

IN THE HIGH COURT OF SINDH AT KARACHI

Present:

Mr. Justice Omar Sial

Mr. Justice Shamsuddin Abbasi

Criminal Jail Appeal No.683 of 2023

Appellant : Roshan Jan through Ms. Rahat Ahsan,
advocate

The State : Through Ms. Rubina Qadir, Deputy
Prosecutor General

Date of hearing: 31.08.2026

Date of Judgment: 18.09.2026

JUDGMENT

Omar Sial, J.: On 14.02.2022, Mohammad Moosa complained to the Sohrab Goth police station that on 07.02.2022, when he returned home from work in the evening, he found his daughter, Shazia, was not home. Nadia, Moosa's younger daughter, told him that Shazia had left the house at 4:30 p.m. and had not returned home. Moosa cast suspicion on his neighbor Nasibo, her husband, and two unknown persons for having abducted Shazia. Police registered F.I.R. No. 155 of 2022 under sections 365-B and 376 P.P.C.

2. On 15.02.2022, the police recovered Shazia from the home of Roshan Jan, the appellant in these proceedings. The police arrested Roshan Jan the same day. He pleaded not guilty and claimed a trial.

3. At the trial the prosecution examined PW-1 Shazia (victim); PW-2 Mohammad Ismail (witness to the inspection of the place of incident); PW-3 Mohammad Moosa (the complainant); PW-4 S.I. Ali Akbar (the police official who registered the F.I.R.); PW-5 Nasreen Tariq (the magistrate who recorded Shazia's statement under section 164 Cr.P.C.); PW-6 S.I. Tahira Naz (the second investigating officer);

PW-7 Dr. Samia Sehar (the doctor who examined Shazia); PW-8 P.C. Nazish Khan (witness to Roshan's arrest and Shazia's recovery); PW-9 A.S.I. Shabbir Ahmed (the first investigating officer). Roshan Jan, in his statement under Section 342 Cr.P.C., professed innocence but offered no substantial defense, nor did he wish to be examined as his own witness or produce any other person in support of his innocence.

4. The learned 5th Additional Sessions Judge, Malir, on 14.10.2023 held that Roshan Jan was guilty of offenses under Sections 365-B P.P.C. and 376 P.P.C. and sentenced him to life imprisonment and ten years' imprisonment, respectively. This appeal challenges that judgment.

5. We have heard the appellant's learned counsel and the learned Deputy Prosecutor General. The complainant did not effect an appearance. Our observations are as follows.

6. We have little doubt that Shazia willingly and voluntarily left her house with Roshan Jan, a person she admittedly knew for several years. Shazia acknowledged this in her Section 164 Cr.P.C. statement and in her trial testimony, though she said Roshan Jan lured her. It is also admitted that three days after she left the house, i.e., on 10.02.2022, Shazia came back home on her own. The F.I.R. was lodged four days after her return, i.e., on 14.02.2022. Moosa's testimony reveals that Shazia also told her father that she had left of her own free will and had also returned as such.

7. Police malafide is evident from the fact that, although both witnesses, Shazia and her father Moosa, testified that Shazia had come back home of her own free will on 10.02.2022, the Memo of Arrest and Recovery prepared on 15.02.2022 shows her being recovered from Roshan Jan's home.

8. In spite of Shazia's claim that she had also been raped, her medical examination revealed that no traces of semen were found from a vaginal swab. Her vaginal examination also did not show any conclusive signs of recent intercourse. Apart from the fact that the

medical evidence led at the trial does not prove rape, we also find Shazia's testimony to be neither trustworthy nor confidence-inspiring. It is obvious that it is an afterthought to a reckless action. Conviction cannot be sustained on her testimony alone.

9. An aspect of the case we have looked at closely is whether, in spite of Shazia leaving of her own free will, Roshan Jan could still be convicted of a kidnapping offense. Section 365-B P.P.C. is as follows:

365B. Kidnapping, abducting or inducing woman to compel for marriage etc.- *Whoever kidnaps or abducts any woman with intent that she may be compelled, or knowing it to be likely that she will be compelled, to marry any person against her will, or in order that she may be forced, or seduced to illicit intercourse, or knowing it to be likely that she will be forced or seduced to illicit intercourse, shall be punished with imprisonment for life, and shall also be liable to fine; and whoever by means of criminal intimidation as defined in this Code, or of abuse of authority or any other method of compulsion, induces any woman to go from any place with intent that she may be, or knowing that it is likely that she will be, forced or seduced to illicit intercourse with another person shall also be punishable as aforesaid.*

10. Section 365-B P.P.C has two limbs. The first one is contingent on a woman having been "kidnapped or abducted," while the other is contingent on "criminal intimidation, abuse of authority or any other method of compulsion". Section 359 P.P.C. says that kidnapping is of two kinds: Kidnapping from Pakistan and kidnapping from lawful guardianship. At best, the latter would apply to the present case. Section 361 P.P.C. provides that whoever takes or entices any minor under fourteen years of age if a male, or under sixteen years of age if a female, or any person of unsound mind, out of the keeping of the lawful guardian of such minor or person of unsound mind, without the consent of such guardian, is said to kidnap such minor or person from lawful guardianship. Our observation on Shazia's age is given below. Had Shazia been under sixteen years of age, Section 361 P.P.C.

may have been invoked to justify a charge of kidnapping. Section 362 P.P.C. defines abduction as: “whoever by force compels, or by any deceitful means induces, any person to go from any place, is said to abduct that person”. Shazia was admittedly not compelled by force to leave her house, nor was sufficient evidence brought at trial to show deceit. We are of the opinion that neither kidnapping nor abduction was proved.

11. Things could have been different if Shazia were under sixteen years of age. Her age was unfortunately never determined at the trial. The doctor who examined Shazia testified at the trial that it was not her job to ascertain the age. She had written that Shazia was 15 or 16 years of age because she was told that. Indeed, in the F.I.R. too, Moosa had said she was 15 or 16 years of age. Massive doubt arises in her father's claim when Shazia herself, in her Section 164 Cr.P.C. statement recorded on 18.02.2022, tells the magistrate that she is 24 years old.

12. Given the above, we conclude that neither kidnapping nor rape was proved by the prosecution. Accordingly, the appeal is allowed, and Roshan Jan is acquitted of the charge. He should be released if not required in any other custody case.

JUDGE

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