

IN THE HIGH COURT OF SINDH AT KARACHI

Present:

Mr. Justice Mohammad Karim Khan Agha

CRIMINAL APPEAL NO.419 OF 2020

Appellant: Muhammad Shahroz S/o. Muhammad Shafiq through Mr. Shahid Hussain Soomro, Advocate.

Respondent/State Mr. Muhammad Iqbal Awan, Addl. Prosecutor General, Sindh, Sindh

Criminal Jail Appeal No.541 of 2020

Appellant: Shaikh Muhammad Hanif alias Anwar Dada S/o. Shaikh Muhammad Habib through Mr. Ghulam Murtaza, Advocate.

Respondent/State Mr. Muhammad Iqbal Awan, Addl. Prosecutor General, Sindh, Sindh

Date of Judgment: 26.02.2024

J U D G M E N T

Mohammad Karim Khan Agha, J.- Appellants Muhammad Shahroz S/o. Muhammad Shafiq and Shaikh Muhammad Hanif alias Anwar Dada S/o. Shaikh Muhammad Habib have preferred these appeals against the impugned judgment dated 09.09.2020 passed by the Model Criminal Trial Court (Extension)/Vth Additional Sessions Judge Karachi East in Sessions Case No.933/2019 arising out of F.I.R. No.1316/2018 U/s. 392/302/423/34 PPC registered at P.S. Korangi Industrial Area, Karachi whereby the appellants were convicted and sentenced to Life Imprisonment along with fine of Rs.100,000/- (One Lac. Only) each as a compensation which would be paid to the legal heirs of deceased and in case of default of payment, they shall suffer S.I. for three months more. They were also convicted and sentenced to suffer R.I. for 07 years under section 324/34 PPC and to pay fine of Rs.50,000/- each and so also R.I. for 07 years under section 392/34 PPC and fine of Rs.50,000/- each. In case of default the appellants were order to suffer S.I. for three months more. The benefit of section 382-B Cr.P.C. was also extended to the appellant.

2. The brief facts as per the contents of FIR lodged by the complainant Abdul Sattar are that on 21.12.2018 his son Muhammad Qasim at about 9:30 p.m. left house and on the same night on 22.12.2018 at about 1:30 p.m. Atif, the son of neighbor of complainant came at his house and informed that his son Muhammad Qasim along with his friends Muhammad Kashif S/o. Muhammad Ali and Muhammad Umar S/o. Muhammad Ayoub, riding on the motorcycle of Muhammad Umar going towards Jinnah Hospital to see brother of his friend Shahrukh and when at about 2330 hours, they reached at Malir Naddi, Korangi Crossing Road, the chain of motorcycle broken and when they were repairing the chain, suddenly two unknown culprits, aged about 35-36 years and 25-26 years armed with deadly weapons riding on motorcycle came and on the force of weapons snatched mobile phones from Muhammad Umar and Muhammad Kashif and also snatched Mobile Phone Nokia and purse containing his original service Card of K-Electric from the son of complainant and when his son resisted, the culprits committed his murder by means of firing and also caused bullet injury to Muhammad Umar. On such information, the complainant reached at Jinnah Hospital and identified dead body of his son at mortuary of Jinnah Hospital. Thereafter the complainant lodged FIR against unknown accused persons.

2. On 16.01.2019, ASI Muhammad Khan of P.S. K.I.A. during patrolling duty received spy information that accused involved in instant crime are present at Korangi Crossing, Godam Chowrangi Road, duly armed with deadly weapon on separate motorcycles in order to commit any offence, hence on such information, ASI Muhammad Khan along with his subordinate staff reached at the pointed place and on the pointation of spy informer apprehended both the culprits. On query, the culprit sitting on motorcycle bearing No.KDX-4241 Yamaha 100 cc of red color disclosed his name as Shaikh Muhammad Hanif S/o. Shaikh Muhammad Habib and the culprit sitting on motorcycle No.KIE-1334, maker Super Star disclosed his name as Muhammad Shehroz son of Muhammad Shakil, from the possession of accused Shaikh Muhammad Hanif one 30 bore pistol loaded with magazine alongwith three live rounds was recovered, whereas from the possession of accused Muhammad Shehroz one 30 bore pistol loaded with magazine alongwith three live rounds was recovered. On demand, the accused persons remained failed to produce licenses of the recovered pistol. On tentative interrogation at the spot, the accused

persons also admitted commission of the alleged incident, hence both the accused persons arrest in this case.

3. After completion of usual investigation charge was framed against the accused person in which they pleaded not guilty and claimed to be tried.

4. The prosecution in order to prove its case examined 11 Prosecution Witnesses and exhibited various documents and other items. The appellants in their statements under Section 342 Cr.P.C denied the allegations against them. He however, did not give evidence on oath or called any DW in support of his defence case.

5. At the very outset learned Additional Prosecutor General Sindh brought the court's attention that PW-1 Abdul Sattar, who was the complainant in this case, PW-2 Arif Ahmed Khan, who was Mashir and Muhammad Umar, who was an injured eye witness. All these three witnesses are important witnesses whose evidence in chief were recorded in this capital case in absence of their defence counsel as such this case to be a case of remand. Learned counsel for the appellant when confronted with this situation also agrees that this legal defect also made this case of remand.

6. I am in agreement with the learned counsel for the appellant and learned Addl. PG that since the appellants have been prejudiced in their defence by not having their defence counsel while evidence in chief of the aforesaid PWs were recorded. This because this is the capital case and it was mandatory requirement of law that the defence counsel should be present during evidence in chief of the aforesaid PWs as he may object certain piece of evidence and even to any documents which they might have exhibited. This also appears to be a violation of Article 10-A of the Constitution.

7. Under these circumstances, the impugned judgment is set aside and case is remanded to Model Criminal Trial Court (Extension)/Vth Additional Sessions Judge Karachi East for the limited purpose of re-recording the evidence of PW-1 Abdul Sattar, PW-2 Arif Ahmed Khan and PW-9 Muhammad Umar in presence of their defence counsel. This evidence including examination-in-chief, right to cross-examination and any re-examination, if desired by the prosecution. Thereafter, Section 342

Cr.P.C. statement shall be recorded afresh of the appellants and after hearing the arguments of the parties learned trial Court shall re-write afresh judgment in this case. This exercise shall be completed within three (03) months of the date of this order. Copy of this order along with R&Ps shall be sent to Model Criminal Trial Court (Extension)/Vth Additional Sessions Judge Karachi East for compliance.

8. The question of bail shall be determined by the trial Court. The trial Court shall call the aforesaid witnesses and summon the appellants upon receipt of this order.

9. The above two appeals are disposed of in the above terms. The appeal No.420 of 2020 and Cr. Jail Appeal No.15 of 2021 are detached from the above appeals and adjourned to a date in office.

JUDGE