

**THE HIGH COURT OF SINDH
CIRCUIT COURT AT HYDERABAD**

Cr. Appeal No. S-165 of 2018

DATE	ORDER WITH SIGNATURE OF JUDGE
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1. For hearing of Main Case.

Appellants : Through Mr. Ghulam Asghar Mirbahar
The State : Through Ms. Safa Hisbani A.P.G
Complainant : Through Mr. Agha Ghulam Abbas
Date of hearing : 21 July 2023
Date of Decision : 20 October 2023

J U D G E M E N T

MOHAMMAD ABDUR RAHMAN J. The Appellants have maintained this Appeal as against the Judgment dated 18 July 2018 passed by the IInd Additional Session Judge Shaheed Benazir Abad in Crime No. 233 of 2016 that was registered as PS Sakrand and whereby the Appellants were convicted under Section 265-H (ii) of the Code of Criminal Procedure, 1898 of a crime under Sections 365-B of the Pakistan Penal Code, 1860 and were each sentenced to serve Rigorous Imprisonment for a term of five years and to pay a fine of Rs. 20,000 each and on the failure to pay the fine to undergo further Rigorous Imprisonment for a term of six months.

2. The Complainant Mst. Haseena complains that on 12 October 2016 she was not married and was under the care of her father one Naban. She averred that one of the Appellants namely Molai was trying to force her to marry him and whose advances she had rejected. On the date of the incident on 12 October 2016, she was returning from a Majlis when she was kidnapped by the Appellants in their car and taken to a jungle where each of them raped her. Her absence caused concern amongst her family who attempted to search for her in the jungle. She contends that the search alerted the Appellants who fled from that area. It is contended that

thereafter the Appellants took her to an undisclosed location and on the intervention of one Ali Hasan Solangi, a “Nek Mard,” her custody from the Appellants was secured and she was returned into the custody of her father. She stresses that to preserve her dignity, a marriage was arranged by her father with her cousin within three days after the incident and initially the matter was not reported to the police. She thereafter contends that on her own volition she filed a complaint with the police regarding the incident and who initially did not register an FIR and which compelled her to institute an Application under 22 A of the Code of Criminal Procedure, 1898 before the Additional District & Sessions Judge Shaheed Benzair Abad District for the registration of an FIR. The application was granted after some delay and on the basis of which the FIR was registered.

4. The Police thereafter investigated the matter and submitted the Charge Sheet and a Charge was framed as against the Appellants each of whom pleaded that they were not guilty and requested for a trial. After the framing of the charge, the Prosecution examined the following witnesses:

- (i) Saleem ;
- (ii) Mst. Haseena;
- (iii) SIP Muhammad Bux; and
- (iv) Mitho

6. Each of the Appellants recorded their statements under Section 342 of the Code of Criminal Procedure, 1898 and pleaded their innocence. They each contended that they were falsely implicated in the crime to “create room to negotiate” in respect of an FIR that has been registered by one Samina as against the maternal uncle of Mst. Haseena one Mashooque. On this basis they stated that the FIR that had been registered was in fact contrived and sought the dismissal of the Charges as against each of them.

7. The IInd Additional Session Judge Shaheed Benazir Abad after a full trial exonerated the Appellants of the crime under Section 376 of the Pakistan Penal Code, 1860 but found the Appellants guilty of the crime under Section 365-B, of the Pakistan Penal Code, 1860 and against which conviction the Appellants have maintained this Appeal and have been granted bail. For the sake of clarity, it is noted that as no appeal has been filed against the acquittal of the Appellants of the crime under Section 376 of the Pakistan Penal Code, 1860, therefore this judgement only deals with the Appellants conviction under Section 365-B of the Pakistan Penal Code, 1860.

8. I have heard the Counsel for the Appellants, the learned A.P.G and the Counsel for the Complainant. Mr. Ghulam Asghar Mirbahar on behalf of the Appellants contended that the entire evidence that has been produced by the prosecution was that of Mst. Haseena. He further contends that the evidence of the other Witness was hearsay evidence as each of the witnesses had not witnessed the kidnapping themselves and have only testified to the recovery of Mst. Haseena through the "Nek Mard". He also pointed out that during the course of the investigation the police did not depose Mr. Ali Hasan Solangi i.e. the Nek Mard and from whose custody Mst. Haseena was admittedly recovered. On this basis he argued that there was reasonable doubt to show that the custody of Mst. Haseena was in fact not with the Appellants and may have well been with the Nek Mard. He contended that on these grounds, the Appeal should be granted and the Appellants should be exonerated.

9. The Counsel for the Complainant, while conceding that the corroborating witnesses had not witnessed the incident, argued that the evidence adduced by Mst. Haseena was in fact enough to prove that charges that had been maintained as against the Appellants and on which

basis each of their Appeals was liable to be dismissed. The Learned APG also argued for the dismissal of the Appeals on the ground that Mst. Haseena deposition was without exception and also prayed that the Appeals be dismissed.

10. I have heard the Counsel for the Appellant, the Counsel for the Complainant and the Learned A.P.G. Admittedly, the evidence of Mst. Haseena is the sole evidence that has been adduced by the Prosecution to prove the committing of the crime. I have perused the evidence of Mst. Haseena and note that aside from a discrepancy in respect of the date of the registration of the FIR the rest of the evidence is consistent with the FIR and which has not been disturbed in the cross examination. In specific, her allegations regarding her abduction, as against the Appellants, as well as her recovery is consistent with her testimony and remains proved.

11. While such evidence could have been corroborated by the Prosecution by examining the person from whom her custody was recovered namely Ali Hasan Solangi, regrettably at no stage was his statement ever taken and rendering it apparent, as has been correctly pointed out by the IInd Additional Session Judge Shaheed Benazir Abad in her Judgment dated 18 July 2018, that the matter has terribly mishandled by the Police *inter alia* by first not registering the FIR and thereafter not examining the requisite witnesses.

12. Be that as it may, the contentions of the Counsel for the Complainant and the Learned A.P.G. are correct that in circumstances such as these the sole testimony of a witness, if found to be credible, convincing and trustworthy can be the basis for maintaining the conviction. On the basis of the deposition that has been conducted, it is not been alleged that there is any personally enmity as between Mst. Haseena and the Appellants. In addition, the allegation made against her purported maternal uncle

Mashooque having been categorically denied by her and also having not been established by the Appellants reaffirms the fact that no enmity did in fact exist. The deposition of Mst. Haseena as recorded reads as under:

“ ... *I was returning from Majlis towards my house. In the way accused persons namely Molai, Khan, Dolat, Khairo kidnapped me in one car of white colour.... Accused persons handed over me to Ali Hasan Solangi who returned me to my relative...*”

The testimony given by Mst. Haseena to my mind is not only consistent with the Complaint and the FIR but to my mind is also credible, convincing and trustworthy and can be safely relied on and which clearly establishes her abduction by the Appellants and her return through a “Nek Mard.” I am therefore hard-pressed to find any illegality or irregularity in the Judgment dated 18 July 2018 passed by the IInd Additional Session Judge Shaheed Benazir Abad in Crime No. 233 of 2016 who has properly analysed and examined the case in its proper perspective. The Appeal therefore cannot be sustained.

13. For the foregoing reasons, there being no merit in this Appeal the same is dismissed, the concession of bail granted to each of the Appellants is withdrawn and the Judgment dated 18 July 2018 passed by the IInd Additional Session Judge Shaheed Benazir Abad in Crime No. 233 of 2016 is sustained.

JUDGE

Hyderabad Dated 20 July 2023.