

IN THE HIGH COURT OF SINDH, CIRCUIT COURT LARKANA

Cr. Appeal No. S-39 of 2024
Cr. Appeal No. S-01 of 2025
Cr. Appeal No. S-02 of 2025

Appellant (in Cr. Jail Appeal No. S-01/2025)	Sagar Kumar s/o Hari Chand Hindu Through Mr. Muhammad Afzal Jagirani, advocate
Appellant (in Cr. Jail Appeal No. S-02/2025)	Israr Ahmed s/o Nadir Ali Awan Through Mr. Safdar Ali G. Bhutto, advocate
Appellant (in Cr. Jail Appeal No. S-39/2024)	Sagar Kumar s/o Hari Chand Hindu Through M/s Muhammad Afzal Jagirani and Aftab Hussain Channa.
State	Through Mr. Nazir Ahmed Bhangwar, D.P.G
Date of hearing	10-03-2025
Date of Judgment	21-03-2025

J U D G M E N T

KHALID HUSSAIN SHAHANI, J.- The appellants Sagar Kumar and Israr Ahmed were convicted by the court of learned Additional Sessions Judge-II, Kandhkot, in case bearing crime No.221/2023, offence u/s 324, 353, 34 PPC, PS A-section Kandhkot, vide judgment dated 24-12-2024, and sentenced as under:-

- (a) Offence u/s 324 r/w section 34 PPC to R.I for 10 years and fine of Rs.200,000/- each and in case of default to undergo S.I for 02 years.
- (b) Offence u/s 353 r/w section 34 PPC to R.I for 02 years.
- (c) Offence u/s 337-F(iii) PPC to R.I 03 years and to pay Daman of Rs.50,000/- for one injury, total Rs.200,000/- of four injuries, to be paid to injured Om Kumar.
- (d) Offence u/s 337-F(v) r/w 34 PPC to R.I 05 years and to pay Daman of Rs.100,000/- each per injury, total Rs.200,000/-, to be paid to injured PC Zameer Hussain. They will remain inside prison till payment of Daman.

The benefit of section 382-B Cr.P.C was extended to the appellants.

02. As per prosecution theory, on 03.09.2023 police party led by PC Abdul Majid Khoso, whilst patrol, at about 0120 hours, when reached at HBL Bank Kandhkot, heard cries, attracted to Mari, found accused Sagar Kumar being armed with T.T pistol, accused Israr and two unidentified individuals beating Om Kumar. The police party restrained them not to do so. It is alleged that accused Sagar Kumar fired with his respective pistol at Om Kumar which hit him. As soon as PC Zameer Hussain moved ahead to arrest him, accused Sagar Kumar also fired, which hit him. The accused made their escape good. The injured were shifted to hospital; such information was communicated to police of PS A-section Kandhkot. Consequent upon, case was registered inter alia on above facts.

03. After usual investigation, report was submitted against the appellants.

04. A formal charge was framed against the appellants, to which they pleaded not guilty. To substantiate its case, prosecution examined HC Muhammad Siddique (author of the FIR), WPC Faisal Akhtar (Malkhana Incharge), PC Niaz Muhammad (carrier of weapons for FSL), Om Kumar (injured), PC Abdul Majid (complainant), PC Zameer Hussain (injured), PC Muhammad Tayab (Mashir), ASI Kaleemullah Chandio (Investigating officer) and Dr. Khaliq Anwar (MLO).

05. It is worth mentioning that prior to this, appellant were convicted vide judgment dated 25-06-2024 by the trial court. Cr. Appeals No.S-38/2024 and S-52/2024 were filed by the appellants and this court vide judgment dated 05-12-2024, remanded the case with the observations:

It is matter of record that the prosecution examined 08 witnesses to prove their case and only opportunity of cross examination to the witnesses was provided to appellant Sagar Kumar, while no opportunity of cross examination was provided to co-appellant Israr Ahmed, which is against the provisions of fair trial guaranteed under Article 10-A of Constitution of Pakistan, 1973. Article 133 of Qanoon-e-Shahadat provided mechanism for examination in chief and cross examination to provide full opportunity to accused to prove his innocence and best method to ascertain truth. Every accused is entitled to a fair trial and due process for determination of his rights. Article 10-A of constitution

protects the rights of accused for a fair trial. In the present case appellant Israr Ahmed was prejudiced in his trial and defense, therefore, a miscarriage of justice has occurred in his case. The procedure adopted by the trial court is an illegal procedure that cannot be cured u/s 537 Cr.P.C as held in case of Shafiq Ahmed Shah Jee V. The State. Hence, impugned judgment is liable to be set aside.

In view of above legal position, impugned judgment is set aside. The case is remanded back to the trial court with direction to provide fair opportunity of cross examination to the appellant Israr Ahmed and after recording the fresh statements of accused, the trial court shall pass the judgment afresh.

06. Record reflects that, after remand of the case, no evidence of any of the witness was recorded by the learned trial court to accord opportunity of cross examination to appellant Israr Ahmed, despite having clear directions as highlighted hereinabove, and learned trial court relied upon the statement to close the side of prosecution submitted by learned ADPP on 17-12-2024. On the same date, statement of accused was recorded and passed impugned judgment on 24-12-2024. Prima facie from the conduct of learned presiding officer it appears that he has ignored the directions accorded by this court in its letter and spirit and passed the judgment in hasty manners without applying judicial mind and wisdom behind Article 10-A of the Constitution of Pakistan, which guarantees that the right to a fair trial is an inviolable fundamental right of every accused person, as observed by this court in the order highlighted above.

07. At the very outset, learned counsel for the appellants put stance that though learned trial court failed to accord opportunity of cross examination to appellant Israr Ahmed in pursuance of the judgment, whereby the case was remanded, yet the evidence brought on the record is not sufficient enough to record conviction against the appellants. Learned counsels pointed out that the star witnesses of the occurrence have not supported the prosecution case on material aspects and alleged recovery of the weapons has been foisted upon the accused Sagar Kumar. They urged that no private person has cited throughout the case and private witness Om Kumar being star witness of the occurrence has exonerated the accused from commission of the offence and remaining witnesses are police officials. They prayed for acquittal of the appellants.

08. Conversely, learned Additional Prosecutor General, reluctantly agreed, the star witness injured Om Kumar not supported the prosecution case and injured PW PC Zameer Hussain recorded no objection for acquittal of the appellants. He prayed for remand of the case.

09. The directions highlighted above have not been complied with, therefore, the case is remanded back with the directions that trial of the case be commenced either by the learned Sessions Judge, Kashmore @ Kandhkot himself or assign the same to another court having jurisdiction, with specific directions to decide the case within the span of two months. It is also pointed out that during first round of trial, the appellants were on bail, therefore, they are at liberty to apply for bail and the transferee court shall decide the same in accordance with the law.

10. Given the above, the appeals are disposed of along with pending application(s). Office is directed to send the R&Ps of the case to the learned Sessions Judge, Kashmore @ Kandhkot for compliance.

JUDGE