IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD
Criminal Appeal No.S-54 of 2020

Appellant: Ghulam Mustafa alias Matoo son of Haji Mandrani Khoso, through Mr. Pirbhulal-U-Goklani, Advocate.

Respondent: The State, through Ms. Safa Hisbani, APG.

Complainant: Majid Ali through Syed Samreen Ali, Advocate

Date of hearing: 22-02-2021.
Date of decision: 22-02-2021.

JUDGMENT

IRSHAD ALI SHAH, J; The fact in brief necessary for disposal of instant appeal are that the appellant allegedly dragged the baby Ayat with intention to subject to her rape, for that he was booked and reported upon.

2. The appellant denied the charge and the prosecution to prove examined complainant Majid Ali and his witnesses and then closed the side.

3. The appellant in his statement under section 342 Cr.P.C denied the prosecution's allegation by pleading that he has been involved in this case falsely at the instance of PW Muhammad Hassan with whom, he is inimical. The appellant did not examine anyone in his defence or himself on oath.

4. On conclusion learned Additional Sessions Judge Hala found the appellant guilty for the above said offence, consequently

convicted and sentenced him to undergo R.I for ten years with fine of Rs.200,000/- and in case of default whereof to undergo S.I for one year with benefit of section 382 (b) Cr.P.C, vide his Judgment dated 03.02.2020, which is impugned by the appellant before this Court by preferring the instant Criminal Appeal.

5. It is contended by learned counsel for the appellant that the appellant being innocent has been involved in this case falsely by the complainant party at the instance of PW Muhammad Hassan; the F.I.R of the incident has been lodged with delay of about five hours after due consultation with the elders; DNA report is negative and the evidence of the prosecution being doubtful in its character has been believed by the learned Trial Court without lawful justification. By contending so, he sought for acquittal of the appellant.

6. Learned A.P.G for the State and learned counsel for the complainant have sought for dismissal of the instant appeal by contending that the offence alleged against the appellant is affecting the society at large.

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

8. As per complainant Majid Ali, he lodged the F.I.R of the incident with police after consultation with the elders. The lodgment of the F.I.R with police after consultation with the elders that too with delay

of about five hours could hardly be relied upon to base conviction. No incident of rape has taken place. Only allegation made against the appellant by the complainant, PWs Imran and Muhammad Hassan, is to the extent that they found the appellant dragging baby Ayat to Otaque and they suspected him to be attempting to commit rape with her. The appellant is alleged to have made his escape good from the place of incident by scaling over the wall. The failure of the complainant and his witnesses to apprehend the appellant at the place of incident prima facie suggests that they were not available at the place of incident. It is denied by the appellant that he was dragging baby Ayat with intention to commit rape with her. If, for the sake of argument, it is believed that the appellant actually dragged baby Ayat even then it would be hard to believe that such dragging of baby Ayat on the part of the appellant was with intention to commit rape with her. No cogent evidence has been brought on record by the prosecution, on point of intention on the part of appellant to commit rape with baby Ayat. As per medical officer, Dr. Haleema Sadiya excepting a bruise, above the left nipple no mark of violence was found on the body of baby Ayat. The DNA report suggested that the appellant was not contributor of semen stains/sperm fractions of victim baby Ayat. PW/Mashir Sayal was fair enough to say that his signatures on all the mashirnamas were obtained by the police on the next date. If, it is so then its smells dishonest investigation on the

part of police. In these circumstances, it would be unjustified to hold the appellant for guilty of above said offence on the basis of sole evidence of baby Ayat whereby she too has stated that the appellant tried to commit offence with her. In these circumstances, it would be safe to conclude that the involvement of the appellant in the alleged offence the prosecution has not been able to prove shadow of doubt.

9. In case of *Tarique Pervaiz vs. The State (1995 SCMR 1345),* it has been held by Hon'ble Apex Court that;

> *"For giving benefit of doubt to an accused it is not necessary that there should be many circumstances creating doubt- if a simple circumstance creates reasonable doubt in a prudent mind about the guilt of the accused, then he will be entitled to such benefit not as a matter of grace and concession but as a matter of right."*

10. In view of the fact and reasons discussed above, the conviction and sentence awarded to the appellant by way of impugned judgment are set-aside. Consequently, the appellant is acquitted of the offence, for which he has been charged, tried and convicted by the learned Trial Court; he shall be released forthwith, if not required in any custody case.

11. The instant appeal is disposed of in above terms.

JUDGE

Muhammad Danish Steno*