

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR
Criminal Appeal No.S-69 of 2023

Appellant	Moula Bux son of Adam Shar Through Mr. Shabbir Ali Bozdar advocate.
	Complainant Ghulam Mahdi in person.
The State	Through Mr. Imran Mobeen Khan, Assistant Prosecutor General.
Date of hearing	21-11-2023
Date of decision	21-11-2023

J U D G M E N T

IRSHAD ALI SHAH, J. It is alleged that the appellant with rest of the culprits by committing lurking house trespass by night in house of complainant Ghulam Mahadi with intention to commit theft of his buffalos caused fire shot injuries to PW Wasim Akram, for that they were booked and reported upon. On conclusion of trial, he was convicted and sentenced to various terms of imprisonment of by learned IVth Additional Sessions Judge/Gender Based Violence Court, Khairpur, vide judgment dated 02-07-2023, which the appellant has impugned before this Court by preferring the instant CrI. Appeal.

2. At the very outset it is stated by learned counsel for the appellants that during course of his examination u/s 342 Cr.P.C, the appellant wanted to examine himself on oath, such opportunity has been denied to him by learned trial Court without lawful justification, which has prejudiced him in his defence seriously. By stating so, he sought for remand of the case with direction to learned trial Court to make its fresh disposal after recording the

statement of the appellant on oath, which is not opposed by learned Assistant P.G for the State, who is assisted by the complainant.

3. Heard arguments and perused the record.

4. The omissions pointed out by learned counsel for the appellant takes support from the record, same has prejudiced the appellant seriously. It 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 to everyone; consequently the impugned judgment is set aside with direction to learned trial Court to record statement of the appellant on oath and then to make fresh disposal of the case independently without being influenced by earlier finding.

5. Appellant was enjoying the concession of bail at trial, he to enjoy same concession subject to his furnishing fresh surety in sum of Rs. 50,000 (fifty thousand) and P.R bond in the like amount to the satisfaction of learned trial Court.

6. It is pointed out by learned counsel for the appellant that same judge is presiding the learned trial Court; therefore, it would be in the fitness of the circumstances that the fresh judgment to be rendered by someone else, which is not opposed by learned APG for the State, who is assisted by the complainant; consequently learned Sessions Judge Khairpur is directed to assign the instant case to some other judge of the competent jurisdiction within its Sessions division for its disposal in accordance with law.

7. The instant Crl. Appeal is disposed of accordingly.

J U D G E