

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA

Criminal Jail Appeal No.D-10 of 2024

Before:

Mr. Justice Shamsuddin Abbasi.

Mr. Justice Ali Haider 'Ada'.

Appellant : Allah Wadhayo S/o Saindad Jatoi
through Mr. Alam Sher Khan Bozdar,
Advocate.

The State : through Mr. Aitbar Ali Bullo,
Deputy Prosecutor General, Sindh

Date of Hearing : 27.08.2025.

Date of Decision : 27.08.2025.

JUDGMENT

Ali Haider 'Ada'.J:- Through this Criminal Jail Appeal, the appellant has assailed the judgment dated 14.03.2024, passed by the learned Additional Sessions Judge-I/MCTC/Special Judge for CNS, Shikarpur, in Special Case No.153/2023, arising out of FIR No.02/2023, for offence punishable under Section 9 (e) CNS Act, registered at Police Station, Gaheja, whereby the appellant was convicted and sentenced to undergo rigorous imprisonment for twenty (20) years and to pay a fine of Rs.800,000/-. In default of payment of fine, the appellant was directed to suffer simple imprisonment for a further period of five (05) years. However, the benefit of Section 382-B, Cr.P.C. was extended to the appellant.

2. Concisely, the facts of the prosecution case are that on 25.02.2023, at about 1200 hours, ASI Abdul Rahim Bhutto, accompanied by police personnel, apprehended the accused while transporting Charas in a vehicle bearing registration No.AQG-577, from which 24 kilograms of Charas was recovered. Thereafter, an FIR was lodged after completion of codal formalities.

3. After registration of the FIR, investigation was conducted and the challan was submitted, whereupon the appellant was sent up for trial. The learned trial Court took cognizance, and after supplying the requisite documents, framed a charge against the appellant on 25.05.2023. The appellant pleaded not guilty and claimed trial, where after the learned trial Court directed the prosecution to lead its evidence.

4. In pursuance thereof, on 14.03.2024, the prosecution examined PW-01 Anees Ahmed, who acted as mashir, and produced copies of the FIR, memo of arrest and recovery, memo of place of incident, and the chemical report. Thereafter, on the same day, an application was moved by the appellant wherein he pleaded guilty and prayed for a lenient view. Consequently, the learned State Counsel closed the prosecution side, as the evidence of PW-01, the application of the accused, and the statement of the prosecution were all recorded on 14.03.2024. Thereafter, upon closing of the prosecution side on 14.03.2024, the learned trial Court recorded the statement of the accused under Section 342, Cr.P.C. in a formal manner, and on the very same day proceeded to pass the impugned judgment, which is now under challenge through this appeal.

5. Learned counsel for the appellant submits that the learned trial Court failed to properly examine the prosecution evidence and, instead, merely relied upon the application moved by the accused, thereby convicting him without adopting the due process of law. Hence, the impugned judgment is not sustainable in the eye of law and is liable to be set aside.

6. Conversely, the learned State Counsel raised no objection if the matter is remanded to the trial Court for continuation of trial in accordance with law, submitting that the right to fair trial is a fundamental right of the accused, and where capital punishment or severe sentence is involved, the matter requires to be dealt with utmost care and caution.

7. Heard the learned counsel for the appellant as well as the learned State Counsel at length and carefully examined the record available before the Court.”

8. The foremost legal issue which comes to the surface is whether an accused, who has pleaded guilty before the trial Court, is entitled to maintain an appeal against such conviction and sentence. In this regard, the provisions of Section 412, Cr.P.C. are relevant, which lay down that no appeal shall lie in a case in which the Court of Session or Magistrate of the first class has passed a sentence on an accused person on his plea of guilty, except to the extent or legality of the sentence. However, it is well settled by judicial pronouncements that the scope of Section 412, Cr.P.C. cannot be concerned so as to oust or curtail the inherent jurisdiction of the High Court to examine the legality, propriety and correctness of the conviction or sentence. The

wisdom behind Section 412, Cr.P.C. as explained in authoritative commentaries is that an accused who voluntarily confesses his guilt cannot be allowed to approbate and reprobate, by pleading guilty at trial and then resiling therefrom in appeal, save to the extent that the sentence is excessive or illegal. However, where the trial Court has not acted in conformity with the settled procedure, or has recorded a conviction in a mechanical manner, without appreciating whether the plea was legally sustainable, such a conviction is open to interference in appeal. The superior Courts have consistently held that the right of fair trial under Article 10-A of the Constitution permeates every criminal proceeding, and therefore even a plea of guilty cannot be treated as a substitute for a full-fledged trial in cases where capital punishment or severe sentences are involved. Thus, on such aspect we curb ourselves only to the legality and extent of the sentence, as contemplated under Section 412, Cr.P.C. The rationale is that the Legislature, through Section 412, Cr.P.C., has restricted the scope of appeal in cases of conviction on a plea of guilty; nevertheless, the Courts retain jurisdiction to correct any illegality, impropriety or miscarriage of justice that may appear in the sentence so imposed.

9. Now, coming to the legality, it has transpired that on 14.03.2024, the learned trial Court conducted the entire exercise starting from recording the deposition of one mashir and ending in the pronouncement of judgment all within a single day. The record reflects that no precautionary exercise was undertaken by the learned trial Court. Thus, the omission to caution the accused about the legal consequences of his plea of guilt, and the undue haste in concluding the trial within one day, vitiates the propriety and legality of the proceedings. Even otherwise, in view of Article 10-A of the Constitution of the Islamic Republic of Pakistan, the right to fair trial and due process has been guaranteed as a fundamental right to every accused person. It is now well-settled that a fair trial does not only mean that the accused is heard, but also that he is provided with adequate safeguards to ensure that justice is not only done but is manifestly seen to be done. The trial Court, before acting upon a plea of guilt, was under a constitutional as well as statutory duty to caution the appellant regarding the consequences of such plea, and to adopt the proper procedure envisaged under the law. For ready reference, Article 10-A of the Constitution is reproduced as under:

Article 10-A. Right to fair trial.---For the determination of his civil rights and obligations or in any criminal charge against him a person shall be entitled to a fair trial and due process.

10. Now, so far as the reliance upon the application of guilt is concerned, it reflects that the learned trial Court failed to appreciate other material aspects of the case, despite being under a legal obligation to do so. Merely acting upon such application, without examining the prosecution evidence in its true perspective and without ensuring that the plea of guilt was voluntary, informed and free from any influence, renders the entire exercise not only irregular but also contrary to the settled principles of law. It is trite that the concept of fair trial and due process, as enshrined under Article 10-A of the Constitution, cannot be curtailed or bypassed merely on the strength of such application. Thus, the approach adopted by the learned trial Court is contrary to the law and unsustainable in the eye of justice.

11. The discretion to convict an accused solely on the basis of a plea of guilt must be exercised with the utmost care and caution. Ordinarily, especially in cases involving capital punishment, the safe administration of justice requires that the guilt of the accused be established by recording the evidence of the complainant and prosecution witnesses. In this regard, the Honourable Supreme Court of Pakistan, in the case of *Muhammad Ismail v. The State* (2017 SCMR 713), held as follows:

"...12. True, that under section 265-E, Cr.P.C. the Trial Court in a session case, has a discretion to record the plea of the accused and if he pleads guilty to the charge, it may convict him in its discretion. Nevertheless, it is also provided in section 265-F, Cr.P.C. that if the Trial Court does not convict him on his plea of guilt, it shall proceed to hear the complainant (if any) and take all such evidence as may be produced in support of the prosecution. This discretion is to be exercised with extra care and caution, and ordinarily on such admission, awarding capital sentence of death shall be avoided and to prove the guilt of an accused, evidence of the complainant or the prosecution has to be recorded, in the interest of safe administration of justice.

The most important factors and required standards of confession may be cited below:-

"It should be ensured,

(i) that the accused is in full senses and understands the consequences of making a confession;

(ii) that, the confession was not a result of any duress, coercion or any promise by the prosecution, to be made an approver;

(iii) *that, during transit of the accused by the police from and to the Trial Court from the prison, on each "Paishi" no threat or pressure was applied by the escorting police guard or incharge thereof;*

(iv) *what were the actual facts, which induced the accused to confess after facing trial, during which he pleaded innocence all the way;*

(v) *the court recording the confession has to ensure that the mental capacity of the accused is not diminished due to any illness and if some indication of abnormality is suspected by the Court, it is better to refer the accused to the Standing Medical Board to ascertain the true cause thereof;*

(vi) *While recording the confession, the same safeguards and precautions be adopted, by directing the Public Prosecutor, the complainant's counsel, the Naib Court and all other officials to leave the Court. If need be, the counsel who represents him, may be given an opportunity to be present inside the Court during the whole process, if the accused person, on asking by the Trial Judge, so demands;*

(vii) *the handcuffs of the accused be removed and he be provided a chair on the dais. He may be given some time to think over the making of the confession and in that regard particular questions be put to him, as to why he was making the confession when he has already pleaded innocence and claimed trial at the time, the formal charge was framed;*

(viii) *the Trial Judge shall explain to the accused that, in case of making confession, he has to face a capital sentence in a murder case or any offence punishable with death;*

(ix) *the entire record of all the questions and answers recorded, be properly maintained and thereafter, a proper certificate be appended thereto, showing the satisfaction of the Trial Judge that the accused person was not mentally sick and he was making the confession voluntarily, based on true facts and that, there was no other compelling reason behind that.*

As the above procedure was not adopted, therefore, it was incorrectly construed by the Courts below as confession of the accused. Under the law, it may be treated as an admission of the appellant, however, on the basis of admission alone, accused person cannot be awarded a capital punishment because admission, as has been defined by Article 30 of the Qanun-e-Shahadat Order, 1984, is only a relevant fact and not a proof by itself, as has been envisaged in Article 43 of the Order, 1984, where a proved, voluntary and true confession alone is held to be a proof against the maker therefore, both the Courts below have fallen in error by treating this halfway admission to be a confession of guilt on the part of the appellant.

13. It is a bedrock principle of law that, once a Statute or rule directs that a particular act must be performed and shall be construed in a particular way then, acting contrary to that is impliedly prohibited. That means, doing of something contrary to the requirements of law and rules, is impliedly prohibited. Therefore, it is held that the admission of the appellant cannot be a substitute for a true and voluntary confession, recorded after adopting a due process of law

and it cannot be made the sole basis of conviction on a capital charge."

12. It is pertinent to note that the learned trial Court did not issue any notice to the accused informing him of the legal consequences of his plea of guilt. Such a procedural lapse is a violation of the principles of natural justice. The mere fact that the accused filed an application and pleaded guilty cannot alone serve as a sufficient basis for conviction, especially when the case involves serious allegations and the possibility of capital punishment. In cases of such gravity, the accused must be expressly informed, through a notice, of the consequences of his admission, so that his plea is made knowingly and voluntarily. The absence of such notice undermines the fairness of the trial and the validity of the conviction. In this context, the Division Bench of this Court, in the case of *Qasim v. The State (2007 MLD 1669)*, held that:

14. We have gone through the case of Rahim Bakhsh (supra), wherein the Hon'ble Federal Court had observed that "it would be most unfair to the accused and it would amount to a violation of a fundamental principle of natural justice if he is convicted solely on the basis of an admission alleged to have been made by him without calling his attention to the admission and asking for his explanation when he was examined in Court." In the present case, though the appellant besides his confessional statement had also admitted his guilt before the trial Court, but no explanation was either sought from the appellant in regard to the material contradiction referred to hereinabove, nor any justification was offered by the trial Court while passing the impugned judgment. The other authority referred to by the learned counsel for the appellant is also on the same point of law.

13. The plea of guilt submitted by the accused in the form of a written application after the examination of prosecution witnesses runs contrary to the principles of a fair trial. Reliance is placed on the judgment of *Waqar Ahmed v. The State (2025 MLD 1152)*.

14. In view of the foregoing, this Criminal Jail Appeal is hereby partly allowed with the following directions:

(a). The impugned judgment dated 14.03.2024, passed in Special Case No.153 of 2023 arising out of FIR No.02 of 2023, under Section 9(e) of the CNS Act, registered at Police Station, Gaheja, whereby the appellant was convicted and sentenced, is hereby set aside. The matter is remanded to the learned trial Court with direction to adopt the proper procedure by first issuing a notice to the appellant apprising

him of the legal consequences of his plea of guilt, particularly keeping in view that the charge entails capital punishment.

(b). After receiving the appellant's response to such notice, the learned trial Court shall proceed with the matter by examining the entire evidence produced by the prosecution, and thereafter decide the case strictly on merits. The trial Court is under obligation to assess the whole of the evidence available on record and render its findings accordingly, rather than resting its conviction solely on the admission of guilt made by the appellant.

15. Accordingly, this Criminal Jail appeal is disposed of with the above directions.

JUDGE

JUDGE