

# THE HIGH COURT OF SINDH, KARACHI

Criminal Appeal No. 548 of 2019  
Confirmation Case No. 15 of 2020

*Present:*  
*Mr. Justice Mohammad Karim Khan Agha*  
*Mr. Justice Irshad Ali Shah*

Appellant: Muhammad Arshad through Mr. Shamail Sikander advocate

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

Date of hearing: 01.09.2021

Date of announcement 01.09.2021

## JUDGMENT

MOHAMMAD KARIM KHAN AGHA, I- Muhammad Arshad, appellant has preferred the instant appeal against the impugned judgment dated 11.09.2019, passed by learned MCTC/ I-Additional Sessions Judge, Malir, Karachi in Sessions Case No.13/2018 (State vs. Muhammad Arshad) arising out of FIR No. 453/2017 for offences under sections 365/302 PPC registered at PS SITE Super Highway Industrial Area, Karachi, whereby, after full-dressed trial, the appellant was convicted under Section 302(b) PPC and sentenced to death as tazir, subject to the confirmation by this Court. Appellant was also directed to pay fine of Rs. 2.5 Million to the legal heirs of deceased under Section 544-A Cr.P.C. In case of default, he was ordered to suffer S.I for six months more.

2. During reading of the evidence, it transpires that the examination-in-chief of P.W-01 complainant Muhammad Sarfaraz, who is an important witness, was recorded in absence of defense counsel. We find that the examination-in-chief in a case carrying capital punishment must be recorded in presence of the defense counsel so that the accused is not prejudiced of his right to a fair trial as enshrined under Article 10-A of the

Constitution. If a counsel had been appointed for the appellant he may have objected to certain questions being asked by the state counsel or to certain documents being exhibited, as such we intend to remand this case back to MCTC/ I-Additional Sessions Judge, Malir, Karachi. Reliance in this respect is placed on the case of Bashir Ahmed vs. The State (SBLR 2021 Sindh 112), wherein this Court under the similar circumstances remanded back the case to the trial Court for re-recording the evidence of the prosecution witness in presence of defense counsel.

3. When learned counsel for appellant and learned Addl. P.G Sindh were confronted with this position, they fully agreed that examination-in-chief of P.W-01 complainant Muhammad Sarfaraz was not recorded in the presence of defense counsel, as such it is a fit case to be remanded for limited purpose of re-recording the evidence of P.W-01 complainant Muhammad Sarfaraz in presence of defense counsel, so that no prejudice is caused to appellant.

4. Under these circumstances, we hereby set aside the impugned judgment, answer the confirmation case in **negative** and remand the case along with R&Ps back to MCTC/ I-Additional Sessions Judge, Malir, Karachi for limited purpose of re-recording the evidence of P.W-01 complainant Muhammad Sarfaraz in presence of his defense counsel and thereafter, the opportunity of cross-examination shall be given to learned counsel for the appellant. The trial Court shall also re-record section 342 Cr.P.C statement of the appellant and thereafter shall re-write the judgment afresh in accordance with law in respect of all offences for which the appellant has been charged. This process shall be completed within six weeks of the date of this order. The appellant shall remain in custody and the office shall forward the case file & R&Ps to the trial court for compliance.

5. The instant appeal and confirmation case stand disposed of in the above terms.