

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

Cr. Jail Appeal No.S- 145 of 2019

Date of hearing & judgment: 21.03.2022

Appellant Mazar Khan: through Mr. Bazaib Ali Raza,  
Advocate

Respondent the State: through Mr. Shahzado Saleem  
Nahyoon, Additional  
Prosecutor General, Sindh

**JUDGMENT**

Salahuddin Panhwar, J.-Through captioned appeal, appellant has challenged the judgment dated 23.05.2019 passed by learned Additional Sessions Judge, Sehwan in Sessions Case No.314 of 2018 (Re: the State v. Mazar Khan) arising out of Crime No.179 of 2018 registered at P.S Sehwan, under Sections 365-B, 496-A PPC.

2. Precisely, the facts of the prosecution case are that complainant lodged FIR stating therein that they are two brothers and six sisters, out of them his younger sister Mst. Bibi Hina is unmarried. On 06.09.2018, he alongwith his sister went to Sehwan for ziarat of Hazrat Qalandar Lal Shahbaz and stayed there. On next day viz. 07.09.2018 complainant alongwith his sister proceeded to pay ziarat where his relative Syed Javed Ali Shah and a friend Bhali Dino met. After ziarat when they reached at Bodla Bahar Chowk at 10:00 a.m. they saw one white coloured car parked there. When complainant party reached near the car, three person with open faces came out of the car, out of them one was identified to be Mazar Khan (present accused), while two persons were also seen who if seen again will be identified, they took out pistols from their folds. Accused Mazar Khan dragged his sister Mst. Bibi Hina from her arms, set her in a car and went away towards northern side. Thereafter, complainant

searched his sister but met with no clue and therefore he went to PS and lodged F.I.R.

3. At the outset, learned counsel for the appellant contends that by impugned judgment capital punishment has been awarded by the trial Court though accused was unrepresented, even Court failed to provide service of a counsel on State expenses, hence impugned judgment is against the spirit of fair trial as provided under Article 10-A of the Constitution of Islamic Republic of Pakistan, 1973. This factual aspect is not disputed by learned A.P.G and he extends his no objection to the remand of case to the trial Court for *de novo* trial. Perusal of R&Ps as well as the impugned judgment reflects same position. Accordingly, the impugned judgment is set aside and the case is remanded to the trial Court for *de novo* trial from the stage of evidence. The trial Court shall ensure that either appellant/accused should engage his own counsel or he may be provided service of a counsel at State expenses. The trial Court shall conclude the trial and deliver judgment afresh within a period of six months after receipt this order.

4. Further, the appellant is behind the bars since last more than three years, therefore, he is granted post-arrest bail subject to furnishing his solvent surety in the sum of Rs.50,000/- (Rupees fifty thousand) and P. R. Bond in the like amount to the satisfaction of trial Court.

5. The appeal stands disposed of in above terms. Office shall send the copy of the order along with R&Ps to the trial Court for compliance.

JUDGE

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