

IN THE HIGH COURT OF SINDH, AT KARACHI

Criminal Appeal No. 86 of 2024

Appellant: Muhammad Zohaib through Mr. Muhammad Farooq, advocate
The State: Ms. Seema Zaidi, Addl. PG for the State
Date of hearing: 14.05.2024
Date of judgment: 14.05.2024

J U D G M E N T

IRSHAD ALI SHAH, J- It is alleged that the appellant with one more culprit threw a tea cup at the face of his wife Mst. Qurat-ul-Ain, thereby she sustained impairment of her left eye, for which the present case was registered. At trial, the appellant and co-accused Muhammad Zeeshan denied the charge and the prosecution to prove the same examined in all six witnesses and then closed its side. The appellant and co-accused in their statements recorded u/s 342 Cr.PC denied the prosecution's allegation by pleading innocent; they did not examine anyone in their defence or themselves on oath. On completion of the trial, co-accused Muhammad Zeeshan was acquitted while the appellant was convicted for the aid offence and sentenced to undergo various terms of imprisonment spreading over ten years with the benefit of Section 382(b) Cr.PC by learned IVth-Additional Sessions Judge, Malir, Karachi, vide judgment dated 16.01.2024, which he has impugned before this Court by preferring the instant Criminal Appeal.

2. At the very outset, it is stated by learned counsel for the appellant that Dr. Kishwar Rehman of JPMC who medically examined the eye of Mst. Qurat-ul-Ain has not been examined by the prosecution, his/her non-examination has prejudiced the appellant in his defence seriously. By stating so, he sought remand of the case for examination of the above-named Medical Officer to arrive at a just decision of the case, which is not opposed by the learned Additional Prosecutor General for the State.

3. Heard arguments and perused the record.

4. Apparently, the examination of Dr Kishwar Rehman was essential; his/her non-examination has prejudiced the appellant in his defence seriously, which is contrary to the mandate contained by Article 10-A of the Constitution of the Islamic Republic of Pakistan,1973, which prescribes the right of fair trial to everyone. Consequently, the impugned judgment only to the extent of the appellant is set aside with a direction to the learned trial Court to call and examine the above-named Medical Officer and then to dispose of the case afresh against the appellant as per law, without being influenced by the earlier findings; such exercise to be completed within 02 months after receipt of the copy of this judgment.

5. The instant Criminal Appeal is disposed of accordingly.

JUDGE