

IN THE HIGH COURT OF SINDH AT KARACHI

Cr. Jail Appeal No. 691 of 2021

[Faheemv..... The State]

Date of Hearing : 19.07.2023
Appellant through : Mr. Qaim Ali Memon, Advocate.
Respondents through : Mr. Shams ul Hadi, Advocate for the complainant.
Mr. Faheem Panhwar, DPG.

ORDER

Zulfiqar Ahmad Khan, J:- Through instant Criminal Appeal, the appellant has impugned the judgment dated 23.09.2021, passed by the learned 5th Additional Sessions Judge Malir, Karachi, in Sessions Case No. 1356 of 2019, arising out of FIR No.124/2019, under section 365-B, 376 PPC at Police Station Quaidabad, Karachi, whereby appellant was convicted and sentenced as follows:-

a). He is convicted under section 365-B PPC for abduction of victim Mst. Shumaila @ Samina daughter of Mohammad Zahid with intention to commit illicit intercourse with her and sentenced him to undergo rigorous imprisonment for life and to pay fine of Rs.50,000/- (Rupees fifty Thousand) in case of non-payment of fine the accused shall suffer R.I for 03 months more.

b). Accused Mohmmad Yameen is further convicted under section 376 PPC for committing rape with the victim girl Mst. Shumaila @ Samina daughter of Mohammad Zahid and sentenced him to undergo rigorous imprisonment for 10 9ten) yhears and to pay fine of Rs.50,000/- (Rupees Fifty Thousand) in case of non-payment of fine the accused shall suffer R.I for 03 months more.

2. Both sentences were ordered to run concurrently and the benefit provided under section 382-B Cr.P.C was also extended to the appellant. The allegation against the appellant is that on 28.04.2019 at 1100 Hours he abducted Mst. Shumail @ Samina

daughter of Mohammad Zahid aged about 16 years and committed Zina with her.

3. After framing of charge, the prosecution has examined as many as eight (08) witnesses. PW-01 Shehla Siddiqui at Exh. 3, PW-02, Shumaila @ Samina (victim) at Exh. 4, PW-03 Dr. Noor Un Nisa (WMLO) at Exh. 05, PW-04 Muhammad Hasnain at Exh. 6, PW-05 Mir Sagar Khan at Exh. 8, PW-06, Dr. Abdul Ghaffar (MLO) at Exh. 9, PW-7 SIP Sher Muhammad at Exh. 10 and PW. 08 SIP M. Hafeez at Exh. 11. Thereafter prosecution side was closed vide Ex:12 and statements of appellant under section 342, Cr.P.C. was recorded at Exh. 13, who claimed his innocence.

4. After observing all formalities and hearing the parties, the learned trial Court convicted the appellant through impugned judgment in the manner described in the operative part of this edict.

5. The appellant being aggrieved and dissatisfied with his conviction has preferred instant appeal. Learned counsel for the appellant contended that the semen was not detected from internal swab of the victim which is a sufficient proof that offence of zina was not committed, therefore, the appellant be acquitted of the charge.

6. On the other hand learned counsel for the complainant assisted by learned APG argued that learned trial Court is the fact finding authority and having examined the all material available on record, the learned trial Court convicted the appellant which judgment based on the sound reasons and does not call for the interference by this Court.

7. I have heard the arguments and have gone through the relevant record. There is no denial to the proposition that the conviction can be recorded on the solitary statement of the victim provided that if the same was corroborated by the other circumstantial evidence, particularly, with the opinion rendered by the medical witness. The prosecution based its case upon the following piece of evidence:

- (1) Ocular evidence.
- (2) Medical evidence.
- (3) Circumstantial evidence.
- (4) Motive.

8. PW.3 Dr. Noor-un-Nisa (Exh. 5 available at page 69 of the paper book) having examined the victim handed out her cloths to the I.O for chemical analysis to exclude human sperm. It is a matter of record that the said cloths of victim sent to Forensic & Molecular Biology Laboratory for DNA Testing and that the said Laboratory through its report available a Exh. 11-B (page 185-189 of the paper book) concluded as under:-

“Conclusion: The accused Yameen S/O Mohammad Yaseen (Item 4.0) is the contributor of Semen stains/Sperm fraction identified on cloth of victim Samina Urf Shumaila D/O Zahid Hussain (Item2.0).

9. It is gleaned from appraisal of the foregoing that the Forensic & Molecular Biology Laboratory, For DNA Testing concluded that semen stains/sperm of accused was found on the cloths of victim which is a sufficient fact that the offence of abduction was committed by the accused with sole motive to commit zina forcibly. The victim PW-2 in his examination in chief (Exh. 4 available at page 61) introduced on

record the factum of alleged incident as well as in her statement recorded under Section 164 Cr.P.C by the learned Judicial Magistrate (available at page 75 of the paper book) also established the factum of alleged incident. Learned counsel for the appellant introduced on record certain contradictions in the deposition of the witnesses which are minor in nature and does not impair the intrinsic value of the prosecution case. There are two types of contradictions (minor and major). The minor contradictions in the evidence carry no weight, whereas, the major contradictions are such under which either the story of the prosecution is changed or some material changes have been made so as to fit in the circumstances of the case or to make them consistent with other pieces of evidence such as medical evidence etc. Those contradictions carry weight and should be examined minutely before discarding the evidence of a witness. The contradictions may be in the testimony of same witness or between the evidence of some of several witnesses. It should realize that the contradictions are bound to arise in the testimony of witnesses especially if their evidence is recorded after a long time of the incident, loss of memory and sense of observation of witness to perceive an event and give importance to different aspects of it. The Hon'ble Supreme Court have ruled that unimportant contradictions which are not material and connected with the actual incident should be ignored particularly if the evidence of witness is recorded after months or years of the incident (**1995 SCMR 1793**). In the instant case no major contradictions in the evidence of prosecution witnesses which may belied their version has been pointed out by the defence side. However, so far minor contradictions, while highlighting

evidence of the witnesses, would not shake the probate value of their evidence, but these discrepancies occurred due to lapse of time.

10. The learned counsel for the appellant during course of arguments also pointed out the delay in lodging of FIR. It unfurls from the record that the offence occurred on 20.04.2019 whereas, the FIR was lodged on 01.05.2019 there is a considerable delay in the lodging of FIR but this delay would not fatal the prosecution case more particularly the factum of alleged incident has been more particularly described by the victim and the same has also been corroborated by the medical evidence discussed supra.

11. Apart from above, it is well-settled principle of law that the criminal Courts are supposed to take into consideration the overall effect of the prosecution case in order to ascertain as to whether crime has been committed or not and unless the discrepancies, contradictions etc. have impaired the intrinsic value of the prosecution evidence, the same is not liable to be discarded merely for technical reasons. Similarly if some delay has occasioned in lodging the F.I.R. that would also not be fatal in the circumstances because the offence of zina which is against the society has been committed by the accused and the victim left to face the consequences of shame in the society, therefore, if owing to some anguish and shock some time is consumed in lodging F.I.R.; it cannot be considered fatal for prosecution case as it has been held in the case of *Mst. Shamim Akhtar v. Faiz Akhtar* (PLD 1992 SC 211) and *Muhammad Ashraf v. Tahir alias Billo* (2005 SCMR 383).

12. In view of overwhelming evidence available on record, I am of the opinion that the reasons found favour with the learned Sessions

Judge for believing the prosecution evidence are tenable in the eyes of law. Since the material evidence available on record was taken into consideration with cogent reasons. The independent appreciation of evidence available on record produced by the prosecution as well as defence, persuades this Court to hold that no other conclusion can be drawn except that appellant is responsible for the commission of offence as alleged.

13. In view of the above rational and deliberation discussed above, the appeal at hand is dismissed maintaining the impugned Judgment

Karachi
Dated: 19.07.2023.

JUDGE

Aadil Arab.