

ORDER SHEET  
IN THE HIGH COURT OF SINDH, KARACHI

Cr. Jail Appeal No. 55 OF 2016

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Date Order with signature of Judge  
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1. For Hearing of M.A No. 1717/2016
2. For Hearing of Case.

30<sup>th</sup> May, 2018

Ms. Farah Khan Yousuf Zai, advocate for appellant  
Mr. Abrar Ali Khichi, DPG

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**Salahuddin Panhwar, J:-** Through instant appeal, the appellant has challenged judgment dated 18.02.2015 passed in SC No. 600/2011 (Re. The State Vs. Griffin) in Crime No. 285/2011 under Section 324 PPC, registered at Police Station Rizvia Society, Karachi.

2. Precisely, relevant facts are that on 23<sup>rd</sup> September, 2011, SIP Safdar Ali, being duty officer at PS Rizvia Society, Karachi, received information from Dr. Nasir Ali, MLO of Abbasi Shaheed Hospital, Karachi regarding arrival of Yasir Altaf son of Altaf Hussain Shakir in injured condition, having daggers blows. On said date as well on 24<sup>th</sup> September, 2011 he (SIP Safdar Ali) went there but concerned MLO informed him that the injured was not in a position to record his statement. Subsequently, on 27<sup>th</sup> September, 2011, the said SIP again went to Ziauddin Hospital, Karachi and , having obtained permission from the concerned doctor, recorded 154 Cr.PC statement of injured Yasir Altaf who had disclosed that he is working as Operational Manager in C-Hawk Shipping Company and has been given Liana Car bearing registration No. ARL-483 of Silver Colour for traveling. On 23<sup>rd</sup> September, 2011 (Friday) as routine he left

his office and stopped his car at signal, where one disable person asked for lift which he gave. When they reached at Lal Khoti, Shahrah-e-Faisal, suddenly, the said person took out pistol and put it on him and directed him to go by his directions, henceforth, the said person took him to different places and at about 7:45 p.m. he got stopped near Park of Nazimabad No. 1 and also made fire upon him but the bullet was not fired and magazine of pistol fell down and he endeavored to take out magazine, the said person attacked upon him with some sharp edge substance and caused him injuries on his head and face, resultantly, he was seriously injured and then the said culprit decamped from the spot. He also noticed that the said culprit during the episode of crime remained in contact through his mobile phone with someone and updated the current situation. Accordingly, the said SIP returned back to police station, where he lodged the FIR on the basis of 154 Cr.PC statement of complainant for the offence under section 324 PPC.

Thereafter, the investigation was entrusted to ASI Aminudin, who recorded the statement of the witnesses under section 161 Cr.PC despite hectic efforts could not succeed to arrest the culprit, hence, on completion of usual investigation, the case was disposed of under A-class vide order dated 06.10.2011 passed by learned XII-Judicial Magistrate, Karachi Central.

3. Subsequently, the appellant was arrested and identified by victim and arraign to substantiate prosecution story, prosecution examined PW-1 Complainant Yasir Altaf at Ex. 3, who produced his 154 Cr.PC statement, five photographs pasted on two pages and noticed under section 160 Cr.PC, given to him by the I.O as Ex. 3-A to 3-D, respectively. PW-2 PC

Akhtar at Ex. 4, who produced memo of arrest of the present accused in the instant crime as Ex. 4-A. PW-3 HC Muhammad Anwar at Ex. 5, who produced memo of poination of place of crime and memo of re-arrest and seizure of dagger as Ex. 5-A and 5-B respectively. PW-4 Malik Muhammad Aamir son of Fakhra-e-Alam at Ex. 6, who produced memo of inspection of place of incident as Ex. 6-A. PW-5 SIP Ejaz Ahmed Memon at Ex. 7 being well conversant of SIP Safdar Ali, who produced carbon copy of FIR as Ex. 7-A. PW-6 Asghar Ali Tanwari, Judicial Magistrate at Ex. 8, who produced memo of identification parade as Ex.8-A. PW-7 Dr. Nisar Ali Shah at Ex. 9, who produced ML No. 7222/2011 as Ex. 9-A and PW-8 ASI Aminuddin at Ex. 10 and then the learned DDPP for the state closed the side of prosecution vide statement as Ex. 11.

4. Thereafter statement U/s. 342 Cr.PC was recorded wherein he pleaded innocence.

5. At the outset learned counsel for the appellant contends that case of the prosecution is that appellant caused dagger injury to the victim as well such recovery was effected, memo of seizure was prepared but in statement 342 Cr.PC such question is not put to the appellant hence this piece of evidence cannot be considered. Learned counsel for the appellant relying upon the case law reported in 2018 YLR 216.

6. In contra learned Deputy P.G. contends that this ground cannot be considered for acquittal however, the case is remanded back for recording fresh statement U/s. 342 Cr.PC and passing judgment as per law.

7. Through his proposal learned counsel for the appellant agreed however, she contends that right of defense may be provided to the appellant.

8. Needless to mention here that the alleged recovery of dagger, supported by witnesses, is a material evidence but no such question was formulated in 342 Cr.PC statement. The provision of Section 342 of the Code is not a mere formality but this provision is aimed to confront the accused of every *material* piece of evidence, brought by prosecution against him, under its (prosecution's) bounden obligations within meaning of Section 265-F(1) to (3) of the *Code*. In *Criminal Administration of Justice* the accused, *normally*, is not to prove his innocence but to rebut /explain. Thus, if any *piece* of evidence is not confronted there shall be no question of giving an opportunity of *hearing / explanation*. This shall result in failing the purpose and object of ***fair-trial***. This has been the reason and logic for emerging of settled proposition of law i.e '**a piece of evidence, not put to an accused at time of recording of his statement u/s 342 Cr.PC, cannot be considered against him**'. Reference is made to case of *Qaddan & Ors* 2017 SCMR 148. There is a claimed *recovery* of dagger through which injuries on person of victim was caused and such *evidence* was led by prosecution yet the learned trial Court did not include such *question* while recording 342 Cr.PC statement of accused. Thus, *prima facie*, the accused was never allowed an opportunity of *explanation* for such material piece of evidence, available on record. Such failure is always sufficient for ordering for *remand* of the case for *simple* reason that ***fair-trial*** is a substantial right of accused and not a *mere* formality.

In consequence of above, the impugned judgment is set-aside. The case is remanded to trial court for recording statement U/s. 342 Cr.PC and further directed that appellant shall be provided an opportunity to lead evidence, if desire so and thereafter pass judgment without being influenced by the earlier impugned judgment.

J U D G E

M. Zeeshan