

ORDER SHEET  
IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Appeal No.15 of 2020  
Criminal Appeal No.25 of 2020  
Confirmation Case No.01 of 2020

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DATE ORDER WITH SIGNATURE(S) OF JUDGE(S)  
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*Before: Justice Mohammed Karim Khan Agha  
Justice Irshad Ali Shah*

**11.8.2021**

Mr. S. Zakir Hussain, Advocate for the appellants.  
Mr. Muhammad Iqbal Awan, Addl. P.G.

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*Mohammed Karim Khan Agha, J.* The appellants namely Sohail Talib and Haroon Rasheed were convicted by the Court of 8<sup>th</sup> Additional District and Sessions Judge/ Additional Model Criminal Trial Court, Karachi (West) in Sessions Case No.712/2013, pursuant to FIR No.251/2013 under Sections 302/324/34 PPC, PS SITE-A, Karachi vide Judgment dated 26.12.2019, whereby appellant Sohail Talib was sentenced to death and appellant Haroon Rasheed was sentenced to life imprisonment. The appellants have challenged the impugned Judgment vide these instant appeals.

2. Judgment dated 01.10.2018, which had earlier convicted the appellants was remanded back to the trial Court by this Court vide order dated 19.11.2019 for the limited purpose of enabling learned counsel for appellant Haroon Rasheed to cross-examine PW-6 Amanullah and thereafter recording his Section 342 CrPC statement afresh. Pursuant to this order, the impugned judgment was passed despite failing to fully comply with order dated 19.11.2019.

3. Today whilst going through the charge and the evidence, we have noted that the charge is defective in that it fails to deal with the attempted murder of PW Asma and complainant Tahir Faisal and firearm injuries caused to them by the appellants. The charge has only charged the appellants with murder under Section 302/34 PPC of Abdullah, who too died subsequently 11 days later in hospital. Pursuant to this defective charge, no finding was made

regarding the firearm injuries caused to PW Asma and complainant Tahir Faisal.

4. When learned counsel for appellants and learned Additional Prosecutor General Sindh were confronted with this situation, they were of the view that these defects in the charge were not cureable at this stage by this Court and that in the interest of justice and to ensure that the appellants had a fair trial in accordance with Article 10-A of the Constitution, this matter be remanded back to the learned trial Court for a complete denovo trial of the appellants.

5. We are in agreement with the contentions of learned counsel for appellants and learned APG. Accordingly, the impugned judgment dated 26.12.2019 is set aside. This case shall be remanded forthwith to the Court of District and Sessions Judge, Karachi (West) along with R&Ps, who shall assign the same for trial to any other Model Criminal Trial Court which are not presided over by Judges, who have passed the two judgments earlier, mentioned in this order. Whichever trial Judge is assigned this case, shall ensure that the charge is framed properly and in accordance with law, so that the appellants have sufficient notice of the offences in which they need to defend themselves against. The trial Court Judge shall carry out the fresh trial strictly in accordance with law and in particular ensure that the appellants' counsel are present at all stages of the trial.

6. It is directed that whichever Model Criminal Trial Court is assigned this case, the trial shall be completed within three months of the date of receipt of the R&Ps and the other documents relating to this trial.

The above Appeals and reference are disposed of in the above terms.

Judge

Judge