

**ORDER SHEET**  
**IN THE HIGH COURT OF SINDH, CIRCUIT COURT,**  
**HYDERABAD**

Criminal Appeal No.S-178 of 2020

Appellants : Shouban, Shaman and Mansoor all sons of  
Qurban Ali Khokhar **through** Mr. Faisal Nadeem  
Abro, advocate.

The State : **Through** Ms. Sana Memon, Assistant  
Prosecutor General, Sindh.

Date of hearing : 09-07-2021.

Date of decision : 09-07-2021.

**JUDGMENT**

**IRSHAD ALI SHAH, J:** The appellants for an offence punishable under section 377-B P.P.C (wrongly typed in impugned judgment as 337-B P.P.C) read with section 34 P.P.C for subjecting PW Ahmed to sexual abuse have been convicted and sentenced to undergo rigorous imprisonment for 14 years and to pay fine of Rs.10,00,000/- each otherwise to undergo simple imprisonment for 10 months with benefit of section 382-(b) Cr.P.C by learned IVth Additional Sessions Judge, Dadu vide his Judgment dated 29.10.2020, ignoring the fact that the maximum punishment prescribed by the law for the said offence is seven years with fine upto five hundred thousand, which is impugned by the appellants before this Court by preferring the instant appeal.

2. It is contended by learned counsel for the appellants that the appellants being innocent have been involved in this case by the complainant in order to satisfy her family dispute with them; evidence of the PWs have been believed by learned Trial Court

without lawful justification and the conviction awarded to the appellants is other than the one which is prescribed by law, therefore, the appellants are entitled to their release by extending them benefit of doubt.

3. Learned A.P.G for the State has sought for dismissal of the instant appeal by supporting the impugned judgment by contending that it is based on sound reasons. However, she was fair enough to concede that the conviction awarded to the appellants other than the one which is prescribed by law.

4. I have considered the above arguments and perused the record.

5. Complainant Mst. Durnaz admittedly is not an eye witness of the incident, therefore, her evidence hardly requires any consideration, she even otherwise as is apparent from her evidence is found addicted to lodge F.I.Rs against her rivals off and on. It was stated by PW victim Ahmed that he was subjected to rape by appellant Shouban while appellants Shaman and Mansoor caught hold of him. As per DNA report the blood samples of appellant Shouban were not found matched with anal swab and stains on cloth of PW victim Ahmed. DNA report has not been challenged it apparently has absolved appellant Shouban of the liability. The involvement of appellants Mansoor and Shaman in commission of incident, on the basis of allegation that they caught hold of PW victim Ahmed at the time of alleged incident is appearing to be doubtful. As per I.O/ASI Muhammad Nawaz 161 Cr.P.C statements

of PWs victim Ahmed and Azizullah were recorded by him on 16.12.2018, it was with delay of about six days to F.I.R such delay having not been explained plausibly could not be overlooked. In these circumstances, it would be safe to conclude that the prosecution has not been able to prove its case against the appellants beyond shadow of doubt and to such benefit they are found entitled.

6. In case of *Abdul Khaliq vs. the State (1996 SCMR 1553)*, it has been held by Hon'ble Court that;

*“---S.161---Late recording of statements of the prosecution witnesses under section 161 Cr.P.C. Reduces its value to nil unless delay is plausibly explained.”*

7. In case of *Muhammad Mansha vs The State (2018 SCMR 772)*, it has been held by the Hon'ble Apex Court that;

*“4...Needless to mention that while giving the benefit of doubt to an accused it is not necessary that there should be many circumstances creating doubt. If there is a circumstance which creates reasonable doubt in a prudent mind about the guilt of the accused, then the accused would be entitled to the benefit of such doubt, not as a matter of grace and concession, but as a matter of right. It is based on the maxim, "it is better that ten guilty persons be acquitted rather than one innocent person be convicted".*

8. In view of the facts and reasons discussed above, the conviction and sentence recorded against the appellants by way of impugned judgment are set-aside. Consequently they are acquitted of the offence for which they have been

charged, tried and convicted by learned Trial Court and they shall be released forthwith, if not required in any other custody case.

9. Above are the reasons of short order dated 09-07-2021 whereby the instant appeal was allowed.

JUDGE

*Muhammad Danish Steno\**