

**ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI**

Criminal Appeal No.503 of 2018

Date	Order with Signature of the Judge
Date of hearing	: 17th July, 2019
For Appellant	: Mr. Khalid Javed, Advocate.
The State	: Ms. Rubina Qadir, D.P.G.
For Complainant	: Mr. M. Qasim Niazi, Advocate.

Kausar Sultana Hussain, J.:-Vide impugned judgment, pronounced on 07.09.2018 by learned VIth Additional Sessions Judge, Karachi-East (Mr. Rahmatullah Mooro) in Sessions Case No. 1704 of 2016, FIR No.416 of 2016, registered at P.S Zaman Town, Karachi under Section 376(i) PPC, the appellant Tahir Hussain was convicted for an offence punishable u/s 376(i) PPC and sentenced to suffer R.I for 10 years and to pay a fine of Rs. 50,000/- and in default he shall undergo as S.I for two months more, however he has been given benefit as provided u/s 382-B Cr.P.C. Being aggrieved and dissatisfied with the impugned judgment, the appellant Tahir Hussain submitted present jail appeal against his conviction and prayed for justice and mercy. It is a hand written appeal transmitted to this Court by Superintendent Central Prison, Karachi alongwith letter No.JB/35750/52, dated 01.10.2018. Later Mr. Khalid Javed, Advocate has filed his Power on 29.10.2018 on behalf of the appellant, which had been taken on record.

2. Precisely stating the facts of the case are that on 15.07.2016 the complainant Mst. Nizaj Akhtar lodged a report at Police Station Zaman Town, Karachi, alleging therein that her daughter Shahida Parveen suddenly became ill, when she brought

her at Chiniot Hospital, at Korangi No.1 ½, after examination the lady Doctor informed her that her daughter was pregnant of three months, so she inquired her daughter about this fact, then she informed that the accused Tahir Hussain son of Saleem Khan had forcibly entered in their home and committed Zina with her on 30.04.2016, at about 2:00 p.m and thereafter, accused Tahir Hussain used to come at her home after every 2/3 days to commit Zina with her under threats, that if she discloses such fact to her parents, he would kill her parents. Thereafter, on 22.07.2016, she lodged the instant FIR against the above named accused. After submission of challan and supply of copies of the case to the appellant the learned trial Court on 06.01.2017 framed formal charge against the appellant to which, he pleaded not guilty and claimed trial. In order to prove the case, the prosecution examined eight witnesses. Statement of appellant/convict was recorded under Section 342 Cr.PC, wherein he denied the prosecution allegations and professed his innocence and did not adduce any defence evidence. Upon culmination of trial, learned trial Court after hearing both the sides, convicted and sentenced the appellant as mentioned above, hence the instant appeal.

3. I have gone through the record carefully, considered the arguments advanced by the learned counsel for both the sides including learned D.P.G for the state.

4. As inscribed above, prosecution in support of its case examined PW-1 WMLO Noor-un-Nisa, at Exh.3, she produced letter for examination of victim, Medico Legal Report (ML), ML letter for taking blood sample and request letter of I.O as Exh.3-A to 3-D respectively; PW-2 complainant Mst. Nizaj Akhtar at Exh.4, she produced FIR No.416 of 2016, memo of place of

incident and memo of sketch of place of wardat as Exh.4-A to 4-C respectively; PW-3 prosecutrix Shahida Parveen as Exh.5. The learned ADPP has given up the PW Waris Khan, vide statement as Exh.6. PW-4 Dr. Neloofar Awan as Exh.07, she produced original card of patient victim Shahida Parveen, patient slip issued by Dr. Sareeka, slip regarding ultrasound report, ultrasound report as Exh.7-A to 7-D respectively; PW-5 Dr. Sareeka Rathor, as Exh.8; PW-6 ASI Asad Ali Channa, as Exh.09, he produced entry No.36 dated 22.7.2016, letter regarding sending case property by SIO Naimat Ali, Chemical Report, request letter for recording the statement of the victim Shahida Parveen under Section 164 Cr.P.C, letter for obtaining the certified copy of 164 Cr.P.C statement of victim, request letter for getting the permission for medical examination of accused as Exh.9-A to 9-G respectively; PW-7 Asif Ali, the learned Judicial Magistrate, as Exh.10, he produced the application of the I.O, 164 Cr.P.C. statement of prosecutrix, as Exh.10-A & 10-B; PW-8 Dr. Pardeep Kumar as Exh.11, he produced MLC report as Exh.11-A. Thereafter the learned ADPP closed the prosecution side as Exh. 12.

5. Per record statement of accused was recorded under Section 342 Cr.PC as Exh. 13; he had emphatically denied the allegations leveled in the charge by the prosecution and did not adduce any defence evidence.

6. The learned counsel for the appellant/convict has argued that impugned judgment is based on non-reading and misreading of evidence and that the judgment had been passed without correct appreciation of evidence. He emphasized that the trial Court did not take into consideration the cross examination of prosecution witnesses which suffers from material contradictions,

improbabilities and untrustworthy. He further argued that no independent evidence has been produced to corroborate her version.

7. Conversely, learned D.P.G emphatically opposed the arguments advanced by the learned counsel for the appellant/convict. She argued that the learned trial Court after considering the all facts of the case and evidence led by the witnesses and the appellant passed a well- reasoned judgment, as such, the same does not require interference by the appellate Court. She also produced the case law reported in 2002 SCMR 303, 2012 YLR 847, PLD 2010 SC 47 and PLD 2007 SC 249.

8. I have carefully examined the record, placed before this Court and so also given due and anxious consideration to arguments propounded by both the sides. The pivotal question, involved in this matter which needs deep determination is, as to whether the prosecution has established the guilt of the appellant / convict? In order to solve the query, I deem it proper to examine the prosecution evidence by keeping the defence version in juxtaposition. I have gone through the statements of the prosecutrix recorded under Section 161, 164 Cr.P.C and then recorded by the learned trial Court on oath during trial as PW-2 and found that there is no contradictions in her all statements either recorded during investigation or by learned trial Court. She in all her statements remained constant by stating that Zina-bil-Jabr was committed by the appellant / convict, when on 30.4.2016 she was alone in her house as her mother went to her work, the appellant, who is her relative came and committed zina with her in her house by force and also kept her under threats that, if she discloses this to anyone he would kill her parents. It further

reveals from her statements that she was in precarious condition as the appellant / convict used to visit her home after every 2/3 days for the purpose of committing Zina-bil-Jabr, and continuously kept her in fear of death of her parents in case of disclosure of his act of zina to anyone. The prosecutrix was subjected to a lengthy cross-examination but the learned defence counsel could not shake her evidence. While perusing the record it further reveals that after lodging FIR by the complainant against appellant/convict the I.O produced her on 23.7.2016 for medical examination before Women Medico Legal Officer (WMLO) namely Noor-un-Nisa (PW-1) at Jinnah Hospital, Karachi and on her examination the said WMLO (PW-1) found her external genital normal, vestibule normal, hymen old torn and healed, vagina admits one finger loose, no bleeding at the time of examination, cloths changed, urine stole passed and she found anal sphincter normal. Per PW-1 (WMLO) the prosecutrix was unmarried but on the basis of her medical examination she was not found virgo intacta. She took DNA sample. The PW-1 (WMLO) forwarded the prosecutrix for ultrasound pelvis and beta HCG to confirm any side of pregnancy.

9. PW-4 Dr. Neloofar Awan (Sonologist) on the same day i.e. 15.7.2016 made ultrasound of the prosecutrix Shahida Pareveen and after ultrasound found fourteen weeks active alive pregnancy. She had produced said ultrasound report at Ex.7-D. She was duly cross-examined by the learned defence counsel but he could not shake her evidence.

10. PW-5 Sareeka Rathor (Gynecologist) supported the statements of PW-1&7 (Dr. Noor-un-Nisa, WMLO and Dr. Neloofar

Awan, Sonologist, (Exb.3&7) respectively in regard of her medical examination and pregnancy.

11. In view of the statements of all three Doctors i.e. WMLO, Gynecologist and Sonologist it is proved medically that she was subjected to zina. Now question arises that, whether it was Zina-bil-Jabr or Zina-bil-Raza? The PW-3 (Shahida Parveen/prosecutrix) at the time of alleged incident was aged about 15 years and studying in class VIIIth. She in her statement on oath recorded by the learned trial Court during trial has specifically repeated the same facts, which she had already stated in her statement before learned Judicial Magistrate, while recording her statement under Section 164 Cr.P.C. Per her statement the appellant/convict kept her under threat of dire consequences while committing zina and every time he threatened her that he would kill her parents, in my view for the girl of aged about 15 years this type of situation must be very horrible and she must be terrorized, therefore disclosure of her pain and fear even before her mother must had been very difficult for her. The statement of the prosecutrix is corroborative with the medical evidence and the mark of violence is not necessary to prove the factum of Zina-bil-Jabr. In this regard, I am fortified by the dictum laid down by the Hon'ble Supreme Court in case titled Ghulam Sarwar v. State (PLD 1984 SC 218) and Haji Ahmed v. State (1975 SCMR 69).

12. I have also examined the statement of the appellant, wherein he has denied the allegation of the complainant and prosecutrix and further stated that it is a false allegation against him as there was a dispute between him and the complainant party over the transection of money due to which she had involved him in this false case. The appellant has not opted to lead his

evidence either through recording his own evidence on oath under Section 340(2) Cr.P.C nor he produced defence witnesses in support of his plea of enmity with the complainant party over some money transaction as he alleged in his statement. The PW-8 Dr. Pardeep Kumar, Medico Legal Officer, Jinnah Hospital Karachi on 8.12.2016, medically examined the appellant, who was produced before him by the I.O. SIP Naimat Ali and found him as capable to perform sexual intercourse.

13. Keeping in view the circumstances and entire evidence led by the parties, other prosecution witnesses and medical reports of the prosecutrix and the appellant, I am convinced that the appellant has committed Zina-bil-Jabr with the prosecutrix, I do not find any misreading or non-reading of evidence by the learned trial Court while deciding the matter on merits.

14. As a corollary of above discussion, this Court finds no merits to interfere with the conviction recorded under Section 376(i) PPC and sentenced to suffer R.I for 10 years and to pay a fine of Rs. 50,000/- and in default he shall undergo as S.I for two months more by the learned trial Court, hence, his sentence is maintained.

15. With the above orders, case in hand stands disposed of and appeal is dismissed

Dated: 23.09.2019.
Faheem/PA

J U D G E