

IN THE HIGH COURT OF SINDH, KARACHI
Cr. Revision Application No. 05 of 2023

Applicant : The State, through Mr. Mumtaz Ali Shah,
Assistant Prosecutor General, Sindh

Respondent : Nikson Malik s/o Malik Masih, through
Mr. Ghulam Muhammad, Advocate

Date of hearing : 27.03.2025
Date of order : 27.03.2025

ORDER

ZAFAR AHMED RAJPUT. J :- This Cr. Revision Application under section 435 and 439, Cr. P.C. is directed against the Judgment, dated 07.07.2022, passed in Session Case No. 1760/2021, arisen out of FIR No. 370/2021 registered at P.S. Peerabad, Karachi under sections 376 read with section 511 of the Pakistan Penal Code (the “Code”), whereby by the learned X-Additional District & Sessions Judge, Karachi-West convicted the Respondent / accused for the said offence and sentenced him R.I. for two years with fine of Rs. 50,000/=, and/or in default thereof, he should suffer S.I. for six month more.

2. As per prosecution case, on 08.05.2021 at 1730, the Respondent attempted to commit rape on minor Habarsa, 09, the daughter of complainant, who went to him for tuition.

3. Learned A.P.G contends that on the relevant day when the alleged offence was committed i.e. 08,05,2021, the punishment provided for the offence under section 376 of the Code is death; imprisonment of either description for a term which shall not be less than 10 years or more than 25 years; that since the sentence awarded to the Respondent is not as per law, the instant Application has been maintained; that this is a fit case for the enhancement of sentence.

4. On the other hand, learned counsel for the Respondent maintains that the Trial Court has rightly taken leniency while awarding sentence to respondent in the circumstances of the case.

5. Heard and perused the record.

6. It appears from perusal of the record that after a full-fledged trial, the Respondent has been found guilty of the charge under section 376, read with section 511 of the Code for attempting rape on victim minor Habarsa. The term of imprisonment provided under section 376 of the Code is *not be less than 10 years or more than 25 years* in case rape is committed. Since no punishment has been provided for the attempt of rape under section 376 (*ibid*), the prosecution added section 511 of the Code, which is a general section dealing with attempts to commit offences which are not made punishable by specific section of the Code, and it provides punishment for attempting to commit offences punishable with imprisonment for life or for a shorter term where no express provision is made by the Code for the punishment of such attempt, be punished with imprisonment of any description provided for the offence for a term which “*may extend to*” *one-half of the longest term of imprisonment provided for that offence*. The phrase “may extend to” indicates that the court has the discretion to impose a sentence up to that maximum, but not necessarily that maximum.

7. It may be observed that the punishment for any offence committed by a person is awarded for retribution, deterrence and in order to strengthen the society by reforming the guilty. The law itself has categorized the offences. There are certain offences, which carry punishment with phrase “*not less than*” while there are also offences, which carry punishment with phrase “*may extend up-to*”. Such difference itself is indicative that the Courts have to appreciate certain circumstances before awarding quantum of punishment in later case which appear

to be dealing with those offences; the guilty thereof may be given an opportunity of reformation by awarding less punishment.

8. In the instant case, the learned trial Court while observing in its judgment that there was no previous record of the Respondent for committing such like offence, has taken leniency in awarding him sentence. The age of the Respondent at the time of committing the alleged offence was recorded by PW-2 Dr. Muhammad Areeb as 17 years; hence, he has been given by the trial Court an opportunity for reformation by awarding less punishment.

9. For the foregoing facts and reasons, we find no illegality in exercising its discretion by the trial Court in awarding sentence to the Respondent. This Criminal Revision Application is, therefore, dismissed accordingly being devoid of any merit.

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