

Remand : Chief is absence of Defence Counsel

S26

IN THE HIGH COURT OF SINDH, KARACHI

Special Criminal A.T.J.A. No.65 of 2022  
Confirmation Case No.02 of 2022

*Present:*

*Mr. Justice Mohammad Karim Khan Agha  
Mr. Justice Khadim Hussain Tunio*

Appellant : Muhammad Manan S/o Noor  
Muhammad through Mr. Moula  
Bux Bhutto, Advocate.

Respondent : The State  
through Mr. Muhammad Iqbal  
Awan, Additional Prosecutor  
General Sindh.

Date of Hearing : 19.04.2023

Date of Order : 19.04.2023

JUDGMENT

MOHAMMAD KARIM KHAN AGHA, J:- Accused Muhammad Manan, Muhammad Asif and Muhammad Yousuf were tried before the Anti-Terrorism Court No.V, Karachi in Special Case No.21/2021 under FIR No.128/2017 U/s 302/34 PPC R/w Section 7 ATA, 1997 and vide judgment dated 20.01.2022, accused Muhammad Asif and Muhammad Yousuf were acquitted, whereas, appellant Muhammad Manan was convicted U/s 302(b) PPC and sentenced to death for four counts subject to confirmation by this Court and subject to pay an amount of Rs.100,000/- in equal share to the legal heirs of the deceased as compensation as contained in section 544-A Cr.P.C. and in case of default, he shall further suffer R.I. for 06 months and compensation shall be recoverable as arrears of land revenue.

2. The brief facts of the prosecution case as per FIR are that the complainant namely Sabir Ahmed S/o Tajmal Hussain registered the FIR on 13.05.2017 at P.S. Iqbal Market contending therein that his daughter namely Rabia aged about 24/25 years was divorced from her first husband and from the said marriage one minor daughter namely Raheela

aged 3½ years was born, thereafter, I again got my daughter Rabia married with Muhammad Manan S/o Noor Muhammad two years ago and from the said wedlock, one son namely Rehan Arif aged about 1½ year was born and my minor son namely Noor Muhammad aged about 6 years who was also residing with my daughter since the birth of minor son of my daughter the son of ex-wife of Muhammad Manan namely Asif and Yousuf became jealous with my daughter. On 12.05.2017 at about 10.30 p.m. some family dispute/quarrel arose between my daughter Mst. Rabia and Muhammad Manan and during that both sons of Muhammad Manan namely Asif and Yousuf also came there and having iron rods in their hands. They started beating ruthlessly to my son namely Noor Muhammad, my daughter Rabia, my granddaughter Raheela, my grandson Rehan Arif by inflicting blows with iron rod on their heads with intention to Qatl-e-Amd, due to which they have received severe injuries and they died on the spot, then accused fled away from the spot in presence of mohalla people. After acquiring the information complainant immediately reached at Masoor Nagar and enquired the matter from area people. Thereafter, the instant FIR.

3. After usual investigation, the case was challaned and the accused persons were sent up for trial where they pleaded not guilty to the charge.

4. The prosecution in order to prove its case examined 15 Prosecution Witnesses and exhibited various documents and other items. The statement of accused was recorded under Section 342 Cr.P.C in which they denied the allegations levelled against them and claimed false implication. However, the accused did not give evidence on oath nor produce any DWs in support of their defence.

5. After hearing the parties and appreciating the evidence on record, the trial court convicted the appellant and sentenced him as set out earlier in this judgment; hence, the appellant has filed this appeal against his conviction, whereas, acquitted his co-accused as mentioned earlier. However, it is noted that no appeal against acquittal of the co-accused has been made.

6. The facts of the case as well as evidence produced before the trial court find an elaborate mention in the impugned judgment dated

20.01.2022 passed by the trial court and, therefore, the same may not be reproduced here so as to avoid duplication and unnecessary repetition.

7. The complainant was served; however, he preferred to remain absent and as such, service on him was held good.

8. At the very outset of hearing of this appeal, learned counsel for the appellant stated that it was a case of remand in respect of appellant on the basis of three PWs; namely PW-10 Shamim Ahmed, PW-11 Muhammad Hanif and PW-15 Syed Adnan Haider Kazmi, whose evidence had not been recorded in the presence of defence counsel and this was a violation of mandatory provision of Section 353 Cr.P.C. which was not curable under Section 537 Cr.P.C. In support of his contentions, he has placed reliance on the cases SBLR 2019 Sindh 967 [*Rajab Ali vs. The State*] and SBLR 2021 Sindh 112 [*Bashir Ahmed vs. The State*] and contended that under these circumstances, this case was of remand.

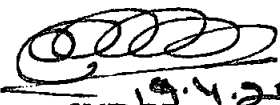
9. Learned Addl. AP.G. after considering the record was in agreement with learned counsel for the appellant.


10. We have also considered the record and gone through the relevant law and agreed with the learned counsel for the appellant and learned Addl. P.G. for the reasons mentioned above. This case warrants remand for trial Court.

11. Under these circumstances, we hereby set aside the impugned judgment dated 20.01.2022 and answer the Confirmation Reference in negative for the appellant Muhammad Manan. The case shall be referred back to Anti-Terrorism Court No.V, Karachi for the limited purpose of re-recording the evidence of PW-10 Shamim Ahmed, PW-11 Muhammad Hanif and PW-15 Syed Adnan Haider Kazmi in the presence of learned counsel for the appellant Muhammad Manan, who shall also be given an opportunity to cross-examine the witnesses, who shall be re-examined if so desired by learned Public Prosecutor. Thereafter, fresh statement under Section 342 Cr.P.C. of appellant Muhammad Manan shall be recorded and after hearing the parties, learned trial Court shall write a fresh judgment in respect of Muhammad Manan **only**. However, learned trial Court before re-recording the evidence of the aforesaid witnesses shall give the notice to the complainant. This is because other co-accused have

already been acquitted by the learned trial Court and no appeal has been filed against their acquittal. This process shall be completed within a period of three months of the date of this order. A copy of this order alongwith R&Ps shall be immediately sent to Anti-Terrorism Court No.V, Karachi which shall comply with this order.

12. The instant appeal stands disposed of in the above terms and the Confirmation Reference is answered in negative.

  
JUDGE  
19.4.2022

  
JUDGE  
19/04/23