

ORDER SHEET
IN THE HIGH COURT OF SINDH BENCH AT SUKKUR
Cr. Jail Appeal No. D – 92 of 2013

Date of hearing	Order with signature of Judge
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For hearing of main case

26.06.2018

Mr. Abdul Baqi Jan Kakar, Advocate for the appellants.
Syed Sardar Ali Shah, Deputy Prosecutor General for the State.

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During arguments, it is surfaced that in the trial Court, application under Section 540 Cr.P.C. was moved; same was declined by order dated 13.09.2013. The plea of the appellants is that they are residents of KPK Province and there was not ample time to prepare their case due to lack of contact with their relatives, hence, material available with them was not placed on record. As well, counsel was not instructed properly regarding full facts of their arrest, their job and their implication in this case. Moreover, record reflects that as per documents, name of driver is Arshad Mehmood and this contradiction was not brought by learned counsel for the appellants; such documents were not confronted with Investigation Officer of the case. This is a case of capital punishment, hence, this was the duty of the trial Court to examine material witnesses as Court witnesses or to cross-examine / put questions by the Court itself but those powers were not exercised. Besides the contradiction with regard to one day delay in respect of property that was sent for chemical examination and non-examination of witness Zahid Hussain with regard to safety of that property was very pertinent.

Under these circumstances, with consent of learned DPG, we set aside the impugned judgment and remand this case back to the trial Court for *de novo* trial. Counsel for the accused would be competent to cross any witness or produce any witness as DW. Since the appellants are in custody from 9th March 2012, therefore, judicial propriety demands grant of bail. Accordingly, they are admitted to post-arrest bail in the sum of Rs.200,000.00 (two hundred thousand) each to the satisfaction of trial Court. Needless to mention that trial Court shall decide the case afresh and shall not be influenced by earlier conviction awarded to them.

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