

# IN THE HIGH COURT OF SINDH, AT KARACHI

Criminal Jail Appeal No.170 of 2022

Appellants: Nawab, Saddam, Haider and Gul Baz Khan through M/S Nasir Rizwan Khan a/w Syed Qamar Abbas Zaidi, MS Anjum and Muhammad Aslam Bhutta a/w Muhammad Zareef Lakho and Muhammad Afzal, advocates

The State: Ms. Rubina Qadir, Deputy Prosecutor General Sindh

Date of hearing: 08.09.2023

Date of judgment: 08.09.2023

## J U D G M E N T

**IRSHAD ALI SHAH, J-** The appellants are alleged to have committed rape with Mst. Mahnoor, for that they were booked and reported upon. On conclusion of trial, they were convicted to various terms of imprisonment with fine; all the sentences awarded to them were directed to run concurrently with benefit of section 382(b) Cr.P.C by learned Xth-Additional Sessions Judge, Karachi West, vide judgment dated 19.02.2022, which they have impugned before this Court by preferring the instant Crl. Jail Appeal.

2. At the very outset, it is pointed out by learned counsel for the parties that the charge was amended more than once and the evidence already recorded was adopted, such exercise was against the mandate contained by Section 231 Cr.P.C which prescribes for recalling and re-examination of the witnesses, so examined, on the amendment/addition/alteration which is made in the charge. By contending so, they suggested for remand of the case for recalling and reexamination of the witnesses after final amendment of the charge for the reason that such omission has denied the right of fair trial to the appellants which is guaranteed by Article 10-A of the Constitution of the Islamic Republic of Pakistan, 1973.

3. Heard arguments and perused the record.

4. The omission which is pointed out by learned counsel for the parties takes support from the record, same being incurable in terms of section 537 Cr.PC have occasioned in failure of justice, consequently conviction and sentence awarded to the appellants under impugned judgment are set aside with direction to learned trial Court to recall and re-examine the witnesses who were already examined before the final amendment of the charge and then to make disposal of the case afresh and in accordance with law without being influenced by earlier finding; such exercise to be completed within three months after receipt of copy of this judgment.

5. Appellant Haider was enjoying the concession of bail at trial, he to enjoy the same concession subject to his furnishing fresh surety in sum of Rs.100,000/- and PR bond in the like amount to the satisfaction of the learned trial Court.

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

JUDGE