

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR

Criminal Jail Appeal No. S- 79 of 2019

Before:-

Mr. Justice Zulfiqar Ali Sangi

Appellants: Shah Nawaz alias Shano Mallah and
Waheed Ali Solangi,
Through Mr. Rashid Khan Durrani,
Advocate

Nemo for the Compalinant

The State: Through Mr. Zulfiqar Ali Jatoi,
Additional Prosecutor General

Date of hearing: 21-11-2024

Date of judgment: 21-11-2024

J U D G M E N T

Zulfiqar Ali Sangi, J.- This Criminal Jail Appeal is directed against the judgment dated 16.05.2019, passed by 1st Additional Sessions Judge/Model Criminal Trial Court, Naushahro Feroze, whereby the appellants were convicted and sentenced under section 302(b) P.P.C for imprisonment for life as *Tazir* and to pay fine of Rs.200,000/- each as compensation, to the legal heirs of the deceased Amjad alias Porho as required u/s 544-A, CrPC, they were also directed to pay fine of Rs.50000/- each, in case of default in payment of fine, they shall further undergo S.I for one year more. The benefit of Section 382-B, CrPC was also extended to them.

2. At the very outset, learned counsel for the appellant submits that initially the charge was framed against three accused persons on 07-03-2014 and thereafter the accused Waqas Ali was declared as juvenile and his case was bifurcated and the charge against the present appellants was amended on 04-09-2015. The charge against the appellants was framed by violating the provisions of sections 222 and 223 Cr. P.C. as the case of the prosecution as per FIR, statements under section 161 Cr. P.C. and the evidence recorded by the trial court was different from the charge framed. By contending so, the learned counsel submits that the case in hand is fit for remand and de novo trial.

3. Learned Additional P.G. after going through the charge, FIR and the depositions of prosecution witnesses has not rebutted the above facts and further pointed out that the judgment itself is defective having not been recorded following the law. Therefore, he frankly conceded that the judgment be set-aside and the matter be remanded for re-trial.

4. I have heard learned counsel for the parties and have gone through the material available on record with their able assistance.

5. The charge is a precise formulation of the specific accusation made against a person who is entitled to know its nature at the early stage. The whole object of framing a charge is to enable the accused to concentrate his attention on the case that he has to meet. Therefore, the charge must contain all material particulars as to time, and place as well as the specific name of the alleged offence, *the manner in which the offence was committed and the particulars of the accusation so as to allow the accused to explain the matter with which he is charged*. The purpose behind giving such particulars is that the accused should prepare his case accordingly and may not be misled in preparing his defence. It needs no emphasis to state that a defective and misleading charge causes serious prejudice to the accused and vitiates the whole trial. The trial court had not specified the allegations in the charge. On examination of the charge in the case in hand, it clarified that it was not framed correctly and is defective in as much as the charge was framed against appellants Shah Nawaz alias Shanu and Waheed that they along with co-accused Waqas Ali (Juvenile) in furtherance of common intention duly armed with a hatchet, while issuing threats of dire consequences to PW Khalid Hussain committed the murder of deceased Amjad alias Porho, aged about 25/26 years, the brother of complainant Abid Ali Mallah by causing him hatchet blows on backside of his neck and thereby committed an offence punishable U/S 302, 506/2 R/W Section 34 PPC. The contents of FIR and statements under section 161 Cr. P.C. speak otherwise. The allegation against the present appellants was that Khalid Hussain s/o Gulam Muhammad Malah informed the complainant that on the

night of the incident, he was going to the house of his relative Sher Mallah and at about 10.00 pm in the night, he heard the crisis from the ground of High School N. Feroze where he went and saw on the light of the torch that beside the wall of School, Waqas s/o Islamuddin Memon and Waheed s/o Bakhshiyal Solangi had caught hold from both arms of Amjad @ Porho while Shah Nawaz @ Shano s/o Muhammad Umer Mallah having hatchet was causing hatchet blows to the deceased on the backside of neck which reflects that there was role against each accused; however, the charge was not framed as per the allegations made and it was generalized in nature and is in violation of section 222 Cr.P.C. The illegality committed by the trial court as discussed above is not curable under the law. The Division Bench of this Court under the above circumstances in the cases of **Mubeen alias Haji Muhammad Mubeen vs. The State (2006 YLR 359)** and **Bashir Bughio vs. The State (2022 MLD 1405)**, has also remanded the case for *de novo* trial.

6. It is also observed that the trial court also committed another illegality which too is not curable under the law. The case of juvenile accused Waqas Ali was separated from the case of the present appellants and both cases were also tried separately; however a single judgment was announced and the accused in both cases were convicted and sentenced. The evidence recorded in both the cases was not discussed separately and evidence of only one case was discussed. The trial court was bound by law to discuss evidence in each case separately and passed separate judgments as the evidence of one case cannot be relied upon in another case while awarding the conviction or acquitting the accused. The accused Waqas Ali also preferred the appeal against the same judgment; however, during the pendency of his appeal parties entered into a compromise and he was acquitted vide order dated: 06-04-2020 in Appeal No. S- 81 of 2019 which attained finality. Therefore, his case is not considered at this stage.

7. For the above reasons, the instant jail Appeal is allowed to the extent that the impugned judgment is set-aside. The case is remanded to the trial Court for *de novo* trial after framing a fresh

charge containing full material particulars of the offence committed to making it in consonance with the provisions of Section 222, Cr. P.C. coupled with recording evidence of the prosecution witnesses and examination of the accused afresh and an opportunity of hearing to the parties. The case pertains to the year 2013, and the appellants are present on bail, granted by this court while suspending the sentence vide order dated: 21-12-2023, therefore, they shall remain on the same bail. The trial Court is directed to conclude the trial within a period of three months without granting any adjournment to the parties by fixing the matter on a day-to-day basis. The trial court if feels that the witnesses are not appearing for recording their evidence may issue a coercive process against them.

8. The criminal jail appeal is, therefore, disposed of in the above terms.

Judge