

IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Appeal No. 28 of 2016

[Juman v. The State]

Before: Justice Mrs. Ashraf Jahan

Date of hearing : 30.11.2017

Date of Order : 30.11.2017

Appellant : Juman son of Aloo, through Mr. Aziz- ur-Rehman Akhund, Advocate.

Respondent : The State through Ms. Rahat Ehsan, Additional Prosecutor General Sindh.

J U D G M E N T

Mrs. Ashraf Jahan, J.: - Appellant Juman son of Aloo through this appeal has challenged his conviction and sentence awarded by the learned Sessions Judge, Thatta, vide Judgment dated 21.12.2015, passed in Sessions Case No.14 of 2014, arising out of F.I.R.No.169 of 2013, under Section 376, 511, 506/2 P.P.C., registered at Police Station Sijawal, District Thatta, whereby he was convicted and sentenced to suffer R.I. for five (05) years and to pay fine of Rs.10,000/- and in case of default in payment of fine to further suffer S.I. for three months. The benefit of Section 382-B Cr.P.C. was extended in his favour.

The appeal in hand was dismissed vide short order dated 30.11.2017, which reads as under:

“After hearing the learned counsel for the Appellant, Additional P.G. and perusal of record, I am satisfied that the conviction of Appellant under Section 376 read with Section 511 P.P.C. is fully justified, as attempt to commit rape is proved beyond reasonable doubt. Accordingly, for the detailed reasons to be recorded separately, this appeal is dismissed.”

The detailed reasons are recorded as under:

The facts of the case in a nutshell as per F.I.R. lodged on 06.12.2013 are that Dr. Ishrat Parveen stated that she was posted as Women Medical Officer at Taluka Hospital Sijawal since last 15/16 years. On the fateful

date, i.e., 03.12.2013, she was on duty, busy in examining the patients, when she noticed that one stranger was sitting in front of her office and staring at her. She asked her peon Bilawal Memon as to why that fellow was sitting in the area exclusive for female patients. Peon tried to expel that fellow, but he refused, whereupon peon went to report the matter to Medical Superintendent. Meanwhile, that person armed with dagger intruded in the office of lady doctor (complainant), closed the door from inside and while issuing threats of dire consequences, dragged her towards the examination room and attempted to commit rape and in result of resistance, the complainant received injuries. She raised cries, on which dresser Abdul Aleem, Peon Bilawal and Peon Arshad came running and kicked the door. Due to intervention of the P.Ws. he left the complainant and ran outside by showing dagger and issuing threats to kill. Meanwhile, Medical Superintendent Syed Ameer Hyder Shah also came there and complainant narrated the whole incident to him, who informed his higher-ups. Due to pressure and mental stress, complainant remained at home for two days and on third day she lodged the F.I.R.

After registration of F.I.R., Police conducted investigation, arrested accused and submitted challan before the competent Court of law.

Charge against the accused was framed on 18.03.2014, under **Section 376, 511, 337-F(ii), 337-L(2) and 506(2) P.P.C.** to which he pleaded not guilty and claimed trial.

In support of its case, prosecution examined the following witnesses: -

- P.W.-1, Complainant, Dr. Ishrat Parveen, was examined as Ex.4, who produced the F.I.R. Ex.4/A. She supported the case of prosecution as per contents of F.I.R. and identified the present Appellant in Court to be same who committed this offence.
- P.W.-2, Muhammad Bilawal, was examined as Ex.5. He supported the case of prosecution but at the same time deposed that the face of accused (Appellant) was covered at the time when he came out of the room of the complainant, therefore, he was declared hostile and was duly cross examined by DDPP and counsel for the accused (Appellant)

- P.W.-3, Arshad, was examined as Ex.6. He is also one of the witnesses, who entered in the room of the complainant after hearing her cries. He supported the case of prosecution on all material points and also produced his statement recorded under Section 164 Cr.P.C. as Ex.6/A. He is also mashir of Sarzameen and produced the mashirnama of Sarzameen as Ex.6/B.
- P.W.-4, Abdul Aleem Memon, was examined as Ex.7/A. He produced his statement recorded under Section 164 Cr.P.C. and supported the case of prosecution but at the same time he deposed that he was not sure if the accused present Court was the same. He was witnesses of the occurrence, therefore, he was also declared hostile and was cross-examined by the DDPP and the counsel for the accused (Appellant).
- P.W.-5, Dr. Amir Ahmed Shah, Medical Superintendent, Taluka Hospital Sujawal, was examined as Ex.8. He fully supported the case of prosecution.
- P.W.-6, H.C. Qurban Ali, was examined as Ex.9. He acted as mashir of arrest and recovery of dagger from accused, he produced such mashirnama as Ex.9/A.
- P.W.-7, SIP Muhammad Ayoub, who is Investigating Officer of this case, was examined as Ex.10. He supported the case of prosecution.
- P.W.-8, SIP Asif Ahmed, was examined as Ex.11, who lodged the F.I.R. in the instant crime. He supported the case of prosecution. He produced mashirnama in respect of injuries sustained by the complainant as Ex.11/A, daily diaries entires dated 06.12.2013 as Ex.11/B and 11/C.
- P.W.-9, Dr. Maryam, who is not only one of the witnesses of the incident but has also examined Dr. Ishrat Parveen (complainant) and found injuries at her person, was examined as Ex.12. She produced such final Medico legal Certificate as Ex.12/A

Thereafter, prosecution closed its side vide Statement as Ex.13 dated 01.09.2015.

The Statement of accused was recorded under Section 342 Cr.P.C., wherein he denied the case of prosecution. He also denied the recovery of dagger from his possession and took stance that:

“I am innocent and have been falsely implicated in this crime. On the day of alleged occurrence I brought my ailing mother and waited there for her medical check for long time and on his turn when entered into the office room of Dr. Ishrat Qazi where he saw one male doctor Ghulam Rasool and as soon that male doctor saw me he became annoyed and gave fist below so I came back however this FIR was registered after 3 days from alleged incident. I pray for justice.”

In his statement though the Appellant had stated that he had brought his ailing mother in hospital but neither he chosen to record his statement on oath nor examined his mother or any other person as defence witnesses to support his stance.

Learned trial Court after conclusion of the trial passed the Judgment, which is impugned before this Court.

I have heard the learned counsel appearing for the Appellant and Additional P.G. and have perused the record minutely.

It is contended by learned counsel for the Appellant that the Appellant is innocent and has falsely been implicated in this case, the trial Court has passed the Judgment on the basis of misreading and non-reading of the evidence. The version of the complainant in FIR is totally different as compared to her evidence. Per learned counsel, same is the position regarding evidence of other P.Ws. but the trial Court had ignored all the discrepancies in the evidence of prosecution witnesses and recorded conviction of the Appellant. He further contended that two of the witnesses have been declared hostile; therefore, prosecution has totally failed to prove the charge against the Appellant. In support of his contention, he has relied upon the following case law: -

- i) 2010 P Cr. L J 1296
[*Rizwan alias Abu-Bakar v. The State*]
- ii) 2013 Y L R 2563
[*Ejaz ul Haq v. The State and another*]
- iii) 2014 P Cr. L J 819
[*Mst. Zahida Parveen v. Muhammad Afzal, A.S.-I. and another*]
- iv) 2016 M L D 1352
[*Naseer Ahmad v. The State*]

Conversely, it is contended by learned Additional P.G. that the attempt to commit rape is proved against the present Appellant, therefore, trial Court has rightly awarded him conviction and present appeal merits no consideration and is liable to be dismissed accordingly.

I have considered the arguments advance before me and have perused the case record. Admittedly, it is a case of attempt of rape. For this purpose, the evidence of the prosecutorix / victim is of material value. Relevant portion of her evidence is reproduced hereunder for ready reference:

“On 03.12.2003, I was performing my duty in the female OPD of Taluka Hospital Sujawal. It was about 01:15 noon while I was examining the patients in OPD, I saw one person sitting outside the ward. He was staring at me through the door open to the ward. I told the peon Bilawal to move him from this place as it is exposed to female OPD but the peon replied me that he refused to move from this place. Then I called him and told why he was sitting there without any whim and reason and he replied threateningly that I will not go from there, this hospital is not belonged to your father. It was about 01:30 p.m. and the rush of the patients reduced and the doctors on duty went to perform Zuhar prayer and I was sitting in my office alone. In the meantime the same person took the opportunity and entered in my room and bolted the door from inside and held me from my shoulder and dragged me into patient’s examination room which is situated inside the office. I was so terrified due to such physical act of accused on me. I attempted to cry but the accused with exerting all pressure pressed my mouth so that I could not cry. He was pressing my mouth so hard with his hands that I could hardly take breath. He took me in this position for about 5/10 minutes. I resisted and attempted to move towards the door but accused strongly grasped me by pressing my neck and shoulders. During my such resistance and on the counter act of the accused I received hurts on my different parts of body including neck, knee joint, shoulders etc. My voice was chocking due to the pressure of accused and I was

praying for help of someone else. In the meantime accused took out a dagger from the pocket of his shirt and brandished on me and threatened if I told to anyone he would kill me. Such act made me even more terrified and it was trembling with fear. He also touched the said dagger on my arms and legs which caused me injuries and I was bleeding. The accused was also moving his hands on my private parts forcibly and attempted to commit sexual assault with me. I was so helpless in the clutches of the accused and I prayed and call Almighty Allah and I received Allah's help and door of my room was opened with the bang sound. Someone kicked open the door and I saw he was Abdul Aleem; the dresser alongwith peons Bilawal and Arshad. Seeing the situation the accused ran away by brandishing the dagger to them."

She was cross examined at length by the learned counsel for the Appellant but her evidence could not be shattered in cross-examination and was firm and undisturbed. No doubt in the instant case, two witnesses were declared hostile and they gave obligatory statements in favour of present Appellant but so far as their evidence regarding occurrence on 03.12.2013 is concerned, all the prosecution witnesses have fully supported this aspect of the case. So much so, they are unanimous in their evidence that they all heard cries of the lady doctor coming out of her room which was locked from inside and upon kicking at door by the dresser Abdul Aleem and two peons, they entered in the room, where the culprit was very much available and on seeing the P.Ws., he made his escape good.

It will be relevant to mention that as at the time of sexual assault / or attempt to rape, the room was bolted from inside and only the lady doctor and the accused (Appellant) were present, therefore, it is only complainant who can disclose the real facts but none else. It will not be out of place that Medical Superintendent, doctors and hospital staff, all have given unshaken evidence regarding occurrence. Even the Appellant in his statement recorded under Section 342 Cr. P. C. has not denied his presence at the time of occurrence in lady doctor's room, but he narrated a different story that he had taken his ailing mother to the hospital and due to long wait, he entered in the room of the lady doctor where she was available with one other colleague who gave him fist blow, but such story narrated by the accused (Appellant) on the face of it seems to be ridiculous. It is also important to

note that statements of P.Ws. were also recorded under Section 164 Cr.P.C. and such statements are already produced in evidence. No motive or any other cause was attributed to the Complainant and other prosecution witnesses to falsely implicate the present Appellant.

No doubt, in the present case there is delay in lodging of FIR, as it was lodged on third day of incident, but for that the complainant has given the explanation that due to mental shock and trauma, she was not in a position to lodge the F.I.R. This attitude on the part of an unmarried woman in our society is very natural and can be termed as genuine explanation so far as the delay is concerned.

Admittedly, in this case there is no dispute regarding date, time, place of incident, role and conduct of accused against the victim, therefore, it is established that prosecution has discharged its burden successfully. Even otherwise, Courts cannot be oblivious of present day criminal trend, where the life, liberty and modesty of a woman at all the time is at stake, therefore, such type of criminals do not deserve any leniency at any stage. The act of entering into the room of a lady doctor, bolting it from inside, assaulting her sexually and causing her injuries clearly reflect the intention of present Appellant who was intending to commit rape but due to cries raised by the complainant and timely intervention of the P.Ws. she was saved from the nefarious act of culprit. In the instant case, all the witnesses are natural witnesses, all links and evidences are intact and thus evidence of prosecution witnesses is confidence inspiring and sufficient to connect the Appellant with commission of crime.

The case law referred to by the learned counsel for the Appellant is distinguishable and cannot be applied in the facts and circumstances of the present case.

In the light of above discussion, I am of the considered view that the learned trial Court has rightly convicted the Appellant. For the above mentioned reasons, present appeal was dismissed vide short order dated 30.11.2017.

Judge

Dated:16.01.2018