

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Cr. Jail Appeal No. S – 74 of 2019
(*Shah Murad Nandwani versus The State*)

Dates of hearing : **27-11-2023**
Date of decision : **27-11-2023**

Mr. Achar Khan Gabol, Advocate for appellant.
Mr. Hidayatullah Balouch, Advocate for complainant.
Mr. Shafi Muhammad Mahar, Deputy Prosecutor General.

J U D G M E N T

Muhammad Iqbal Kalhoro, J.– With the assistance of learned counsel for the parties as well as learned Deputy Prosecutor General Sindh, I have gone through evidence of prosecution witnesses and statement of the appellant recorded under section 342, CrPC. Learned counsel for the appellant after arguing at some length has stated that in 342, CrPC statement of the appellant, the medical evidence i.e. unnatural death of both the deceased, medico-legal report of injured Mst. Zahida, report of chemical examiner, and motive part of the story have not been confronted to him, which have been relied by the trial Court in the impugned judgment for recording conviction against him and which has seriously prejudiced him to defend his case and to offer explanation in regard to the said incriminating pieces of the evidence. This position has not been denied either by learned Deputy Prosecutor General Sindh or by learned counsel for the complainant. All the counsel have consented that this matter in view of such legal flaw may be remitted to the learned trial Court after setting aside the impugned judgment with direction to record statement of the appellant u/s 342 CrPC afresh by putting him every piece of incriminating evidence as stated above for purpose of seeking his explanation thereto and then after hearing the parties announce the judgment within a certain period.

2. I have considered above submissions and have noted that learned trial Court has not complied with mandatory provisions of section 342 CrPC. and in the impugned judgment while convicting the appellant for life imprisonment for offence u/s 302 PPC has relied upon medical evidence i.e. unnatural death of both the deceased, medico-legal report of injured Mst. Zahida, report of chemical examiner, and motive part of the story as supporting evidence, but has not put such evidence to the

appellant in his statement u/s 342 CrPC. to enable him to explain the same as required under the said provision of law. It is a trite law that provisions of section 342 CrPC. are mandatory in nature and if any piece of evidence is not put to the accused in his statement u/s 342 CrPC, the same cannot be used against him for recording conviction against him. In support of such a view, reliance can be placed on the case law reported as **2010 SCMR 1009, 2016 SCMR 267 and 2017 SCMR 148.**

3. Further, in the case of *Allah Jurio alias Jurio & other Vs. The State (SBLR 2018 Sindh 1987)*, when the Divisional Bench of this Court was faced with similar situation, it decided to remand the case to the trial Court by observing that “...***the learned trial Court while passing the judgment has committed illegality and violated the provisions of Section 342 CrPC as well Article 132 of Qanun-e-Shahadat Order, 1984. Consequently, the judgment dated 14.07.2010 passed by the learned trial Court is hereby set-aside and Reference for confirmation of death sentence is declined. Case is remanded back to the learned trial Court with direction to record statement of the accused under Section 342 CrPC afresh by putting all incriminating pieces of evidence including the reports of chemical examiner as well as evidence of Tapedar***”. I fully concur with the said findings and suggestions of learned counsel appearing for respective parties for remanding the case and therefore dispose of the appeal against appellant in the following manner.

The conviction and sentences awarded to appellant Shah Murad Nindwani vide impugned judgment are set aside and his case is remanded to the trial Court with direction to record his statement under section 342 CrPC. afresh by putting him entire incriminating evidence such as medical evidence i.e. unnatural death of both the deceased, medico-legal report of injured Mst. Zahida, report of chemical examiner, and motive part of the story etc. to seek his explanation thereto as provided under the said provision of law and decide the case within a period of two months hereof after affording an opportunity of hearing to all the parties.

4. In the above terms, this Criminal Jail Appeal No.S-74 of 2019 is **disposed of.**