

THE HIGH COURT OF SINDH, BENCH AT SUKKUR

Spl. Anti-Terrorism Appeal No.D- 273 of 2019
Spl. Anti-Terrorism Appeal No.D- 274 of 2019
Spl. Anti-Terrorism Appeal No.D- 275 of 2019
Spl. Anti-Terrorism Jail Appeal No.D- 186 of 2019
Spl. Anti-Terrorism Jail Appeal No.D- 122 of 2022
Spl. Anti-Terrorism Acquittal Appeal No.D- 240 of 2019

Date of hearing	Order With Signature Of Judge.
-----------------	--------------------------------

Hearing of Case

1. For orders on MA 4741 of 2015
2. For orders on MA 3210 of 2020
3. For hearing of main case.

Present

Mr. Justice Muhammad Iqbal Kalhoro
Mr. Justice Arbab Ali Hakro

Ms. Rizwana Jabeen Siddiqui, Advocate for appellants in all appeals and for respondent in connected acquittal appeal.

Mr. Aftab Ahmed Shar, Additional P.G for the State.

Date of Hearing & Judgment: **24-04-2024**

J U D G M E N T

MUHAMMAD IQBAL KALHORO J.- Appellants Ikhtiar Ali, Mashooq Ali, Khadim Hussain, Shoukat, Hyder Ali, Talib Hussain and Saleem Darwan, were tried by learned Judge, Anti-Terrorism Court, Naushahro Feroze in Special Cases Nos.21, 22, 23 of 2014, 49 of 2018 and 31 of 2022, arising out of FIR No.32 of 2014 under sections 302, 395, 324, 353, 114, 148, 149, 337-F(ii), 337-A(i) r/w sections 6/7 of the Anti-Terrorism Act, 1997, FIR No.38 of 2014, under section 23(1)(a) of the Sindh Arms Act, 2013 and FIR No.40 of 2014 under section 23(1)(a) of the Sindh Arms Act, 2013, all registered at P.S, Muhbat Dero respectively and by judgments dated 01.06.2015, 30.08.2019 and 18.10.2022 respectively, they have been convicted and sentenced, as mentioned in the impugned judgments.

2. We have heard learned counsel for the parties at some length and perused material available on record including evidence of the prosecution witnesses. Learned Additional P.G while arguing the case has pointed out that in all appeals, the appellants were charged for committing offences

under sections 302, 395, 324, 353, 114, 148, 149, 337-F(ii), 337-A(i) r/w sections 6/7 of the Anti-Terrorism Act, 1997. However, the trial Court while rendering the judgments has convicted and sentenced the appellants only under sections 302(b), 324, 392 PPC r/w section 6/7 ATA & 23(i)(a) Sindh Arms Act without making any mention about or a reference to the remaining penal sections that whether appellants have been acquitted in those offences or have also been convicted. If so, how as the accused in law cannot be impliedly convicted, and if not whether they shall be treated as acquitted. Secondly, the appellants were charged under section 302 PPC on three counts viz. murdering three persons, but in impugned judgments, appellants have been convicted under section 302(b) PPC only on one count. The trial Court has not mentioned whether or not appellants have been acquitted in respect of remaining two counts of murder. Such lacuna committed by the trial Court has resulted in negation of mandatory provisions of section 367 CrPC warranting remand of the case back to the trial Court for rewriting the judgment. To support his arguments, learned Additional P.G has relied upon *Irfan and another v. Muhammad Yousaf and another* (**2016 SCMR 1190**), **2004 SCMR 01**, **2020 PCrLJ 952**, **2024 PCrLJ 499** and an unreported judgments dated 10.04.2019 and 02.11.2018, passed by Divisional Benches of this Court in CrI.J.A.No.D-120 of 2016 etc and CrI. Jail Appeal No.378 of 2016 respectively.

3. Learned counsel for the appellants, in view of above undeniable legal position, has consented to the remand of the case to the trial Court for rewriting the judgment after hearing both the parties. However, she submits that appellants may be set at liberty to move application in terms of section 23 of ATA for transfer of the case to the Court of ordinary jurisdiction and bail application before the trial Court, which the Court may be directed to decide before announcement of judgment, which proposition has not been opposed by learned Additional P.G.

4. In the case of *Irfan and another* (**supra**), the Supreme Court has been pleased to observe that under the provisions of section 367(2) and (3) CrPC, it was mandatory for the trial Court that upon finding the accused guilty of one or more offences, separate sentence must be clearly awarded to the accused so convicted, otherwise it would be illegal being in violation

of the mandatory provisions of law. In the case in hand, the trial Court has convicted and sentenced the appellants only under sections 302(b), 324, 392 PPC r/w section 6/7 ATA & 23(i)(a) Sindh Arms Act, but did not record any specific conviction and sentence under remaining penal sections, as reflected in the charge. Further, this is a case of triple murder, but appellants have been convicted under section 302(b) PPC and sentenced on only one count and there is no mention whether appellants have been acquitted in respect of remaining two counts of murder or have also been convicted and sentenced therein. Accordingly in view of such legal flaw and with consent, conviction and sentence awarded to the appellants vide impugned judgment are set aside and their case is remanded to the trial Court with direction to hear both the parties and rewrite the judgment in accordance with law in terms of provisions of section 367 CrPC within a period of three months. However, if application under section 23 of ATA, 1997 or bail application is filed on behalf of the accused, the same shall be decided in accordance with law on its own merits before announcement of the judgment.

5. In the above terms, the captioned Special Anti-Terrorism Appeals No.D-273, 274, 275 of 2019 and Special Anti-Terrorism Jail Appeals No.D-186 of 2019 & 122 of 2022 along with pending application(s) are **disposed of** accordingly.

6. So far Special **Anti-Terrorism Acquittal Appeal No.D-240 of 2019** is concerned, since it has been filed against acquittal of private respondent, whose trial was conducted separately after his arrest resulting in his acquittal by the trial Court vide judgment dated 09.11.2019 and having no nexus with the above impugned judgments, is adjourned to a date in office.

Office to place a signed copy of this order in captioned connected matters.

JUDGE

JUDGE