

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR
Criminal Appeal No.S-64 of 2021

Appellants	1. Hazaro son of Ghous Bux. 2. Muhammad Bux son of Sohno. 3. Adam son of Sohno. 4. Muhammad Yaqoob son of Qaim Din. All bycaste Bheri Through Abdul Rehman Farooq Pirzada, advocate.
The complainant	Through Mr. Ubedullah Ghoto, advocate.
The State	Through Mr. Khalil Ahmed Maitlo, Deputy Prosecutor General for the State.
Date of hearing	08-11-2023
Date of decision	08-11-2023.

J U D G M E N T

IRSHAD ALI SHAH, J- It is the case of the prosecution that the appellants with rest of the culprits after having formed an unlawful assembly and in prosecution of its common object committed murder of Shahnawaz by causing him fire shot injuries and then went away by making aerial firing to create harassment, for that the present case was registered. At trial appellants and co-accused Ali Hassan were charged for the said offence, which they denied and prosecution to prove the same examined in all eleven witnesses and then closed its side. On conclusion of trial co-accused Ali Hassan was acquitted while the appellants were convicted u/s 148, r/w 149 PPC and sentenced to undergo R.I for three years and to pay fine of Rs. 10,000/- each and in default whereof to undergo simple imprisonment for one month; they were further convicted u/s 302 (b) r/w 149 PPC and sentenced to undergo rigorous imprisonment for life as *Ta'zir* and to pay compensation of Rs. 500,000 (five 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. No order was passed as to whether the sentences awarded to

the appellants to run concurrently or consecutively by learned Ist Additional Sessions Judge (MCTC), Ghotki vide judgment dated 23-08-2021 which they have impugned before this Court by preferring the instant Crl. Appeal.

2. At the very outset, it is pointed out by learned counsel for the appellants that appellants Muhammad Bux and Hazaro were wanting to examine Jam Thario, medical officer Taluka Hospital Kotdiji and duty officer PS Kotdiji in their defence to prove their innocence; they have not been examined by their counsel by filing such statements without their consent which has prejudiced them in their defence. By pointing out so, he suggested for remand of the case with direction to learned trial Court to call and examine the above named defence witnesses, which is not opposed by learned DPG for the State and learned counsel for the complainant.

3. Heard arguments and perused the record.

4. The omission which has been pointed out by learned counsel for the appellants takes support from the record, same being incurable in terms of section 537 Cr.P.C has not only occasioned in failure of justice but has denied right of fair trial to the appellants, which is guaranteed 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 call and examine the above named defence witnesses and then to make disposal of the case afresh independently without being influenced by earlier finding

5. The instant Criminal Appeal is disposed of accordingly.

JUDGE