

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR
Criminal Appeal No.S-60 of 2023

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| Appellants | 1. Faqeer Muhammad son of Allah Waryo. 2. Lal Bakhsh son of Kando. 3. Jamal Faqeer son of Adit Faqeer, all bycaste Mahar, through M/s Qurban Ali Malano and Shabbir Ali Bozdar, advocates. |
| The complainant | Through M/s Mehfooz Ahmed Awan and Farhan Ali Shaikh, advocates. |
| The State | Through Mr. Aftab Ahmed Shar, Additional Prosecutor General for the State. |
| Date of hearing | 27-11-2023 |
| Date of decision | 27-11-2023. |

J U D G M E N T

IRSHAD ALI SHAH, J- It is alleged that the appellants with rest of the culprits in furtherance of their common intention caused fire shot injury to PW Zulfiqar Ali with intention to commit his murder on his ear and then went away by insulting the complainant party and making fires at complaint Muhammad Yousif too with intention to commit his murder, for that the present case was registered. On conclusion of trial the appellants were convicted and sentenced to various terms of imprisonment by learned IInd Additional Sessions Judge, Mirpur Mathelo vide judgment dated 23-06-2023, which they have impugned before this Court by preferring the instant appeal.

2. At the very outset, it is stated by learned counsel for the appellants that the charge is wrongly framed against the appellants; it contains the incorrect parentage of appellant Faqeer Muhammad; it does not disclose the actual place of incident; it does not speak of section 337-A(iii) PPC for which the appellants have been convicted and sentenced; it is contrary to the mandate contained by section 221 Cr.P.C that the charge shall state the offence with which the accused is charged and moreso, the appellants have never been confronted with the nature of injuries allegedly sustained by the injured during course of their examination u/s 342 Cr.P.C and by such omission, they have been prejudiced in their defence seriously, which has occasioned in failure of justice in terms of section 537 Cr.P.C. By stating so, they sought for remand of the case for *denovo* trial right from stage of framing the charge against the appellants afresh. In support of

their contention, they relied upon case of *Sibgatullah Vs. The State* (2020 MLD 776).

3. Learned APG for the State and learned counsel for the complainant were fair enough to say that they would be having no objection, if the case is remanded to learned trial Court for fresh disposal, but only to the extent of recording statements of the appellants u/s 342 Cr.P.C afresh confronting them the nature of the injuries sustained by the injured and other circumstances for their explanation.

4. Heard arguments and perused the record.

5. Besides above omissions, the charge and statements of the appellants recorded u/s 342 Cr.P.C, does not speak of fire allegedly made at the complainant by appellant Lal Bux with intention to commit his murder, though it proved to ineffective one, such omission together with the omissions pointed out by learned counsels for the appellants have not only prejudiced the appellants but the *State* in its defence seriously, which is 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.

6. Consequent upon above discussion, the conviction and sentence awarded to the appellants by way of impugned judgment are set aside with direction to learned trial Court to conduct *denovo* trial against the appellants right from the stage of framing of the charge against them on the basis of material collected by the police during course of investigation and then to dispose of the case afresh and in accordance with law preferably within three months after receipt of copy of this judgment.

7. The appellants were enjoying the concession of bail at trial, they to enjoy the same concession subject to their furnishing fresh surety in sum of Rs.50,000/- each and PR bond in the like amount to the satisfaction of the learned trial Court.

8. The instant Criminal Appeal is disposed of accordingly.

JUDGE

