

JUDGMENT:

ABDUL WAHEED SIDDIQUI, J: Appellant has assailed a judgment delivered by Additional Sessions Judge, D.I. Khan on 10-2-1998 whereby he has been convicted under section 511 P.P.C read with section 377 P.P.C and has sentenced him to R.I for 5 years , fine of Rs.3000/- or in default R.I for 6 months. Benefit of section 382-B Cr.P.C is not extended for which reasons advanced in the impugned judgment are in the following words:

"He is not given benefit of section 382 B Cr.P.C being not entitled for the same, as not only the offence with which he is charged, is that of moral turpitude but he is also a desparate and dangerous criminal from the available record in the file so far!"

It has also been adjudicated that sentences passed against appellant are to run separatly and independently and not concurrent to any other sentence.

In fact the impugned judgment is the result of a criminal Revision No.21/97 and Cr.Appeal No. 10/97 challenging judgment of the court of MIC/Judicial Magistrate.D.I.Khan by which appellant was convicted under the same sections of P.P.C but was sentenced to three years S.I and a fine of Rs.1000/-

in default to further undergo six months S.I. Benefit of section 382-B Cr.P.C was also extended.

2. One Muhammad Rafique aged about 11/12 years appeared at P.S Saddar D.I.Khan on 17-9-1993 @ 22.30 hours and reported that on the same day at Digar Wela while he was returning from village Mugeem Shah accompanied by Bashir (PW-1) after having got the wheat grinded and carried on the asses that the appellant was found sitting on the side of the passage. He took the complainant forcibly inside the nearby crop of sugar-cane and got the victim's shalwar opened forcibly and opened his shalwar, made the victim lie down. The appellant / accused made efforts for penetration of his penis inside the rectum of the victim, but failed and discharged outside. Then the appellant left him and he came to his house, informed his father and accompanied with him ^{and} had come to report. An FIR was lodged and the appellant was arrested and challaned in the court of judicial Magistrate D.I.Khan and was charged u/ss 377/511 P.P.C to which he did not plead guilty.

3. To prove its case, prosecution examined 6 witnesses.

Handwritten signature

A separate statement of the complainant/victim was also recorded. Bashir (PW-1) has proved the occurrence as an ocular witness. Gulzar (PW-2) PC, has proved receipt of warrants u/s 204 Cr.P.C against the appellant as he was absconding. He searched the appellant in the nearby villages, but could not find him. Later on he was given proclamation u/s 87 Cr.P.C which is ex.SW/2, Muhammad Khan (PW-3), Inspector of Police, has proved being S.H.O of the concerned P.S. at the relevant time and after completing investigation he challaned the appellant/accused, Muhammad Ismail (PW-4) is a marginal witness of the recovery of shalwar belonging to victim and has proved his signatures on its memo. Muhammad Aslam (PW-5), ASI, has proved coming of the complainant and report which was reduced to writing as FIR Ex.P.A. He referred the complainant for medical examination and prepared site plan Ex.PSS. He has also proved receipt of a positive report of chemical analysis of the articles sent for the said purpose which report is Ex.PR Dr. Shah Jahan (PW-6) has declared the age of victim to be 11/13 years. He has deposed that on external anal examination, there were slight bruises and redness. He obtained swabs from anal canal

Kabeer

and shalwar of the victim for chemical examination. In his statement on oath, Muhammad Rafique has proved the contents of FIR.

Appellant, in his statement u/s 342 Cr.P.C has denied all the specific questions, has declined to be examined on oath and has not produced any defence.

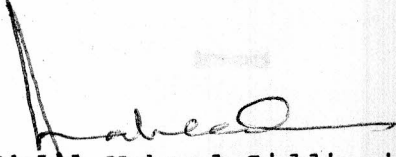
4. I have heard the counsel for appellant and State. Appellant's counsel has not contested the case, however he has prayed for reduction of sentence. For this prayer he has relied on PLJ 1985 FSC 142. The said case is apparently distinguishable from the facts of the present case. Heading (i) of the cited case reads;

Hadood

"Offence of Zina (Enforcement of Hadood) Ordinance, 1979 (VII) of 1979.-- S.12/18 read with Pakistan Penal Code, 1860 (XLV of 1860.S 377/511- Sodomy-Offence of Conviction for- Allegation regarding accused having committed sodomy with boy of 12 years totally belied by medical evidence- No mark of injury found on body of the victim - persons allegedly arriving on scene of occurrence closely related to victim- Element of kidnapping and abduction also not present- Held Appropriate offence committed being one under S.377 read with S.511 PPC, conviction of appellant under S.12 of Ordinance VII of 1979 to be set aside. (P.144)A, B & C

In the present case , the complainant/victim is corroborated completely by expert evidence and the evidence of PW-1 who is ocular. The counsel for State has contended that the appellant's long abscondence is not explained by him and that he was arrested after exchange of fires. He is a desparate and dangerous criminal and no mitigating circumstances are made out in his favour.

5. In view of the above mentioned discussion, the impugned judgment is upheld and the appeal is dismissed.


(Abdul Waheed Siddiqui)
Judge

FIT FOR REPORTING.

Islamabad, 30th April, 1998

Latif Baloch/*