

HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

Cr. Jail Appeal No.S-14 of 2023.

Mehboob v. The State.

Present:-

Mr. Justice Miran Muhammad Shah.

Appellant : Mehboob through Mr. Barrister Muhammad Saad Saeed Qureshi, Advocate.

Complainant : Present in-person.

Respondent : The State through Mr. Shawak Rathore, D.P.G.

Date of hearing : 16.04.2025.

Date of Decision : 30.05.2025.

J U D G M E N T

Miran Muhammad Shah, J:- Through this Criminal Jail Appeal, appellant Mehboob s/o Yar Muhammad Shah has called in question the Judgment dated 18.07.2022 passed by the learned Additional Sessions Judge-II Jamshoro @ Kotri in Sessions Case No.362 of 2021 (Re: The State v. Mehboob & another) arising out of crime / F.I.R No.78 of 2021, registered at P.S Kotri for an offence under Section 376, 365-B PPC, whereby he was convicted U/s 265-H(2) Cr.P.C and sentenced for offence U/s 376 & 365-B PPC to suffer imprisonment for Ten (10) years for committing rape with victim Mst. Tehmina with fine of Rs.50,000/-. In case of default in payment of fine of Rs.50,000/-, he shall suffer further Simple Imprisonment for three months. The appellant was extended benefit of Section 382-B Cr.P.C.

2. The facts of the case are that the complainant Syed Barkat Ali Shah got lodged FIR at P.S Kotri on 26.03.2021 at 1430 hours alleging therein that on 19.03.2021 he, his son Syed Khameer Ali Shah, his wife Mst. Shabana and his daughter Tahmina aged about 18/19 years went to sleep after taking dinner by locking the main door of house. On 20.03.2021 at 0200

hours the door was knocked, on that the complainant and his family members awoke and saw that the accused everyone Mehboob Shah having pistol, (2) Murad Ali Shah both sons of Muhammad Shah, (3) Sultan Shah s/o Abdul Rahim Shah R/o Baldiya colony Ghulam Shah Kalhoro Hyderabad, (4) Munawar Shah s/o Muhammad Shah, (5) Sajjad, (6) Muneer both sons of Munawar Shah r/o Yousif village near LMC Jamshoro and two unknown persons who will be identified on seeing, they forcibly entered into the house and accused Mehboob Shah pointed out his pistol upon the complainant party for keeping silence, thereafter, accused Mehboob Shah and Murad Ali Shah dragged the daughter of the complainant Mst. Tehmeena and took her outside then abducted into one white colour van, Mst. Tehmeena was crying but due to fear of weapons, the complainant party kept her silent. Thereafter, the complainant consulted with his brothery but no response came out. Thereafter, complainant appeared and reported the matter at PS stating that the accused have taken away his daughter forcibly with intention to commit Zina.

3. On completion of usual investigation, the police submitted final report under Section 173 Cr.P.C against the accused/appellant and other co-accused. The learned trial Court after completing formalities against absconding accused framed charge against present appellant/accused & another to which they pleaded not guilty and claimed trial.

4. In order to prove a charge, prosecution examined as many as Nine (9) witnesses, which include complainant Syed Barkat Ali Shah at Exh.08, who produced FIR at Exh.08/A, P.W-02 Mst. Shabana at Exh.09, P.W-03 Zameer Ali Shah (mashir) at Exh.10, who produced mashirnama of place of incident at Exh.10/A, P.W-04 Mst. Tehmina (victim) at Exh.11, who produced her statement u/s 164 Cr.PC at Exh.11/A, P.W-05 Dr. Irfana (WMO) at Exh.12, who produced Police letter for medical examination of victim at Exh.12/A, Provisional Medico-Legal Certificate of victim Tehmina at Exh.12/B, DNA report at Exh.12/C, final medico-legal certificate of alleged victim at Exh.12/D, P.W-06 (*mistakenly written as "witness No.5"*) Dr. Sirajullahaq Ansari the Medoco-legal officer tat Exh.13, who produced police letter for medical examination of accused Mehboob

Shah at Exh.13/A, Provisional Medico-Legal Certificate of accused Mehboob Shah at Exh.13/B, Final Medico-Legal Certificate of accused Mehboob Shah at Exh.13/C. P.W-07 (*mistakenly written as "witness No.6"*) Ms. Erum Sheikh the learned Civil Judge & J.M at Exh.14, P.W-08 (*mistakenly written as "witness No.7"*) SIP Sikandar Ali (Investigation Officer) at Exh.15, who produced entry No.16 at Exh.15/A, departure entry No.17 at Exh.15/B, arrival entry No.21 at Exh.15/C, departure entry No.14 at Exh.15/D, mashirnama of arrest of accused at Exh.15/E, arrival entry No.17 at Exh.15/F, further statement of complainant at Exh.15/G, departure entry No.40 at Exh.15/H, mashirnama of arrest of accused at Exh.15/I, arrival entry No.44 at Exh.15/J, departure entry No.44 at Exh.15/K, mashirnama of arrest and recovery at Exh.15/L, arrival entry No.46 at Exh.15/M, statement of abductee Mst. Tehmina at Exh.15/N, arrival entry at Exh.15/O, Police letters to incharge Forensic for DNA report at Exh.15/P and at Exh.15/Q, PS copy of letter for production of Mst. Tehmina issued by Director Social Welfare Darulaman Hyderabad at Exh.15/R, PS copy of police letter for production to learned Magistrate at Exh.15/S, PS copy of application filed before the learned Magistrate at Exh.15/T, PR bond/stamp paper at Exh.15/U, PR Bond obtained by Police at Exh.15/V, arrival entry No.28 at Exh.15/W. HC Ayaz Hussain (mashir) at Exh.16. Thereafter, the learned DDPP for the State closed side of prosecution evidence and submitted statement at Exh.17.

5. The Statement of appellant/accused U/s 342 Cr.P.C was recorded, whereby he denied the allegations of prosecution in terms of Section 342 Cr.P.C, but he neither testified on oath nor called any defense witness(s). He claimed his false implication and pleaded his innocence. According to the appellant, he had one cottage in front of Dargah Baba Sallauddin Kotri but the complainant had occupied the same and when he demanded to get it vacant from complainant, he was falsely implicated by complainant in this case in order to pressurize him from withdrawing said cottage.

6. After hearing respective parties as well as assessment of evidence available, the learned trial Court passed the Judgment dated 18.07.2022, convicted and sentenced the appellant/accused as stated above. The learned trial Court through the said Judgment had acquitted the accused

Ghulam Hyder as well as proclaimed offenders accused Imran and Irfan in their absentia U/s 265-H(i) Cr.P.C. Hence, the appellant/accused being aggrieved and dissatisfied had preferred instant appeal against the impugned Judgment.

7. The learned counsel for appellant argued that there are major contradictions in the evidence of prosecution witnesses, which have been ignored by the learned trial Court while deciding the impugned Judgment; that all the prosecution witnesses are interested being set up and officials; that all the material witnesses and complainant himself contradicted their version regarding the information about the incident as well as there are so many contradictions in the evidence of WMLO; that there are major contradictions in the evidence of the prosecution witnesses, but the same were totally ignored by the learned trial Court; that there is delay of about six days in registration of FIR for which no plausible explanation is furnished by complainant, which shows due deliberation and consultation on the part of complainant party to engineer a false case against the appellant/accused due to dispute over cottage; that the delay is fatal to the case of prosecution as observed by Honourable Superior Courts in number of cases; that there is no eye witness of the alleged incident but despite such fact, the learned trial Court in a hasty manner convicted the appellant, who is innocent; that the prosecution examined Nine witnesses but their evidence is neither credible nor inspiring confidence as suffering from material contradictions, which are fatal to the case of prosecution and creating serious doubt. He further contended that the complainant in his evidence had also admitted that all the accused are by caste Syed except one, and all Syed accused are relatives of his wife; that the complainant had also admitted that accused Hyder Abbasi is husband of sister of his wife, which clearly shows that the accused are nominated due to personal grudge which commonly exists between relatives and just to teach them a lesson, this heinous prosecution story was cooked against the appellant/accused otherwise appellant is innocent and has no concern with the alleged offence. The learned trial Court convicted the appellant and passed the impugned Judgment, which is nothing but against the law & natural justice. The learned counsel while arguing the matter had also read over the chief as well as cross-examination of PWs. Lastly, he prayed

that the impugned Judgment may be set-aside and the appellant/accused may be acquitted from all the charges. Learned counsel for appellant placed his reliance upon case laws reported as 2018 YLR Note 56, 2022 P.Cr.L.J Note 45, 2023 P.Cr.L.J 1546 & 2024 MLD 1047.

8. On the other hand, Mr. Shawak Rathore, Deputy Prosecutor General also argued at some length and opposed the appeal of appellant/accused on the grounds that the appellant is involved by the prosecution witnesses as well as medical evidence. He also supports the prosecution case; that the appellant/accused was rightly convicted by the learned trial Court and even the learned trial Court had taken lenient view by awarding sentence of Ten (10) years; that sufficient material was brought on record against him in shape of medical evidence. Lastly, it is argued that there are minor contradictions in the evidence of prosecution witnesses but the same are not fatal to the case of prosecution. He prayed for dismissal of appeal in hand.

9. I have carefully heard the learned counsel for the parties and scanned the entire evidence as well as record available.

10. After hearing all the parties i.e. counsel for the appellant/accused as well as the learned D.P.G for the State. I have observed that it is a clear open & shut case, where the appellant had on the force of gun kidnapped a girl of 13 years and who happened to be his own niece (daughter of his sister). After kidnapping her he raped her as per the statement of the victim. She categorically identified all the people present, however, she accuses only the present appellant who caused rape upon her. This is a gruesome offence one can commit where the own kith & kin of your blood line becomes victim of your power and lust. Sufficient evidence has come before this Court which implicates the present appellant/accused in this case. The medical evidence which is the only plea taken by the counsel for the appellant/accused is of medical evidence, however, I have thread barely gone through the evidence of the female as well as the male doctor examined before the learned trial Court and they both have fully implicated the present appellant/accused and specially the evidence of the male Doctor i.e. Sirajullhaq who examined the appellant clearly stated in his examination in chief that *"I am of the opinion that accused Mehboob*

Shah has performed rape with Tehmina d/o Syed Barkat Ali Shah. I produce final medico-legal certificate as Ex.12/C and say it is same, correct and bears my signature". For the brevity of this case, the deposition of the Doctor Sirajullhaq is reproduced as under;

"MR. JAVED HAKRO, ADPP FOR THE STATE.

On 08-04-2021, I was posted as Medico-Legal Officer at DHQ hospital, Jamshoro @ Kotri. On that day at 05:30pm, accused Mehboob Shah s/o Sayed Yar Muhammad Shah was brought by Police vide letter No.Cr.78/2021 dated 08/04/2021 for medical examination of accused with history of rape. I produce the letter as Ex.12/A and say it is same and correct.

ON EXAMINATION:

The person was of average built, height, well oriented in time, space and well cooperative. Gait normal. Penis adult size and circumcised. Pubic hair present and not mated.

The accused was physical capable to perform sexual act of any kind. I secured his clothes and blood samples of DNA test. I issued provisional medico-legal certificate that I produce as Ex.12/B and say it is same, correct and bears my signature.

Thereafter, I received DNA report that I see at Ex.11/C and say it is same, correct. On the basis of report of DNA, I issued final medico-legal certificate of all three accused with opinion that accused Mehboob Shah (item 5.0) is contributor of semen stains/sperm fractions identified on vaginal swab and clothes of victim Tahmina d/o Syed Barkat Shah (item 1.0 and item 3.0). I am of the opinion that accused Mehboob Shah has performed rape with Tahmina d/o Syed Barkat Ali Shah. I produce final medico-legal certificate as Ex.12/C and say it is same, correct and bears my signature. The case property i.e clothes of accused produced in the court are same.

CROSS-EXAMINATION TO MR.SHOAIB ALI NAREJO, ADVOCATE FOR ACCUSED.

I was on duty from 2:00pm to 8:00pm on that day. It is correct that I have not mentioned particulars or color of clothes of accused in my medico-legal certificate. It is correct that I have not mentioned in my medico-legal certificate that I asked the accused agent for erection. The accused could not produce semen from his agent but I only obtained his blood samples. It is correct that I have not mentioned in medico-legal certificate that accused could not produce his semen. I gave opinion that accused can commit sexual act on the basis of adult penis. I handed over clothes and blood sample to SHO. It is correct that I have not mentioned the date on which I handed over the sample to SHO. It is correct that I have mentioned in medico-legal certificate that I sample to LUMHS DNA Laboratory and I kept my opinion reserved for receipt of DNA report. It is incorrect to suggest that as per DNA report, the articles of victim are not

matching with the accused. I see the DNA report, Item 1.0 and 2.0 are swabs of victim. Item 5.0 is mentioned in my final medico-legal certificate. It is correct that same item 5.0 is blood sample of victim Tahmina in DNA report. It is incorrect to suggest that as per DNA report the blood sample of victim item 5.0 has been matched with swab of victim item 1.0 and 2.0. It is correct that I issued final report on the basis of DNA report. It is correct that articles 1.0 to Item 5.0 are samples of victim Mst. Tehmina. I see DNA report, It is correct that articles 6.0 and 7.0 of accused are not matched with articles of victim. It is incorrect to suggest that I have not properly examined the active agent of accused. It is incorrect to suggest that I had not sent the samples to the DNA laboratory. It is incorrect to suggest that I am deposing falsely."

11. His examination in chief as well as cross-examination fully corroborates with the medico-legal certificate produced before the learned trial Court. Then the female Doctor Irfana Abbasi, who examined the victim has in her deposition also fully corroborated with the medico-legal certificate as well as other documents produced. She after obtaining the DNA report and producing it before the learned trial Court states that *"on the basis of report of DNA, I issued final medico-legal certificate on 21.09.2021 with opinion that the accused Mehboob Shah s/o Yar Muhammad Shah item 5.0 is contributor of semen stains/sperm fraction identified on vaginal swab and clothes of victim Mst. Tehmina d/o Syed Barkat Shah"*. Herein she categorically states the clothes of the victim matches with the semen of the appellant. She further produces the final medico-legal certificate which categorically conclude that accused Mehboob Shah s/o Yar Muhammad Shah is a contributor of semen stains/sperm fractions identified on vaginal swab and clothes of the victim Tehmain d/o Syed Barkat Shah. Although in its provisional medical certificate she states that no violence was caused upon the victim, but after obtaining the DNA report, in final medico-legal certificate she states that injury No.1 & 2 are declared as other hurt 337Lii caused by hard and blunt substance. This last sentence of her opinion also belies the defense case that no violence was used upon her just to weaken the prosecution case. The deposition of the female Doctor Irfana Abbasi is also reproduced as under for brevity of the case;

"MR. JAVED HAKRO, ADPP FOR THE STATE.

On 08.04.2021, I was posted at District Headquarter Hospital, Kotri. On same date, victim Mst. Tehmina d/o Syed Barkat Shah aged about 19 years was

produced by Police at 04:50pm for her medical examination with history of kidnapping and sexual assault. I received Police letter No.Cr.78/2021 dated 08.04.2021 that I produce as Ex.11/A and say it is same, correct.

Identification mark:

1. Mole on right side chest below the clavicle

At first instance I took informed consent of the victim and then examined her.

At the time of examination, the victim was young female, Muslim, 19 years of age, normal height and built, cooperative, oriented with time and place, plain dress, shalwar and shit silver gray color, green colour dupatta, purple color bra, color stain found on clothes.

ON GENERAL PHYSICAL EXAMINATION:

On general physical examination, patient was vitally stable.

EXTERNAL EXAMINATION:

Multiple small bruises about 1 x 0.5cm present on left breast

Bruises of same size about 2 x 1.5 cm present on posterior aspect of left shoulder

PARTICULAR EXAMINATION

No mark of violence seen on vulva, vagina and perineum. Pubic and axillary hairs shaved. Vulva and vagina were normal.

Two fingers easily crossed through vagina. Cervical O.S is closed. Uterus is normal in size and ante-verted. Gloves stained with whitish discharge.

High vaginal swab, low vaginal swab, rectal swab taken for chemical analysis and DNA.

Nail clippings, blood sample and clothes taken for DNA and chemical analysis.

All samples duly sealed and sent to Forensic DNA Molecular Laboratory LUMHS Jamshoro

Urine pregnancy test done which is negative

From examination of victim, I am of the opinion that victim has lost her virginity. I reserved final opinion till receipt of report. Thereafter, I issued provisional medico-legal certificate as Ex.11/B and say it is same, correct and bears my signature. The samples and sealed clothes of victim handed over to Police Official.

Thereafter, I received report of DNA report 20.09.2021 that I produce as Ex.11/C and say it is same, correct. On the basis of report of DNA, I issued final medico-legal certificate on 21.09.2021 with opinion that the accused Mehboob Shah s/o yar Muhammad Shah item 5.0 is contributor of semen stains/sperm fraction identified on vaginal swab and clothes of victim Mst. Tehmina d/o Syed Barkat Shah (Item 1.0 and 3.0). I declared the injuries No.1 and 2 as other hurt 337-L(2) caused by hard and blunt substance. I produce final medico-legal certificate that I produce as Ex.11/D and say it is same, correct and bears my signature. The case property i.e clothes of victim produced in the court are same.

CROSS-EXAMINATION TO MR.SHOAIB ALI NAREJO, ADVOCATE FOR ACCUSED

It is correct that I have not specifically mentioned that on which kind of clothes the stains were found in provisional medico-legal certificate. Voluntarily says that I made circles on the said cloth. It is correct that I have also not mentioned in medico-legal certificate that I put circles on the said cloth. I obtained consent from victim before medical examination. It is correct that I have not obtained consent from victim in writing in presence of witnesses. It is correct that I have not mentioned the age of bruises in my medico-legal certificate either the same were healed or fresh. I examined the victim on a examination table. I know the lithotomy position. It is correct that I have not mentioned in my medico-legal certificate about the lithotomy procedure adopted by me. It is correct that I have not mentioned the word that hymen was intact or ruptured. Voluntarily says that I have mentioned Cervical O.S in medico-legal certificate. It is correct that after conduct of two finger test I observed the cervical O.S. I preserved the swabs in a plastic tube. The clothes of victim were sealed in a cloth bag. I cannot say how much time the sperms will survive in body of victim. I cannot that the sperm stains on the clothes are destroyed within 24 hours. It is correct that if the victim washes the alleged private part, the sperm will wash out. It is correct that I have not mentioned in the medico-legal certificate that after taking samples of victim, I handed over the same to ASI for depositing with the laboratory. It is correct that male and female can produce semen. I see the DNA report, the swab of victim was matched with the blood sample of victim. I see DNA report at Ex.11/C, Item 6.0 and 7.0 are not matched up with Item 1.0 and 2.0 samples. I see DNA report at Ex.11/C, it is correct that it is not mentioned that samples preserved by me were in a tube and received by the laboratory. It is correct that I have not mentioned the date in medico-legal certificate of handing over samples to Police officer. It is incorrect to suggest that I have not properly examined the victim. It is incorrect to suggest that no rape with committed with her. It is incorrect to suggest that I am deposing falsely."

12. The main evidence is of victim Tehmina whose statement U/s 164 Cr.P.C was also made part of the R&Ps of the case who has fully corroborated her uncle (the present appellant/accused) in this case clearly accusing him of kidnapping her and then causing rape upon her. She then further fully corroborated the same statement as earlier recorded before the learned trial Court in her deposition. For brevity of the case, the evidence of victim Mst. Tehmina is reproduced as under;

MR. JAVED HAKRO, ADPP FOR THE STATE ASSISTED BY MS. SHAHNAZ BURIRO, LEARNED COUNSEL FOR COMPLAINANT.

I do not remember the date and month of incident. In the night time, I along with my mother Mst. Shabana, my father Syed Barkat Ali, my brother Zameer Shah, my sister Sakeena and younger brother Rizwan and younger sister Shoona were asleep at our home. At about 02:00am night time, my maternal uncle Mehboob Shah entered into the home along with Murad Shah and others were not identified by me. My maternal uncle Mehboob Shah came to me and threatened me to remain silent and if I made cries my parents will be killed. Due to this, I remained silent. Accused Mehboob Shah and Murad Shah kidnapped from the house and took me in a van, in which accused Ghulam Hyder, Irfan Shah and Imran Shah was sitting. They kidnapped me through the van and kept me at unknown place. Accused Mehboob Shah and Sultan Shah talked with each other. Thereafter, accused Mehboob Shah forcibly raped me. I along with accused persons were present at unknown place. Accused Ghulam Hyder or Sultan disclosed to the accused Mehboob Shah that Police has been informed. On such information, they took me to some other place. They continuously changed places for 13 days. At the time of changing place, Police party arrested accused Mehboob Shah and me at Minar Chowk Kotri. Police brought us at Police Station, where Police recorded my 161 Cr.P.C statement and then with the order of Court I was sent to Darul Aman. I informed that a court letter has been received to Incharge to Darul Aman for producing me before the Court. On the next day, Police produced me before the Court. My statement was not recorded in the Court and I was sent to Darul Aman. Next time, I was called before the Court and my 164 Cr.P.C statement was recorded by Judge. Thereafter, I was handed over to my parents. I produce my 164 Cr.P.C statement as Ex.11/A and say it is same, correct and bears my RTI. Accused present in the Court are same.

CROSS-EXAMINATION TO MR.SHOAIB ALI NAREJO, ADVOCATE FOR BOTH ACCUSED.

No incident occurred prior to this incident. It is correct that prior to this incident about 2 or 2 ½ years ago I went to the house of my elder aunt. It is incorrect to suggest that after being annoyed with my parent, went to house of my aunt. Voluntarily says my maternal uncle took me on false hope. It is correct that Mehboob Shah used to visit our house and he was residing with us and then my father kicked out to him prior to six months of first incident. Prior to this incident, we used to reside near Baba Salahudin at Kotri. Firstly, I woke up on the night of incident and then on my cries other family members also awakened. The neighboring houses are there but at some distance from our house. I do not know how much away is main road from our house. When I was taken away by culprits in vehicle, I was crying. The culprits had taken me and we travelled from 01:00am of the night till 01:00pm of next day. We had not taken meal anywhere during this travelling time or fueled our vehicle. My maternal uncle Mehboob Shah committed illicit intercourse with me on the first day. I was kept in three different places. I resided seven days in one house. I do not remember the time and

period of residing in other houses. I was kept confined in a room. My feet and mouth were tied in the room. It is incorrect to suggest that I had given statement to Police and stated that only Mehboob Shah came to our house. It is incorrect to suggest that I stated in my statement to Police that I was taken away in a car. The culprits were changing the vehicle at the time of shifting me to different places. When I was recovered by Police I was standing on the road. I do not remember how much time was taken by me from house towards the road. My mouth and my feet were open when I was taken on the road. Only Mehboob Shah dropped me on the road. I had not raised cries there as I was threatened by accused Mehboob Shah. Police came on the car at the same place. There were three Police officials. Police came there and directly took me to Police Station. My father, mother and my brother came at Police Station in night time who remained there for 02 minutes and then went out. About 14 days of my recovery by Police, the zina was committed with me by accused Mehboob Shah. It is correct that I with my own conscious got recorded my statement before the learned Magistrate. It is incorrect to suggest that I had only disclosed the name of Mehboob Shah in my statement recorded by the Magistrate. It is correct that I had stated in my statement before the Magistrate, that Mehboob Shah awakened me and told me that if I raise any cry my parents would be killed. It is incorrect to suggest that I have in my statement before Magistrate that I was recovered from Karachi by Police. It is incorrect to suggest that no illicit intercourse was committed with me by accused. It is incorrect to suggest that I am deposing at the instance of my father and mother.

13. No contradiction could be made available by the defense counsel in any of the witnesses evidence especially the evidence of the victim herself which is vital and important in any rape case and specially when the accused is a family member, it is a very difficult for a victim to come out openly and blatantly stated that such and such relative of her has caused rape upon her. Even a mother of the victim who is a witness and has deposed before the learned trial Court very categorically stated the name of the appellant/accused and also in a cross-examination admits that accused Mehboob Shah is her brother. Similar has been the evidence of the complainant, who is father of the victim, have also identified the present appellant/accused and stated that by use of force and weapon kidnapped the victim. They however state other names also against whom not much of evidence has come on record, especially that of the victim who only accuses the present appellant Mehboob Shah for causing rape upon her. The medical evidence brought on the record and the depositions of the both the doctors who were independent of any relationship and any

enmity have fully implicated the present appellant/accused and this aspect of the case is of such nature which transpires confidence into the case of the prosecution/complainant. This kind of offences cannot and should not be taken lightly and leniently. This brings into question the basic framework of the society we all live in. In such cases, where merely by use of force the females are brought under the control of male members of the family and such desperate acts are committed. The appellant who perhaps seems more powerful and as per his own statement a holder of property has used his all such tricks to cause force and then rapped upon a victim who seems to belong to a family who lives in a *Jhugi* (house made of a hay and raw pieces of wood), where the victim of the brother does not have sufficient room to sleep in the house and stated to be a sleeping on a stall cart. Such houses do not have any doors or walls, hence could be entered easily specially, if the culprit is carrying arms and ammunition. The statement of accused, in which he submit his plea of innocence and state that due to a dispute over a cottage which was the property of the appellant, he has been falsely implicated in this case, which is only could be considered a laughable proposition as who would want their young daughter to be used for a mere piece of land and implicate their own family members causing dishonor to their own family and depose against him. Such plea made by the appellant/accused in his statement U/s 342 Cr.P.C does not transpire any confidence and does not help with the case of the appellant. The learned counsel has relied upon certain case laws which merely relies upon the contradictions in medical evidence, which I have failed to see and the case law which is quite irrelevant and not binding upon this Court. The Investigation Officer has also fully supported the case of the prosecution and has corroborated his case despite lengthy cross-examination. In such circumstances, I fully support the findings of the learned trial Court. I see that despite clear evidence which is not been destroyed by the defense cross-examination or statement of accused. The sentence is not been sufficient despite the gravity of the case and the gravity of the evidence brought on record and the medical evidence. The appellant/accused in fact has been sentenced of a much lesser punishment than that was required/should have been applied. The learned trial Court despite convicting the appellant U/s 376 & 365-B has only given him a lesser

punishment for the offence of 376 PPC for committing rape, however, his conclusion is silent about 365-B PPC which carries only one punishment and that is imprisonment for life, whereas the conviction for 376 PPC also carries a punishment of 25 years alongwith fine. No explanation has been given by the learned trial Court in its conclusion as to why a lesser punishment was applied upon the appellant/accused and no explanation has been given as to why no sentence in the kidnapping which according to the learned trial Court's conclusion has also been proved, however, he was not sentenced for the said crime. In such circumstances, while relying on the case law, I hereby **enhance** the sentence of the present appellant/accused from **Ten (10) to Fourteen (14) years** imprisonment. The case of **Abdul Ghani v. The State through P.G Balochistan and another reported as 2022 SCMR 544** is very much identical and relevant to the case in hand. The relevant portion of the case law is reproduced as under;

"3. The incident occurred in a remote rural part of the Province of Balochistan when the prosecutrix's father was away to Quetta and rushed back upon receipt of information. In this backdrop, the crime is reported with a remarkable promptitude; petitioner being a close family relation, the timeframe does not space any hypothesis of consultations or deliberations. The child being in tender nubility is clinically established to have been violated, a circumstance that required no further forensic corroboration. Negative reports do not reflect upon the veracity of prosecution case for reasons more than one. D.N.A. profile generation though a most meticulous method with unfailing accuracy, nonetheless, requires an elaborate arrangement about storage and transportation of samples, a facility seldom available. Even a slightest interference with the integrity of samples may alter the results of an analysis and, thus, the fate of prosecution case cannot be pinned down to the forensic findings alone, otherwise merely presenting a corroborative support, hardly needed in the face of overwhelming evidence, presented by the prosecution through sources most unimpeachable. Penetration is sufficient to constitute the offence and there are many factors, physical as well as psychological, that may intervene during a carnal assault, impeding complete consummation of carnal assault. Such subsequent failures do not redeem the enormity of initial assault, a case otherwise established to the hilt. Given the violence inflicted upon the child, enhancement of appellant's sentence by the High Court, his juvenility notwithstanding, nonetheless, cannot be viewed as excessive or harsh. Petition as well as appeal fail. Dismissed."

14. I also place my reliance upon case of **Nathu Khan v. The State reported as PLD 1986 Supreme Court 82** while enhancing the sentence already awarded to the appellant/accused by the learned trial Court.

15. Based upon all deliberations, I while **enhancing** the sentence applied by the learned trial Court, **uphold** the Judgment passed by the learned Additional Sessions Judge-II Jamshoro @ Kotri dated 18.07.2022 and hereby **dismiss** the present Cr. Jail Appeal No.S-14 of 2023.

JUDGE

Ali.