

JUDGMENT SHEET
IN THE PESHAWAR HIGH COURT,
PESHAWAR
 (Judicial Department)

Crl. Appeal No.101-P/2015

Date of hearing: _____

Appellant (s) : _____

Respondent (s) : _____

JUDGMENT

ASSADULLAH KHAN CHAMMKANI, J.- At a trial held by learned Additional Sessions Judge-III, Mardan, appellants 1. Zeeshan and 2. Faizan, having been found guilty of various offences, vide impugned judgment dated 14.02.2015, have been convicted and sentences as under:-

Under section 324/34 PPC:-To undergo 05 yers R.I. and to pay a fine of Rs.20,000/- or in default thereof to undergo 02months S.I. further.

Under section 337-D PPC: To undergo 05 years R.I. and to pay Arsh equal to 1/3rd of diyat amounting to Rs.7,24,859/- to victim Muhammad Farooq.

Under section 427 PPC:- To undergo 06 months R.I..

The sentences have been directed to run concurrently. Benefit of S.382-B Cr.P.C. has been extended to the appellants-convicts.

2. During the course of arguments, it came to light that the learned Trial Court while recording conviction and sentence of the appellants-convict under section 427 PPC, has not specifically charge-sheeted the appellants under the said section of law which clearly depicts that the appellants have been misled in their defence which has caused prejudice to them. It is well settled principle of law that charge against accused shall be specific, fair and clear in all respects to provide an opportunity to the accused to defend himself in due course of trial. Charge is a brief formulation of specific allegations made against accused person, who is entitled to know its nature at the very early stage of the trial. It must convey to the accused with sufficient transparency and clarity as to what the prosecution intends to prove against him. Under section 232 Cr.P.C. Appellate Court is vested with the power to direct a new trial or quash the conviction, if it is found that on account of omission of particulars in framing charge, prejudice has been caused to the accused and that he has not been provided an

opportunity of clear understanding of the charge to defend himself. According to mandatory provisions of section 233 Cr.P.C. for every distinct offence, a separate charge sheet should be framed in order to enable the accused to defend himself against the accusations levelled against him while under section 235 Cr.P.C. a proper mechanism for trial of an accused, charged for more than one offence, has been provided. The learned Trial Court has not complied with the mandatory provisions of section 233 Cr.P.C. by not framing separate charge under section 427 PPC against the appellants-convicts.

3. It appears from the impugned judgment that the learned Trial Court has also convicted and sentenced the appellants under section 337-D, PPC, on the basis of hospital record/ discharge slips of victims Muhammad Farooq Exh. PW.12/1 and Exh.PW.12/2, respectively, showing his treatment history in the hospital. Both these documents have been strongly objected by the defence at the time of production and exhibition in the statement of victim Muhammad Farooq. The objection of the defence read as under:-

**“STO by the defence counsel that these
discharge slips are not to be exhibited
because these were not handed over to the**

I.O. during the course of investigation and being false, factitious certificate having no legal worth and value. Neither these documents were produced to the I.O nor to the accused at the time of delivering the copies under section 265-C Cr.P.C., hence in admissible in evidence”.

This material objection of the defence has neither been answered by the learned Trial Court at the very first instance nor at the time of final judgment. Keeping in view the quantum of sentence under section 337-D PPC, in the interest of justice, it was essential for the learned Trial Court to meet this objection in light of the law of evidence. Thus, recording of conviction of the appellants by the learned Trial Court under section 337-D PPC, without answering the objection of the defence, would be against the law and norms of justice.

4. Besides, the learned Trial Court while convicting the appellants-convicts under section 337-D PPC and sentencing them thereunder, has not directed the mode of payment of the Arsh i.e. whether to be paid in lump sum or in installments as contemplated under section 337-X PPC. Similarly, the consequences to be faced by the

convicts in case of their failure to pay arsh, has also not been mentioned in the judgment.

5. Keeping in view the above mentioned irregularities and illegalities causing miscarriage of justice, I, while setting aside the convictions and sentences of the appellants convict, hereby remand the case to the learned trial Court for formulation of charge against the appellants under section 427 PPC, and trial denovo. If any such objection is raised again by the defence at the time of production of documentary evidence in respect of proof of offence under section 337-D PPC, the learned Trial Court shall meet the same by recording specific findings in accordance with law. It would be appropriate to mention here that the learned Trial Courts in each and every case is bound to meet the objections raised by either party during trial at the time of exhibition of certain documents in even at the very first instance or at the time of recording final judgment.

6. During the period of trial denovo the appellants shall remain as under trial prisoners. Since, the appellants are behind the bars from the last two years and three months, therefore, the learned Trial Court shall proceed with the trial on day to day basis and conclude the same as early as possible, but not later than a month, from

the date of receipt of the record. In case of failure to conclude the trial within the specified period, if delay was not on the part of the appellants or anybody acting on their behalf, they would be at liberty to file an application for bail which shall be disposed of independently. Office is directed to send the record to the learned Trial Court within two days, without fail.

7. This appeal stands disposed of in the above terms.

8. The Additional Registrar of this Court is directed to send copy of this judgment to the learned Sessions Judge, Mardan with the direction to circulate copy of the same among the Additional Sessions Judges, in District Mardan, for future guidance, with intimation to this Court.

Announced
30.10.2015.

J U D G E

7. For what has been discussed above, Suo motu notice given to accused Shakir stands withdrawn. He is admitted to bail on already existing bail bonds, on merits. Since this court has already directed expeditious conclusion of trial while dealing with the bail petition of co-accused Farman, therefore, office is directed to send the record to the quarter concerned within two days, positively.

announced:
19.10.2015

J U D G E

