

IN THE HIGH COURT OF SINDH AT KARACHI

Present:
Mr. Justice Omar Sial
Mr. Justice Shamsuddin Abbasi

Criminal Appeal No.493 of 2025

Appellant : *Badaruddin*, through Mr. Abdul Jabbar Rajper, advocate for the appellant

The State : Through Mr. Muhammad Noonari, Deputy Prosecutor General Sindh alongwith SIP Riasat Ali PS Sachal

Complainant Maharaj Chand present

Date of hearing: 13.08.2026

Date of Judgment: 21.08.2026

JUDGMENT

Omar Sial, J.: On 15.07.2023 at about 1850 hours, Maharaj Chand provided information of a cognizable offense to the Sachal police station. He recorded that earlier that day at about 1100 hours his eight-year-old daughter Chando Bai was raped by Badruddin in a vacant plot in Scheme 33 Karachi with the connivance of Mohammad Asif and Adnan. F.I.R. No. 815 of 2023 was registered under section 376(iii) and 34 P.P.C.

2. Badruddin was arrested the same day, i.e., 15.07.2023. Accused Asif was not arrested but faced trial and was acquitted under section 265-K Cr.P.C. on 15.02.2024, while accused Adnan remained an absconder.

3. Badruddin pleaded not guilty and claimed trial. At the trial, the prosecution examined: **PW-1 Maharaj Chand** (complainant); **PW-2 Chando** (victim/survivor); **PW-3 Dr. Mehak Irfan** (the doctor who examined Chando); **PW-4 A.S.I. Abdul Ghafoor** (registered the F.I.R.); **PW-5 Inspector Ghulam Murtaza Abbasi** (first investigating officer) and **PW-6 S.I. Tahira Naz** (second investigating officer). In his section 342 Cr.P.C. statement, the

accused professed innocence and stated that Chando's father owed him Rs. 200,000, and that when he asked for the money back, this false case was registered against him. He declined to testify on oath, nor did he produce any witness to support his case.

4. At the end of the trial, the learned 5th Additional Sessions Judge, Malir, Karachi, on 09.07.2025, convicted the appellant for an offense under section 376(iii) P.P.C. and sentenced him to life imprisonment and a fine of Rs. 500,000 to be given to the victim/survivor.

5. The primary argument raised by the appellant's counsel was that there is an ambiguity as to how Badaruddin was arrested; that the false case was registered against Badruddin because of a money dispute; that no marks of violence were found on the body of the victim/survivor; and finally that the DNA report was "negative". The learned prosecutor passionately supported the impugned judgment. The complainant was present; however, did not wish to engage private counsel.

6. We have listened to the appellant's learned counsel and the learned Deputy Prosecutor General and have also re-appraised the evidence. Our observations and findings are as follows.

7. We will first address the arguments made by the appellant's learned counsel.

8. A slight discrepancy exists in the witness statements regarding how Badruddin was arrested. Maharaj, in his testimony, said that his cousin telephonically informed him of the incident, and when he went home, he was told that Chando had been taken to the hospital by her uncle. In the evening Maharaj went to the police station where Badruddin was already present. The F.I.R., however, records that Maharaj himself produced Badruddin at the police station. Maharaj further conceded that contrary to what he had stated at the trial, he had recorded in his section 161 Cr.P.C. statement that he had himself, along with his cousin Gullo, taken his daughter first to the hospital and then to the police

station. It is not denied that Badruddin was arrested the same day. Whether Maharaj himself caught hold of Badruddin and took him to the station, or the police arrested Badruddin, is not material enough to overturn the conviction.

9. The appellant's counsel attributed the false accusation to a Rs. 200,000 loan he had given to Maharaj; however, learned counsel conceded that no details or evidence of this transaction were adduced at trial, nor was any witness summoned to support this allegation or the loan. It would be reasonable to assume that a man facing a false rape charge would bring in some evidence to support his claim. Similarly, it is highly unlikely that a person for Rs. 200,000 would level a rape charge.

10. It is not always necessary that a rape victim, in particular a minor girl, would have to have marks of violence on her body to support an allegation of rape. Rape can be committed under fear of a weapon or by coercing and alluring a minor. The proviso to section 375 P.P.C. (reproduced below) categorically states that "if B who does not physically resist the act of penetration, it shall not by the reason only of that fact be regarded as consenting to the sexual activity."

11. In this case, the allegation was that Badruddin, being a watchman, would lure Chando with sweets and toffees. Be that as it may, it is pertinent to point out that the doctor who examined Chando soon after the alleged incident has written in her report that she had been "*subjected to violent vaginal intercourse*". After analyzing the medical reports, we are of the view that the observation regarding intercourse was not correct. We base this finding on the observation made in the report that there was no bleeding and the fact that the DNA report shows that no seminal material was identified in Chando's vaginal swab. This finding alone, however, is not sufficient to hold that rape was not committed. Intercourse and the presence of sperm were thought of as important evidence to support an allegation of rape. This position changed when the Parliament expanded the definition of

rape in section 375 P.P.C. The definition of rape as it stands now is as follows:

"A person A is said to commit "rape" if A-

- (a) penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of another person B or makes B to do so with A or any other person; or*
- (b) inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of B or makes B to do so with A or any other person; or*
- (c) manipulates any part of the body of B so as to cause penetration into the vagina, urethra, anus or any part of the body of B or makes B to do so with A or any other person; or*
- (d) applies his mouth to the vagina, anus, urethra or penis of B or makes B to do so with A or any other person, under the circumstances falling under any of the following seven descriptions,-*

firstly, against B's will;

secondly, without B's consent;

thirdly, with B's consent, which has been obtained by putting B or any person in whom B is interested, in fear of death or of hurt;

fourthly, with B's consent, when A knows that A is not B's husband and that B's consent is given because B believes that A is another man to whom B is or believes herself to be lawfully married;

fifthly, with B's consent when, at the time of giving such consent, by reason of unsoundness of mind or intoxication or the administration by A personally or through another of any stupefying or unwholesome substance, B is unable to understand the nature and consequences of that to which B gives consent;

sixthly, with or without B's consent, when

B is under sixteen years of age; or

seventhly, when B is unable to communicate consent.

Explanation 1.- For the purposes of this section, "vagina" shall also include labia majora.

Explanation 2.- Consent means an unequivocal voluntary agreement when B, by words, gestures or any form of verbal or non-verbal communication, communicates willingness to participate in the specific sexual act:

Provided *that if B who does not physically resists to the act of penetration, it shall not by the reason only of that fact be regarded as consenting to the sexual activity."*

What Badaruddin is accused of doing would fall within "b" or "c" above, and thus rape.

12. It is well settled that in similar cases the victim/survivor's testimony alone is sufficient to sustain a conviction, provided the court finds it trustworthy and confidence-inspiring. We do find Chando's testimony to be exactly that. It rings true, especially given that she was a little girl and had no grudge against Badruddin. As mentioned above, we have already rejected Badruddin's claim that Chando's father owed him money, and had thus forced his daughter to falsely accuse Badruddin of rape. The medical report showing violent insertion in the vagina further supports the allegation.

13. With much respect and humility, we are not convinced with the arguments rendered by the appellant's counsel. We find no reason to interfere with the Trial Court judgment.

14. The appeal is dismissed.

JUDGE

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