

Judgment Sheet

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR

CrI: Jail Appeal No. S – 84 of 2019

Before;-

Mr. Justice Naimatullah Phulpoto, J

Date of hearing: **17.07.2023**

Date of judgment : **17.07.2023**

Mr. Rukhsar Ahmed M. Junejo, Advocate for the Appellants
Mr. Zulfiqar Ali Jatoi, Additional PG for the State

J U D G M E N T

NAIMATULLAH PHULPOTO, J.- Appellants, namely, Abdul Ghaffar Buriro and Manzoor Hussain were tried by learned 1st. Additional Sessions Judge, Naushahro Feroze in case arising out of FIR No.28 of 2012 registered at Police Station, Mithiani, District Naushahro Feroze for offence under Sections 302, 504 and 34 PPC. After regular trial, both the appellants were convicted under Section 302(b) PPC as *Ta'zir* to suffer imprisonment for life and were directed to pay compensation of Rs.200,000/- (Two lac) each in terms of Section 544-A, Cr.P.C to be paid to the legal heirs of deceased Haji Sohrab.

2. Brief facts of the prosecution case as disclosed in the FIR that Haji Sohrab was grandfather of complainant, who had a shop in village; Appellants were purchasing house hold articles from the shop of Haji Sohrab on credit basis. It is alleged that on 20.05.2012 in the morning complainant's grandfather Haji Sohrab demanded his outstanding amount against appellant Abdul Ghaffar, which caused annoyance to him. Complainant, his cousins Mushtaque and Amjad

were sitting in front of the shop while Haji Sohrab (now deceased) was sitting on a bench of the shop. It is further alleged that at about 12:30 pm appellants Abdul Ghaffar Buriro armed with Gun and Manzoor Hussain armed with Pistol appeared and abused deceased Haji Sohrab and asked him as to why he was demanding the outstanding from them and he would not be spared. Complainant party tried to intervene and rescue the deceased but appellant Manzoor Hussain pointed his pistol at complainant party and kept them silent at some distance. Thereafter, it is alleged that appellant Abdul Ghaffar fired from his Gun at Haji Sohrab with intention to commit his murder, which hit him and he fell down. Both the appellants succeeded in running away, in the meanwhile, complainant party saw that deceased had sustained injuries on various parts of his body, immediately he was taken to Naushahro Feroze hospital for his treatment, but he succumbed to the injuries on the way to the hospital. The FIR of the incident was lodged by complainant Ghulam Murtaza on 20.05.2012 at 1500 hours at police station, Mithiani, which was recorded vide Crime No.28 of 2012 for offence under Sections 302, 504 and 34 PPC.

3. During investigation, appellant Abdul Ghaffar was arrested; however, appellant Manzoor Hussain was shown as absconder. The case was sent up to the Court of Sessions Judge by the concerned Magistrate. Charge was framed against appellant Abdul Ghaffar, thereafter proclaimed offender accused Manzoor Hussain was arrested and charge was amended. After amendment of the charge, the prosecution examined complainant Ghulam Murtaza (PW-1) at Ex.11, Mushtaque Ahmed (PW-2) at Ex.12, mashir Ali Akbar (PW-3) at Ex.13, mashir Ali Asghar (PW-4) at Ex.14, mashir Qadir Bux (PW-5) at Ex.15, Tapedar Naseer Ahmed (PW-6) at Ex.16, Medical Officer Dr. Ghulam

Shabbir (PW-7) at Ex.17, PC-Anwar Ali Corpse Bearer (PW-8) at Ex.18, Investigating Officer Inspector Ghulam Shabbir (PW-9) at Ex.19, Second Investigating Officer SIP Abdul Majeed (PW-10) at Ex.20. Thereafter, prosecution side was closed.

4. The trial court recorded the statements of the accused under Section 342, Cr.P.C in which both the appellants claimed false implication in this case and denied the prosecution allegations. The appellants did not lead evidence in defence and declined to examine themselves in disproof of the prosecution allegations.

5. The trial Court after hearing the learned counsel for the parties and assessment of the evidence convicted and sentenced the appellants as stated above, hence being dissatisfied the appellants have preferred the instant Criminal Jail Appeal.

6. Learned advocate for the appellants at the very outset submitted that the trial Court has recorded statements of the accused under Section 342, Cr.P.C at Ex.22 and 23, respectively, in which all the incriminating pieces of the evidence were not put to the appellants for their explanation, which caused serious prejudice to the appellants. It is further submitted that the trial Court based the conviction upon those pieces of evidence, which were not put to the appellants in their statements recorded under Section 342, Cr.P.C. Learned advocate for the appellant has drawn the attention of the Court to the statements recorded under Section 342, Cr.P.C and submitted that incriminating pieces of evidence such as unnatural death of the deceased Haji Sohrab by means of the firearm, motive of the incident, recovery of the gun from appellant Abdul Ghaffar were not put to the appellants. Lastly, it is submitted that the report of the Chemical Examiner was

produced before the trial Court, but such question was also not put to the appellants. In support of his contentions, he has relied upon the case of Mohammad Bilal vs. The State (2019 M L D 1291) [Sindh].

7. Learned Additional PG has conceded to the contentions raised by learned advocate for the appellants that the trial Court had failed to put all the incriminating pieces of evidence to the appellants for their explanation as required by law and suggested that this is a fit case for remand to the trial Court for recording the statements of the appellants under Section 342, Cr.P.C afresh in accordance with law.

8. After hearing the learned counsel for the parties, I have re-examined the entire evidence as well as statements of the accused recorded under Section 342, Cr.P.C.

9. It appears that the learned trial Court had failed to put all the incriminating pieces of evidence to the appellants in their statements recorded under Section 342, Cr.P.C for their explanation, omission is not curable under the law.

- (a) *Trial Court failed to put question regarding unnatural death of the deceased Haji Sohrab by means of firearm.*
- (b) *Trial Court failed to put question regarding recovery of gun from appellant Abdul Ghaffar.*
- (c) *Trial Court failed to put the question regarding motive of the incident for commission of the offence.*
- (d) *Trial Court failed to put question regarding the positive report of the Chemical Examiner from the appellant.*

10. It is settled principle of law that all the incriminating pieces of evidence shall be put to the appellants for their explanation, omission is not curable under the law, learned counsel for the appellant has rightly relied upon the case reported as Mohammad Bilal vs. The State (*supra*), wherein this Court while remanding the case to the trial Court has observed as under;-

*"10. Under these circumstances and in the interests of justice we hereby set aside the impugned judgment and remand the case back to the concerned trial court which shall continue with the trial from the point at which the appellants S.342, Cr.P.C. statement is to be recorded afresh after putting all incriminating pieces of evidence to the accused for his explanation (as we see no valid legal justification to recommence the trial after framing of the charge and thus it is made clear that all other evidence on record up to the point of recording the accused's S.342, Cr.P.C. statement shall remain in the field and will not need to be re-recorded) and thereafter decide the trial on merits in accordance with law **within two months** of receipt of this Judgment. On the first date of hearing the trial court shall issue P.O. for the accused who shall on his appearance record his S.342, Cr.P.C. statement where he shall be confronted with all the evidence against him in accordance with the law. The office shall send a copy of this judgment along with R&Ps immediately to the concerned trial court for information and compliance."*

11. For the above stated reasons the impugned judgment is set-aside and the case is remanded to the trial Court with direction to

record the statements of the appellants / accused under Section 342, Cr.P.C afresh by putting all the incriminating pieces of evidence to the appellants for their explanation. In the meanwhile, the appellants shall be treated as under trial prisoners and shall be produced before the trial Court on 07.08.2023.

12. The appeal is disposed of in the above terms.

Judge

ARBROHI