

Judgment Sheet

IN THE PESHAWAR HIGH COURT,
ABBOTTABAD BENCH
JUDICIAL DEPARTMENT

J U D G M E N T

Cr.A No.33-A/2013
Date of hearing...08.04.2015

Yousaf Vs The State.

Appellant(s) by.....

Respondent(s) by.....

ABDUL LATIF KHAN, J:- This appeal has been preferred against the judgment dated 22.01.2013, passed by learned Additional Sessions Judge-III, Abbottabad whereby the appellant Yousaf involved in case FIR No.515 dated 9.7.2011 u/s 377 PPC, P.S. Cantt: Abbottabad, was convicted and sentenced to undergo imprisonment for life alongwith fine of Rs.50,000/- or in default thereof to suffer further six months SI. He was also ordered to pay compensation of Rs.2,00,000/-(Two lac) to the complainant/victim u/s 544-A Cr.PC, recoverable as an arrears of land revenue however benefit of Section 382-B Cr.PC was extended to the appellant.

2. As per prosecution case, complainant Sami Ullah was called by the appellant being Moulvi to the room of the mosque where he committed carnal intercourse against the order of nature with the complainant forcibly after tying him with a cloth. Consequently on the report of complainant/victim instant FIR was registered against the appellant.

3. After completion of investigation complete challan against accused was submitted in the trial Court where in order to prove its case against accused, the prosecution examined 14 witnesses. At conclusion of trial, the learned trial Court convicted and sentenced the appellant vide impugned judgment hence the instant Criminal appeal has been preferred by the appellant/convict for his acquittal.

Arguments hear and record perused.

4. The evidence on the record shows that the case against the appellant has been proved beyond any shadow of doubt as the statements of all the P.Ws being in line with each other are not only credible but also inspire confidence which is duly supported by the medical evidence. All the prosecution witnesses were lengthy cross examined

by defence but nothing beneficial towards the appellant was brought out from their mouths. Defence has brought nothing on the record which could show that the testimony of the P.Ws was motivated by any ill will or hostility. Therefore, we have no hesitation to maintain the conviction recorded by the learned trial Court.

5. So far as sentence awarded to the appellant/convict is concerned, punishment for the offence u/s 377 PPC is **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**. The learned trial Court while convicting the appellant considered the first portion of section 377 PPC but ignored the other portion wherein punishment more than 10 years cannot be awarded to an accused. Besides, appellant is a young boy of 23/24 years, being first offender having no record/previous history of involvement/conviction in such like offence therefore, the sentence awarded to the appellant is harsh in nature. The sentence should be neither so severe that the offenders, could, out of frustration,

become desperate and hardened criminals, nor should it be so mild that it encourage the offenders to commit the offence again therefore we, in the circumstances of the case, when the appellant has spent almost 4 years in Jail, would like to reduce his sentence of imprisonment for life to 5 years R.I and the fine of Rs.50,000/- to Rs.25,000/- or in default to undergo one month S.I whereas the judgment of learned trial Court to the extent of payment of compensation of Rs.2,00,000/- u/s 544-A Cr.PC, to the complainant/victim is set aside.

With the modification hinted to above, this appeal is disposed of.

Announced.
Dt.08.04.2015.

J U D G E

J U D G E

“A.Qayum”