

## THE HIGH COURT OF SINDH AT KARACHI

Present:

**Mr. Justice Khadim Hussain Tunio**

**Mr. Justice Amjad Ali Sahito**

### **Criminal Jail Appeal No.671 of 2024 Confirmation Case No.11 of 2024**

Appellants : i. Javed Ali son of Sawan Maghanhar  
ii. Irshad son of Sawan Maghanhar  
through Mr. Abdul Majeed Khoso,  
Advocate.

Complainant : Juman son of Salami in person.

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

Date of Hearing : 09-03-2026

Date of Order : 09-03-2026

### **JUDGMENT**

**AMJAD ALI SAHITO, J.-** Through the instant Jail Appeal, the Appellants have impugned the Judgment dated 19.09.2024 passed by the learned Additional Sessions Judge, Sujawal Old Sessions Case No.490 of 2022 and New Session Case No.37 of 2023 under FIR. No.26/2022 U/s 302, 324, 337Ai and 337Fi PPC registered at P.S. Jhoke Sharif; whereby the Appellant Javed Ali son of Sawan Mangarhar is convicted under Section 302(b) PPC, death as Tazir. He is sentenced to death. He be hanged by the neck till he is dead. Appellant Irshad Ali son of Sawan Mangarhar is convicted under Section 302(b) read with Section 34 PPC, imprisonment for life as Tazir. Under Section 544-A Cr.P.C, the appellants were directed to pay as compensation of Rs.500,000/- each to the legal heirs of deceased Akash, in default thereof, they will have to suffer S.I for six months only. The benefit of Section 382-B Cr.P.,C were also extended to the Appellants, for period which they remained in Jail as UTP.

2. Succinctly stated, the prosecution case is that the complainant, Juman son of Salami, lodged an FIR on 14.07.2022 at Police Station Jhoke Sharif, wherein he stated that Jawaid Mangarhar is his close relative. According to the complainant, on 11.07.2022 he, along with his son Akash (aged about 19/20 years) and his brother-in-law Sajan son of Allahdino Mangarhar, went to the house of Jawaid Mangarhar for an Eid Milan gathering. After the gathering, due to the hot weather, the complainant and Sajan came out of the house and sat under a Bubber tree, while Akash remained inside the house of Jawaid.

3. At about 11:30 p.m., they heard cries emanating from inside the house, whereupon they rushed inside and allegedly witnessed Jawaid inflicting hatchet blows upon his wife, Mst. Uzma, aged about 19/20 years. At that juncture, Akash intervened in an attempt to rescue Uzma. It is alleged that Irshad then caught hold of Akash, enabling Jawaid to inflict hatchet injuries on the back side of Akash's head, as a result of which both Akash and Uzma became unconscious. Upon the complainant party raising cries, the accused persons, namely Jawaid and Irshad, fled from the scene of occurrence.

4. The complainant thereafter arranged conveyance and shifted the injured persons to Police Station Jhoke Sharif, obtained a medical treatment letter, and subsequently took them to the Taluka Hospital Bathoro. After providing first aid, the doctors referred both injured persons to a hospital in Hyderabad. As Akash remained unconscious, the complainant lodged the FIR under sections 324, 337-A(i), and 337-F(i) PPC.

5. The initial proceedings were conducted by ASI Abdul Aziz, and on 15.07.2022 the investigation was entrusted to SIP Wasno Khan. On the same day, the complainant informed SIP Wasno Khan that his son Akash had succumbed to his

injuries in Hyderabad and that the dead body had been shifted to village Mirpur Bathoro. Consequently, SIP Wasno Khan carried out the necessary formalities relating to the dead body of the deceased Akash, including preparation of the mashirnama of the dead body and the lash chakas form, and also recorded the statement of the injured Uzma under section 161 Cr.P.C. Thereafter, on 18.07.2022, the Investigating Officer succeeded in arresting the accused persons from Dalidal Link Road, Chorwah Mori. On 20.07.2022, accused Jawaid Ali Mangarhar allegedly produced a hatchet which was stated to have been used in the commission of the offence. Upon completion of the investigation, SIP Wasno Khan submitted the charge-sheet before the competent Court of law.

6. After conducting a full-dressed trial, the learned trial Court convicted and sentenced the appellants in the manner stated above, whereafter they have preferred the instant jail appeal against their conviction and sentence.

7. At the very outset, learned counsel for the appellants/accused contended that at the time of recording the evidence and the statements of the appellants/accused under section 342 Cr.P.C., the material and incriminating circumstances appearing in the evidence were not put to the appellants. He argued that it is a settled principle of law that any piece of evidence not put to an accused during his examination under section 342 Cr.P.C. cannot legally be used against him. He further submitted that in the present case, although the alleged crime weapon, i.e., a hatchet, was recovered from accused Javed and the same was sent to the office of the Sindh Forensic and Serology Laboratory, which reportedly returned a positive report, yet no question with regard to the said recovery or the forensic report was put to the accused Javed during his examination under section 342 Cr.P.C. Learned counsel, therefore, prayed that in view of the aforesaid circumstances, the conviction and sentence

awarded to the appellants/accused be set aside and they be acquitted of the charge. Alternatively, he requested that if acquittal is not considered appropriate, the matter may be remanded to the learned trial Court with directions to put all incriminating pieces of evidence to the appellants/accused and bring the same on record in accordance with law.

8. When the above contentions raised by the learned counsel for the appellants were confronted to the learned Additional Prosecutor General, Sindh, he submitted that it is indeed a mandatory requirement of law that every piece of incriminating evidence appearing against an accused must be put to him during his examination under section 342 Cr.P.C. so as to afford him an opportunity to explain the same. However, he raised no objection to the proposition that the learned trial Court may be directed to record the fresh statements of the appellants/accused under section 342 Cr.P.C. and to put all incriminating evidence to them, bringing the same on record in accordance with law.

9. We have heard the learned counsel for the appellants as well as the learned Additional Prosecutor General, Sindh, and have carefully examined the material available on record with their able assistance.

10. The prosecution case is that the complainant, Juman son of Salami, lodged an FIR on 14.07.2022 at Police Station Jhoke Sharif stating that Jawaid Mangarhar, his close relative, had hosted an Eid Milan gathering at his house on 11.07.2022, which the complainant attended along with his son Akash (aged about 19/20 years) and his brother-in-law Sajan son of Allahdino Mangarhar. After the gathering, due to hot weather, the complainant and Sajan sat outside under a Bubber tree while Akash remained inside the house. At about 11:30 p.m., upon hearing cries from inside, they rushed in and allegedly saw Jawaid inflicting hatchet blows on his wife Mst. Uzma. When Akash intervened to rescue her, Irshad

allegedly caught hold of him, enabling Jawaid to strike Akash with a hatchet on the back side of his head, causing both Akash and Uzma to fall unconscious, whereafter the accused fled from the scene. The complainant then arranged conveyance, shifted the injured to Police Station Jhoke Sharif for a treatment letter, and took them to Taluka Hospital Bathoro, from where after first aid they were referred to a hospital in Hyderabad for further treatment; however, Akash remained unconscious and later succumbed to his injuries.

11. From the perusal of the record, it transpires that after framing of the charge and recording of the prosecution evidence, the prosecution closed its side. However, while recording the statements of the accused persons under section 342 Cr.P.C., the material and incriminating questions emerging from the evidence were not put to the accused persons so as to seek their explanation. It is a well-settled principle of law that if any piece of evidence is not put to an accused in his statement under section 342 Cr.P.C., the same cannot be used against him for the purpose of his conviction.

12. Further, when an incriminating circumstance is not put to the accused, it cannot legally be considered as evidence against him. Every piece of evidence intended to be relied upon for recording conviction must necessarily be put to the accused in his examination under section 342 Cr.P.C., so as to afford him an opportunity to explain the same; otherwise, such evidence cannot be relied upon for convicting him.

13. The first part of section 342 Cr.P.C. confers discretion upon the Court, whereas the second part imposes a mandatory obligation upon the Court to put all incriminating pieces of evidence brought on record to the accused. In the present case, the learned trial Court, after recording the evidence, failed to put all material questions arising from the record to the accused persons. The record further reflects that PW-09 Mushtaque Ali produced a copy of Register No.19 of

the police station in order to prove the safe custody of the parcel containing the hatchet and its safe transmission to the laboratory. Certain entries were also produced by the prosecution to demonstrate the movement of the police officials. Learned counsel for the appellants has rightly pointed out that although the alleged crime weapon, i.e., a hatchet, was recovered from accused Javed, no question in this regard was put to him. Even the said hatchet was sent to the office of the Sindh Forensic and Serology Laboratory and a positive report was received therefrom, yet no question pertaining to the same was put to accused Javed during his examination under section 342 Cr.P.C. Likewise, necessary questions regarding the arrest of the accused, the collection of blood-stained earth, blood-stained clothes, and the weapon allegedly used in the commission of the offence which resulted in the unnatural death of the deceased, were also not put to the accused persons. In the absence of putting all such incriminating pieces of evidence to the accused at the time of recording their statements under section 342 Cr.P.C., the same cannot be lawfully relied upon against them.

14. In these circumstances, the ends of justice would be adequately met by partly allowing the appeal, setting aside the conviction and sentences awarded to the appellants through the impugned judgment, and remanding the case to the learned trial Court. Accordingly, the impugned judgment dated 19.09.2024 is hereby set aside and the case is remanded to the learned trial Court with the direction to record fresh statements of the accused persons under section 342 Cr.P.C. after putting to them all incriminating pieces of evidence brought on record so as to seek their explanation. After recording the statements of the appellants/accused, the learned trial Court shall pass a fresh judgment in accordance with law after hearing the parties, preferably within a period of two months from the date of receipt of the reasons for this order. This order along with a copy of the record and

proceedings shall be transmitted forthwith to the learned trial Court for compliance.

15. As a consequence of the above findings, the reference bearing No.11 of 2024 submitted by the learned trial Court for confirmation of the death sentence awarded to the appellants is answered in the negative.

16. Consequently, Jail Appeal No.671 of 2024 and Confirmation Case No.11 of 2024 stand disposed of in the above terms.

17. These constitute the reasons for our short order dated 09.03.2026.

**JUDGE**

**JUDGE**

HYDER/PS