

IN THE HIGH COURT OF SINDH, AT KARACHI

Criminal Appeal No. 119 of 2023

Appellant: Muhammad Ikram through Mr. Sajjad Gul Khatri, advocate

The State: Through Mr. Khadim Hussain Khuharo, Addl. PG alongwith complainant Muhammad Akhtar

Date of hearing: 23.08.2023

Date of judgment: 23.08.2023

J U D G M E N T

IRSHAD ALI SHAH, J- It is alleged that the appellant attempted to commit rape with baby Muskan, a girl aged about 06 years, for that he was booked and reported upon by the police. On conclusion of trial, he was convicted u/s 376/511 PPC and was sentenced to undergo rigorous imprisonment for five years, with benefit of Section 382(b) Cr.P.C by learned IInd-Additional Sessions Judge, Karachi Central, vide judgment dated 07.02.2023, which he has impugned before this Court by preferring the instant Criminal 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 Muskan; the appellant inclusive of remission has already undergone 02 years, 06 months and 16 days 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 by modifying the penal section, which is not opposed by learned Addl. PG for the State who is assisted by the complainant Muhammad Akhtar.

3. Heard arguments and perused the record.

4. The formal FIR of the incident which is to be recorded on printed prescribed proforma has not been brought on record of the Court by the prosecution. There is no medical evidence. SIP Baag Ali who has conducted the investigation has not been examined by the prosecution on account of his death. Evidence of PW Mst. Kausar is not bearing the signature of Presiding Officer of the court as such it is to be excluded from

consideration. As per 154 Cr.PC statement which is recorded by ASI Naveed Ahmed, on plain paper, the allegation against the appellant is only to the extent that he put off the *shalwar* of baby Muskan and then slept over her; there is no allegation of rape; such allegation, so leveled against the appellant by the complainant party, 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 10 days with benefit of Section 382(b) Cr.P.C.

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

JUDGE