

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Cr. Appeal No. S-97 of 2024

Appellants : 1. Sajjad Ali son of Hadi Bux @ Khuda Bux
2. Qadeer Hussain s/o Khadim Hussain
3. Mst. Reema d/o Allah Dino
4. Mst. Salma @ Saira d/o Lal Dino
Through Mr. Rukhsar Ahmed Junejo Advocate

The State : *Through Mr. Imran Mobeen Khan, Asst. P.G*

Date of hearing : 18.12.2025

Date of Judgment : 18.12.2025

JUDGMENT

KHALID HUSSAIN SHAHANI, J.— The present criminal appeal has been preferred by four appellants, namely Sajjad Ali, Qadeer Hussain, Mst. Reema, and Mst. Salma @ Saira, against the judgment dated 23.08.2024 passed by the learned Special Judge for GBV/Additional Sessions Judge-IV, Khairpur, in Session Case No.957/2021, arising from FIR No.102/2021, for offences under Sections 376(ii), 342 and 120-B PPC, registered at Police Station B-Section, Khairpur, and the trial court, after conviction of all four appellants under Section 376(ii) r/w Sections 120-B and 149 PPC, sentenced the male appellants to rigorous imprisonment for life and a fine of Rs.100,000/- each (in default, simple imprisonment for six months), while the female appellants were sentenced to rigorous imprisonment for ten years and a similar fine with default clause. Dissatisfied with the aforesaid judgment, the appellants have invoked the appellate jurisdiction of this Court, contending that the impugned conviction and sentence are vitiated by a fundamental legal flaw, as the trial court convicted and sentenced them for an offence under Section 376(ii) PPC, which had already been omitted from the Pakistan Penal Code by virtue of the Criminal Law (Amendment) Act, LVI of 2021, long before the trial concluded and the judgment was pronounced in 2024.

2. The prosecution case, as narrated by the complainant Mst. Sobia, is that she was married to appellant Sajjad Ali and was pregnant at the relevant time. On 15.04.2021, her aunt, appellant Mst. Reema, called her on the mobile phone and requested her to come to her house for medical treatment. Acting upon that call, the complainant, accompanied by her sister-in-law Mst. Sapna, proceeded to the house of Mst. Reema, where Mst. Salma @ Saira was also present.

3. According to the complainant, at about 10:00 a.m., the male appellants, Sajjad Ali and Qadeer Hussain, entered the house, took her into a room, intoxicated her, and thereafter forcibly committed rape upon her. It is further alleged that on 21.04.2021, the male appellants left the complainant in Mohalla Bodla, Ranipur, and absconded. The complainant thereafter narrated the incident to her father, Hadi Bux, who advised her to lodge an FIR. Consequently, on 22.04.2021 at 1800 hours, the complainant lodged FIR No. 102/2021 at Police Station A-Section, Khairpur, against the accused persons.

4. In her statement recorded under Section 162 Cr.P.C, the complainant further disclosed that appellants Mst. Sapna, Mst. Salma and Mst. Reema had conspired criminally and lured her to the house of Mst. Reema, where she was raped by the male appellants. The investigation was completed, the appellants were sent up for trial, supplied with the necessary documents, and a formal charge was framed against them. The appellants pleaded not guilty and claimed trial.

5. To substantiate its case, the prosecution examined six witnesses and produced several documents in evidence. Thereafter, the learned Assistant Director Public Prosecution (ADPP) for the State closed the prosecution side. The statements of the appellants were recorded under Section 342 Cr.P.C, in which they denied the prosecution allegations but did not choose to examine themselves on oath. After hearing the learned counsel for the respective

parties, the learned trial court passed the impugned judgment convicting and sentencing the appellants as noted above.

6. Learned counsel for the appellants has urged that the impugned judgment is fundamentally defective in law and cannot be sustained in its present form. His primary contention is that the trial court convicted and sentenced the appellants for an offence under Section 376(ii) PPC, which had already been omitted from the Pakistan Penal Code by the Criminal Law (Amendment) Act, LVI of 2021, well before the trial concluded and the judgment was pronounced in 2024.

7. It is submitted that the formal charge framed against the appellants in 2023 itself reflects that they were charged for offence under Section 376(ii) PPC, despite the fact that this provision had ceased to exist in the statute book. This, according to the learned counsel, amounts to a material illegality and a jurisdictional error, as the trial court proceeded to convict and sentence the appellants for an offence which was not in force at the relevant time.

8. A further serious legal flaw pointed out by the learned counsel is that the trial court convicted and sentenced the female appellants, Mst. Reema and Mst. Salma @ Saira, for the offence under Section 376(ii) PPC. It is well settled that Section 376, as a provision dealing with rape, is by its very nature an offence which can only be committed by a male person. The conviction of female accused persons under this section, therefore, is not only legally unsustainable but also contrary to the very nature and definition of the offence.

9. In view of these legal flaws, learned counsel has urged that the impugned judgment is vitiated in law, and the conviction and sentence passed thereunder cannot be allowed to stand. He has prayed that the appeal be allowed, the impugned judgment be set aside, and the case be remanded to the learned trial court for fresh trial in accordance with law, after framing a proper

charge in accordance with the provisions of the Pakistan Penal Code as amended by Act LVI of 2021.

10. Learned Assistant Prosecutor General, Mr. Imran Mobeen Khan, appearing for the State, has fairly conceded the arguments advanced by the learned counsel for the appellants. He has admitted that there are indeed legal flaws in the impugned judgment, particularly in respect of the conviction and sentencing of the appellants under Section 376(ii) PPC, which had been omitted by the Criminal Law (Amendment) Act, LVI of 2021, prior to the conclusion of the trial.

11. The learned Assistant Prosecutor General has further conceded that these are not mere technical irregularities but go to the root of the matter, as they relate to the very existence of the offence for which the appellants were convicted. He has also not disputed the point that the conviction of female appellants under Section 376(ii) PPC is legally unsustainable.

12. In the circumstances, learned Assistant Prosecutor General has recorded no objection to the remand of the case to the learned trial court for fresh trial, after framing a proper charge in accordance with the amended law, and after recording the evidence of the prosecution witnesses afresh, in accordance with law.

13. This Court has carefully considered the record of the case, the impugned judgment, and the submissions of the learned counsel for the respective parties.

14. It is not in dispute that Section 376(ii) PPC was omitted from the Pakistan Penal Code by the Criminal Law (Amendment) Act, LVI of 2021, which came into force with effect from the date of its notification. The trial in the present case commenced and continued after this amendment, and the judgment was pronounced in 2024, i.e., well after the repeal of Section 376(ii) PPC.

15. The law is well settled that a court cannot convict an accused for an offence which has been omitted from the statute book and is no longer in force. The jurisdiction of a criminal court to convict and sentence an accused arises only in respect of offences which are in force at the relevant time. Where a court proceeds to convict and sentence an accused for an offence which has been repealed or omitted, such conviction and sentence are rendered null and void in law, as they are based on a non-existent provision.

16. In the present case, the learned trial court has convicted and sentenced the appellants for an offence under Section 376(ii) PPC, which had already been omitted from the Pakistan Penal Code. The formal charge framed in 2023 also reflects that the appellants were charged under this now-omitted provision. This is a clear case of a material illegality and a jurisdictional error, which cannot be cured by any subsequent proceedings or by any doctrine of irregularity.

17. Further, the conviction of the female appellants, Mst. Reema and Mst. Salma @ Saira, under Section 376(ii) PPC is legally unsustainable. Rape, as defined under Section 375 PPC and punishable under Section 376 PPC, is an offence which can only be committed by a male person. The conviction of female accused persons for this offence is contrary to the very nature of the offence and is therefore not maintainable in law.

18. In view of the above, this Court is of the considered opinion that the impugned judgment passed by the learned trial court is vitiated by a fundamental legal flaw and cannot be sustained in its present form. The conviction and sentence passed thereunder are set aside, and the case is remanded to the learned trial court for fresh trial in accordance with law.

19. In the result, the appeal is allowed in the following terms:

i. *The impugned judgment dated 23.08.2024 passed by the learned Special Judge for GBV/Additional Sessions Judge-IV, Khairpur, in Session Case No. 957/2021, is set aside.*

ii. *The case is remanded to the learned trial court with the direction to:*

- *Frame a proper formal charge against the appellants in accordance with the provisions of the Pakistan Penal Code as amended by the Criminal Law (Amendment) Act, LVI of 2021;*
- *Record the evidence of the prosecution witnesses afresh, in accordance with law;*
- *Accord full opportunity of being heard to the respective parties;*
- *Pass a fresh judgment strictly in accordance with law, on the basis of the evidence brought on record.*

iii. *Learned counsel for the appellants has submitted that during the first round of trial, the female appellants, Mst. Reema and Mst. Salma @ Saira, had remained on bail. In the circumstances, they shall remain on bail in the remanded proceedings, subject to furnishing a solvent surety in the sum of Rs. 100,000/- and a personal bond in the like amount, to the satisfaction of the learned trial court.*

20. The appeal stands disposed of accordingly.

J U D G E