

**IN THE HIGH COURT OF SINDH BENCH AT SUKKUR**

***CrI. Jail Appeal No.S-16 of 2023***

DATE OF HEARING	ORDER WITH SIGNATURE OF JUDGE.
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*For hearing of main case.*

**06.02.2025**

M/s Shahid Ali and Rizwana Parveen Memon, Advocate(s) for appellant.

Mr. Khalil Ahmed Maitlo, Deputy Prosecutor General.

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**ORDER**

***Riazat Ali Sahar, J.*** This order disposes of the Jail Appeal filed by the appellant, Hazaro Jakhrani, assailing the impugned judgment dated 24.01.2023, passed by the learned Additional District & Sessions Judge-V, Sukkur Camp, held at Central Prison, Sukkur, in Sessions Case No. 69 of 2021, arising out of Crime No. 29/2020, registered under Sections 302, 311, 148, and 149 of the PPC at Police Station Mouladad. Through the impugned judgment, the appellant has been convicted and sentenced to undergo rigorous imprisonment for life and to pay compensation of Rs. 500,000/- (Rupees five lacs) to the legal heirs of both deceased persons, as mandated under Section 544-A Cr.P.C. In the event of default in the payment of compensation, the appellant shall undergo simple imprisonment for a further period of six months.

The learned counsels for the appellant submit that the appellant, Hazaro, son of Meenhon Jakhrani, has been implicated in multiple offences punishable under Sections 302, 311, 148, and 149 of the PPC, registered at

Police Station Mouladad, District Jacobabad, pertaining to the alleged commission of *Qatl-e-Amd* of two deceased persons, namely Mst. Shado and Mashooque Ali. During the course of arguments, it has been pointed out by the learned counsels for the appellant that the charge framed in the trial was defective, as it only pertained to the alleged *Qatl-e-Amd* of Mst. Shado, whereas, according to the prosecution's version, two individuals were allegedly murdered: (i) Mashooque Ali, son of Jourakh Jakhrani, and (ii) Mst. Shado, wife of Hazaro Jakhrani. Despite this discrepancy, the trial proceeded, and after framing the charge and recording the evidence of the parties, the learned trial court pronounced the impugned judgment. In view of the defective framing of charge and the consequent effect on the reliability of the evidence, the learned counsels argue that the trial suffers from a serious legal infirmity. They contend that a trial based on a fundamentally flawed charge cannot be sustained in the eyes of the law. Therefore, they urge that it would be just and appropriate to remand the case to the trial court with a direction to conduct a *de novo* trial from the stage of framing of charge, ensuring due process and compliance with legal requirements.

Learned Deputy Prosecutor General appearing for the state does not oppose the proposal so advanced by the learned counsel for appellant.

Having heard the learned counsel for the respective parties and upon a meticulous examination of the impugned judgment as well as the record available before me, it is evident that the appellant was charged with the *Qatl-e-Amd* of two deceased persons, namely (i) Mashooque Ali, son of Jourakh Jakhrani, and (ii) Mst. Shado, wife of Hazaro Jakhrani. However, the learned trial court, in derogation of settled legal principles and established procedural norms, framed a defective charge, limiting it solely to

the alleged murder of Mst. Shado. This omission is not a mere irregularity but a *non curat lex* defect, rendering the trial inherently flawed and contrary to the fundamental tenets of criminal jurisprudence. It is a well-settled principle that a trial vitiated by a defective charge offends the *principles of natural justice* and violates the accused's right to a fair trial. The learned trial court, having proceeded on an erroneous premise, has rendered a judgment that is *coram non judice* and legally unsustainable. In light of these glaring infirmities, the impugned judgment suffers from *ex facie* legal defects and cannot be upheld under the law.

Resultantly, the instant appeal is allowed. The impugned judgment dated 24.01.2023 is hereby set aside. Since the entire trial was conducted on the basis of a defective charge, the proceedings are rendered *null and void ab initio*. Accordingly, the matter is remanded to the learned trial Court with a direction to conduct a ***de novo trial*** commencing from the stage of framing of charge. The learned trial court shall ensure due compliance with procedural safeguards by affording both parties a fair opportunity to adduce evidence, whereafter a fresh judgment shall be rendered in accordance with law.

Furthermore, the appellant, who was in custody at the time of the pronouncement of the impugned judgment, shall remain in custody unless otherwise directed by the competent Court in accordance with law.

In view of the foregoing, the learned Sessions Judge, Sukkur, is directed to proceed with the matter either by himself or to assign the same to any Additional Sessions Judge, as he deems fit and proper, in the interest of justice. Furthermore, the learned trial Court is directed to ensure the ***expeditious disposal of the matter*** by securing the attendance of prosecution

witnesses and concluding the trial strictly within a period of “**three months**”, adhering to due process of law.

Appeal stands disposed of in the above terms.

**J U D G E**

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