

ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA.
Cr. Appeal No.D-75 of 2018.

112

Order with signature of Hon'ble Judge

1. For orders on office objection. (Flag A).
2. For orders on M.A No. 5541 of 2022.
3. For hearing of main case.

19.4.2022

M/s Ali Nawaz Ghangro and Altaf Hussain Surahio, advocates for the appellants.

Mr. Asif Ali Abdul Razak Soomro, advocate for the complainant

Mr. Ali Anwar Kandhro, Addl. P.C.

Appellants Gulzar son of Ghous Bux alias Gosho and Ghafoor son of Mitho, both by caste Kehar, have filed this appeal against the judgment dated 15.12.2018, penned down by the learned Special Judge, Anti-Terrorism Court, Shikarpur, in Special Case No.38/2017 re-The State v. Gulzar & others, arisen out of Crime No.23/2016, registered at P.S. Sultan Kot, District Shikarpur, whereby the appellants were convicted for offence under Section 365-A, PPC read with section 7 (1)(e) of Anti-Terrorism Act, 1997 and sentenced to suffer imprisonment for life and forfeiture of their property; they were also convicted under Section 302, read with 149, PPC and sentenced to suffer imprisonment for life, and also to pay Rs.200,000/- each as compensation to the legal heirs of deceased Rahim Bux in terms of Section 544-A, Cr.P.C; the appellants were also convicted under Section 7(a) of Anti-Terrorism Act, 1997 and sentenced to suffer imprisonment for life, and to pay fine of Rs.50,000/-, in default whereof to suffer imprisonment for three months more. These sentences were ordered by the trial Court to run concurrently and benefit of Section 382-B, Cr.P.C. was also extended to the appellants.

2. According to the case of prosecution, on 01.06.2016, at Lodra Bus Stop, the accused persons, namely, 1) Sharif, 2) Hazoor Bux, 3) Gulzar, 4) Usman, all four armed with pistols, 5) Fateh Mohammad *alias* Fatoo, 6) Ghafoor, 7) Rasheed, all by caste Kehar, armed with T.T. Pistols, kidnapped for ransom Rahim Bux Shar, brother of complainant Rasool Bux Shar and subsequently committed his murder by making fires upon him. On 02.6.2016 complainant Rasool Bux Shar lodged such FIR at P.S Sultan Kot.

3. At the very outset, learned counsel for the appellants submit that the appellants Gulzar and Ghafoor were tried and convicted by the trial Court through impugned judgment; however, case against absconders namely Shareef, Abdul Raseed @ Rasheed and Usman was kept on dormant file. They next submit that after filing of instant appeal, the absconders, namely, Shareef, Abdul Rasheed @ Rasheed and Usman were arrested by the police and were tried before same trial Court vide New Special Case No.09 of 2021 and on conclusion of the trial, they have been acquitted of the charge. They further submit that P.Ws, who appeared before the trial Court in the trial of co-accused Shareef and others had not deposed even a single word against the appellants, hence the propriety of the law demands that the case may be remanded back for recording fresh evidence/*de novo* trial. In support of such contentions, they submit certified copy of judgment dated 30.10.2021 passed by the trial Court in New Special Case No.09/2021, which is taken on record.

4. Learned Addl. P.C and learned counsel for the complainant have no objection.

5. Perusal of judgment dated 30.10.2021 passed by the learned trial Court in New Special Case No.09/2021 reveals that the P.Ws examined in the trial proceedings against co-accused Shareef, Abdul Rasheed @ Rasheed were declared hostile, as they did not implicate the accused in the commission of offence. Some P.Ws were examined in the trial against appellants in earlier round of trial, where they had deposed against the appellants and subsequently they have taken U-turn, therefore, such development in the case has created doubt; hence, in order to ascertain veracity of the prosecution evidence, it will be proper to remand the case for *denovo* trial. Accordingly instant appeal is hereby allowed. Impugned judgment dated 15.12.2018 is set aside. The case is remanded to the trial Court with direction to conduct the *de novo* trial and conclude it within shortest possible time, preferably within six months from date of receipt of this order.



JUDGE



JUDGE

Qazi Tahir PA*