

IN THE HIGH COURT OF SINDH AT KARACHI

CR. APPEAL NO.33/2016

Appellant : Ubaidul-Haq,
through Mr. Saadat Hassan, advocate.

Respondent : The state,
through Mr. Abrar Ali Khichi, APG.

Date of hearing : 02.10.2018.

Date of order : 02.10.2018.

JUDGMENT

SALAHUDDIN PANHWAR, J: This appeal assails judgment dated 31.12.2015 in S.C. No.2108/2014, arising out of FIR No.238/2014, u/s 376 PPC, PS Gulistan-e-Johar, Karachi, whereby appellant was convicted and sentenced for the offence punishable under section 376(i) PPC to suffer R.I. for 14 years and fine of Rs.50,000/- and in default thereof to suffer R.I. for two months more, with benefit of section 382-B Cr.P.C.

2. Brief facts of prosecution case that complainant Sher Rehman lodged FIR at PS Gulistan-e-Johar being brother of victim Mst. Suneela and narrated the incident of snapping questionable videos by the accused Ubaidul Haq of his sister and kept on blackmailing her as much as on such pretext he committed continuously zina with her. After registration of FIR, police arrested the accused and after completing usual investigation challaned him in the court of law.

3. To the charge framed, appellant/accused pleaded not guilty and claimed trial. Prosecution examined PW-1 complainant Sher Rehman at exhibit 5, who produced copy of FIR, memo of site inspection, sketch of place of incident and memo of arrest as exhibits 5/A to 5/D respectively; PW-2 Victim Suneela at exhibit 6, who produced her statement U/s 164 Cr.P.C. as exhibit 6/A; PW-3 Dr. Summaya at exhibit 7, who produced MLC of victim and letter addressed to police surgeon as exhibits 7/A and 7/B respectively; PW-4 ASI Sohail at exhibit 8, who produced Roznamcha entry, letter addressed to police surgeon, MLC of accused, notice U/s 160 Cr.P.C. and receipt of motorcycle as exhibits 8/A to 8/F; PW-5 Eid Rehman at exhibit 9; and PW-6 SIP Sardar Ahmed at exhibit 10. In his statement u/s 342 Cr.PC at exhibit 12, he denied allegations of prosecution and stated that he has been falsely implicated in this case; he neither examined himself on oath nor led evidence in his defence.

4. Trial Court answered the issues framed as under:-

1	Whether accused Ubaidul Haq prior to 02.01.2014 being friend of father of alleged victim Mst. Saneela visited his house; made them to believe that their daughter shall have to write Quran-e-Pak with handwriting as ROHANI TREATMENT of her father and has thereafter committed Zina with Mst. Saneela D/o Abdul Rehman as well as made objectionable video of her for black mailing her and later on 02.01.2014 at inside House No.208, Block-9, Mohib Colony PIA Society, Gulistan-e-Jouhar Karachi accused Ubaidul Haq with help of his wife committed rape with Saneela daughter of Abdul Rehman aged about 21 years as alleged by the prosecution?	Proved
2	What offence, if any, has been committed by the accused?	Accused is convicted

5. I have heard learned counsel for appellant and learned APG and perused the record.

6. Learned counsel for appellant contended that appellant has been falsely implicated in this case; that father of victim and accused were in Pakistan Army and after retirement father of victim had taken Rs.800,000/- from accused for establishing security guard company but neither he established security company nor returned the amount; when appellant demanded his money back he implicated the accused in the this case; that there are material contradictions in the statement of victim recorded under section 164 Cr.P.C. and evidence recorded in before the trial court; that in the memory card produced by the prosecution the face of accused is not seen while the victim has been seen which shows that victim with her consent is involved in the commission of offence with someone else; that prosecution has failed to examine any independent witness so also eye witness of the incident; that victim has failed to disclose the actual date when accused committed rape with her and there is inordinate delay in lodging the FIR for which no plausible explanation has been given by the complainant; that as per medical report of victim no mark of any violence was present on all over the body, which shows that no forceful rape was committed upon her; no any DNA test was conducted, case of the prosecution is not free from doubt and the benefit of doubt.

7. Learned APG has contended that the complainant, victim and other witnesses have fully implicated the accused with commission of offence; that in Islamic society no girl can falsely

level allegation of such heinous nature if the alleged act is not committed; that victim firstly recorded her statement before learned Judicial Magistrate and thereafter in her evidence recorded before trial court she has stated that appellant committed her rape; that evidence of PW-3 WMLO, Dr. Summaya also supports the version of victim therefore the prosecution has discharged its burden and has succeeded to prove the allegations beyond reasonable doubts hence appellant has rightly been convicted for the offence and impugned judgment is liable to be maintained. He has relied upon case law reported in 2004 P.Cr.L.J. (FSC) 1039, 2004 PLJ (FSC) 125 and NLR 1994 SD 09.

8. At the very outset, I would insist that it is by now well established principle of law that it shall only be the intrinsic worth and probative value of the evidence on which question of the guilt or innocence of an accused person could be determined; and mere heinous or gruesome nature of crime could never be sufficient in detracting a Court of law, in any manner, from the due course to judge and make the appraisal of evidence in a laid down manner. I would further add that allegations, levelled in the FIR, shall remain the '**allegations**' and in absence of satisfactory proof thereof, no conviction could be recorded thereon because legally the benefit of reasonable doubt is indefeasible and inalienable right of an accused. Reference, if any, may well be made to the case of Azeem Khan & another v. Mujahid Khan & ors (2016 SCMR 274) wherein these root principles of **Criminal Administration of Justice** have been reiterated while observing as:-

“29. The plea of the learned ASC for the complainant and the learned Additional prosecutor General, Punjab that because the complainant party was having no enmity to falsely implicate the appellants in such a heinous crime thus, the evidence adduced shall be believed, is entirely misconceived one. It is a cardinal principle of justice and law that only the intrinsic worth and probative value of the evidence would play a decisive role in determining the guilt or innocence of an accused person. ...”

“32. It is also a well embedded principle of law and justice that **no one should be construed into a crime on the basis of presumption in the absence of strong evidence of unimpeachable character and legally admissible one.** Similarly, mere heinous or gruesome nature of crime shall not detract the Court of law in any manner from the due course to judge and make the appraisal of evidence in a laid down manner and to extend the benefit of reasonable doubt to an accused person being infeasible and inalienable right of an accused. In getting influence from the nature of the crime and other extraneous consideration might lead the Judges to a patently wrong conclusion. In the event the justice would be casualty.”

Since, above **root** principles can never be avoided therefore, the case, in hand, regardless of severity of allegations, was / is required to be examined on these principles. Having said so, the perusal of the record shows that prosecution set-up its case, on number of different circumstances (*evidences*), including evidence of victim and medical evidence therefore, it was always obligatory upon it (*prosecution*) to have proved each or least to justify conviction even on failure / absence thereof.

9. The perusal of the record makes it clear that evidences of the complainant (*a real brother*) and PW-5 Eid Rehman (*father*) had been to extent of alleged status of appellant / convict as **‘Roohani Aalim** or **fairy’** but it is a matter of record that none of them attempted to produce any thing on record which could establish such *specifically* claimed circumstances though on basis thereof the prosecution built its whole case. It was specific claim of the

prosecution that though all **medical tests** of the PW-5 Eid Rehman PW-5, Eid Rehman (father of victim) were clear as is evident from categorical admission (s), made by complainant and even victim in their evidence (s) as:-

Complainant "His father had cardiac problem but the reports were clear"

Victim "It is correct that my father had arranged medical test relating to heart disease which come in negative"

so PW-5 Eid Rehman thought of '**Roohani Treatment**' from appellant / convict but surprisingly prosecution did not produce anything so as to establish such '**status**' of appellant / convict.

Further, it also came on record that on advice of appellant / convict the victim, per her 164 Cr.PC, wrote calligraphy of '**15 Suparas of Holy Quran**' which requires considerable space but it, *quite* surprisingly, seems to have been done in one **room** so it appears from 164 Cr.PC statement of victim wherein she admitted as:-

"Three fairy comes upon him and three fairy would present there for such reason anyone not come **upper side room**, since calligraphy used to prepare in **upper side room** and fairy issued threats to my family...."

Such was very important piece but no proof in that regard was collected / produced rather when questioned, the victim stated that:

"It is correct that **I have not produced any script of Holly Quran**, which was allegedly written by me. Vol. says that it was washed out due to that incident. It is correct that **I have also not produced any Taveez written by accused.**"

I would also add that these witnesses never claimed to have witnessed or even felt any *ill* activities on part of the appellant /

convict or his wife during period when these witnesses sent their sister / daughter with appellant / convict to their house as well when she (*victim*) was left alone during night hours in room of house of these witnesses. Worth to add that such period *allegedly* was of such a length that **victim** became **pregnant** and had to get abortion twice. Thus, *prima facie*, the alleged continuity of letting the **victim** go with appellant / convict to his house as well letting her (*victim*) to remain alone in room of their house for such long period was / is indicative that nothing *abnormal* was ever felt by house inmates, including **brother & father**. Absence of *anxiety* in house inmates of victim was always requiring to be taken as a circumstance favouring to appellant / convict who, even per prosecution case, never visited house of complainant without his '**wife**' and his **family**, including children, were residing with him (appellant / convict). However, since evidence of these witnesses (complainant and PW-5) was only to such extent which the prosecution failed to establish, therefore, I would not go to discuss their evidences any more.

10. Be that as it may, what can safely be deduced from above is that none claimed to have witnessed '**zina**' upon victim which allegedly remained committing even in in said **upper room** of house of complainant and PW-5 (father of victim) *too*. Here, it may well be said that *normally* no one shall dare to commit '**Zina**' in presence or *likely* presence of '**blood-relations**' of the victim rather would always prefer to do such *evil* act in loneliness. This has been the reason that *normally* much weight is given to evidence of **victim**. Reference may well be made to the case of *Ghulam Mohay-ud-Din alias Baoo v. State & Ors* (2012 P Cr.L.J 1903) wherein it was held at page-1906 as:

“...It is true that the such offences are committed in loneliness **so the absence of the eye-witnesses is not material and statement of the victim corroborated by the medical evidence is sufficient to prove the charge** but if the statement of victim does not inspire confidence on her own character appears to be doubtful, then her solitary statement cannot be deemed to be sufficient to prove the allegation of commission of rape punishable under section 376 PPC”

I would add that normally no one shall dare to commit Zina in presence or *likely* presence of his **‘wife’** and **‘children’**. Thus, such story was never safe to be taken as *natural & confidence inspiring* and was never strong enough to hold the conviction. In a case of Mst. Shamim & 2 others v. State & another (2003 SCMR 1466), finding the prosecution story improbable, it was held that no conviction could sustain on such like story.

11. However, prima facie the prosecution story neither appears to be acceptable to a **prudent mind** nor fits to *normality* which ordinarily a normal person would behave as shall stand evident from 164 Cr.PC statement of the victim as well her examination-in-chief, recorded during trial. The relevant portion(s) thereof are reproduced hereunder:-

164 Cr.PC statement of victim:-

“... My father remains ill mostly then someone advised my father to get spiritual treatment. In this connection, my father contacted with accused Ubaid-ul-Haq, upon which, he said that he would do your treatment you come at his home. When my father went to his home then he called one Pari/fairy named Amina Bibi upon him and made spiritual treatment to my father from which my father was feeling good. One week later, when my father went to his home then fairy came upon him and said my father that your treatment would remain continued besides spiritual treatment has to make at your home and we would come at your home in order to make spiritual treatment. My father replied it is OK. Few days later, he **alongwith his wife** came at our house and made spiritual treatment upon us and derived nails inside home and burnt fire, as such he came at our home about 2/3 times and remained spiritual treatment **and his wife and**

children were with him. Since matter was calligraphy of Holy Quran and **accused used to reside with family**, upon which, my father allowed me to go to the house of accused and I went to the house of accused as allowed by my parents. **Where first night he and his wife tortured and maltreated me and torn my clothes, his wife caught hold me and accused Ubaid-ul-Haq committed Zina with me**, after that he committed Zina with me for about 2/3 times.

Examination-in-Chief

“... The other people also used to receive treatment from him and therefore our father agreed and then he started visiting our home frequently, **so much so he used to visit our house with his family In February, 2013** accused Abdul Haq asked my father that since there was effect of black magic upon all the family members. therefore fairy (Pari) had chosen my name for writing the script of holly Quran. He further asked that fairy (Pari) had asked for my name to stay in his house for 3 days for learning as to how the script of Holly Quran would be written, therefore my father allowed his request. I went to the house of accused for 3 days where his wife Musarrat threatened me and also torn my clothes. Accused in-connivance with his wife forcibly detained me there and accused committed rape with me... Then accused started coming to our house after 3-4 days and he sued (used) to stay in our house at night time and the exercise of script Holly Quran was started. When the exercise of writing script of holly Quran accused Ubaidul Haq used to read and worth DAM upon my parents and asked my parents to leave the room and he further used to ask not to enter the room as he would check the script of Holly Quran in privacy. Then he firstly used to check the script of Holly Quran and then prepared to soft drink and put piece of paper in glass and asked me to drink. He further used to ask whatever he is doing it was under the instruction of fairy (Pari), then **he used to commit rape with me and also recorded such nude video.**”

Since, it is needless to reiterate well settled principle of Criminal Administration of justice that if two views are possible the one favouring to accused is to be taken but this principle was entirely ignored by the learned trial Court judge while observing as:-

“In our Islamic society, no young girl could level heinous nature of allegation viz zina against anyone till the said act has not been committed upon her....”

The learned trial court judge *however* entirely ignored other aspect, so was / is prima facie, appearing that alleged ‘**zina**’ was committed

either in presence of '**family of appellant/convict**' or in house of complainant, which too, in presence of '**wife**' of appellant / convict although learned trial Court judge was required to have weighed the *possibilities* of both views, keeping in view the well settled principle of law of appreciation of evidence which always insist examining that claims of both witnesses and accused must qualify the test of being **reasonable** and **acceptable** to a **prudent mind**.

12. Be that as it may, since it is equally well established principle of law that mere positive medical report / evidence could prove nothing but, *at the most*, commission of Zina *only*. The medical report / evidence *legally* can establish happening of alleged '**offence**' but can never *exactly* point out the '**culprit**'. I would find myself quite safe in saying that a positive medical evidence showing commission of '**zina**' shall never be sufficient to hold sent-up accused **guilty** unless and until offence of '**commission of zina**' is proved to have been committed by a **particular person** (*sent up accused*). This has been the reason that *identity* of the **culprit** was / is always subject to *two* proof (s) which are:-

- i) identity through **DNA**;
- ii) evidence of **victim**;

At this juncture, I would refer the relevant portion of the case of Salman Akram Raja v. Govt. of Punjab (2013 SCMR 203) wherein importance of **DNA** in such like cases was discussed:

At relevant p-210

".. In the case of Muhammad Azhar v. The State (PLD 2005 Lahore 589) the Court has accepted the admissibility of DNA test results in the following words:-

“18. The DNA test may be an important piece of evidence for a husband to establish an allegation of Zina against his wife and use this as a support justifying the taking of the oath as ordained by Surah Al-Noor, which leads to the consequences of breaking the marriage. **The DNA test may further help in establishing the legitimacy of a child for several other purposes.** Therefore, its utility and evidentiary value is acceptable but not in a case falling under the penal provisions of Zina punishable under the Hudood Laws having its own standard of proof.”

In *Muhammad Shahid Sahil's case* (supra) the Federal Shariat Court has laid great emphasis **on the administration of DNA test in rape cases.** The Court has also overruled the finding of the High Court in *Muhammad Azhar's case* to the effect **that DNA test has no evidentiary value in a case falling under the penal provisions of Zina punishable** under the *Hudood Laws* having its own standard of proof. Relevant Paras from the said case are reproduced herein below:-

.....

In the said case it was finally concluded as:-

“16. In view of the above proposals, the petitioner as prayed that following points may be approved and the concerned public authorities be directed to enforce them through the course of investigation and prosecution of all rape matters in Pakistan:--

- a) Every police station that receives rape complaints should involve reputable civil society organizations
- b) **Administration of DNA tests and preservation of DNA evidence should be made mandatory in rape case.**
- c) ..
- d) ..
- e) ...”

In view of the binding effects of above directive (s), the **DNA** was to be taken in such like case (s) *however*, perusal of the record shows that no such attempt was ever made by the prosecution for making compliance of such **mandatory** rather evidence of WMO says:

“On the basis of clinical examination she was not a virgo intacta. Vaginal swab not made because there was a gap of 4 months between last date of incident and date of examination”

13. Since, admittedly the prosecution never claimed to be in possession of evidence of '**DNA**' hence the duty of prosecution had become rather serious to prove allegation of **zina** by present **appellant / convict** on '*second touch-stone*'.

14. I shall insist that even for proving a charge of such like nature on *second* count, the Court(s) can take no exception to legal position that before recording conviction on *sole* evidence of victim, it (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 dependant upon person or personality;
- iv) the benefit of doubt shall always be extended to accused;

Let's see whether the victim passes the required test or otherwise?. Since, statement of victim, recorded under section 164 Cr.P.C. is not only root but was / is with an object to examine her evidence during trial hence the relevant portion (s) thereof are made hereunder:-

“I do hereby state on oath that; accused Ubaid-ul-Haq was serving in Army with my father. After about 10/12 years back, he met with my father. My father remains ill mostly then someone advised my father to get spiritual treatment. In this connection, my father contacted with accused Ubaid-ul-Haq, upon which, he said that he would do your treatment you come at his home. When my father went to his home then he called one Pari/fairy named Amina Bibi upon him and made spiritual treatment to my father from which my father was feeling good. One week later, when my father went to his home then fairy came upon him and said my father that your treatment would remain continued besides spiritual treatment has to make at your home and we would come at your home in order to make spiritual treatment. My father replied it is OK. Few days later, he alongwith his wife came at our house and made spiritual treatment upon us and derived nails inside home and burnt fire, **as such he came at our home about 2/3 times and remained spiritual treatment and his wife and children were with him.** One day, incoming (Pari)/ fairy upon him said my father that calligraphy of Holy Quran would make in your home, in this regard we have appointed your daughter (me) and such course would for 3 days and your children would go to the house of accused where would tell for calligraphy and would give permission for spiritual treatment. Since matter was calligraphy of Holy Quran and **accused used to reside with family**, upon which, my father allowed me to go to the house of accused and I went to the house of accused as allowed by my parents. **Where first night he and his wife tortured and maltreated me and torn my clothes, his wife caught hold me and accused Ubaid-ul-Haq committed Zina with me**, after that he committed Zina with me for about 2/3 times. Third time, his wife prepared beverage then fairy came upon accused and she made spiritual upon beverage and put one paper in the beverage and got drank me thereafter I became unconscious. **Last day, accused, his wife and fairy showed me a Video wherein movie was recorded regarding committing Zina with me.** They issued me threat that if you told such facts to anyone in house then we would show such video to your relatives, parents and put on Internet. Therefore, under compulsion I became silence and came to home and started calligraphy of Holy Quran. During which he used to visit to our house about 3/4 day at stayed in nighttime and on the pretext of spiritual treatment he used to check calligraphy. Such facts used to say fairy coming upon him. **Three fairy comes upon him and three fairy would present there for such reason anyone not come upper side room, since calligraphy used to prepare in upper side room and fairy issued threats to my family because if our family refused such facts of fairy then my all family members became ill therefore under compulsion we accepted such facts of fairy because my vide was with them.** During which fairy used to check Holy Quran and if any mistake occurred then she used to check. After that, the whole night wrong doings remained happening with me and after checking Holy Quran and used to have beverage and used to mix paper and also making videos. After some times, I felt that I am pregnant, then his fairy came upon him and said that we have knowledge about your condition and you have to cooperate with us, so that we have to solve this matter, beside that they were also issuing threats that if you disclose with anyone then we will release your video and We

will disgrace your parents and family and it same would have been happened that I did not obey them then my family members would have been bad, due to compulsion I agreed to say yes then accused called fairy upon him and fairy said to my father that your daughter would have gone to accused's house for three days, **in the meanwhile accused's wife came with accused to our house then I went away with them then accused and his wife took me in clinic and they got my DNC then I came back to my home then It remained happening in the same way**, they used to come my home and night they were stay our home and his wife used to stay 3 or 4 day in our home then gone. **After that, again I was pregnant and then they produced me to Doctor for DNC**, first time they introduced them as my parents and got made abortion but second time no one get being abortion of mine then fairy said that you have to say to Doctor that accused is your husband then DNC would be done then **I went to doctor with his wife and due to fear I said to doctor that accused is my husband then doctor got made my abortion**. I came back at home. In the meanwhile he is admitting that he ruined the lives of many girls. Then fairy said that now the turn of your younger sister whose age about 12/13 years old now we will abuse with her. They were insisting me to do that and agreed to my parents and sister, which was not possible for me that whatever happened with me then how will I allow to do the same thing with my sister. **This time I was not blackmail from them then I tried to suicide and I also tried to suicide before it**. At this time I was in accused's house that's why they saved me then fairy said I put magic on you so you could not come out from our grab then situation became such that the condition of my father is very critical, upon which, he called me and said that you get apology from fairy and obey her wordings then your father will be better but I did not obey them then accused came to my home with her wife and recited (dam) etc., on my father then his condition got improved before it. During which, **I had written calligraphy of 15 "SEPARY" of Holy Quran**, thereafter, fairy said where you got engagement of your daughter you have to finished it and get her marriage with our consent but my father did not agree and my father said that I am very thankful to you whatever you got treatment of mine. Now you will not get further treatment of us. **Thereafter, his fairy having made phone call issued threats me, my father and brothers and I did not disclose such facts till that time**. After that I disclosed such facts to my parents when they came to know such facts whereupon **my father talked with fairy and fairy issued threats then my parents became silent, thereafter, wife of accused while taking video reached my married sister's house and showed my video to my sister and said that you get marriage of your sister with my husband (accused) and issued threats of fairy there and if you would not make such act then I having come again and would disturb your house**. After that, my parents took shelter of **Media and having gone to police station got registered such FIR**. The accused Ubaid-ul-Haq is present at this time, while other accused Azam did not see with accused Ubaid-ul-Haq after such matter came on Media. Prior to this, I did not see him nor has committed Zina with me. This much is my statement.”

Though the victim attempted to justify her *abnormal* conduct in becoming a consenting party to continuity of '**zina**' during such long period by saying in her 164 Cr.PC statement as:

“Last day, accused, his wife and fairy showed me a Video wherein movie was recorded regarding committing Zina with me.”

but such *plea* was contradicted by her during her cross-examination wherein she stated that:

“I have not seen video therefore I cannot say whether there is picture/face of accused Abdul Haq”

If she had not seen the '**video**' then as to what had been the reason for such *abnormal* and *long* silence of the **victim** when she *undeniably* returned to her house and was *freely* residing in her house?. No, *prima facie*, answer can be deduced except a presumption against the words of **victim**. Further, the **victim** categorically claimed in her **164 Cr.PC** statement that;

“..in the meanwhile accused's wife came with accused to our house then I went away with them then accused and his wife took me in clinic and they got my DNC then I came back to my home then It remained happening in the same way, they used to come my home and night they were stay our home and his wife used to stay 3 or 4 day in our home then gone. **After that, again I was pregnant and then they produced me to Doctor for DNC,** first time they introduced them as my parents and got made abortion but second time no one get being abortion of mine then fairy said that you have to say to Doctor that accused is your husband then DNC would be done then **I went to doctor with his wife and due to fear I said to doctor that accused is my husband then doctor got made my abortion.”**

From above portion, it can safely be concluded that she (*victim*) was

in complete senses, however, she (*victim*) never disclosed such **doctor** or **clinic** where such **abortions** were done. On the other hand, the **victim** attempted to justify such *prima facie* failure while answering to a question, posed to her during her cross-examination, as:-

“I did not see the sign board of clinic. Vol. says that I was not in proper senses.”

Such stand, being a *pure* improvement as well deviation from her earlier stand, was never worth believing rather was / is to be taken as seriously effecting upon her **credibility**. It may well be added that the victim *categorically* admitted in her evidence that “**At the time of incident I was student of B.Sc**” therefore, it cannot be believed that she was not in a position to remember the place where she was taken for **abortion** , particularly when she (*victim*) never claimed in her 164 Cr.PC statement or examination-in-chief that before going for **abortion** she was administered any thing of *like* nature particularly when she (*victim*) *intelligibly* satisfied doctor, conducting abortion, by claiming the appellant / convict as her ‘**father**’ and ‘**husband**. It is also worth to add that there also came a categorical admission on part of the victim to the effect that:

“It is correct that I have not produced any documents in court that I was pregnant.”

It is material to add here that though complainant and PW-5 categorically claimed to have been told about whole incident but they in their **evidences** said not a **single word** with regard to allegedly claimed **two-time abortion** which is also quite surprising. This, *however*, was never appreciated properly by the learned trial Court

judge while recording the conviction.

15. Be that as it may, the examination of the victim further shows that she categorically stated as:-

“On 2.1.2014 I disclosed whole incident to my parents about rape and other excesses committed by accused with me.”

If so, then why the complainant and his father (PW-5) remained silent for a considerable period of more than three & half months and then lodged the FIR on “**28.4.2014**”? There came no answer to this question from any corner. On the other hand, the complainant of this case in his evidence claimed that:

“At the **time for lodging FIR** his sister disclosed the incidents and occurrence of two months prior and disclosed that she was when gone for three days in the house of Ubaid ul Haq, accused Ubaid ul Haq and his wife made her to had one glass of some drink due and thereafter accused committed rape with her.”

Such, *prima facie*, suggests happening of **zina** upon victim two months prior to date of recording of FIR which *even* stand belied by medical evidence whereby “***there was a gap of 4 months between last date of incident and date of examination***”.

Further, the victim claimed in her evidence that:

“Videos were prepared in the house of accused so also **in our house on different occasion**”

Recording of a video, *which too* from an angle of not disclosing male, cannot be done without *third* person or if it is believed to be recorded by one of them even then it can't be done without knowledge / notice of persons, being caught in video. This aspect was also never found an answer and if is examined in *peculiarly*

claimed circumstances of the case, it would reflect as ‘**cloud**’ over such story.

16. Accumulative effect of examination of evidence of the victim shows that her evidence is replete with improvements / contradictions which are sufficient to bring her *credibility* and *veracity* in doubt hence no conviction could safely be recorded upon such evidence. In addition to this, the prima facie the abnormal conduct and behaviour of the victim as well witnesses cannot be ignored. Thus, it was never safe in convicting the appellant / convict at cost of old and deep rooted principle of Criminal Administration of Justice that a single benefit of doubt is sufficient for acquittal. In the case of *Javed Iqbal v. State* (2018 SCMR 1380) the honourable Apex Court while acquitting the appellant from charge of similar nature while appreciating the improvements and inherent defects in prosecution story, held as:-

“6. All these circumstances cast serious doubts on the veracity of prosecution case against the petitioners and the premium of such unexplained lacunas in the prosecution case must go to an accused. We, therefore, have no manner of doubt in our mind that the prosecution has failed to prove its case against the petitioners beyond reasonable doubt.”

Accordingly, the appeal is accepted; judgment is set-aside and appellant is acquitted by extending him benefit of doubts.

17. These are the reasons of short order dated 02.10.2018 whereby instant appeal was allowed.