

IN THE HIGH COURT OF SINDH, KARACHI
Criminal Appeal No. 614 of 2024

Before:
Justice Zafar Ahmed Rajput (ACJ)
Justice Jan Ali Junejo

Appellant : Najeeb Ahmed @ Bobby s/o Nazeer Ahmed,
through M/s. Muhammad Shafqat & Hafiz
Abdul Rahim Abid, Advocates.

Respondent : The State, through Mr. Abrar Ali Khichi,
Addl. Prosecutor General (**Addl. PG**), Sindh

Date of hearing : 13.11.2025
Date of order : 20.11.2025

JUDGMENT

ZAFAR AHMED RAJPUT, ACJ. – Impugned in this CrI. Appeal is the judgment, dated 24.08.2024, passed in Sessions Case No. 2576 of 2023, arisen out of FIR No. 250 of 2023, registered at P.S. Madina Colony, Karachi-West under sections 376, 354, 506-B, PPC, whereby the Addl. Sessions Judge-X, Karachi-West/Model Court for Gender Based Violence Cases (**“Trial Court”**) convicted the appellant for the offence under section 376, PPC and sentenced him to suffer R.I for ten years and to pay a fine of Rs. 1,00,000/-, and in case of default thereof, he should undergo S.I. for six months more, and for the offence under section 506-B, PPC sentenced him to suffer R.I for three years and to pay a fine of Rs. 50,000/-, and in case of default thereof, he should undergo S.I. for three months. The benefit of section 382-B, CrPC has been extended to him.

2. It is alleged that, on 25.06.2023 at different times, the appellant compelled the complainant, Mst. Sana, for meeting and called her at Guldad Shah Road, Saeedabad, Baldia Town, Karachi wherefrom he took her in a house at an unknown place where he committed rape on her multiple times and issued threats to her that he would inform all facts to her husband; for that, he was booked in the aforesaid FIR. After usual investigation, the police submitted the charge-sheet against him. The Trial

Court framed the charge against him, to which he pleaded not guilty, which followed his full-dressed trial, conviction and sentence, as mentioned above, vide impugned judgment.

3. Learned counsel for the appellant have contended that the appellant and the complainant were known to each other and were in relationship for a long period, which fact can be verified from the CDR, which shows hundreds of calls from the complainant to the appellant; that there was no element of rape as defined under section 375, PPC, but of fornication as defined under section 496-B (1), PPC; hence, the conviction awarded to the appellant should be altered and the sentence modified. In support of their contentions, they have relied on an unreported judgment dated 26.06.2024, passed by the Apex Court in Criminal Petition No. 725/2023.

4. Learned Addl. PG has conceded to the contentions of learned counsel for the appellant.

5. Heard the learned counsel for the appellant as well as Addl. PG and scanned the material available on record with their assistance.

6. As per the jail roll, furnished by the Superintendent, District Prison & Correctional Facility Malir, Karachi, the appellant has served out the sentence, excluding the remissions, for a period of two years, two months and eight days and with remission about six years, two months and eighteen days till 13.11.2025.

7. There is no denial on the part of the appellant that the illicit intercourse took place between the appellant and the complainant, and the complainant (PW-2) has also alleged that the appellant committed rape on her but the moot point for determination before this Court is that as to whether it is a case of fornication punishable under section 496-B (2), PPC as pleaded by the learned counsel for the appellant. On scanning, it

appears that the Phone-SIM in use of the complainant was in the name of the appellant. The total calls/messages between them are 1229, out of them, from the complainant there were 735 calls/messages to the appellant, which shows that she was in relationship with him. It further appears that the alleged incident first time took place on 25.06.2023 but the complainant lodged the FIR on 29.08.2023, with a delay of more than two months, for that no plausible explanation has been furnished by the complainant. Under the circumstances, the contents of the FIR appear to be doubtful for implicating the appellant for the offence of rape. It is also an admitted position that the complainant and the appellant have settled the matter outside the court and in this regard the complainant has sworn an affidavit to the effect that she has taken *khula* from her husband and their marriage shall be solemnized soon; hence, there is every possibility that the complainant lodged the FIR after deliberation while narrating an exaggerated story to change the nature of the offence for ulterior motive.

8. We are mindful of the fact that once we hold that it is a case of fornication punishable under section 496-B (2), PPC then the complainant, Mst. Sana, is also liable to be proceeded against and punished as an accused of the offence of illicit intercourse with consent but as she was not prosecuted by the police and no charge of fornication under section 496-B (2), PPC was framed against her by the learned Trial Court, thus, she had no opportunity to defend herself, therefore, it will not be appropriate to punish her without providing her opportunity of defence.

9. For what has been discussed above, we partly allow this CrI. Appeal by modifying the impugned judgment to the extent that the conviction and the sentences of the appellant under sections 376 & 506-B, PPC, are set aside and instead he is convicted under section 496-B (2), PPC and sentenced to the period already undergone.

10. The instant Crl. Appeal stands disposed of with the above alteration in conviction and modification in sentence.

Acting ***Chief***

Justice

Judge

Athar Zai