

IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD

Before:

Mr. Justice Abdul Maalik Gaddi
Mr. Justice Fahim Ahmed Siddiqui

Cr. Appeal No.D-49 of 2013.
(Confirmation Case No.13 of 2013.

Gulzar

Versus

The State.

Appellant : Gulzar	Through Mr. Muhammad Jameel Ahmed, Advocate
Respondent : The State	Through Syed Meeral Shah Bukhari, Additional Prosecutor General
None present for complainant, though served.	
Date of hearing	01.11.2018
Date of judgment	01.11.2018

J U D G M E N T

ABDUL MAALIK GADDI, J.- By this criminal appeal, appellant Gulzar has assailed the legality and propriety of the judgment dated 17.07.2013 passed by learned IInd Additional Sessions Judge, Hyderabad, in Sessions Case No.445 of 2007, arising out of Crime No.26/2007 of Police Station Tando Yousuf, under section 302 PPC, whereby he has been convicted u/s 302(b) PPC and sentenced to death and to pay compensation of Rs.200,000/- to the Walis of both deceased, as provided under section 544-A Cr.P.C. and in case of non-payment of compensation he was also ordered to suffer simple imprisonment for 06 months more.

2. As per prosecution case, on 08.09.2007 at about 08:00 p.m. the appellant in his house has committed Qatl-i-amd of his mother-in-law Mst. Asath and brother-in-law Ghulam Hussain by causing them fire shot injuries.

3. On conclusion of investigation challan was submitted against the accused for offence u/s 302 PPC.

4. Trial court framed charge against accused, to which he pleaded not guilty and claimed to be tried. At trial, in order to prove its case, prosecution examined as many as 09 witnesses and thereafter closed its side.

5. Thereafter, statement of accused was recorded u/s 342 Cr.P.C. wherein he denied the prosecution allegations and claimed his false implication in this case.

6. Learned trial Court after hearing the learned counsel for the parties and examining the evidence available on record convicted and sentenced the appellant as stated above. Hence this appeal.

7. At the very outset, the learned counsel for the appellant has contended that the charged framed by the trial Court is defective because as per the F.I.R. the actual date of occurrence is 08.09.2007, whereas the trial Court while framing the charge has mentioned the date of occurrence as **08.9.2006** so also in the statement of accused recorded under section 342 Cr.P.C. the same date is incorporated. Leaned counsel further submits that when the charge as well as the statement under section 342 Cr.P.C. is apparently defective then the entire process i.e. recording of evidence as well as delivering judgment by convicting and sentencing the appellant in the terms as mentioned in the said judgment, has become futile. Therefore, under these circumstances, the learned counsel for the appellant prayed that the case be remanded to the trial Court for *de novo* trial from the stage of framing charge, and thereafter the prosecution would be at liberty to lead fresh evidence or it may adopt the same evidence as already recorded and available on record.

8. Learned Additional Prosecutor General Sindh concedes the contentions as raised by the learned counsel for the appellant by submitting that in this matter charge as well as statement of the accused under section 342 Cr.P.C. have not been framed/recorded in accordance with law, as such, whole evidence brought on record is against the facts and law, therefore, he submitted that the impugned judgment may be set-aside and the case be remanded to the trial court for *de novo* trail at the stage of framing fresh charge considering all the facts involved in the case and thereafter parties may lead evidence, if they desired so, in accordance with law. In support of

his contention, the learned APG has referred the section 232 Cr.P.C, which reads as under:-

“ **232. Effect of material error.** (1) If any Appellate Court or the High Court, or the ¹⁵[Court of Session] in the exercise of its powers of revision or under Chapter XVII, is of opinion that any person convicted of an offence was misled in his defence by the absence of a charge by any error in the charge, it shall direct a new trial to be held upon a charge framed in whatever manner it thinks fit.

(2) If the Court is of opinion that facts of the case are such that no valid charge could be preferred against the accused in respect of the facts proved, it shall quash the conviction.”

9. In view of above, by consent of the parties, this criminal appeal is disposed of, the impugned judgment dated 17.07.2013 passed by learned IInd Additional Sessions Judge, Hyderabad in Sessions Case No.445 of 2007 is set-aside and the case is remanded to the learned trial Court for *de novo trial* from the stage of framing fresh charge considering all the facts involved in the case and then both parties would be at liberty to lead their evidence afresh or may adopt the same evidence as already available on record and thereafter the trial Court shall decide the case in accordance with law.

10 The reference / confirmation case is also disposed of accordingly.

JUDGE

JUDGE

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