

HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

Cr. Appeal No.S-58 of 2022.

Rizwan Ahmed v. The State.

Present:-

Mr. Justice Miran Muhammad Shah.

Appellant : Rizwan Ahmed through Mr. Jahangir Khyber,
Advocate.

Respondent : The State through Mr. Shahid Ahmed Shaikh,
Addl. P.G.

Date of hearing : 17.04.2025.

Date of Decision : 16.05.2025.

J U D G M E N T

Miran Muhammad Shah, J:- Through this Criminal Appeal, appellant Rizwan Ahmed s/o Saleem Ahmed b/c Shaikh has called in question the Judgment dated 01.04.2022 passed by the learned 1st Additional Sessions Judge/Model Criminal Trial Court, Hyderabad in Sessions Case No.625 of 2020 (Re: The State v. Rizwan Ahmed) arising out of crime / F.I.R No.23 of 2020, registered at P.S Site, Hyderabad for an offence under Section 302, 376, 201-PPC, whereby he was convicted U/s 265-H(ii) Cr.P.C and sentenced for offence U/s 201 PPC to suffer R.I for three years and to pay fine of Rs.100,000/- (One Lac Rupees). In case of default in payment of fine of Rs.100,000/-, he shall suffer further S.I for three months. The appellant (Rizwan Ahmed) was further convicted for offence U/s 376 PPC and sentenced to suffer R.I for ten years and to pay fine of Rs.100,000/-. In case of default in payment of fine of Rs.100,000/-, he shall suffer further S.I for six months. The learned trial Court observed that both sentences shall run concurrently and benefit of Section 382-B Cr.P.C was also given to appellant (Rizwan Ahmed). Since, during pendency of the trial, the parties entered into compromise and offence punishable U/s 302

PPC being compoundable was compounded and appellant/accused was acquitted from the charge of Section 302-PPC, however, the appellant/accused was convicted as mentioned above regarding offence U/Section 201 & 376 PPC, therefore, this Judgment would also be to the extent of conviction U/s 376 & 201-PPC.

2. The facts of the case are that on 05.05.2020 complainant Ghulam Sabir appeared at P.S SITE, Hyderabad and lodged FIR alleging therein that he resides with his family in a rented house and used to do contractor-ship. In the year 2008 he married with Sadaf d/o Ghulam Muhammad Ghaffari and out of such wedlock he has two issues one son namely Bilal aged about 11 years and one daughter namely Ayesha aged about 2 ½ years. In the beginning of their marriage, his family used to reside in the house of his father and after 2014 they remained at different houses of Bismillah City on rent. Since, last three months they were residing in the House No.33, Bismillah City in rented house. In the year 2018 his wife from his savings i.e. Rs.2,000,000/-, Rs.13,00,000/- of his brother in law Khalid and Rs.700,000/- of her own savings given to one Zulfiqar alias Zulfi S/o Riaz Ahmed R/o Labour Square, Site area, Hyderabad on profit basis and Zulfi used to give profit till 2019 but subsequently he stopped to pay profit and even avoiding to give principle amount due to which his wife was very much worried. Complainant further alleged in the FIR that some time back a lady of their neighborhood namely Fareeda Aunty told Sadaf (wife of complainant) that she have persons who can affect recovery of their amount within minutes, as such, his wife sought her help and two Sindhi boys to whom complainant had also seen. Out of them one boy namely Amjad Ali S/o Muhammad Malook Mirbahar Mirrani and second Sindhi boy name he does not know. Both boys went to their task regarding recovery of amount from Zulfi and about 10/15 days back both these boys and Fareeda Aunty came to their house, where his brother in-law Khalid was also present. At that time, it was decided that in lieu of their amount i.e. 4-Million, Zulfi gave one Honda Civic Car Model-1994 in the sum of Rs.230,000/-, however, for remaining amount, he sought time. Thereafter, Sadaf, Fareeda aunty and Sindhi boys used to come in their house and Honda Civic Car was kept by Sindhi boys in their custody as stop gap arrangement. He further stated that on 04.05.2020 (Yesterday) in connection with work he went to Karachi and his

wife and children were present at home. After Iftar at about 0700 hours, when he came back from Karachi his wife and children were present at home. Due to tiredness he went to sleep and at about 10:00 p.m. Sadaf awakened him and told that she along with children is going to her sister Samreen Unit No.7, Latifabad which was normal routine and his wife with his both children went in own car Toyota Passo to the house of her sister. Thereafter, he went to sleep and at about 1200/01:00 he awakened and after taking dinner noticed that his wife and children had not come, thereafter, he again went to sleep. In the morning at about 0800 hours, he was awakened through a call from Site police station and he was informed that opposite custom house, near gate of labour square his car is found in ownerless condition in which there exists a dead body of his wife Sadaf. On such information, he along with his brother Muhammad Imran, his brother in law Muhammad Ghuffran and Khalid reached at the pointed place at about 0900 hours, where police of PS Site was present. He saw that the dead body of his wife Sadaf was lying beside driver seat and on the face there were two holes one was beneath chin and next was on the cheek and blood was oozing from it and blood was lying in the vehicle, thereafter the police conducted usual legal formalities in their presence, took the vehicle under custody and through Edhi ambulance came at Bhattai Hospital, where police after conducting postmortem of body, handed over the corpse to complainant party for funeral and burial. After final rituals, complainant appeared at P.S on 05.05.2020 at about 2000 hours and complaint that unknown accused persons at present for not known reasons murdered his wife by opening fires. He is complainant, investigation may be carried out.

3. After lodgment of FIR, an investigation was carried out and during investigation process, the name of present appellant/accused Rizwan Ahmed came on surface through CDR record of deceased Sadaf mobile who was subsequently arrested and interrogated by Investigation Officer. The present appellant/accused was challaned and one Section i.e. 376-PPC was also added on the basis of DNA as well as other chemical tests of samples obtained from crime scene and during post mortem, which brought another aspect of the case i.e. rape before committing murder of deceased Sadaf. Hence, the present appellant/accused was charged U/s 302, 376 & 201-PPC and final report under Section 173 Cr.P.C was submitted against the

accused/appellant. The charge against present appellant/accused was framed to which he pleaded not guilty and claimed trial.

4. In order to prove a charge against appellant/accused, prosecution examined WMLO Dr. Khairunnissa as P.W-1 at Exh.3 (who produced police letter, provisional postmortem, and final postmortem at Exh.3/A to Exh.3/C respectively), complainant Ghulam Sabir as P.W-2 at Exh.4 (who produced FIR at Exh.4/A, HC Bakht Ali as P.W-3 at Exh.5 (who produced memo of arrest of accused Zulfiqar, memo of arrest of accused Rizwan and memo of arrest of accused Yasir at Exh.5/A to Exh.5/C respectively), Fareeda Khanum as P.W-4 at Exh.6, Tapedar Manzoor Ahmed as P.W-5 at Exh.7 (who produced letter and sketch at Exh.7/A & Exh.7/B respectively), Muhammad Imran as P.W-6 at Exh.8 (who produced site inspection memo, danistnama, memo of dead body, memo of clothes, memo of recovery at Exh.8/A to Exh.8/E respectively), ASI Muhammad Kashan as P.W-7 at Exh.9 (who produced entries, lash chakas form, letter to Edhi ambulance, memo of clothes at Exh.9/A to Exh.9/E respectively, Saqib as P.W-8 at Exh.10. Inspector Mazhar Ali Soomro as P.W-9 at Exh.11 (who produced FIR, letter for handing over vaginal sawab, letter for DNA laboratory, letter for FSL, memo of arrest of suspect accused Amjad, receiving letter of articles by DNA laboratory, deceased mobile phone Zong number, CDR data, DNA laboratory Jamshoro, FSL matching letter, SSP permission letter for releasing the accused U/s 169, FSL reports, CDR of deceased's Zong mobile number, CDR of deceased's U-phone mobile number, CDR of accused Rizwan's U-phone number, CDR of suspect accused Amjad's mobile, CDR of suspect accused Yasir, CDR of suspect accused Zulfiqar alias Zulfi mobile phone, entries, Sadaf DNA report containing two pages at Exh.11/A to Exh. 11/Z-4 respectively). Thereafter learned ADPP closed the side of the prosecution vide his statement at Exh. 12.

5. The Statement of appellant/accused U/s 342 Cr.P.C was recorded, whereby he denied the allegations of prosecution in terms of Section 342 Cr.P.C. The appellant/accused did not testify himself on oath but he called one defense witness namely Rashida (mother of deceased Sadaf). He claimed his false implication and pleaded his innocence.

6. After hearing the learned State counsel, learned counsel for appellant as well as assessment of evidence available, the learned trial Court passed the Judgment dated 01.04.2022, convicted and sentenced the appellant as stated above. Hence, the appellant preferred instant appeal against the impugned Judgment.

7. The learned counsel for appellant argued that there are major contradictions in the evidence of prosecution witnesses, which have been ignored by the learned trial Court while deciding the impugned Judgment; that all the prosecution witnesses are interested, set up and officials; that all the material witnesses and complainant itself contradicted their version regarding the information about the incident as well as there are so many contradictions in the evidence of WMLO; that there are major contradictions in the evidence of the prosecution witnesses, but the same were totally ignored by the learned trial Court; that there is delay of about one day in registration of FIR for which no plausible explanation is furnished by complainant, which shows due deliberation and consultation on the part of complainant party to engineer a false case against the appellant/accused due to matrimonial dispute; that the delay is fatal to the case of prosecution as observed by Honourable Superior Courts in a number of cases; that there is no eye witness of the alleged incident and eyewitness so far examined did not support the case of prosecution and left certain contradictions in their statements but despite such fact, the learned trial Court in a hasty manner convicted the appellant; that the prosecution examined Nine witnesses but their evidence is neither credible nor inspiring confidence as suffering from material contradictions, which are fatal to the case of prosecution and creating serious doubt. He further contended that the name of appellant/accused was not mentioned in the FIR nor his features and descriptions are mentioned, even no proper source of information through which name of appellant/accused came on surface, but despite all these lacunas, the learned trial Court convicted the appellant in a blind case, which creates serious doubt in the prosecution case. That it is also admitted fact on record that appellant was acquitted from the charge of Section 302-PPC by way of compromise, which clearly shows that appellant was not actual accused but he was involved due to matrimonial dispute and this fact also clearly shows that appellant had not committed any offence; that none

of PW had involved the appellant in commission of present offence and even complainant did not identify the appellant in Court; that DW Rasheeda being mother of deceased deposed that accused is innocent and further deposed that there was nothing between deceased and accused Rizwan but such fact was even not considered by the learned trial Court and only on the basis of DNA report, the appellant was convicted in this case; that it is matter of record that I.O got tested DNA of appellant/accused as well as other let off accused namely Amjad Mirani, but it is very surprising to note here that I.O prior to issuing and collecting DNA report, released the accused Amjad Mirani U/s 169 Cr.P.C which clearly shows that appellant/accused was involved in this case with preplanned manner by I.O; that it is also matter of record that accused Zulfiqar @ Zulfi had already dispute with deceased over money which fact is even admitted in FIR, but I.O without collecting any material evidence let off them; that admittedly no PW, who took DNA of accused was examined by the prosecution to endorse the genuineness of DNA and without recording evidence of official of Laboratory of DNA, learned trial Court convicted the appellant and passed the impugned Judgment, which is nothing but against the law & natural justice; that the appellant/accused had also filed application U/s 265-K Cr.P.C upon which, complainant recorded his no objection for acquittal of the appellant by stating that accused is not real culprit but despite such fact, the learned trial Court convicted the appellant/accused in a hasty manner. The learned counsel while arguing the matter had also read over the chief as well as cross-examination of PWs. The learned counsel for appellant while concluding his arguments had relied upon the case laws reported as 2024 MLD 1563, 2017 SCMR 486 & PLJ 2022 SC (Cr.C) 40. He prayed that the impugned Judgment may be set-aside and the appellant/accused may be acquitted from all the charges.

8. On the other hand, Mr. Shahid Ahmed Shaikh, Additional Prosecutor General also argued at some length and opposed the appeal of appellant/accused on the grounds that though the name of appellant/accused does not transpire in the FIR, but his name came on surface through CDR record of deceased Sadaf, who was subsequently arrested and interrogated by Investigation Officer; that though the

compromise between parties had taken place before learned trial Court, but since Section 376-PPC is non-compoundable, therefore, the appellant/accused was rightly convicted by the learned trial Court as sufficient material was brought on record against him in shape of medical evidence. Lastly, it is argued that yet there are minor contradictions in the evidence of prosecution witnesses but the same are not fatal to the case of prosecution. He prayed for dismissal of the appeal.

9. I have carefully heard the learned counsel for the parties and scanned the entire evidence as well as record available.

10. The evidence of Investigation Officer (Inspector Mazhar Ali Soomro), who has provided information regarding the implication of the present appellant in the case, wherein the story has been narrated by the I.O is that the present appellant Rizwan was having an affair with the deceased and he who killed the deceased as according to I.O, the deceased was cheating on him while having an affair with one Amjad, who was initially also made an accused, but was let off later on by the I.O himself. He also states that CDR of Rizwan indicates his presence at the time of place of incident. The bullet of the weapon used by Rizwan has been recovered from the car, where the dead body was found. He also states that the FSL was positive, which indicated that Rizwan's pistol was used for the murder. According to him, Zulfi & Amjad, who were earlier named in the FIR as accused were released and let off by the Investigation Officer, and only Rizwan, whose name was not mentioned in the FIR was tried and interestingly no cross from the complainant by the counsel of the appellant was made. Hence, the evidence of Investigation Officer is reproduced for the brevity of understanding the case.

"Mr. Attiqu ur Rehman learned ADPP for the State.

On 05-05-2020 I was posted as SHO PS Site. I was present on duty when at 1400 hours time, ASI Kashan Khanzada handed over the initial proceeding of deceased Sadaf case to me. He also handed over sealed parcels for DNA, sealed empty for FSL. I perused the same. I then went with ASI Kashan Khanzada and inspected the place. I returned to police station and I deposited the sealed parcels including sample of vaginal swap at DNA laboratory. At about 2000 hours time, I was present at police station when

deceased's husband Ghulam Sabir alongwith witness Imran, Ghufraan & Khalid came at P.S. His FIR No.23/2020 U/s 302, 34 PPC was registered. I see the FIR at Exh.4/A, which is same and bears my signature. In said FIR, names of two suspects namely Zulfiqar @Zulfi and Amjad were mentioned. I recorded the statements of Imran, Ghufraan & Khalid. All there were brother-in-law of the deceased Sadaf. I wrote a letter for deceased Sadaf mobile phone CDR. On 06-05-2020, I recorded the deceased Sadaf sister namely Mst. Samreen W/o Imran statement. On 07-05-2020, I recorded the statement of witness Farida W/o Ghulam Nabi. On 08-05-2020, vide entry No.8, I proceeded and arrested the accused Zulfiqar @ Zulfi near from passport office. I returned vide entry No. 10. I interrogated the accused Zulfiqar @ Zulfi and recorded his statement. He disclosed that there was money transaction between him and deceased and some money of deceased was outstanding against him but he was innocent and not involved in her murder. On 10-05-2020, I arrested the suspect Amjad Mirani and recorded his 161 statement. He disclosed that he had contact with the deceased in relation to money recovery and he help her and was used to meet her in such connection. She was used to meet him therefore he received threats from the deceased old friend Rizwan who demanded that he should stop meeting Mst. Sadaf. He further disclosed that on 04-05-2020 at about 2300 hours time, deceased Sadaf was with him when Rizwan phone calls were coming to which she went to meet Rizwan. According to him, he was innocent and not involved in murder of Sadaf. I then received CDR of deceased Sadaf two mobile phones numbers i.e Zong and Ufone companies. I perused the CDR and came to know that it was supporting the suspect Amjad Statement. From same CDR, the last call received by the deceased was of Ufone number and on verification, it was disclosed that the said Ufone number was Rizwan number. The mobile phone of deceased Sadaf, Ufone number, as per CDR record, was switched off after Rizwan last call. While, Ufone was switched on. The Rizwan contact with the deceased was on Ufone number and not on Zong company number. On 11-05-2020, accused Rizwan was arrested vide entry No.19 and returned entry No.21. I interrogated the accused Rizwan. I record his statement on 13-05-2020. Accused Rizwan made confession before me that he had 10/12 years old friendship with deceased Sadaf and he had spent 10/12 crores on Sadaf during said period of friendship. He bought five vehicles for Sadaf. He was bearing all expenses of her house. He was jeweler but his brothers disown him and his business was collapsed due to such activities. The deceased discontinued to meet him and started relation with Amjad. He severally restrained her but she did not stop relation with Amjad. He was intensively feeling jealous. On 04-05-

2020, he followed Sadaf and saw that she went to meet Amjad at Qasimabad. He returned and made plan for her murder. He took his pistol from his house and contacted with Sadaf who called him at Gul Center. He alongwith his 4/5 years old servant Yasir went to Gul Center on Motorcycle. Yasir dropped him there and returned at about 2345 hours time, Mst. Sadaf came in same car which he bought for her. He joined her in same car which is drove replacing the Sadaf from driving seat who seated on front seat i.e adjacent to driving seat. He drove the car towards the Tando Muhammad Khan road as per his plan. Sadaf was angry from him and he talked with her in sweet words. From kathar Stop, they returned and were coming back to Hyderabad when he stopped the car near Dadex Pipe Factory and tried to convince her. She was not agree to which he took out pistol from the fold of his shalwar and put her in fear of danger of life. He then raped her. Thereafter he made two fire shots and killed her. He put her on same seats by stretching the same. Then, he buried the pistol beside the Dadex Factory wall. Thereafter he intentionally left the car with dead body in front of the house of suspect Zulfiqar @ Zulfi so that police find him suspect. He became ready to produce the pistol. I recorded his such statement. I then alongwith accused and staff proceeded vide entry No. 14 and reached the Dadex Factory wall. It was abundant area. I appointed ASI Allah Dino and P.C Ghulam Nabi as mashir. In their presence, accused dug out the pistol from the earth. He handed over the pistol to me. I checked the pistol. It was 30 bore pistol with rubbed numbers. Accused disclosed that it was unlicensed pistol and he killed the deceased Sadaf with same pistol. The pistol was sealed in presence of mashir and at 1630 hours time, such memo was prepared. I then brought the accused and property at police station vides entry No. 18. An FIR No.24/2020 was registered for unlicensed pistol. I produce copy of such FIR at Exh.11/A. On 14-05-2020, I produced arrested suspect Zulfiqar @ Zulfi, Amjad and accused Rizwan at DNA Laboratory Jamshoro for DNA test. I returned to police station. As per Rizwan confessional statement before me, after leaving the car with dead body, he called his servant Yasir at the Spot to pick up him and let him back. Yasir came there and took him back. On 14-05-2020, I arrested the facilitator of crime namely Yasir and I recorded his statement. Yasir stated that he was used to drop and pick Rizwan at and from the places of Sadaf and Rizwan meeting. He further stated that he had no knowledge due to black glasses of car as to whether dead body was lying in car or not when he lastly picked Rizwan. He further stated that he never saw the dead body nor he had knowledge of murder nor he intentionally facilitated the accused Rizwan. He further stated that while returning to home, Rizwan thrown

out the Samsung Company mobile phone in Phuleli within his sight. According to him, he was innocent. During investigation, ASI Kashan had recovered OPPO company mobile phone of deceased Sadaf from the same car containing the SIM of Zong company. The mobile phone of deceased Sadaf containing Ufone company SIM remained missing during investigation. In his statement, accused Rizwan stated before me that he dropped the said mobile phone with Ufone company SIM of deceased Sadaf in Phuleli canal. On 15-05-2020, I sent unlicensed pistol of Rizwan to FSL Laboratory Hyderabad for matching and ballistic test. Empties were already sent to the laboratory. On 16-05-2020, finding the deficient evidence, I released two suspect Zulfiqar @ Zulfi and Amjad U/s 169 on their PR Bond and Surety with permission of SSP and intimating the concerned Court of Magistrate i.e. II J.M Hyderabad. On 18-05-2020, I received three FSL reports in respect of ballistic of empties, ballistic of pistol and ballistic of matching reports. As per said reports, empties were found fired from same pistol. On 28-05-2020, finding insufficient evidence against suspect Yasir, with permission of SSP and intimation to area Magistrate, I released Yasir U/s 169 Cr.P.C. On 16-05-2020, accused Rizwan was remanded to Judicial Custody. Interim Charge Sheet report was filed in Court U/s 173-B Cr.P.C for want of DNA report and final postmortem report. On 27-07-2020 DNA report and final postmortem report were received. In DNA report of Rizwan, the male swab was found matched with female swab of deceased Sadaf. Finding the evidence sufficient against the accused Rizwan, I obtained opinion and filed final charge sheet report. I produce WMLO letter for handing over Vaginal Swab and clothes of deceased and four parcel at Exh.11/B, letter for DNA Lab at Exh.11/C, letter for empties FSL at Exh.11/D, suspect Amjad arrest memo at Exh.11/E, receiving letter of articles by DNA laboratory at Exh.11/F and 11/G. deceased mobile phone Zong number CDR data at Exh.11/H, accused produced at DNA laboratory Jamshoro letter at Exh. 11/I, FSL letter at Exh. 11/J, FSL Matching letter at Exh.11/K, SSP permission letter for releasing the accused U/s 169 at Exh. 11/L, FSL Reports at Exh. 11/M to 11/O, CDR of deceased's Zong Mobile Number at Exh. 11/P, CDR of deceased's Ufone Mobile Number at Exh. 11/Q, CDR of accused Rizwan Ufone mobile number at Exh.11/R, CDR of suspect accused Amjad mobile phone at Exh.11/S, CDR of suspect accused Yasir mobile phone at Exh. 11/T, CDR of suspect accused Zulfiqar @ Zulfi mobile phone at Exh.11/U, departure entry No.16 at Exh.11/V, arrival entry No.18 at Exh.11/W, ronznamcha entry No.19 at Exh.11/X, ronznamcha entry No.21 at Exh.11/Y, Entry No.12 at Exh.11/Z/1, Entry No. 14 at Exh.11/2/2, Accused Riwan, Zulfiqar @ Zulfi and Amjad with

deceased Sadaf DNA report containing two pages at Exh.11/Z/3, entry No.15 at Exh.11/Z/4. I see memo of arrest of accused Zulfiqar at Exh.5/A, accused Rizwan memo of arrest at Exh.5/B, Yasir arrest memo at Exh.5/C, recovery of crime used pistol at Exh.8/E, and say that these are same and bears my signature. Accused is same. Car is same. Case property parcels which I received in sealed condition, are same. I produce sealed parcel of pistol as article P/7 and I say that it is same and bears my signature.

Note: Sealed parcel is descaled and shown to the PWs.

White barrel with black handle pistol is same.

Cross examination to Mr. Shakir Nawaz & Co. learned advocate for accused.

It is correct to suggest that till arrest of accused Rizwan, complainant and witnesses never disclosed the name of accused Rizwan. It is incorrect to suggest that I have not produced letter calling for CDR record in court. It is incorrect to suggest that I have not disclosed the date when I received CDR. It is incorrect to suggest that I have deposed false evidence. It is correct to suggest that at present, I do not remember the date when I received the CDR. Voluntarily says, the date is mentioned in my examination in chief. It is correct to suggest that CDR record does not contained issuing authority signature. It is correct to suggest that I have not produced separate letter containing my or SSP address for receiving CDR. It is correct to suggest that I have not produced roznamcha record of CDR. Voluntarily says, usually no entry is prepared for receiving documentary evidence during investigation. I wrote letter for obtaining CDR of accused Rizwan on 11/5/2020. Voluntarily says, I am not sure it was 11 or 12 of the month. However, deceased CDR was already received prior to accused Rizwan CDR. It is correct to suggest that deceased Sadaf name is not mentioned in CDR record of deceased. Voluntarily says, her CNIC number is mentioned. I got issued CDR record of all numbers mentioned in CDR of deceased Sadaf for verification purpose. It is correct to suggest that I have not disclosed the names and numbers of those persons. Voluntarily says, they were irrelevant therefore, I did not mention. It is correct to suggest that I did not call irrelevant person at P.S for recording of their statements. On the basis of my investigation, I found those persons irrelevant in investigation. Due to lack of evidence against them, I found said persons irrelevant during my investigation. In CDR of deceased Sadaf, some numbers belongs to her husband, some belongs to her family members like sister etc. It is correct to suggest that I did not obtain CDR of deceased

Sadaf husband. It is incorrect to suggest that there is second last phone call of accused Rizwan on deceased Sadaf Zong phone number CDR. Voluntarily says, accused Rizwan call record is available in deceased Sadaf U-phone CDR and not in Zong number. It is correct to suggest that in Zong number of deceased Sadaf, last call of Amjad Mirani, was found. Voluntarily says, till postmortem of dead body, Amjad Mirani phone call record on deceased Sadaf Zong number is available. It is correct to suggest that I have not produced roznamcha entry in court regarding receiving police file. It is correct to suggest that names of Amjad Mirani and Zulfiqar were disclosed by the complainant in FIR. It is correct to suggest that as per FIR, one car of the deceased Sadaf was in possession of Amjad Mirrani. Voluntarily says, during investigation such fact was not proved against Amjad Mirrani. It is correct to suggest that I had released Amjad Mirrani and Zulfiqar prior to receiving DNA report. It is correct to suggest that I released Amjad Mirrani and Zulfiqar prior to filing interim charge sheet report. Voluntarily says, I released them on the basis of deficient evidence against them. It is correct to suggest that Amjad Mirrani and Zulfiqar did not produce their defense witnesses before me. It is incorrect to suggest that till release of Amjad Mirrani and Zulfiqar, I had only evidence of CDR. Voluntarily says, I had investigation progress; therefore, I released them for want of sufficient evidence. I examined all witnesses in this case. I did not take spot witness. It is correct to suggest that I have not produced car steering finger prints report in court. At the time of accused Rizwan arrest, I called complainant and witnesses at the place of arrest for identification. I called Imran, Ghufiran, Khalid, and complainant. It is correct to suggest that in memo of arrest of accused Rizwan, presence of complainant and witnesses is not mentioned. It is correct to suggest that I have not produced FSL addressed letter dated 7/5/2020. Voluntarily says, due to typing mistake date 7/5/2020 is mentioned, while actual date was 6/5/2020 as I have already mentioned in my examination in chief. It is correct to suggest that I have not produced entry showing my proceeding with accused for DNA test. It is incorrect to suggest that I never obtained permission from high ups for accused DNA. It is correct to suggest that I have not cited the DNA expert as witness in charge sheet. It is correct to suggest that I have not cited FSL expert as witness in charge sheet. It is correct to suggest that I did not examine any witness regarding disclosing accused involvement in murder. Voluntarily says, there is no eye witness of murder. It is incorrect to suggest that it is not in my investigation as to where from the fire was made. It is incorrect to suggest that I have not conducted investigation as to whether the dead body was shifted from other place to the place of recovery

or not. It is correct to suggest that there is not witness who heard the fire shot. Voluntarily says, the place of recovery of weapon and murder is abundant place. Voluntarily says, Dadex factory wall is abundant place where the accused committed murder of deceased and concealed his crime used weapon, thereafter, he brought the dead body in same car at the place of dead body recovery. It is incorrect to suggest that place of murder being Dadex factory area is not mentioned in charge sheet. It is correct to suggest that place of dead body recovery is not the place of murder. It is correct to suggest that I did not write a letter to Mukhtiarkar for preparation of sketch of wardat at Dadex factory. It is correct to suggest that I did not cite any witness from the Dadex factory area. Voluntarily says, it is abundant place. Dadax factory is situated about half kilometer away from the main Tando Muhammad Khan road. It is correct to suggest that I have not disclosed the specific portion of Dadex factory boundary wall in my evidence. It is correct to suggest that I did not record the statement of Dadex factory employee. Voluntarily says, at that time the factory was closed. It is correct to suggest that in SSP permission letter dated 16/5/2020 at Exh.11/L, contained the words involved/arrested. It is incorrect to suggest that I did not send the deceased clothes for cross match purpose to the laboratory. I sent my letter to DNA laboratory Jamshoro, for cross matching. It is incorrect to suggest that I have never sent letter to DNA laboratory for cross match purpose. It is correct to suggest that I have not produced entry regarding receiving sealed parcels from ASI Kashan. It is correct to suggest that I have not produced vehicle ownership report in court. Voluntarily says, I sent letter to Excise department but I did not receive response. It is correct to suggest that I have not produced deceased OPPO mobile phone forensic report in court. It is correct to suggest that I did not find CNIC of accused Rizwan in his possession when I arrested him. It is correct to suggest that I have not mentioned the name of the person who identified the accused Rizwan at the time of his arrest. Voluntarily says, that on spy information and pointing, I arrested the accused Rizwan. I see entry No.14 at Exh.9/E, and I say that it is correct to suggest that my arrival is mentioned at 1500 hours time in said entry. It is correct to suggest that in entry No.14 at Exh.9/E, it is not specifically mentioned that I received property parcels from ASI Kashan. It is incorrect to suggest that I have deposed false evidence that I received investigation at 1400 hours time. It is correct to suggest that place of pistol recovery is not the accused Rizwan own property. It is correct to suggest that my efforts for private mashir are not specifically mentioned in mashirnama. It is incorrect to suggest that finger prints articles are necessary part of investigation kit bag as per police rule. It is correct to

suggest that at present pistol parcel does not contain police seal. Voluntarily says, it contained laboratory seal. Police constable Bakht Hussain prepared the property parcel. We had small sewing machine in kit bag. It was handy size sewing machine made by china. It is correct to suggest that such fact is not mentioned in mashirnama. It is correct to suggest that kit bag is not specifically mentioned in entry. It is correct to suggest that usually official articles are registered in entry. Voluntarily says, except investigation kit bag which is allotted to the police mobile. I did not open the sealed parcel. It is incorrect to suggest that I released the other accused due to their statements against accused Rizwan. It is incorrect to suggest that in charge sheet report my particular investigation progress is not mentioned. I called the accused Rizwan at Fateh chowk through informer. It is correct to suggest that in charge sheet report, it is mentioned that I took the accused to FSL laboratory Hyderabad. Voluntarily says, it is typing mistake while I took the accused to DNA laboratory. It is correct to suggest that in charge sheet report it is mentioned that accused were produced at FSL for their finger prints. Voluntarily says, finger prints is situated in same FSL laboratory. It is correct to suggest that permission letter and entry for proceeding to DNA laboratory are not mentioned in charge sheet report. Voluntarily says, I have already produced the same in court. It is correct to suggest that Amjad Mirrani and Zulfiqar release date is not mentioned in charge sheet report. Voluntarily says, I have produced entry record in such respect. It is correct to suggest that I released the accused Yasir, Zulfiqar and Amjad Mirrani prior to receiving their finger prints report. It is incorrect to suggest that there was no independent evidence against accused Rizwan with me. I received Sadaf CDR on the basis of mobile number and CNIC. It is correct to suggest that I have not mentioned the number of mobile SIMs issued against the Sadaf CNIC. I have not produced Zulfiqar CDR mobile. It is correct to suggest that Exh. 11/U, which I have produced is the CDR of Zulfiqar. It is incorrect to suggest that I have deposed false evidence in court. Voluntarily says that I could not remember that I had produced CDR record. It is correct to suggest that I have not produced CDR of Zulfiqar after 3/5/2020. It is correct to suggest that I have not produced proof regarding Zulfiqar location on date and time of offence. It is incorrect to suggest that I have not produced Amjad Mirrani CDR. It is correct to suggest that on date and time of offence prior to 2300 hours time, CDR shows the same place presence of Amjad Mirrani and deceased Sadaf. Voluntarily says, Amjad Mirrani himself admitted his presence with deceased in his statement and he stated that she came for help in recovery of money matter. It is correct to

suggest that Amjad Mirrani had no official authority in money recovery matter. Voluntarily says, he pretended him to be influential person in money recovery matter. I am not sure but I say that I might have recorded the statement of Fareeda Khanum on 5/5/2020. Voluntarily says, date is mentioned in my examination in chief. I thought that Fareeda Khanum in her statement did not disclose the car matter. Voluntarily says, she only stated that she introduced Amjad Mirrani to deceased Sadaf. I did not record the statement of ASI Kashan. I received phone call of ASI Kashan at about 0700 or 0730 hours time thereby received information about the recovery of dead body. After about one hour of receiving information, I reached the place of dead body recovery. Prior to my reaching, ASI Kashan had completed such process etc. It is correct to suggest that during my presence lady police was not available when the dead body was checked. 4/5 police constables were available with ASI Kashan when I reached at the place of dead body recovery. Complainant and witnesses were present there. I do not remember the names of police constables. It is incorrect to suggest that none from the police constable available with ASI Kashan, is witness in this case. It is correct to suggest that I did not record HC Bakhat statement in murder case. I had directed ASI Kashan to complete initial proceeding. Voluntarily says, I was at my home out of station. I told to ASI Kashan for calling lady police. Voluntarily says, he tried but lady police constable did not come. It is correct to suggest that courier name is not mentioned in letter Exh.11/J. It is correct to suggest that courier name is not mentioned in letter at Exh.11/K. Voluntarily says, I took the property to the laboratory. It is correct to suggest that in FIR section 376 is not applied. It is correct to suggest that it is not mentioned in final DNA at Exh.11/Z the name of the person who produced the accused is not mentioned. Voluntarily says, I produced them for DNA sampling. It is correct to suggest that WPC Tufail is not witness in charge sheet report. It is correct to suggest that I have not produced entry about taking the parcel to the laboratory. Deceased Sadaf husband DNA was not preferred by me. I see Exh.11/Z and say that it contained the DNA blood test of Ghulam Sabir husband of deceased Sadaf. Voluntarily says, I do not remember when it was taken. It is correct to suggest that DNA report husband result is not mentioned. It is incorrect to suggest that I preferred charge sheet only on the basis of CDR. At present, I do not remember the date when forensic report was received. Voluntarily says, it was received in the month of July, 2020. It is correct to suggest that complete date is not mentioned about presenting charge sheet report in court. It is incorrect to suggest that in order to save Amjad Mirrani and Zulfiqar from punishment; I falsely booked the present accused Rizwan in

this case. It is incorrect to suggest that I demanded money from the accused which he did not pay to me; therefore, I booked him in this false case. It is correct to suggest that I have not produced CCTV recording in court. It is correct to suggest that after Gul Center location, there is no CDR of accused Rizwan with deceased Sadaf. Voluntarily says, after Gul center location the deceased Sadaf mobile phone was switched off. It is correct to suggest that deceased mobile phones are not mentioned in FIR. It is correct to suggest that accused relation with deceased are not mentioned in FIR. It is correct to suggest that none from the witnesses disclose the name of accused Rizwan. It is incorrect to suggest that accused Rizwan is innocent. It is incorrect to suggest that I did not conduct fair investigation."

11. Since the Section 302-PPC was compromised being compoundable and as per the counsel for the appellant the conviction was only made for Section 376 PPC for which the appellant was convicted for 10-years. It was further stated by the counsel that rather than focusing upon the facts of the murder case and the evidence related to it, the material evidence with regard to Section 376 PPC (rape) should only be considered for the purpose of this appeal.

12. With regard to the rape, the medical evidence has come on record, which shows that hymen was torn and the sex was there and at the same time hymen of the accused was matched with the victim for the purpose of rape. The medical does not show much of use of force at the time of commission of rape, and if the above evidence of the Investigation Officer is taken as truthful still there were certain visible flaws in the case of prosecution, which were not clarified till the end. Major one being non-obtaining of finger prints from the car from where the dead body was found where allegedly the crime took place. No keys were recovered for the purpose of obtaining finger prints and even no lady constable was associated with the entire recovery process and development of the investigation, which is also a major lacuna on the part of the prosecution. There are certain other evidentiary lacunas and contradictions in the evidence. Despite all that, even if the conviction is maintained, the major obstacle which comes into the way of prosecution's case is the defense evidence of the mother of deceased (Rashid), who deposed in favour of the

accused and she was the only defense witness produced by the accused, whose evidence is reproduced as under;

“Mr. Shakir Nawaz Shar, learned advocate for accused.

I say that I was not involved in this case though I am mother of deceased Sadaf. Husband of deceased Sadaf intentionally did not involve me in this case. After the FIR, I went to police station and asked the police but police did not hear me. I say that accused Rizwan is innocent. I say that there was nothing between Sadaf and accused Rizwan and we never made quarrel. After arrest of accused Rizwan, I went to police station due to him. There was money dispute between one Zulfiqar and Sadaf. Severally I asked Sadaf to take me for talk. I went to police station but police insulted me. Police did not talk with me about Zulfiqar and Rizwan and gave me title mad woman. I swear that accused Rizwan is innocent, while actual accused were released. I say that Fareeda who arranged meetings of Sadaf with Amjad and Zulfiqar was also in collusion with said accused.

Cross Examination to Mr. Attiq-ur-Rehman, learned ADPP for the State.

It is incorrect to suggest that on the instance of accused Rizwan, I have come to the court for supporting him. I am widow lady having one son namely Abdul Rehman aged about 29 years. I have four more daughters and all of them are married. I received information about Sadaf death at about 0800 hours time. On next night, I came to know that police arrested accused Rizwan. Police had recorded my statement visiting my house. It is correct to suggest that I have not lodged FIR of Sadaf murder. Voluntarily says, I and my son tried but nobody heard us. I am poor lady. It is correct to suggest that Sadaf's husband has pardoned the accused Rizwan. It is correct to suggest that I have pardoned the accused Rizwan as he is innocent. It is incorrect to suggest that I am deposing false evidence.”

13. Secondly the case law produced, which in fact ties my hand also to upheld this conviction is of the Judgment of Honourable Supreme Court of Pakistan reported as PLJ 2022 Supreme Court (Cr.C) 40, whose operative part is reproduced as under;

“3. With the assistance of the learned Additional Prosecutor-General, Punjab appearing for the State we have gone through the memorandum of this appeal, the impugned judgments passed by the Courts below and the

record of the case and have found that the criminal case in hand had originated in the year 2009. The Appellant happens to be a cousin of the alleged victim of rape namely Mst. Alia Bibi (PW-5) besides being a nephew of the complainant namely Umer Ahsan (PW-4). The record shows that the appellant wanted to marry the alleged victims namely Mst. Alia Bibi (PW-5) and upon refusal of that matrimonial proposal the appellant had allegedly committed the offences which are the subject matter of the present criminal case. During the pendency of the appellant's appeal before the High Court the complainant namely Umer Ahsan (PW-4) as well as the alleged victims namely Mst. Alia Bibi (PW-5) and Mst. Haleema Bibi (PW-6) had sworn affidavits maintaining therein that the present appellant had been implicated in the present criminal case on account of some misunderstanding, the appellant had not abducted anybody and the allegation of rape leveled against him was also a result of some misunderstanding. The complainant had personally appeared before the High Court at the time of hearing of the appellant's appeal and he had owned the affidavits sworn by him and the two victims. It is important to notice here that the said stand taken by the complainant and the alleged victims had been accepted by the High Court and resultantly the appellant had been acquitted of all the charges pertaining to the compoundable offences and his sentences vis-a-vis the non-compoundable offences were reduced by the High Court. We are of the opinion that if the High Court was minded to accept the affidavits sworn by the complainant and the alleged victims, in which affidavits it had been maintained that the allegations leveled against the appellant were factually incorrect, then instead of reducing the sentences of the appellant vis-a-vis the non-compoundable offences the High Court ought to have rejected the prosecution's case as a whole entailing acquittal of the appellant, but unfortunately that course was not adopted by the High Court.

4. For what has been discussed above this appeal is allowed, the outstanding convictions and sentences of the appellant are set aside and he is acquitted of the charge by extending the benefit of doubt to him. The appellant shall be released from the jail forthwith if not required to be detained in connection with any other case".

14. Under this case law, the Honourable Supreme Court of Pakistan had allowed the appeal by setting aside the outstanding conviction and sentence of the appellant on the whole and had acquitted the appellant of the charge by extending benefit of doubt to him. This case being of similar nature with

certain major facts in consonance with the facts of the case law. Such principle laid down by the Honourable Supreme Court of Pakistan is binding upon this Court. In such circumstances, I hereby acquit the present appellant by extending him the benefit of doubt, since in the major case of 302-PPC, the parties have compromised bringing the prosecution on weaker footing resulting in overall acquittal of the appellant from all the charges. In light of above observations/conclusion, this appeal is **allowed** and the impugned Judgment passed by the learned Additional Sessions Judge-I/Model Criminal Trial Court, Hyderabad in Sessions Case No.625 of 2020 dated 01.04.2022 is **set-aside**. The appellant confined in prison may be released forthwith if not required in any other custody case.

JUDGE

Ali.