

**IN THE HIGH COURT OF SINDH,  
CIRCUIT COURT, HYDERABAD**

Criminal Appeal No. S- 59 of 2021

Appellant : Kamran @ Kami s/o Ikram @ Jaga by caste Qureshi, through Mr. Ahsan Gul Dahri, Advocate.

Respondent : The State through Miss Sana Memon, Assistant Prosecutor General, Sindh.

Complainant : Muhammad Asif through Mr. Sanaullah Khoso, Advocate.

Date of hearing : 19.05.2022  
Date of judgment : 31.05.2022

**J U D G M E N T**

*ZULFIQAR AHMED KHAN, J:* Appellant Kamran @ Kami was tried by learned IIIrd 3<sup>rd</sup> Additional Sessions Judge/Juvenile Court, Shaheed Benazirabad in Sessions Case No. 68 of 2019, arising out of Crime No.159/2018 registered at Police Station Airport Nawabshah for offence under Section 376 PPC. Vide judgment dated 06<sup>th</sup> March 2021, the appellant / accused was convicted for offence punishable under Section 376 r/w 511 PPC and sentenced to suffer RI for Seven (07) years and to pay the fine of Rs.100,000/- (Rupees one lac). In case of default in payment of fine, accused was ordered to suffer SI for Six (06) months more. In addition to above sentence, the appellant was also directed to pay the compensation of Rs.1,00,000/- (Rupees one lac) to the victim Mst. Sehrish Qazi as provided u/s 544-A Cr.P.C. Benefit of Section 382-B Cr.P.C. was however extended to the appellant.

2. The relevant facts of the prosecution case as mentioned by the trial court in its judgment reads as under:-

*“I am residing with my family on the above address having 02 sons & 01 daughter. Mst. Sehrish, aged about 14 years, is my eldest daughter. On 12-11-2018 I, my wife Mst. Saima, daughter Mst. Sehrish & other children went to sleep at night. The electricity in the house was on. On 13-11-2018 at about 02:00 am (mid night hours) I & my wife Mst. Saima woke up on cries of Mst. Sehrish & saw, on the burning light installed in the Veranda, that our neighbour namely Kamran @ Kami s/o Ikram @ Jaga Qureshi whose shalwar was off & my daughter Mst Sehrish, whose shalwar was also removed, was committing rape of my daughter Mst. Sehrish on cot lying in the Veranda. As soon as the accused saw us, he wore his shalwar & escaped away. My daughter Mst. Sehrish was weeping. We got her shalwar worn. She disclosed that the accused Karam @ Kami Qureshi had forcibly committed her rape. My elder brother Abdul Jabar had gone away who came today. We narrated the facts to him who advised us to go to Police Station & lodged the FIR.”*

3. After usual investigation challan was submitted against accused under the above referred Section and he was sent up for trial.

4. Trial Court framed charge against accused at Ex.2, to which, he pleaded not guilty and claimed to be tried.

5. In order to substantiate the charge, prosecution examined complainant Muhammad Asif Qaziat Exh.03, who produced FIR at Exh.03/A, CNIC at Exh.03/B; PW-2/witness Mst. Saima Qazi at Exh.04 who produced CNIC at Exh.04/A, memo of site inspection & memo of clothes' production at Exh.04/B & 04/C; PW-3/ Victim Mst. Sehrish at Exh.05, who produced her photograph at Exh.05/A; PW-4 Dr. Muhammad Waliullah Qureshi at Exh.06, who produced police letter at Exh.06/A, Letter to In-charge Forensic and Molecular Lab for DNA Testing, LUMHS Jamshoro at Exh.06/B; PW-5/Author of FIR ASI Shahid Khan Memon at Exh.07; PW-6/I.O./Inspector Nisar Ahmed Mughal at Exh.08, who produced photocopy of memo of arrest & recovery at Exh.08/A, R.C. No.263 dated 29-11-2018 at Exh.08/B, Letter No.Cr.159/2018 dated 06-12-2018 & R.C No.366 dated 06-12-2018 at

Exh.08/C & 08/D; PW-7 Retired SIP Muhammad Juman at Exh.09, who produced DNA Testing report at Exh.09/A; PW-8 W.M.O. Dr. Shameem Javed Brohi at Exh.10, who produced provisional certificate vide No.PS/SBA/3094 dated 22-11-2018 at Exh.10/A, Letters issued to the Chemical Analyser, Rohri as well as to the Incharge Forensic and Molecular lab for DNA Testing LUMHS, Jamshoro at Exh.10/B & 10/C, Report at Exh.10/D, Final Medical Certificate vide No.PS/SBA/008 dated 03-01-2019 at Exh.10/E. Thereafter, prosecution side was closed vide statement at Ex.11.

6. Statement of accused was recorded under Section 342 Cr.P.C at Exs.12, wherein he denied the prosecution allegations and pleaded innocence. Appellant further stated that case has falsely been managed against him; no private witness has deposed against him and the official witnesses are interested. However, neither he examined himself on Oath nor produced any evidence in his defence to disprove the prosecution allegations.

7. Learned trial Judge after hearing the learned counsel for the parties and examining the evidence available on record, through its judgment dated 06.03.2021 convicted and sentenced the appellant as stated supra.

8. Facts of the prosecution case as well as evidence find an elaborate mention in the judgment of the trial court as such there is no need to repeat the same to avoid unnecessary repetitions.

9. I have heard Mr. Ahsan Gul Dahri, learned counsel for appellant, Miss Sana Memon, learned A.P.G for the State and Mr. Sanaullah Khoso, learned counsel for complainant at length and perused the entire evidence minutely with their assistance.

10. Learned counsel for the appellant has mainly argued that appellant is innocent and has falsely been implicated in the case in hand by police due to some personal grudge; that the prosecution story was un-natural and unbelievable; that the alleged incident is said to have been occurred on 13.11.2018 whereas the report thereof was got registered on 17.11.2018 after the delay of four days without any plausible explanation; that in this case the complainant as well as eye witnesses including victim who is the star witness of case have exonerated the appellant from the commission of offence; that PW Mst. Saima has also not supported the case of prosecution; that medical evidence including DNA report are not supporting the case of prosecution; that ingredients of Section 376 and 511 are missing in the case in hand; that report of WMLO totally belies the version as narrated in the FIR; that private person of the locality was not associated to act as mashir; that material contradictions have been brought on record in the evidence of prosecution witnesses; that this is the case of no evidence at all. Lastly, he has prayed for acquittal of the appellant. In support of his contentions, learned counsel has placed reliance on the case law reported as Muhammad Amir v. The State and another (2018 YLR 2592).

11. On the other hand, learned A.P.G as well as learned counsel for the complainant opposed the appeal on the ground that appellant has been named in FIR with specific role; that the prosecution has fully established its case against the appellant beyond any shadow of doubt; that complainant as well as eyewitnesses including victim have supported the main incident including commission of rape with the victim; that ocular set of witnesses have only exonerated the present accused from identification at the spot and have supported that they had suspicion over the present appellant; that the exoneration of accused by

the prosecution witnesses at the time of evidence is outcome of pressure of the accused party for entrance in the compromise which is not warranted under the law as the offence is not compoundable in nature; that D.N.A. report has clearly mentioned that the present accused has committed the offence. Lastly, they have prayed for dismissal of the appeal.

12. I have carefully heard the learned counsel for the parties and scanned the entire evidence in the light of case law cited by the counsel for the appellant.

13. In my considered view, prosecution has failed to prove its' case against the appellant for the reasons that in the case in hand complainant party including the victim girl have been declared hostile before the trial court hence they have not supported the case of prosecution. Further, the alleged incident is said to have taken place on 13.11.2018 at about 2-00 a.m (night time) whereas the report thereof was got registered on 17.11.2018 at 1630 hours by complainant Muhammad Asif after the delay of four days without any plausible explanation which shows the real possibility that the matter was reported to the police with due consultation and deliberation. Mashir Jabbar who is the real brother of the complainant has not been examined before the trial court. The statement of said mashir at page-35 of paper book shows that he does not know about the case. Moreover, the mashirnama of arrest shows that accused was arrested on 26.11.2018 in presence of police mashirs and the I.O in his cross examination admitted that he did not attempt to associate any other local person as mashir. Complainant stated that light was burning whereas the victim stated that there was load-shedding at the time of incident. There is also difference between the date and time of incident. As per FIR, the alleged incident occurred on 13.11.2018 at 2-00 a.m (night time) whereas in his examination in

chief, the complainant deposed that it was 12.11.2018 and the star witness of the case namely Sehrish stated before the Medical Officer that it was 13.11.2018 at 09-00 p.m, creating doubt in the prosecution case. The facts and circumstances of the case indicates that the mode and manner of the occurrence had not been ascribed by the victim as to what actually happened on the day of occurrence as it is alleged that she was forcibly subjected to sexual intercourse but no any mark of violence was found on her body by the WMLO.

14. As discussed above, the complainant party including victim girl have not supported the case of prosecution and only DNA report says that semen were found detective but per learned counsel for the appellant when the semen were not sent then how the chemical report says positive. Moreover, the semen were alleged to have been found on the clothes of the victim. As per learned A.P.G this is a case of attempt to rape and the complainant party had shown their suspicion upon the present appellant. It is settled law that nobody can be convicted on account of presumptions and assumptions as the trial court itself has written in its judgment referring the opinion of WMLO that **“there might be an attempt of rape”**. Moreover, it appears that victim was produced before the WMLO on 19.11.2018 after the delay of six days of incident but as per medical theory after 72 hours no semen could be detected. The WMLO further observed that there were no marks of violence on the body of victim. The victim had no injury on her body at all. She further admitted in her cross examination that **“It is correct to suggest that as per D.N.A report, there is no mention of detection of human semen in the low vaginal cotton swabs. The duration of detection of human semen would be about 72 hours. The victim was examined by me about one week after the alleged incident. It is correct to suggest that as per chemical report, the low vaginal cotton swabs were**

received at chemical laboratory Rohri on 29.11.2018 about two weeks after the alleged incident. There is a doubt in the report of chemical analyser Rohri as the human semen was not detected in the low vaginal, swabs sent to D.N.A. Testing Laboratory. I do not know as to why the delay was occurred in the despatch of cotton swabs to the chemical laboratory Rohri". She was also of the opinion that chemical findings of consultant gynaecological findings (opinion) does not correct with the chemical report received from (chemical lab Rohri) in which human semen was detected in the vaginal swab.

15. Apart from above, four items were sent to the chemical examiner but the semen was only found on the clothes of victim whereas vaginal swabs were not found positive. According to A.P.G this case can be treated as an attempt to commit rape and not of committing rape. She further submits that the punishment is provided u/s 511 PPC as Section 376 PPC is not proved. According to the counsel for appellant, if the attempt is made then there should be some marks of violence on the body of victim girl which are lacking in the case in hand. He further added that the clothes of victim are not belonging to her but the same have been sent by police with malafide intention and ulterior motive. The clothes of victim girl were recovered on 06.12.2018 after the delay of 25 days whilst the offence was allegedly committed on 13.11.2018 which creates serious doubts in the prosecution case. The chemical examiner report shows that human semen was detected but as per counsel, it could be of anybody. There is also delay in sending and receiving the sample by the concerned Laboratory. Clothes of victim as per DNA report shows Ferozi colour shalwar and Ferozi colour Qameez with embroidery whereas the mashirnama dated 06.12.2018 shows that the colour of Shalwar Qameez of the victim was of light green colour. Accused was arrested on 26.11.2018 and sample was taken on

29.11.2018 through PC Karim Bux but he has not been examined before the trial court. Lady doctor also disagreed with the chemical examiner report of Kotri as according to her swabs cannot be detected after 72 hours. When swab of the accused Kamran were not taken, then how those were sent to the chemical examiner. It is also not ascertained from where the swabs of Kamran were taken on the contrary, the report shows Karman's blood sample were taken. Laboratory also shows in column No.3 blood sample of victim girl Sehrish which are not mentioned anywhere else in her evidence or in any other report.

16. Considering the above facts and circumstances, in my humble view prosecution has failed to bring guilt at home, whilst the appellant has succeeded to make out his case, as there are solid reasons to believe his plea of innocence. It is well settled that any slightest iota of doubt if created in prosecution case, shall be counted in favour of the accused and then the accused will be entitled to the benefit not as a matter of grace and concession but as a matter of right whereas in the case in hand there are number of doubts created in the case of prosecution. In this regard, reliance can be placed upon case of 'Tariq Parvez v. The State' [1995 SCMR 1345] wherein it has been held by Honourable Supreme Court of Pakistan that:

***"For giving benefit of doubt to appellant it is not necessary that there should be many circumstances creating doubts. If there is a circumstance which creates reasonable doubt in a prudent mind about the guilt of the accused, then the accused will be entitled to the benefit not as a matter of grace and concession but as matter of right".***

17. For the aforementioned reasons, I have no hesitation to hold that the prosecution has miserably failed to prove its case against the appellant / accused. Resultantly, instant Criminal Appeal No.S-59/2021 is allowed and the conviction and sentence recorded by the trial court



through impugned judgment dated 06.03.2021 are set aside. Appellant Kamran @ Kami is acquitted of the charge. Appellant is in custody. He shall be released forthwith if not required in any other custody case.

JUDGE

Tufail