

THE HIGH COURT OF SINDH, CIRCUIT COURT LARKANA

Cr. Appeal No. S-64 of 2010

Appellant : Jumo Bangulani, through Mr. Habibullah G. Ghouri,
Advocate.

Respondents : The State, through Mr. Ali Anwar Kandhro, Additional
Prosecutor General.

Mr. Asif Ali Abdul Razak Soomro, advocate for the
complainant.

Date of hearing 27.02.2020.
Date of decision 27.02.2020.

ORDER.

ZAFAR AHMED RAJPUT, J.- Appellant Jumo Bangulani was booked in Crime No.140/2009, registered at P.S. Thul, District Jacobabad under Sections 302, 337-H(2), 148, 149, 114, PPC and after regular trial, he was convicted by the learned Sessions Judge, Jacobabad vide judgment dated 06.04.2010 passed in Sessions Case No.270 of 2009 (Re: State Vs. Jumo Bangulani) and sentenced to suffer life imprisonment as Tazir and to pay Rs.100,000/- as compensation to the legal heirs of the deceased; in case of failure to make payment of compensation, he was to undergo simple imprisonment for a period of six months; the appellant was also convicted for offence under Section 337-H(2), r/w Section 149, PPC and sentenced to to to undergo R.I. for one month; all the sentences were ordered to run concurrently and benefit of Section 382-B Cr.P.C., was also extended to the appellant. The appellant named above has assailed the judgment through this criminal appeal.

2. After hearing the learned counsel for the parties and having gone through the record, I am of the view that there is no need to go into the merits of the case, as I am inclined to set-aside the conviction and sentence of the appellant and order for re-examination of the accused, for the reason that the examination of the appellant has not been made in accordance with the provisions of Section 342, Cr.P.C. I have found that the learned Sessions Judge, Jacobabad has failed to append the requisite certificate to the statement of accused/appellant recorded under Section 342, Cr.P.C in his handwriting to the effect that statement of the accused/appellant was recorded in his presence and hearing and it contained a full and true account of the statement made by him. No doubt the statement U/S 342, Cr.P.C is available on record, but the certificate appended thereto is not in the handwriting of the Presiding Officer and the same is in typed form. It is well-settled principle of law that where a thing is provided to be done in a particular manner, it has to be done in that manner and if not done so, the same would not be lawful. Non-compliance of the provisions regarding examination of an accused U/S 342, Cr.P.C and non-giving of certificate by the trial Judge in his own handwriting, are not curable and the same is illegality not irregularity.

3. I am of the considered view that the miscarriage of justice has resulted on account of above-mentioned illegality. That being the position, there is no option but to set-aside the conviction and sentences of the appellant by allowing instant Cr. Appeal and send back the case to the trial Court to proceed afresh from the stage of recording of statement of accused/appellant under Section 342, Cr.P.C in

accordance with requirements of Section 364(2), Cr.P.C and thereafter decide the case afresh in accordance with law.

4. Since this is an old appeal of the year 2010, the learned trial Court is directed to dispose of the case expeditiously and preferably within a period of two months hereof.

Qazi Tahir P.A/*