

IN THE HIGH COURT OF SINDH AT KARACHI

PRESENT:-

Mr. Justice Omar Sial

Mr. Justice Shamsuddin Abbasi

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Criminal Jail Appeal No.564 of 2023

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Appellant	Muhammad Ali son of Lakhmeer through Mr. Moula Bux Bhutto, Advocate.
Complainant	Mst. Shazia Parveen wife of Israr Ahmed through Ms. Asiya Munir, Advocate.
Respondent	The State through Ms. Rubina Qadir, Deputy Prosecutor General [Sindh]. <><><>
Date of hearing	<u>27.08.2026</u>
Date of Judgment	<u>07.09.2026</u>

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JUDGMENT

Shamsuddin Abbasi, J.- Hifza Israr daughter of Israr Ahmed, aged about 15/16 years, was allegedly abducted by Muhammad Ali son of Lakhmeer with intention of committing zina with her against her will and wishes. FIR No.252 of 2020 was registered at Police Station Iqbal Market, District West, Karachi, on the complaint of her mother Mst. Shazia Parveen for an offence punishable under Section 365-B, PPC.

2. FIR in this case has been lodged on 11.09.2020 at 2:00 pm whereas the occurrence is shown to have taken place on 10.09.2020 at about 12:30 pm. Complainant Mst. Shazia Parveen has stated that on the fateful day her neighbor Muhammad Ali took her daughter Hifza Israr, who had been ill for the last four months on his motorcycle bearing Registration No. KNM-2094 for the purpose of administering "Dam", however, Muhammad Ali did not return with Hifza Israr and upon inquiry his brother-in-law Anwar informed that Muhammad Ali had taken Hifza Israr outside Karachi with intention of marrying her. As her daughter did not return home, the complainant

approached the Police Station Iqbal Market and lodged FIR claiming that Muhammad Ali had enticed away Hifza Israr with the intention of committing Zina with her against her will and wishes.

3. Pursuant to the registration of the FIR, the investigation was set into motion and upon completion thereof the police submitted the challan before the Court of competent jurisdiction under Sections 365-B read with 376, PPC, whereby the appellant was sent up to face the trial.

4. Upon his indictment, Muhammad Ali pleaded not guilty to the charged offence and claimed trial. To substantiate its case, the prosecution has examined as many as seven witnesses namely, SIP Riaz Hussain as PW.1 at Ex.4, victim Hifza Israr as PW.2 at Ex.5, complainant Mst. Shazia Parveen as PW.3 at Ex.6, SIP Ayaz Ahmed as PW.4 at Ex.8, Dr. Muhammad Talha as PW.5 at Ex.9, Dr. Sidra Tariq PW.6 at Ex.10 and Ms. Saima, Civil Judge and Judicial Magistrate as PW.7 at Ex.13. Thereafter, the prosecution closed its side. In his statement recorded under Section 342, Cr.P.C. at Ex.14, accused Muhammad Ali denied the allegations levelled against him, professed his innocence and stated his false implication by the parents of the victim, who had received a huge amount from him and subsequently lodged a false case with intention of usurping the said amount. He further stated that the medical and DNA reports have been managed against him. He, however, neither opted to appear on oath in terms of Section 340(2), Cr.P.C. nor produced any witness in his defence.

5. Upon conclusion of the trial, the learned Additional Sessions Judge-X, Karachi (West), vide judgment dated 05.10.2023, found the appellant guilty of the offence with which he was charged and, thus, convicted him under Section 376(iii), PPC, and sentenced to imprisonment for life with a fine of Rs.200,000/- and to suffer simple imprisonment for a further period of six months in lieu of fine. The benefit in terms of Section 382-B, Cr.P.C. was, however, extended to the appellant. Feeling aggrieved and dissatisfied with the said judgment of conviction and order of sentence, the appellant has preferred the instant appeal.

6. It is contended on behalf of the appellant that the impugned judgment is contrary to law and facts and suffers from misreading and non-

reading of the evidence. It is next submitted that the prosecution has failed to establish the victim's age through reliable documentary evidence and that the FIR has been lodged with a delay of one day without furnishing any plausible explanation. According to him, the victim has voluntarily accompanied the appellant and the prosecution has failed to establish that she was abducted, enticed away or taken from the lawful guardianship of her parents through force, coercion or against her will. It is also submitted that the victim's statement under Section 164, Cr.P.C. could not by itself be treated as substantive evidence and the medical evidence brought on record is inconclusive as the Medical Officer has only opined that the possibility of a fresh act of sexual intercourse could not be ruled out whereas the DNA report reflects a mixed DNA profile merely stated that the appellant could not be excluded as a possible contributor and did not conclusively identify him as the perpetrator. It is argued that the prosecution has failed to establish the safe custody and chain of transmission of the biological samples and to exclude the possibility of contamination or tampering. Learned counsel has pointed out that no independent witness from Sehwan Sharif or from the alleged rented premises has been associated to support the prosecution case. Lastly, he maintained that the appellant has been falsely implicated due to a monetary dispute with the victim's parents and prayed for acceptance of the appeal, setting aside of the impugned judgment and acquittal of the appellant.

7. Conversely, the learned Deputy Prosecutor General, assisted by learned counsel for the complainant, has supported the impugned judgment and submitted that the prosecution has proved its case against appellant through reliable and corroborative evidence. It is next submitted that the victim consistently implicated the appellant and categorically stated that he had taken her to Sehwan Sharif, where he kept her in a rented room and subjected her to rape on three occasions. According to her, the testimony of the victim remained unshaken in cross-examination and has been corroborated by her statement under Section 164, Cr.P.C., the medical evidence and the DNA report. She further submitted that the victim has been recovered from the appellant's custody on next day of registration of the FIR, which constituted a strong incriminating circumstance and that the appellant has offered no plausible explanation for her presence with him. It is argued that the alleged monetary dispute is an unsubstantiated defence

plea and that the non-examination of independent witnesses from Sehwan Sharif is not fatal to the prosecution case. Learned DPG has maintained that the learned trial Court has properly appreciated the evidence and that no misreading, non-reading or illegality has been pointed out warranting interference. She, therefore, prayed for dismissal of the appeal and maintaining of the conviction and sentence awarded to the appellant.

8. We have given our anxious consideration to the submissions of respective parties and have minutely examined the entire material available on record with their able assistance.

9. The principal contention of the learned counsel for the appellant is that the prosecution evidence is insufficient to establish the offences charged against him. We are, however, unable to subscribe to such contention. The prosecution case rests upon the direct and consistent account furnished by the victim, which finds substantial corroboration from the surrounding circumstances, her statement recorded under Section 164, Cr.P.C., the medical evidence, the recovery of the victim from the custody of the appellant and the forensic evidence available on record.

10. The victim, Hifza Israr, in her deposition before the learned trial Court, categorically implicated the appellant and stated that he had taken her away from her house to Sehwan Sharif, where he kept her in a rented room and subjected her to sexual intercourse against her will on three occasions. Her testimony is not a solitary or subsequently developed version. She had earlier made a statement before the learned Magistrate under Section 164, Cr.P.C., wherein she furnished a substantially similar account and specifically nominated the appellant as the person who had taken her away and committed rape with her. The consistency of the victim's account on material particulars lends considerable assurance to the truthfulness of her testimony.

11. It is settled that the statement of a victim of sexual assault is accorded the same evidentiary value as that of an injured witness and, if found confidence-inspiring and trustworthy, conviction can safely be recorded on her sole testimony without requiring corroboration as a rule of law. In the present case, however, the testimony of the victim does not

stand alone. It receives independent corroboration from the circumstances appearing on record.

12. It is an undisputed circumstance that soon after the registration of the FIR, the appellant was apprehended and the victim was recovered from his custody. This circumstance constitutes a highly material piece of evidence. The appellant has not furnished any plausible explanation as to how the minor victim came to be in his company and why she was found in his custody after having remained missing from her house. The fact of her recovery from the appellant lends strong corroboration to the prosecution allegation that she had been taken away by him from her home.

13. The medical evidence further lends assurance to the prosecution case. The victim was medically examined soon after her recovery and the Medical Officer found her not to be virgo intacta. Her vaginal swabs and blood samples were secured and forwarded for forensic examination. The Medical Officer further opined that the possibility of a fresh act of sexual intercourse could not be ruled out. Although medical evidence by itself may not always conclusively establish the identity of the offender, it constitutes an important corroborative circumstance when read in conjunction with the direct testimony of the victim and other evidence available on record.

14. The forensic evidence provides further corroboration to the prosecution case. The DNA report revealed the presence of semen material on the vaginal swabs of the victim. The report further indicated that the appellant could not be excluded as a possible contributor to the DNA profile obtained from the relevant sample. The defence has attempted to capitalize upon the expression that the appellant "could not be excluded" and upon the fact that the DNA material was a mixture involving at least two individuals, however, such expression cannot be read in isolation from the entire body of evidence. Scientific evidence is required to be appreciated in conjunction with the ocular account and the attending circumstances. In the present case, when the victim has consistently and categorically implicated the appellant and she was recovered from his custody shortly after the occurrence, the DNA findings constitute a corroborative circumstance which cannot be ignored merely because the profile was expressed in terms of possible contribution.

15. The argument that no independent witness from Sehwan Sharif or from the alleged rented premises was associated is equally without substance. The law does not require that every circumstance narrated by a victim must necessarily be corroborated by independent witnesses. Sexual offences are ordinarily committed in secrecy and behind closed doors, therefore, independent eye-witnesses are seldom available. The prosecution cannot be expected to produce witnesses who were not naturally present at the place where the offence was committed. The absence of an independent witness, therefore, does not detract from the otherwise reliable testimony of the victim.

16. Similarly, the non-examination of PW Anwar does not materially affect the prosecution case. The complainant is not an eye-witness of the occurrence and the information allegedly conveyed by Anwar merely led her to believe that the appellant had taken her daughter outside Karachi. The prosecution case, therefore, does not rest upon the testimony of Anwar. The direct evidence regarding the occurrence has come from the victim herself, who appeared before the Court and remained available for cross-examination. Hence, the non-production of Anwar cannot be considered fatal when the prosecution has produced the victim, the complainant, the Investigating Officer, the Medical Officer witnesses and the learned Magistrate who recorded the statement of victim under Section 164, Cr.P.C.

17. The defence plea regarding an alleged monetary dispute is wholly unsubstantiated. The appellant in his statement under Section 342, Cr.P.C. has alleged that the parents of the victim had received a huge amount from him and falsely implicated him with the intention of usurping the same, however, apart from making a bald assertion, he produced no documentary evidence or a witness or any other material in support of such plea. Even though the accused is not required to prove his defence beyond reasonable doubt, but when a specific plea is taken, it must have some foundation in the evidence or circumstances appearing on record. In the present case, the plea appears to be a mere afterthought and does not cast any dent in the prosecution case.

18. The appellant has also alleged that the medical and DNA reports had been managed. This allegation is equally unsupported by any material whatsoever. No suggestion establishing manipulation, fabrication or tampering was substantiated through the cross-examination of the medical witnesses or the investigating officer. The defence did not produce any evidence to demonstrate that the samples were improperly collected, sealed or transmitted. A mere allegation that scientific reports have been "managed", without any supporting material, cannot be accepted as a substitute for evidence.

19. So far as the argument concerning the age of the victim is concerned, the prosecution case cannot be discarded merely on the ground that her exact age was not established through a particular documentary source especially when the evidence otherwise establishes that she was taken away by appellant from her house and subjected to sexual assault against her will. The essential question in the present case is whether the prosecution has succeeded in proving the ingredients of the offences charged through reliable evidence. The testimony of the victim, supported by the circumstances discussed above, sufficiently establishes the prosecution case.

20. It is also noteworthy that the appellant did not opt to make himself available for cross-examination by appearing on oath under Section 340(2), Cr.P.C. nor did he produce any evidence in defence. While no adverse inference can be drawn merely because an accused chooses to exercise his statutory right not to enter the witness box, the fact remains that his plea regarding the alleged monetary transaction and false implication remained completely unsupported by any material.

21. The learned trial Court, after examining the testimony of the victim, the medical evidence, the DNA report and other attending circumstances, found the prosecution evidence to be reliable and trustworthy. We have independently reappraised the entire evidence and find no material contradiction, omission or infirmity going to the root of the prosecution case. Minor discrepancies, if any, occurring in the statements of witnesses are natural consequences of lapse of time and human memory and do not affect the foundation of the prosecution case.

22. Another important aspect of the matter, which carries considerable legal significance, is that the appellant was a neighbour of the victim and therefore was not a stranger to her. Such proximity provided him with an opportunity to gain her confidence and by virtue of their familiarity exercise influence over her. The victim, being a girl of about 15/16 years of age, was admittedly of tender age and vulnerable to such influence. The prosecution case that the appellant enticed her away on the pretext of taking her for "Dam" and thereafter subjected her to sexual intercourse is therefore a circumstance of considerable evidentiary significance. The manner in which the appellant first gained her confidence and then took her away on a false pretext cannot be regarded as a mere chance occurrence or an innocent act rather it forms a relevant link in the chain of circumstances pointing towards his culpable conduct. When this circumstance is considered in conjunction with the ocular and other corroborative evidence available on record, it materially strengthens the prosecution case.

23. The cumulative effect of the evidence leaves no room for doubt that the victim was taken away by the appellant, remained in his custody outside Karachi and was subsequently recovered from his possession. Her direct and consistent account regarding the sexual assault is supported by her statement under Section 164, Cr.P.C., the medical examination and the forensic evidence showing the presence of semen material on her vaginal swabs. These circumstances form a coherent and unbroken chain pointing towards the guilt of the appellant and are wholly inconsistent with his plea of false implication.

24. It is a settled principle that an appellate Court would ordinarily interfere with a judgment of conviction where the findings of the trial Court are based upon misreading or non-reading of material evidence, perverse, arbitrary or contrary to law. In the case in hand, no such infirmity has been pointed out. On the contrary, the conclusions drawn by the learned trial Court are fully supported by the evidence available on record.

25. For the foregoing reasons, we find that the prosecution has succeeded in proving its case against the appellant beyond reasonable doubt. The evidence of the victim is trustworthy, confidence inspiring and finds material corroboration from the medical and forensic evidence as well

as the recovery of the victim from the custody of the appellant. The defence raised by the appellant is without any evidentiary foundation and does not create any reasonable doubt in the prosecution case. Consequently, we find no merit in the instant appeal, which is dismissed. The conviction and sentence recorded by the learned trial Court against appellant Muhammad Ali through impugned judgment dated 05.10.2023 are maintained.

JUDGE

JUDGE

Naeem /PA