

JUDGMENT SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT
HYDERABAD

Cr. Rev. Appln. No.S-63 of 2022

DATE	ORDER WITH SIGNATURE OF JUDGE(S)
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1. For orders on office objections.
2. For orders on MA-4679/2022
3. For hearing of main case.
4. For hearing of MA-4580/2022

Date of hearing : 18.11.2022
Date of judgment : 18.11.2022

Applicants Khuda Bux alias : Through Mr. Muhammad
Khuda Dino and Sarfraz Rahim Gaju, Advocate
alias Jani.

The State : Through Ms. Sana Memon,
Assistant P.G.

Complainant and Victim : Azad Gul and Fisham are
present in person.

JUDGMENT

Muhammad Saleem Jessar, J.- Through this criminal revision application, applicants/convicts have assailed judgment dated 21.04.2022 passed by Additional Sessions Judge-I, Tharparkar at Mithi (Appellate Court) in Criminal Appeal No.22/2011 (Re: Khuda Bux alias Khuda Dino and another v. The State), whereby Appellate Court dismissed the appeal filed by applicants/convicts and maintained the judgment dated 03.11.2021 passed by Civil Judge/Judicial Magistrate/Consumer Protection Court, Tharparkar at Mithi (Trial Court) in Criminal Case No.22 of 2021 (Old No.61 of 2021) (Re: The State v. Khuda Bux alias Khuda Dino and another) being outcome of FIR No.49 of 2021 of P.S Mithi, under Sections 377, 506 PPC, who after full dressed trial, found the applicants/convicts to be guilty of the charges and therefore convicted and sentenced them to rigorous imprisonment for three years with fine of

Rs.10,000/- each, in default thereof to suffer simple imprisonment for one month more; however, with benefit of Section, 382-B Cr.P.C.

2. The allegation against the applicants / convicts as leveled by the prosecution is that on 15.04.2021 they committed sodomy with victim Fisham, aged about 14/15 years, the brother of complainant and consequently present FIR was lodged.

3. After completion of usual as well legal formalities a formal charge against the applicants / convicts was framed to which they pleaded not guilty and claimed to be tried. The case proceeded before the trial Court and after full dressed trial, the trial Court found the applicants / convicts guilty of the offence and were sentenced as mentioned above; which sentence have been maintained by the Appellate Court; hence, this revision application has been maintained by the applicants / convicts.

4. In compliance of order dated 10.11.2022 the jail authorities have submitted jail roles of applicants which reveal that remaining portion of their sentence is 10 months and 25 days only. Complainant Azad Gul as well victim Fisham present in Court have filed their affidavits duly sworn in by them today viz. 18.11.2022; taken on record. In their respective affidavits the victim as well complainant have categorically stated that they have no objection if the applicants / convicts are acquitted of the charges.

5. Learned Counsel for applicants / convicts submits that as per prosecution evidence particularly medical evidence available at Page-28 of the paper book, the alleged semen collected by the I.O during investigation was not matched; hence, the medical evidence is in negative; therefore, he submits that in such eventuality the prosecution seems to have failed to prove charge against the applicants; hence, pray for allowing instant revision application as well acquittal of the applicants by way of benefit of doubt.

6. Learned Assistant P.G Sindh after going through the record submits that per medical evidence which is inconsistent with the ocular version coupled with the fact that victim as well complainant have extended their no objection; therefore, she also extends her no objection.

7. Heard and perused the record.

8. Per impugned judgment the applicants have been sentenced to suffer R.I for three years with fine of Rs.10,000/- each. Out of said sentence, they have served out the sentence of 08 months and 12 days and have earned remission of 01 year 05 months and 23 days; and the remaining portion of their sentence is 10 months and 25 days. Admittedly, the FIR is delayed for about one day and the medical evidence / DNA does not support the prosecution case. As per prosecution case, the applicants had allegedly committed un-natural offence with the victim; however, such allegation does not get support from the medical evidence; therefore, such conduct on the part of prosecution shows that prosecution has not come with its clean hands. It is well settled principle of law that prosecution has to stand on its own legs to prove the charge against accused and the benefit of doubt, even a slightest, if arises out of the prosecution case, shall go in favour of the accused as of his right but not grace or concession. Reliance in this respect may be placed upon the case of MUHAMMAD MANSHA v. The STATE (2018 SCMR 722). In this case, a major discrepancy in the shape of negative DNA report has established and since the entire ocular version was not corroborated by the medical evidence; therefore, the revision application in hand appears to be considered for its allowing.

9. In view of above discussion, instant revision application merits consideration and consequently it is hereby allowed. Resultantly, applicants Khuda Bux @ Khuda Dino and Sarfraz @ Jani are hereby acquitted of the charges. They shall be released forthwith if their custody is no more required in any other custody case.

JUDGE

Shahid

