

## THE HIGH COURT OF SINDH, CIRCUIT COURT LARKANO

Cr. Revision Appln. No. D-12 of 2014

Cr. Jail Appeal No. S-28 of 2014

**Present :**

Mr. Justice Zafar Ahmed Rajput,  
Mr. Justice Shamsuddin Abbasi,

**Cr. Rev. Appln. No. D-12 of 2014**

For hearing of main case.

**Cr. Jail Appeal No. S-28 of 2014**

1. For hearing of M.A No. 6258/2014. (Appl. U/S 561A Cr.P.C.)
2. For hearing of main case.

Mr. Ahsan Ahmed Quraishi, advocate for the applicant in Cr. Rev. Appln. No. D-12/2014 and for the complainant in Cr. Jail Appeal No. S-28/2014.

M/s Safdar Ali G. Bhutto and Habibullah G. Ghouri, advocates for the appellants in Cr. Jail Appeal No. S-28/2014.

Mr. Ali Anwar Kandhro, Additional Prosecutor General.

Date of hearing 19-02-2020

Date of decision 19-02-2020

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**ORDER**

**ZAFAR AHMED RAJPUT, J.:-** By this common order, we intend to dispose of both aforementioned criminal revision application and criminal jail appeal as the same have arisen out of same judgment dated 10.09.2014, passed by the learned Sessions Judge, Larkana.

2. The appellants Sanaulah, Zakauallah and Mohammad Aslam in Cr. Jail Appeal No. S-28/2014 and respondents No.1 to 3 in Cr. Rev. Appln. No. D-12/2014 were booked in Crime No.96/2009, registered at P.S. Market in respect of offence under Sections 302 and 34 P.P.C and after regular trial under Sessions Case No.411 of 2009, they were convicted by the learned Sessions Judge, Larkana vide judgment dated 10.09.2014 and sentenced

to suffer life imprisonment as Tazir and to pay compensation of Rs.100,000/- each to the legal heirs of the deceased; in case of their failure to make payment of compensation, each one of them would undergo same imprisonment for a period of six months, benefit of Section 382-B Cr.P.C. was however extended to the appellants. The appellants named above have assailed the judgment in criminal jail appeal while the complainant Deedar Ali Bhutto has assailed the judgment in aforementioned criminal revision application seeking enhancement of sentence awarded to appellants/respondents No.1 to 3 from life imprisonment to that of death sentence.

3. After hearing the learned counsel for the parties, having gone through the record of the case, we are of the view that there is no need to go into the merits of the case as we are inclined to set-aside the conviction and sentence of the appellants and order for retrial for the reasons that the examination of the appellants has not been made in accordance with the provisions of Section 342 Cr.P.C. We have found that the learned Sessions Judge, Larkana has failed to give requisite certificates to the statements of accused/appellants recorded U/S 342 Cr.P.C in his handwriting to the effect that statements of the accused/appellants were recorded in his presence and hearing and contained full and true account of the statements made by them. No doubt the statements U/S 342 Cr.P.C are available on record but the certificates appended thereto are not in the handwriting of the Presiding Officer but 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 provisions regarding examination of accused U/S 342 Cr.P.C and giving of certificates by the trial Judge in his own hand writing, are not curable and the same is illegality not irregularity.

4. We are of the view that the miscarriage of justice has resulted on account of above mentioned illegality. That being position, there is no option but to set-aside the convictions and sentences of the appellants by allowing Cr. Jail Appeal and send back the case to the trial court to proceed afresh from the stage of recording of statements of accused/appellants under Section 342 Cr.P.C in accordance with requirements of Section 364(2) Cr.P.C and therefore decided the case afresh without being prejudiced from the earlier judgment. The Criminal Revision Application No. D-12/2014 and M.A No.6258/2014 in Criminal Jail Appeal No. S-28 of 2014 on being infructuous stand dismissed. and writing of a judgment in accordance with law.

5. Since it is an old matter of 2009, learned Sessions Judge, Larkana is directed to disposed of the case expeditiously and preferably within a period of three months hereof.