

IN THE HIGH COURT OF SINDH, AT KARACHI

Criminal Appeal No. 581 of 2019

Appellant: Muhammad Sajid through M/S Muhammad Jamil and Mazhar Hussain Alvi, advocates

The State: Through Mr. Muhammad Anwar Mahar, DDPP alongwith complainant Danish Masih

Date of hearing: 17.08.2023

Date of judgment: 17.08.2023

J U D G M E N T

IRSHAD ALI SHAH, J- It is alleged that the appellant attempted to commit rape with baby Dinsha, a girl aged about 07 years, for that he was booked and reported upon by the police. On conclusion of trial, he was convicted u/s 376 r/w Section 511 PPC and was sentenced to undergo rigorous imprisonment for 12 years and 06 months with fine of Rs.50,000/- and in default whereof to undergo simple imprisonment for 06 months, without passing any order under Section 382(b) Cr.P.C by learned VIIIth-Additional Sessions Judge, Karachi East, vide judgment dated 03.09.2019, which is impugned by the appellant before this Court by preferring the instant appeal.

2. At the very outset, it is contended by learned counsel for the appellant that at the most it would be a case of outraging the modesty of baby Dinsha; the appellant inclusive of remission has already undergone more than 07 years of the sentence, therefore under instructions he would not press disposal of instant Criminal Appeal before this Court on merits, provided the sentence awarded to the appellant is reduced to one which he has already undergone, which is opposed by learned DDPP for the State who is assisted by the complainant by stating that the offence alleged against the appellant is affecting the society at large.

3. Heard arguments and perused the record.

4. As per FIR, the allegation against the appellant is only to the extent that he put the hands of baby Dinsha on his penis and then attempted to remove her *Shalwar*; such allegation, if is believed to be true then it constitutes an offence punishable under section 354 PPC.

5. In case of *Muhammad Sharif vs. The State (1986 P.Cr.L.J 2496)*, it has been held by the Honourable Federal Shariat Court that;

“.....from the record as demonstrated above the appellant was at the most trying to make Mst. Parveen naked by unfastening the Shalwar. He did not succeed in the attempt of removal of the Shalwar and did not take away his own Shalwar. The Shalwar of Mst. Parveen was not even torn (it has not been even alleged). In these circumstances it cannot be held that the appellant had been guilty of the offence under section 11 or 10 (3) A read with section 18 of the Ordinance and in our opinion has been guilty of offence under section 354, P.P.C. and can be convicted and sentenced under that section. We accordingly allow this appeal, set aside the conviction and sentences under section 11 and 10 (3) read with section 18 of the Ordinance and convert the conviction to one under section 354, P.P.C. and sentence him to the sentence, already undergone by him.....”

6. In view of above, the conviction awarded to the appellant under Section 376 r/w Section 511 PPC is modified with one under Section 354 PPC, consequently the appellant is sentenced to undergo rigorous imprisonment for 02 years with fine of Rs.20,000/- and in default whereof to undergo simple imprisonment for 03 months with benefit of Section 382(b) Cr.P.C.

7. The instant Criminal Appeal is disposed of subject to above modification.

JUDGE