

IN THE HIGH COURT OF SINDH AT KARACHI

Present

Mr. Justice Dr. Syed Fiaz ul Hassan Shah

Criminal Appeal No.518 of 2023

Appellant : Muhammad Sharif S/o Muhammad Qasim
through Mr. Moula Bux Bhutto, Advocate

State : through Ms. Rubina Qadir, D.P.G. Sindh.

Date of Hearing : 29.09.2025

Date of Order : 09.10.2025

J U D G M E N T

Dr. Syed Fiaz ul Hasan Shah, J – The Appellant has filed the instant Criminal Appeal under section 410 Criminal Procedure Code, 1860 (Cr.P.C.) being aggrieved with and dissatisfied by the Judgment dated 25.08.2023 (**impugned Judgment**) passed by learned Additional Sessions Judge-X, Karachi West (**Trial Court**) in Sessions Case No.1622/2022 under FIR No.206/2022 under section 376(iii)/506 Pakistan Penal Code, 1860 (**PPC**) registered at PS Jackson; whereby he was convicted and sentenced as under:

“In view of forgoing facts, circumstances and discussions made in point No.1, this Court has reached to the conclusion that the accused has committed the shameful act of rape of real niece of her wife / victim baby Areeba aged about 9 years only as such He requires no leniency under the law. The offence of abduction punishable under Section 376 PPC has been fully proved against the accused beyond shadow of any doubt The accused Muhammad Sharif son of Muhammad Qasim is hereby convicted U/S. 265 H(ii) Cr.P.C for the offence punishable under section 376(iii) PPC and sentenced to suffer life imprisonment and he is also liable to pay fine of Rs. 200,000/-(two Hundred Thousand Rupees). In case of default in payment of fine, the accused shall further undergo simple

imprisonment for a period of six (6) months. The accused is also convicted for the offence punishable under section 506 PPC to suffer RI for two years and to pay fine of Rs.50,000/- and in case of default of payment of fine he will further suffer SI for three months.

The above sentences shall run concurrently. However, the benefit of Section 382-B Cr.P.C. was extended in favour of the appellant.”

2. Brief facts of the prosecution case are that Complainant Nadia stated that on 01.06.2022 her relative Muhammad Sharif has rape her daughter Areeba aged about 09 years when she and her husband was in Lyari Hospital to lookafter her another daughter who was hospitalized for medical treatment. It is alleged that the Appellant taking the benefit of absence of parents committed rape with her daughter Areeba. Hence, the instant FIR was lodged. After completing the investigation, challan was submitted against the accused person, to which he pleaded not guilty and claimed to be tried.
3. In order to prove its case, the prosecution has examined 08 witnesses and exhibited various documents and closed its side at Ex.15. Thereafter, statement of Appellant/accused was recorded u/s 342 Cr.P.C at Ex.16 whereby the Appellant has denied the allegations of the prosecution levelled against him and has taken a defense plea that due to dispute over the distribution of property of the house in which he was residing with his family and the complainant party was not happy and was demanding the portion of said house. He further claimed that he had not committed alleged act of rape with his niece/alleged victim. Lastly, he prays for his acquittal.
4. I have heard the learned counsel for the appellant as well as the learned Addl. P.G. and with their assistance meticulously perused the record.
5. I have carefully considered the arguments advanced by learned Counsel for the Appellant, particularly the contention that the Appellant has been falsely implicated. It is stated that the alleged crime occurred in a home comprising multiple portions, where several families reside under a joint family

arrangement. The Counsel has emphasized that no noise was heard during the incident and that the victim, who is age about 09 years, did not complain of any pain, which, in his view, casts doubt on the prosecution's case. However, it is indeed unusual that a nine-year-old girl, if subjected to rape, would remain silent and show no visible injuries on sensitive parts of her body. Yet, it is well settled in criminal jurisprudence that absence of physical injuries does not necessarily negate the occurrence of rape, particularly in cases involving minor victims. The Supreme Court of Pakistan has held in *State v. Muhammad Hanif* (PLD 2001 SC 472) that the testimony of a child victim, if found to be trustworthy and confidence-inspiring, is sufficient to sustain a conviction even in the absence of medical corroboration. The relevant portion of the PW-1 Areeba evidence is reproduced:

“We are four sisters namely Misbah, myself, Alishba and Anabia. The complainant Mst. Nadia is my mother. I know the accused Shareef present in Court. He is my paternal uncle (pupha). He was residing in upper portion with his wife (my puphi) and three children namely Shayan, Sharmeen and Shahwaiz. On 1.6.2022, my paternal aunty/pupho left the house with her children and my paternal uncle Shareef was alone in the house. My younger sister Anabia was ill and she was admitted in hospital and my parents were with her. My paternal uncle Shareef called me and gave me Rs.20/- and sent me for getting gutka for him at about 9:00 a.m. in the morning. Thereafter I brought gutka from the shop and went in the portion of accused Shareef in order to give him gutka. Thereafter my paternal uncle Shareef pulled my hand and took me inside the house and took me inside the room and thereafter he removed my shalwar and also removed his own clothes and thereafter he forcibly entered his penis into my vagina and as well as into my anal. I was feeling pain. Thereafter sometime he released me and sent me back by saying that not to disclose such facts to anyone otherwise he would kill me. My paternal uncle Shareef has also committed the same act with me in the same house four/five times prior in absence of my paternal aunty puphi. At the time of committing offence the accused put his hand on my mouth and issued me murderous threats. Thereafter, I informed such facts to my

mother who made enquiry from my paternal uncle Shareef but he denied to commit such act with me upon which my mother shouted upon accused and thereafter later on my mother reported the matter to police. My mother also produced me before police. I was also taken to JPMC where WMLO examined me. Police also recorded my statement. I also brought in Court where my statement was recorded by a Judge.”

6. In the present case, the testimony of the victim, PW-1 Areeba, holds significant weight. She was subjected to extensive cross-examination, yet nothing material emerged that could undermine the prosecution’s case. Her evidence is consistent, firm, and inspires confidence. A comparative analysis of her oral testimony and her statement recorded under Section 164 of the Code of Criminal Procedure reveals no material contradictions. On the contrary, both accounts consistently affirm that she was subjected to repeated sexual assault.
7. Furthermore, there is no indication of any malafide intent or personal enmity that could suggest a motive to falsely implicate the Appellant. The only defence plea raised is that the Appellant has been falsely implicated due to a property dispute. However, this assertion has been effectively rebutted by the prosecution. No details regarding the nature of the alleged dispute, any pending litigation, or documentary evidence relating to the property in question have been brought on record. It is a well-recognized principle in our societal context that parents, particularly of minor children, do not resort to implicating others in heinous offences such as rape merely to settle property-related vendettas. Such conduct would be contrary to deeply rooted cultural and moral norms.
8. In criminal jurisprudence, mere allegations of enmity or ulterior motive are not sufficient to discredit the prosecution’s case unless substantiated by cogent and reliable evidence. The courts have consistently held that bald assertions of enmity, without supporting material, cannot be a ground to discard otherwise trustworthy and

confidence-inspiring evidence. The Supreme Court of Pakistan has elaborated this principle in several cases. In *Mehrban and others v. The State* (1995 SCMR 259), the Court held that the mere existence of enmity is not enough to cast doubt on the veracity of prosecution witnesses who had no reason to let the real culprit go scot-free and falsely implicate the accused.

9. PW-4, Woman Medico-legal Officer Dr. Afshan Nazlin, deposed that there were no signs of recent violence or injury on the private parts of the minor victim, either on the vaginal or anal side. However, she observed that the hymen was torn, and the tear appeared to be old and healed. Due to the lapse of time between the alleged incident and the medical examination, DNA samples could not be collected. She further stated that the victim's vagina appeared normal, with no swelling or inflammation. Additionally, there was no medical evidence suggestive of anal penetration.
10. PW-5 Dr. Kamran Khan, Medico-Legal Officer has confirmed that the appellant is capable to perform sexual intercourse. It is not controverted during the cross-examination by the Appellant.
11. Under Section 164-A of the Cr. P.C., the medical examination of a rape victim must be conducted promptly to preserve forensic evidence. Delay in examination often results in loss of crucial biological traces, which may hinder DNA profiling. Nonetheless, the absence of physical injuries or forensic evidence does not, by itself, negate the occurrence of sexual assault, especially in cases involving minor victims. The superior courts have consistently held that medical evidence is corroborative in nature and not conclusive. In *Atta ul Mustafa vs. The State* (2023 SCMR 1698), the Supreme Court of Pakistan reiterated that the testimony of the victim, if found credible and confidence-inspiring, is sufficient to sustain a conviction even in the absence of medical corroboration.

- 12.** Under Article 17 of the Qanun-e-Shahadat Order, 1984, the testimony of a competent witness is sufficient to prove a fact in issue. The courts have repeatedly held that the statement of the victim in sexual offences, particularly involving minors, must be given due weight and cannot be discarded merely for lack of medical evidence or absence of eyewitnesses. In *Mst. Nasreen v. Fayyaz Khan and another* (PLD 1991 SC 412) and *Rana Shabaz Ahmad and 2 others v. The State* (2002 SCMR 303), the Supreme Court reaffirmed that the solitary statement of the victim, if found credible, can form the basis of conviction.
- 13.** In light of the foregoing discussion, the testimony of PW-1 Areeba remains credible, trustworthy, and reliable in support of the prosecution's case. Her evidence, recorded under oath and subjected to rigorous cross-examination, does not suffer from material contradictions and inspires confidence. No adverse inference can be drawn against her merely on the basis of speculative assumptions or the absence of physical injuries, particularly in light of settled legal principles that the sole testimony of a child victim, if found truthful, is sufficient to sustain a conviction.
- 14.** However, it is also a matter of record that PW-1 Areeba retracted her earlier statement regarding anal penetration during her testimony, and this retraction finds support in the medical evidence of PW-4 Dr. Afshan Nazli, who categorically stated that there were no signs of anal intercourse. Furthermore, the medical officer confirmed that the hymenal tear appeared old and healed, and due to the delay in reporting, DNA evidence could not be obtained. In such circumstances, while the offence of rape stands proved beyond reasonable doubt, the aggravating factors that may justify the imposition of the maximum sentence are not fully established.
- 15.** In the present case, while the conviction of the Appellant under Section 376 (iii) PPC is upheld based on the credible and confidence-inspiring testimony

of the victim (PW-1 Areeba), certain mitigating factors warrant a reconsideration of the sentence. These include the partial retraction by the victim regarding anal penetration, the medical testimony of PW-4 Dr. Afshan Nazli confirming the absence of signs of anal intercourse, and the delay in reporting which resulted in the loss of forensic evidence. Moreover, the hymeneal tear was found to be old and healed, further weakening the aggravating aspects of the prosecution's case.

16. I have also noted that the primary object behind punishment for an offence should be to reform the individual as well apart from retribution and deterrence. Foregoing in view the above facts coupled with the facts that the Appellant's old age and that he is first offender and has already faced embarrassment in family and community are such glaring factors which are sufficient to attract favorable consideration for reducing the quantum of sentence awarded in the instant case while placing reliance on dictum of Hon'ble Supreme Court in *Faiz Ahmad and another vs. Shafiq ur Rehman* (2013 SCMR 583). The sentencing must be proportionate to the gravity of the offence and the attendant circumstances. The courts are vested with judicial discretion to tailor punishment where mitigating factors are present, ensuring that justice is tempered with equity.

17. In view of the above, and while maintaining the conviction, I am inclined to take a lenient view with respect to sentencing. Accordingly, the instant Criminal Appeal is dismissed. However, the sentence of life imprisonment awarded to the Appellant is reduced to the period of 12 (twelve) years with fine Rs.50,000/- and failing to repay fine amount, Appellant would further undergo one-month simple imprisonment. No offence under section 506 is proved, therefore, the Sentence of 02 years under section 506 PPC is set aside. Office to communicate to all concerned accordingly.

J U D G E

asim/PA