

IN THE HIGH COURT OF SINDH, AT KARACHI

Criminal Appeal No. 426 of 2019

Appellant: Salman through Mr. Liaquat Ali Hamid Meo,
advocate

The State: Mr. Muhammad Anwar Mahar, DDPP

Date of hearing: 11.08.2023

Date of judgment: 11.08.2023

J U D G M E N T

IRSHAD ALI SHAH, J- It is alleged that the appellant with rest of the culprits during course of robbery committed murder of Irfan by causing him fire shot injuries, for that he was booked and reported upon by the police. On conclusion of trial, he was convicted under Section 302(b) PPC r/w Section 397 and sentenced to undergo imprisonment for life and to pay compensation of Rs.3,00,000/- to the legal heirs of the deceased and in default whereof to undergo simple imprisonment for 06 months with benefit of section 382(b) Cr.P.C; by learned Ist -Additional Sessions Judge (MCTC) Karachi South vide judgment dated 26.06.2019, which is impugned by the appellant before this Court by preferring the instant Criminal Appeal.

2. At the very outset, it is pointed by learned counsel for the appellant that when the case was about to be disposed of finally, learned trial Court declared the appellant as juvenile offender and charge against him was amended accordingly. After amendment of the charge, the evidence already recorded was adopted and the case was disposed of accordingly, which is against the principle of fair trial as envisaged under Article 10A of the Constitution of the Islamic Republic of Pakistan, 1973; more-so the joint punishment for two different offences was also contrary to the mandate contained by Section 367 Cr.PC. By pointing out so, he suggested for remand of the case for fair trial, which is not opposed by learned DDPP for the State.

3. Heard arguments and perused the record.

4. The omissions pointed out by learned counsel for the appellant takes support from the record, those being incurable in terms of section 537 Cr. PC have occasioned in failure of justice, consequently the impugned judgment is set aside with direction to learned trial Court to record the evidence of the witnesses as per law, from the stage when the charge was amended against the appellant and then to make disposal of the case afresh and in accordance with law without being influenced by earlier finding; such exercise to be completed within 03 months.

5. The appellant was enjoying the concession of bail at trial, he to enjoy the same concession subject to furnishing fresh surety in sum of Rs.200,000/- and PR bond in the like amount to the satisfaction of the learned trial Court.

6. The instant Criminal Appeal is disposed of accordingly.

JUDGE