

**IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR**  
**Criminal Jail Appeal No.S-119 of 2022**

<b>Appellants</b>	1. Shahmir Ali. 2. Zamir Hussain. 3. Ghulam Shabbir. All sons of Ghulam Muhammad Abro <b>through</b> Mr. Rukhsar Ahmed Junejo advocate.
<b>The State</b>	<b>Through</b> Mr. Shafi Muhammad Mahar, Deputy Prosecutor General for the State.
<b>Date of hearing</b>	<b>20-11-2023</b>
<b>Date of decision</b>	<b>20-11-2023.</b>

**JUDGMENT**

**IRSHAD ALI SHAH, J.-** The appellants in furtherance of their common intention are alleged to have committed murder of Mst. Piyari by declaring her to be *Kari* for that they were booked and reported upon by the police. On conclusion of trial they were convicted u/s 302 (b) r/w 311, 34 PPC and sentenced to undergo life imprisonment as *Ta'zir* and to pay compensation of Rs. 1000,000/- (ten lacs) each to the legal heirs of the deceased and in default whereof to undergo simple imprisonment for six months with benefit of section 382 (b) Cr.P.C by learned IVth Additional Sessions Judge, (Hudood) Sukkur vide judgment dated 17-12-2020, which they have impugned before this Court by preferring instant Crl. Jail Appeal.

2. At the very outset, it is pointed out by learned counsel for the appellants that excepting medical officer, rest of the witnesses have been examined by learned trial Court in absence of their counsel, who on the date of incident as is apparent of the case diary was ill and sent an application for an adjournment, it was a murder case; therefore it ought not to have been proceeded in absence of learned counsel for the

appellants as is prescribed by Circular 6 of Chapter VI of Federal Capital and Sindh Courts Criminal Circulars. By pointing so, he suggested for remand of the case for its fresh proceedings in accordance with law, which is not opposed by learned DPG for the State.

3. Heard arguments and perused the record.

4. Apparently, excepting medical officer, the examination in chief of the complainant and his witnesses has been recorded in absence of counsel for the appellants, which is contrary to the direction of law, same in terms of Section 537 Cr.PC has occasioned in failure of justice and is contrary to the mandate contained by Article 10-A of the Constitution of Islamic Republic of Pakistan, 1973, which prescribes right of fair trial; consequently, the impugned judgment is set aside with direction to learned trial Court to recall and re-examine the witnesses who have been examined in absence of learned counsel for the appellants and then to make fresh disposal of the case in accordance with law independently without being influenced by earlier findings, preferably within two months after receipt of copy of this judgment.

5. The appellants were enjoying the concession of bail at trial, they to enjoy the same concession subject to their furnishing fresh surety in the sum of Rs. 200,000/- (two lacs) each and P.R bond in the like amount to the satisfaction of learned trial Court.

6. The instant Criminal Jail Appeal is disposed of accordingly.

**J U D G E**

*Nasim P.A*