

ORDER SHEET

IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD

Cr. Appeal No.S-15 of 2016.

DATE	ORDER WITH SIGNATURE OF JUDGE
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1. For orders on office objection.
2. For hearing of M.A-936 of 2016 as well as main case.

21.06.2017.

M/s Meer Ahmed Mangrio and Mohsin Raza Gopang, Advocates for the appellants.

Mr. Shahid Ahmed Shaikh, A.P.G.
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Learned counsel for appellants after arguing at some length, contends that this is not a case of section 337-J PPC; appellants were charged under section 337-J PPC for an allegation that while administering intoxicating substance they committed unnatural offence upon victim Muhammad Ashraf. Muhammad Ashraf though has supported the version of F.I.R., but medical evidence is not supporting with regard to administering of intoxicating substance, hence conviction awarded under section 377 PPC is unwarranted under the law, whereas minimum sentence as provided under section 377 PPC is 02 years; appellants are first offenders; they have remained in jail for about 25 months including remissions earned by them; they are only male members of their respective family to earn the bread and butter.

2. In contra, learned APG halfheartedly opposed such proposition.

3. It is matter of record that medical evidence is not supporting with regard to section 337-J PPC and prosecution has failed to establish that any intoxicating substance was poured / administered to the victim. The sections 337-J and 377 PPC have their *independent* ingredients and have no *nexus* with each other. Since, *prima facie* the main ingredient to attract Section 337-J i.e 'hurt by any poison or any stupefying, intoxicating or unwholesome drug' was never proved by prosecution therefore, conviction under section 337-J was never maintainable however, with regard to unnatural offence medical evidence is supportive which attracts Section 377 PPC. The Section 377 PPC provides minimum punishment **not less than 2 years**. Per learned

counsel, appellants have remained in jail for about 25 months including remissions. It is further emphasized by learned counsel for appellants that appellants were also young at the time of incident and material contradictions have come on record. Since concept of punishment is based on various theories i.e. reformatory, deterrence and retributive hence in matters of young-age offenders every hope of possibility of *reformation* normally to be considered particularly where confinement is claimed to be effecting *families* of offenders *too*.

4. Learned APG is not seriously opposing the proposal made by counsel for appellants with substance that appellants deserve maximum punishment and for awarding maximum sentence excavating circumstances are required, which *prima facie* are lacking in this case hence it would meet the end of justice to reduce the sentence by maintaining conviction. Accordingly, impugned judgment is modified; conviction awarded by the trial court under section 377 PPC i.e. five years is altered to the extent of RI for two years and as the appellants have already undergone the sentence of 25 months, hence they shall be released forthwith if not required in any other custody case.

Instant appeal is disposed of in above terms.

JUDGE

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