

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

Crl. Appeal No. S – 170 of 2019

Appellants: Asif alias Guloo son of Naseer Ahmed Arain,
through Mr. Aijaz Shaikh, advocate.

Complainant: Rian Ahmed (in person).

Respondent: The State, through Ms. Safa Hisbani, APG.

Date of hearing: 01-03-2021.

Date of decision: 01-03-2021.

J U D G M E N T

IRSHAD ALI SHAH, J; The facts in brief necessary for disposal of instant appeal are that the appellant allegedly committed death of Noman by causing him fire shot injury and then made his escape good while making fires in air to create harassment, for that he was booked and reported upon.

2. On conclusion of trial, the appellant was found guilty for an offence punishable u/s 302(b) PPC, therefore, was convicted and sentenced to undergo Imprisonment for life with fine of rupees two lac payable to the legal heirs of the said deceased as compensation and in default whereof to undergo Imprisonment for six months by learned Ist. Additional Sessions Judge/(MCTC), Umerkot, vide his judgment dated 24.06.2019, which is impugned by the appellant before this Court by preferring the instant Criminal Appeal.

3. At the very outset, it is stated by learned counsel for the appellant that learned trial Court has recorded evidence of PW Muhammad Asif in absence of learned Prosecutor for the State while PW Amanat Ali has been given up by learned counsel for the complainant without taking learned Prosecutor for the State into confidence thereby

the appellant has been deprived in his defence seriously. By contending so, he sought for remand of the matter for recording evidence of Pws Muhammad Asif and Amanat Ali in accordance with law.

4. Learned A.P.G for the State was fair enough to concede for remand of the matter. However, the complainant has opposed to remand of the case by contending that whatever is done by learned trial Court was justified.

5. I have considered the above arguments and perused the record.

6. PW Amanat Ali was material witness; he has been given up by the learned counsel for the complainant without taking learned Prosecutor into confidence, which is against the mandate contained by section 493 Cr.P.C, which prescribes the role to the learned counsel for the complainant only to the extent of instruction to the Public Prosecutor. Learned trial Court ought not to have accepted such statement by learned counsel for the complainant. Be that as it may, evidence of PW Muhammad Asif has been recorded by learned trial Court, in absence of the learned Prosecutor, for the reason that the very case as per direction of High Court is to be disposed of within four months. The direction of the High Court, if any, was for disposal of the case on merit and not otherwise. Needless to state that like accused the prosecution has every right to prove its case against accused in accordance with law and such right is guaranteed by Article-10(A) of the constitution of Islamic Republic of Pakistan, 1973.

7. In view of above, the impugned judgment is set-aside with direction to learned trial Court to examine PW Muhammad Asif afresh in accordance with law and to summon PW Amanat Ali for his examination or otherwise and then to dispose of the case afresh by providing chance of hearing to all the concerned by applying its independent mind.

8. The appellant was enjoying the concession of bail at trial; he may enjoy the same concession subject to furnishing fresh surety in sum of rupees two lac and PR bond in the like amount to the satisfaction of learned trial Court.

9. The instant Criminal Appeal is disposed of accordingly.

Judge

Ahmed/Pa