

**IN THE FEDERAL SHARIAT COURT**  
(REVISIONAL JURISDICTION)

**PRESENT:**

**MR. JUSTICE MEHMOOD MAQBOOL BAJWA**  
**MR. JUSTICE SHAUKAT ALI RAKHSHANI**

**CRIMINAL REVISION NO.65-L OF 2007**

TABASSAM ZIA SON OF MUHAMMAD HANIF, CASTE ARAIN  
RESIDENT OF KUCHA USMANI, RANALA KHURD, DISTRICT OKARA.

PETITIONER

VERSUS

1. THE STATE.
2. ABDUL JABBAR SON OF TAJ DIN, CASTE SINDHU JATT,  
RESIDENT OF MUSLIM TOWN, RANALA KHURD, DISTRICT  
OKARA.

RESPONDENTS

COUNSEL FOR THE PETITIONER	...	CH. FAYYAZ HUSSAIN DHARIWAL, ADVOCATE.
COUNSEL FOR THE STATE (RESPONDENT NO.1)	...	SAEED AHMAD SHAIKH, ADDL.PROSECUTOR GENERAL, PUNJAB.
COUNSEL FOR RESPONDENT NO.2	...	MALIK KHADIM HUSSAIN AWAN, ADVOCATE.
FIR NO. AND POLICE STATION	...	197 OF 2006 CITY RANALA KHURD, DISTRICT OKARA.
DATE OF ORDER OF TRIAL COURT	...	31.10.2007
DATE OF FILING OF REVISION PETITION	...	19.12.2007
DATE OF HEARING	...	12.03.2019
DATE OF DECISION	...	12.03.2019

**JUDGMENT:**

**Mehmood Maqbool Bajwa, J:** Quantum of sentence awarded to the respondent No.2 (The respondent) while recording conviction under Section 377 of The Pakistan Penal Code, 1860 (Act XLV of 1860) (Hereinafter called The Code) is under challenge by the petitioner, complainant of F.I.R. No.197 of 2006 registered under Section 12 of The Offence of Zina (Enforcement of Hudood) Ordinance VII of 1979 (Shall be called The Ordinance as and when required) and Section 377 of The Code.

2. Through judgment dated 31<sup>st</sup> October, 2007, handed down by a learned Additional Sessions Judge, Okara, the respondent though was acquitted under Section 12 of The Ordinance but while recording conviction under Section 377 of The Code, was awarded sentence of 10 years rigorous imprisonment and fine to the tune of Rs.25,000/ (Rupees Twenty-Five Thousand Only). In case of non-payment of fine, to further undergo six months simple imprisonment. Premium under Section 382-B of The Code of Criminal Procedure, 1898 (Act V of 1898) was granted.

3. Co-accused, Abdul Ghani, real brother of the respondent was acquitted while extending benefit of doubt.

4. Crime-Report bearing No.197 of 2006 was lodged by petitioner-complainant (P.W.1), narrating the occurrence of

abduction of his son Ahmed Zia (P.W.2), school going boy, 13 years old for the purpose of committing sodomy on 22<sup>nd</sup> September, 2006. As per allegations, the victim did not turn up after school hours, resulting in his search not only by petitioner (P.W.1) but also by Muhammad Tariq Nadeem (P.W.3) and Farrukh Zia, who found respondent, committing sodomy with victim in the room of tower of Jazz company. Abdul Ghani (since acquitted), was found at guard outside the room.

5. Heard adversaries and perused the record.

The arguments canvassed though are not incorporated but will be reflective in the discussion at appropriate stages.

6. Section 377 of The Code provides two punishments. First sentence provided is imprisonment for life, alternatively describing punishment with imprisonment of either description for a term which shall not be less than two years and not more than 10 years.

7. No hard and fast rule can be described while determining quantum of punishment, particularly, when there is also a provision of alternate punishment. Each case has to be decided keeping in view its own facts.

It was concluded by Apex Court that imposition of a sentence is not a mechanical exercise and Court owes responsibility to inflict fair, reasonable, adequate sentence, commensurating with gravity of crime.<sup>1</sup>

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<sup>1</sup> “MUHAMMAD JUMAN v. The STATE and others” (2018 SCMR 318)

While awarding sentence, concept of retribution, deterrence as well as reformation has also to be kept in mind.<sup>2</sup>

One of the yardstick for awarding alternative sentence was highlighted by Hon'ble Supreme Court in the case of "MUHAMMAD MUSHTAQ"<sup>3</sup> and "GHULAM MOHY-UD-DIN alias HAJI BABU & others"<sup>4</sup> concluding that arising of some doubt in the prosecution case, may not be sufficient to record acquittal can be taken as mitigating circumstance while awarding quantum of sentence.

8. Version of prosecution with reference to abduction of victim for the commission of sodomy was brushed aside by the learned Trial Court recording acquittal under Section 12 of The Ordinance. Abdul Ghani (brother of the respondent) to whom though minor role was attributed, suggesting his presence as guard, outside the room, where occurrence was committed was also extended benefit of doubt.

The petitioner being aggrieved of the said conclusion preferred Appeal No.206-L of 2007 dismissed on 7<sup>th</sup> January, 2016.

The respondent and Abdul Ghani are real brothers. The respondent as per his statement under Section 342 of Act V of 1898 was approximately 42-43 years old at the time of making statement

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<sup>2</sup> "HAMID MAHMOOD and another v. The STATE" (2013 SCMR 1314)

"DADULLAH and another v. The STATE" (2015 SCMR 856)

<sup>3</sup> (2017 SCMR 1995)

<sup>4</sup> (PLJ 2014 SC 1004)

on 27<sup>th</sup> October, 1997, while Abdul Ghani was 30 years old. Both were mature. It does not appeal to the reason that a younger brother having sufficient maturity will be an instrument to facilitate the commission of such like offence.

In our considered view, fact narrated about casts some doubt to the case of prosecution, though by itself, not sufficient to record acquittal.

9. The petitioner admittedly is a first offender. He was convicted on 31<sup>st</sup> October, 2007. It is not the case of prosecution that even prior to occurrence or after the occurrence, after serving out his total sentence, the respondent indulged himself in such like activity. The respondent at present is more than 50 years old. Both factors have also to be kept in view.<sup>5</sup>

10. The respondent admittedly did not prefer appeal against his conviction. However, he has served out his whole sentence. Enhancement of sentence at this stage, which for the reasons recorded would not be justifiable, would be un-fair and unjust.<sup>6</sup>

11. Even otherwise, sentence awarded to the respondent is justified, commensurate with the nature of offence committed. Enhancement would be excessive and unjust.

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<sup>5</sup> “MUHAMMAD AKHTAR v. MUHAMMAD SHAFIQUE and another” (1986 SCMR 533)

“MUHAMMAD YAQOOB and 3 others v. THE STATE and 4 others” (1991 P.Cr.L.J. 564 (FSC))

<sup>6</sup> “ABDUL HAQ v. MUHAMMAD AMIN alias MANNA and others” (2004 SCMR 810)

“AMIR KHAN and others v. THE STATE and others” (2002 SCMR 403)

“Haji TAHIR HUSSAIN v. SQLAIN and others” (2008 SCMR 817)

12. Pursuant to above, we do not find any reason and justification to interfere in the sentence awarded, resulting in dismissal of revision petition.

SHAUKAT ALI RAKHSHANI  
JUDGE

MEHMOOD MAQBOOL BAJWA  
JUDGE

Dated, Lahore the  
12<sup>th</sup> March, 2019.  
*Mubashir\**

**Approved for Reporting**

Judge