

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR
Criminal Jail Appeal No.S-68 of 2023

Appellants Gulzar and Ali Hassan both sons of Gul Hassan Shaikh **through** Mr. Rukhsar Ahmed Junejo advocate.

The State **Through** Mr. Shafi Muhammad Mahar, Deputy Prosecutor General for the State.

Date of hearing 14-12-2023

Date of decision 14-12-2023.

J U D G M E N T

IRSHAD ALI SHAH, J;- It is alleged that the appellants with one unknown culprit by making trespass into house of complainant Gulab Khan abducted his sister Mst. Naila @ Laila with intention to subject her to rape and then she actually was subject to rape, for that they were booked and reported upon by the police. On conclusion of trial they were convicted u/s 365 (b) r/w 34 PPC and sentenced to undergo imprisonment for life and to pay fine of Rs.100,000/- each and in default whereof to undergo simple imprisonment for one year; they were further convicted u/s 458 PPC and sentenced to undergo rigorous imprisonment for five years and to pay fine of Rs.50,000/- each and in default whereof to undergo simple imprisonment for six month; both the sentences were directed to run concurrently with benefit of section 382 (b) Cr.P.C by learned IInd Additional Sessions Judge/Gender Based Violence Court, Sukkur, vide judgment dated 13-06-2023, which they have impugned before this Court by preferring instant Crl. Jail Appeal.

2. It is contended by learned counsel for the appellants that examination in chief of complainant Gulab Khan, PWs Muhammad Ali and Mst. Naila @ Laila was conducted in absence of counsel for the appellants, which has prejudiced them in their defence in case like present one, which was entailing the imprisonment for life, which is contrary to the mandate contained by Article 10-A of the Constitutional of Islamic Republic of Pakistan, 1973, which prescribes right of fair trial to everyone. By contending so, he

suggested for remand of the case for recording evidence of the complainant and above named witnesses afresh and in accordance with law.

3. It was contended by learned DPG for the State that the appellants have not been charged for subjecting Mst. Naila @ Laila to rape; therefore, he would be having no objection to remand of the case for *denovo* trial of the appellants after amending the charge against them suitably.

4. Heard arguments and perused the record.

5. As per record Mst. Naila @ Laila was abducted allegedly by the appellants and others with intention to subject her rape and then was raped allegedly but no charge on point of rape has been framed against the appellants, such omission being incurable in terms of Section 537 Cr.PC has occasioned in failure of justice; consequently, the impugned judgment is set aside with direction to learned trial Court to frame the charge against the appellants afresh on the basis of material collected against them by the police on investigation and then to proceed with the case further in accordance with law.

6. The appellants were enjoying the concession of bail at trial, they to enjoy the same concession subject to their furnishing fresh surety in the sum of Rs. 100,000/- (One lac) each and P.R bond in the like amount to the satisfaction of learned trial Court.

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

J U D G E