

**ORDER SHEET**  
**IN THE HIGH COURT OF SINDH KARACHI**

Criminal Appeal No. 380 of 2022

<b>DATE</b>	<b>ORDER WITH SIGNATURE OF JUDGES</b>
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1. For orders on MA No.7057/2022
2. For hearing of case
3. For hearing of MA No.7058/2022

**30-09-2022**

Barrister Fayyaz Ahmed a/w M/s. Mehboob A. Zardari and Ghulam Mustafa Bughio for applicant.  
Mr. Talib Ali Memon, A.P.G.

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**Omar Sial, J:** I have heard the counsels. It transpires that an error has been made by the learned trial court in the sentencing portion of the judgment. The charge against the appellant was framed for having committed an offence under section 377 P.P.C. This section provides as follows:

**377. Unnatural offences.** *Whoever voluntarily has carnal intercourse against the order of nature with any man, woman or animal, shall be punished with imprisonment for life, or with imprisonment of either description for a term which shall not be less than two years nor more than] ten years, and shall also be liable to fine.*

**Explanation.** *Penetration is sufficient to constitute the carnal intercourse necessary to the offence described in this section.*

2. From a reading of the judgment, it appears that the learned trial judge was satisfied that an offence under section 377 P.P.C had occurred. The sentence for such an offence is provided within the section itself.

3. The learned judge however has sentenced the appellant under section 377-B P.P.C. It would facilitate reference if the sections 377-A and 377-B P.P.C. are reproduced:

**377A. Sexual abuse.** *Whoever employs, uses, forces, persuades, induces, entices, or coerces any person to engage in, or assist any other person to engage in fondling, stroking, caressing, exhibitionism, voyeurism or any obscene or sexually explicit conduct or simulation of such conduct either*

*independently or in conjunction with other acts, with or without consent where age of person is less than eighteen years, is said to commit the offence of sexual abuse.*

**377B. Punishment.** *Whoever commits the offence of sexual abuse shall be punished with imprisonment of either description for a term which may extend to seven years and liable to fine which shall not be less than five hundred thousand rupees or with both.*

4. The above provisions of law reflect that the punishment under section 377-B is restricted to an offence of sexual abuse which is defined in section 377-A P.P.C. The learned judge was at liberty to conclude after evidence had been reviewed that an offence under section 377 P.P.C. was not made out and that according to her it was an offence under section 377-A P.P.C. which was proved. If that was the case, reasons should have been given and then the punishment awarded should also have been in line with that in section 377-B P.P.C. A 14 year imprisonment sentence that has been awarded is not in consonance with that provided in section 377-B.

5. I am usually reluctant to remand back cases as inevitably it causes a lot of inconvenience to all concerned and burdens further an already overly burdened legal system. In this particular case however, I cannot take the liberty, nor would taking such liberty be appropriate, to read into the mind of the learned judge as to whether she concluded that an offence under section 377 P.P.C. or 377-A P.P.C. had been proven against the appellant. This appeal is therefore remanded back to the learned trial court for the limited purpose of re-writing the judgment afresh and to ensure that the sentence awarded is in line with the offence held to have been committed. The learned counsel for the appellant nor the learned APG have any objection to the same.

6. Appeal stands disposed of in the above terms alongwith pending applications.

JUDGE