

**THE HIGH COURT OF SINDH, BENCH AT SUKKUR**

CrI. Appeal No.D-68 of 2019  
Confirmation Case No.D-04 of 2019

**Present**

**Mr. Justice Muhammad Iqbal Kalhoro**

**Mr. Justice Arbab Ali Hakro**

Date of hearing(s): **04.10.2023, 13.12.2023, 18.01.2024 &  
27.02.2024**

Date of decision: **13.03.2024**

Mr. Imtiaz Ali Abbasi, Advocate for the Appellant.

Mr. Iftikhar Ali Arain, Advocate along with Complainant.

Mr. Zulfiqar Ali Jatoi, Additional P.G for the State.

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

**MUHAMMAD IQBAL KALHORO, J:-** Appellant Asghar Ali Kamboh was tried in Sessions Case No.157 of 2011 (re-State-Versus Asghar Ali), arising out of Crime No.27 of 2011, registered at P.S, Mehrabpur u/sections 302, 376 & 364-A PPC and vide judgment dated 30.04.2019, passed by learned 1<sup>st</sup> Additional Sessions Judge (MCTC), Naushehro Feroze, has been convicted and sentenced as under:

- i. For offence u/s 364-A PPC, he has been sentenced to death as Ta'zir with fine of Rs.50,000/- and in default, to suffer S.I for six months more.
- ii. For offence u/s 376 PPC, he has been sentenced to death as Ta'zir with fine of Rs.50,000/- and in default, to suffer S.I for six months more.
- iii. For offence u/s 302(b) PPC, he has been sentenced to death as Ta'zir with compensation of Rs.100,000/- to be paid to legal heirs of deceased in terms of section 3544-A PPC so also fine of Rs. 50,000/- and in default, to suffer S.I for six months more.

**2.** Facts in brief are that on 01.03.2011 at about 2130 hours, complainant Mushtaque Ahmed lodged an FIR alleging that he is an Electrician. On the same day, at about 4.00 pm, he returned to his house, after work, and was informed that baby Nimra, his daughter, had gone missing after she went outside to play in the street. Complainant immediately organized a search,

and in the street he met with Ghulam Sarwar who told him that his daughter Baby Nimra was being taken away by Asghar Ali Kamboh, talking and enticing her, towards northern side. Upon which he along with Ghulam Sarwar went to the northern side for her search. When they reached the agricultural land in-front of an abandoned machine of Qazi, PWs Akbar Ali and Arshad Ali, standing there, called them to come quickly. They went there running where both informed them that they had gone to village Tando Karam Khan for purchasing cattle (JINS), and when they were returning and reached near the abandoned machine of Qazi at about 5.30 hours, they heard cries of a girl coming from the room. When they went near, they saw Asghar Ali lying over baby Nimra with her trouser removed. He was committing rape with her and she was raising cries. Accused Asghar Ali then in order to shut her up, put his hand on her mouth and nose. There was a pistol with him. As soon as accused Asghar Ali saw them coming, he aimed his pistol at them and threatened not to come near. Due to fear, they remained silent. Thereafter accused Asghar Kamboh fled away towards Langerji minor. They saw baby Nimra dying within their sight. The complainant and witnesses then came over the dead body of baby Nimra and spotted multiple injuries and bruises on her different parts including bite marks. Complainant leaving the witnesses over the dead body went to P.S along with Ghulam Sarwar and lodged the FIR.

**3.** In investigation, appellant Asghar Ali was arrested and on his pointation, a pistol of 30 bore pistol was recovered on 05.03.2011. Thereafter, he was referred to the Court for a trial against above allegations. To a formal charge, he pleaded 'not guilty' and claimed trial. Prosecution in order to substantiate its case examined as many as 11 witnesses. They have produced all necessary documents: inquest report, postmortem report, FIR, sketch, memo of dead body, all the relevant memos, lab reports, chemical reports etc. In statement, recorded u/s 342 CrPC, the appellant has denied the allegations and pleaded innocence. Then, after hearing the parties, the trial Court vide impugned judgment has convicted and sentenced the appellant in the terms as stated above.

**4.** Learned counsel in defence has argued that appellant is innocent and has been falsely implicated in this case; that there is no

confidence inspiring evidence brought on record by the prosecution against him; that on the basis of two chance witnesses who have contradicted each other on material points, the trial Court has recorded conviction and sentence against the appellant; that FIR is delayed by four hours regarding which no explanation has been given by the complainant; that entire evidence is based on weak type of evidence of chance witnesses and appellant has been implicated in this case on the basis of matrimonial dispute with the complainant. He has relied upon the cases reported as Muhammad Wajid v. The State (2022 YLR 1569) and Mst. Sughra Begum v. Qaiser Pervez (2015 SCMR 1142) in support of his arguments.

5. On the other hand, learned counsel for complainant and learned Additional P.G have supported the impugned judgment and have submitted that there is sufficient evidence against the appellant. Complainant present in person has stated that appellant is the real culprit who was seen by two witnesses committing rape with his minor daughter and disposing of her dead body in a well after murdering her. Since he was shocked to see body of her minor daughter and commission of rape with her, it took him some time to gather himself and approach the police for the FIR. To support his arguments, learned APG has relied upon the cases reported as Farooq Ahmad v. The State (PLD 2020 SC 313), Zahid and another v. The State (2020 SCMR 590), Khan Muhammad v. The State (2011 SCMR 705), Hamid Mehmood v. The State (2013 SCMR 1314) and Niaz-ud-Din v. The State (2011 SCMR 725), while, learned counsel for complainant has relied upon the cases reported as Imran Ali v. The State (2018 SCMR 1372), Iftikhar Ahmed alias Badshah v. The State (2022 PCr.LJ 1160), Muhammad Irshad v. The State (2021 MLD 1886) and Jumraz v. The State (2021 YLR 955).

6. We have heard the parties, perused material available on record and taken guidance from the case law cited at the bar. In this case, prosecution has examined 11 witnesses, out of which two are eyewitnesses, namely, PWs- Akbar Ali and Arshad Ali (Exh.9&10). Complainant is not the eyewitness as far as allegation against appellant for committing rape with his daughter and killing her is concerned. He, however, has supported the facts mentioned by him in FIR in his evidence. He has deposed that on 01.03.2011, when he

came back to his house after doing electric work, he was informed by his wife about missing of their daughter, namely, Nimra who had gone outside to play in the street. He did a search for her but in vain. He then came across PW-Ghulam Sarwar who informed him that his daughter was taken away by the appellant. He then with the said PW went to the fields to search for his daughter, where PWs Akbar Ali and Arshad Ali, already present, called them and told that they had heard cries of baby Nimra emanating from an abandoned room of water machine while on their way back from village Tando Karam Khan. They further disclosed that they went and saw appellant committing zina with a baby girl inside the room by shutting her mouth and nose with one hand and holding a pistol with another hand, which he aimed at them after spotting them. Then after committing the offence and throwing baby Nimra in the well inside the room, he fled towards Langerji minor. Complainant on such information went inside the room and took out dead body of his daughter from the well who was bearing injuries. Thereafter, he appeared at P.S and registered FIR, which he has produced in deposition.

**7.** PWs Akbar Ali and Arshad Ali in their evidence have stated that on the day of incident, they were coming from Tando Karam Khan after purchasing a buffalo. When they reached near an abandoned water machine of Qazi Nisar in the evening time at about 5.30 p.m, they heard cries of a baby coming from there. They went inside the room and saw appellant committing zina with a minor girl by blocking her nose and mouth with a hand. He was armed with a pistol and aimed the same at them, hence they retired. Appellant then stole away towards a minor (watercourse) after throwing the baby girl in the abandoned well, who died within their sight. Then complainant and PW-Ghulam Sarwar, making some search, reached there, they called them and narrated entire incident. The complainant thereafter took out dead body of Nimra from the well and went to P.S to report the incident. They also confirmed that in the investigation, their statements under section 161 CrPC were recorded by the I.O.

**8.** HC-Abdul Sattar (Exh.11) has deposed that he had received dead body from the I.O and took it to Medico-Legal Officer for

postmortem on 01.03.2011. Inspector Nazar Hussain (I.O of the case) in his evidence (Exh.13) has deposed that after receiving FIR, he inspected the place of incident, where dead body of baby Nimra was lying without a Shalwar with 11 injuries on her person. He recovered her Chappal (flip-flop), Shalwar (trouser) from the well. He then prepared necessary documents including inquest report, memo of place of incident and recovery, duly notified to the Mashirs, who had signed them. He then recorded further statement of complainant, in which he claimed that he was also informed by the witnesses that appellant had thrown dead body of baby Nimra in the well within their sight. Next day, he recorded statements of the witnesses and arrested the appellant in presence of Mashirs under due docket. On 05.03.2011, he recovered a .30 bore pistol from the appellant on his pointation from near wheat crop, which he had used in commission of offence. He noted such recovery on the relevant document, which was signed by the Mashirs. He accordingly registered FIR under section 13 EAO and sent the pistol to Ballistic Expert for an opinion. On his direction, also a sketch/site plan of incident was prepared. He has produced all relevant documents in his evidence.

**9.** Evidence of Muhammad Bux, Tapedar was recorded at Exh.14. He had visited the place of incident in presence of Mashirs and prepared such report and sketch. PW-Ghulam Sarwar has been examined at Exh.15. In his evidence, he has confirmed that when he was standing beside house of one Abdul Hameed Kamboh on 01.03.2011 at about 5-00 p.m, found complainant searching his daughter, informed him that he had seen the appellant taking her away towards the fields to northern side, 15/20 minutes before. He then went along with complainant towards the fields, where they had met with PWs Arshad Ali and Akbar Ali who had seen the entire incident and had narrated the same before them. Evidence of PW-Muhammad Aslam is available at Exh.16. He has confirmed that on 01.03.2011, police had prepared inquest report of deceased baby Nimra at the Tubewell of Qazi Nisar in his presence, inspected place of incident, examined her dead body and such memos were prepared by them in his presence, which he had seen and verified. He has also verified arrest of appellant on 02.03.2011 in his evidence.

**10.** Evidence of WMO Dr. Farha is available at Exh.17. She had conducted postmortem of deceased baby Nimra on 01.03.2011, when she was posted as WMO, RHC, Mehrabpur. In her deposition, she has stated that she had found atleast 14 injuries on her person, which she has, in detail, narrated in her evidence. She in respect of examination of vagina of deceased has stated that pubic hair was absent. Breasts were not developed. Finger nails were cyanosed and skin of hands was sodden. Rigor Mortis was present. She has opined that baby Nimra was sexually assaulted and she died out of asphyxia shock and hemorrhage. Probable time between injury and death, as told by her, was spontaneous. She has confirmed, on the basis of lab reports, the human semen was detected on her internal vaginal swabs and Shalwar worn by her. She has produced relevant lab reports including postmortem report in her evidence.

**11.** Dr. Muhammad Asghar, DMS, T.H. Kandiaro has been examined at Exh.18. His evidence is related to the fact that he had examined the appellant and found him of sound mind and physically fit and capable to perform sexual act. He has produced the relevant lab reports. He has further claimed that at the time of examination of appellant, he had revealed that he had not taken a bath after commission of offence. Hence his Shalwar was sent to the lab and found containing human semen. He has submitted such report. After which, the statement of appellant was recorded. He has simply denied the prosecution case and has stated that he has been implicated in this case falsely due to matrimonial dispute with complainant. However, neither he examined himself on oath, nor led any evidence in his defence.

**12.** Above is the gist of prosecution case. There are at least two witnesses who saw the appellant committing rape with minor baby Nimra and killing her at the spot. They in unambiguous words have revealed manner of incident unfolding with in their sight at the relevant time. They have also put forth reasons as to why they could not do anything to save baby Nimra at the time of incident from the clutches of the appellant. It was because he was armed with a pistol and had pointed it to them when they tried to come close to him. They have unanimously deposed that at the time of commission of offence, appellant had blocked baby's mouth and nose with one hand

and after finishing the act, he had thrown her in the well, where from her dead body was recovered. The fact of rape with baby girl has been confirmed by her medical examination. Dr. Farha has stated in evidence that baby Nimra was sexually assaulted and her vaginal swabs on examination were found containing human semen. Human semen was also detected on her Shalwar as well as Shalwar of appellant, which he was wearing at the time of commission of offence and which he had handed over at the time of his examination to the MLO for a lab report. Both the eye-witnesses have explained that on the day of incident they had gone to Tando Karam Khan for purchasing a buffalo and were returning to their village. On their way, when they reached an abandoned room, they heard cries coming from there. When they went there, they saw appellant committing rape with a minor girl. On all material aspects of the case, highlighted by these two witnesses, learned defence counsel has not succeeded in obtaining any major contradiction in their cross-examination. They both are consistent in describing the salient features of the case including their presence and witnessing the incident and nothing to injure authenticity of their evidence has come on record. They have clearly stated that they had identified the appellant at the spot who after commission of offence had sneaked off.

**13.** Learned defence counsel in arguments has pointed out to some discrepancies in their evidence. Such as, PW-Akbar Ali has stated that they had reached the place of incident at 5:30 p.m, whereas, PW-Arshad Ali states that they had reached there at 5:00 p.m. Or PW Akbar Ali has stated that complainant had taken dead body of Nimra from the well and PW Arshad Ali states that complainant and Ghulam Sarwar had taken dead body from the well. Or that complainant had gone alone to P.S for FIR. The other says that he along with PW Ghulam Sarwar had gone to P.S to bring the police. All these discrepancies, as is obvious, are minor in nature and have no bearing over merit of the case. On the basis of such discrepancies, evidentiary value of statements of these witnesses will not be put in jeopardy. Minor inconsistencies or incongruities do occur in the evidence of witnesses when they are examined in the trial after a long interval. In this case, the incident took place in March, 2011, evidence of these witnesses was recorded in September, 2015 after more than four years. Remembering all minor details

and the nitty-gritty involved therefore was not humanly possible for them to disclose in their evidence. They were recalled for further cross-examination thereafter in February, 2018, which is more than seven years of the incident. In these circumstances, some variations in their evidence qua not-so-important aspects of the case does not mean that their trustworthiness is in doubt or their evidence describing all necessary contours of the incident impeccably is suspicious. Not the least, when over these particular facets, no contradiction is found in their cross-examination and nothing has been pointed out by learned defence counsel which may undermine intrinsic value inherent in their evidence.

**14.** Their evidence is further corroborated by the evidence of PW Ghulam Sarwar, who has stated that he had seen the appellant Asghar Ali taking away daughter of the complainant towards the fields. That he had told the complainant this fact and he along with him had gone to the place where they had found PWs Akbar Ali and Arshad Ali available. Nothing is available in his cross-examination to suspect probative value of his evidence is below the mark. He is consistent and resilient in describing the incident as it panned out before him. Further, there was no reason to the complainant to falsely implicate the appellant in a heinous offence of murder of his minor girl. Complainant in FIR has told the story truthfully which he has supported in his evidence and has not improved the case a bit. He does not claim that he had seen the appellant committing the offence, but has taken names of two witnesses who had seen the incident and who when examined have supported the complainant on this point. Had the complainant wanted to falsely implicate the appellant, he would have come up with a story claiming that he had seen the appellant committing the offence or at least escaping from the place of incident. Instead, he has revealed story of the incident as it evolved before him from the point when he returned to his house till he found his murdered daughter in the well. All the events which took place in between, he has described eloquently and PW Ghulam Sarwar has supported him in this respect and has confirmed that he had in fact seen the appellant and baby Nimra going towards the fields. Despite their cross-examination, and further cross-examination later on, no material contradiction or discrepancy has come on record.



**15.** All these witnesses have supported each other and none has waived on any of the material point. Their evidence is further authenticated by medical evidence, lab reports as well as recovery of a pistol from the appellant which he had used while committing the offence. Medical evidence has confirmed sexual assault upon deceased baby Nimra and her death by asphyxia, which means that she died out of suffocation, which fact is in complete alignment with the story narrated by PWs Akbar Ali and Arshad Ali that they had seen the appellant blocking her mouth and nose with one hand while committing rape with her. Nothing in defence has been proposed to suggest that appellant has been a victim of false implication in this case of heinous offence of rape and murder of a minor girl. There has come no record to establish any motive on the part of complainant either pushing him to contrive the story against the appellant and let off the real culprit instead. The evidence on record supports the case as set up by the prosecution.

**16.** If we take a holistic view of evidence of all PWs, as discussed above, we come to only one conclusion that is congruous with the guilt of the appellant. There is no mitigating circumstance to give its benefit to him either and convert his death penalty into life imprisonment. The appellant has committed a very serious and heinous offence by not only murdering a baby girl of eight years, but doing so after committing rape with her. The charge against the appellant has been established from the evidence brought on record by the prosecution and we do not find any reason to interfere with the findings recorded against the appellant by the trial Court. His conviction and sentence on all the counts are maintained.

**17.** Accordingly, Crl. Appeal No.D-68 of 2019 is **dismissed**. Consequently, death reference (Confirmation Case No.D-04 of 2019) is hereby replied in **affirmative**.

***Office to place a signed copy of this order in captioned connected matter.***

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