

IN THE HIGH COURT OF SINDH AT KARACHI

Cr. Appeal No. 421 of 2025

Appellants : Danish Ali & another
through Mr. Muhammad Farooq, advocate.

Respondent : through M/s. Muhammad Iqbal Awan, Additional
Prosecutor General, Sindh.

Date of Hearing : 23.09.2025

Date of Decision : 23.09.2025

JUDGMENT

OMAR SIAL, J.- At the very outset, it has been pointed out to us that the appellants' right to a fair trial has been violated; accordingly, the appellants' learned counsel seeks a remand of the case. The learned Additional Prosecutor General agrees that the appellants were asked by the trial court to cross-examine five witnesses. We have heard the counsel and the Additional Prosecutor General. Our observations are as follows.

2. The record reflects that the trial court deemed it appropriate to ask the accused to cross-examine Azam Khan, PW-1; Javed Iqbal, PW-2; Fareed Khan, PW-6; Mohammad Asad, PW-8; and Zeeshan, PW-9, as their counsel remained absent. This was not the proper course to follow. If the trial court was of the view that the appellants' counsel was delaying proceedings, the accused should have been warned that, if their counsel did not appear, one at the State's expense would be provided to them.

In **Ghulam Rasool Shah and another vs The State (2011**

SCMR 735) it was held that:

“Having considered the case of appellants, we are of the view that the appellants could be given time to engage a counsel privately of their own choice, failing which the learned trial Court shall provide them the defence counsel at State expenses of their choice, out of the list maintained by the Court. If the appellants fail to engage a counsel of their own or refuse to be represented by a defence counsel provided at State expenses, the Court will be at liberty to proceed with the case and the defence counsel so appointed shall be called upon to conduct cross-examination on prosecution witnesses and call for evidence in defence.”

In **Abdul Ghafoor vs The State (2011 SCMR 23)** it was held

that:

With immense respect to the learned Judges of the High Court. we are persuaded to hold that it is the primary responsibility of the court seized of a matter to ensure that the truth is discovered and the accused are brought to justice.

“If the learned trial Court found that the counsel engaged by the appellant had sought too many adjournments, even then he was not appearing, the court could either have directed that a defence counsel be provided to the appellant at State expense or could have given last opportunity to the appellant to make alternate arrangements failing which the court would proceed to decide the matter. This course was not adopted by the learned trial Court and instead on 2-12-1999 gave a total surprise to the appellant by asking him to cross-examine those witnesses for which obviously' neither the appellant had the requisite expertise nor he was prepared to do so. In these circumstances and in view of the fair concession given by the State, we find that the procedure adopted by the learned trial Court is reflective of miscarriage of justice and the appellant be provided one opportunity to have the afore-referred witnesses cross-examined.”

3. Given the above, the impugned judgment is set aside, and the case is remanded to the Trial Court. The appellant shall be treated as an under-trial prisoner. He shall be given one

opportunity to cross-examine the witnesses referred to in paragraph 2 above, and thereafter the court shall decide the matter within 45 days of the said opportunity given. The parties are directed to appear or arrange representation before the Trial Court on 11.11.2025. A copy of this order should be sent to the learned Trial Court for information. As the Appellants were on bail when the impugned judgment was announced, they are readmitted to bail against a surety of Rs.100,000/- (One Hundred Thousand) each and a bond for the same amount to the satisfaction of the Nazir of this Court.

JUDGE