

**HIGH COURT OF SINDH CIRCUIT COURT MIRPURKHAS**

**Criminal Appeal No.S-26 of 2024**

*Present*

*Justice Dr. Syed Fiaz ul Hassan Shah.*

Appellant/ accused: Umair Ahmed s/o Aziz Ahmed  
Through Mr. Abdul Hafeez Mari, Advocate.

Respondent: The State  
Through, Mr. Ghulam Abbas Dalwani, D.P.G.

Date of hearing: 13.03.2025.

Date of Judgment: 26.05.2025.

**J U D G M E N T**

**Dr. Syed Fiaz ul Hasan Shah, J:** The Appellant /accused Umair Ahmed s/o Aziz Ahmed (hereinafter referred as **"the appellant"**), has filed present Criminal Appeal under section 410 of Criminal Procedure Code, 1898, against the conviction awarded through the impugned judgment dated 11-10-2017 passed in Sessions Case No. 318/ 2016 by learned Additional Sessions Judge-I/MCTC, Mirpurkhas, (Re: S.V Umair Ahmed), arising out of F.I.R., No.02/ 2016 under sections 376 and 506(i) P.P.C., registered at P.S Women, Mirpurkhas.

2. As per facts of the F.I.R. lodged by complainant Ateequddin s/o Shafiquddin Qureshi on 26-08-2016 at 1600 hours at PS Women, Mirpurkhas are that his brother-in-law Raza Muhammad contracted

marriage with Mst. Shagufta about 20 years back. out of said back they have two daughters namely Kashaf, aged about 17 years and Mahnoor aged about 15 years. About 5/6 years back Raza Muhammad divorced his wife Mst. Shagufta. Thereafter, Mst Shagufta alongwith her daughters used to reside with her mother Mst. Noor Jahan. About three years back Mst. Shagufta contracted marriage with Umair Yousuf Zai r/o Scheme No.2, Mirpurkhas and then started residing near Mecca Masjid while both the above named daughters used to come at her house to meet her from the house of her grand-mother. About two months back, in the month of Ramzan Sharif and then one-month latter daughter Kashaf informed her and her maternal uncle Shahzad that Umair committed forcible Zina with her in absence of her mother. Due to fear of denigration they kept Kashaf silent. On 25-08-2016 at about 0930 hours Umair came at his house and told daughter Kashaf that her mother Shagufta is ill and is admitted in hospital and asked her to accompany him and taken her to his house. After one hour Kashaf returned while weeping and informed her and Shahzad that Umair taken her to his house, where after forcibly removing her clothes committed Zina and threatened that if she disclosed such facts to anybody he would commit her murder. Then they brought Kashaf at PS Satellite Town and informed such facts to police; police gave letter for medical examination of Kashaf and then they got conducted medical examination of Kashaf from Civil Hospital, Mirpurkhas. Thereafter, they came at police station where complainant lodged instant F.I.R.

3. After completion of the investigation, the I.O submitted Police Report/ Challan under Section 173 of the Criminal Procedure

Code, 1898. Subsequently, the trial Court has framed the charge against the appellant on 01-12-2016 at Ex 2, to which he pleaded not guilty and claimed for trial vide his plea at Ex:02-A. During the trial, the prosecution has examined following witnesses:

P.W No.1 Complainant Attiqueuddin examined vide Ex:03, who produced copy of FIR as Ex:03-A.

P.W No.2 Witness/mashir Muhammad Shehzad Khan examined vide Ex:04, who produced copy of mashirnama of arrest of accused as Ex:04-A, mashirnama of place of incident as Ex:04-B, mashirnama of securing clothes of accused and victim as Ex:04-C & Ex:04-D and the case property viz: Article-01 to 04 respectively.

PW No.3 Witness/victim Kashaf examined vide Ex:05, who produced her statement recorded u/s 164 Cr.P.C as Ex:05-A.

PW No.4 Victim's mother Mst. Shagufta examined vide Ex:07.

PW No.5 M.O Dr. Muhammad Moosa examined vide Ex:08, who produced police letter as Ex:08-A, medical report as Ex:08-B and report of Chemical Examiner as Ex:08-C respectively.

P.W No.6 I.O SIP Moomal Shaheen examined vide Ex:09, who produced DNA Test Report as Ex:09-A.

P.W No.7 SIP/SHO Mehnaz examined vide Ex:10.

P.W No.8 W.M.O Dr. Tulsi Das examined vide Ex:11, who produced police letter, letter for DNA test report, provisional medical report and final medical report as Ex:11-A to Ex:11-D respectively.

4. After the completion of prosecution's evidence, the statement of appellant was recorded under section 342 of Criminal Procedure Code, 1898, at Ex.13 wherein the appellant has denied the allegation of prosecution and claimed his innocence; however he not opted for his examination on oath under section 340(2) of the Criminal Procedure Code, 1898 but he wanted to examine Dr. Fayyaz Ahmed Memon, but since said Doctor has left for abroad as per statement of process server Ex.14, therefore, learned counsel for the appellant closed the side of defence evidence vide statement at Ex.15. After hearing arguments advanced by learned counsel for the parties, the trial Court found the appellant guilty and thereby convicted and sentenced him as under:

For the offence punishable u/s 376 PPC to suffer R.I for twenty five (25) years and pay Rs.100,000/= as fine and in case of non-payment of fine amount further suffer S.I for four (4) months more; he shall also pay Rs.5,00,000/= as compensation under section 544-A Cr.P.C to the victim namely Kashaf and in case of default, the compensation amount also be recovered as provided u/s 544-A(2) Cr.P.C.

For the offence punishable u/s 506(i) PPC to suffer R.I for two (02) years and pay Rs.50, 000/= as fine and in case of non-payment of fine amount, further suffer S.I for two (02) months more. However, benefit of section 382(B) Cr. P.C was extended to the appellant and both sentences were ordered to run concurrently.

5. Upon a careful re-examination of the evidence provided by the PW-3, the victim, it has been found that she testified in a straightforward and natural manner. She deposed: ***"On 25-08-2016 accused Umair taken me from the house of my paternal grand-mother***



*on the pretext that my mother is ill and admitted in hospital. Then I alongwith accused, who is my step father, went to the house of accused, where the accused forcibly committed rape with me. She again stated that he committed rape with me 03 times. Prior to this incident he also committed rape with me and I became pregnant and accused took me to lady doctor Najma, who confirmed that I am pregnant. Lady doctor given me medicine and injection, therefore, my pregnancy was lost. After the incident my medical examination was held in the hospital by lady doctor. I.O recorded my statement u/s 161 Cr.P.C. My statement u/s 164 Cr.P.C. was also recorded before the Magistrate, which I produce as Ex.05-A and say that it is same, correct and bears my signature. Accused present in the court is same and I identify him.”*

6. It is well established that a conviction in a rape case can be awarded solely on the statement of the victim, provided that such testimony is credible, trustworthy, and reliable. The observations of the Supreme Court in “**Atif Zareef and Others v. The State**”, (PLD 2021 SC 550), hold relevance to the present discussion. The Court acknowledged the inherent challenges in obtaining direct evidence for sexual crimes due to their private nature and emphasized that, where the victim's testimony is credible within the specific facts and circumstances of a case, additional direct evidence should not be insisted upon.
7. Now turning to the Medical evidence and testimony of medical doctor PW-8, I have seen evidence of Medical doctor carefully and I have noticed that the evidence of Medical Doctor/Expert requires clarification. The evidence of PW-8 Dr Tulsi who deposed that “I

*generally examined her and found well co-operative and oriented, gait normal, marks of violence (1) Abrasion 1 c.m in size on right breast (2) Abrasion 1 c.m in size in left breast (3) Abrasion 3 c.m in size on right foot and (4) Abrasion 2 cm in size on right foot. Clothes changed.” ... “I see chemical examiner's report exhibit 8C and DNA report exhibit 9A and say that these are same.”* During cross examination, the PW-8 deposed that *“The vaginal swaps of victim were taken at the time of her medical examination. It is a fact that male semen sperm were not detect.”* I have noticed that in the exhibit 11C it has been written by the medical doctor PW 8 that victim was used for sexual intercourse. I have also carefully noticed that in the exhibit 11/D the result of DNA test from molecular biology laboratory from LUMHS Jamshoro shows that high vaginal swabs of Kashaf do not contain any male DNA sperm fraction. The evidence of Investigation officer, the PW-7 has also confirmed such fact when she deposed that *“It is a fact that, as per DNA test report, vaginal swept of victim do not contain any male DNA/sperm fraction.”*

8. The PW-8 Medical Doctor vociferous deposed: ***“Opinion. After complete physical examination I am of the opinion that she was used for sexual intercourse.”*** However, there is nothing on record to demonstrate or establish any incriminating evidence linking the appellant to the alleged rape. Neither the DNA report nor the serologist's findings have provided clarity or concrete proof. The lack of such forensic evidence renders the Judgment of Conviction to corroborate the charge against the appellant for the commission of offence in uncertainty.

9. It is an admitted position that the victim, PW3, was a married woman. However, PW8, the medical doctor, has failed to provide any valid justification or plausible reasoning to establish that sexual intercourse was committed by the Appellant. In the presence of a negative DNA report or a negative Serologist report, the medical opinion remains ambiguous which need clarification.
10. Furthermore, there is specific evidence on record to suggest that the victim was coached and tutored and bruises on her breasts is visibly noticed by the Doctor and she has categorically deposed before the trial Court but she has not given findings and nature and it has not clarified that such bruises is a fact of facts for commission of offence or was it general? and such fact has not been deposed by the victim herself. Hence a clarification is also required from the PW-8 about her findings with regard to the "bruises" of the victim (PW-3) was due to specific fact of commission of offence of rape or otherwise.
11. The PW-3 during evidence deposed ***"Prior to this incident, he has also committed rape with me, and I became pregnant and accused took me to Lady Doctor Najma, who confirmed that I am pregnant. Lady Doctor given me medicine and injection, therefore, my pregnancy was lost. After the incident, my medical examination was held in the hospital by Lady Doctor."***  
It may be observed that similar facts have been narrated by the victim PW 3 in her statement recorded under section 164 CrPC at Exh.5/A.
12. It has been observed that the learned presiding officer, while recording the statement of the accused under Section 342 Cr.P.C., framed question number nine in a manner that presupposed the

final medico-legal certificate of the victim (Exhibit 11D) as being positive. However, this question contradicts the contents of Exhibit 11D, which clearly state that neither the DNA test report nor the serologist report confirmed any male contributor.

13. The conviction in this case has been awarded primarily on the basis of the victim's testimony (PW3), which has been corroborated by medical evidence. However, while the medical report confirms that the victim was subjected to sexual intercourse, it does not conclusively establish that the appellant was the perpetrator. No forensic evidence has been presented to distinctly link the appellant to the alleged offense, and ambiguity surfaces regarding the PW-8 evidence and it needs clarity on various points about the reliability of the conviction.
14. The courts have consistently held that in cases where direct evidence is scarce due to the private nature of the crime, the victim's testimony alone, if found convincing and free from doubt, is sufficient to sustain a conviction. In such instances, the victim's testimony alone suffices for the conviction of the accused. Furthermore, the Supreme Court underscored that a rape victim stands on a higher pedestal than an injured witness, as the latter suffers only physical harm, whereas the former endures both psychological and emotional distress.
15. However, the learned trial Court has awarded a conviction and a sentence of 25 years not solely on the basis of the victim's solitary testimony— while holding or found to be trustworthy, confidence-inspiring, and substantially credible—but by corroborating her statement with medical evidence. Consequently, the testimonies of the victim and her mother (PW-2) have been reinforced and



substantiated by the **medical findings** confirming the occurrence of rape.

;. In my opinion, in the present case, the absence of Lady Doctor Najma has significantly influenced the trial court's approach in assessing corroborative evidence and to not rely only on solitary evidence of rape victim. Given her expected role as a key witness, her nonappearance created a gap in direct testimony, necessitating reliance on supplementary evidence of medical corroboration. However, such corroboration need certain clarities looking to the high degree of nature of sentence.

17. The trial court, in its reasoning, emphasized the principle that corroborative evidence serves to reinforce existing testimony, ensuring a more reliable determination. Without her statement, the court had to weigh alternative evidentiary sources to establish the veracity of claims presented. The trial court's approach exemplifies this principle, ensuring that judicial findings remain rooted in fairness and evidentiary integrity. The guidance is taken from the case of *Mst. Shamim & 2 others v. The State & another* 2003 SCMR 1466 wherein it is held as:

"7. .. The statement of the complainant also makes it manifest that Mst. Shamim was not her friend, she had accompanied Mst. Shamim for the first time and had not enquired about the field from which cotton was to be plucked. The prosecution story is indeed improbable and irrational because it does not appeal to reason that the appellant Nst. Shamim had procured the complainant for her husband and the complainant had accompanied a stranger to pluck cotton from unknown fields. The prosecution story being the foundation on which edifice of the prosecution case is raised occupies a pivotal position in a criminal case. It

should, therefore, stand to reason and must be natural, convincing and free from any inherent improbability. It is neither safe to believe a prosecution story which does not meet these requirements nor a prosecution case based on an improbable prosecution story can sustain conviction.

18. Ordinarily, this Court should refrain from adopting either of the two approaches—relying solely on the **victim's statement** to maintain the conviction, (primarily it is duty of trial Court which has not been done by such court) or combining the **victim's testimony with medical corroboration**—without first affording the trial Court an opportunity to record fresh evidence from PW-8, Dr. Tulsi (due to serious ambiguities and lacking medical and scientific reason that victim, a married girl, is used for sexual intercourse). Given her medical scientific expertise, it is essential that she provide a thorough assessment regarding the commission of the offense.
19. Consequently, the Judgment of conviction dated 11.10.2017 is set aside and matter in Sessions Case No.318 of 2016 emanating from Crime No.2/2016 is remanded to the trial Court with direction to examine and record afresh evidence of PW-8, Dr Tulsi and only after recording the evidence of PW-8, Dr. Tulsi, the trial Court should proceed to record the statement of the appellant under Section 342 Cr.P.C., ensuring that the questions framed align with the deposition and findings of PW-8, Dr. Tulsi and then pass Judgment after providing opportunities to parties and in accordance with law.

**JUDGE**

\*Saleem\*