

IN THE HIGH COURT OF SINDH, AT KARACHI

Criminal Jail Appeal No.454 of 2020

Appellant: Ghulam Sarwar through Mr. Ahmed Ali Deewan, advocate

The State: Mr. Muhammad Anwar Mahar, DDPP for the State

Complainant: Anb through Sardar Azmat Hussain, advocate

Date of hearing: 11.10.2023

Date of judgment: 11.10.2023

J U D G M E N T

IRSHAD ALI SHAH, J- It is the case of prosecution that the appellant allegedly with rest of the culprits in furtherance of their common intention committed murder of Abdul Hameed and then went away by causing injuries to P.W Qurban Ali, for that the present case was registered. On conclusion of trial, co-accused Ghulam Fareed and Ghulam Hyder were acquitted while the appellant was convicted under Section 302(b) PPC and sentenced to undergo rigorous imprisonment for life as *Tazir* and to pay compensation of Rs.100,000/- 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.PC by learned 1st -Additional Sessions Judge/MCTC Thatta vide judgment dated 19.11.2019 which he has impugned before this Court by preferring the instant CrI. Jail Appeal.

2. At the very outset, it is pointed out by learned counsel for the parties that during course of his examination u/s. 342 Cr.PC the appellant wanted to examine himself on oath; such opportunity has been denied to him by learned trial Court, on the basis of statement of his counsel which was filed without his consent. By stating so, he sought for remand of the case with direction to the learned trial Court to record statement of the appellant on oath, which is not opposed by learned DDPP for the State; however, learned counsel for the complainant has opposed to remand of the case for recording

statement of the appellant on oath by stating that the appellant has failed to avail such opportunity when was asked to avail the same.

3. Heard arguments and perused the record.

4. The appellant in his statement recorded under Section 342 Cr.PC in clear terms has stated that he is wanting to examine himself on oath; such opportunity has been denied to him by learned trial Court on the basis of statement filed by his counsel which is said to have been filed without his consent. If the appellant is wanting to examine himself on oath in disproof of the prosecution's allegation then he could not be denied such opportunity even by this Court; if denied then it would be against the mandate of Article 10-A of the Constitution of the Islamic Republic of Pakistan, 1973, which prescribes right of fair trial; consequently, the impugned judgment only to the extent of the appellant is set aside with direction to the learned trial Court to record statement of the appellant on oath and then to make fresh disposal of the case in accordance with law, preferably within two months after receipt of copy of this judgment.

5. The instant Criminal Appeal is disposed of accordingly.

JUDGE