

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR
Criminal Appeal No.s-102 of 2023

Appellant: Zahid Hussain son of Four Ali bycaste
Mallah **through** Manzoor Hussain Larik,
advocate

The State: Through Mr. Shafi Muhammad Mahar,
Deputy Prosecutor General.

Date of hearing: 08-12-2023

Date of judgment: 08-12-2023

J U D G M E N T

IRSHAD ALI SHAH, J- It is alleged that the appellant attempted to commit rape with baby Ghulam Zainab, a girl aged about 5/6 years by putting off her *shalwar*, for that he was booked and reported upon by the police. On conclusion of trial, he was convicted u/s 376 (iii) PPC and was sentenced to undergo rigorous imprisonment for twelve years, with fine of Rs. 50,000/- and in default whereof to undergo simple imprisonment for three months with benefit of Section 382(b) Cr.P.C by learned IVth Additional Sessions Judge/Gender Based Violence Court, Khairpur, vide judgment dated 22-09-2023, which he has impugned before this Court by preferring the instant Criminal Appeal.

2. At the very outset, it is contended by learned counsel for the appellant that the appellant being innocent has been involved in this case by the complainant party to satisfy with him its civil dispute; at the most it would be a case of outraging the modesty of baby Ghulam Zainab; besides remission of 09 months and 05 days; the appellant has already undergone substantial sentence of 01 year, 08 months and 13 days, therefore under instructions he would not press disposal of instant Criminal Appeal before this Court on merits, provided the sentence awarded to the appellant is reduced to one which he has already undergone by modifying the penal section with one u/s 354 PPC, which is opposed by learned Deputy P.G for the State by

contending that the offence alleged against the appellant is affecting the society at large.

3. Heard arguments and perused the record.

4. As is evident, the entire investigation of the case has been conducted either by WHC or PC Ali Hassan of PS Bozdar Wada. None of them has been examined by the prosecution, which has prejudiced the appellant in his defence. Baby Ghulam Zainab the victim of the incident has not been able to make statement before learned trial Court. The benefit of such omission is to be extended to the appellant. No independent person has been cited as a witness, perhaps knowingly. The appellant has claimed to have been involved in this case falsely by the complainant party on account of pendency of civil suit. There is no allegation of rape against the appellant. It is the case of mere attempt. If is believed to be true then it constitutes an offence punishable u/s 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. In view of above, the conviction awarded to the appellant under Section 376 (iii) r/w 511 PPC is modified with one u/s 354 PPC, consequently the appellant is convicted accordingly and sentenced to undergo rigorous imprisonment for two years and to pay fine of rupees five thousand and in default whereof to undergo simple imprisonment for ten days with benefit of Section 382(b) Cr.P.C.

7. The instant Criminal Appeal is disposed of subject to above modification.

JUDGE

Nasim/P.A