

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Crl. Jail Appeal No.S-53 of 2024

Appellants: Kabootar and another *through* Mr. Sohail Ahmed Khoso, Advocate

Complainant: Ali Gul Maitlo *through* Mr. Muhammad Rafique Phulpoto, Advocate

Respondent: The State *through* Mr. Zulfiqar Ali Jatoi, Additional Prosecutor General, Sindh

Dates of hearing:- 10.07.2025, 27.07.2025, 28.07.2025, 31.07.2025

Date of announcement: 01.09.2025

J U D G M E N T

Muhammad Jaffer Raza, J.- This Criminal Jail Appeal is directed by the Appellants Kabootar son of Phul and Ghulam Sarwar son of Phul, both by caste Maitlo, impugning the judgment dated 07.05.2024, passed by learned Additional Sessions Judge-IV / Special Court / Gender Based Violence Court, Khairpur in Sessions Case No.650 of 2020 (Re: The State versus Kabootar and another), arising from Crime No.71/2020, registered at Police Station Pir Jo Goth, District Khairpur, under Sections 365-B, 343, and 34 PPC. By the said judgment, both the Appellants were convicted and sentenced to undergo Rigorous Imprisonment for life and to pay compensation of Rs.50,000/- each to the victim under Section 544-A Cr.P.C., and in case of default in payment, to suffer Simple Imprisonment for six months more. Both the Appellants were further sentenced to undergo Rigorous Imprisonment for two years under Section 343 PPC read with Section 34 PPC and to pay fine of Rs.20,000/- each, and in case of default in payment of fine, to undergo Simple Imprisonment for one month more. The aforesaid sentences were ordered to run concurrently, however, benefit of Section 382-B was also extended to them.

2. The brief facts of the prosecution case are that on 10.09.2020 at about 11:00 a.m., complainant Ali Gul Maitlo was present at his home in village Tando Phulai

Maitla, along with his family and relatives, when four persons, including the Appellants and two unknown culprits, allegedly entered his house armed with pistols. It is alleged that Appellant Kabootar forcibly dragged the complainant's wife, Mst. Iqbal Khatoon, outside the house and all the accused abducted her in a white-colored car. FIR was registered the next day on 11.09.2020, after consultation with the village elder/s.

3. Both the Appellants were formally charged, pleaded "not guilty" and faced trial in the Court of learned Additional Sessions Judge-IV / Special GBV Court, Khairpur. During trial, the prosecution examined as many as seven witnesses, including the complainant Ali Gul Maitlo, victim Mst. Iqbal Khatoon, eyewitness Muhammad Iqbal Maitlo, and police officials involved in recovery and investigation. The complainant and other PWs produced documentary evidence including FIR, mashirnamas of site inspection and arrest, mashirnama of recovery of the victim, and relevant police roznamcha entries. In their statements under Section 342 Cr.P.C., both accused denied the allegations, claimed false implication, and neither examined themselves on oath nor produced any witness in their defence.

4. The learned trial Court, after hearing both sides and evaluating the evidence, convicted the Appellants as noted above. Hence, the present appeal.

5. Learned counsel for the Appellants has argued that the Impugned Judgment passed by the learned Trial Court is contrary to settled principles of law. He has further argued that the Appellants have been falsely implicated due personal enmity over street and landed property. He contended that initiation of the instant case emanates from consultation and deliberation by the complainant, with the clear intention to falsely involve the Appellants in a case which can, according to him, only be classified as "fabricated". He further submitted that the alleged incident took place on 10.06.2020, but the FIR was lodged on 11.06.2020, showing a delay of one day without any reasonable or satisfactory explanation. This delay, according to the learned counsel, in a case of alleged abduction and sexual assault, raises serious questions about the

authenticity of the allegations and gives rise to reasonable doubt, which must inevitably go in favour of the accused. It was also argued that no medical examination of the alleged victim was conducted, despite the serious nature of the charge of rape. According to learned counsel, the alleged victim, Mst. Iqbal Khatoon, in her statement under Section 161 Cr.P.C., did not allege that she was subjected to rape, and the Investigation Officer (PW-5) admitted in cross-examination that neither was such an allegation made nor was any medical examination carried out. Learned counsel further pointed out “material contradictions” in the statements of the prosecution witnesses regarding the recovery of the alleged abductee which, according to him, casts serious doubt on the credibility of the prosecution’s version. In light of the above, learned counsel submitted that the prosecution has failed to establish its case beyond the shadow of doubt. He reiterated that it is a settled principle of criminal law that if there is any doubt, the benefit of that doubt must go to the accused. Therefore, he prayed for the acquittal of the Appellants in the interest of justice.

6. The learned Additional Prosecutor General rendered fair assistance in this regard and categorically stated that he is unable to agree with the conclusion of the learned Trial Court based on the evidence recorded at trial. In this regard he deliberately refrained from making further submissions and stated that the counsel appearing for the complainant shall be better placed to render his assistance. The absence of the learned counsel for the complainant has already been noted in detail vide order dated 28.07.2025. The matter was reserved for judgment on 31.07.2025 and the noted counsel failed to affect appearance even on the given date.

7. I have heard all the learned counsels and perused the record. More specifically, I have perused the testimony of the witnesses recorded at trial. At the outset it will be expedient to refer to the testimony recorded of PW. No.3 Iqbal Khatoon i.e. the victim. Relevant excerpts of the examination are reproduced below: -

Examination-In-Chief

“On 10.09.2020 at about 11:00 am, I was present in the house. That four persons entered into the house.... Accused after tying my arms, mouth forcibly kept me in a white colour car, which was parked outside of our house and took me at unknown place and detained me there. On the night of the same day, accused Kabootar forcibly committed rape with me. On the next day accused Kabootar went to his village by leaving me with accused Sarwar. I was detained for about 10/12 days. No any other accused committed rape with me except accused Kabootar. After 10/12 days, accused by tying my hands and mouth took me in a car and left at unknown place, from where one kind person took me to the police, who on the same date handed over to me to the police of P.S Pir Jo Goth.”

Cross examination

“It is correct that I and accused are residing in same village. It is correct that house of sister of both accused is adjacent to my house.All accused entered in my house together....Accused torn my clothes and same are available in my house. Police did not demand my clothes. Accused only dragged me and torn my clothes but I didn't received any injury. Total time consumed in incident was about thirty minutes. No villager came outside of the house during incident..... Accused stopped the car at about 05:00 p.m. after travelling. Accused Kabootar committed zina with me. It is incorrect I, in my statement u/s 161 Cr.P.C, did not disclose about the commission of zina with me. Accused left me on the bypass road in the night time. I don't know the person who met with me in the night at bypass road. It is correct that police did not produce me for medical examination before WMO. It is correct that prior to present case I got registered FIR against present accused vide Crime No.62/2018 at PS Pir Jo Goth.” (Emphasis added)

8. It is apparent from the excerpts of the examination reproduced above that the witness has taken a contradictory stance in relation to the alleged incident. In the examination-in-chief the Petitioner has taken a stance that she was abducted and kept in the confinement of the Appellants. However, perusal of the cross examination reveals that the alleged offence took place inside her home. Further, the said witness testified that she was in the confinement of the Appellants for 10/12 days. Contrary to the same, she has later deposed during her cross examination, that she was dropped around 5 pm and the total time consumed in the incident was thirty minutes. Additionally, the witness admitted that she was not produced for any medical examination. It is further surprising that the torn clothes were stated to be at her house whilst the alleged offence took place elsewhere i.e. in the custody of the Appellants. The Appellants allegedly left her at the bypass road. The said contradiction will

become apparent after perusing the testimony of ASI Qadir Bux (PW No.4). Relevant excerpts of the same are reproduced as under: -

“Examination-In-Chief

On 19.09.2020 I was posted at PS Economic Zone and was present on duty. At about 05:00 a.m. one lady Mst. Iqbal Khatoon wife of Ali Gul Maitlo voluntarily appeared and stated that accused Kabootar had abducted her and she succeeded to escape from his confinement and has appeared at PS.

Cross examination

At the time of appearance of abductee, her appearance was found good. It is correct that abductee disclosed that after 8/9 days she escaped from the illegal confinement of accused.....It is correct that I did not keep any entry regarding arrival of abductee at PS nor same has been produced by me in my evidence.” (Emphasis added)

9. It is incomprehensible how Mst. Iqbal Khatoon who was allegedly left at the bypass road by the Appellants, made her way to PS Economic Zone, without any mechanical mode of transportation. Further, Mst. Iqbal Khatoon has no recollection of going to the noted P.S and in her cross examination, as noted above, has stated that she does not even identify the individual who helped her when she was allegedly left at the bypass road.

10. After examining the contradictions in the alleged abduction and the recovery, it will at this juncture, be imperative to peruse the examination of SIP Khalid Hussain who was the investigation officer in the instant case. Relevant excerpts of the cross examination are reproduced below: -

“It is correct that the alleged abductee in her statement did not make allegation of rape. It is correct that no any medical examination of abductee was conducted. Voluntarily says, there was no any allegation of rape, therefore, there was no need of medical examination.”

11. It is evident from the perusal of the Impugned Judgment that the learned Trial Court has not gone into any detailed deliberation of the facts as presented and the examinations recorded by the respective parties. None of the glaring contradictions between the statements of the prosecution witnesses have been taken a note of by the learned Trial Court. This is more particularly the case in relation to the alleged abduction and the recovery of Mst. Iqbal Khatoon. In such circumstances serious

doubts exist in the account of the prosecution. It is a settled principle of law that the prosecution must prove every element of the offence beyond all reasonable doubt. In this regard reliance can be placed upon the following judgments, relevant excerpts of which are reproduced as under: -

- **Muhammad Azam v. The State and others¹**.

“It is a settled principle of law that for giving benefit of the doubt to accused it is not necessary that there should be so many circumstances creating doubt in the prosecution's case, rather if only a single circumstance creating reasonable doubt in the mind of a prudent person is available then such benefit is to be extended to an accused not as a matter of concession but as of right.”

- **Khial Muhammad v. The State²**.

“12. Mere heinousness of the offence if not proved to the hilt is not a ground to punish an accused. It is an established principle of law and equity that it is better that 100 guilty persons should let off but one innocent person should not suffer. The peculiar facts and circumstances of the present case are sufficient to cast a shadow of doubt on the prosecution case, which entitles the appellant to the right of benefit of the doubt.

It is a well settled principle of law that for the accused to be afforded this right of benefit of doubt, it is not necessary that there should be many circumstances creating uncertainty and if there is only one doubt, the benefit of the same must go to the accused. In the case reported as Mst. Asia Bibi v. The State (PLD 2019 SC 64) this Court has held that if a single circumstance creates reasonable doubt in a prudent mind about the apprehension of guilt of an accused, then he/she shall be entitled to such benefit not as a matter of grace and concession, but as of right. Reference in this regard may be made to the cases reported as Tariq Pervez v. The State (1995 SCMR 1345) and Ayub Masih v. The State (PLD 2002 SC 1048). The same view was reiterated in the case reported as Abdul Jabbar v. State (2019 SCMR 129) wherein it was held that once a single loophole is observed in a case presented by the prosecution, such as conflict in the ocular account and medical evidence or presence of eye-witnesses being doubtful, the benefit of such loophole/lacuna in the prosecution's case automatically goes in favour of an accused. The conviction must be based on unimpeachable, trustworthy and reliable evidence. Any doubt arising in prosecution case is to be resolved in favour of the accused. However, as discussed above, the prosecution has failed to prove its case beyond any reasonable doubt.”

¹ 2025 SCMR 810.

² 2024 SCMR 1490.

In similar circumstances the above-noted view was also adopted by Shamsuddin Abbasi, J. in the case of Ahsan Versus The State reported at 2024 YLR 578.

12. In light of what has been held above, the instant Criminal Appeal is allowed. The Impugned Judgment of conviction and sentence dated 07.05.2024, passed by the learned trial court is hereby set aside. The Appellants, Kabootar son of Phul, and Ghulam Sarwar son of Phul, both by caste Maitlo, are acquitted of the charge. They shall be released forthwith if not required in any other custody case.

JUDGE