

# IN THE HIGH COURT OF SINDH, AT KARACHI

Criminal Appeal No.161 of 2023

Appellant: Ramash alias Raju through M/S Abdul Hameed and Ghulam Abbas, advocates

The State: Mr. Zafar Ahmed Khan, Additional Prosecutor General Sindh

Date of hearing: 09.08.2023

Date of judgment: 09.08.2023

## J U D G M E N T

**IRSHAD ALI SHAH, J-** The appellant is alleged to have committed rape with Mst. Rami, an old woman of 80/90 years of age, for that he was booked and reported upon by police. On conclusion of trial, he was convicted u/s.376 PPC and sentenced to undergo rigorous imprisonment of 10 years with fine of Rs. 50,000/- and in default whereof to undergo Simple Imprisonment for three months by learned Jnd-Additional Sessions Judge, Karachi Central, vide judgment dated 18.02.2023, which he has impugned before this Court by preferring the instant Crl. Appeal.

2. At the very outset, it is pointed out by learned counsel for the appellant and learned Addl. PG for the State that the offence alleged against the appellant was entailing capital punishment, therefore, learned trial Court ought not to have recorded evidence of complainant Dharam Das in absence of counsel of the appellant which is contrary to the directions prescribed by Circular 6 of Chapter VI of Federal Capital and Sindh Courts Criminal Circulars. By pointing out so, they suggested for remand of the case for recording evidence of the complainant in accordance with law. In support of their suggestion, they relied upon case of *Bashir Ahmed vs. The State (SBLR 2021 Sindh 112)*.

3. Heard arguments and perused the record.

4. The omission pointed out by learned counsel for the parties takes support from the record, the same being incurable in terms of Section 537 Cr.PC has occasioned in failure of justice and is contrary to the mandate contained by Article 10-A of the Constitution of Islamic Republic of Pakistan, 1973, which prescribes the right of fair trial, therefore, the impugned judgment is set aside with direction to learned trial Court to recall and re-examine the complainant as per mandate of law and then to make disposal of the case afresh in accordance with law without being influenced by earlier findings, preferably within 03 months after receipt of copy of this judgment.

5. The instant Criminal Appeal is disposed of accordingly.

JUDGE