

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

Present:
Mr. Justice Muhammad Iqbal Kalhoro
Mr. Justice Khalid Hussain Shahani

Cr. Revision Application No.105 of 2024
(Shahjahan Khokhar **vs.** The State & another)

Date of hearing : **03.09.2026**
Date of order : **14.09.2026**

Mr. Wazeer Hussain Khoso, advocate for applicant
Mr. Qamar Abbas Abbasi, advocate for respondent No.1
Mr. Muhamad Ali Noonari, APG

ORDER

Muhammad Iqbal Kalhoro, J:- This revision application has been filed by complainant Shahjahan Khokhar, seeking enhancement of sentence awarded to respondent No.1, Kamran Ali Shah, in Sessions Case No.1096/2020, arising out of Crime No.71/2020, u/s 364-A, 376(iii), 292-C, 171, 109 PPC, Police Station Sachal, Karachi vide judgment dated 20.03.2024 passed by the V-Additional Sessions Judge, Malir, Karachi.

2. As per FIR, registered on 22.01.2020, complainant's daughter, namely, Kainat, aged about 13 years, was abducted by unknown accused on 20.01.2020 from a Tuition Centre viz. S.T. Jacob Grammar Secondary School, situated at Maroorah Goth, Karachi, where, she used to go along with her two minor sisters for getting tuition.

3. In ensuing investigation, various suspects were rounded up, but the abductee could not be recovered. She was recovered on the basis of some spy information on 22.02.2020 from the custody of respondent housed in a building known as 'Hanafia Manzil', Street No.2, Moosa Line, Khadda Market, Karachi. At the time of recovery, her hands were found tied with ropes. She was medically then examined on 23.02.2020 by PW-6, Dr. Zainab Irshad, who found on her person marks of violence i.e. bruises around ankles B/L, greenish in color linear, pattern 1.7x9 cm; besides a tear present at posterior fourchette. Her recovery, medical report, and findings of the investigation led to submission of the Challan in the relevant Court and commencement of a trial against five accused, including respondent.

4. In response to a formal charge, the accused pleaded not guilty and claimed trial. Hence, prosecution examined as many as 11 witnesses, including complainant, victim, medico-legal officer, and investigating officer. After the completion of the prosecution evidence, the statements of accused were recorded u/s 342 Cr.PC. In the said statement, respondent claimed

that he had married the minor victim with her consent on 08.01.2020, which fact was in knowledge of her mother and maternal aunt. He further claimed to have been falsely implicated in the case. In order to support factum of his marriage, he produced a photocopy of the Nikahnama and a Marriage Registration Certificate purportedly issued by NADRA.

5. The trial Court, after examining the entire material brought on record, vide impugned judgment, has acquitted all the accused except respondent, Kamran Ali Shah. He has been convicted for multiple offences, u/s 364-A PPC RI for 10 years' with a fine of Rs.50,000/-; u/s 376(iii) PPC to suffer R.I. for 10 years with a fine of Rs.50,000/-, and u/s 3 & 4 of the Sindh Child Marriage Restraint Act, 2013 to suffer 03 years' imprisonment with a fine of Rs.10,000/-. Notwithstanding, he has been extended the benefit of section 382-B Cr.PC.

6. It is the quantum of sentence u/s 376(iii) PPC i.e. 10 years' R.I., which has essentially been challenged by applicant on the ground that the said offence carries only two punishments i.e. death or imprisonment of life and fine. Hence, the trial Court had no option, when it found the accused guilty under the said offence to sentence him for 10 years' R.I. instead of either death or imprisonment for life and fine. Further, the Court decided to award a sentence of 10 years, different than what is provided in law, without explaining jurisdiction empowering it to do so – award the lesser sentence – in absence of any mandate by the law.

7. We may remind here that the respondent has not filed any appeal against his multiple convictions and sentences awarded by the trial Court, and hence, declaration of his guilt (conviction) has attained finality. Since, the applicant has prayed for enhancement of his sentence to death, and no counsel was representing the respondent here in this application, we appointed Mr. Qamar Abbas Abbasi, advocate for this purpose vide order dated 30.04.2026. He has pleaded the case on his behalf after getting necessary instructions from him. His line of argument mainly is that the trial Court has convicted and sentenced the respondent u/s 3 & 4 of the Sindh Child Marriage Restraint Act, 2013. Meaning thereby, the Court has accepted factum of marriage between the victim and respondent. Such acceptance would lead to extenuating circumstance in favour of respondent, therefore, any application for enhancement of his sentence would not be maintainable and cannot be entertained. Once, the Court accepts the marriage between the parties to have happened, then question of rape with the victim would go away.

8. Learned Assistant Prosecutor General Sindh has, however, supported the complainant's plea for enhancement of the sentence.

9. We have heard the parties and perused material available on record. It is an admitted position that respondent has not challenged his convictions and sentences awarded to him for committing the alleged offences. To our specific query, his counsel replied that when he had asked this question from the respondent, he said that he was fearful to his life, and would rather remain in jail than be released. Be that as it may, in these proceedings, we are confronted with a legal question that when an offence carries a particular quantum of sentence in law, whether the trial Court on finding the accused guilty thereof can deviate under any circumstances, and award either a lesser or a higher sentence than the one provided by the law. The Superior Courts in various decisions have always held that the Court has no jurisdiction or power to impose less than minimum sentence laid down in the Statute.

10. The Supreme Court of India in one case¹ was seized with the question whether the High Court could award less than the minimum sentence contemplated by the Statute. In this case, the accused was charged for an offence u/s 3(i) (ix) of the Scheduled Casts and Scheduled Tribes (Prevention of Atrocities Act, 1989). The section provided a minimum sentence of six months extendable maximally up to five years and fine. The High Court of Madhya Pradesh, India, sentenced the accused for a period already undergone by him. The appeal was allowed by the Supreme Court of India and the High Court's order was set aside. The accused was ordered to undergo the remaining sentence imposed by the trial Court. The Supreme Court while doing so has categorically held that where a minimum sentence is provided for a particular offence, the Court cannot impose less sentence than that even under the jurisdiction conferred by the Constitution (as in this case one of the arguments was that under the constitutional jurisdiction, the High Court was empowered to award less sentence than the one provided in law).

11. In another case² the Supreme Court of India has observed (in the context of sections 302 and 303 IPC) that the Court has no option u/s 303 (punishable only for death) to impose any other sentence except death, since section 303 IPC does not provide alternative sentence, no matter what is motivation of the crime and the circumstances in which it was committed. These remarks have been given by Supreme Court of India, when vires of

¹ State of Madhya Pradesh v. Vikram Das (AIR 2019 SC 835 = MANU/SC/0159/2019)

² Mithu vs. State of Punjab (AIR 1983 SC 473=MANU/SC/0065/1983)

section 303 IPC were challenged in the context of Article 21 of the Constitution, which provides that “no person shall be deprived of his life or personal liberty except according to the procedure established by law”, and it was struck down as unconstitutional.

12. In a yet different case³ where the issue was whether the Supreme Court, in contempt jurisdiction, while convicting an advocate could additionally suspend his right to practice as an advocate for three years when the Advocates Act, 1961 specifically entrusted suspension/removal from the roll to statutory disciplinary authorities. The Constitution Bench of Supreme Court of India has held that suspension of the advocate’s licence to practice could not be imposed by the Supreme Court in the contempt proceedings. The relevant disciplinary power belonged to the competent statutory authorities under the Advocates Act. That means that where the Statute does not empower the Court to inflict a particular punishment not provided in law, even the Supreme Court has no power to award the same.

13. In the same context, the Supreme Court of India has decided yet another case⁴. Here, the appellants were convicted under the Prevention of Corruption Act, 1988. The relevant provisions prescribed minimum terms of imprisonment. The appellants sought reduction of the sentences below those statutory minimums by relying on Article 142 of the Constitution and mitigating circumstances. The Supreme Court rejected the argument and held that constitutional powers, albeit wide, cannot be exercised in direct conflict with an express statutory provision. As a result, the convictions and minimum sentences were maintained

14. Lastly, the Supreme Court of Pakistan in a case⁵, where a final-year medical student had been involved in assaulting a professor and was rusticated for three years by the Principal, following disciplinary proceedings, has considered a question whether the applicable rules authorized the Principal to impose a punishment beyond the punishment actually prescribed by the rules. The Supreme Court of Pakistan has held that the impugned order was invalid. The appellant’s rustication was declared valid only for one year (maximum period as provided by the rules). This judgment lays down that higher punishment than the one provided in law cannot be awarded.

15. The ratio of aforesaid judgments clearly shows that the Courts have no power to impose a sentence different (higher or lesser) than what is

³ Supreme Court Bar Association vs. Union of India (AIR 1998 SC 1895=MANU/SC/0291/1998)

⁴ Narendra Champaklal Trivedi vs. State of Gujarat (AIR 2012 SC 2263=MANU/SC/0848/2012)

⁵ Muhammad Iqbal Niazi vs. Vice Chancellor, University of Panjab (PLD 1979 SC 1)

provided in the Statute for an offence. In the present case, section 376(iii) PPC carries only two punishments either death or imprisonment of life. The trial Court, after holding the respondent guilty of the said offence, had no option left but to either punish him with death or life imprisonment. No reason has been given by the trial Court either as to why, despite the specific punishments provided under the said provision, it had preferred to impose a sentence i.e. 10 years R.I. different and lesser than what is provided in law.

16. Insofar as, the argument of learned counsel for the respondent that since the respondent had produced evidence of marriage with the victim, the punishment awarded by the trial Court has served the interest of justice and the same is adequate is. We are of the view that this ground is devoid of any merit. Firstly, because, the law does not provide that under certain circumstances, including the one addressed here, the Court can detract from the sentence provided by law and punish the accused in different terms. Secondly, in fact there is no evidence produced by the prosecution on record to establish that the victim had married with respondent No.2. An act of producing photocopies of certain documents by respondent in his 342 Cr.PC statement is not akin to presenting prosecution evidence. It is settled that the same, under no circumstances, can be considered so for holding the accused guilty and awarding him punishment.

17. The learned trial Court in convicting and sentencing the accused u/s 3 & 4 of the Sindh Child Marriage Restraint Act, 2013, without such accusation, charge, and relevant evidence brought on record by the prosecution acted illegally and against the law. The trial Court simply got influenced from the said documents without realizing that they were produced in defence. The purpose for defence evidence is to draw attention of the Court to compare it in juxtaposition with the prosecution evidence and arrive at a just conclusion. The defence evidence, if any, and irrespective of its nature and value, will not constitute a part of prosecution case, so as to provide an option to the Court to consider it as incriminating evidence and punish the accused based on it. It is either accepted in defence and benefit extended to the accused or discarded altogether. There is no law sanctifying conversion of defence evidence into prosecution evidence and awarding conviction to the accused on the basis thereof.

18. In this case, if the trial Court wanted to consider and rely upon the defence evidence, it should have done so by comparing the same with the prosecution evidence and appreciating the merits of the case accordingly.

19. Through the defence evidence, the respondent had attempted to deny the prosecution case of committing rape with the victim on the one hand, and on the other, by such documents, he had tried to disprove allegation of the victim being a minor, as in the said documents, the victim is shown to be 18 years of age. So, if the trial Court was of the view that those documents carried any evidentiary value, instead of considering the same as an incriminating evidence and punishing the accused on the basis thereof, the Court ought to have extended its benefit to the respondent and acquitted him. Instead, the Court formed an opinion that it was sufficient evidence of marriage between the parties firstly, and secondly, it was an offence under the Sindh Child Marriage Restraint Act, 2013, without realizing that in those documents the minor is shown as 18 years old. Such approach is not only self-contradictory but also against the case as set up by the prosecution, and also sufficient to make the entire theory of rape with the minor, which the trial Court had already determined positively, as suspicious.

20. Although, the respondent has not challenged conviction and sentence under the provisions of Sindh Child Marriage Restraint Act, 2013, but we have ample powers to look into it u/s 435 & 439 Cr.PC when the record of the case is brought before us. We, therefore, while exercising the powers under the said provisions declare the sentence of respondent u/s 3 & 4 of the Sindh Child Restraint Marriage Act, 2013, as illegal and set aside the same accordingly. But at the same time, we allow this criminal miscellaneous application and convert the sentence of ten years awarded to respondent u/s 376(iii) PPC into life imprisonment holding that the trial Court had no power to award any other punishment except death or life imprisonment as provided in the said provision.

The criminal revision application is disposed of in above terms.

A copy of this order shall be shared with the author of impugned judgment for guidance.

JUDGE

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