

ORDER SHEET
IN THE HIGH COURT OF SINDH,
 CIRCUIT COURT, HYDERABAD.
 Cr. Appeal No.S-202 of 2006

DATE	ORDER WITH SIGNATURE OF JUDGE
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For regular hearing.

25-09-2017

Appellant Muhammad Achar is present on bail.

Mushtaque Ali Tagar, advocate files power on behalf of appellant, taken on record.

Syed Meeral Shah DPG .

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ABDUL MAALIK GADDI, J- It is stated by the learned counsel for the appellant that appellant Muhammad Yousif son of Abdul Majeed Juno has been died by his natural death on 01.8.2015 and in this respect he has placed on record photocopy of the affidavit sworn by appellant Muhammad Achar, taken on record and learned DPG has not opposed the affidavit submitted by appellant. In view of the circumstances, the proceedings against deceased Muhammad Yousif stands abetted.

2. By means of this criminal Appeal, appellant assailed the legality and propriety of the judgment dated 23.09.2006 passed by the learned 1st Additional Sessions Judge, Nawabshah in Sessions Case No.234 of 2005 (Re:Muhammad Yousif &another), whereby the learned trial court after full-dressed trial convicted and sentenced the appellant as

stated in the findings of the impugned judgment in Point No.3 which reads as under:-

In view of my findings on point No.2 above I have come to the conclusion that both accused persons guilty of the offence punishable u/s 506/2 PPC read with section 34 PPC and prosecution has successfully proved the charge against them beyond any reasonable doubt. I therefore convict both the accused persons u/s 265-H(2) Cr.P.C and sentence them u/s 506/2 PPC read with section 34 PP to undergo rigorous imprisonment for one year and they will also be liable to pay fine of Rs.50,000/-each, in case of default in payment of fine they will be undergo RI for two months more. In case of realization of fine half of the fine will be given to complainant as compensation. Both the accused persons are present in the court on bail, they are taken into custody and remanded to judicial custody to serve their sentence as above. Case of Rehmatullah will be kept on dormant file till his arrest.

3. Related facts of the prosecution case narrated in the FIR are that complainant Nawab s/o Jan Mohammad Juno r/o village Jado Juno lodged FIR at PS Kazi Ahmed on 09.09.2005 at 1400 hours stated therein that he has his own herd of Goats which is grazed by his son Zamir about 5/6 years old. On 19.6.2005 as usual his son had gone to grass the goats in the Jangle when at about 5/6 pm. complainant alongwith his brother Mashooq, sister Sahib Khatoon wife of Dholan were going their village towards cultivation. When they reached near Jangle towards southern side they saw goats grazing in the Jangle, suddenly they heard the cries of his son Zamir on which he and Mashooq went towards the cries. They saw from near that Rehmatullah son of Abdul Majeed by caste Juno r/o

Hado Juno had made his son Zamir Naked threw him on the ground and was swinging upon him and his son was raising cries when they came nearer Rehmatullah raise his Shalwar and ran towards west, they saw the semen of Rehmatullah were spread around the anus of his son and blood was oozing therefrom. Thereafter put the trouser his son and took him to police station Kazi Ahmed but police did not lodge the FIR but gave him letter for hospital, where he was treated. He has further stated that he made applications to higher authorities against Rehmatullah. He has further stated that he alongwith his brother Mashook and friend Ali Muhammad son of Abdul Karim by Juno were going from village towards City Kazi Ahmed when they reached Jadoo Minor man namely Yousaf son of Abdul Majeed Juno, Achar son of Abdul Majid Juno who were having hatchets and Rehmatullah son of Abdul Majid Jono having lathi r/o Jado Juno were standing who raised hatchets and said that they will kill him if lodge case against them and asked him to leave the village. He was rescued by his brother. He thereafter went to PS and also received the medical report but all in vain and his report was not lodged by the Kazi Ahmed police. He thereafter filed application u/s 22-A Cr.P.C before Sessions Judge Nawabshah who ordered the registration of FIR. He therefore is present at P.S and report that Rehmatullah has committed forcible act of sodomy with his son and Rehmatullah

and others have advanced threats of killing him, action may be taken.

4. It is stated by the learned counsel for the appellant that on merits though the appellant has a good case for his acquittal on the ground that case of the prosecution is false and the evidence of the prosecution witnesses are on record, is contradictory to each other. He further submits that the appellant is facing agony of protracted trial since 2005 without his fault. According to him this appeal has been filed in the year 2006 and appellant is appearing in Court for the last 11 years, therefore, he would be satisfied and shall not press this appeal on merit, if the sentence awarded to the appellant by the learned trial court is reduced to the period which he has remained in jail. Per learned counsel appellant has remained in jail for the period of about 08 months. Thereafter, the appellant was granted bail by this Court under section 426 Cr.P.C vide order dated 26.09.2014 and since then appellant is attending this Court regularly and the appellant is young in age having no past criminal history. The appellant is only source for earning of his family.

5. Learned D.P.G after going through the record tenders no objection to above proposal.

6. I have thoroughly examined the record with the able assistance of learned D.P.G and Counsel for the appellant. In view of the record, I am of the opinion that the conviction of the appellant is based on

cogent reasons. The appellant is first offender. No past criminal history against him is placed on record. He is very young in age, who remained in jail for a considerable time, therefore, in the present scenario of the case, the appellant has been sufficiently punished. Under these circumstances, he needs to be given chance in his life to rehabilitate himself.

7. Consequently, in view of above, the appellant deserve leniency. While taking lenient view, I dismiss this appeal on merits; however, reduce the sentence to one already undergone by the appellant and fine is hereby remitted. Appellant is present on bail, his bail bonds stand cancelled and surety discharged.

JUDGE