

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

Mr. Justice Manzoor Ahmad Malik
Mr. Justice Qazi Muhammad Amin Ahmed
Mr. Justice Amin-ud-Din Khan

Criminal Appeal No.359 of 2018

(Against the judgment dated 27.2.2018 of
the Peshawar High Court Abbottabad Bench
passed in Criminal Appeal No.86-A/2015)

Muhammad Mumtaz

...Appellant(s)

Versus

Mehtab and another

...Respondent(s)

For the Appellant(s):	Qari Abdul Rasheed , ASC Syed Rifaqat Hussain Shah, AOR
For the Respondent (s)	Mr. Naveed Hayat Malik, ASC
For the State:	Malik Akhtar Hussain Awan, AAG KPK
Date of hearing:	2.12.2019

ORDER

Qazi Muhammad Amin Ahmed, J.- Mehtab s/o Ayub, respondent herein, was tried as a juvenile for committing *Qatl-i-Amd* of his schoolmate Muhammad Azhar in the dormitory during wee hours of 17.9.2013. The incident was reported without nomination; weapon of offence spotted outside the room, turned out as a lead to the respondent who was eventually tried on the basis of various pieces of circumstantial evidence, his retracted judicial confession being most prominent. A learned Additional Sessions Judge at Abbotabad returned a guilty verdict vide judgment dated 5.6.2015; convicted under clause (b) of Section 302 of the Pakistan Penal Code, 1860, the respondent was sentenced to imprisonment for life with a direction to pay Rs.50,000/- as compensation or undergo six months SI in default thereof with pre-trial commutation. A learned Judge-in-Chamber of the Peshawar High Court altered respondent's conviction into clause (c) of the Section *ibid* and reduced sentence to 10-years RI

vide impugned judgment dated 27.2.2018; complainant seeks enhancement thereof, by leave of the Court.

2. Learned counsel for the appellant while conceding that the respondent has since served out the sentence, nonetheless, contends that sentence of 10-years is not a conscionable wage for the crime and, thus, merits enhancement in the interest of justice, albeit without support from the State.

3. Heard. Record perused.

4. Respondent's confessional statement, though retracted subsequently, is prosecution's mainstay; going by his words, he was carnally assaulted by the deceased for more than once; despite resistance, the deceased insistingly treaded the lusty course and it is in this backdrop, according to the prosecution itself, that the respondent exasperatingly embarrassed, took the most drastic step in the face of no other possible motive. In the absence of any other evidence, the respondent made his breast clean and as such his narrative is to be received in its totality. Incident though most unfortunate, nonetheless, the deceased cannot be credited as being entirely blameless and as such interference by this Court at this point of time, particularly when the respondent had already served out the sentence would be far from being expedient. Appeal fails. Dismissed.

Judge

Judge

Judge

Islamabad

2nd December, 2019

Not approved for reporting

*Azmat**