

IN THE HIGH COURT OF SINDH CIRCUIT COURT LARKANA

Criminal Appeal No.S-106 of 2023

Present:

Mr. Justice Jan Ali Junejo.

Appellant/Accused: Niaz Hussain S/o Fakir Muhammad Siyal
Through Mr. Habibullah G. Ghori Advocate.

Respondent: The State,
Through, Mr. Nazir Ahmed Bhanwar, D.P.G.

Date of hearing: 30-05-2025

Date of Judgment: 01-07-2025

JUDGMENT

Jan Ali Junejo, J.— In present Criminal Appeal, the appellant, Niaz Hussain, challenges the judgment dated December 8, 2023 (hereinafter referred to as to the “*Impugned Judgment*”), rendered by the learned Additional Sessions Judge-IV, Dadu (hereinafter referred to as the “*Trial Court*”) in Sessions Case No.98/2022 arising out of F.I.R No.207/2020 registered at PS K.N Shah, under sections 365-B, 496-A and 376 PPC. The appellant was convicted on the following counts under the Pakistan Penal Code (PPC) 1860:

1. Accused Niaz Siyal is found guilty for offence under section 452 PPC, and sentenced to suffer imprisonment 05 years and to pay fine of Rs.5,000/-. In case of default in payment of the fine, he shall suffer S.I for one month. Accused is also convicted for offence under section 365-B PPC for imprisonment for life and fine of Rs.20,000/. In default of payment of fine, he shall suffer S.I for 06 months more. Accused Niaz Siyal is also convicted for committing an offence under section U/S 496-A PPC, he shall suffer R.I for five years and to pay fine of Rs:10,000/- in default of payment, he shall suffer S.I for 01 month more. Accused Niaz Siyal is also convicted for committing an offence U/S 376 PPC he shall suffer R.I for ten years with fine Rs.30,000/-. In default of payment of fine, thereof he shall suffer S.I for 03 months more. All the sentences shall run concurrently. The benefit of Section 382-B Cr.P.C is awarded to appellant. Co-accused Ayaz Ali, Fayaz and Nadir were acquitted due to insufficient evidence; therefore, benefit of doubt was extended to them.
2. Briefly stated, the facts as narrated in the FIR are that one Nazeer Ahmed Siyal lodged FIR on 20.11.2020 at 1400 hours at PS K.N Shah alleging therein

that he alongwith his wife Mst. Shahida and other house inmates resides in same and one house. The accused Niaz Hussain Siyal had shown inappropriate interest in his wife, hence he restrained him on that who was annoyed. On 18.11.2020, after having dinner, the complainant, his wife, his brother Akhtar Ali, and his cousin Saeed Ahmed went to sleep while the lights remained open. On 19.01.2020 at 01:00 a.m, the complainant noticed Niaz Hussain Siyal along with three unidentified accused having pistol trespassed into the house. The intruders, brandishing pistols, subdued the household members and instructed them to remain silent. The accused, Niaz Hussain, then forcibly dragged Mst. Shahida outside at gunpoint. Their minor daughter, Aliza, followed her mother. The complainant witnessed Niaz Hussain placing both his wife and daughter into a 2-D car and went away. Due to the late hour, he remained inside the house and, the following morning, proceeded to the police station to report the incident and lodge the FIR.

3. Upon completion of the investigation, the challan was submitted. The case was sent up to the trial Court, and formal charge was framed against the accused persons to which he and co-accused pleaded not guilty and claimed trial. To prove the charge, the prosecution examined the following witnesses and produced the following exhibits:

- (i) PW-1 Nazeer Ahmed the complainant, who testified at Ex.3. He produced copy of FIR at Exh.03/A. The complainant supported the contents of the FIR but admitted to initially nominating only Niaz Hussain and three unidentified accused. In his cross examination, he deposed that it is fact that P.Ws have implicated unknown accused to be Wazeer Ali, Aslam, Niaz and Imran Ali. Voluntarily says police apprehended them but who brought Holy Quran to us hence we exonerated them. It is incorrect I have submitted affidavit in the court of civil Judge K.N. Shah, wherein stated that he has wrongly given names of accused persons. It is correct accused Niaz and Mst. Shahida filed a C.P before Honourable High Court for quashment of FIR. It is fact I have appeared before Honourable High Court in said C.P. I only received notice of Honourable High Court without copy of C.P. I do not know Mst. Shahida and accused Niaz Hussain had contracted marriage and produced such Nikahnama before Honourable High Court. It is fact Mst. Shahida disclosed that accused Niaz contracted Nikah with him. It is correct neither I, nor Mst. Shahida challenged the said Nikahnama being false.

- (ii) PW-3 Mst. Shahida (Victim, Exh.5): In her cross-examination, she deposed that I do not remember when I got marriage with Nazeer Ahmed. Accused has evil eyes over me. We had not made such complaint to any Nekmard. It is fact I and Niaz Hussain filed a C.P in the Honourable High Court. It is fact I have signed on affidavit and identification has also taken place in identification branch through photograph and thumb impression. I have put my thumb impression in the Honourable High Court on some papers. Voluntarily says accused were pressuring me that if I have not put my signature then they will commit murder of my children. It is fact I have verified the averments in the Honourable High Court that same is true and correct to the best of my knowledge. Voluntarily says that I have put my signature due to blackmailing of accused. It is correct I have not raised cries in the Honourable High Court as accused were pressurizing me and were asking that they will commit murder of my baby. It is correct I have not disclosed such facts with any staff member of Honourable High Court that I am under pressure. It is correct my photograph is affixed on Nikahnama. It is fact my thumb impression is affixed on Nikahnama. Voluntarily says I have put the same due to pressure of accused. I have not disclosed to Molvi that my Nikah is under force and under pressure. Molvi asked me three times that I have accept Niaz Hussain as husband. It is correct before Molvi I have not refused the Nikah nor made resistance. Advocate for accused Niaz shown her photograph to witness with Niaz having free will in hand she admitted that her photograph. I do not know that in my petition it is mentioned that Nazeer Ahmed lodged false FIR and same may be cancelled. It is fact I have not mentioned in my statement that minor baby is with me. It is fact neither I nor complainant made any application before any forum that my Nikah with Niaz is false. I do not know about facts of FIR lodged by complainant Nazeer. It is fact complainant forgiven accused Wazeer, Aslam and Imran on Holy Quran. At the time of my abduction, I have not raised cries. My relative has not chased accused.
- (iii) PW-4 I.O./ASI Ghulam Rasool (Exh.6): He produced the memo of arrest of accused Aslam and Imran, memo of samples of accused Niaz, receipt of handing over abductee to complainant, and DNA report at Exh.6/A to 6/F. He also stated that during investigation, he found accused Imran and Aslam innocent.
- (iv) PW-5 WMO Amina Begum (Exh.7): She produced the PMLC at Exh.7/A and final medical certificate at Exh.7/B. In her cross examination, she deposed that it is fact at the time of examination no mark of violence was found on her body.

4. Thereafter learned DDPP closed the side vide statement at Ex.8. Statements under Section 342, Cr.P.C. of appellants were recorded, wherein they denied commission of offence, professed their innocence and stated their false

implication. They opted not to make a statement on Oath under Section 340(2), Cr.P.C. nor adduce any evidence in their defence. Accused Niaz Hussain in his statement deposed that Mst. Shahida obtained divorced from her first husband and then contracted free will marriage with me. Complainant pressurized Mst. Shahida, hence she deposed falsely against me. He produced three happy mode photographs of Mst. Shahida with me, copy of Nikahnama, copy of free will affidavit, affidavit of complainant exonerating the accused persons, Photo copy of order U/S 63 Cr.P.C. and true copy of CP No.D-504/2021. Subsequently, the trial court fixed the matter for final arguments. However, on 09.08.2023, the A.D.P.P for the State filed an application under Section 540, Cr.P.C., seeking permission to summon additional prosecution witnesses, namely Dr. Muhammad Yameen, ASI Muhammad Siddique Panhwar, HC Ghulam Muhammad, Akhtar Siyal, and Saeed Ahmed. The trial court allowed the said application without issuing any notice to the appellant or the co-accused. In consequence, the evidence of HC Ghulam Muhammad (Exh.13), ASI Muhammad Siddique (Exh.15), and Medical Officer Dr. Muhammad Yameen (Exh.16) was recorded. However, instead of affording the appellant and the co-accused an opportunity to record fresh statements under Section 342, Cr.P.C., in response to this additional evidence, the learned trial court merely obtained a statement from the defence counsel adopting the earlier statements of the accused. Thereafter, the trial Court convicted the appellant Niaz Hussain on the basis of ocular testimony, DNA analysis, and medical evidence, while acquitting co-accused Fayaz, Nadar, and Ayaz on the ground of insufficient evidence.

5. The learned counsel for the appellant vehemently contended that the impugned judgment is unsustainable in law due to several grave procedural irregularities and misapplication of legal principles. It is further argued that the Impugned Judgment passed by the learned trial Court is full of misreading and non-reading of the evidence available on record. It is further contended that the learned trial Court has not considered the copies of Constitution Petition and

Order passed thereon, *Nikahnama* and other documents relied upon by the Appellant during his statement under Section 342, Cr.P.C. In light of these submissions, the learned counsel for the appellant prayed for the impugned judgment to be set aside and the appellants to be acquitted.

6. The learned Deputy Prosecutor General (DPG), vehemently defended the impugned judgment and argued for the dismissal of the appeal. The learned DPG argued that no prejudice was caused to the appellants as their counsel had the opportunity to participate in the cross-examination of the recalled witnesses (Exh.13, 15, 16). Furthermore, the act of adopting prior statements (Exh.18) by the defense counsel implied a waiver of the right to re-examination under Section 342 Cr.P.C. It was submitted that the conviction of the appellant was based on solid evidence, including ocular testimony from PW-1 and PW-3, corroborating medical evidence, and conclusive DNA proof, all of which unequivocally established the guilt of the appellant. He further contended that the fact that co-accused were acquitted demonstrated that the trial Court conducted an independent evaluation of the evidence and did not convict mechanically. Based on these arguments, the learned DPG prayed for the upholding of the conviction and the dismissal of the appeal.

7. I have considered the arguments advanced by the learned counsel for the Appellant, as well as the learned Deputy Prosecutor General for the State. I have also meticulously examined the evidence available on record. It is an undisputed fact, evident from the record, that the trial Court recorded the statements of the Appellant and co-accused under Section 342, Cr.P.C. on 05.07.2023, and thereafter fixed the case for final arguments. However, on 09.08.2023, the ADPP for the State submitted an application under Section 540, Cr.P.C. seeking to summon prosecution witnesses Dr. Muhammad Younis, ASI Muhammad Siddique Panhwar, HC Ghulam Muhammad, Akhtar Siyal, and Saeed Ahmed. The trial Court allowed this application without issuing notice or affording an opportunity of hearing to the Appellant or the acquitted accused. Section 540 of the Code of

Criminal Procedure, 1898, which deals with the summoning of material witnesses or the examination of any person present in Court, is reproduced as under:

“540. Power to summon material witness or examine person present.-
— Any Court may, at any stage of any inquiry, trial or other proceeding under this Code, summon any person as a witness, or examine any person in attendance, though not summoned as a witness, or recall and re-examine any person already examined: and the Court shall summon and examine or recall and re-examine any such person if his evidence appears to it essential to the just decision of the case”.

Section 540 of the Code of Criminal Procedure, 1898 confers upon the Court the authority to summon any person as a witness, examine any person present in court, or recall and re-examine any person who has already been examined, at any stage of an inquiry, trial, or other proceeding under the Code (Cr.P.C.). The provision comprises two distinct parts:

- The first part is discretionary, as indicated by the use of the word “*may*”, allowing the Court to act based on its judgment and the circumstances of the case.
- The second part, however, is mandatory, employing the term “*shall*”, thereby obligating the Court to summon, examine, or recall and re-examine any person whose evidence is deemed essential for arriving at a just decision in the matter.

8. This judicial power is not intended to serve the interests of either the prosecution or the defence; its sole purpose is to facilitate the discovery of truth and the administration of justice. When acting under the mandatory part of Section 540, the Court is legally required to record its reasons. Even when exercising the discretionary power, recording reasons is necessary to maintain fairness and transparency. Failure to do so constitutes a serious procedural lapse, violating the accused’s right to a fair trial and justifying judicial intervention. Reliance is placed on the case of ***Chairman NAB v. Muhammad Usman and others (PLD 2018 Supreme Court 28)***, wherein the Honourable Supreme Court of Pakistan held that: *“The 3rd category of witnesses is called ‘Court witnesses’, who are examined or re-examined by the Court, when at trial, the Court is of the view that their evidence is essential for the just and fair decision of the case in discovering the truth. These powers have been conferred on the Court with the only object that justice is not slipped out of the hands of the Court nor it get out of its domain, because doing justice in each case is the primary*

obligation of every Court and not the party in an adversarial system of justice. The role of the Court under the provision of section 540, Cr.P.C. is inquisitorial where it endeavours to discover the truth, suppressed by both or one party to the case to incapacitate the Court to reach at a just conclusion. The role of the Judge does not undergo change because in exercising inquisitorial powers, the law has imposed obligation on it to discover the truth and to secure the ends of justice". The trial Court, in the instant case, failed to record any reasons whatsoever for calling the said witnesses at that stage. This omission is a serious procedural lapse. Furthermore, the allowance of the application under Section 540 Cr.P.C. without notice and opportunity of hearing to the Appellant constitutes a flagrant violation of Article 10A of the Constitution of Islamic Republic of Pakistan, 1973, which enshrines the fundamental right to a fair trial and due process. The right to be heard is a cornerstone of any fair legal proceeding, and its denial, particularly in a criminal trial, vitiates the entire process. The trial Court's failure to adhere to these fundamental principles reflects a disregard for both the true letter and spirit of Article 10A of the Constitution, 1973 and Section 540 of the Code of Criminal Procedure, 1898.

9. Another critical procedural flaw that has emerged is the trial Court's failure to record a fresh statement of the Appellant under Section 342, Cr.P.C. after the examination of prosecution witnesses Ghulam Muhammad (Exh.13), ASI Muhammad Siddique (Exh.15), and Medical Officer Muhammad Yameen (Exh.16). Section 342, Cr.P.C. mandates that, after the prosecution evidence is recorded and before the accused is called upon to enter his defence, the Court shall question the accused generally on the case to afford him an opportunity to explain any incriminating circumstances appearing in the evidence against him. In the present case, vital and incriminating material, including medical certificates, was brought on record through the testimony of these witnesses. This evidence was later relied upon by the trial Court in rendering the impugned judgment. However, this incriminating evidence was never put to the Appellant during his statement under Section 342, Cr.P.C., thereby depriving him of a crucial opportunity to explain or

rebut it. This omission has undoubtedly prejudiced the Appellant's right of defence, as he was convicted based on evidence he was never properly confronted with. The judicial record establishes that, in contravention of established procedural norms, the learned trial Court failed to record a *de novo* statement from the Appellant. Instead, the trial Court improperly relied upon a written submission dated 15th November 2023, tendered by counsel for the Appellant, purporting to adopt the previously recorded statement under Section 342 of the Code of Criminal Procedure, 1898. This procedural course adopted by the trial Court constitutes a fundamental deviation from the statutory framework and mandatory provisions enshrined in the Code of Criminal Procedure, 1898. The purported "adoption" or "incorporation by reference" of an antecedent statement recorded under Section 342, Cr.P.C. through a subsequent written submission lacks any statutory sanction or judicial precedent. Such a procedure is wholly *ultra vires* the provisions of the Code, constitutes a jurisdictional error, and is fundamentally repugnant to the established principles of criminal jurisprudence. Consequently, this irregular and legally untenable procedure is hereby deprecated as being contrary to the due process requirements mandated by law. While an accused may, to some extent, adopt his earlier defence, it does not absolve the Court of its mandatory duty to confront him directly with newly emerged incriminating material. The trial Court's failure to comply with this essential requirement constitutes a material irregularity and has resulted in a miscarriage of justice. In similar circumstances, the Honourable Supreme Court of Pakistan, in ***Muhammad Shah v. The State (2010 SCMR 1009)***, held that: *"It is not out of place to mention here that both the Courts below have relied upon the suggestion of the appellant made to the witnesses in the cross-examination for convicting him thereby using the evidence available on the record against him. It is important to note that all incriminating pieces of evidence, available on the record, are required to be put to the accused, as provided under section 342, Cr.P.C. in which the words used are "For the purpose of enabling the accused to explain any circumstances appearing in evidence against him" which clearly demonstrate that not only the circumstances appearing in the examination-in-chief are put to the accused but the*

circumstances appearing in cross-examination or re-examination are also required to be put to the accused, if they are against him, because the evidence means examination-in-chief, cross-examination and re-examination, as provided under Article 132 read with Articles 2(c) and 71 of Qanun-e-Shahadat Order, 1984. The perusal of statement of the appellant, under section 342, Cr.P.C., reveals that the portion of the evidence which appeared in the cross-examination was not put to the accused in his statement under section 342, Cr.P.C. enabling him to explain the circumstances particularly when the same was abandoned by him. It is well-settled that if any piece of evidence is not put to the accused in his statement under section 342, Cr.P.C. then the same cannot be used against him for his conviction. In this case both the Courts below without realizing the legal position not only used the above portion of the evidence against him, but also convicted him on such piece of evidence, which cannot be sustained”.

10. Mst. Shahid in her cross examination has deposed that my house consists upon 4 rooms. I along with my brother Saeed, cousin Akhtar, husband Nazeer, children, and my two sisters and mother is residing in same house. I do not remember when I got marriage with Nazeer Ahmed. Accused Niaz is residing in Dadu city. Accused persons, used to visit our house. My husband restrained them not to come in our house. Accused has evil eye over me. We had not made such complaint to any nekmark. In our colony there are houses of Siyal community. I and my husband never remained on dispute. It is fact I and Niaz Hussain filed a C.P in the Honourable High Court. It is fact I have signed on affidavit and identification has also taken place in identification branch through photograph and thumb impression. It is incorrect I and Niaz appeared before Honourable Judge in Honourable High Court. I have not seen male and female police in the Honourable High Court. I have put my thumb impression in the Honourable High Court on some papers. Voluntarily says accused were pressuring me that if I have not put my signature then they will commit murder of my children. It is fact I have verified the averments in the Honourable High Court that same is true and correct to the best of my knowledge. Voluntarily says that I have put my signature due to

blackmailing of accused. It is correct I have not raised cries in the Honourable High Court as accused were pressurizing me and were asking that they will commit murder of my baby. It is correct I have not disclosed such facts with any staff member of Honourable High Court that I am under pressure. It is fact in para No. 2 of petition it is mentioned that I have contracted marriage with Nazeer Ahmed about 10/12 years back and I have five children from wedlock. It is incorrect I have mentioned in that petition that my husband Nazeer Ahmed was maltreating me and raising dispute over petty matters. It is incorrect I have mentioned in C.P that about one year back Nazeer Ahmed verbally divorced me. I had not mentioned in CP that Nazeer Ahmed divorced me about one year back due to dispute. It is correct my photograph is affixed on Nikahnama. It is incorrect I have contracted Nikah with Niaz Hussain. It is fact my thumb impression is affixed on Nikahnama. Voluntarily says I have put the same due to pressure of accused. I have not disclosed to Molvi that my Nikah is under force and under pressure. Molvi asked me three times that I have accept Niaz Hussain as husband. It is correct before Molvi I have not refused the Nikah nor made resistance. Advocate for accused Niaz shown her photograph to witness with Niaz having free will in hand she admitted that her photograph. Voluntarily says that she was under pressure as accused told that they will commit murder of my baby if I refused. I do not know that in my petition it is mentioned that Nazeer Ahmed lodged false FIR and same may t. cancelled. It is incorrect I have mentioned in my free will affidavit that I am divorced lady. It is correct due to fear I have made statement before Judge of Honourable High Court. It is incorrect at present I am under pressure of complainant Nazeer Ahmed hence deposed falsely. It is incorrect Nazeer Ahmed divorced me prior to Nikah with Niaz. It is correct on the day of incident I left house of my mother. It is incorrect I have contracted free will Nikah with Niaz. When police recovered me neither complainant nor any other relative was accompanied with police. After my recovery police firstly brought me at P.S then produced me before Honourable court. Police recorded my statement. I along with my minor baby were recovered by the police. It is fact I have not mentioned in my

statement that minor baby is with me. Voluntarily says minor baby was with me at that time. My statement was recorded before learned Magistrate at K.N. Shah. At the time of recording my statement my mother and husband were not available. I informed Nazeer Ahmed (complainant) that my forcible Nikah has been made with Niaz. It is fact neither I nor complainant made any application before any forum that my Nikah with Niaz is false. It is incorrect as per Shariat I am wife of Niaz. I do not know about facts of FIR lodged by complainant Nazeer. It is incorrect complainant lodged false FIR. It is incorrect I am legally wife of Niaz. It is incorrect I am residing with Nazeer illegally. It is incorrect I am deposing falsely at the instance of complainant. It is incorrect I left house of my mother for free will marriage. It is correct accused Nadir, Fayaz and Ayaz are not advocate nor witness from either side. It is incorrect complainant registered false FIR. It is incorrect complainant nominated accused Niaz and three unidentified persons. I do not know seven persons were involved in this false case. After my recovery police examined me. It is fact complainant forgiven accused Wazeer, Aslam and Imran on Holy Quran. I do not know P.Ws Saeed and Akhtar stated in their statements that I have been abducted by Wazeer, Aslam, Imran and Niaz. It is incorrect Wazeer, Aslam and Imran were innocent. There are 5/6 houses surrounding house of complainant. At the time of my abduction, I have not raised cries. My relative has not chased accused. There were 6/7 bulbs at place of incident. It is incorrect I have falsely implicated accused Ayaz, Fayaz.

11. It has come on record that during her cross-examination that Mst. Shahida candidly admitted that she, along with Niaz Hussain, had filed a Constitutional Petition (C.P.) before the Hon'ble High Court seeking quashment of the FIR. She further affirmed that she had duly signed an affidavit and undergone identification through both her photograph and thumb impression. This admission by the alleged victim clearly indicates that she was not abducted by the Appellant, but rather had voluntarily left her residence of her own free will without any coercion or pressure from the Appellant. Moreover, the act of jointly filing a C.P. and her

personal appearance before the High Court reinforces the conclusion that no force or undue influence was exercised by the Appellant upon her. During his statement recorded under Section 342 of the Code of Criminal Procedure (Cr.P.C.), the Appellant submitted a copy of the said Petition filed by both himself and Mst. Shahida before this Court. These material facts, which significantly undermine the prosecution's version, were unfortunately not taken into consideration by the learned trial Court. The failure to appreciate these aspects has resulted in a miscarriage of justice, as they are sufficient to create reasonable doubt regarding the prosecution's case. In view of the above, the Appellant is entitled to acquittal on the basis of benefit of doubt alone. It has also come on record during cross examination of the complainant that although he nominated accused Niaz and three unidentified persons in the FIR, he later voluntarily stated that the police had apprehended accused persons namely Wazeer, Aslam, and Imran who brought the Holy Quran to him, and he therefore exonerated them. He further admitted that the police never examined him under Section 162 Cr.P.C. on 23.11.2020, and that he had not submitted any affidavit before the Civil Judge K.N. Shah claiming that he had wrongly implicated anyone. The complainant also stated that although P.Ws Saeed and Akhtar were examined by police, he himself did not produce them in court for evidence, and that no neighbour had gathered at the place of incident, despite his colony comprising 40–50 houses. He confirmed that no identification of accused Aslam and Imran was done by him on 03.12.2020. Importantly, the complainant admitted that he received a notice from the High Court in the Constitutional Petition filed by Mst. Shahida and Niaz, but claimed he did not know that they had contracted marriage or produced a Nikahnama in court. He also confirmed that he was not present at the place from where Mst. Shahida was recovered, and only reached the police station after being informed. He did not deny that Mst. Shahida made a statement under Section 164 Cr.P.C. and was produced before the magistrate. However, he conceded that he had not filed any complaint or application before any forum to challenge the marriage or the petition filed in the High Court. These admissions indicate that the complainant's version

has been significantly weakened by his lack of knowledge, his failure to support key allegations with corroborating witnesses, and his subsequent exoneration of accused persons. The contradictions and omissions in his testimony raise serious doubts about the truthfulness and reliability of the prosecution's case. In similar circumstances, the Hon'ble Supreme Court of Pakistan, in the case of **Muhammad Siddique v. The State and others (2019 SCMR 1048)**, held that: *"The defence has brought on record copy of harassment petition (Ex.DA) filed by the alleged abductee Mst. Nasreen Siddique against her father Muhammad Siddique (complainant) and Ahmad Yar (given up PW) which was filed on 17.09.2010 i.e. after four days of registration of FIR, wherein she alleged that she was forced to contract Nikah with Abdul Waheed in March 2008 by her father; that she had filed a suit for dissolution of that Nikah before Family Court, Khanewal; that in order to harass her, the complainant Muhammad Siddique (her father) had got registered the instant FIR; that the complainant side is forcing her to make a false statement etc. Another complaint (Ex.DB) filed by the alleged abductee Mst. Nasreen Siddique in the Court of Illaqa Magistrate against Abdul Waheed, Muhammad Siddique (complainant), Muhammad Riaz (PW3) and Ahmad Yar (given up PW) has been brought on record, wherein it is alleged by Mst. Nasreen Siddique that on 12.09.2010, Abdul Waheed along with complainant Muhammad Siddique, Muhammad Riaz and Ahmad Yar attacked her house in order to abduct her or to kill her but on her hue and cry, people around the area reached at the spot and saved her. In these circumstances, we are not hesitant to hold that the prosecution has failed to prove its case against the petitioner beyond reasonable doubt.*

12. Based on the comprehensive analysis, this Criminal Appeal is allowed. The appellant's conviction and sentence vide Impugned Judgment dated 08.12.2023 passed by the learned Additional Sessions Judge-IV, Dadu, in Sessions Case No. **98 of 2022**, is set aside due to critical legal and constitutional violations, including:

1. **Significant violations of Article 10A** of the Constitution of the Islamic Republic of Pakistan, 1973, which guarantees the right to a fair trial.

2. **Non-compliance with the mandatory provisions** of Sections **540** and **342** of the Code of Criminal Procedure, 1898.

13. Furthermore, the trial Court failed to consider crucial exculpatory evidence: specifically, the Constitutional Petition No.D-504/2021, filed jointly by the appellant and the alleged victim, Mst. Shahida, before the High Court. This failure to evaluate vital evidence, rendered the judgment unsustainable. Consequently, the appellant is acquitted unless required to be detained in another case.

JUDGE