

**IN THE HIGH COURT OF SINDH, BECH AT
SUKKUR**

Criminal Jail Appeal No.30 of 2023

(Ali Hassan Vs. The State)

Appellant: Nemo.

The State: Mr. Shafi Muhammad Mahar, Deputy
P.G for the State.

Date of hearing: 19-10-2023

Date of judgment: 19-10-2023

J U D G M E N T

IRSHAD ALI SHAH, J- The appellant is alleged to have committed rape with Mst. Zainab a young girl, aged about 10 years, for that he was booked and reported upon by the police. On conclusion of trial he was convicted u/s 376 (3) PPC and sentenced to undergo life imprisonment and to pay fine of Rs. 100,000/- (one lac) and in default whereof to undergo simple imprisonment for two years with benefit of section 382 (b) Cr.P.C by learned IInd Additional Sessions Judge/Gender Based Violence Court, Sukkur vide judgment dated 06-12-2022, which he has impugned before this Court by preferring instant Crl. Jail Appeal.

2. At the very outset, it is pointed out by learned DPG for the State that the examination-in-chief of complainant Ghulam Mustafa and PW/victim Mst. Zainab has been recorded in absence of the counsel for the appellant which as per requirement of Circular 6 of Chapter VI of Federal Capital and Sindh Courts Criminal Circulars was to have been recorded in presence of his counsel as the offence alleged against the appellant was entailing the death penalty and/or imprisonment for life with fine, which is contrary to the mandate contained by Article 10-A of the Constitution of the

Islamic Republic of Pakistan, 1973, which prescribes right of fair trial. By stating so, he suggested for remand of the case for further proceedings and its fresh disposal in accordance with law.

3. Heard arguments and perused the record.
4. The omissions pointed out by learned DPG for the State takes support from the record, the same being incurable in terms of Section 537 Cr.PC has occasioned in failure of justice, consequently, the impugned judgment is set aside with direction to learned trial Court to recall and re-examine the above named witnesses as per law and then to make fresh disposal of the case in accordance with law without being influenced by earlier findings, preferably within one month after receipt of copy of this judgment.
5. The instant Criminal Jail Appeal is disposed of accordingly.

J U D G E