

THE HIGH COURT OF SINDH, BENCH AT SUKKUR

Crl. Jail Appeal No.S- 740 of 2022

(Abdul Sattar v. The State)

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

Hearing of Case

1. For orders on MA 14454/2022
2. For hearing of main case.

Mr. Muhammad Farooq, Advocate for appellant.

Mr. Khadim Hussain, Additional P.G for the State.

Date of Hearing: **18-10-2024**

Date of Decision: **18-10-2024**

J U D G M E N T

Muhammad Iqbal Kalhoro J.- This appeal questions judgment dated 22.09.2022 passed by learned Additional Sessions Judge-I, Karachi West in Sessions Case No.582/2010 bearing Crime No.169/2010 U/s 302, 34 PPC of P.S. Docks, Karachi, whereby appellant has been convicted and sentenced to suffer imprisonment for life as Tazir and to pay compensation of Rs.100,000/- to the legal heirs of deceased Noor Muhammad u/s 544-A Cr.P.C, in default to suffer imprisonment for six months more.

2. As per brief facts, on 13.05.2010 complainant lodged FiR alleging that on 12.05.20210 at 2330 hours, while he was available near Shakir Wali Gali with KESC officials, his maternal cousin Noor Muhammad informed him that his father had received fire shot injury and was lying injured at Shakir wali Gali. Complainant rushed there and saw his father in serious condition. He took him to Civil hospital, where he succumbed to his injuries. Complainant was informed that accused Abdul Sattar s/o Abdul Hassan, Abdul Shakoor s/o Abdul karim and two unknown persons had fired upon deceased due to old enmity. Complainant thereafter registered FIR against accused persons.

3. Learned defence counsel at the very outset has submitted that offence with which appellant was charged carries capital punishment of death but the trial court without recognizing right of appellant to be represented by a qualified legal practitioner recorded examination in chief of the witnesses in absence of his advocate which is a violation of section 340 Cr.P.C as well as Article 10-A of

Constitution which guarantees a fair trial of the accused. More so, after arrest of the appellant although the charge was reframed but the same evidence was adopted by the prosecutor recorded earlier in the case against co-accused Abdul shakoor and allowed by the trial court which is violation of section 353 Cr.P.C. He submits that in the circumstances, this is a fit case to be remanded to the trial court to examine the witnesses, whose examination in chief was recorded in absence of advocate for appellant and whose evidence was adopted by the prosecutor and allowed by the court. He has relied upon the case law reported as 2018 MLD 422, 2019 MLD 1713, and PLD 2006 Kar 377.

4. This fact has been admitted by learned APG, who has proposed that he would have no objection if the case is remanded back to the trial Court for examining the witnesses in presence of counsel for appellant in terms of section 353 Cr.P.C.

5. In view of these facts and grounds, I agree with the above proposition. It is clear that the requirements of fair trial in the present case, under section 340, 353 Cr.P.C as well as Article 10-A of the Constitution, have not been met. Hence, conviction and sentence awarded to the appellant vide impugned judgment is set aside and the case is remanded. On remand, the trial court shall recall and reexamine the witnesses, whose examination in chief was recorded in absence of counsel for appellant namely namely Javed Akhtar, (P.W.2 Ex.7), Muhammad Shakir (PW.3 Ex.8), Noor Muhammad (P.W.4 Ex.9), Taj Nabi, Iftikhar Ahmed (P.W.5 Ex.17), Tarique Mehmood (P.W.9 Ex.21) as well as P.W. Muhammad Umar (P.W.5 Ex.10), and whose evidence was adopted and allowed by the court in violation of section 353 Cr.P.C as well as Article 10-A of Constitution of Pakistan and then decide the case in accordance with law.

The appeal along with listed application is accordingly **disposed of** in the above terms alongwith pending application.

JUDGE