Judgment Sheet

PESHAWAR HIGH COURT, PESHAWAR.

(JUDICIAL DEPARTMENT)

Cr.A.No.1178-P/2021.

JUDGMENT

Date of hearing ------ 08.11.2022.

Appellants by --- Mr.Rahat Ali Khan, Advocate.

State by --- Mr.Niaz Muhammad, A.A.G.

Father of the complainant.

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S M ATTIQUE SHAH, J:- Through this single judgment we shall also decide the connected criminal appeal bearing No.1183-P/2021 titled "Yaseen Vs. The State, etc." as both have arisen from the same judgment dated 09.12.2021 of the learned Judge, Child Protection Court, Mardan delivered in case FIR No.172 dated 11.03.2019 registered under sections 377/511/34 PPC read with section 53 of the Khyber Pakhtunkhwa Child Protection and Welfare Act, 2010 at police station Katlang, Mardan whereby the appellants have been convicted under section 377 PPC and sentenced to imprisonment for life with fine of Rs.10,00,000/- each or in default whereof to further suffer simple imprisonment for six months. They have

also been convicted under section 377-B PPC and sentenced to 07 years imprisonment with a fine of Rs.10,00,000/- each. In default of such payment, they shall further undergo six months SI. They have further been convicted under section 53 of the Khyber Pakhtunkhwa Child Protection and Welfare Act, 2010, and sentenced to undergo 14 years RI with a fine of Rs.10,00,000/- each or in default whereof to further suffer 06 months imprisonment, however, benefit of section 382-B Cr.P.C was extended to them.

2. As per the prosecution case, on 10.03.2019 at *Asar vela* time complainant Sudais (P.W-4) aged about 10 years in the company of his father and cousin Salman aged about 11 years, reported the matter to the local police to the effect that on eventful day, after performing *Asar* prayer in Madrassa, he and his cousin Salman were going to their house and when reached the spot, there the accused-appellant Imad caught hold of him while co-appellant Yaseen caught hold of his cousin Salman

and took them to the sugarcane field where his cousin Salman rescued himself and succeeded in decamping from the spot whereas he was subjected to sodomy by both the appellants.

3. After completion of investigation, complete challan against the appellants was submitted before the learned trial Court, which indicted them for the offence to which they pleaded not guilty. To prove its case, prosecution examined 08 witnesses, whereafter statements of the accused were recorded wherein they professed their innocence. After conclusion of trial, the learned trial court while appreciating the evidence in its wisdom found the appellants guilty of the charge and whilst recording their convictions sentenced them as mentioned above, whereagainst they have filed the instant and connected appeals.

4. Learned counsel for the appellants contended that the appellants are innocent and have falsely been charged in the case with *mala fide*; that the

prosecution has failed to prove its case against the appellants beyond reasonable doubt; that the appellants have been convicted by the learned trial Court only on the ground that the offence is heinous in nature, however, no trustworthy, unimpeachable and cogent evidence is available on file to connect them with the commission of the offence; that medical evidence is not in line with the statement of the victim and that there are glaring contradictions in the statements of the PWs. He concluded that the grounds prevailed with the learned trial court for convicting and sentencing the appellants are based on conjectures and surmises and thus devoid of merits, hence, in such circumstances, the appellants/convicts deserve acquittal.

5. On the other hand, learned Additional Advocate General supported the impugned judgment and contended that all the material available on case file reasonably connect the accused-appellants with the commission of offence; that the

prosecution has successfully proved its case against the appellants/convicts; that the offence is of moral turpitude and heinous in nature, which affects the whole society, therefore, such like acts of inhuman nature should be discouraged by imposing exemplary punishment on the accused; that appellants/convicts are directly charged by the complainant in his report; that the victim who is minor aged about 10 years but was examined before the Court and during cross-examination nothing favorable has been extracted from his mouth by the defence and that the accused-appellants have failed to prove any previous ill-will/*mala fide* on part of the prosecution. He concluded that the learned trial Court has rightly convicted the appellants and prayed for dismissal of the appeals in hand.

6. Heard. Record perused.

7. It is the case of prosecution that the appellants forcibly took the complainant/victim Sudais and his cousin, Salman to a sugarcane field while they

were coming back to their homes after performing the *Asar* prayer in *Madrassa* and, thereafter committed sodomy with complainant Sudais while Salman remained successful in escaping therefrom. During trial on 09.12.2021, the complainant appeared before the court and recorded his statement as P.W-4. In his examination-in-chief, he straightforwardly narrated the entire episode totally in line with his initial report (Ex.PA). He was subjected to lengthy cross-examination by the defence in a very testing and taxing manner even then nothing could be extracted from his mouth in favour of the appellants. Besides, despite being of tender age complainant/ victim withstood the test of cross-examination, which reflects that whatever he stated before the court was truth and nothing else. P.W-5 Salman who is the cousin of the complainant also supports the prosecution version by stating that he along with complainant Sudais was coming towards the house. When they reached the spot, the accused Imad caught hold of

Sudais while accused Yaseen hold his hand and they were taken towards the sugarcane field. Meanwhile, he succeeded in rescuing himself from the clutches of accused Yaseen and escaped. Both the accused took Sudais to the sugarcane field and committed sodomy with him. The site plan (Ex.PB) was also prepared on his pointation. The careful assessment of the testimony of these PWs would reveal that the same is straightforward, coherent, and confidence-inspiring. Further, at the time of incident, the complainant/victim or any of his family members was having no ill will, grudge, malice, or ulterior motive against the appellants for their false implication in the case. The father of the complainant (PW-6) has also supported the prosecution version and there is nothing in his statement to discard his testimony and to believe that he was having any axe to grind against the appellants before the occurrence. The prosecution version has also been corroborated and supported by the medical evidence furnished by Dr.

Muhammad Shahab (P.W-3), who examined the victim and opined that there were bruises around his anus vide his examination report (Ex.P.W.3/1). It is settled that DNA profiling is not essential for maintaining the conviction of an accused under the charge of rape and sodomy. ***PLD 2020 S C 313 FAROOQ AHMAD V. THE STATE.*** Still, the prosecution has proved through the forensic test (EX-PW.7/9) the commission of sodomy with the complainant/victim. PW-3 has also examined the accused-appellants and confirmed that they are capable of performing sexual intercourse through examination report (Ex.P.W.3/2).

8. Coming to the contention of learned counsel for the appellants that the prosecution has failed to produce any independent witness of the occurrence, suffice it to state that the statement of the victim in such like offences itself is sufficient for maintaining conviction if the same is independent, unbiased, coherent, cogent and straightforward to establish the

charge against the accused. ***Shakeel and 5 others V. The State (PLD 2010 SC 47).*** As of now, it is well settled that the crime of sodomy and rape is usually committed in private and hardly any independent witness can be produced in such like cases. Therefore, courts do not insist upon producing direct evidence to corroborate the testimony of victim if the same is found confidence-inspiring then even the sole testimony of a victim is sufficient for conviction. It is also well settled that the testimony of a victim in such like cases stands on a much higher pedestal than the other offences as in the case of sodomy and rape the victims suffer severe mental trauma psychologically and emotionally and it becomes difficult for the victim to overcome the same. ***Atif Zarif Vs. The State (PLD 2021 SC 550).*** Coming towards the alleged delay so occurred in reporting the matter in hand suffice it to state that in such like cases the victim and their families are always reluctant to come forward to promptly report the matter due to the

trauma they had suffered besides a perception of shame and dishonor of the victim as well as his entire family, therefore, the delay in such like cases is not material. ***Zahid Vs. The State (2020 SCMR 590).*** Moving towards the contention of learned counsel representing the appellants that both P.W-4 and P.W-5 had not made any hue and cry while being pulled to the sugarcane field by the accused-appellants, true, that no such hue and cry had been made by the PWs but it is the matter of evidence that both the accused-appellants were co-villagers of the victim and P.W-5 and were well known to them, therefore, that might be the reason of their not making any hue and cry. ***Zahid Vs. The State (2020 SCMR 50).*** Given, that both the P.Ws i.e. P.W-4 and P.W-5 were minors at the time of offence having the age of 10 and 11 years respectively, however, their testimony is straightforward, coherent and confidence inspiring, therefore, the same is admissible for maintaining the conviction of the appellants.

9. From the reappraisal of the above-referred evidence produced by the prosecution, it can be inferred without any reasonable doubt that the accused-appellants have committed sodomy upon the minor victim. All the PWs including the doctor were subjected to lengthy cross-examination by the defence counsel but nothing fatal to the case of the prosecution could be squeezed out from their mouth, so the statements of all the witnesses are believable and worthy credence. Further, not a single question was put to the victim (P.W-4) to show that the accused-appellants were not the real culprit. Moreover, no member of society, in our estimation, would choose to lose the honour of his family, particularly of a child, by falsely implicating an innocent person as the victim of rape and sodomy carries the stigma of such offence throughout his entire life is our part of the region. Thus the findings recorded by the learned trial court are based on sound reasons.

10. Now adverting to the quantum of sentence awarded to the appellants/convicts by the learned trial court. According to their card of arrest, the accused-appellants were arrested on the same day i.e. 11.03.2019 and at that time the age of accused-appellant Imad was 22/23 years whereas that of accused-appellant Yaseen 19/20 years. Thus on the quantum of sentence too the learned trial court has committed no illegality by recording convictions of the appellants.

11. In view thereof, we are of the considered view that the impugned judgment is based on correct appreciation of case material, which needs no interference by this Court. Therefore, the instant appeals, being bereft of any merit, are hereby dismissed.

CHIEF JUSTICE

JUDGE

Announced.
Dt.08/11/2022.

HON'BLE MR.JUSTICE QAISER RASHID KHAN, C.J &
HON'BLE MR.JUSTICE S. M. ATTIQUE SHAH.

(A·K·KHAN Court Secretary)