

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

Criminal Jail Appeal No.D-161 of 2019  
Confirmation Case No.39 of 2019.

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<b>DATE</b>	<b>ORDER WITH SIGNATURE OF JUDGE</b>
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21.12.2021.

Ms. Ambreen Siyal advocate for the appellants.  
Mr. Nazar Muhammad Memon, Additional Prosecutor General.  
Mr. Fayaz Hussain Sabki, Assistant Prosecutor General.

JUDGMENT

MUHAMMAD IQBAL KALHORO, J:- Appellants Rasheed, Muhammad Siddique, Ishaque, Ghulam Qadir alongwith absconding accused Saifullah were booked in Crime No.02/2015 at P.S. Pabban, Hyderabad under Sections 302, 114, 34 PPC for committing murder of deceased Ghulam Shabbir and Mst. Saiqa on the ground of *Karo-Kari* in the house of Ghulam Hyder Khoso situated in Sheikh Bhirkio Hyderabad on 03.01.2015. Against the said charges they were tried by learned 4<sup>th</sup> Additional Sessions Judge Hyderabad in Session Case No.354/2015 and have been returned guilty verdict with death penalty vide impugned judgment dated 27.08.2019 except appellant Ghulam Qadir who has been sentenced to suffer life imprisonment. Co-accused Saifullah was in trial but jumped off bail and his case was bifurcated.

We have heard learned defence counsel, learned Additional Prosecutor General and Assistant Prosecutor General Sindh. Main contention of learned defence counsel is that parties had compromised the matter and applications under Section 345 (2) (6) Cr.P.C. were filed before learned trial Court seeking permission to compound offence, and acquittal on the basis of compromise. Under that impression, learned defence counsel, when eye witnesses were examined, did not cross-examine them and it was marked as 'Null'. And even from other witnesses under the said impression of compromise cross-examination bereft of material questions was conducted by the learned defence counsel which has seriously prejudiced the appellants and as they were not able to properly put up their defence and ask material questions and consequently have been visited with

death sentence. It was duty of learned trial Court particularly when it was not deciding application for compromise to ask material questions from the witnesses if not asked by learned defence counsel to come to a just conclusion but the learned trial Court failed to perform said duty.

Learned counsel for the State has not disputed these facts and in the circumstances all have made a joint request for setting-aside impugned judgment having prejudiced the appellants vis-a-viz sentence of death and remand back the case to learned trial Court with direction to afford a proper opportunity to the appellants to cross-examine the witnesses and so also decide the applications filed for compromise.

We have considered above submissions and perused the material available on record. We have seen that from the eye witnesses no question in cross-examination has been asked. Although they have supported the incident in the evidence but have stated that they have compromised with the accused. This statement of eye witnesses infact misled the defence counsel into thinking that compromise would be accepted and appellants would be given benefit thereof. But neither the compromise application was decided nor learned trial Court thought it fit to recall the witnesses so that a proper cross examination of them could be conducted. We therefore are of the same view as expressed by learned counsel for the parties that prejudice has been caused to the appellants in the manner the trial against them has been conducted and they were misled into surrendering their right to cross examine witnesses under impression of compromise with complainant party. They have been awarded capital punishment of death penalty without having been afforded a proper opportunity of defence in the trial. This has infact resulted into miscarriage of justice. Every endeavor is to be made to grant a right of fair trial to the accused particularly in a case punishable for death penalty.

We in the circumstances, set-aside impugned judgment dated 27.08.2019, remand the case back to learned trial Court with direction to decide applications under Section 345 (2) (6) Cr.P.C. in accordance with law and in case the result is not in favor of appellants, they shall be afforded a proper opportunity to cross-examine the witnesses and only thereafter decide the case on merits.

Learned defence counsel at this stage has submitted that Appellant Muhammad Siddique is seriously ill therefore, he may be released on bail. She may file bail application before learned trial Court on the same ground or any other ground for the same relief, which if filed shall be decided expeditiously within 15 days of its filing on merits. Office is directed to return R&Ps to learned trial Court.

The appeal stands disposed of in the above terms. Accordingly confirmation Case No.39/2019 is replied in negative.

JUDGE

JUDGE

Irfan Ali