

ORDER SHEET
IN THE HIGH COURT OF SINDH
CIRCUIT COURT MIRPURKHAS

Crl. Jail Appeal No.S-01 of 2024

DATE	ORDER WITH SIGNATURE OF JUDGE
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- 1. For hearing on M.A No.5042/2022.
- 2. For hearing on M.A No.2464/2021.
- 3. For hearing of main case.

07.03.2025

Mr. Mohan Lal advocate holding brief for Mr. Syed Tarique Ahmed Shah, advocate for the appellant.

Mr. Ghulam Abbas Dalwani, Deputy Prosecutor General Sindh.
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Learned DPG has pointed out that this is a murder case involving capital punishment. He invited my attention to the evidence of prosecution witnesses recorded at Page No. 54 (PW-5), Page No. 57 (PW-6), and Page No. 59 (PW-7), which clearly shows that the evidence was recorded in the absence of counsel for the appellant/accused. This is not in accordance with the law, as ruled in case laws 2023 P.Cr.L.J 671, 2019 MLD 1713, and SBLR 2021 Sindh.

Since the essential legal requirement of providing an opportunity to the counsel for the appellant/accused has not been fulfilled, and no alternative arrangement was made by appointing counsel for the pauper appellant/accused, the impugned judgment cannot be sustained. This failure violates the doctrine of fair trial under Article 10-A of the Constitution of Pakistan, 1973.

Accordingly, the impugned judgment dated 27.04.2017, passed in Sessions Case No.385/2016, arising out of Cr. No.210/2009, U/S 302 PPC of PS Town Mirpurkhas passed by the learned Additional Sessions Judge-

II, Mirpurkhas, is hereby set aside and remanded back to the trial court with direction to record the evidence of prosecution witnesses PW-5, PW-6, and PW-7 for de-novo examination of prosecution witnesses in presence of the appellant/accused and his counsel. After fulfilling this mandatory legal requirement, the trial court shall record the statement of the appellant/accused and thereafter deliver judgment within three months hereof. Suffice to say that trial court would have to form its own opinion about the custody of appellant/accused after consulting the record as to whether he was on bail during trial or otherwise.

JUDGE

Faisal