IN THE HIGH COURT OF SINDH BENHC AT SUKKUR

Cr. Jail Appeal Nos. D-02, S-55 of 2021
AND
Cr. Confirmation Case No.01/2021

Before:
Mr. Justice Amjad Ali Bohio, J.
Mr. Justice Khalid Hussain. Shahani, J.

Appellants	:	1. Aijaz Ahmed S/o Imdad @ Shaman, Luhar 2. Sajjad S/o Khadim Hussain, Luhar 3. Imdad @ Shaman S/o Morand, Luhar *Through* Mr. A.R Faruq Pirzada and Mr. Faraz Khan, Advocates
Complainant	:	Deedar Ali Khan s/o Umaid Ali Khan, Luhar *Through* Mr. Z.A Channa, Advocate
The State	:	*Through* Mr. Zulfiqar Ali Jatoi, Addl. P.G
Date of hearing	:	21.10.2025
Date of judgment	:	04.11.2025

J U D G M E N T

KHALID HUSSAIN SHAHANI, J. — These criminal jail appeals, along with the connected murder reference, have been placed before this Division Bench for adjudication under the mandatory requirement of Section 374, Code of Criminal Procedure, 1898. The proceedings arise from the judgment delivered by the learned Additional Sessions Judge-III/MCTC-II, Sukkur (Camp Court at CP-I, Sukkur) in Sessions Case No. 166 of 2016, emanating from Crime No.77 of 2012 registered at Police Station Lakhi Gate, Shikarpur. The appellants were convicted under Sections 302, 337-H (2), 148 and 149 PPC and sentenced to death, necessitating confirmation by this Court. A connected matter pending before a Single Bench of this Court shall continue to proceed in that forum to maintain procedural consistency.

2. According to the prosecution, as disclosed in the FIR lodged by complainant Deedar Ali on 15.10.2012 at 1000 hours, the incident occurred earlier the same morning. The complainant, proprietor of a generator shop, reported that his two sons, Arif Ali (aged 22–23) and Sajjad Ali (aged 20–21), opened the shop as per routine. The complainant, accompanied by witnesses Ghulam Shabbir and Ali Gul alias Riaz Khan Luhar, was seated at the adjoining motorcycle showroom

of one Nasrullah around 09:45 a.m., when the accused Imdad alias Shaman, Aijaz Ahmed, Sajjad, Nasrullah, Babu Saleem Raza and Wazeer Ali arrived on three motorcycles, all armed with Kalashnikov rifles. It was alleged that accused Imdad fired at Arif Ali, hitting his right shoulder; Aijaz Ahmed fired at his abdomen; and Babu Saleem Raza at his neck. Simultaneously, accused Sajjad shot Sajjad Ali on the right shoulder; Wazeer Ali on the left side of the chest; while Nasrullah fired at his abdomen. Due to the fear of armed assault, the complainant and witnesses did not intervene. After the assault, the accused allegedly threatened those present, resorted to aerial firing, and fled. Both victims succumbed to their injuries at the spot. Their bodies were transported to Civil Hospital, Shikarpur by relatives Kamran and Himat, while the complainant proceeded to lodge the FIR.

3. Upon completion of the investigation and submission of the final challan, the learned trial Court proceeded against the accused in accordance with law. During trial, accused Wazir Ali and Babu @ Saleem Raza absconded; consequently, they were declared proclaimed offenders. Accused Nasrullah expired during proceedings, leading to abatement of trial against him.

4. In compliance with Section 265-C Cr.P.C, copies of all requisite documents, including statements and prosecution evidence, were supplied to the accused to ensure a fair opportunity to defend themselves. A formal charge was framed at Ex.21. The accused pleaded not guilty, as recorded in their statements at Ex.21/A to Ex.21/D, and claimed trial. To discharge its burden, the prosecution examined nine witnesses and produced relevant documentary evidence as follows:

PW-1: The complainant Deedar Ali was examined as the principal prosecution witness and his statement was recorded at Ex.23. He produced the original First Information Report at Ex.23/A.

PW-2: Ali Gul, an eyewitness of the occurrence as well as a marginal witness (Mashir), examined at Ex.24.

PW-3: Ghulam Shabbir, another eyewitness of the incident and marginal witness, examined at Ex.25.

PW-4: Sub-Inspector Ghulam Hyder, being the author & scribe of the First Information Report examined at Ex.26. He produced the attested copy of Entry No.09 of the Daily Diary Register at Ex.26/A.

PW-5: Dr. Jahangir Ahmed, who conducted the medico-legal examination and post-mortem of the deceased persons examined at Ex.27. He produced the carbon copy of the Inquest Form, Final Post-Mortem Report pertaining to deceased Arif Ali, the Inquest Form and Final Post-Mortem Report concerning deceased Sajjad Ali at Ex.27/A to Ex.27/D respectively.

PW-6: Inspector Arsellan Khan (Investigating Officer) was examined at Ex.28. He produced the Chemical Examiner's Report and the Mashirnama of arrest and recovery at Ex.28/A and Ex.28/B respectively.

PW-7: Sub-Inspector Abdul Samad (Second Investigating Officer) was examined at Ex.29. He produced various documents including the Mashirnama of inspection of the place of occurrence *(vardat)*, Mashirnamas of inspection of the dead bodies, *Danishnamas* (Intimation Letters), Mashirnama regarding receipt of blood-stained clothes of the deceased persons, receipt acknowledging handing over of the dead bodies to the complainant, and letter regarding preparation of the Site Plan, all were exhibited from Ex.29/A to Ex.29/G respectively.

PW-8: Muhammad Saleem, a marginal witness (Mashir) of certain proceedings, was examined at Ex.30.

PW-9: Nadeem Parvaiz, the Tapedar (Revenue Official), was examined at Ex.33. He produced separate Site Plans of positions of both deceased, namely Sajjad Ali and Arif Ali, which were exhibited at Ex.33/A and Ex.33/B respectively.

5. After closure of the prosecution evidence, the learned trial Court, in compliance with Section 342, Cr.P.C, recorded the statements of the accused, available on record as Ex.35 to Ex.37. The accused denied all allegations, asserted false implication, and neither opted to make statements on oath under Section 340(2), Cr.P.C, nor produced any defence evidence, oral or documentary.

6. Assailing the conviction, learned counsel for the appellants, Mr. Pirzada, challenged the impugned judgment on multiple legal and factual grounds. The primary contention advanced is that the trial proceedings stood vitiated due to a defective and perfunctory examination of the accused under Section 342, Cr.P.C. It was argued that the learned trial Court mechanically recorded the statements, in disregard of the mandatory requirements laid down by law and the authoritative guidance of superior courts. The counsel submitted that Section 342, Cr.P.C. is not a mere procedural formality, but a substantive safeguard rooted in the principles

of natural justice and constitutionally protected under Article 10-A of the Constitution. Its object is to provide the accused an effective opportunity to explain every material circumstance appearing against them in the prosecution evidence. Failure to do so undermines the fairness of the trial. It was further contended that the trial Court did not confront the accused with all incriminating material available on record. The term "evidence" under Article 2(c) of the *Qanun-e-Shahadat* Order, 1984, includes not only examination-in-chief but also cross-examination and re-examination. However, several crucial circumstances arising during cross-examination were not put to the accused, thereby depriving them of an opportunity to furnish an explanation. Reliance was placed on judicial precedents holding that any piece of evidence not specifically brought to the notice of the accused during Section 342 examination cannot subsequently be used against them.

7. Learned counsel contended that the statements of the accused under Section 342, Cr.P.C. were recorded in a mechanical and ritualistic manner, devoid of meaningful judicial engagement. Instead of the presiding officer personally examining the accused, as mandated by law, a pre-drafted questionnaire, prepared by the prosecution or complainant's counsel, was handed to the defence, who prepared written replies. These were merely placed on record without any direct interaction between the Court and the accused. Reliance was placed on precedents wherein superior courts have deprecated this practice and held that examination under Section 342 Cr.P.C is a judicial act exclusively between the Court and the accused, and legal advisers have no role in the process. The Court must place the accused before it face-to-face and elicit answers in their own words. It was further urged that crucial incriminating material, including alleged recovery of weapons, medico-legal and post-mortem reports, and other documentary evidence, was not specifically put to the accused. Such omission, counsel argued, invalidates the use of that evidence against them, as no explanation was sought from the accused regarding these circumstances. Failure to comply with Section 342 Cr.P.C.,

particularly in a capital case, was asserted to be an incurable illegality not curable under Section 537 Cr.P.C., especially where the sentence is one of death, demanding heightened judicial care. Without prejudice to the procedural challenge, learned counsel further assailed the prosecution case on merits. He submitted that the testimonies of PW-1 Deedar Ali (complainant), PW-2 Ali Gul, and PW-3 Ghulam Shabbir were riddled with critical contradictions concerning the sequence of events, attribution of individual roles, and manner of assault. Such inconsistencies, he argued, severely undermine the credibility of the ocular account. Moreover, despite the occurrence allegedly taking place in broad daylight in a busy commercial locality, no independent or neutral witness was produced; all witnesses examined were close relatives of the deceased. While the testimony of related witnesses is admissible, it requires independent corroboration, which is absent in this case. Learned counsel further argued that although a motive was alleged by the prosecution, it was never substantiated through any independent or reliable evidence. Once motive is pleaded, its proof becomes obligatory; its absence renders the ocular account subject to heightened scrutiny. Additionally, counsel pointed to material discrepancies between the medical evidence and the ocular version. The number, nature, and placement of injuries described in the post-mortem reports did not conform fully to the manner of assault narrated by the eyewitnesses. Where medical evidence contradicts the eye-witness account on material particulars, it renders the prosecution version doubtful. It was further highlighted that no weapon or incriminating article was recovered from any of the present appellants. The only alleged recoveries pertain to proclaimed offenders Wazir Ali and Babu @ Saleem Raza, not before the Court. Hence, no physical evidence connects the appellants to the offence. He submitted that even recovery of a weapon, if the ocular account is found unreliable, cannot salvage the prosecution case. In conclusion, counsel argued that the prosecution case suffers from serious procedural irregularities, unproved motive, lack of independent corroboration, contradictions in eyewitness accounts, inconsistency with medical

evidence, and absence of recovery, each of which, individually and collectively, raises reasonable doubt. Benefit of doubt, it was submitted, is a right of the accused, not a concession, in line with the cardinal principle that it is preferable to acquit ten guilty persons than convict one innocent.

8. Mr. Zulfiqar Ali Jatoi, learned Additional Prosecutor General (APG), assisted by Mr. Channa, learned counsel for the complainant, supported the impugned judgment and opposed the appeals. He submitted that the prosecution successfully established the guilt of the appellants beyond reasonable doubt through reliable, cogent, and corroborative evidence forming a complete and unbroken chain of incriminating circumstances. It was argued that the prosecution examined three natural and competent eyewitnesses, PW-1 Deedar Ali (complainant), PW-2 Ali Gul, and PW-3 Ghulam Shabbir, who consistently described the incident and unequivocally identified the appellants as the perpetrators. Their presence at the scene was natural and established, and mere relationship with the deceased does not render their testimony unreliable. Reliance was placed on settled jurisprudence that evidence of related witnesses cannot be discarded solely on account of relationship, and that credible ocular evidence prevails over minor inconsistencies in medical or circumstantial evidence. The learned APG contended that the medical evidence, particularly the post-mortem reports prepared by PW-5 Dr. Jahangir Ahmed, corroborates the ocular account in terms of nature, number, and location of injuries. When medical evidence supports eyewitness testimony, it lends strong assurance to the prosecution case and excludes alternate hypotheses. He further submitted that PW-7 SI Abdul Samad produced the *mashirnama* of the crime scene, which confirmed the recovery of multiple empty cartridges of different calibers from the place of occurrence, consistent with the prosecution's claim that several accused armed with automatic weapons opened fire. Although no weapon was recovered from the present appellants, absence of recovery is not fatal where the ocular account is trustworthy. Recovery is only corroborative, not a foundational requirement for conviction. On

motive, the learned APG submitted that although motive is not a sine qua non for conviction in murder cases, the prosecution nonetheless proved the existence of previous enmity between the parties, which lends further probability to the prosecution's version. With respect to alleged contradictions, he argued that the discrepancies highlighted by defence are minor and relate to peripheral details, not to the core of the case. Minor variations, in fact, indicate truthfulness and absence of tutoring. The test is whether the evidence inspires confidence, not whether it is perfectly consistent in every detail. Regarding the objection on the manner of recording statements under Section 342 Cr.P.C., the learned APG initially maintained that substantial compliance had been made and the accused were afforded full opportunity to explain the incriminating circumstances. However, in fairness, he conceded that upon examination of the record, some procedural lapses may have occurred. He nevertheless argued that even if such irregularities exist, they are curable under Section 537 Cr.P.C. unless prejudice or failure of justice is demonstrated. The appellants were represented by counsel, remained present throughout trial, and had full opportunity to defend themselves. He urged that substantive justice should not be defeated by technical irregularities, particularly when the prosecution evidence, comprising consistent eyewitness accounts, corroborative medical evidence, recovery of empty shells, and proof of motive, unerringly points to the guilt of the appellants. Nonetheless, he candidly left it to the wisdom of this Court, in its appellate and confirming jurisdiction under Section 374 Cr.P.C., to examine the record, determine whether any procedural irregularity has caused prejudice affecting the fairness of the trial, and to pass appropriate orders in accordance with law.

9. We have heard the learned counsel for the parties and examined the record with utmost care. These criminal appeals question the legality of the judgment delivered by the learned trial Court whereby the appellants were convicted under relevant provisions of the Pakistan Penal Code and sentenced to death. The connected murder reference under Section 374, Cr.P.C. obliges this

Court to independently assess the entire evidence, proceedings, and findings of the trial Court to determine whether the death sentence requires confirmation, alteration, or annulment. It is trite law that in capital punishment cases, the duty of the High Court extends beyond a mere appraisal of arguments. The Court is mandated to reappraise the entire evidence, scrutinize whether any material evidence was misread, non-read, improperly excluded or admitted, and to ensure that the findings are free from legal infirmity. This heightened standard of review stems from the irreversible nature of the death penalty.

10. In this backdrop, the statements of the accused recorded under Section 342, Cr.P.C. were carefully examined by this Court, particularly in light of the procedural objections raised by the appellants' counsel. For proper evaluation, the exact questions put to the accused and their responses are reproduced as follows:

Q.1: *It has come in evidence that on 15.10.2012 at about 1000 hours, at the generator shop of the complainant near PIA Office, Shikarpur, you, along with co-accused (names mentioned), including deceased accused Nasrullah and absconding accused Babo Saleem Raza and Wazir Ali, in furtherance of your common object and while armed with Kalashnikovs, opened fire upon Arif Ali, son of the complainant. Co-accused Sajjad and Nasrullah (since deceased), along with absconding accused Wazir, fired upon Sajjad Ali, son of the complainant, resulting in the death of both victims on the spot, followed by aerial firing. What have you to say?*

Ans.: ……

Q.2: *Why have the prosecution witnesses deposed against you?*

Ans.: ……

Q.3: *Do you wish to produce evidence in your defence?*

Ans.: ……

Q.4: *Do you wish to be examined on oath under Section 340(2), Cr.P.C?*

Ans.: ……

Q.5: *What do you have to say regarding the reports and case property produced in Court?*

Ans.: ……

Q.6: *Have you anything else to say?*

Ans.: ……

11. Upon careful scrutiny of the questionnaire reproduced above, this Court is compelled to observe that the examination of the accused under Section 342, Cr.P.C, conducted by the learned trial Court, is fundamentally flawed and legally deficient. The process does not conform to the mandatory requirements of Section 342, Cr.P.C. nor to the principles consistently enunciated by the superior judiciary. The most serious defect lies in the failure of the trial Court to put specific incriminating circumstances emerging from the evidence to the accused for their explanation. Question No. 1 merely encapsulates a broad summary of the FIR and allegations in a generalized, omnibus manner, beginning with the vague expression: "You have heard the evidence, it has come in evidence that …" This approach is contrary to the statutory mandate. Section 342(1), Cr.P.C. explicitly requires that each incriminating circumstance appearing in the evidence must be individually and specifically brought to the notice of the accused, so as to enable them to offer an explanation. The phrase "circumstances appearing in the evidence" imposes a duty on the Court to confront the accused not with summaries, but with precise pieces of evidence, naming the witness, the statement, and the material fact against them. It is by now settled that "evidence," as defined in Article 2(c) of the *Qanun-e-Shahadat* Order, 1984, includes the examination-in-chief, cross-examination, and re-examination of witnesses. Therefore, any material circumstance emerging from any stage of a witness's testimony that is adverse to the accused must be put to them during their examination. Failure to do so renders such evidence unusable against the accused.

12. In the present case, nine prosecution witnesses were examined, including the complainant (PW-1), two ocular witnesses (PW-2 and PW-3), the FIR scribe (PW-4), the Medical Officer (PW-5), two Investigating Officers (PW-6 and PW-7), a mashir (PW-8), and the Tapedar (PW-9) who prepared the site plans. Collectively, their testimony produced multiple distinct incriminating circumstances:

(i) the exact time, location, and progression of the incident;

(ii) the identification of each accused at the scene;

(iii) the specific act and weapon attributed to each accused;

(iv) the nature and number of firearm injuries recorded in medico-legal reports;

(v) the alleged motive based on prior enmity;

(vi) recovery of empty Kalashnikov shells and blood-stained earth from the crime scene;

(vii) preparation of site plans showing relative positions of the assailants and deceased; and

(viii) various mashirnamas, post-mortem reports, daily diary entries, chemical examiner's report, and forensic documentation.

However, none of these specific incriminating circumstances were individually put to the accused for their explanation, a requirement expressly embedded in Section 342, Cr.P.C. This omission deprived the accused of the opportunity to rebut, clarify, or provide an alternative version of the facts.

13. Instead of confronting the accused with each material circumstance, the trial Court posed a single omnibus question summarizing the FIR narrative. This is contrary to law. Section 342, Cr.P.C. obliges the Court to confront an accused with each distinct circumstance emerging from any stage of the evidence, including examination-in-chief, cross-examination, and re-examination. The Sindh High Court in Criminal Appeal No. D-10/2024 *(Abdul Wahab @ Majeed v. The State)* held that "any piece of evidence not brought to the notice of the accused during their examination under Section 342 Cr.P.C. cannot subsequently be used against them." Likewise, 2022 MLD 1805 reiterates that examination under Section 342 is a mandatory judicial obligation, not an empty formality. The failure to specifically put each proved circumstance to the accused renders the entire exercise legally defective and undermines the fairness of the trial.

14. Equally serious is the non-confrontation of the accused with material exhibits produced during trial. Question No. 5, "What do you want to say about the reports and property present in Court?" is hopelessly vague and incapable of

eliciting any meaningful response. The trial record contains post-mortem reports (Ex.27/A–D) showing precise entry and exit wounds from firearms, chemical examiner's report (Ex.28/A) confirming the presence of propellant residues, site plans (Ex.33/A & B) indicating positions of the dead bodies and assailants, mashirnamas of the place of occurrence and dead body inspection (Ex.29 series), recovery of spent shells, and Daily Diary Entry No. 09 (Ex.26/A) registering the crime. None of these were specifically shown or read out to the accused, nor were they asked to explain any observation arising from them. Such omission defeats the very purpose of Section 342, which is to confront the accused with every piece of evidence that may be used against them.

15. A generic question regarding "reports and property in Court" does not meet the statutory standard of "circumstances appearing in the evidence." Without identifying which report, which weapon, which shell casing, or what medical finding is being relied upon, the accused cannot be expected to respond rationally. This transforms a substantive safeguard into a hollow ritual and nullifies the accused's statutory right to respond.

16. A further legal infirmity lies in the complete failure to question the accused witness-by-witness. Each prosecution witness testified to different material facts, yet not a single question was framed attributing a specific statement to any specific PW. For instance, no question was placed before the accused referring to PW-1's assertion of having seen them arrive on motorcycles armed with Kalashnikovs; nor to PW-2's attribution of specific firearm roles; nor to PW-5's account that the injuries were sufficient in the ordinary course of nature to cause death; nor to PW-6's recovery of empty shells from the place of occurrence. This omission deprived the accused of an opportunity to point out contradictions, impeach credibility, or provide explanations, such as mistaken identity, absence from scene, or fabrication.

17. The overall tenor of the examination under Section 342 reflects a mechanical and perfunctory method, apparently based on a pre-drafted

questionnaire rather than a judicial application of mind. No follow-up queries were asked; no clarification was sought; no witness-specific inconsistencies were put. Superior courts have consistently held that Section 342 is a direct judicial dialogue between the Court and the accused, not a clerical formality or a prosecutorial instrument.

18. Questions framed by the trial Court do not afford a reasonable opportunity of defence. Question No.1 is excessively broad; Question No.2, "Why have PWs deposed against you?" is vague and speculative; Question No.5 fails to identify specific reports; Question No.6 ("Have you anything else to say?") is ceremonial. Such questions do not satisfy the mandatory requirement to bring each material circumstance clearly and separately to the knowledge of the accused.

19. The illegality is aggravated by the fact that the prosecution assigns precise firearm roles to each accused (e.g. Imdad firing at Arif Ali's shoulder; Aijaz at abdomen; Babu at neck), yet no corresponding question was asked. Likewise, convictions are based on Sections 148 and 149, PPC, which require proof of unlawful assembly and common object; yet, no question was framed seeking the accused's explanation regarding their presence in an unlawful assembly, prior meeting of minds, or shared intention. The omission to question the accused on these essential legal ingredients strikes at the root of constructive liability under Section 149.

20. Furthermore, medically documented injuries correspond to alleged firing positions and weapon trajectories, yet the accused were not confronted with these specifics to challenge distance, direction, or possibility of cross-fire. Recovery of empty Kalashnikov shells at the scene, central to linking weapons and accused, was never put to them. The alleged motive of prior enmity, heavily relied upon by prosecution to rule out false implication, was also not put to the accused. By failing to put these circumstances, the trial Court effectively denied the accused the opportunity to: (i) deny their presence, (ii) allege mistaken identity, (iii) offer alternative narrative (self-defense, sudden provocation), or (iv) challenge common

object under Section 149 PPC. This has caused demonstrable prejudice and violates Article 10-A of the Constitution.

21. Having identified grave defects in the recording of statements under Section 342, Cr.P.C., the next legal question is whether such irregularities are curable under Section 537, Cr.P.C. Section 537 stipulates that no finding, sentence, or order shall be reversed on account of any error, omission, or irregularity unless such defect has occasioned a failure of justice. While this provision embodies the principle that procedural technicalities should not defeat the course of justice, superior courts have consistently distinguished between curable procedural irregularities and incurable illegalities which strike at the very foundation of a fair trial. Where a breach affects the constitutional guarantee of fair trial, the defect transcends the realm of curable irregularities and becomes jurisdictional in nature.

22. The established test for determining whether an irregularity is curable includes (i) Whether it infringes the fundamental rights of the accused; (ii) whether it has caused prejudice to the defence; (iii) whether it has resulted in failure of justice; and (iv) whether it affects the fairness and integrity of the trial process. In *Farrukh Sayyar v. Chairman NAB* (2004 SCMR 1), the Hon'ble Supreme Court held that omission to comply with mandatory requirements of Section 367 Cr.P.C, such as framing points for determination, is not curable under Section 537, as it affects the rights of the accused and constitutes an illegality. Likewise, in Karim Khan v. State (Peshawar High Court), it was held that non-compliance with mandatory procedural safeguards governing fair trial is not curable. The jurisprudence is now settled that failure to conduct a proper examination of the accused under Section 342 Cr.P.C. constitutes an incurable illegality, because Section 342 is not a ceremonial formality, but a substantive statutory right grounded in natural justice and constitutionally reinforced by Article 10-A of the Constitution. It operationalizes the maxim *audi alteram partem*, ensuring that no person is condemned unheard and every incriminating circumstance is fairly put to the accused for explanation.

23. In the present case, the trial Court failed to confront the accused with specific incriminating material comprising ocular evidence, post-mortem reports, chemical examination results, and recovery of empty cartridges, mashirnamas, site plans, and the testimony of each prosecution witness. Instead, a vague, omnibus question was posed, reducing Section 342 Cr.P.C. examination to a ritualistic formality. As a consequence, evidence was used against the accused without ever having been lawfully put to them for rebuttal. This omission stripped the defence of its ability to deny presence at the crime scene, claim alibi, dispute identification, question ballistic or medical findings, rebut motive, or challenge the attribution of individual firearm roles under Sections 148 and 149 PPC. It is a settled principle that any evidence not specifically put to the accused cannot be considered against them. Therefore, reliance on such un-confronted material for conviction constitutes misuse of evidence and a direct violation of due process, thereby occasioning a failure of justice within the meaning of Section 537 Cr.P.C.

24. The test under Section 537 Cr.P.C., whether the identified irregularity has occasioned failure of justice, is clearly met. The appellants stand convicted and sentenced to death on the basis of evidence which was never lawfully confronted to them. They were deprived of the opportunity to contest individual allegations, point out contradictions between ocular and medical accounts, rebut the alleged common object under Section 149 PPC, or explain the alleged recovery and forensic results. This renders the conviction inherently unsafe. The defect is not of form but of substance, affecting the very heart of the adjudicatory process.

25. Furthermore, in cases involving capital punishment, the duty of the Court is heightened. The law demands that justice must not only be done, but must be seen to have been done in its strictest form, as the consequence is irreversible. Where life and liberty are at stake, even the slightest infringement of procedural safeguards assumes constitutional magnitude. In this backdrop, the non-compliance with Section 342 Cr.P.C. is not a trivial irregularity but a profound violation of the right to fair trial under Article 10-A. It is a structural illegality that

has resulted in manifest prejudice, miscarriage of justice, and therefore lies outside the curative scope of Section 537 Cr.P.C.

26. For the reasons elaborated hereinabove, this Court is of the considered view that the defects in recording the statements of the accused under Section 342, Cr.P.C. are not mere procedural irregularities but constitute substantive illegality going to the root of the trial. The omission has infringed the accused's fundamental right to a fair trial under Article 10-A of the Constitution, caused manifest prejudice, and resulted in a failure of justice. Consequently, the defect is not curable under Section 537, Cr.P.C.

27. In exercise of powers under Sections 423 and 386, Cr.P.C., and in the interest of justice, the impugned judgment dated 19.01.2021 passed by the learned Additional Sessions Judge-III/MCTC-II, Sukkur in Sessions Case No. 166 of 2016 is hereby set aside, and the matter is remanded to the learned trial Court for a fresh decision in accordance with law, subject to the following directions:

(a) The learned trial Court shall re-record the statements of all accused persons under Section 342, Cr.P.C. strictly in compliance with statutory requirements and judicial precedents laid down by the superior courts.

(b) While re-recording statements, the learned trial Court shall ensure that: Every incriminating circumstance, whether arising in examination-in-chief, cross-examination, or re-examination, is individually and distinctly put to each accused; The Presiding Officer personally conducts the examination, face-to-face with the accused, without resorting to pre-drafted questionnaires or mechanical templates; All material exhibits, including post-mortem reports, medico-legal certificates, site plans, recovery memos, crime weapon(s), forensic reports, and documentary evidence, are specifically confronted to the accused for explanation; The language of examination is one fully understood by the accused, and a proper certificate to that effect is recorded; The accused are given adequate time and fair opportunity to provide meaningful responses; Defence counsel may remain present to assist the accused, but shall not replace or interfere with the Court's direct examination.

(c) After recording fresh statements under Section 342, Cr.P.C., the trial Court shall afford the accused an opportunity to lead defence evidence, if they so choose, in accordance with law.

(d) Both prosecution and defence shall be granted an opportunity to address fresh oral arguments.

(e) The learned trial Court shall thereafter render a speaking judgment afresh, strictly in accordance with law, framing all points for determination, appraising evidence independently, and arriving at its conclusions uninfluenced by the earlier judgment.

(f) Given that the appellants are in custody and the matter involves capital charges, the learned trial Court shall decide the case expeditiously, preferably within ninety (90) days of receipt of this order.

28. Criminal Jail Appeal No. D-02 is allowed to the extent indicated above. The Cr. Confirmation case No.01 of 2021 is answered in negative at this stage, subject to the outcome of fresh trial. The Cr. Jail Appeal No.S-55 of 2021 being connected with above matters also stands disposed of in the above terms. The appellants shall remain in custody during the pendency of the re-trial, unless released on bail by a competent Court. The office is directed to transmit a certified copy of this judgment along with the complete record to the learned trial Court forthwith for compliance, and to place a signed copy in each connected matter accordingly.

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