

HIGH COURT OF SINDH AT KARACHI

Spl. Cr. A.T. Jail Appeal No.200 of 2020

Date _____ Order with signature of Judges _____

For hearing of main case.

28.03.2022.

Mr. Zulfiqar Ali Langha, Advocate for the Appellant.
Mr. Mohammad Iqbal Awan, Addl. Prosecutor General.

ORDER

Mohammad Karim Khan Agha, J. Appellant Imtiaz Hussain @ Muhammad Fayyaz son of Muhammad Riaz Rind Baloch was charge sheeted to face his trial in two Special Cases No.1709/2016 arising out of FIR No. 357 of 2016 under section 302/34 PPC r/w section 7 of ATA 1997 and Special Case No.1710/2016 arising out of FIR No.358 of 2016 under section 23(1)(a) of Sindh Arms Act, 2013 both registered at PS, Korangi Karachi. After a full dressed trial the appellant was convicted and sentenced vide impugned judgment dated 28.09.2020 passed by the learned Judge, Anti-Terrorism Court No.XIII, Karachi/Judicial Complex at Central Prison, Karachi as under:-

- (i) He is found guilty for the offence, convicted u/s.302(b) PPC and sentenced to suffer imprisonment for life as Tazir and fine of Rs.2,00,000/- (two lacs) and also directed to pay Rs.2,00,000/- (tow lacs) as a compensation to the L.R.S. of deceased as provided u/s.544-A Cr.P.C. in case of default accused shall suffer R.I. one (01) year more.
- (ii) He is also convicted u/s.23(i)/ A of Sindh Arms Act, 2013 and sentenced to suffer R.I. seven (07) years with fine of Rs.50,000/- (fifty Thousand) in case of default in payment of fine accused shall suffer R.I. six (06) months more.

2. Prior to reading out of the evidence both learned counsel for the appellant and learned Additional Prosecutor General Sindh drew attention of this Court to the fact that this case warrants remand to the concerned trial Court i.e. Anti-Terrorism Court No.XIII, Judicial Complex at Central Prison, Karachi. This was because PW-6 Arsalan, who was an eye witness, had his evidence in chief recorded in absence of appellant's defence counsel. Likewise evidence in chief of PW-12 Ali Akber who was Mashir of arrest was also recorded in absence of appellants' defence counsel in violation of Section 353 of Cr.P.C.

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3. We have considered the record and note that learned counsel are correct in their contentions and that since PW-6 Arsalan and PW-12 Ali Akber did not have their evidence in chief recorded in presence of their defence counsel and have a right to fair trial as guaranteed by Article 10-A of the Constitution they have been prejudiced. For example, if the counsel of the appellant had been present when the aforesaid important witnesses were giving evidence in chief, they may have objected to certain questions being put and certain documents being exhibited, as such the fact that the appellant's defence counsel was not present during this process has caused prejudice to the appellant in his defence case. We note that this Court has already in such like cases for example reported in SBLR 2021 Sindh 112 and 2019 MLD 1713 adopted the following approach of remand.

4. As such we set-aside the impugned judgment and remand the case back to the ATC Court No.XIII, Judicial Complex at Central Prison, Karachi for limited purposes of recording evidence of PW-6 Arsalan and PW-12 Ali Akber mentioned in this order afresh in the presence of the counsel of the appellant who shall also be present during the cross-examination and examination-in-chief. Thereafter the trial court shall record afresh section 342 Cr.P.C statement of the appellant and after hearing the parties render a fresh Judgment. This process shall be completed within three months of the date of this order. This order along with the R&PS shall be sent by the office to the learned Anti-Terrorism Court No.XIII Karachi for compliance.

5. The above appeals stand disposed of accordingly.