

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

Cr. Jail Appeal No. D- 76 of 2014
Cr. Jail Appeal No. D- 63 of 2014
Cr. Jail Appeal No. D- 78 of 2014
Cr. Appeal No. D- 77 of 2014
Cr. Appeal No. D- 59 of 2014

DATED

ORDER WITH SIGNATURE OF JUDGE

13.09.2017

M/s. Hameedullah Dahri & Nazeer Ahmed Bhatti, advocate for appellants
Mr. Shahzad Saleem Nahiyoon, D.P.G.

At the outset, learned counsel for appellants contends that the judgment of the trial court is harsh; one of the appellant has been convicted for death sentence in spite of that fact that there is no evidence of rape. As per evidence of abductee the accused persons forcibly took her away but she did not state in her evidence that any sexual intercourse was committed with her as well medical evidence is negative. After arguing at length learned counsel for appellants agreed that they would not press the instant appeal on merits, if the sentence is reduced up to 07 years. They further submit that the appellants are first offenders and have been implicated falsely in this case; ingredients of Section 364-A with regard to providing punishment with full dose are not available hence quantum of lesser punishment may be considered.

Learned DPG extended his no objection on the above proposal.

Perusal of evidence of abductee and the case file including medical evidence it transpires that factum of non-commission of *rape* is not disputed. Except the allegation of abduction no other ingredient with regard to compelling her for zina or selling her is available. The purpose of providing different punishments for same *offence* even by the legislature is apparently with some object. Awarding of conviction shall always require establishing of the *offence* but it shall not necessarily require the court to award *maximum* punishment rather the Court shall always be *obliged* to examine gathering circumstances so as to justify *maximum* sentence. A comparative reading of the *two* provisions i.e. Section 364 and 364-A PPC would make it clear that *if kidnapping of any person* (under age (fourteen) is for murder; grievous hurt; slavery or to lust of any

person etc, only then the act of *kidnapping* shall fall within meaning of Section 364-A else it (kidnapping) will remain confine to Section 364 PPC *only*.

In the instant matter, the prosecution does not claim proof of other required ingredients except that of *abduction / kidnapping* hence conviction under Section 364-A PPC legally cannot sustain. Even otherwise, the section 364-A PPC *itself* provides a legal punishment i.e '**shall not be less than seven years**'. Thus, prima facie the maximum punishment, so awarded to appellants, is not justifiable. The courts are required to examine the facts and circumstances of the case as well nature of allegation and circumstances of the appellant as well while awarding punishment. Admittedly lesser punishment is 07 years; hence we feel that this is a case of lesser punishment thereby impugned judgment is modified and sentence is reduced from death / life to 07 years including fine with benefit of Section 382-B Cr.P.C. Superintendent Central Prison, Hyderabad shall calculated the remission earned by the appellants during trial and during pendency of appeal and on expiry of 07 years punishment and they shall be released forthwith if not required in any other custody case.

JUDGE

JUDGE