HIGH COURT OF SINDH, CIRCUIT COURT, MIRPURKHAS

Present:-

Mr. Justice Shamsuddin Abbasi,
Mr. Justice Muhammad Hasan (Akber).

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Criminal Appeal No.D-22 of 2024 (Mirpurkhas)
Criminal Appeal No.D-97 of 2023 (Hyderabad)

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Appellant	1. Taroo Urif Khoso Bheel son of Lachman. 2. Aneel son of Taroo Urif Khoso. Through Mr. Ali Hassan Chandio, Advocate.
Respondent	The State. Through Mr. Shahzado Saleem, Additional Prosecutor General (Sindh) a/w complainant.
Date of hearing	**03.11.2025**
Date of Judgment	**17.11.2025**

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JUDGMENT

Shamsuddin Abbasi, J,- Taroo Urif Khoso Bheel son of Lachman and Aneel son of Taroo Urif Khoso Bheel, appellants, were tried by the learned Additional Sessions Judge-I (MCTC), Mirpurkhas, in Sessions Case No.464 of 2023 (FIR No.54 of 2023) registered at Police Station Digri, District Mirpurkhas, for offences under Sections 302, 120-B, 201 and 34, PPC. By a judgment dated 21.08.2023 the appellants were convicted under Section 302(b), PPC and sentenced to death as Ta'zir to be hanged by neck till they are dead subject to confirmation by the Hon'ble High Court of Sindh, Circuit Court, Hyderabad in terms of Section 374, Cr.P.C. and also directed to pay Rs.10,00,000/- as compensation to the legal heirs of deceased as provided under Section 544-A, Cr.P.C. and in case of default shall undergo for a further period of six months imprisonment and the amount of compensation shall be recovered as arrears of land revenue, however, they were exonerated from the charges of offences punishable under Section 201 and 120-B, PPC.

2. In essence the allegations against the appellants are that on 20.05.2023 they came at the house of complainant Girdhari son of Revo Bheel and asked complainant's son Gulab Bheel to accompany them for

some work and thereafter committed his murder by way of strangulation due to personal grudge and thrown his dead body in a sugar cane crop, outside the village, just to save their skin by way of screening of evidence against them.

3. Pursuant to the registration of FIR, the investigation was followed and in due course the challan was submitted before the Court of competent jurisdiction under the above referred Sections, whereby the appellants were sent-up to face the trial.

4. They appellants were tried and found guilty of the offence under Section 302(b), PPC, and, thus, convicted and sentenced as detailed in paragraph-1 (supra), which necessitated the filing of the listed appeal.

5. At the very outset, the learned counsel appearing for the appellants argued that the appellants were being represented by a counsel, who failed to enter his appearance and the learned trial Court at his own appointed Advocate to defend the appellants on Government expenses without their consent. He has drawn our attention to the case diary dated 21.08.2023, which shows an unforeseen incident occurred wherein a mob of Advocates gathered in the Court room, pressurized the Presiding Officer and stopped him from announcement of judgment. The learned counsel submits that the matter pertains to capital punishment and the learned trial Judge acted contrary to law while appointing Advocate at his own and convicted the appellants and awarded them capital punishment of death in absence of their counsel on the same date, which smokes personal grudge of the Presiding Officer with the counsel representing the appellant. By pointing out so, he suggested for setting-aside of the impugned judgment and remand of the case for de novo trial and disposal in accordance with law.

6. The learned APG, on query of this Court, submits that the irregularity pointed out by the learned counsel for the appellants take support from the record and recorded his no objection for remand of the case for de novo trial.

7. We have heard the learned counsel for both the sides, given our anxious consideration to their submissions, and also scanned the entire

record carefully with their able assistance.

8. Admittedly, the case relates to capital punishment and the appellants have been awarded death sentence. A bare perusal of the record reveals that the appellants have engaged Mr. Ali Hassan Chandio, Advocate to defend them at trial, despite the learned trial Court appointed Ms. Asma Malik, Advocate to render legal assistance on Government expenses without consent of the appellants. The record is also suggestive of the fact that on 18.08.2023 the matter was fixed for recording of evidence of prosecution witnesses when four PWs namely, Abdul Hafiz, Shahbaz Ali, Muhammad Aslam and Muhammad Saleem were in attendance and examined on the same day. A bare perusal of the depositions of prosecution witnesses reveals that they were cross-examined by the counsel for the appellants and he was assisted by Ms. Asma Malik, Advocate, appointed by the Presiding Officer at his own without consent of the appellants. We are also cognizant of the fact that on the same day the learned ADPP closed the side of prosecution and the learned trial Judge recorded the statements under Section 342, Cr.P.C. of appellants on the same day and adjourned the matter to 21.08.2023 for announcement of judgment and recorded verdict of conviction of death penalty and that too in absence of the counsel for the appellants. Instead of adjourning the matter for final arguments, the learned trial Judge directly fixed the case for announcement of judgment. It seems that the learned trial Judge has handled the matter in cursory manner and announced conviction verdict of death penalty in haste on a date when alleged unforeseen incident alleged to be occurred in Court room. In that way, the appellants obviously have been deprived of their right of fair trial as guaranteed under Article 10-A of the Constitution of Islamic Republic of Pakistan, 1973.

9. A careful examination of record reveals that the learned trial Judge while recording statements under Section 342, Cr.P.C. of appellants put all incriminating evidence in shape of ocular version, medical and circumstantial evidence in the same verbatim as deposed by the witnesses and confronted the same to the appellants through lengthy questions by way of reproduction and copy paste. In such a backdrop, we are in agreement with the learned counsel for the appellants that the learned trial Judge has shown haste in handing down the conviction and sentencing the appellants to capital punishment of death without observing the due care and caution required to ensure a fair trial and the meeting of requirements of safe

administration of justice.

10. The manner in which the learned trial Court has proceeded with the matter and completed the trial within a month with conviction verdict made it clear that the learned trial Judge was so hurry in convicting the appellants. How could it be possible that within a month, the learned trial Judge completed the entire process of recording evidence of nine prosecution witnesses consisting of lengthy examination-in-chief as well as cross-examination, statements of appellants under Section 342, Cr.P.C. each consist of nine pages in single space and announced the judgment comprising of 21 pages and that too in small font and size and awarded capital punishment of death.

11. We are clear in our mind that right of fair trial is the essence of criminal justice whereby each and every party is equal before the Court and should be provided fullest opportunity to advance its case and such right being enshrined under fundamental rights guaranteed under Article 10-A of Constitution of Islamic Republic of Pakistan, 1973, which postulates fair opportunity of trial. We are also of the considered view that the Courts while recording statements under Section 342, Cr.P.C. have to keep in mind that each and every incriminating evidence is put to accused through short and simple questions so that the accused could easily explain his position and answer the questions in proper way. In the case in hand, the learned trial Judge while recording statements of appellants put lengthy questions and that too by way of reproduction and copy past of the entire evidence recorded at trial, which amounts to denial of mandatory requirement of law and defeats the ends of justice. We have truly been shocked by the cursory and casual manner in which the learned trial Judge has handled the matter of recording of evidence and examination of the appellants under Section 342, Cr.P.C. which are completely shorn of the necessary details that were required to be put to the appellants in a precise manner. It goes without saying that the omission on the part of the learned trial Judge is not merely an irregularity but has vitiated the appellants' conviction. The essence of Qanun-e-Shahadat Order, 1984 as required under Chapter X has not been adhered to in its letter and spirit under Article 133 of Qanun-e-Shahadat Order, 1984 and thus the trial conducted in haste by ignoring the principles of fair trial and due process as has been guaranteed under Article 10-A of the Constitution of 1973.

12. No doubt cases are to be decided expeditiously, but the Courts are bound to adopt legal course and dispose of the cases after paying due attention to the record and application of conscious judicial mind just to avoid violation of any provision of law. The Courts are not supposed to proceed with the cases in a haste and slipshod manner. To ensure fair trial and self-dispensation of justice, Courts are bound to fulfill all formalities and legal requirements. In the case in hand, the manner in which the trial is completed is reflective of miscarriage of justice and in violation of Article 10-A of the Constitution of Islamic Republic of Pakistan, 1973, which provides right of fair trial. Here we deem it conducive to reproduce Article 10-A of the Constitution, which reads as under:-

> *"10-A. Right to fair trial.---For the determination of his civil rights and obligations or in any criminal charge against him a person shall be entitled to a fair trial and due process".*

13. It is now made clear that the evidence of prosecution witnesses as well as statements of appellants under Section 342, Cr.P.C. have been recorded in a stereotype manner without fulfilling the requirement of Article 10-A of the Constitution, 1973. Relevant and very important incriminating pieces of evidence have been put to the appellants in a slipshod manner, enabling them to explain and reply the same, whereas the trial Judge used such piece of evidence and convicted the appellants relying on such evidence. Under the law, if any piece of evidence is put to the accused in the manner he /she unable to understand and furnish proper reply, the same cannot be used against him for awarding conviction more particularly in a case involving capital punishment. It is also noteworthy that the learned trial Judge while recording 342 Cr.P.C. statements of appellants copied entire examination-in-chief of the witnesses and confronted the same to appellants and ignored the portion of evidence which appeared in the cross-examination and not put to the appellants enabling them to explain their position and furnish reply. Exactly same is the position in the cases in hand. Reliance in this behalf may well be made to the case of *Muhammad Shah v. The State* {2010 SCMR 1009} wherein the Hon'ble Supreme Court has held as follows:-

> *"11. It is not out of place to mention here that both the Courts below have relied upon the suggestion of the appellant made to the witnesses in the cross-examination for convicting him*

> *thereby using the evidence available on the record against him. It is important to note that all incriminating pieces of evidence, available on the record, are required to be put to the accused, as provided under section 342, Cr.P.C. in which the words used are "For the purpose of enabling the accused to explain any circumstances appearing in evidence against him" which clearly demonstrate that not only the circumstances appearing in the examination-in-chief are put to the accused but the circumstances appearing in cross-examination or re-examination are also required to be put to the accused, if they are against him, because the evidence means examination-in-chief and re-examination, as provided under Article 132 read with Articles 2(c) and 71 of Qanun-e-Shahadat Order, 1984. The perusal of statement of the appellant, under section 342, Cr.P.C., reveals that the portion of the evidence which appeared in the cross-examination was not put to the accused in his statement under section 342, Cr.P.C. enabling him to explain the circumstances particularly when the same was abandoned by him. It is well-settled that if any piece of evidence is not put to the accused in his statement under section 342, Cr.P.C. then the same cannot be used against him for his conviction. In this case both the Courts below without realizing the legal position not only used the above portion of the evidence against him, but also convicted him on such piece of evidence, which cannot be sustained".*

14. For what has been observed herein above coupled with the dictum laid down by the Hon'ble apex Court in the case (supra), we are of the view that the learned trial Judge has committed gross irregularity while convicting the appellants and awarding capital punishment of death depriving them of their right of fair trial as guaranteed under Article 10-A of the Constitution, 1973. Consequently, without touching the merits of the case, the convictions and sentences awarded to the appellants through impugned judgment dated 21.08.2023 are set-aside and the matter is remanded to the learned trial Court for de novo trial and disposal in accordance with law. It is, however, noted that the case pertains to the year 2023. We expect that the learned trial Court, which is seized of the matter, shall proceed with the matter expeditiously and try to dispose it of as quickly as possible preferable within a period of six months under intimation to this Court through Additional Registrar of this Court.

15. This Criminal Appeal D-22 of 2024 (Old No.D-97 of 2023} stands disposed of in the foregoing terms.

JUDGE

JUDGE