

Judgment Sheet
IN THE PESHAWAR HIGH COURT,
PESHAWAR
Judicial Department
Cr.A No. 283-P/2022

Abdur Rahim Vs the State & another


Date of hearing: 17.08.2022

Mr. Muhammad Ayaz Khan, Advocate for the appellant.

Mr. Syed Asif Jalal, AAG, for the State

Mr. Shahab Ali, Advocate for the complainant.

JUDGMENT

 **SHAHID KHAN, J.** The appellant (Abdur Rahim) has called in question the judgment of learned Additional Sessions Judge/Child Protection Court/Judge, Juvenile Court, Peshawar, dated 16.03.2022, delivered in case FIR No.1128 dated 17.11.2019 u/s 366 PPC 50/53 Child Protection & Welfare Act, Police Station, Tehkal, (Peshawar), whereby he was convicted and sentenced as under: -

U/s 377-PPC read with 377-B PPC & 53 Child Protection & Welfare Act, 2018, for a period of five years (05) SI with fine of Rs. 10,00,000/- (Ten lac) or 06 (Six) months SI in default with benefit of section 382-B

Cr.P.C. However, on completion of three (03) years of sentence of imprisonment, the remaining two (02) years period of imprisonment would be suspended as per Section 15-C of JJSA, 2018, subjected to good conduct on probation on furnishing bonds to the sum of Rs:50,000/- to the satisfaction of Probation Officer.

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2. Facts in small compass are that complainant Mst. Zarghuna reported the event to the local police in terms that on the fateful date, day & time, her daughter Manahil, aged about 04 years went out for playing, however, on her return as weeping to home at 11:00 hours and on query she complained of pain on her stomach. She opted for urination but was weeping of feeling severe pain in her stomach. The complainant while changing her clothes, noticed the sign & symptoms of rape with her minor daughter. She was shifted to hospital for medical aid and the event was registered through proper FIR against the unknown person.

3. On the next day, on due satisfaction that the child victim is competent enough to

record her statement, she was produced before the Judicial Magistrate and after due satisfaction, her statement u/s 164 Cr.P.C, whereof, the appellant-accused, Abdur Rahim was nominated for the commission of offence.

4. After collection of the requisite evidence, substantive, circumstantial & medical followed by completion of investigation, complete challan against the appellant-accused was drawn and sent up for trial to the Court of competent jurisdiction/Child Protection Court/Judge Juvenile Court/Addl: Sessions Judge, Peshawar.

5. Appellant-accused put his appearance before the learned trial Court and copies of the evidence (oral & documentary) were delivered u/s 265-C Cr.P.C. The accused was formally charged u/s 376/337-B PPC read with 53 Child Protection & Welfare Act, 2010, however, it was altered as u/s 377/377-B PPC read with 53 Child Protection & Welfare Act, 2010, to which he did not plead guilty and claimed trial. The prosecution, in order to prove its case against the appellant, examined 11 PWs. Thereafter, the appellant-accused was examined

under section 342, Cr.P.C, wherein he professed innocence and false implication. After hearing the arguments, the learned trial Court convicted and sentenced the appellant-accused as mentioned above vide impugned judgment dated 16.03.2022.



6. Learned counsel for the appellant-accused is focal & consistent on the preposition that the story of the prosecution is based on the account of a minor/child victim and on face of the record the same being not confidence inspiring, therefore, the learned trial Court while placing reliance on the subject evidence has fallen in error. Added, there is no tangible evidence to boost & support the version of the minor child/alleged victim and to base conviction on the solitary statement of a child witness is unwise. The victim being well conversant to the appellant-accused as her next door neighbor, not to disclose his name & identity at the very first instance is Mystery and the learned trial Court to place reliance on the same has fallen in error. Further added, to nominate the appellant-accused for the commission of offence after due delay speak

about the consultation & deliberation, as such, it reduced the intrinsic worth of the very first step of the subject event. Also added, drafting of Murasila in the hospital, KTH, followed by its transmission to P.S Tehkal being against the prevailing practice also speak of the malafide on part of the investigation agency. Likewise, knowingly, the appellant-accused is a juvenile and opt to produce him before the ordinary Court also speak of malafide of the investigation agency. The learned trial Court has fallen in error to rely upon the dishonest investigation and the evidence so collected in this regard. Further added, the learned trial Court was conscious of the dishonest improvement made by the victim during the trial and it also amounts to erroneous conclusion of trial of the appellant-accused. The case of the prosecution is full of surmises & conjectures coupled with the evidence so collected is full of contradictions, therefore, the learned trial Court has fallen in error to place reliance on the evidence not of the standard to be relied upon. Concluded, the appellant-accused deserve as a matter of right the benefit of the contradictions & omissions in



the case of the prosecution and the learned trial Court while reliance on the same has fallen in error, as such, on acceptance of the appeal in hand the appellant-accused deserve acquittal.

7. As against it, the learned AAG assisted by private counsel for the complainant argued that the circumstantial evidence coupled with the medical evidence and above all the substantive evidence boost & support each other. During the investigation involvement of the accused facing trial in the commission of offence did surface and the evidence so furnished as account of victim Manahil as PW-4 followed by her mother Mst. Zarghuna (complainant) as PW-5 have nominated the appellant-accused for the commission of the offence. Added, the medical evidence substantiated that minor-victim Manahil was subjected to illicit act and no good ground does exist to substitute the actual culprit for the appellant-accused. The appellant-accused being the next door neighbor, therefore, question of misidentification or false implication does not arise at all. The circumstantial evidence as garments of the victim coupled with the medical

evidence boost & support the prosecution's case and the learned trial Court on due appraisal of facts & circumstances coupled with the evidence so furnished during the trial, has arrived at the just conclusion of the event. The appellant-accused has rightly been found guilty followed by his conviction.

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8. The learned trial Court has appraised the oral evidence so furnished by the prosecution, whereof, neither material contradictions nor infirmity has been surfaced which could be made as base of an even slight doubt to the set of allegations confronted the appellant-accused.

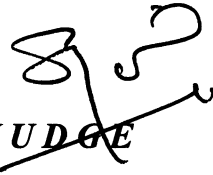
9. The oral evidence finds its positive support from the circumstantial evidence as garments of the victim coupled with the medical evidence as its speak loud & clear of act of sodomy has been committed with the child victim.

10. For what has been discussed above, the Court has arrived at the conclusion that impugned judgment of the learned trial Court is based on proper appraisal of facts & circumstances coupled with the evidence so

recorded. It does not suffer from any illegality, irregularity, misreading or non-reading of evidence, therefore, does not need any interference of this Court. Resultantly, the subject appeal, being bereft of merits, stands dismissed.

Announced

17.08.2022


JUDGE

Nadir SSS,

SB Hon'ble Mr. Justice Shahid Khan HJ.