

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR
Criminal Jail Appeal No.S-78 of 2019

Appellants: Muhammad Siddique and Inayatullah
both by caste Soomro **through** Ali Ahmed
Khan, advocate.

The Complainant: **Through** Mr. Khan Muhammad Sangi,
advocate.

The State: Through Syed Sardar Ali Shah Rizvi
Additional Prosecutor General.

Date of hearing: 12-12-2023

Date of judgment: 12-12-2023

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, committed murder of Muharram Ali by causing him hatchet blows, for that they were booked and reported upon by the police. On conclusion of trial, co-accused Naimatullah was acquitted while the appellants were convicted u/s 302 (b) r/w section 34 PPC and sentenced to undergo life imprisonment and to pay compensation of rupees one lac each to the legal heirs of the deceased with benefit of Section 382(b) Cr.P.C by learned IInd Additional Sessions Judge, Sukkur, vide judgment dated 17-05-2019, which they have impugned before this Court by preferring the instant Criminal Jail Appeal.

2. At the very outset, it is pointed out by learned counsel for the appellants that appellant Muhammad Siddique was intending to examine himself on oath in disproof of the prosecution allegation but side on his behalf was closed by his counsel without his consent, which deprived him to put up his defence by examining him on oath. By

pointing so, he suggested for remand of the case for recording statement of appellant Muhammad Siddique on oath, which is not opposed by learned APG for the State and learned counsel for the complainant.

3. Heard arguments and perused the record.

4. Admittedly, the appellant Muhammad Siddique was intending to examine himself on oath to disprove the prosecution allegation against him, such right has been denied to him by his counsel by closing his side, without his consent as said to be, which has prejudiced him in his defence seriously. If he would have been examined on oath, then his evidence was to have been considered in juxta position with the evidence of the prosecution. Article 10-A of the Constitution of Islamic Republic of Pakistan, 1973 prescribes fair trial to everyone for determination of his civil/criminal rights/obligation, such right could not be taken away under any circumstance.

6. Consequent upon above discussion, the impugned judgment only to the extent of the appellants is set aside with direction to learned trial Court to record statement of appellant Muhammad Siddique on oath and then to make disposal of the case afresh independently without being influenced by earlier finding possibly within one month after receipt of copy of this judgment.

7. The instant Criminal Jail Appeal is disposed of accordingly.

JUDGE