

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Crl. Jail Appeal No.S-56 of 2024

Appellant: Kabootar *through* Mr. Sohail Ahmed Khoso, Advocate

Complainant: Mst. Iqbal Khatoon *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.- The instant Criminal Jail Appeal No. S-56 of 2024 is instituted by the Appellant Kabootar son of Phul 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. 418/2018 (Re: The State versus Kabootar), arising from Crime No. 62/2018, registered at Police Station Pir Jo Goth, under Sections 376 and 354 PPC. Vide the noted judgment, the accused Kabootar was convicted under Section 376 PPC and sentenced to undergo Rigorous Imprisonment for ten years, along with compensation of Rs.50,000/-, which shall be given to the complainant/victim, Mst. Iqbal Khatoon in terms of Section 544-A Cr.P.C. In case of default in payment of compensation amount, the accused was to undergo further Simple Imprisonment for six months. The accused was also convicted under Section 354 PPC and sentenced to undergo Rigorous Imprisonment for two years, with a fine of Rs. 20,000/-. In case of default, the accused was to undergo Simple Imprisonment for one month. The aforesaid sentences were ordered to run concurrently, however, benefit of Section 382-B was also extended to him.

2. The facts of the prosecution case, in brief, are that on 01.06.2018, the complainant, Mst. Iqbal Khatoon, was en route to the residence of her relative, Allah Ditto Maitlo, while her husband, Ali Gul, had departed from the house. It is alleged that around 0900 hours, when she reached the street of the aforementioned Allah

Ditto Maitlo, the accused, Kabootar, suddenly appeared and, by means of a pistol, forcibly seized her and attempted to drag her. The complainant then raised an alarm, upon which witnesses namely Mst. Hakim, Mst. Farzana, and other women from the village, came to her. Upon seeing the approaching witnesses, the accused fled the scene. Subsequently, the complainant informed her husband of the incident, and on 04.06.2018, she lodged an FIR at Police Station Pir Jo Goth, alleging an offense punishable under Section 354 P.P.C. Upon further investigation, a further statement of the complainant Mst. Iqbal Khatoon, was recorded, wherein she elaborated the details of the incident. In her statement, she stated that on the aforementioned date, the accused, Kabootar, forcibly grappled with her from behind, placed his hand over her mouth, and held a pistol in his other hand. Under the threat of the pistol, the accused took her to the house of Wazeer, ascended the staircases within the house, and, after removing her shalwar, committed zina with her and after recording of her such statement, the offence of rape under Section 376 PPC was added.

3. Accused Kabootar Maitlo was formally charged before the Court of learned Judicial Magistrate, Pir Jo Goth, from where the case was sent up to the Court of learned Sessions Judge, Khairpur, and thereafter transferred to the Court of learned Additional Sessions Judge-IV / Special GBV Court, Khairpur for disposal according to law. The accused pleaded 'not guilty' and claimed trial. During the trial, the prosecution examined the witnesses namely PW/1 Mst. Iqbal Khatoon Maitlo (complainant), PW/2 Mst. Hakim Maitlo, PW/3 Ali Gul Maitlo (husband of the complainant), PW/4 Muhammad Jirial Maitlo, PW/5 ASI Ghulam Shabir Larik, PW/6 Mst. Farzana Maitlo, and PW/7 Inspector (retired) Hussain Bux Siming. These witnesses testified and produced documentary evidence, including the FIR, mashirnamas of site inspection, and relevant police roznamcha entries. In his statement under Section 342 Cr.P.C., the accused denied the allegations and claimed false implication, asserting that there had been a prior dispute over land. However, the accused neither examined himself on oath nor produced any defense witnesses.

4. Thereafter, on the application of the learned ADPP/SPP, the charge was altered and reframed for the offences punishable under Sections 376 and 354 of the Pakistan Penal Code, to which the accused pleaded 'not guilty' and claimed trial, as recorded in his plea.

5. During the course of the trial, the testimony of the complainant Mst. Iqbal Khatoon, was recorded; alongwith the statements of Ali Gul, Mst. Farzana, Hussain Bux Siming, Ghulam Shabir Larik, Muhammad Jurial Maitlo and HC Ghulam Asghar Narejo. Subsequently, learned Assistant Public Prosecutor (APG) for the State closed the prosecution side.

6. The statement of the accused, as required under Section 342 Cr.P.C., was recorded, wherein he denied all the allegations made by the prosecution. He prayed for justice and acquittal. The accused neither examined himself on oath, as per Section 340(2) Cr.P.C., nor did he produce any defense witnesses to support his claims.

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

8. Learned counsel for the Appellant contended that the Impugned Judgment passed by the learned Trial Court is against the settled principles of criminal justice and ought to be set aside. He submitted that the Appellant is innocent and has been falsely implicated in this case owing to a pre-existing dispute between the complainant party and the Appellant over a pathway. It was further argued that there is no medical evidence available on record to substantiate the allegation of rape, and the failure of the complainant to undergo timely medical examination, or any medical examination at all, despite having been referred for the same, gravely undermines the prosecution's case. Learned counsel emphasized that the incident allegedly took place on 01.06.2018 but was reported belatedly on 04.06.2018, without any plausible explanation for the delay. He submitted that the FIR was initially lodged under Section 354 PPC and did not contain any allegation of rape; rather, a supplementary statement introducing the

accusation of Zina was recorded after an unexplained and inordinate delay of around 40 days. Such delayed improvement, according to the learned counsel, raises serious doubts about the credibility of the prosecution's version and creates a fatal contradiction in the case. He pointed out that the complainant has shifted her stance materially in the supplementary statement, giving an entirely new version, and named additional accused persons not mentioned in the FIR. It was further submitted that Mst. Hakim Zadi, whose statement was also recorded on the same day as the complainant's further statement, did not mention the commission of Zina, thereby contradicting the complainant's version. Learned counsel further argued that the complainant alleged the offence of Zina occurred in the house of one Mullah Allah Ditto, yet neither he was examined as a witness nor were any of his family members mentioned or examined, though the complainant's own husband, Ali Gul, claimed family members were present at the time. The Mashirnama (memo of inspection of place of incident), prepared on the pointing of the complainant, also makes no reference to any act of Zina having been committed. He submitted that all prosecution witnesses, contradicted each other on material points, including the presence of family members, the place of incident, and the timing of events, indicating that key witnesses were either not supportive of the prosecution or were withheld. He further submitted that the I.O. also admitted that even during the site visit, in the presence of the complainant, she made no mention of the offence of rape. In view of the above material contradictions, absence of medical evidence, delayed reporting and doubtful supplementary statement, learned counsel contended that the prosecution has utterly failed to prove its case beyond reasonable doubt. He submitted that the benefit of such doubt must go to the accused. Lastly, he prayed for the acquittal of the Appellant in the interest of justice.

9. 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.

10. I have heard all the learned counsels and perused the record. More particularly, I have examined at length the evidence recorded by the respective prosecution witnesses. I shall make an endeavor to reproduce the relevant excerpts of the testimony recorded by the prosecution witness and thereafter render a finding on the same.

➤ **Mst. Iqbal Khatoon. Complainant. PW No.1.**

Examination-in-Chief.

“..accused Katoobar Maitlo came behind me and grappled, put the pistol and keep the hand upon my mouth and dragged me in the house of Allah Ditto Maitlo and forcibly committed Zina with me then went way towards house of his sister. Mst. Hakim, Mst. Farzana, Jalal and Jurial came at the place of vardat on my cries. After incident, I came back at my home and disclosed such facts to my husband Ali Gul, who advised me to lodge FIR. On 04.06.2018. I appeared at PS Pir-Jo-Goth and lodged the FIR against the above named accused. After passing of ten days of incident, police recorded my further statement.”

Cross Examination

“It is correct to suggest that I have not disclosed in my further statement that I raised cries during incident. It is correct to suggest that it is not mentioned in FIR as well as in my further statement that Jalal and Jurial came at the place of vardat on my cries.....When accused dragged inside the house of Allah Ditto there was no any person present there. On the day of incident, house of Allah Dino was open. The accused forcibly committed Zina with me on earth and during committing Zina, sustained injury on my ear. First of all, accused tied my hands then he forcibly committed Zina with me. It is incorrect to suggest that accused committed Zina in the house of Wazir Ali. It is correct to suggest that accused Katoobar forcibly committed Zina inside the ladder of the house. Accused after committing Zina with me, climb over the building and ran away while jumping. It is correct to suggest that during course of committing Zina, accused torn my cloths.....My mouth and hands were tied by the accused, therefore, I could not cry for rescues...It is not mentioned in FIR as well as further statement that accused tied my mouth When I came out from the house in the common street, I disclosed such facts to PWs and two male members, who were present there.....police did not issue letter for my medical checkup. It is incorrect to

suggest that there is dispute over agricultural land against me and accused.”
(Emphasis added)

➤ **Mst. Hakim. PW No.2.**

Examination-in-Chief

“I saw accused Kabootar Maitlo forcibly taking away my relative Mst. Iqbal Bano inside towards house of Wazir Ali Maitlo to commit Zina upon her.....After sometime, accused Kabootar Maitlo while after committing Zina upon Mst: Iqbal went away from the house of Wazir Ali Maitlo.”

Cross Examination

“No house inmates were present in the house of Wazir Ali at the relevant time. Accused. Kabootar committed Zina upon Mst. Iqbal at the stair case of the house.....Accused forcibly took away the victim into the house of Wazir Ali and then I left away my place. It is correct to suggest that I did not see with my own eyes while committing Zina of accused Kabootar with victim Mst. Iqbal.”
(Emphasis added)

➤ **Ali Gul. PW No.3**

Examination-in-Chief

“On 4.6.2018 I went from the house for doing labour and was out of house and when I returned back to my house where my wife disclosed that accused Kabotar was having armed with pistol and embraced and took her to the house of Mulla Allah Dito where he committed rape upon her, thereafter, I along with complainant went to PS where complainant lodged FIR to this effect against accused Kabotar.”

Cross-examination

“I left my house for doing labour work early morning of the day. I returned back at my house from the work at about 3.00 to 4.00 pm. The place of incident is the house of Wazir son of Mulla Allah Dito wher 6/7 house inmates of Wazir are living. It is correct to suggest that at the time of incident house inmates were present at the place of incident. It is correct to suggest that house of wazir is surrounded by other houses of villages. My wife disclosed me that accused Kabotar committed zina with her at first floor of the house of Wazir. The clothes of complainant was torn but no injury on her person was made at the hands of accused Kabotar.”
(Emphasis added)

➤ **Ghulam Shabir. PW No.5**

Cross Examination

“It is correct that from place of warhdat no any incriminating evidence was collected.

➤ **Farzana w/o Muhammad Jalal PW No.6**

Examination-in-Chief

“I along with PW Mst. Hakim were present in our house. Meanwhile, we heard cries towards the street, therefore, I myself and Mst. Hakim went outside the house where we noticed that accused Kabootar was armed with Pistol and he was dragging to Mst. Iqbal Khatoon towards the house of one Wazir and thereafter he closed the outer door of house. We made cries and thereafter returned back to our house. After some time Mst. Iqbal Khatoon returned back and she informed us that accused Kabootar has committed zina with her.”

Cross-Examination

“The place of incident is situated at the distance of about 2/3 houses from the house of victim.....It is fact that the children of Wazir were present at the time of incident at his house and they were crying but accused did not open the door. My house is situated at the distance of about three houses from the house of complainant. I have heard noise of complainant at my house. Mst. Iqbal Khatoon returned back after about one hour when she was dragged by the accused.”
(Emphasis added)

➤ **Hussain Bux. PW No.7**

Examination in Chief.

“The victim had not gone to WMO for examination and treatment while saying that much time has been passed and she is residing with her husband, therefore, she refused examine herself.”

11. As noted above, the relevant excerpts of the prosecution witnesses have been reproduced. Prior to rendering my finding on the same it will be pertinent to reiterate that the alleged incident took place on 01.06.2018 and the noted FIR was lodged on 04.06.2018 i.e. after a delay of 4 days. It is further pertinent to mention that initially the FIR was only filed under section 354 PPC and after the further statement of the complainant was recorded on 11.07.2018 (approximately 40 days after the alleged incident), Section 376 PPC was added and subsequently the challan against the Appellant was amended.

12. For the following reasons, the conviction against the Appellant is not sustainable and ought to be set aside:-

- (i) There is an apparent discrepancy about the place of incident. The prosecution witnesses have given a conflicting account of the place of incident. The complainant in her testimony, as reproduced above, has stated the place of

incident to be in the house of Allah Ditto Maitlo, whereas other prosecution witnesses as evident above, have identified the place of incident as the house of Wazir Ali. It is most notable that neither Wazir Ali nor Allah Ditto Maitlo were ever examined at trial.

(ii) No medical examination was ever conducted of the said complainant even after her further statement was recorded after a significant delay, as noted above.

(iii) The supplementary statement recorded on 11.07.2018 as noted above, was recorded approximately 40 days after the alleged incident. However, the complainant in her examination has stated the said supplementary statement was recorded only 10 days after.

(iv) The FIR lodged by the complainant does not allege the offence of rape under 376 PPC and only allegation in the noted FIR is under section 354 PPC. That too, after four days of the alleged incident.

(v) The husband of the complainant i.e. Ali Gul, deposed that on 04.06.2018 he was informed about the incident by his wife. However, it is evident that the alleged incident took place on 01.06.2018.

(vi) The husband of the complainant in his testimony has stated that there was no apparent injury to the complainant whereas the complainant in her testimony has stated that there was injury to her ear.

(vii) There is further discrepancy as to whether there were any inmates at the alleged place of incident, irrespective of the place of incident being the house of Wazir Ali or Allah Ditto. None of those noted inmates were ever examined at trial, irrespective of the discrepancy surrounding their presence.

13. At this juncture I would like to address the point noted above in reference to the supplementary statement. It is a settled proposition of law that the value of a supplementary statement is no more than a statement recorded under Section 161

Cr.P.C¹. It is evident from the bare perusal of the belated supplementary statement that the complainant made an effort to improve her case. In this respect it is held that the learned Trial Court erred in placing reliance on the same. Further, the finding of the learned Trial Court regarding the prosecution witnesses corroborating the statement of the complainant is misfounded as noted above.

14. It is a settled principle of criminal law that the burden of the prosecution is to prove every element of the offence against the accused person beyond all reasonable doubt². It is held that the prosecution miserably failed to discharge the said burden. In light of what has been held above, the instant Criminal Jail 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 Appellant, Kabootar son of Phul by caste Maitlo, is acquitted of the charge. They shall be released forthwith if not required in any other custody case.

JUDGE

¹ Khalid Javed Versus The State reported at 2003 SCMR 1419.

Kashir Ali versus The Judge Anti Terrorism Court No.II, Lahore reported at P L D 2016 Supreme Court 951.

Naqeebullah versus The State reported at 2020 MLD 408.

Wishal Munawar versus The State reported at 2025 YLR 548.

² Muhammad Azam versus The State reported at 2025 SCMR 810.

Khial Muhammas versus The State reported at 2024 SCMR 1490