

IN THE HIGH COURT OF SINDH, AT KARACHI

Criminal Jail Appeal No. 184 of 2023

Appellant: Muhammad Imran Moeed through Mr. Musharaf Azhar, advocate

The State: Through Muhammad Anwar Mahar, DDPP for the State

Date of hearing: 02.05.2024

Date of judgment: 02.05.2024

J U D G M E N T

IRSHAD ALI SHAH, J- It is alleged that the appellant attempted to commit rape with baby Mehak, a girl aged about 09 years, for that he was booked and reported upon by the police. On conclusion of the trial, he was convicted under section 376 r/w Section 511 PPC and was sentenced to undergo rigorous imprisonment for 10 years and to fine of Rs.100,000/- and in default in payment whereof to undergo simple imprisonment for three months, with benefit of Section 382-B Cr.PC, by learned IIIrd-Additional Sessions Judge, Karachi South, vide judgment dated 08.03.2023, which is impugned by the appellant before this Court by preferring the instant Crl. Jail Appeal.

2. At the very outset, it is stated by learned counsel for the appellant that he would not press disposal of instant Crl. Jail Appeal 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 DDPP for the State.

3. Heard arguments and perused the record.

4. It was stated by P.W Mehak that the appellant kissed her cheek; if it is believed then such an allegation constitutes an act of outraging her modesty on the part of the appellant, 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 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. Under given the circumstances, the sentence awarded to the appellant under Section 376 r/w section 511 PPC is modified with Section 354 PPC; consequently, the appellant for the said offence is convicted and sentenced to undergo rigorous imprisonment for 02 years and to pay a fine of Rs.20,000/- and in default in payment whereof to undergo simple imprisonment for one month with the benefit of Section 382-B Cr.P.C.

7. The instant CrI. Jail Appeal is disposed of accordingly.

JUDGE