

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD  
Criminal Jail Appeal No.S-255 of 2018

**Appellants:** Ali Asghar alias Porho son of Taj Muhammad Chandio and 2) Akbar son of Taj Muhammad Chandio through Mr.Om Parkash H. Karmani, advocate.

**The State** : Through Ms. Safa Hisbani, A.P.G.

**Complainant** : Moula Bux Chandio through Mr. Farhad Ali Abro, advocate.

**Date of hearing** : 08.03.2021

**Date of decision** : 08.03.2021

**J U D G M E N T**

**IRSHAD ALI SHAH-J;** The facts in brief necessary for disposal of instant Jail Appeal are that; it is alleged that the appellants with rest of the culprit after having formed an unlawful assembly and in prosecution of their common object committed murder of Wali Muhammad alias Walo by causing him fire shot and lathi injuries and then went away by issuing threats of murder to the complainant party, for that they were booked and reported upon.

2. At trial, appellants denied the charge and prosecution to prove it examined complainant Moula Bux and his witnesses and then closed the side.

3. The appellants in their statements recorded u/s 342 Cr.P.C also denied the prosecution's allegation. Consequently, the appellants for offence punishable u/s 302 PPC, were convicted and sentenced to undergo imprisonment for life and to pay fine of Rs.100,000/-each to

the legal heirs of the deceased as compensation by learned 2<sup>nd</sup> Additional Sessions Judge, Shaheed Benazirabad vide judgment dated 8<sup>th</sup> November, 2018, which is impugned by the appellants before this Court by preferring the instant appeal.

4. The perusal of record reveals that when the case was at the verge of its final disposal learned trial Court amended the charge against the appellants, thereby inserted section 302 PPC was inserted. On amendment so made as per requirement of section 231 Cr.P.C the witnesses, which were already examined were to have been reexamined on the amendment so made in the charge. It was not done by learned trial Court. Not only this, but no fresh statements of the appellants u/s 342 Cr.P.C were recorded and thereafter the impugned judgment was rendered, which could hardly be maintained on account of above said legal omission.

5. Learned counsel for the parties when were confronted with above, were fair enough to concede for remand of the matter for its fresh trial in accordance with law.

6. In view of above, the impugned judgment is set-aside with direction to learned trial Court to recall and re-examine the witnesses afresh and then to pass fresh judgment in accordance with law, preferably within three months, after receipt of copy of this judgment.

7. The instant appeal is disposed of accordingly.

**J U D G E**