

IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD

- 1. Crl. Jail Appeal No.S-141 of 2016.**
- 2. Crl. Jail Appeal No.S-150 of 2016.**
- 3. Crl. Jail Appeal No.S-151 of 2016.**

Mst. Ilamzadi alias Sanam and others.Appellants.

Versus.

The State.Respondent.

Mr. Ashfaque Ahmed Lanjar, Advocate for the appellants.

Ms. Sana Memon, APG.

Complainant Allahdino and victim Mst. Aysha present in person.

Date of hearing and judgment: 22.06.2018.

JUDGMENT

IRSHAD ALI SHAH, J.-The appellants by way of filing three separate appeals have impugned judgment dated 08.08.2016 of learned Sessions Judge, Badin, whereby they have been convicted and sentenced to undergo as under;

“**Accused Ali Nawaz** son of Hussain is convicted under section 363 PPC and sentenced to suffer R.I. for seven years and to pay fine amounting to Rs.30,000-00(thirty thousand rupees) and in case of default in payment of fine amount, he will further undergo S.I for three months. **Accused Ali Nawaz** is also convicted under section 364-A PPC and sentenced to suffer R.I for ten years and to pay fine amounting to Rs.50,000-0(fifty thousand rupees) and in case of default in payment of fine amount, he will further undergo S.I for six months. **Accused Ali Nawaz** son of Hussain and **Majeed** son of Natho are convicted under section 376 PPC read with section 34 PPC and sentenced to suffer R.I for 14 years each and to pay fine of Rs.50,000-00(fifty thousand rupees) each and in case of default in payment of fine amount, they will further undergo S.I for six months. **Accused Mst. Illumuzadi alias Sanam** wife of Akber Shah is convicted under section 376 PPC read with section 114 PPC and is sentenced to suffer R.I for 10 years and to pay fine

amounting to Rs.30,000-00(thirty thousand rupees) and in case of default in payment of fine amount, she will further undergo S.I for three months.”

2. The facts of the case are disclosed in FIR lodged by complainant Allahdino with Police Station Badin, which read as under;

“Complaint is that I am labourer and am residing at the address given in the FIR. I have got four daughters and two sons. Out of them, Mst. Aysha aged about 09 years and Baby Sania aged about 04 years, are residing with me. Ali Nawaz is my neighbourer. He used to take my daughters on his motorcycle to have a view of city. On 19.02.2015 at about 1600 hours, my daughters Mst. Aysha and Baby Sania went out of the house to make some purchase but did not return. I made search for them. I came to know through my son-in-law Rashid Ali and his brother Mehboob that they had seen Ali Nawaz taking away my daughters Mst. Aysha and Sania through his motorcycle. I approached elders of Ali Nawaz for return of my daughters. They kept me on false hopes and promises, but to no avail. I have now come at P.S. and to report that Ali Nawaz has abducted my daughters Mst. Aysha and Sania. Action be taken.”

3. At trial, the appellants denied the charge and prosecution to prove it, examined P.W-1 complainant Allahdino at Exh.13, produced through him FIR of the present case at Exh.13-A, P.W-2 victim Mst. Aysha at Exh.14, produced through her 164 Cr.P.C statement at Exh.14-A, P.W.-3 Rashid Ali at Exh.15, P.W.4/mashir Ali Nawaz Dars at Exh.16, produced through him memo of place of incident at Exh.16-A, P.W.5 / mashir PC: Ali Nawaz Lund and produced through him mashirnama of arrest of accused Ali Nawaz and Mst. Ilamzadi and recovery of abducted girls at Exh.17-A, P.W.6 SIO/SIP Burhan Ali at Exh.18, produced through him the police letter at Exh.18-A, P.W.7 Dr. Hajran at Exh.20, produced through him the original police letter, provisional and final medical certificates, letter to Chemical Examiner and report of Chemical Examiner at Exhs.20-A to 20-E and then closed the side.

4. The appellants during course of their examination under section 342 Cr.P.C. denied the prosecution allegations by pleading innocence. They did not examine anyone in their defense or themselves on oath in disproof of the prosecution allegations.

5. Learned trial Court, on evaluation of evidence so produced before it, convicted and sentenced the appellants by way of judgment dated 08.08.2016, which they have impugned before this Court by way of filing separate appeal, as stated above, those are now being disposed through single judgment.

6. It is contended by learned counsel for the appellants that they being innocent were involved in this case falsely by the police, the FIR was lodged with unexplained delay of one day, the complainant was not an eye witness of the incident, the recovery of the victim and her sister Baby Sania was doubtful, the appellants have been convicted and sentenced by the learned trial Court without proper appreciation of evidence. By contending so he sought for acquittal of the appellants as according to him, the prosecution was not able to prove its case beyond shadow of doubt.

7. Complainant Allahdino and victim Mst. Aysha recorded no objection to acquittal of the appellants by contending that they in "Brotherly Faisla", have been found to be innocent. By stating so, Mst. Aysha, the alleged victim filed her affidavit, which is taken on record.

8. I have considered the above arguments and perused the record.

9. It was stated by complainant Allahdino during course of his examination before the learned trial Court that he came to know through Rashid Ali that his daughters Aysha and Sania have been taken away by Ali Nawaz through his motorcycle. Complainant in that respect was belied by

P.W. Rashid Ali by stating before the learned trial Court that the person who taken away Mst. Aysha and Baby Sania through his motorcycle, was with his face muffled. The evidence of the complainant and P.W. Rashid Ali, as is detailed above, if is believed to be true then it hardly connects any of the appellant with commission of the incident.

10. The main reason apparently which prevailed with the learned trial Court for convicting the appellants was the evidence of Mst. Aysha, the alleged victim. It is well settled principle of law that in such like cases, the status of victim is of “Star Witness”. The evidence of such witness controls the fate of the case. If such witness does not support the case of the prosecution, it would suffice to be taken as a reasonable doubt to acquit without waiting for corroborative evidence. But when such witness supports the case of the prosecution, then it is always necessary that evidence of such witness must pass test of being natural and convincing, else no conviction could be recorded. Reference in that respect may be placed upon the case of **Shahzado @ Shaddu & Ors v. State (2002 SCMR 1009)**, wherein it is observed that;

“6. We would like to mention here at this juncture that corroboration is not a rule of law but that of prudence. There is no denying the fact that acid test of the veracity of the prosecutrix’s statement is the **inherent merit of her statement** because corroborative evidence alone could not be made a base to award conviction. It is well settled by now that “the extent and the nature of corroboration required may, no doubt, vary from witness to witness and corroboration in every particular, all that is necessary is that the corroboration must be such as to effect the accused by connecting or rendering to connect him with the crime...”

7. We have..... Generally speaking the statement of prosecutrix **if considered trustworthy** no corroboration would be needed and such need only arise in the circumstances indicating the possibility of her being consenting party to sexual intercourse which is a rare phenomena in cases of Zina-bil-Jabr. ..

11. After having observed above, now is to be examined the evidence of Mst. Aysha, the alleged victim. It was stated by her, during course of her examination before the learned trial Court that accused Ali Nawaz took her and her sister Baby Sania through his motorcycle to the house of accused Mst. Ilamzadi, then took her and her sister Baby Sania to Mirpurkhas, then got her married with accused Majeed, who conducted rape with her forcibly. So far allegation of forcible rape with her is concerned, she in that respect is belied by Medical Officer Dr. Hajran by stating that the hymen of the victim was found relaxed and there was no mark of violence on her person. The evidence of Mst. Aysha, the alleged victim is silent with regard to the allegation that appellant Ali Nawaz committed rape with her. By remaining silent on that point, she withdrawn allegation of rape against appellant Ali Nawaz, which she leveled against him at the time of recording her 164 Cr.P.C. statement. Why she did so? No explanation to it is furnished by her. It was further stated by Mst. Aysha, the alleged victim, that she was recovered by the police when she, her sister Baby Sania, appellants Ali Nawaz and Mst. Ilamzadi were going through **car**. She in that respect is also belied by SIO/SIP Burhan Ali by stating that she was recovered with her sister Baby Sania, appellants Ali Nawaz and Mst. Ilamzadi when they were found coming out of a **Coaster**. Significantly, as per PW/mashir PC: Ali Nawaz Lund, Mst. Aysha, the alleged victim together with her sister Baby Sania, appellants Ali Nawaz and Mst. Ilamzadi were apprehended when they were found standing at **Allah Walla Chowk Badin**. The above said inconsistencies and contradictions have obviously made the evidence of Mst.

Aysha, the alleged victim, to be doubtful; same as such could not be said to be natural and convincing to hold conviction.

12. As per SIO/SIP Burhan Ali, Mst. Aysha, the alleged victim, was recovered by him on 23.02.2015. She, as per Medical Officer Dr. Hajran, was brought at hospital for her medical examination on 24.02.2015, it was with delay of one day to her recovery. Where she was kept for one day? The explanation to such delay as is provided by SIO/SIP Burhan Ali was that she for such period was kept with a lady police constable. Who that lady constable was? It is not made known by the prosecution even. In that situation, the delay by one day in producing Mst. Aysha, the alleged victim, before the Medico Legal Officer to prove the allegation of rape with her, could not be lost sight of. Indeed, such delay is smelling something wrong or foul play.

13. The swabs allegedly taken on 24.02.2015 from the vagina of Mst. Aysha, the alleged victim, as per report of Chemical Examiner, were delivered to him for chemical analysis on 27.02.2015 with delay of about three days. No explanation to such delay is offered by the prosecution, which reflects the possibility of manipulation. The cross-matching of the semen samples could not be conducted by the Chemical Examiner for want of insufficient material. No DNA test of semen samples of any of the male appellants was arranged by the prosecution to connect them with the vaginal swabs of Mst. Aysha, the alleged victim. In these circumstances, it is rightly being contended by the learned counsel for the appellants that the prosecution was not able to prove its case against the appellants beyond shadow of doubt.

14. In case of **Faheem Ahmed Farooq vs. The State (2008 SCMR 1572)**, it is held that;

“Single infirmity creating reasonable doubt regarding truth of the charge makes the whole case doubtful.”

15. The recording of no objection by the complainant and Mst. Aysha, the alleged victim to the acquittal of the appellants together with filing of affidavit by one of them, as stated above, needs no consideration particularly when the offence for which the appellants are convicted and sentenced by the learned trial Court is not compoundable.

16. Above are the reasons of short order dated 22.06.2018, whereby all the three appeals were accepted; the conviction and sentences recorded against the appellants by way of impugned judgment were set aside and they were acquitted of the offence for which they were charged, tried and convicted by the learned trial Court.

JUDGE