

ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD.

Cr. Appeal No.D-83 of 2016.
Confirmation case No.18 of 2016

Cr. Appeal No.D-114 of 2018

| DATE | ORDER WITH SIGNATURE OF JUDGE |
|-------------|--------------------------------------|
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28.04.2020.

Mr. Afzal Karim Virk, Advocate for the appellant in Criminal Appeal No.D-83/2016.

Mian Taj Muhammad Keerio, Advocate for appellant in Criminal Appeal No.D-114/2016.

Ms. Rameshan Oad, A.P.G.

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With the assistance of learned counsel for the appellants and learned Assistant Prosecutor General Sindh, we have gone through evidence of prosecution witnesses and statement of the appellants recorded under section 342, Cr.P.C. Learned counsel for the appellants have submitted, inter alia, that statement of the appellants under section 342, Cr.P.C. have been recorded in a stereotype manner by the trial court and they have not been confronted with every incriminating piece of evidence to seek their explanation thereto. According to them, appellants have not been confronted with the medical evidence i.e. postmortem report, report of chemical examiner, F.S.L. report, recovery of bloodstained clothes and mud, recovery of motorcycle, so also site plan, actual date of arrest i.e. 28.07.2010 at 1630 hours, etc. although the same pieces of evidence have been relied upon by the learned trial court while convicting them and therefore, the appellants have been seriously prejudiced. The position that the appellants have not been confronted with the aforementioned incriminating pieces of evidence in their statement under section 342, Cr.P.C has not been denied by learned Assistant Prosecutor General Sindh. Learned counsel for appellant Siraj has further submitted that a wrong question regarding recovery of lathi was put to Siraj in his statement u/s 342, Cr.P.C, whereas nothing was recovered from him at the time of his arrest.

In the circumstances, all the counsel have consented that this matter in view of such a legal flaw may be remitted to the learned trial Court after setting aside the impugned judgment with direction to the trial Court to record the statements of the appellants afresh by confronting them every piece of incriminating evidence for seeking their explanation and then after hearing the parties announce the judgment within a certain period.

We have noted that the statement of appellant u/s 342, Cr.P.C has been recorded by the trial court in a stereotype manner and while convicting the appellants has relied upon medical evidence i.e. postmortem report, report of chemical examiner, F.S.L. report, recovery of bloodstained clothes and mud, etc. as supporting evidence, but the appellants have not been put to such evidence in their statement u/s 342 Cr.P.C. to enable them to explain the same as required under the said provision of law. It is an established law that provisions of section 342 Cr.P.C. are mandatory in nature and if any piece of evidence is not put to an accused in his statement u/s 342 Cr.P.C. the same cannot be used against him for conviction. In support of such a view reliance can be placed on the case law reported as 2010 SCMR 1009, 2016 SCMR 267 and 2017 SCMR 148. In the case of *Allah Jurio alias Jurio & other Vs. The State (SBLR 2018 Sindh 1987)*, when the divisional bench of this court was faced with similar situation, it decided to remand the case to the trial court by observing that ***“... the learned trial Court while passing the judgment has committed illegality and violated the provisions of Section 342 Cr.P.C. as well Article 132 of Qanun-e-Shahadat Order, 1984. Consequently, the judgment dated 14.07.2010 passed by the learned trial Court is hereby set-aside and Reference for confirmation of death sentence is declined. Case is remanded back to the learned trial Court with direction to record statement of the accused under Section 342 Cr.P.C. afresh by putting all incriminating pieces of evidence including the reports of chemical examiner as well as evidence of Tapedar”***. We fully concur with the said findings and dispose of the appeal filed by appellants in the following manner.

The impugned judgment dated 06.08.2016 is set aside with the result the conviction and sentence awarded to appellants are also set aside and the case is remanded to the trial court with direction to record the statements of accused under section 342 Cr.P.C afresh by putting them all incriminating evidence such as medical evidence i.e. postmortem report, report of chemical examiner, F.S.L. report, recovery of bloodstained clothes and mud, recovery of motorcycle, so also site plan, actual date of arrest i.e. 28.07.2010 at 1630 hours, etc. to seek their explanation as provided under the said provision of law and decide the case within a period of one month from today after affording an opportunity of hearing to all the parties.

In the above terms, both appeals are disposed of and resultantly the death reference No.18 of 2016 against appellant Naseem Gul is replied in negative and disposed of accordingly.

JUDGE

JUDGE

