

IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD

Criminal Appeal No.S- 177 of 2020

Appellants: Saeed Solangi son of Saleh Solangi and Khadim Hussain alias Mirch son of Fateh Ali Khan, Through Mr. Raja Jawad Ali Saahar, Advocate

State: Through Mr. Shahzad Saleem Nahiyoona, DPG for the State.

Date of hearing: 16.03.2021

Date of decision: 16.03.2021

JUDGMENT

IRSHAD ALI SHAH, J.- The facts in brief necessary for disposal of instant appeal are that the appellants with one more culprit, allegedly by making trespass into house of complainant Mst.Shahzadi by administering some intoxicant substance dragged her into room with intention to subject her to rape, on cries raised by her and PW baby Pirah, they made their escape good, for that they were booked and reported upon.

2. At trial, the appellants did not plead guilty to the charge and prosecution to prove it examined the complainant and her witnesses and then closed the side.

3. The appellants in their statements recorded u/s 342 Cr.P.C. denied the prosecution allegation by pleading innocence by stating that they have been involved in this case by the complainant on account of her dispute with them over plot. They did not examine anyone in their defence or themselves on oath.

4. On conclusion of trial, learned Additional Sessions Judge-IV Dadu/ Gender Based Violence Court vide judgment dated 26.10.2020 convicted and sentenced the appellants as under;

“Accordingly, accused Saeem son of Saleh and Mirch alias Khadim Hussain son of Fateh Ali Khan, both by caste Solangi, are convicted U/S 354, PPC and sentenced to suffer R.I for two years and to pay fine of Rs.10,000/- each (ten thousand), and in case of default of payment of fine, they shall suffer S.I for one month more. Accused are also convicted for committing offence under section 376-II, PPC read with section 511, PPC and sentenced to suffer R.I for ten years (10) in terms of section 265-(ii), Cr.P.C. Accused also convicted for committing offence under section 337-J, PPC and sentenced to suffer R.I for ten years (10) in terms of section 265-(ii), Cr.P.C. All sentences shall run concurrently. Benefit of section 382-B Cr.P.C is extended to accused.”

5. The appellants by preferring the instant appeal have impugned the above said judgment before this Court.

6. It is contended by learned counsel for the appellants that the appellants being innocent have been involved in this case falsely by the complainant party on account of their dispute with her over plot and matrimonial affairs; the FIR has been lodged with delay of more than three months; co-accused Rano has been let-off by the police with consent of the complainant and the evidence of the prosecution witnesses being doubtful in its character has been believed by learned trial Court, without lawful justification; therefore, the appellants are entitled to their acquittal by extending them benefit of doubt.

7. Learned D.P.G for the State has sought for dismissal of the instant appeal by contending that the prosecution has been able to prove its case against the appellants beyond shadow of doubt.

8. I have considered the above arguments and perused the record.

9. The FIR of the incident has been lodged with delay of more than three months, that too after enquiry. In inquiry, it was reported by Inquiry Officer SIP Rasool Bux Panhwar that there is dispute between the parties over matrimonial affairs and passage. The FIR recorded after inquiry and with noticeable delay could hardly be relied upon. The 161 Cr.P.C statements of PWs as per SIO/ASI Qurban Ali were recorded on 03.09.2019. It was with further delay of FIR atleast by three days. No explanation to such delay is offered by the prosecution. Nothing has been brought on record, which may suggest that the complainant actually was given intoxicant substance by the appellants. The complainant has never been subjected to medical examination. PW Muhammad Hajan is not an eye witness of the incident. Co-accused Rano has been as per SIO/ASI Qurban Ali was let-off by him during course of investigation. By that act he disbelieved the complainant to some extent even at the time of investigation. In these circumstances, it could be concluded safely that the prosecution has not been able to prove its case against the appellants beyond shadow of doubt and to such benefit they are entitled.

10. In case of *Mehmood Ahmed & 03 others vs. The State and another* (1995 SCMR-127), it has been held by Honourable Apex Court that;

“Delay of two hours in lodging the FIR in the particular circumstances of the case had assumed great significance as the same could be attributed to consultation, taking instructions and calculatedly preparing the report keeping the names of the accused open for roping in such persons whom ultimately the prosecution might wish to implicate”.

11. In case of *Abdul Khaliq vs. the State* (1996 SCMR 1553), it was observed by Hon'ble Court that;

"---S.161---Late recording of statements of the prosecution witnesses under section 161 Cr.P.C. Reduces its value to nil unless delay is plausibly explained."

12. In case of *Faheem Ahmed Farooqui vs. The State* (2008 SCMR-1572), it is held by Hon'ble apex Court that;

"single infirmity creating reasonable doubt regarding truth of the charge makes the whole case doubtful."

13. In view of the facts and reasons discussed above, the impugned judgment is set-aside, consequently the appellants are acquitted of the offence for which they have been charged, tried and convicted by learned trial Court, they are in custody and shall be released forthwith in present case.

14. The instant appeal is disposed of accordingly.

J U D G E