

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR
Criminal Appeal No.S-43 of 2020

Appellants	1. Allah Bux son of Wali Muhammad. 2. Imtiaz son of Allah Bux. 3. Aijaz Ali s/o Allah Bux. All bycaste Chachar Through M/s Qurban Ali Malano and Muhammad Hamzo Buriro advocates.
The complainant	Through Mr. A.R Faruq Pirzada, advocate.
The State	Through Mr. Zulfiquar Ali Jatoi, Additional Prosecutor General for the State.
Date of hearing	06-12-2023
Date of decision	06-12-2023.

JUDGMENT

IRSHAD ALI SHAH, J- It is alleged that the appellants with rest of the culprits in furtherance of their common intention besides committing murder of Alan by causing him fire shot injuries, caused fire shot and hatchet injuries to complainant Qamar Din, PWs Ghulam Akber and Muhammad Ibrahim with intention to commit their murder and then went away by insulting the complainant party, for that the present case was registered. On conclusion of trial the appellants were convicted and sentenced to various terms of imprisonment spreading over life by learned IIIrd Additional Sessions Judge/(MCTC-II), Sukkur vide judgment dated 16-03-2020, 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 framed against the appellants is defective one; the statements of the appellants recorded under section 342 Cr.P.C makes no disclosure of the injuries sustained by any of the injured or recovery so made in present case and the points for determination framed in impugned judgment does not disclose the nature of injuries allegedly sustained by the injured. By stating so, they sought for remand of the case for *denovo* trial right from stage of framing of 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 by conceding to the omission pointed above consented for remand of the case for *denovo* trial.

4. Heard arguments and perused the record.

5. Section 221 Cr.P.C *inter-alia* prescribes that charge shall contain the specific name of the offence with sufficient description. In the instant case, the charge framed against the appellants is jumble one; it does not contain the proper name of the deceased and it does not contain the nature of injuries allegedly sustained by the injured. By such omissions, the appellants apparently have been prejudiced in their defence seriously; which is contrary to the mandate contained by Article 4 of the Constitution of Islamic Republic of Pakistan, 1973, which prescribes that the right of individual to be dealt with in accordance with law. It is also requirement of law that every circumstance brought in evidence is to be confronted to the accused during course of his/their examination u/s 342 Cr.P.C to have his/their explanation on it. Such circumstance, if not confronted then same could not be used against him/them. In the instant matter, no question with regard to the recovery so made or nature of injuries allegedly sustained by any of the injured has been put to the appellants; therefore, conviction against them for allegedly causing injuries to the injured could not be sustained legally. Even in impugned judgment there is no disclosure of the nature of injuries in points for determination, which is contrary to the mandate contained by section 367 Cr.P.C which *inter-alia* prescribes that every judgment shall specify the offence and the Penal sections for which the accused is/are punished and sentenced.

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 them by framing the charge against them afresh and then to proceed with the case further in accordance with law.

7. The appellants Allah Bux and Aijaz 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.

J U D G E