

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR

Before:

Mr. Justice Amjad Ali Bohio, J.

Mr. Justice Khalid Hussain Shahani, J.

Spl. Anti-Terr. Jail Appeal No. D-19 of 2024

Appellant : Muhammad Punhal s/o Datar Dino, Mirani
Through Mr. Rukhsar Ahmed Junejo, Advocate

Spl. Anti-Terr. Jail Appeal No. D-20 of 2024

Appellant : Majid Hussain s/o Janib Mirani
Through Mr. Rukhsar Ahmed Junejo, Advocate

The State : Through Mr. Aftab Ahmed Shar, APG

Date of hearing : 17.12.2025

Reasons recorded : 17.12.2025

JUDGMENT

KHALID HUSSAIN SHAHANI, J.— The present appeals arise from the conviction and sentencing of Muhammad Punhal and Majid Hussain by the learned Anti-Terrorism Court-I, Sukkur, in Old Special Case No.99/2016 and New Special Case No.20/2023, arising out of the abduction and murder of Zubair Ahmed, a minor boy of about 7/8 years of age. The prosecution case, as disclosed in FIR bearing Crime No.49/2015, registered at Police Station ‘C’ Section, Sukkur, by complainant Abdul Aziz Mahar, is that on 04.04.2015 at about 8:00 p.m., his son Zubair Ahmed left the house and did not return. Upon inquiry, the family members informed the complainant that Zubair had gone out at about 8:00 p.m. and had not come back. The complainant, along with his nephew Amanullah Mahar, conducted a search but could not trace the child. Subsequently, the complainant resorted to public appeals through newspapers and television channels in an effort to locate his son.

2. On 06.04.2015, two individuals, Badaruddin and Muhammad Ibrahim, visited the complainant’s residence and informed him that on the evening of 04.04.2015, at about 8:15 p.m., while they were returning from Old Sukkur towards Waspur Muhalla, they had seen six unknown persons near Pirzada Ground in the light of an electric bulb, among whom was Zubair

Ahmed. They stated that they had seen these persons before, as they used to visit the complainant's house, and that when they inquired where the group was taking Zubair, they were told that the child was being taken to Tanga Stand, Old Sukkur. They further asserted that they could identify the persons if seen again.

3. On 07.04.2015, Amanullah Mahar informed the complainant that the feet of a dead body were visible on the bank of the river near Jind Peer, where a crowd had gathered. The complainant, accompanied by his brother Abdul Jabbar and nephew Amanullah, rushed to the spot and immediately informed the police of Police Station 'C' Section, Sukkur. Head Constable Ehsan Ali Shaikh, along with his staff, reached the scene, recovered the dead body from the river, and brought it to the hospital for post-mortem examination. The complainant identified the body as that of his son Zubair Ahmed. After the funeral, the complainant proceeded to the police station and formally lodged the FIR against unknown persons. Following investigation, the case was challaned, naming Muhammad Punhal and Majid Hussain as accused in custody, while Saleem was shown as absconder.

4. A formal charge was framed against the accused, to which they pleaded not guilty. During the trial, the prosecution examined ten witnesses and produced several documents in support of its case. After the close of the prosecution evidence, the statements of the accused were recorded under Section 342 Cr.P.C., wherein they denied the prosecution allegations and claimed innocence. In their defence, the accused examined three defence witnesses, namely Iqbal Ahmed, Muhammad Bachal, and Shah Nawaz. After hearing the learned counsel for the respective parties, the trial court passed the impugned judgment dated 31.01.2024, convicting the appellants under the following provisions:

- *Section 302 read with Section 34 PPC, and sentencing them to imprisonment for life, along with compensation of Rs. 100,000/- each to be paid to the legal heirs of the deceased, as required under Section 544-A Cr.P.C.;*

- *Section 364-A read with Section 34 PPC, and sentencing them to rigorous imprisonment for 14 years;*
- *Section 377 read with Section 34 PPC, and sentencing them to rigorous imprisonment for 10 years, along with a fine of Rs. 100,000/- each, or in default, simple imprisonment for six months;*
- *Section 201 read with Section 34 PPC, and sentencing them to rigorous imprisonment for seven years, along with a fine of Rs. 20,000/- each, or in default, simple imprisonment for two months; and*
- *Section 7(a) of the Anti-Terrorism Act, 1997, and sentencing them to imprisonment for life, along with a fine of Rs. 10,000/- each, or in default, simple imprisonment for six months.*

5. At the outset, learned counsel for the appellants submitted that the appellants had earlier been convicted and sentenced by the trial court vide judgment dated 30.01.2018, after a full-fledged trial. That judgment was challenged before this Court in Spl. Criminal Appeal No. D-23/2018. After hearing the parties, this Court set aside the conviction and sentence and remanded the case to the trial court with the specific direction to record the evidence of three prosecution witnesses namely, the complainant Abdul Aziz, PW Amanullah, and PW Badruddin afresh in the presence of defence counsel, and to decide the case within three months for the reason that as per record on 09.02.2017, when these witnesses were to be examined, an adjournment application was filed by the learned defence counsel through his junior advocate, which was granted by the trial court, and a cost of Rs. 200/- was imposed, with the case adjourned. Despite this, the trial court proceeded to record the examination-in-chief of the said witnesses in the absence of the learned defence counsel, which was in clear violation of the principles of fair trial.

6. Learned counsel for the appellants submits that, after the remand, the trial court did record the evidence of the three witnesses, including the complainant, in compliance with the order dated 21.09.2023 passed by this Court. However, the learned trial court then proceeded to pass the impugned judgment dated 31.01.2024 without recording the statements of the appellants under Section 342 Cr.P.C, without putting to them the incriminating evidence

brought on record, and without affording them an opportunity to make a statement on oath under Section 340(2) Cr.P.C or to produce any defence witnesses, if they so desired.

7. This omission is of grave legal consequence. Section 342 Cr.P.C is a mandatory provision designed to ensure that the accused is fully aware of the case against him and is given a fair opportunity to explain or rebut the incriminating evidence. The statement under Section 342 Cr.P.C is not a mere formality; it is a vital safeguard in criminal trials, particularly in capital and serious offences, to prevent miscarriage of justice. The failure to record such a statement deprives the accused of a statutory right and renders the trial fundamentally flawed.

8. Moreover, Section 340(2) Cr.P.C confers upon the accused the right to make a statement on oath and to produce defence witnesses. Denial of this opportunity, especially after the prosecution has closed its evidence, is a serious violation of the principles of natural justice and of the right to a fair trial guaranteed under Article 10-A of the Constitution of the Islamic Republic of Pakistan, 1973. A fair trial is not merely about the presentation of evidence; it also encompasses the procedural safeguards that ensure the accused can effectively participate in his defence.

9. The Court has carefully examined the record and the submissions of learned counsel. It is evident that, although the trial court recorded the evidence of the three prosecution witnesses in compliance with the earlier order of this Court, it failed to follow the essential procedural steps before convicting the appellants. The impugned judgment was passed without recording the statements of the appellants under Section 342 Cr.P.C., without confronting them with the incriminating evidence, and without affording them an opportunity to make a statement on oath or to produce defence witnesses.

10. This omission is not a mere irregularity; it is a fundamental defect that vitiates the entire trial. A conviction rendered without affording the accused

the statutory and constitutional safeguards cannot be sustained in law. The right to a fair trial, including the right to be heard and to present a defence, is a cornerstone of the criminal justice system. Where such rights are denied, the resulting judgment cannot be considered just or lawful.

11. Learned Deputy Public Prosecutor for the State, after hearing the arguments, conceded that the impugned judgment suffers from a legal defect and raised no objection to the prayer for setting aside the conviction and sentence and remanding the case for fresh proceedings. In the light of the foregoing, the impugned judgment dated 31.01.2024 passed by the Anti-Terrorism Court-I, Sukkur, in Old Special Case No. 99/2016 and New Special Case No. 20/2023, is set aside, along with the conviction and sentences awarded to the appellants Muhammad Punhal and Majid Hussain. The case is remanded to the learned trial court with the following directions:

- i. To record the statements of the appellants under Section 342 Cr.P.C., putting to them all the incriminating evidence, if any, brought on record against them;*
- ii. To afford them a full opportunity to make a statement on oath under Section 340(2) Cr.P.C. and to produce any defence witnesses, if they so desire; and*
- iii. Thereafter, to decide the case strictly in accordance with law, preferably within a period of two months from the receipt of this order.*

12. Both Special Anti-Terrorism Jail Appeal Nos. D-19 of 2024 and D-20 of 2024 are disposed of in the above terms. The office is directed to place a signed copy of this judgment in the captioned connected appeal.

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