

**IN THE HIGH COURT OF SINDH, CIRCUIT COURT,
MIRPURKHAS**

Present:

Mr. Justice Amjad Ali Sahito.

Criminal Appeal No.S-60 of 2024

Appellant : Khair Muhammad alias Khairo S/o Yar
Muhammad @ Yaroo.
Through Ms. Mehrun Nisa Mughal,
Advocate.

The State : Through Mr. Shahzado Saleem Nahiyoona,
Additional P.G Sindh.

Criminal Appeal No.S-62 of 2024

Appellant : 1. Maqbolan W/o Muhammad Amin,
2. Waqar Bibi alias Billo Rani W/o Khair
Muhammad.
Through Mr. Afzal Karim Virk, Advocate

The State : Through Mr. Shahzado Saleem Nahiyoona,
Additional P.G Sindh.

Criminal Jail Appeal No.S-65 of 2024

Appellant : Abdul Qayyum @ Ali S/o Abdul Samad,
Through Mr. Aziz Ahmed Laghari, Advocate

The State : Through Mr. Shahzado Saleem Nahiyoona,
Additional P.G Sindh.

Date of hearing : 03-09-2025

Date of decision : 03-09-2025

JUDGMENT

Amjad Ali Sahito, J;- By this single judgment, I shall decide the fate of the captioned Criminal Appeals preferred by the appellants, impugning the single judgment dated 05.11.2021, passed by learned Additional Sessions Judge-II/GBV Court, Mirpurkhas in Sessions Case No.414/2020 vide F.I.R bearing Crime No.23/2020, under Sections 363, 364-A, 366-A, 371-B, 372, 376(i) and 34 P.P.C read with Section 3/4 of the Sindh Child Marriage Restraint Act, 2013 of P.S Mehmoodabad, whereby they were convicted under sections 366-A P.P.C and sentenced them to suffer R.I for ten years with fine of Rs.50,000/-

each, in case of failure of payment of fine amount, they have to undergo three months S.I more. They were also convicted for offence under sections 371-A and 371-B P.P.C and sentenced them to undergo R.I for 25 years with fine of Rs.1,00,000/- each and in case of default, they have to undergo three months S.I more. However, benefit of section 382-B Cr.P.C was extended to the appellants.

2. Per learned counsel for the appellants initially the charge was framed against all the accused persons and after recording evidence of the prosecution witnesses the court was of the view that correct charge was not framed and subsequently amended charge was framed. Thereafter, the prosecutor and defence has adopted the same evidence which was already recorded. He further argued that it is a settled principle of law that under S. 353, Cr.P.C., and read with Art. 10-A of the Constitution, evidence must be recorded in the presence of the accused to ensure the right of cross-examination and the guarantee of fair trial. Where the accused are condemned unheard and not afforded an opportunity to cross-examine prosecution witnesses, any conviction recorded on such evidence is in violation of law and the Constitution. In such circumstances, the conviction and sentence cannot be sustained and the matter must be remanded for re-trial in accordance with law.

3. Learned Additional P.G has raised his no objection.

4. Article 10-A of the Constitution of Islamic Republic of Pakistan provide that **“For the determination of his civil rights and obligations or in any criminal charge against him a person shall be entitled to a fair trial and due process”**. However, Article 10 of Constitution of Islamic Republic of Pakistan, 1973 provides that the accused shall not be denied the right to consult and be defended by a legal practitioner of his choice. The procedure adopted by the trial Court is an illegal procedure, that cannot be cured under section 537, Cr.P.C. Thus, it has vitiated the trial.

5. In view of the above, the impugned judgment dated 05.11.2021, passed in Sessions Case No.414/2020, arising out of Crime No.23/2020, under Sections 363, 364-A, 366-A, 371-B, 372, 376(i) and 34 P.P.C read with Section 3/4 of the Sindh Child Marriage Restraint Act, 2013 of P.S Mehmoodabad passed by the learned Additional Sessions Judge-II/GBV Court, Mirpurkhas is hereby set aside and the case is remanded back to the trial court for *de novo* trial. However, at this juncture, learned A.P.G submits that since the F.I.R was registered under the Penal Code but the charge was framed under the Zina Hudood Laws, the parties may approach the trial court with a request to amend the charge and frame the same under the Penal Code as mentioned in the F.I.R. Counsel for the appellants is at liberty to file fresh bail application before the trial court, which shall be decided strictly in accordance with law. At this juncture, learned counsel for the appellants submits that one lady accused is aged about more than 70 years and another lady accused aged about 45 years and submits that they may be released on bail. However, counsel for the appellants is directed to file a proper post arrest bail application before the trial court and same shall be decided in accordance with law.

JUDGE

**Faisal **