

IN THE HIGH COURT OF SINDH, AT KARACHI

Criminal Appeal No. 320 of 2022

Appellant: Ahmed Raza @ through M/s. Hafiz Abdul
Rahim Rind and Gulzar Ahmed, advocates

The State: Mr. Khadim Hussain Khuharo, Additional
Prosecutor General Sindh

Date of hearing: 28.08.2023

Date of judgment: 28.08.2023

J U D G M E N T

IRSHAD ALI SHAH, J- It is alleged that the appellant has been committing rape with Mst. Afshan, a young girl aged about 16/17 years, for that he was booked and reported upon by the police. On conclusion of trial, he was convicted under Section 376 PPC and sentenced to undergo rigorous imprisonment for 10 years and to pay fine of Rs.200,000/- and in default whereof to undergo simple imprisonment for six months, with benefit of Section 382(b) Cr.P.C by learned Xth-Additional Sessions Judge, Karachi West vide judgment dated 22.04.2022, which he has impugned before this Court by preferring the instant Criminal Appeal.

2. It is contended by learned counsel for the appellant that the appellant being innocent has been involved in this case falsely by the complainant party in order to satisfy with him the family dispute; DNA report is negative and evidence of PWs being doubtful in its character has been believed by the learned trial Court without assigning cogent reasons, therefore, the appellant is entitled to be acquitted by extending him benefit of doubt, which is opposed by learned Addl. PG for the State by contending that the appellant has committed the offence which is affecting the society at large.

3. Heard arguments and perused the record.

4. The appellant and the complainant are closely related *inter se*. It was stated by PW Mst. Afshan that his father usually remains in

jail and the appellant had been subjecting him to rape since five years, it was also witnessed by others. If it was so, then she or the others who actually had witnessed the incident ought to have reported the same to police timely; the silence of 05 years on the part of Mst. Afshan and others prima facie suggests some foul play, therefore, her version together with the version of her mother complainant Mst. Ishrat Jahan who has attempted to support her is to be judged with doubt. DNA report being negative is not implicating the appellant in commission of incident. PW Zahir Shah before whom the appellant had allegedly admitted his guilt has not been examined by the prosecution; his non examination could not be overlooked. The evidence of I.O/SIP Ashique Ali is only to the extent to the investigation which he has conducted in the present case, it is not enough to improve the case of prosecution. The appellant in his statement recorded under Section 342 Cr.P.C has denied the prosecution's allegation by pleading innocence. In order to prove his innocence, he has also examined him and his wife Mst. Raeesa on oath, their evidence could not be lost sight of. In that situation, it would be safe to conclude that the prosecution has not been able to prove its case against the appellant beyond shadow of reasonable doubt.

5. In the case of *Muhammad Mansha vs. The State (2018 SCMR 772)*, it has been held by the Hon'ble Apex court 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".

6. In view of the facts and reasons discussed above, the conviction and sentence awarded to the appellant by way of

impugned judgment are set aside, consequently, he is acquitted of the offence for which he was charged, tried, convicted and sentenced by learned trial Court and shall be released forthwith, if not required to be detained in any other custody case.

7. The instant Criminal Appeal is disposed of accordingly.

JUDGE