IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

Criminal Jail Appeal No.S- 132 of 2016

Appellant:	Amb through Mr. Ali Bukhsh Talpur, Advocate
Respondent:	The State through Ms. Rameshan Oad, A.P.G
Date of hearing:	28.03.2022
Date of Judgment:	28.03.2022

J U D G M E N T

SALAHUDDIN PANHWAR, J.-Amb appellant has assailed judgment dated 21.07.2016, passed by learned Ist Additional Sessions Judge, Mirpurkhas in Sessions Case No.110 of 2012, whereby after regular trial, the appellant was convicted under section 376 PPC and sentenced to suffer R.I for 10 years and to pay fine of Rs.50,000/-, in case of default, he was ordered to suffer S.I for six months more. Benefit of section 382-B Cr.P.C was also extended him.

2. Precisely, the relevant facts of the prosecution case are that complainant Jawaid lodged FIR, wherein it was alleged that on 26.04.2012 at about 5:00 a.m. he went to Jhudo for selling vegetables on his pushcart, when he returned to his house, his wife Meen Bai, who was pregnant of six months, informed him that his brother-in-law Amb came in morning and forcibly committed zina with her. She raised cries, which attracted Loung and Ratan, who came there but accused Amb succeeded in fleeing away from the place of incident. Complainant narrated such incident to his elder brother Ladharam on telephone, who asked him that he would come by tomorrow. On next day

viz. 27.04.2012 Ladharam came and they gathered the community people for decision, but till night Amb and his brother did not come and ultimately, on the advice of community people, complainant lodged FIR against the appellant.

3. After conclusion of investigation, the appellant was sent up to face trial, where he was indicted, however, he did not plead guilty and claimed trial.

4. At trial, prosecution examined as many as 10 P.Ws, who produced/exhibited relevant documents, thereafter, prosecution closed its side.

5. Statement of the accused was recorded under section 342 Cr.P.C, wherein he denied the prosecution allegations and claimed his innocence; however, neither he examined himself on oath as provided under Section 340(2) Cr.P.C nor led any evidence in defence.

6. After hearing learned counsel for the parties, learned trial Court convicted and sentenced the appellant as detailed above.

7. Learned counsel for appellant has contended that appellant is innocent and booked in alleged offence falsely; that the FIR was lodged with unexplained delay for which no plausible explanation has been furnished; that though there was ocular account, but the same was not supported by medical evidence. He has emphasized upon medical certificate, which speaks that no rape has been committed. Admittedly, the victim was a married woman and no DNA test was conducted as well as no mark of violence was noted by medical officer. Lastly, he prayed that in such circumstances, the appellant deserves acquittal.

8. In contra, learned APG has contended that prosecution successfully brought the guilt of appellant at home; that it is well settled that the

evidence of the victim alone is sufficient to award conviction; that the other witnesses have also supported the case of the prosecution; that contradictions and or discrepancies if any in the evidence of the prosecution witnesses were occurred due to flux of time hence are minor in nature and cannot be made basis for extending any benefit to the appellant; that the judgment passed by trial Court is based on valid reasons hence does not require any interference by this Court.

9. The prosecution mainly possesses the following pieces of evidence because rest of the evidence is nothing short of hearsay or mashirnama(s) etc. only:-

i) evidence of the victim;

ii) medical evidence;

10. I would be completely safe in saying that before recording conviction on sole evidence of victim, the Court must satisfy itself that such evidence, beyond any doubt, passes the test of being natural and confidence inspiring one. Any deviation to this, shall result in bringing the base of Criminal Administration of Justice in serious jeopardy which never relieves a Judge from following well settled principles of law i.e:-

i) mere seriousness of an offence would never be a ground to detract the Court of law from due course to judge and make the appraisal of evidence, as required by law;

ii) no conviction could be recorded except on direct, natural and confidence inspiring evidence;

iii) acceptability of evidence is never dependent upon person or personality;

iv) the benefit of doubt shall always be extended to accused;

11. In the case in hand, record reflects that though victim alleged that appellant committed rape with her, but such claim of the victim is negated by the medical evidence. The medical certificate which is produced in evidence

opined that no rape was committed with the victim. According to the prosecution case the appellant entered into the house of the complainant when victim woman was alone and despite resistance, he succeeded to commit rape with her, but such story does not attracted to a prudent mind as not a single mark of violence even scratch was found on the person of victim by the medical officer hence the medical evidence is completely negating the ocular version furnished by the victim, as such serious doubt has arisen with regard to happening of alleged incident in the manner as articulated by the victim. Admittedly, the victim is married woman and in such eventuality, the answer towards identity of the culprit was dependent upon DNA only which could have linked the appellant/accused with commission of the offence when the victim alleges commission of alleged rape/zina by the appellant/accused. The importance of DNA in such like cases can never be denied due to its scientific accuracy and conclusiveness, which was considered as a golden standard to establish the identity of an accused and a very strong corroborative piece of evidence, which has not been carried out in the instant case.

12. Suffice it to say that from material available on record, there appears reasonable doubt in the prosecution case. It needs not to be reiterated that keeping in view the judicial wisdom, experience and while balancing the judicial conscious justice should be dispensed with according to law. I have also found improvements and material contradictions in the evidence of other prosecution witnesses, which are creating serious doubts in the prosecution case and go to the roots of the prosecution case. The rule of benefit of doubt is essentially a rule of prudence, which cannot be ignored while dispensing with justice in accordance with law. Conviction must be based on unimpeachable evidence and certainty of guilt and any doubt arising in the prosecution case, must be resolved in favour of the accused. The said rule is based on the maxim "it is better that ten guilty persons be acquitted rather

than one innocent person be convicted" which occupied a pivotal place in the Islamic Law and is enforced strictly in view of the saying of the Holy Prophet (PBUH) that the "mistake of Qazi (Judge) in releasing a criminal is better than his mistake in punishing an innocent" .Likewise, it is also a well-embedded principle that it is not necessary that there must be so many doubts in the prosecution case if a reasonable doubt arising out of the prosecution evidence pricking the judicious mind, the same would be considered sufficient for extending its benefit in favour of the accused. In this respect, reliance is placed upon the case of **MUHAMMAD MANSHA V. THE STATE** (2018 SCMR 772) wherein it is observed that;-

> *"4. Needless to mention that while giving the benefit of doubt to an accused it is not necessary that there should be many circumstances creating doubt. If there is a circumstance which creates reasonable doubt in a prudent mind about the guilt of the accused, then the accused would be entitled to the benefit of such doubt, not as a matter of grace and concession, but as a matter of right. It is based on the maxim, "it is better that ten guilty persons be acquitted rather than one innocent person be convicted."* ***Reliance in this behalf can be made upon the cases of Tarique Parvez v. The State (1995 SCMR 1345), Ghulam Qadir and 2 others v. The State (2008 SCMR 1221), Muhammad Akram v. The State (2009 SCMR 230) and Muhammad Zaman v. The State (2014 SCMR 749)."***

13. In view of the above, the prosecution has miserably failed to prove its case against the appellant beyond a shadow of reasonable doubt, therefore, the instant appeal is allowed and the impugned judgment dated 21.07.2016, passed by learned Ist Additional Sessions Judge, Mirpurkhas in Sessions Case No.110 of 2012, is set aside. Resultantly, appellant Amb is acquitted of the charge. He is in custody he shall be released forthwith if not required in any other custody case.

JUDGE

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