

ORDER SHEET
IN THE HIGH COURT OF SINDH KARACHI

Criminal Appeal No. 126 of 2019

DATE

ORDER WITH SIGNATURE OF JUDGES

For hearing of Case

23rd November, 2022

Mr. Muhammad Riaz, Advocate for appellant.,
Mr. Talib Ali Memon, APG.

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Omar Sial, J: At the very outset of this hearing, both, the learned counsel for the appellant as well as the learned APG have both submitted that justice requires that the case be remanded back to the learned trial court so that the accused's counsel can cross examine Dr. Muhammad Saleem. Counsel submits that on the date the doctor was examined, the accused's counsel was absent and therefore the accused was asked by the learned court to cross examine the witness himself. This according to the counsel tantamount to depriving the accused his fundamental right to a fair trial. Learned APG agrees with the proposition. While I fail to see as to what material benefit will be derived from cross examining the doctor when the death of a person is admittedly due to a road accident, as the liberty of a person is at stake, it may be appropriate for the safe administration of justice that he should be provided his right to cross examine the doctor. Accordingly, the impugned judgment is set aside and the case remanded back to the learned trial court for the following limited purpose:

- (i) The counsel for the appellant be given an opportunity to cross-examine Dr. Muhammad Saleem. A fresh section 342 Cr.P.C. statement recorded thereafter, and if desired by the appellant a section 340(2) Cr.P.C.
- (ii) Notice be given for the above purpose to the appellant's counsel as well as the appellant himself, the learned counsel for the complainant and the learned prosecutor for a date to be decided

by the learned trial court. If on the date fixed for the cross examination of the witness, none appears on behalf of the appellant or an adjournment is sought for any reason whatsoever, the learned trial judge shall record the same and proceed with the recording of the section 342 Cr.P.C. statement.

It is hoped that the learned trial court will be in a position to conclude this exercise within a period of 4 months.

The appeal stands disposed of in the above terms.

JUDGE