

# HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

## Cr. Appeal No.S-46 of 2021.

*[Shoukat Vs. The State]*

Appellant : Shoukat **through** Ms. Urooj Aqeel, Advocate.

Respondent : The State **through** Mr. Altaf Hussain Khokhar, Deputy Prosecutor General.

Complainant : Khadim Hussain present in-person.

Date of Hearing : 06.04.2026.

Date of Decision : 06.04.2026.

## J U D G M E N T

**Syed Fiaz ul Hassan Shah, J :-** Through the instant Criminal Appeal, the Appellant has challenged the Judgment dated 16.02.2021 (“**impugned Judgment**”) passed by the learned Additional Sessions Judge, Sehwan (“**Trial Court**”) in Sessions Case No.403 of 2020 emanating from Crime No.88/2020 for the offence under Sections 376-PPC registered with Police Station Sehwan, whereby the Appellant was convicted under Section 265-H(ii) Cr.P.C and sentenced him to suffer R.I for life and to pay fine of Rs.100,000/- (One Lac) and in default thereof to suffer S.I for three months more. However, the appellant was extended benefit of Section 382(b), Cr.P.C.

2. Briefly, the facts of the prosecution case are that on 09.08.2020 in between 03:00 to 03:30 p.m. in the house of Saleh Channa situated near Chutto Umrani, Khosa Mohalla, Sehwan the Appellant Shoukat committed rape with victim Saima, who is real niece of the complainant.

3. After usual investigation, copies were supplied to the Appellant in terms of section 265-C, Cr.P.C. vide Exh.1 and the charge was framed against him vide Exh.2, to which he pleaded not guilty and claimed to be tried vide his plea at Exh.2-A.

4. In order to prove a charge against accused, prosecution examined Nine (09) witnesses, who produced relevant documents during their testimony at Ex.03/A to Ex.11/F. Thereafter, the prosecution closed its side vide statement at Ex.12. The statement of appellant/accused was recorded U/S 342 Cr.P.C at Ex.13, in which he denied the prosecution allegations and claimed his innocence and took plea that due to demand of share of plot from one Lihaz Channa, who is father of victim, this false has been lodged against him by the complainant being brother in-law of Lihaz Channa. He did not examine himself on oath nor led any defence evidence. Consequently, the learned Trial Court after hearing the parties passed the Judgment, which has been impugned through this Appeal.

5. The learned counsel for the appellant contended that the Appellant is innocent and has falsely been implicated in this case and there are contradictions in the testimony of prosecution witnesses. She further contended that the statement of the victim Saima is also full of contradictions in as much as she deposed the time of alleged offence as 02:00 p.m. while the charge is framed against Appellant for the alleged commission of offence between 03:00 to 03:30 p.m. and that DNA report produced by prosecution at Ex.F/9 categorically stated that Shoukat s/o Saleh Channa was not the contributor of Semen stains / Sperm fractions identified on vaginal swab samples & clothes of victim Saima d/o Lihaz Channa, therefore, the Judgment is based on mis-reading and non-reading of evidence and material available on record; therefore, she prayed for set-aside of impugned Judgment and acquittal of the Appellant.

6. The Complainant present in court extended no objection for the acquittal of the Appellant as the matter is patched up between the parties due to close relationship.

7. On the other hand, learned Deputy Prosecutor General supported the impugned Judgment and contended that as per the available

evidence, the learned Trial Court has rightly convicted the Appellant and prayed for dismissal of the instant Appeal.

8. Heard the learned counsel for appellant as well as learned Deputy Prosecutor General for the State and with their assistance minutely perused the record of the case.

9. I find no merits in the contention of the learned counsel for the Appellant that there were material contradictions in the evidence of prosecution witnesses and the time of alleged commission of offence recorded in the Charge framed by trial Court and given in the evidence by the victim PW-4 are quite distinct. Such plea that contradiction of timing one that the PW-4 Saima victim of the case deposed at 2.00 pm in the midnight and the other mentioned in the Charge between 3.00 to 3.30 pm reported by complainant is not material contradictory at the victim was minor aged 10 years and that due to her rape in she suffered trauma and could not able to remember the exact time of convoluted midnight and humanly it is difficult to give accurate time when one wake up in midnight encountered with appalling ambush situation. Her disposition that it was midnight of the confirmed date is sufficient to hold that the Appellant had committed act of rape as she clearly confirmed in her evidence. She deposed ***"...It was 2:00 pm time. Accused Shoukat committed zina with me in the house. I raised cries on which my mother attracted. Accused Shoukat then ran away. My mother and my maternal uncle took me to Government Hospital, Sehwan, where my treatment was done..."***. Such testimony of the victim had duly confirmed by the by PW-9 Dr. Sidra and corroborated with the medical record. PW-9 Dr. Sidra, evidence is very crucial who deposed that ***"...Breast were under developed. No public hair, no semen stain on penia or thigh as she had taken on bath after alleged sexual act. From local examination, the examination of vulva and vagina was painful. There was oozing of blood from the inside of vagina. The hymen was ruptured with oozing of blood from edges, there was parineal tear measuring 1.5 cm which***

***was stitched. High vaginal swabs are taken, three from high vagina, three from interior side of vagina taken and preserved for detection of sperm. From examination of young 10 years child victim, I am of the opinion that physical findings of vulva and vagina reveal that sexual act has been committed on her during last 72 hours...***

10. Furthermore, the commission of the offence of Rape was also confirmed by the two other prosecution witnesses. The PW-3 (Samina), who is sister of victim and present at the time of commission of offence, fully implicated the Appellant. She deposed ***“...My sister Saima was also sleeping in the room of house. I heard cries of my sister Saima. I went there where my mother also came in the room where Saima was sleeping; who was weeping and said that uncle Shoukat had committed zina with her. Accused Shoukat was present, who then ran away...”*** She further deposed that ***“...At 03:00 pm, I had seen accused Shoukat in the house. Accused Shoukat was seen in his own room. It is correct to suggest that I was asked about such story; otherwise, I had not seen the incident...”***. Similarly, PW-5 has also confirmed the fact and deposed that ***“...On the day of incident I was available in my house adjoining to the house of Lihaz. We heard cries of women folk. I went to the house of Lihaz and saw that Totri baby was raped by accused Shoukat as disclosed by her mother...”***.

11. The Court has carefully examined the testimony of PW-2 (mother of the victim) and PW-4 (the victim herself). It is evident that in their examination in chief both witnesses categorically recognized the accused/appellant and attributed the commission of rape to him. However, in cross-examination, owing to intervention of family elders and compromise within the joint family, they attempted to retract by stating that the accused was unknown. Such retraction, being the result of external influence and compromise, cannot diminish the probative value of their earlier consistent and natural testimony. Under the Qanun-e-Shahadat Order, 1984, the Court is empowered to read the

evidence as a whole and to accept the truthful portion corroborated by medical and circumstantial evidence while discarding the tainted part. The ocular account of the victim, duly supported by corroborative material, is sufficient to prove the charge beyond reasonable doubt. Therefore, the subsequent denial in cross-examination is ignored, and the prosecution case stands established against the appellant.

12. In view of above, the Appeal is **dismissed** and the impugned Judgment is maintained. However, looking to mitigating circumstances and discrepancies in the evidence of prosecution witnesses, unavailability of DNA and considering to the age of Appellant having just 18 years, the sentence of Appellant is modified by reducing the sentence to **16** years imprisonment instead of life. These are the reasons for my short order dated 06.04.2026.

**J U D G E**

*Ali.*