

**ORDER SHEET
IN THE HIGH COURT OF SINDH,
CIRCUIT COURT, HYDERABAD.**

**Criminal Acquittal Appeal No.D-08 of 2018.
Criminal Appeal No.S-42 of 2018**

DATE ORDER WITH SIGNATURE OF JUDGE

For orders on M.A. No.1393/2018.

07.02.2019.

Mr. Wazeer Hussain Khoso, advocate for the appellant.
Mr. Riazat Ali Sahar, advocate for the complainant.
Ms. Ramehsan Oad, Assistant Prosecutor General, Sindh.

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With the assistance of learned counsel for the parties as well as learned Assistant Prosecutor General Sindh, we have gone through the evidence of prosecution witnesses and statement of the appellant recorded under section 342, Cr.P.C. Learned counsel for the appellant after arguing at some length has stated that in 342, Cr.P.C. statement of the appellant, the medical evidence i.e. post mortem report (Ex.09/A), the FSL report (Ex.12/B), evidence of Tapedar, sketch of place of incident (Ex.11/A) and motive part of the story have not been confronted to him, which have been relied by the trial Court in the impugned judgment while convicting him and which has seriously prejudiced him to defend his case and to offer explanation in regard to the said incriminating pieces of the evidence. This position has not been denied either by learned Assistant Prosecutor General Sindh or by learned counsel for the complainant. All the counsel have consented that this matter in view of such legal flaw may be remitted to the learned trial Court after setting aside the impugned judgment with direction to record statement of the appellant u/s 342 Cr.P.C. afresh by putting him every piece of incriminating evidence as stated above for the purpose of seeking his explanation thereto and then after hearing the parties announce the judgment within a certain period.

We have considered above submissions and have noted that learned trial Court has not complied with mandatory provisions of section

342 Cr.P.C. and in the impugned judgment while convicting the appellant for life imprisonment for offence u/s 302 PPC has relied upon medical evidence i.e. post mortem report, the FSL report, evidence of Tapedar, sketch of place of incident as supporting evidence, but has not put such evidence to the appellant in his statement u/s 342 Cr.P.C. to enable him to explain the same as required under the said provision of law. Even he has not been confronted with motive part of the story in such statement. It is an established law that provisions of section 342 Cr.P.C. are mandatory in nature and if any piece of evidence is not put to the accused in his statement u/s 342 Cr.P.C. the same cannot be used against him for conviction. In support of such a view reliance can be placed on the case law reported as 2010 SCMR 1009, 2016 SCMR 267 and 2017 SCMR 148.

Further, in the case of **Allah Jurio alias Jurio & other Vs. The State (SBLR 2018 Sindh 1987)**, when the divisional bench of this Court was faced with similar situation, it decided to remand the case to the trial Court by observing that ***"....the learned trial Court while passing the judgment has committed illegality and violated the provisions of Section 342 Cr.P.C. as well Article 132 of Qanun-e-Shahadat Order, 1984. Consequently, the judgment dated 14.07.2010 passed by the learned trial Court is hereby set-aside and Reference for confirmation of death sentence is declined. Case is remanded back to the learned trial Court with direction to record statement of the accused under Section 342 Cr.P.C. afresh by putting all incriminating pieces of evidence including the reports of chemical examiner as well as evidence of Tapedar"***. We fully concur with the said findings and suggestions of learned counsel appearing for respective parties for remanding the case and therefore dispose of the appeal against appellant Muhammad Aslam in the following manner.

The conviction and sentences awarded to appellant Muhammad Aslam vide impugned judgment are set aside and his case is remand to

the trial Court with direction to record his statement under section 342 Cr.P.C. afresh by putting him all incriminating evidence such as medical evidence i.e. post mortem report, the FSL report, evidence of Tapedar, sketch of place of incident, motive part of the story, etc. to seek his explanation thereto as provided under the said provision of law and decide the case within a period of two months thereof after affording an opportunity of hearing to all the parties.

At this juncture, learned counsel for the appellant has requested that since learned trial Court has already applied its mind against the appellant, this case may be assigned to some other Court. This proposal has not been opposed by other side. Accordingly, this case is assigned to learned Sessions Judge, Shaheed Benazir Abad who shall either himself decide the case in terms as stated above or entrust the same to any other Additional Sessions Judge for the aforesaid purpose.

In the above terms Criminal Appeal No.S-42 of 2018 is disposed of.

The connected Criminal Acquittal Appeal No.D-08 of 2018 filed against acquitted accused namely Mst. Bhagul is adjourned to a date in office with consent of learned counsel for parties.

JUDGE.

JUDGE.