

[Balochistan (Sibi Bench)]

Before Nazeer Ahmed Langove and Rozi Khan Barrech, JJ

ABDUL GHANI---Appellant

Versus

The STATE---Respondent

Criminal Appeal No.(s) 114 and Criminal Revision No.(s) 30 of 2019, decided on 22nd February, 2021.

(a) Penal Code (XLV of 1860)---

---S. 376---Rape---Appreciation of evidence---Delay of about thirteen hours in lodging the FIR---Scope---Allegation against the accused was that he raped the daughter of complainant aged ten years---Sentence, enhancement of---Delay in reporting the crime to the police in respect of an offence involving a person's honour and reputation and which society might have viewed unsympathetically could prey on the minds of a victim and her family and deter them to go to the police---Delay had been explained by the complainant that on the day of occurrence he was out of city and was informed by his brother about the occurrence---On next day he reached to his house and lodged a report---Appeal against conviction was dismissed and the sentence of accused was enhanced from ten years to imprisonment of life, in circumstances.

Zahid and another v. The State 2020 SCMR 590 rel.

(b) Penal Code (XLV of 1860)---

---S. 376--- Rape--- Appreciation of evidence---Medical evidence---Scope---Allegation against the accused was that he raped the daughter of complainant aged ten years---Sentence, enhancement of---Female Medical Officer had observed that fresh sexual act had been committed with the minor---Medical Officer was neither relative to the complainant nor inimical to the accused, therefore, it was impossible to say that she issued a false medical certificate---Said witness was cross-examined by the defence but failed to impeach her credibility---Appeal against conviction was dismissed and the sentence of accused was enhanced from ten years to that of imprisonment of life, in circumstances.

(c) Penal Code (XLV of 1860)---

---S. 376---Rape---Appreciation of evidence---DNA test--- Scope---Allegation against the accused was that he raped the daughter of complainant aged ten years---Held, when rape had been established, to conduct a DNA test to determine that the semen retrieved from the

victim's body and shalwar was of the accused was not required as DNA testing was not a requirement by the law.

Farooq Ahmed v. The State PLD 2020 SC 313 rel.

(d) Penal Code (XLV of 1860)---

---S. 376--- Rape--- Appreciation of evidence--- Ocular account--- Scope---Allegation against the accused was that he raped the daughter of complainant aged ten years---Sentence, enhancement of---In the present case, the fate of the case was primarily hinged upon the statement of the victim---Victim deposed before the Trial Court that she was grazing goats and the accused was also grazing goats---Accused told that you would like to become his wife and when she denied, thereafter, the accused committed rape/zina with her---At that time, younger sister of victim was also with her and she informed her uncle and cousin---On their coming, the accused ran away---Prosecution also produced sister of victim, who was also eye-witness of the incident and she stated in her statement that on the day of occurrence, she along with her sister/victim was grazing the goats, the accused was also grazing the goats, and he told to her sister that would she like to become his wife---On denial, the accused started rape/zina with her and she told that to her uncle and cousin, when they came there, the victim was in an unconscious condition at that time---At the time of recording statement of the victim, her age was ten years, and the age of eye-witness was eight years, however, before recording their statements the Trial Court had asked the victim and eye-witness a number of questions to establish whether they were competent to testify and had recorded that they were quite mature and had answered the question satisfactorily, hence, said witnesses were declared a competent witness, therefore, the victim and witness testified before the court---Both the said witnesses furnished graphic detail of the occurrence---Said witnesses of the incident were cross-examined by the defence at full length, but they remained consistent inter-se and supplemented each other in minute detail qua time, date, place, mode and manner of the occurrence, identity of the accused and his role for committing rape with the victim---Statement of the said witnesses was corroborated with the statement of their uncle and cousin when the eye-witness informed them about the occurrence---Said witnesses reached to the place of occurrence and saw that the accused caught hold of the victim---Accused when saw them ran away from the place of occurrence-- -Victim was in an unconscious condition and took her to her house and informed her father on the phone---No reason was available for the victim and the witnesses to falsely implicate/nominate the accused for the heinous crime nor was any question put to the witnesses in that regard---Circumstances established that the prosecution had succeeded in proving its case beyond a reasonable doubt---Appeal against conviction was dismissed, in circumstances his sentence was enhanced from ten years to that of imprisonment of life.

(e) Criminal trial---

---Witness--- Child witness--- Scope--- Child witness is not barred from entering the witness box and it is the satisfaction of the Trial Court, which is of crucial importance---Child who also happened to be a victim of an offence is competent to testify as a witness, and the deposition would be worthy of reliance provided the court is satisfied that he or she, as the

case may be, is intelligent and understand the significance of entering the witness box.

Muhammad Jamal and others v. The State 1997 SCMR 1595; Mst. Razia alias Jia v. The State 2009 SCMR 1428; Fayyaz alias Fayyazi and another v. The State 2006 SCMR 1042; Mushtaq Ahmed and another v. The State 2007 SCMR 473 and Ulfat Hussain v. The State 2010 SCMR 247 rel.

(f) Criminal trial---

---Witness---Child witness---Conviction of accused---Scope---Conviction could be handed down placing reliance on the sole testimony of a child witness, but as a rule of prudence, it is generally preferred that it should be corroborated by some other evidence so as to ensure the safe administration of justice.

(g) Penal Code (XLV of 1860)---

---S. 376--- Criminal Law (Amendment), (Offences Related to Rape) Act (XLIV of 2016), S. 5---Rape of minor---Appreciation of evidence---Sentence, quantum of---Allegation against the accused was that he raped the daughter of complainant aged ten years---Record showed that the Trial Court convicted the accused for an offence under S.376(1), P.P.C.---Alternate sentence for the rape of a minor was enhanced by the Criminal Law (Amendment), (Offences Related to Rape) Act, 2016, promulgated on 22.10.2016, whereas the crime was committed in the year 2018, however, S.376(2), P.P.C., provided for two alternate punishments, i.e. death and imprisonment for life when whoever committed rape of a minor or a person with the mental or physical disability---In the present case, the accused had committed zina/rape with a victim and at that time of the occurrence the age of victim was nine years, but the command of law escaped notice of the trial judge for awarding punishment of ten years to the accused---Admittedly, at the time of the commission of offence, the age of the accused was 16/17 years---Section 16 of the Juvenile Justice System Act, 2018, described that no person who was a juvenile offender at the time of the commission of an offence shall be awarded the punishment of death---In such circumstances, appeal of accused was dismissed, however, his punishment was enhanced from ten years to that of imprisonment of life by accepting the criminal revision petition filed by complainant.

Ali Hassan Bugti and Ahsan Rafique for Appellant (in Criminal Appeal No.(s) 114 of 2019).

Abdul Mateen, Deputy Prosecutor General for the State (in Criminal Appeal No.(s) 114 of 2019).

Shabir Ahmed Sherazi (absent) for Petitioner (in Criminal Appeal No.(s) 30 of 2019).

Ali Hassan Bugti and Ahsan Rafique Rana (absent) for the Complainant (in Criminal Appeal No.(s) 30 of 2019).

Abdul Mateen, Deputy Prosecutor General for the State (in Criminal Appeal No.(s) 30

of 2019).

Date of hearing: 17th February, 2021.

JUDGMENT

ROZI KHAN BARRECH, J.---The complainant, Rehmatullah son of Shahdat Khan (PW-1), reported that his daughter aged ten (10) years old was raped by the appellant (Abdul Ghani) on 12.07.2018 at 4:00 p.m., an FIR No.11 of 2018 was registered at Police Thana Chattar District Naseerabad on 13.07.2018 at 5:00 p.m., in respect of the crime. The appellant was tried by the learned Additional Sessions-Judge, Naseerabad at Dera Murad Jamali (hereinafter the "Juvenile/trial Court") and was convicted for rape under section 376(1) of the Pakistan Penal Code ("P.P.C.") and sentenced to ten (10) years RI and on him imposing fine of Rs.50,000/- (Rupees Fifty Thousand Only) and in default of payment of fine to undergo six (06) months' SI. He, however, extended benefit of section 382-B of the Code of Criminal Procedure, 1898 ("the Code") on 07.08.2019 (hereinafter "the impugned Judgment").

2. Being aggrieved from the judgment dated 07.08.2019, the appellant filed the instant appeal, while the complainant Rehmatullah has filed Criminal Revision Petition No.(S) 30 of 2019 for enhancement of the conviction awarded to the accused by the learned trial court.

3. Since both the cases are arising out of the one and same judgment by the trial court, therefore, the same are being disposed of through this single judgment.

4. Arguments advanced from both the sides have been heard. We have also minutely gone through the record available on file with the able assistance of learned counsel for the parties.

5. It is contention of the learned counsel for the appellant that there is a delay in lodging of the FIR which could cause serious doubt in the prudent mind about the implication of the accused for an ulterior motive. In this case, the occurrence of subjecting minor girl Mst. Fazila to sexual intercourse in the said to have been taken place at 4:00 p.m., on 12.07.2018 and the matter was reported at 5:00 p.m., on 13.11.2018; hence there is a delay of almost thirteen (13) hours. However, the fact that the modesty of a minor girl was violated by sexual assault makes understandable the apprehension of the victim and her family in approaching the police immediately. Delay in reporting the crime to the police in respect of an offence involving a person's honour and reputation and which society may view unsympathetically could prey on the minds of a victim and her family and deter them to go to the police. In the present case, the delay has been explained by the complainant that on the day of occurrence he was in Quetta and was informed by his brother Khan Muhammad (PW-4) about the occurrence and on next day he reached to his house situated at District Naseerabad and lodged a report. On the day of occurrence, the father of the victim was not present in his house, therefore, in such a situation it is very obvious that even if the report has been lodged with a delay, it will not bring complications and is otherwise be not beneficial for an accused who has been charged with the offence the punishment of which would entail to the death

penalty or imprisonment for life. In the case title *Zahid and another v. The State* (2020 SCMR 590), the august Supreme Court has observed and held as follows:-

"Undoubtedly, the FIR was registered after a day of the crime having been committed, however, the fact that the modesty of a married woman was violated by sexual assault makes understandable the apprehension of the victim and her family in approaching the police immediately. Delay in reporting the crime to the police in respect of an offence involving a person's honour and reputation and which society may view unsympathetically could prey on the minds of a victim and her family and deter them to go to the police. In the case of *Hamid Khan v. State* a delay of three days in reporting the crime to the police was considered immaterial".

6. In order to constitute the offence of rape, it is necessary that there shall be penetration to constitute sexual inter-course. In this case, Mst. Fazila, the victim who is of very tender age likely to touch nine (09) years has been examined by the female Medical Officer (PW-6) Dr. Zahida Haroon, Lady Doctor at District Headquarter Hospital, Dera Murad Jamali on 13.07.2018. Her statement would reveal that "Redness" and "swelling of vagina especially labia minor and labia major". "Perennial tear about 1/2" long vaginally present and bleeding". "No bruises and scratches mark seen at pelvic area". Hymen was not intact inserting easily index finger", and she further stated that according to sign fresh sexual act seen.

7. It is now absolutely without any coloring being found that minor girl Mst. Fazila was subjected to sexual intercourse, not only mere penetration to the hymen was even found, and it was observed by PW-6 Dr. Zahida Haroon that fresh sexual act had been committed with the minor. Although the Female Medical Officer (PW-6) has been cross-examined to the extent that she did not examine the said victim. The PW-6 neither relative to the complainant nor inimical to the accused, therefore, it is impossible to say that PW-6 issued a false medical certificate. Even otherwise, the said witness was cross-examination by the learned counsel but failed to impeach her credibility. A potency test was also performed on the accused/appellant and the report (Ex.P/7-A) produced by PW-7 Dr. Naseer Muhammad Medical Officer at District Headquarter Hospital, Dera Murad Jamali, confirmed that he was potent and capable of sexual intercourse.

8. The PW-6 Dr. Zahida Haroon also took Vaginal swabs, blood sample and cut of shalwar piece were taken for chemical examination to ascertain the credential. According to the report of the chemical examiner (Ex.P/11-A), it is mentioned that "No seminal material was found on item # 1 and 2.1-2.2; therefore no further DNA analysis (short Tandem Repeat Profiling) was conducted on these items. No analysis was conducted on item # 3, 4, 5 and 6." It is stated earlier that the alleged occurrence took place on 12.07.2018 and the victim was examined on 13.07.2018 after thirteen (13) hours of the occurrence. It is also important to mention here that the accused was arrested on the next date of occurrence, in such circumstances, no seminal material was found on the item sent by a doctor to the Punjab Forensic Science Agency.

9. The rape have been established, was it then necessary to conduct a DNA test to determine that the semen retrieved from the victim's body and shalwar was of the appellant.

We do not think that such DNA testing was required under the circumstances. Moreover, DNA testing is not a requirement by the law. The reliance is placed on the case titled Farooq Ahmed v. The State (PLD 2020 SC 313), the Hon'ble Supreme Court observed and held as under:-

"7. The rape having being established, was it then necessary to conduct a DNA test to determine that the semen retrieved from the victim's body and shalwar was of the petitioner. We do not think that such DNA testing was required under the circumstances. Moreover, DNA testing is not a requirement of law. In Shakeel's case (above) it was held (in paragraph 9), that:

It is well-established by now that "omission of scientific test of semen status and grouping of sperms is neglect on the part of prosecution which cannot materially affect the other evidence." In this regard we are fortified by the dictum as laid down in case titled Haji Ahmad v. State (1975 SCMR 69)...

In the above cited case of Haji Ahmad v. State (1975 SCMR 69) the father had raped his step-daughter and his conviction was sustained by this Court in the absence of a DNA test; the Trial Court had relied on the girl's testimony, chemical examiner's report confirming existence of semen on vaginal swabs taken from her and the medico-legal report showing her to have been sexually molested. Similarly, this Court in the case of Irfan Ali Sher v. State (Jail Petition No.324/2019, decided on 17 April 2020) upheld a conviction under section 376, P.P.C. in the absence of a DNA test. Rejecting the petitioner's argument that 'DNA report was not sought' this Court held (in paragraph 3), that:

As regards the semen not being sent for DNA forensic determination with a view to link it with the perpetrator is not a requirement of law.

It is also not desirable that we should impose additional conditions to prove a charge of rape, or of attempted rape, and to do so would be a disservice to victims, which may also have the effect of enabling predators and perpetrators. However, there may be cases where an accused's DNA is retrieved for forensic determination to establish his guilt.

10. The fate of the case is primarily hinged upon the statement of the victim Mst. Fazila (PW-2) she deposed before the trial court that she was grazing goats and the accused Abdul Ghani was also grazing goats. At there, the accused Abdul Ghani told that you would like to become my wife. When she denied, thereafter, the accused committed rape/zina with her. At that time, her younger sister, namely Shireen was also with her, and she informed her uncle Khan Muhammad and cousin Jalal, on their coming, the accused ran away. The prosecution also produced Mst. Shireen as PW-3 who is also eye-witness of the incident, and she stated in her statement that on the day of occurrence, she along with her sister Mst. Fazila was grazing the goats, the accused Abdul Ghani was also grazing the goats, and he told to her sister that would she like to become his wife, on denial, the accused Abdul Ghani started rape/zina with her, and she told this to her uncle Muhammad Khan and cousin Jalal, when they came there, the victim Mst. Fazila was in an unconscious condition at that time.

11. At the time of recording statement by the victim PW-2 Mst. Fazila, her age was ten

years, and the age of PW-3 Mst. Shireen was eight years. However, before recording their statements the learned Judge of the trial court had asked the victim (PW-2) and Shireen (PW-3) a number of question to establish whether they were competent to testify and have recorded that they were quite mature and have answered the question about satisfactory; hence they are declared a competent witness; therefore, the victim (PW-2) and (PW3) testified before the court.

12. In the witness box both the above witnesses furnished graphic details of the occurrence and both the above witnesses were cross-examined by the defence at full length, but they remained consistent inter-se and supplemented each other in minute detail of the incident qua time, date, place, mode and manner of the occurrence, the identity of the appellant and his role for committing rape with the victim. The statement of the above witnesses was therefore corroborated with the statement of PW-4 Khan Muhammad and PW-5 Jalal when the PW-3 Shireen informed them about the occurrence they reached to the place of occurrence and saw that the accused caught hold the victim Mst. Fazila when the accused saw them the accused run away from the place of occurrence. At there, they found the victim in an unconscious condition and took her to her house and informed her father, Rehmatullah through the phone. There was no reason for the victim and the above witnesses to falsely implicate/ nominate the accused/appellant for the heinous crime, nor was any questions were put to the witnesses in this regard.

13. The learned counsel for the appellant has laid great stress on the reliability of the victim's testimony and statement of PW-3 Shireen, because, as argued by him. That both were child witnesses, and they could have been tutored or influenced by elders. He has strenuously argued that it would not be safe to rely on the child witnesses' testimony. By now, the law relating to the competence of the child witness to depose in a criminal case and its evidentiary value is well settled. It would, therefore, be relevant to discuss the precedent law in this regard. Article 3 of the Qanun-e-Shahadat Order, 1984 (hereinafter referred to as the "Order of 1984") contemplates that all persons are competent to testify unless the court considers that they are prevented from understanding the questions put to them or from giving rational answers to those questions, by tender or extreme old age, disease, whether of body or mind or any other cause of the same, nature.

14. In the case titled "Muhammad Jamal and others v. The State" 1997 SCMR 1595, the apex Court found the child witness's testimony as inspiring and credible and upheld the conviction because it was supported by medical evidence. In the case titled "Mst. Razia alias Jia v. The State" 2009 SCMR 1428, the august Supreme Court upheld the conviction handed down, inter alia, on the basis of ocular testimony of two child witnesses. The apex Court had observed that the trial Court had taken all possible and due steps to judge the level of intelligence and maturity of the child witnesses before recording their statements because they had given consistent accounts of the occurrence and the participation of their mother, i.e. the convicted accused. It was further observed that this ocular evidence had derived strength and corroboration from other evidence. The august Supreme Court, exercising its Shariat appellate jurisdiction, has observed and held in the case titled "Fayyaz alias Fayyazi and another v. The State" 2006 SCMR 1042 as follows:-

"It has also been rightly observed by the learned Federal Shariat Court that conviction

could be based on the solitary statement of the victim provided the same is capable of implicit reliance and is corroborated by any other piece of evidence if so available in the case."

15. In the case titled "Mushtaq Ahmed and another v. The State" 2007 SCMR 473, the august Supreme Court, exercising its Shariat appellate jurisdiction, has observed and held as follows:-

"It is consistent view of this Court that in rape cases mere statement, of the victim is sufficient to connect the petitioners with the commission of offence in case the statement of the victim inspires confidence."

16. In the case titled "Ulfat Hussain v. The State" 2010 SCMR 247 the apex Court held that although in principle a conviction could be based on the testimony of an intelligent and understanding child witness but it is always preferred to adopt the settled principle of prudence and rule of care attached to the sole testimony of a child witness despite the latter's understanding and intelligence.

17. It is, therefore, obvious from the above discussion relating to the precedent law, that a child witness is not barred from entering the witness box. It is the satisfaction of the trial Court, which is of crucial importance. A child who also happens to be a victim of an offence is competent to testify as a witness, and the deposition would be worthy of reliance provided the Court is satisfied that he or she, as the case may be, is intelligent and understands the significance of entering the witness box. A conviction can also be handed down placing reliance on the sole testimony of a child witness, but as a rule of prudence, it is generally preferred that it should be corroborated by some other evidence so as to ensure the safe administration of justice.

18. The facts and circumstances of the case in hand, the learned trial court, for good reasons and after adopting precautionary measures, were satisfied that the victim (PW-2) and Shireen (PW-3) were competent to testify and that their deposition could be relied upon. Their testimony remained unshaken despite being subjected to protracted cross-examination. The medical evidence and testimony of the PW-3, PW-4 and PW-5 lent support and corroborated the victim's plea. There is nothing on record to even remotely indicate that the victim or the other witnesses had any reason for falsely implicating the appellant.

19. Having looked into the evidence from four corners, we are of the considered view that the prosecution has been able to prove the charge against the appellant through cogent, reliable and confidence-inspiring evidence. All the above witnesses, including the victim herself, are quite natural and straightforward raising their finger towards none else but the appellant being a sole perpetrator. Further, it has been observed that the appellant has failed to take any specific plea regarding his false implication. In his examination under section 342, Cr.P.C., he simply denied the questions put to him, whereas he has also not recorded his own oath statement and failed to produce any single witness in his defence. While to the contrary, the prosecution has produced ocular evidence supported by the medical evidence, which is fully corroborating with each other on all counts, thus, the evidence so produced cannot be thrown aside merely on the basis of bald denial of the appellant. It has also been

observed that in such like cases prestige of family, risk and honor is involved as the child of someone was defamed for the whole of her life; hence it is not possible that a person any falsely involve any innocent person in such like heinous crimes and that too without the existence of previous enmity or grudge. Undoubtedly, where a young child could be defamed for whole life, no elder would like to involve their own child, who has to face the society for the whole of her/his life as well as to an innocent person just for nothing. In such like cases of a single accused substitution is always considered to be a rare phenomenon. The prosecution has succeeded in establishing its case beyond a reasonable doubt.

20. Now, the moot question for determination would be the quantum of sentence to be awarded to the appellant to meet the ends of justice. The trial court convicted the appellant for an offence under section 376(1), P.P.C. The learned DPG stated that the alternate punishment prescribed under section 376(1), P.P.C. was imprisonment, which shall not be less than ten (10) years or more than twenty-five (25) years and that it was not appreciated that the alternate sentence for the rape of a minor to 'imprisonment for life' was enhanced by the Criminal Law (Amendment), (Offences Relating to Rape) Act, 2016 promulgated on 22 October 2016 whereas the crime was committed in the year 2018.

21. The learned trial court has awarded ten years sentence to the appellant. For convenience, the contents of section 376, P.P.C. is reproduced as under:-

376. Punishment of rape.---(1) Whoever commits rape shall be punished with death or imprisonment for either description for a term which shall not be less than ten years or more than twenty-five years and shall also be liable to fine.

(1-A) Whoever commits an offence punishable under sub-section (1) of subsection (2) of this section 377 or section 377-B, and in the course of such commission causes any hurt punishable as an offence under section 333, section 335, clauses (iv), (v) and (vi) of subsection (3) of section 337, section 337-C, clauses (v) and (vi) of section 337-F, shall be punished with death or imprisonment for life and fine.

(2) When rape is committed by two or more persons in furtherance of common intention of all, each of such persons shall be punished with death or imprisonment for life.

(3) Whoever commits rape of a minor or a person with mental or physical disability, shall be punished with death or imprisonment for life and fine.

(4) Whoever being a public servant including a police officer, medical officer, jailor, taking advantage of his official position commits rape shall be punished with death or imprisonment for life and fine".

22. Section 376(2), P.P.C. provides for two alternate punishment, i.e., death and imprisonment for life when whoever commits rape of a minor or a person with the mental physical disability. In the case in hand, the appellant has committed Zina/Rape with a victim Mst. Fazila and at the time of the occurrence the age of Mst. Fazila was nine (09) years, but the command of law escape noticed of the learned trial Judge for awarding punishment of ten (10) years to the appellant.

23. The trial of the accused was held by the learned trial court as a Juvenile Court. It is an admitted fact of the case are that at the time of the commission of the offence, the age of the accused/ appellant was 16/17 years.

24. The question of the age of a person facing trial, who has been put to the trial to face the charge of capital punishment in view of the section, 16 of the Juvenile Justice System Act, 2018. According to the said section, no person who was a juvenile offender at the time of the commission of an offence shall be awarded the punishment of death. The Juvenile Justice System Act, 2018, was promulgated in order to provide protection for the right of children involved in the criminal litigation, whereas its preamble states that it is expedient to provide for the protection of children in criminal litigation, their rehabilitation in society, reorganization of Juvenile Courts and matters connected therewith and incidental thereto; whereas its clause (b) of section 2 states that:

"2. Definitions: (a)... (b) 'child' means a person who at the time of an offence has not attained the age of eighteen years."

25. We are mindful that once it was brought to the knowledge of the learned trial Judge that the appellant was a child under section 2(b) of the Juvenile Justice System Act, 2018, his trial should have proceeded under section 4 thereof rather than under ordinary law. The conviction and sentences of the appellant are tantamount to throwing him away in prison with adults with R.I. in violation of section 16 of Juvenile Justice System Act, 2018, which states that no child should be given corporal punishment at any time while in custody. The above provision of law clearly provided that the appellant being juvenile cannot be awarded death. Similarly, he cannot be ordered to labour etc. in view of the clear bar contained under the law, which is applicable to the facts and circumstances of the case".

26. For the reasons discussed above, the Criminal Appeal No.(S) 114 of 2019 filed by the accused/appellant Abdul Ghani is hereby dismissed, his conviction under section 376(2), P.P.C. is maintained, whereas Criminal Revision Petition No.(S) 30 of 2019 filed by Rehmatullah son of Shahdat Khan is allowed. Resultantly, a sentence of the convict is enhanced from ten (10) years to that of Imprisonment of Life, SI. The sentence of fine and period of imprisonment in default thereof shall, however, remain intact.

It is also directed that the appellant be treated as a juvenile prisoner.

JK/81/Bal.

Sentence altered.