

ORDER SHEET  
IN THE HIGH COURT OF SINDH AT KARACHI  
Crl. Appeal No.184 of 2014

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DATE

ORDER WITH SIGNATURE(S) OF JUDGE(S)  
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1. For hearing of Main Case u/s.426 Cr.P.C M.A No.6056/2014
2. For hearing of Main Case

**27.10.2015**

None present for the Appellant.  
Mr. Zafar Ahmed A.P.G.

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None present for the Appellant. However, this Crl. Appeal is connected with Crl. Appeal No.173/2014 and the accused were sentenced by the same judgment in FIR No.277/2008 U/s.395 PPC and therefore, arguments of the learned counsel who is appearing for appellant in connected Crl. Appeal No.173/2014 are fully applicable to the present accused. The accused has been convicted under Section 395 PPC and the record shows that material witnesses were not cross-examined by the accused or his counsel. The other lacuna in the proceeding is that the statement of accused under Section 342 Cr.P.C was not properly recorded by the trial Court and learned APG concedes to the position that in case of defect in the statement of accused case could be remanded back to rectify the error in the proceeding. Learned counsel for the appellant states that when the case remanded, the appellant is also entitled to cross-examine witness because the accused was not properly represented before Trial Court at the time of evidence. He has relied upon **2013 P.Cr.L.J 1279 & 2011 SCMR 23**, it has been held in these citations that the right of cross-examination from time immemorial has been held, to be, particularly in criminal cases, a valuable right to accused. In appropriate cases a Judge would not be acting strictly according to rules of judicial practice if he were to take the work examining and cross-examining witnesses in his own hand. In the case in hand admittedly the cross-examination of the material witness PW-9 is

reserved and even till date and side for cross-examination PW-9 has not been closed.

In view of the above position learned counsel for the appellant say he would be satisfied if only PW-6 & PW-9 are allowed to be cross-examined once the case is remanded back to the trial Court. Learned APG has no answer to the proposition that when cross-examination is still reserved how judgment is passed by the trial Court. In view of the above, conviction of the appellant is set aside and the case is remanded back to the Court of IInd A.D.J (East) Karachi, with direction to complete the trial within three months from the date of receiving of this order. Accused is behind bar and he should be treated as under trial prisoner. He, however, can file proper bail application before the trial Court in accordance with law.

The appeal is allowed in above terms.

J U D G E