

THE HIGH COURT OF SINDH, CIRCUIT COURT AT HYDERABAD

Criminal Appeal No.S-76 of 2021

Criminal Jail Appeal No.79 of 2021

Appellant: Rashid Ali through Mr. Muhammad Saad
Saeed Qureshi, Advocate.

Complainant: Javed Soomro in person.

Respondent: The State through Ms. Sana, A.P.G. Sindh.

Date of hearing: 19.05.2025.

Date of Judgment: 27.06.2025.

J U D G M E N T

RIAZAT ALI SAHAR, J. The appellant namely, Rashid Ali has assailed the legality and propriety of the judgment dated 27.04.2021, passed by the learned Additional Sessions Judge-IV, Dadu (Gender Based Violence Court) in Sessions Case No.33 of 2021, arising out of Crime No.199 of 2020, registered at Police Station A-Section Dadu for the offence punishable under sections 376, 34 P.P.C, whereby, the learned trial Court after full-fledged trial, convicted the appellant under section 376 PPC and sentenced him to suffer Simple Imprisonment for 20 years and further burdened to pay fine of Rs.100,000/- [Rupees one hundred thousand], which shall be paid to victim and in case of default in payment of fine he was ordered to undergo simple imprisonment for ten months. Benefit of section 382-B Cr.P.C. was extended to the appellant. However, co-accused Mst. Rashida was acquitted by extending her benefit of doubt.

2. The prosecution case, as emerging from the FIR lodged on 07.10.2020 by the complainant Javed Soomro at Police Station A-Section, Dadu, is that he is the father of four children, including a

daughter named Sahrish, aged about 10 to 11 years. It was stated in the FIR that the complainant and his family were acquainted with one Rashid Panhwar and his relatives and that the minor daughter Sahrish used to occasionally visit their house. According to the complainant, on the same date, i.e., 07.10.2020, baby Sahrish had gone to attend school at Bai-tul-Mal School, but did not return home at the expected time. This caused concern to the complainant and his wife, Mst. Neelam, who then proceeded to search for her. At around 2:30 p.m., when they reached a common street in front of the house of accused Rashid Panhwar, they allegedly heard the voice of their daughter crying from inside the said premises. The complainant and his wife entered the house and upon reaching a southern-side room, they allegedly found their daughter lying on a cot, in a state of partial undressed and observed the accused present there. Upon their entry, the accused is stated to have fled from the scene. They clothed their daughter and brought her home. Upon being asked, the minor girl allegedly disclosed that while returning from school, she was met in the street by one Rashida, sister of the accused, who took her to their house on the pretext of giving her some books, where the alleged incident occurred. Thereafter, the complainant claimed to have approached some relatives of the accused to raise the matter, but was told that they had no relationship with Rashid and others. The complainant then informed his own relatives and subsequently, the matter was reported to the police; hence, this case.

3. After completing the initial investigation, challan was submitted to the Court of concerned Magistrate, wherefrom the case was sent up to the Court of learned Sessions Judge, Dadu and later to the learned trial Court. Consequently, charge was framed against the appellant, who pleaded not guilty and claimed to be tried. At the trial, the prosecution examined six witnesses to prove its case. PW-1 Dr. Irfana Pirzada was examined at Ex.5, who produced the police letter, provisional and final medico-legal certificates of victim Sahrish and the DNA report, exhibited as Ex.5/A to Ex.5/D. PW-2 Javed Ali, the complainant, was examined at Ex.6, who produced the

FIR at Ex.6/A. PW-3 Sahrish, the alleged victim, was examined at Ex.7. The learned Assistant District Public Prosecutor (ADPP) gave up PW Mst. Neelam, wife of the complainant, through a statement recorded at Ex.8. PW-4 Abdul Jabbar, the mashir, was examined at Ex.9. He produced the mashirnama of the place of incident and mashirnama of clothes, exhibited as Ex.9/A and Ex.9/B. PW-5 Dr. Aftab Ahmed Rustamani was examined at Ex.10. He produced the police letter and medical certificate of accused Rashid Ali, exhibited as Ex.10/A and Ex.10/B. Lastly, PW-6 ASI Shamsuddin Mallah, the Investigating Officer, was examined at Ex.11 who produced entry No.26, entry No.4, mashirnama of arrest of the accused and entries No.18 and 20, exhibited collectively as Ex.11/A to Ex.11/D. Thereafter, the learned ADPP closed the side of the prosecution through a statement recorded at Ex.12.

4. Statement of the appellant/accused as well as co-accused Mst. Rashida were recorded under Section 342 Cr.P.C. wherein they denied all allegations, professed innocence and did not opt to be examined on oath, nor did they produce any witnesses in their defence.

5. Learned trial Judge after hearing the learned counsel for the parties and examining the evidence available on record convicted and sentenced the appellant while acquitted co-accused Mst. Rashida as stated above through impugned judgment. Hence, the appellant against the said judgment has firstly preferred Criminal Jail Appeal No.S-79 of 2021 through Senior Superintendent, Central Prison & Correctional Facility Hyderabad and then Criminal Appeal No.S-76 of 2021 through his private counsel.

6. Learned counsel for the appellant has contended that the FIR was registered after an unexplained delay of 7 hours, during which the complainant admittedly consulted with relatives instead of approaching police or hospital, raising doubts of deliberation and malafide intention and the delay dents the naturalness and credibility of the complaint. He has further contended that the

medical evidence contradicts the ocular version; PW-1 Dr. Irfana observed no marks of violence on the victim's body despite allegations of a violent rape, suggesting that no forceful act occurred. He has also contended that although the complainant and victim stated that the clothes were removed during the act, DNA analysis confirmed the presence of semen stains on the clothes, creating an irreconcilable contradiction and the chain of custody regarding DNA samples is seriously doubtful as three different versions were presented regarding who handed over the victim's clothes and the Investigating Officer failed to describe key identifiers of the clothes. According to learned counsel for the appellant, the principle that DNA is corroborative and not substantive was emphasized, especially when the ocular evidence itself lacks reliability. Learned counsel for the appellant is further of the view that dishonest improvements were also highlighted particularly the alleged presence of co-accused Rashida, later disproven by the I.O., which attracts the doctrine of *Falsus in uno, falsus in omnibus*. He has also contended that the arrest of the accused is also dubious, as the relevant entry No.18 does not mention the complainant's presence and contradicts the I.O.'s own statement that the arrest occurred during routine patrolling. He has further contended that the statement of the victim under Section 161 Cr.P.C. was recorded after three days, without any explanation, thereby allowing room for fabrication. He contended that the inspection of the place of occurrence is also doubtful due to contradictions in the testimony of the complainant, I.O., and mashirs regarding access, description of the door and the lack of independent witnesses as required under Section 103 Cr.P.C. Learned counsel for the appellant has contended that these contradictions and procedural lapses create serious doubts in the prosecution case and the benefit thereof must go to the appellant, as such, he prayed for acquittal of the appellant.

7. Conversely, learned A.P.G. Sindh supported the impugned judgment and argued that the prosecution has successfully proved the case against the appellant through credible

ocular evidence, which finds full support from medical and circumstantial evidence. She has further contended that the incident was witnessed by the complainant as well as his wife. She has further contended that the minor discrepancies or omissions in the evidence do not shake the core of the prosecution case. In conclusion, she submitted that the findings of the trial Court are based on sound appraisal of evidence and require no interference. She, therefore, prayed for dismissal of the appeal.

8. Complainant Javed Soomro appeared in person on 19.05.2025 and stated that he being a poor person is unable to engage a private counsel; however, he has shown his full faith upon learned A.P.G. Sindh.

9. I have considered the arguments advanced before me by the learned counsel for the parties and perused the material available on record including the cases cited at bar.

10. Record reflects that allegedly on 07.10.2020, the minor daughter of complainant Javed Soomro did not return from school and during a search, the complainant and his wife allegedly heard her cries from the house of accused Rashid Panhwar, where they found her in a state of partial undressed. The accused allegedly fled the scene and the victim disclosed she was taken there by Rashid's sister under the pretext of giving books. The matter was later reported to the police.

11. In the instant case, there are two eyewitnesses of the incident, PW-2 Javed Ali (complainant) and PW-3 Sahrish (victim). PW-6 ASI Shamsuddin Mallah is the Investigating Officer, while PW-4 Abdul Jabbar is the mashir of the case. Other material witnesses include PW-1 Dr. Irfana Pirzada and PW-5 Dr. Aftab Ahmed Rustamani, who medically examined the victim and the accused, respectively.

12. PW-01 Dr. Irfana deposed that on 07.10.2020, she was posted as Woman Medical Officer at Civil Hospital, Dadu. On the same day, she received Police Letter No.2567 requesting the medical examination of victim Sahrish. She produced the police letter in evidence as Exhibit 5/A. She examined the victim and obtained her history. The General Physical Examination revealed that the victim was a minor female, conscious, well-oriented, well-behaved, and cooperative. No marks of violence were seen on her body.

The local examination findings were as follows:

- **Auxiliary hairs: Present and light.**
- **Breasts: Underdeveloped, areola light brown, nipple not developed.**
- **P.V. (Per Vaginal) Examination:**
 - **Pubic hairs present, light black in color, no mark of violence.**
 - **Vulva: Normal, no marks of violence.**
 - **Vagina: Normal, admits one finger with pain, no marks of violence.**
 - **Hymen: Torn, gloves stained with blood.**
 - **Uterus: Normal.**

In her provisional opinion, she concluded that Sahrish is not a virgin. Low and high vaginal swabs, nails, urine, blood samples, and clothes were sent for chemical and DNA analysis. She issued a provisional medical certificate, which she produced in court. She later received a DNA test report dated 29.12.2020, which she also produced. Based on the DNA report, she issued the final medical certificate on 08.01.2021.

According to the DNA results, male DNA profile from semen stains identified on items 1.0 and 2.0 (vaginal swab samples and clothes of the victim) matched with the DNA profile of item 4.0 (blood sample of accused Rashid s/o Muhammad Hashim).

In her final opinion, after receiving the LUMHS laboratory report, she concluded that **rape had been committed**, as DNA from semen stains was detected. She produced the final medical certificate in court.

13. PW-02 Complainant Javed Ali Soomro deposed that on 07.10.2020, while working as a laborer, he had dropped his daughter Sahrish at school. After school time, she did not return home, which led him and his wife Neelam to search for her. During the search, in Bhurgri Muhalla near the house of accused Rashid, they heard cries of their daughter. They entered Rashid's house and moved toward the room from where the cries came. There, they found accused Rashid committing zina with Sahrish, whose clothes were removed. Upon seeing them, Rashid fled the scene. They clothed Sahrish and inquired from her. She disclosed that on her way home from school, Mst. Rashida, sister of Rashid (appellant), took her to their house on the pretext of giving her books. There, Rashid forcibly committed zina with her. Mst. Rashida was present in the house during the act. They returned home and informed Rashid's brothers, who denied responsibility. After consulting relatives, they proceeded to the Police Station Dadu, where he narrated the incident and requested registration of the FIR and a medical letter for the examination of his daughter. The police issued the medical letter. After the check-up, they returned to the police station, where FIR was registered at 09:30 p.m. On the following day, 08.10.2020, he showed the place of incident to police at about 9:00 a.m. He identified the accused present in court and the case property.

14. PW-03 Victim Sahrish (aged 10 to 11 years approximately) deposed that accused Rashid Panhwar was their relative and used to visit their house. On 07.10.2020, after returning from school, she met Rashid's sister Mst. Rashida, who asked her to come along to give her some books. She accompanied with Mst.Rashida, who gave her food and left the house, saying she would bring the books. Then, accused Rashid took her to a room removed her clothes and committed zina with her. Her parents arrived during the act and accused Rashid fled the scene. Her parents clothed her and asked her what had happened. She narrated the incident to them. They informed their relatives, who advised registering an FIR. After the medical check-up, they returned to the police station and

then home. Later, her clothes were handed over to the police. Her statement was recorded on 10.10.2020. She identified the accused present in court.

15. PW-04 Mashir Abdul Jabbar deposed that on 08.10.2020 at about 9:00 a.m., while he was present, the police arrived with complainant Javed Ali, and they went to the place of incident. When asked, he and Munawar Mallah volunteered to act as mashirs. The place of incident was in Bhurgri Colony, inside the house of Rashid Panhwar. The police prepared the mashirnama of place of incident, read out its contents to the mashirs and obtained their signatures. On 16.10.2020 at about 2:00 p.m., they went to the hospital where the lady doctor handed over the clothes of victim Sahrish to a Sobedar. ASI prepared a mashirnama of clothes in his and Munawar's presence and the contents were read and signed by them.

16. PW-05 Dr. Aftab Ahmed deposed that on 12.10.2020, accused Rashid Ali s/o Muhammad Hashim Panhwar, aged about 30 years, was brought to him by police of PS A-Section Dadu, along with letter No.199/2020, for medical examination and DNA sampling.

On general examination, the accused was a man of average builds, conscious, oriented, with normal vital signs. He was not under the influence of narcotics and sat comfortably.

On local examination, axillary hair was scanty; moustache and pubic hair were present. Genital examination revealed normal-sized and developed penis and both testicles present.

His opinion was that accused was mature and capable of performing sexual intercourse. He also took a blood sample for DNA analysis. He produced the police letter and medico-legal certificate.

17. PW-06 ASI Shamsuddin deposed that on 07.10.2020, he was posted as duty officer at Police Station A-Section, Dadu. On that date, Javed, his wife Neelam, and their daughter Sahrish approached the police station and narrated the incident. He made entry No.26 at 21:30 hours and registered FIR No.199/2020 under

Section 376 PPC. He issued a letter for medical check-up of victim Sahrish. On 08.10.2020, as per entry No.4 at 08:10 hours, he went to the place of incident and at 09:00 a.m., inspected the house of Rashid Panhwar in Bhurgri Colony. He prepared the mashirnama of place of incident in presence of Abdul Jabbar and Munawar, who signed it. On 10.10.2020, he recorded the statements of witnesses and victim Sahrish. On the same day, he left the police station at 17:30 hours (entry No.18) and at 18:00 hours, reached Siyal Band, where he arrested accused Rashid on the pointation of complainant. He prepared mashirnama of arrest before PC Ali Haider and PC Muharram Ali (entry No.20 at 18:40 hours) and detained the accused. On 12.10.2020, he produced accused Rashid Ali for medical check-up and DNA sampling. On 16.10.2020, he received sealed clothes of Sahrish from WMO and prepared a mashirnama in presence of Abdul Jabbar and Munawar, who signed the same. On the same date, he also recorded statements of accused and victim for DNA purposes. On 24.10.2020, accused Mst. Rashida was granted bail, she appeared before him and he recorded her statement. After receiving the DNA report on 29.10.2020, he completed the investigation, obtained legal opinion from his superiors and submitted the challan of the case. He produced several documents, including entry No.26, entry No.4, arrest mashirnama, entries No.18 and 20, medical letters and reports, mashirnama of place of incident and clothes and medical letter of accused Rashid.

18. All the prosecution witnesses were cross-examined by the learned counsel for the appellant but their evidence could not be shattered. The cross-examinations of the prosecution witnesses revealed several corroborated themes that lent consistency to the prosecution's narrative as PW-01 Dr. Irfana and PW-05 Dr. Aftab Ahmed both denied the suggestion that they issued false medical certificates, thereby supporting the objectivity and integrity of the medical documentation. The credibility of the primary witnesses is reinforced as PW-02 Complainant Javed Soomro, PW-03 Victim Sahrish and PW-04 Mashir Abdul Jabbar all denied implicating the

accused falsely, establishing a common stance on the truthfulness of their testimonies. Regarding access to the place of incident, PW-04 and PW-06 ASI Shamsuddin consistently described the police and mashirs breaking open the locked door of the house of accused, corroborating the manner in which entry was gained. Further, both PW-02 and PW-03 affirmed a prior rental relationship with the accused, substantiating the victim's acquaintance with the premises. The procedural integrity of the investigation is also supported, as PW-04 and PW-06 confirmed the preparation of mashirnamas and the handling of sealed evidence, while PW-01 and PW-06 both referred to the issuance and transfer of medical referral documents, establishing a consistent chain for the medical examination.

19. As per the DNA test report the description of the Items is: Item No.1.0 (Vaginal swab samples of victim Sehrish) Item No.2.0 (Parcel of cloth of victim Sehrish) Item No.3.0 (Nails clipping of victim Sehrish) and Item No.4.0 (Blood sample of accused Rashid) and after analysis by the Forensic & Molecular Biology Laboratory for DNA testing, as per the DNA results, male DNA profile from semen stains identified on items 1.0 and 2.0 (vaginal swab samples and clothes of the victim) matched with the DNA profile of item 4.0 (blood sample of accused Rashid s/o Muhammad Hashim).

20. In view of the above analysis, there is no material contradiction or compelling doubt that would justify interference with the conviction recorded by the learned trial Court. The ocular account furnished by the victim and her father, supported by FIR, medical and DNA evidence, is found to be trustworthy, consistent and corroborative. The evidence of PW-01 Dr. Irfana and PW-05 Dr.Aftab Ahmed further reinforces the prosecution case by confirming the commission of the act and the capability of the accused to perform the same. The forensic DNA results scientifically link the accused to the act of sexual assault, leaving no room for false implication. However, on the question of sentence, a degree of moderation is warranted. While the offence of rape under Section 376

PPC is undoubtedly heinous and calls for stern punishment, sentencing must be proportionate, individualized and reflective of both aggravating and mitigating circumstances.

21. In the present case, the appellant was a first-time offender and no aggravating factor such as use of weapon, gang activity or prolonged detention of the victim has been shown. Moreover, there is no evidence of physical violence or injuries on the body of the minor victim except for the torn hymen and the Medico-Legal Officer (PW-01) herself admitted during cross-examination that there were no external marks of violence. In such circumstances, while the offence is complete under the law, these factors may be considered mitigating in terms of sentence. Furthermore, the final medical certificate was issued by the doctor based on DNA evidence, not on any fresh physical injury or signs of brutality on the minor. Thus, though the psychological trauma of the victim cannot be minimized, the facts justify a sentence that is firm yet not excessive.

22. In view of the foregoing analysis, the prosecution has successfully proved the charge of rape against the appellant beyond a reasonable doubt. The ocular account furnished by the minor female victim and her father, supported by the FIR, medical evidence and DNA analysis, remains consistent, coherent and corroborative. The testimony of PW-01 Dr. Irfana and PW-05 Dr. Aftab Ahmed further affirms both the occurrence of the offence and the appellant's physical capacity to commit the same. The DNA results scientifically link the appellant with the commission of the offence, thereby ruling out the possibility of false implication.

23. It is pertinent to mention that the learned trial Court, while convicting the appellant, has already taken into consideration the absence of aggravating factors such as use of a weapon, gang involvement or infliction of external injuries and awarded a sentence that reflects due consideration of both the gravity of the offence and the mitigating factors present in the case. In doing so, the trial Court

reduced the punishment from the maximum prescribed to **twenty (20) years' simple imprisonment**, rather than awarding the death penalty or life imprisonment. The judgment also notes the absence of external marks of violence and the appellant's status as a first-time offender.

24. Since the heinous nature of the offence committed against a minor girl and the overwhelming forensic and ocular evidence, I am of the considered view that **no further leniency is warranted**. The trial Court has already exercised discretion and awarded a sentence that balances reformation with deterrence. The sentence awarded is neither excessive nor arbitrary, but appropriate in the circumstances of the case.

25. Accordingly, both the **Criminal Appeal No. S-76 of 2021** and **Criminal Jail Appeal No. S-79 of 2021** are **dismissed**. The conviction and sentence awarded by the learned trial Court vide judgment dated 27.04.2021 are hereby **maintained in toto**.

26. Let a copy of this judgment be sent to the Jail Superintendent concerned for compliance. The appellant shall be entitled to remissions, if any, as per law.

J U D G E