

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

Criminal Jail Appeal No.S-131 of 2022

Appellant: Subhan through Mr. Muhammad Saad Saeed Qureshi, Advocate.

The State: Through Ms. Rameshan Oad, D.P.G.

Date of hearing & decision: **21.09.2026**

J U D G M E N T

ZULFIQAR ALI SANGI, J.- Through this Criminal Jail Appeal, the appellant/ convict Subhan, has assailed the Judgment dated 08.09.2021 penned down by learned 2nd Additional Sessions Judge Badin, (trial court), in Sessions Case No.01 of 2021 re: State vs. Subhan whereby the appellant has been convicted for offence under section 376(3) of the Pakistan Penal Code and sentenced to undergo imprisonment for life and to pay fine of Rs.200,000/-, in case of default to pay the fine, to suffer SI for 01 year more and benefit of section 382-B Cr.P.C was also extended to the appellant.

2. Learned counsel for the appellant, at the very outset submits that the trial court in the impugned Judgment while relying on the evidence of Dr. Hajira, Dr. Muhammad Zafar, Mashir Mashooque Ali, first I.O Pir Bux and second I.O Aijaz Ahmed, has convicted the appellant however, their evidence has not specifically been put to the appellant in his Statement under section 342 Cr.PC enabling him to explain the same. Further the evidence recorded and material collected during investigation though was relied upon by the trial court for convicting the appellant was not put to him in his 342 Cr.P.C statement. Contending so he submits that this is fit case to be remanded back to the trial court for recoding statement under section 342 Cr.P.C and passing a judgment afresh.

3. Ms. Rameshan Oad, learned Deputy Prosecutor General conceded to the contentions raised by learned advocate for the appellant and recorded no objection if the case is remanded to the trial Court for recording statement of accused u/s 342, Cr.P.C afresh.

4. I have heard learned counsel for the parties and have gone through the material available on record with their able assistance.

5. It appears that the very important piece of medical evidence come on record is evidence of Doctor Hajira, CMO Taluka Hospital SF Rahu, who

examined the victim Rehana, wherein she has confirmed that the victim was used for sexual intercourse recently, such piece of evidence is not put to the accused in the statement under section 342 Cr.P.C. Even in the provisional medicolegal certificate produced by doctor Ex.5/B clearly mention: "VULVA AND VAGINA: Swollen, perineal tear seen, heavy bleeding seen".

6. It appears that while recording statement under section 342 Cr.P.C of the accused material questions in respect of medical and circumstantial evidence though available and was used for convicting the appellant in the impugned judgment have not been put to accused in his 342 Cr.P.C statement. The omission has deprived the appellant of an opportunity to explain the circumstances appearing against him, thereby causing prejudice to his right of fair trial.

7. It is observed that all the incriminating pieces of evidence available on record in the shape of examination-in-chief, cross-examination or re-examination of witnesses are required to be put to the accused if the same is against him while recording his statement under section 342 Cr. P.C in which the words used *"For the purpose of enabling the accused to explain any circumstances appearing in evidence against him."* which demonstrate that not only the circumstances appearing in the examination-in-chief are put to the accused but circumstances appearing in cross-examination or re-examination are also required to be put to the accused, if they are against him because the evidence means examination-in-chief, cross-examination and re-examination, as provided under Article 132 read with Articles 2(c) and 71 of Qanun-e-Shahadat Order, 1984. From the careful perusal of the statement of the appellant, under section 342 Cr.P.C. it reveals that evidence of Dr. Hajira, Dr. Muhammad Zafar, Mashir Mashooque Ali, first I.O Pir Bux and second I.O Aijaz Ahmed, who also exhibited certain documents was not confronted to the appellant in his statement u/s 342 Cr.P.C. to explain the same and careful perusal of the impugned judgment reflects that it was relied upon by the trial court for awarding conviction. The Supreme Court of Pakistan vide order dated: 04.03.2021 in the case of Jan Muhammad vs. The State and others (Crl. Appeal No. 77 of 2020) while remanding the case to the trial court has observed as under:-

"5. It has been observed by us with concern that none of the aforementioned pieces of evidence has been put to the appellant while examining him under section 342, Code of Criminal Procedure. It has been laid down many a time by this Court that a piece of evidence produced by the prosecution against an accused if not put to accused while examining him under section 342, Code of Criminal Procedure cannot be used against him. The rationale behind it is that the accused must know and then respond to the evidence brought against him by the prosecution. He (accused) must have firsthand knowledge of all the aspects

of the prosecution case being brought against him. It appears that even the learned Judge in chambers of High Court while reappraising evidence available on record did not consider this aspect of the matter. Keeping in view the peculiar circumstances of the case, learned counsel for the appellant and learned Additional Prosecutor General, Sindh assisted by widow of deceased are in agreement that the matter needs to be remanded to the learned trial Court for re-recording statement of appellant under section 342, Code of Criminal Procedure while putting all pieces of prosecution evidence produced during trial to him, giving him an opportunity to know and respond to the same.

6. For the foregoing, the instant criminal appeal is allowed. The impugned judgments of the learned High Court and that of the learned trial Court are set aside. Resultantly, the conviction and sentence of the appellant is also set aside. He shall be treated as an under-trial prisoner. The learned trial Court shall record the statement of appellant under section 342, Code of Criminal Procedure afresh by putting him all pieces of prosecution evidence, enabling him to know and respond to the same and shall decide the case after hearing the parties, within one month of the receipt of this order. In case of conviction of appellant by the trial Court and in the event of filing a criminal appeal by him before the learned High Court, the same shall be decided within one month of its filing. A copy of this order shall be sent to the Registrar, High Court of Sindh, Karachi for its circulation among all the Judges of trial Courts in the Province of Sindh for perusal and strict compliance.”

8. For the above reasons, the appeal is allowed to the extent that the impugned judgment is set aside. The case is remanded to the trial Court, with a direction to proceed from the stage of **recording statement under section 342 Cr.P.C of the appellant afresh** in accordance with the above guidelines and then **pass judgment afresh** after affording due opportunity of hearing to the parties. The appellant is in custody; therefore, the trial court is directed to complete entire exercise within a period of one month without granting any adjournment to the parties by fixing the matter on a day-to-day basis. It is clarified that the remand shall be confined to the stage of recording the statement of the accused under Section 342, Cr.P.C., and shall not entail repetition of the evidence already recorded.

9. The appeal is, therefore, disposed of in the above terms.

J U D G E