

**IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR**  
Criminal Jail Appeal No.S-83 of 2019

<b>Appellants</b>	1. Shado @ Shahzado son of Mitho 2. Azeem son of Rasool Bux. <b>Through</b> Mr. Achar Khan Gabole advocate.
<b>The State</b>	Through Mr. Khalil Ahmed Maitlo, Deputy Prosecutor General.
<b>Date of hearing</b>	<b>02-11-2023</b>
<b>Date of decision</b>	<b>02-11-2023</b>

**J U D G M E N T**

**IRSHAD ALI SHAH, J.** It is alleged that the appellants with rest of the culprits after having formed an unlawful assembly and in prosecution of its common object committed murder of Abdullah by causing him fire shot injuries and then went away by making fires at complainant Masti Khan and his witnesses with intention to commit their murder, for that they were booked and reported upon by the police. On conclusion of trial, they were convicted to various terms of imprisonment spreading over life with compensation/fine and were also awarded benefit of section 382(b) Cr.P.C by learned Ist Additional Sessions Judge/(MCTC) Naushahro Feroze vide judgment dated 25-05-2019, 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 report of chemical examiner has been brought on record by the prosecution by way of statement; in that way the appellants have been denied the right of valuable cross to the investigating officer on such document, which is against the spirit of fair trial and more-so the appellants have not been confronted with all the circumstances appearing in evidence to

have their explanation on it during course of their examination u/s 342 Cr.P.C, which has prejudiced them in their defence seriously. By stating so, it was suggested by him that the matter be remanded to learned trial Court for further proceedings in accordance with law, which is not opposed by learned DPG for the State.

3. Heard arguments and perused the record.

4. The omissions pointed out by learned counsel for the appellants takes support from the record, those being incurable in terms of section 537 Cr.P.C have not only occasioned in failure of justice but are contrary to the mandate contained by Article 10-A of the Constitution of Islamic Republic of Pakistan, 1973; which prescribes right of fair trial to everyone; consequently the impugned judgment is set aside with direction to learned trial Court to recall and re-examine the Investigating Officer of the case for production of the report of the chemical examiner through him with opportunity to the appellants to cross examine him on such document; record statements of the appellants u/s 342 Cr.P.C afresh confronting them all the circumstances brought on record by the prosecution with regard to recovery of case property and expert report etc for their explanation and then to make fresh disposal of the case independently within three months after receipt of copy of this judgment, without being influenced by earlier finding.

4. Appellant Azeem was enjoying the concession of bail at trial, he to enjoy same concession subject to his furnishing fresh surety in sum of Rs. 100,000 (One Lac) and P.R bond in the like amount to the satisfaction of learned trial Court.

5. The instant Crl. Jail Appeal is disposed of accordingly.

# JUDGE

Nasim/P.A