

Remand - Copy and Paste of Evidence  
from other Cases

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CERTIFICATE OF THE HIGH COURT OF SINDH, KARACHI

Criminal Appeal NO. 176 of 2021  
Criminal Appeal NO. 177 of 2021  
Conf. Case NO. 08 of 2021

Babar Siraj

Vs

The State

HIGH COURT OF SINDH

Composition of Bench.

D.B.

Mr. Justice Muhammad Karim Khan Agha  
Mr. Justice Zulfiqar Ali Sangi

Date(s) of hearing: 01-09-2022

Decided on : 07-09-2022

Judgment approved for Reporting

Yes



CERTIFICATE.

Certified that the judgment \*/Order is based upon or enunciates a principle of law  
\*/decides a question of law which is of first impression/distinguishes/. Over-rules/  
reverses/explains a previous decision.

\* Strike out whichever is not applicable.

NOTE: - (i) This slip is only to be used when some action is to be taken.

(ii) If the slip is used, the Reader must attach it to the top of the first  
page of the judgment.

(iii) Reader must ask the Judge writing the Judgment whether the  
Judgment is approved for reporting.

(iv) Those directions which are not to be used should be deleted.

# IN THE HIGH COURT OF SINDH AT KARACHI

Cr. Appeal No. 176 of 2021

Baber Siraj s/o Siraj  
Muslim, adult, R/o House No.  
House No.B-49, 5<sup>th</sup> Floor,  
Flat Glaxy Excel Neepa Block-10-A,  
Chowrangi applicant/accused  
Presently detained in central Jail *Karachi*

PRESENTED ON  
22-03-2021

Deputy Registrar (Judl.)

1235

-----Appellant

**Versus**

**The State-----Respondent**

FIR NO.201/2019  
U/S: 302/34/114 PPC  
P.S. New Town, Karachi

## APPEAL U/S 410 CR.P.C

Being and aggrieved / dissatisfied with the judgment passed by  
Trial court on dated:18.03.2021, hence this appeal

### FACTS:

As per prosecution story that complainant states that his deceased father was an employee of SBCA. He had retired three months prior to the incident. He was General Secretary of Functional Labour Union of SBCA. Previously the deceased was General Secretary of People Unity Labour Union of SBCA. the complainant was also employee in SBCA. which he obtained through his deceased father. on 18-07-2019 the incident occurred in front of SBCA canteen at 15:40 hours. The complainant was present on that day with the deceased and Tanveer Choudhry (PW-4) Chairman of Functional Labour Union. Ebrahim Kaka was Chairman of People Unity, accused Arif Mota and Babar Siraj used to come to SBCCA together. Arif Mota was step brother of his father. Accused Arif Mota was not residing with his father as his father had no talking terms with him. One week prior to the incident accused Arif Mota and Babar Siraj had defaced posted of Union containing picture of his





# IN THE HIGH COURT OF SINDH AT KARACHI

Cr. Appeal No. 177 of 2021

Baber Siraj s/o Siraj  
Muslim, adult, R/o House No.  
House No.B-49, 5<sup>th</sup> Floor,  
Flat Glaxy Excel Neepa Block-10-A,  
Chowrangi applicant/accused  
Presently detained in central Jail Karachi

PRESENTED ON  
22-03-2021

*[Signature]*  
Deputy Registrar (Jud.)

1236

-----Appellant

**Versus**

**The State-----Respondent**

FIR NO.209/2019  
U/S: 23(I) A  
P.S. New Town, Karachi

## APPEAL U/S 410 CR.P.C

Being and aggrieved / dissatisfied with the judgment passed by  
Trail court on dated:18.03.2021, hence this appeal

### FACTS:

As per prosecution story that complainant states that his deceased father was an employee of SBICA. He hand retired three months prior to the incident. He was General Secretary of Functional Labour Union of SBICA. Previously the deceased was General Secretary of People Unity Labour Union of SBICA. the complainant was also employee in SBICA. wich he obtained through his deceased father. on 18-07-2019 the incident occurred in front of SBICA canteen at 15:40 hours. The complainant was present on that day with the deceased and Tanveer Choudhry (PW-4) Chairman of Functional Labour Union. Ebtrahim Kaka was Chairman of People Unity, accused Arif Mota and Babar Siraj used to come to SBCCA together. Arif Mota was step brother of his father. Accused Arif Mota was not residing with his father as his father had no talking terms with him. One week prior to the incident accused Arif Mota and Babr Siraj had defaced posted of Union containing picture of his





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P/F  
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(11)  
OFFICE OF THE DISTRICT & SESSIONS JUDGE KARACHI EAST.  
NO.AE/Conf-Death/ 2232 /2021 KARACHI DATED: 26.03.2021

To,  
The Registrar  
Honorable High Court of Sindh  
Karachi.

316  
CRL  
DATE 01/4/21  
HIGH COURT OF SINDH KARACHI

SUB: REFERENCE UNDER SECTION 374 CR.P.C FOR  
CONFIRMATION OF DEATH SENTENCE IN  
SESSION No.95/2020, FIR No.2010/2019, u/S.  
302/114/34 PPC OF PS NEW TOWN KARACHI  
THE STATE VERSUS BABAR SIRAJ S/O SIRAJ,  
AS PROVIDED UNDER SECTION 374 CR.P.C OR  
OTHERWISE

The reference for confirmation of death sentence  
in the subject case submitted by the judge of Model Criminal Trial  
Court/ Additional Sessions Judge-I, Karachi East is sent herewith.

( KHALID HUSSAIN SHAHANI )  
District & Sessions Judge,  
Karachi-East.

Encl: as above

Remand: Copy and paste of evidence  
for another case

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## IN THE HIGH COURT OF SINDH, KARACHI

CRIMINAL APPEAL NO.176 OF 2021.  
CRIMINAL APPEAL NO.177 OF 2021.  
CONF. CASE NO.08 OF 2021.

*Present:*

*Mr. Justice Mohammad Karim Khan Agha  
Mr. Justice Zulfiqar Ali Sangi*

Appellant: Babar Siraj S/o Siraj through Mr.  
Khawaja Naveed Ahmed,  
Advocate.

Complainant: Syed Talha Ashraf through Mr.  
Ghulam Murtaza, Advocate.

Respondent: The State through Mr. Muhammad  
Iqbal Awan, Additional Prosecutor  
General Sindh.

Date of Hearing: 01.09.2022

Date of Judgment: 07.09.2022.

### JUDGMENT

MOHAMMAD KARIM KHAN AGHA, J:- We intend to dispose of these two appeals through this consolidated judgment. The appellant Babar Siraj S/o. Siraj was tried before the Court of Additional District & Sessions Judge-I, Karachi East in Sessions Case No.95 of 2020 out of Crime No.201 of 2019 U/s. 302/34/114 PPC registered at PS New Town, Karachi and vide judgment dated 18.03.2021 the appellant was sentenced to death subject to confirmation by this court. In addition the appellant was ordered to pay compensation of Rs.500,000/- to the legal heirs of the deceased as required under section 544-A Cr.P.C. In another Sessions Case No.2511 of 2019 out of Crime No.202 of 2019 U/s. 23(i)A of Sindh Arms Act, 2013 registered at PS New Town, Karachi vide judgment dated 18.03.2021 the appellant was convicted and sentenced to suffer R.I. for 07 years with fine of Rs.10,000/- and in case of non-payment of fine, he shall further suffer S.I. for two months more.



2. The brief facts of the case as per FIR No.201/2019 are that on 18.07.2019 at 1540 hour accused Arif Mota and Babar came near to the Canteen of SCBA and exchanged hot words with the deceased. Accused Babar Siraj went inside the office of Ebrahim Kaka, brought back one pistol which he firstly pointed at the complainant and then shot at the deceased, upon which he sustained bullet injury on right side of abdomen. Accused Babar Siraj again pointed pistol at the complainant but his father grappled his hand and brought down pistol of accused Babar Siraj. The deceased became injured and unconscious. He was shifted to Liaquat National Hospital by his friends. People gathered at the spot. Accused Babar Siraj attempted to flee away but he was apprehended by people with the help of police but accused Arif Mota made his escape good. The complainant picked up the pistol of Babar Siraj and handed over the same to the police. The pistol contained four bullets and one empty was recovered from the place of incident, which he also handed over to police. The pistol was taken to PS by police while he proceeded to Liaquat National Hospital where his statement under section 154 Cr.P.C. was recorded at 1730 hours when deceased was admitted in ICU. On 19.07.2019 at 0210 hours the deceased died during treatment at hospital and police completed necessary formalities and thereafter, the dead body was shifted to Jinnah Hospital where after completing legal formalities it was handed over to the complainant. The statement of complainant under section 154 Cr.P.C. recorded at the hospital was incorporated in FIR by SIP Ghulam Akber in a murder case.

3. Thereafter, another FIR bearing No.202/2019 was also registered which states that on 18.07.2019 at about 1630 hours, SIP Ghulam Akbar of PS New Town received information through ASI Ashraf Ali of PS SBCA that one person had shot another at Civic Center in front of Canteen situated near PS SBCA. On such information he left PS to place of incident where he found that people were gathered near Canteen where Talha Ashraf and Tanveer were also present and they apprehended one person and handed over his custody to him and Talha Ashraf disclosed that the apprehended person had shot his father Ashraf Ali. On inquiry the apprehended person disclosed his name as Babar Siraj. Talha Ashraf and Tanveer produced one pistol 30 bore with four live rounds and one empty of 30 bore pistol. The pistol was of "NORINCO" bearing No.CAC-35168. Talha Ashraf disclosed that accused Babar Siraj had taken such pistol from the office of Ebrahim Kaka. He conducted further personal search of the accused and recovered cash of Rs.500/- and one Nokia mobile. Thereafter, the SIP brought the



accused and recovered properties at police station where he lodged a separate FIR against the accused under S.23(1) of the SAA 2013.

4. After completion of investigation of Crime No.201 of 2019 I.O. submitted challan against the accused person for offence punishable under section 302/34/114 PPC to which he pleaded not guilty and claimed trial.

5. After completion of investigation of Crime No.202 of 2019 I.O. submitted challan against the accused person for offence punishable under section 23(i)(A) of Sindh Arms Act, 2013 to which he also pleaded not guilty and claimed trial.

6. The prosecution in order to prove its case examined 05 Prosecution Witnesses in Crime No.201 of 2019 and 04 Prosecution Witnesses in Crime No.202 of 2019 and in both crimes exhibited various documents and other items. The statement of accused was recorded under Section 342 Cr.P.C in which he denied all the allegations leveled against him in both cases. In the murder case he gave evidence on oath and called two DW's.

7. After appreciating the evidence on record the trial court convicted the appellant vide two separate judgments of the same date. In one judgment he was sentenced to death and fine whilst in the other judgment he was sentenced to 7 years imprisonment hence, the appellant has filed these two appeals against the two convictions which arose out of the same transaction albeit were tried separately.

8. The facts of the cases as well as evidence produced before the trial court find an elaborate mention in the impugned judgments both dated 01.02.2021 passed by the trial court and, therefore, the same may not be reproduced here so as to avoid duplication and unnecessary repetition.

9. After reading out of the evidence which was allegedly recorded separately in the murder case u/s 302 PPC and the illegal Arms case under S.23 (1) SSA 2013 which lead to the two separate judgments which were decided on the same day we observed that the evidence of the 4 PW's recorded in the Arms case was identical to the evidence which they had given in separate murder case. In fact it appeared that the evidence was word for word and was the result of a copy and pasting of the evidence which clearly indicated that 4 PW's had only appeared once in the witness box and there evidence was simply placed on the file in the other case which was contrary to law.



10. When we brought this to the attention of learned counsel for the parties and asked them what the legal consequences of such action, if any, were learned counsel for the appellant stated that it had no impact and that both cases would be decided on merit or in the alternative its impact was the acquittal of the appellants in both cases. On the other hand learned APG and the complainant stated as a matter of law this was a case of remand as the two cases ought to have been tried together and one common judgment given; that each witness as a matter of law had to appear in the witness box in each case and their evidence could not be copied and pasted as evidence in another case and as such both the impugned judgments should be set aside and remanded back to the trial court for a complete re trial jointly. In this respect they placed reliance on the cases of **Safeer alias Ali Dino v. The state** (SBLR 2021 Sindh 1368), **Ghulam Hussain and others v. The State** (1996 P.Cr.LJ 514), **Nur Elahi v. The State and others** (PLD 1966 Supreme Court 708), **Azad Khan and another v. The State** (2004 YLR 1076), **The State v. Khan Muhammad @ Khanan & others** (SBLR 2005 Sindh 379), **Khalid Mehmood alias Khaloo v. The State** (2022 SCMR 1148) and **The State v. Khan alias Khanan and others** (2005 P. Cr.LJ 811).

11. We have considered this matter and find that the learned trial judge erred in not making both offences part of the same charge since they arose out of the same transaction at the same time and not holding a joint trial where only one set of witnesses would be examined and one consolidated judgment handed down in respect of all offences charged. The trial court had sufficient power to do so under Section 234, 235 and 239 (d) Cr.PC the logic being to avoid conflicting judgments. This court in the case of **Safeer alias Ali Dino** (Supra) has deprecated such practice as adopted by the trial court in this case. We have also found that if separate trials are held as a matter of law each witness must give his evidence in each trial and that his evidence in one trial cannot be copied and pasted for use in another trial as we find happened in this case.

12. There is a plethora of case law to support our above finding as cited above by the learned APG and the complainant and we only cite the example of **Azad Khan** (Supra) which held as under at P.1077;

*"4. We have heard the Advocate for the appellants, State counsel and perused the record of this case very carefully. Learned Advocate for the appellants has stated that the procedure adopted by the trial Court in the trial of both the cases was against the provision of law and after recording the statement of witnesses in*



one case the copies of the said statements were placed on the record of another case, which is not permissible under the law as such, the appellants have been prejudiced, therefore, he has prayed that the cases may be remanded to the trial Court for retrial.

5. Learned State counsel after going through the depositions of witnesses in both the cases has conceded the above position and has further added that the trial Court has committed illegality in placing copies of the depositions of witnesses recorded in one case, in the file of second case and that the said illegality is not curable under section 537, Cr.P.C.

6. We have given due consideration to the arguments and have minutely examined the statements of three witnesses recorded in both the cases. They are P.W.1, A.S.-I Mehar Ali Shah, Mashir, P.W.2, S.H.O. Muhammad Aslam, complainant and P.W.3 Line Officer Muneer Ahmed, Investigating Officer. We find that the said three witnesses are common in both the cases. Their statements were recorded on the one and same date in both the cases. The examination of the statements reveals that examination-in-chief, cross-examination, paragraphs, sentences, construction and placement of each sentences and words of each sentence are same, (except opening sentence and one word in 15<sup>th</sup> line of the deposition of P.W.2) which is not possible when the statements of same witnesses are recorded on the same date but at different times. Therefore, it is clear that after recording the statements of witnesses in one case, the copies of the deposition of the said witnesses were prepared and placed in the record of other case. The said procedure is in violation of provisions of section 353 Cr.P.C. and Articles 70 and 71 of the Qanun-e-Shahadat Order, 1984. From the said procedure, the trial Court, in fact has read the evidence of one case in other case which is not permissible under the law. The said procedure is highly objectionable and has no sanctity of law.

7. In view of the above circumstances, the submissions made by the learned advocate for the appellants have great force, as such the mode adopted by the trial Court in conducting these cases is illegal, which has vitiated the trials.

8. In the case of Noor Muhammad v. State PLD 1981 Lahore 60, where some portion of the statements of witnesses were copies from one case and placed on the record of another case then in such situation it was held that the trials of both the cases were illegal and the said defect was not curable under section 537, Cr.P.C., therefore, the Court ordered for the retrial of both the cases.

9. In the case of Alam Sher v. State 1977 PCr.LJ 1078 in the similar situation the Court ordered for the retrial of the cases and at page 1085 observed as follows:-

"...In all above five cases, the evidence consists of the statements of Khan Mir, P.W.1 and Cl. Ahmad Ali, S.H.O. P.W.2 and recoveries. The evidence has been recorded in a mechanical fashion. It appears that the entire evidence was recorded once and five copies were prepared,



and filed in different cases. The judgments have also been written in that mechanical fashion.

In case of *Muhammad Younis v. State* PLD 1953 Lahore 321, it is reported that if there are common judgments and evidence is copies, the trial was said to be illegal, viz. in violation of mandatory provisions of section 353, Cr.P.C. and sections 137 and 138 of the Evidence Act. Similarly, in *Nur Illahi v. State* PLD 1966 SC 708 the Supreme Court disapproved the procedure whereby the evidence of common witnesses was recorded once only and their statements were read out in the other cases. Similarly, in *Abdul Waheed v. State* 1968 PCr.LJ 776 where the evidence of Handwriting Expert, who was common in two cases, and whose original deposition was placed on the record of the other case through a carbon copy; the procedure adopted had invalidated the trial, and retrial was ordered. In case of *Qalandar Khan v. State* PLD 1971 Peshawar 119 the statement of common witnesses were recorded only in one case and the carbon copies thereof were placed on the record of the other cases. It was held that the procedure adopted was illegal."

10. We agree with the above proposition of law. Consequently, we set aside the convictions and sentences awarded to the appellants, without touching the merits of the case and remand both the cases for retrial from the stage of recording of the evidence. The appeals are allowed in the above terms".

13. As such we find that the deficiencies which we have pointed out above are not curable under Section 537 Cr.PC and have vitiated both the trials and such deficiencies have caused prejudice to the accused and as such both the impugned judgments are set aside and the confirmation reference is answered in the negative.

14. Both of these cases are remanded back to the MCTC/Addl. District and Sessions Judge 1 Karachi East which is directed to frame a joint charge for each offence and then complete a de novo trial within 3 months of the date of this order through one consolidated judgment. The R&P's of each case shall be sent to MCTC/Addl. District and Sessions Judge 1 Karachi East along with a copy of this order for compliance.

15. The appeals are disposed of in the above terms.

MAJL  
JUDGE 07/01/1

JUDGE