

**IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR**  
**Criminal Jail Appeal No.S-48 of 2020**

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| <b>Appellants</b>       | 1. Yousif Khan son of Baz Muhammad.<br>2. Agha Muhammad son of Saeed Muhammad.<br>3. Dara Khan son of Baz Muhammad.<br>4. Iqbal Khan son of Baz Muhammad.<br>5. Kala Khan son of Seed Ahmed Khan<br>(now has died)<br><b>Through</b> M/s Shabbir Ali Bozdar and Raja Iftikhar Hussain Ansari, Advocates. |
| <b>The complainant</b>  | Through Mr. Shafique Ahmed Leghari, advocate.  |
| <b>The State</b>        | Through Mr. Shafi Muhammad Mahar, Deputy Prosecutor General for the State.   |
| <b>Date of hearing</b>  | <b>31-10-2023</b>  |
| <b>Date of decision</b> | <b>31-10-2023.</b>   |

**JUDGMENT**

**IRSHAD ALI SHAH, J-** It is alleged that the appellants with rest of the culprits in prosecution of its common object, committed murder of Amanullah by causing him fire shot injuries and then went away by insulting the complainant party and making fires in air to create harassment, for that the present case was registered. On conclusion of trial, the appellants were convicted u/s 302 (b) r/w 149 PPC as *Ta'zir* and sentenced to undergo rigorous imprisonment for life and to pay compensation of Rs. 300,000/- (three lacs) each to the legal heirs of the deceased and in default whereof, to undergo simple imprisonment for six months with benefit of section 382(b) Cr.P.C by learned IIIrd Additional Sessions Judge/MCTC-II, Sukkur vide judgment dated 11-08-2020, which they have impugned before this Court by preferring the instant CrI. Jail Appeal.

2. At the very outset, it is stated by learned counsel for the appellants that though the charge was finally amended on 06-03-2019; yet the pleas of the appellants were recorded on 29-10-2019, which prima-facie suggests

that the charge so amended finally was not read over to them, by such omission they have been misled in their defence and moreover the counsel appointed for the appellants to defend them on State expenses was not provided sufficient time for making preparation, who even otherwise was having a very little standing at the Bar, which has prejudiced the appellants in their defence seriously. By contending so, they sought for remand of the case to learned trial Court for *denovo* trial in accordance with law. In support of their contention they relied upon cases of (i) *Bhaisakur Ghara Vs. The State* (1971 P.Cr.L.J 1047), (ii) *Ghulam Rasool Shah and another Vs. The State* (2011 SCMR 735) and (iii) *Allah Diwaya Vs. The State* (1971 P,Cr.L.J 493).

3. Learned Deputy Prosecutor General for the State by conceding the above omissions has recorded no objection for remand of the case for its *denovo* trial; however learned counsel for the complainant has recorded objection to remand of the case to learned trial Court for *denovo* trial of the case by contending that the defect in the charge is minor and the appellants were provided sufficient opportunity by learned trial Court to bring their counsel to defend them, which they failed to avail for no obvious reason.

4. Heard arguments and perused the record.

5. The omissions which have been pointed out by learned counsels for the appellants take support from the record, same being incurable in terms of section 537 Cr.P.C have not only occasioned in failure of justice but have denied right of fair trial to the appellants, which is prescribed under Article 10-A of the Constitution of Islamic Republic of Pakistan, 1973; consequently the impugned judgment only to the extent of the appellants is set aside with direction to learned trial Court to conduct *denovo* trial against them right from the stage of framing of the charge.

6. In end it was stated by learned counsel for the appellants that inclusive of remission the appellants have already undergone more than 15 years of the imprisonment, therefore they to be admitted to bail on point of hardship. The appellants, if so advised may seek their release on bail by filing such application before learned trial Court; if it is filed, then same to be disposed of by learned trial Court in accordance with law.

The instant Criminal Jail Appeal is disposed of accordingly.

**J U D G E**

*Nasin/P.A*