

**IN THE HIGH COURT OF SINDH, CIRCUIT COURT,
HYDERABAD**

**Criminal Appeal No.S-68 of 2019
Criminal Appeal No.S-82 of 2019**

Appellants: Through M/s. Muhammad Sachal R. Awan and Ghulamullah Chang, Advocates.

Complainant: Through Mr. Muhammad Jamil Ahmed, Advocate.

Respondent: The State, through Ms. Safa Hisbani, A.P.G for the State.

Date of hearing: 27-05-2022.
Date of decision: 30-05-2022.

JUDGMENT

IRSHAD ALI SHAH, J; The facts in brief necessary for disposal of instant appeals are that the appellants and co-accused Muhammad Ali allegedly after having formed an unlawful assembly and in prosecution of their common object not only committed murder of Mumtaz Ali but caused injuries to Ahmed, Pat Bhario, Hakim, Javed and Muhammad Ali with hatchet and lathies with intention to commit their murder too and then went away by insulting complainant Akbar Ali and his witnesses, for that the present case was registered.

2. On conclusion of the trial, co-accused Muhammad Ali was acquitted while the appellants were found guilty for the said offence and were convicted and sentenced to undergo various terms of imprisonment spreading over *life* including fine/compensation/Diyat with benefit of Section 382-B Cr.PC, by learned Sessions Judge Tharparkar at Mithi, vide judgment dated 03rd April 2019, which is impugned by the appellants before this Court by preferring two separate criminal appeals.

3. Heard arguments and perused the record.

4. It is noticed that after examination of complainant Akbar Ali and PW Ahmed, on application so moved accused Muhammad Ali and Zaman were joined by learned Trial Court and charge was amended accordingly, after amendment of the charge, the

evidence already recorded by learned trial Court was copied and pasted with simple change, with chance to the newly joined accused to make cross examination to the complainant and PW Ahmed. Such act, obviously has prejudiced the appellants in their defence seriously for the reason that evidence is to be taken in presence of the accused as is prescribed by section 353 Cr.P.C. Making copy and use of evidence of witnesses already recorded could not be approved. PW Abdul Hakeem has not been examined by the prosecution without formal proof that he is not capable to make statement. His examination was essential as he was one of the injured witness of the incident. If, he was not able to make statement then such fact was to have been ascertained through a medical examination. His non-examination therefore could not be lost sight off. By such omission, not only the appellants but the State/complainant have been prejudiced in its defence seriously.

5. In view of above, the impugned judgment to the extent of the appellants is set-aside with direction to learned trial Court to record evidence of the complainant and PW Ahmed on amended charge afresh, as is prescribed by law and then to make the disposal of the case afresh in accordance with law by considering the observations recorded above, expeditiously preferably within period of three months after receipt of copy of this order.

6. The appellants (excepting Mumtaz Ali and Ayoub), are on bail, they together with appellant Ayoub (who was on bail at trial) may enjoy the concession of bail, subject to their furnishing fresh surety in sum of Rs.100,000/- each and P.R bonds in like amount to the satisfaction of learned trial Court.

7. The instant Criminal Appeals are disposed of accordingly.

JUDGE

Muhammad Danish*