

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

Cr. Appeal No. S- 04 of 2014
Cr. Appeal No. S- 79 of 2015

Appellants. Manzoor Ahmed and others (Cr. Appeal No.S-04 of 2014) through Syed Babar Ali Kazmi, Advocate.

Appellant. Akbar in Cr. Appeal No. S- 79 of 2015 through Mr. Imtiaz Ali Chanhio, Advocate

Respondent. The State through Ms. Safa Hisbani, A.P.G.

Date of hearing: 21.06.2021
Date of decision: 21.06.2021
Date of reasons: 23-06-2021

J U D G M E N T

ZULFIQAR ALI SANGI, J:- Through the captioned appeals, appellants Manzoor Ahmed, Ali Muhammad, Niaz Hussain, Illahi Bukhsh, Taj Muhammad, Dawan and Ahmed in Cr. Appeal No. S- 04 of 2014 and appellant Akbar in Cr. Appeal No. S- 79 of 2015 have challenged the Judgment dated: 04.01.2014 passed by learned Additional Sessions Judge, Sehwan in S.C. No. 193 of 2013 emanated from crime No. 01 of 2012 registered at police station Khero Dero under sections 147, 148, 504, 365-B, 337-A(i), (ii), 337-L(ii), 376, 337-H(ii) PPC, whereby the above named appellants were convicted and sentenced as under:-

- i. Appellants were convicted for committing the offence of rioting duly armed with weapons and sentenced to suffer R.I for three years and to pay fine of Rs.200/- each under Section 147 to 149 PPC and in case of default in payment of fine accused will further suffer S.I for 20 days;
- ii. Appellants were also convicted and sentenced under Section 337-L(2) to causing injuries to injured namely Hamzo, Sain Bux, Qurban, Mazar Hussain, Abbas and Kando to suffer R.I for two years and to pay Daman / fine amount of Rs.300/- to each injured and in case of failure to further suffer S.I for one month;
- iii. Appellants were also liable to pay Rs.500/- each as Daman to injured Sain Bux for causing injury under Section 337-A(i) and in default to suffer S.I for one month more;

- iv. Appellants were also convicted and sentenced to suffer R.I for one year.
- v. Appellants were also directed to pay Arsh/fine amount of 5% of diyat Rs.1,07,000/- for causing injuries to injured Mazar Hussain under Section 337-A(ii) PPC jointly to be payable to all accused and in case of default they shall not be released till payment of Arsh amount and further the appellants were convicted and sentenced for a period of three years as R.I.
- vi. Appellants were also convicted and sentenced to suffer R.I for five years under Section 363 PPC as Mst. Pathani was forcibly kidnapped from the lawful guardianship of her parents and also imposed fine of Rs.10,000/- upon each accused to be paid to victim Mst. Pathani and in case of failure to suffer S.I for six months more.
- vii. Appellant Akbar was convicted and sentenced to suffer R.I for life and to pay fine of Rs.50,000/- to pay Mst. Pathani for committing his rape and in default to suffer S.I for six months more; However, benefit of Section 382-B Cr.P.C. was extended to all the appellants.

2. The brief facts of the prosecution case are that complainant Hamzo Khan Rodnani registered the above FIR alleging therein that he is residing in village Silawalpur and is a farmer. Adjacent to his house his brothers Qurban, Sain Bux, maternal cousin Kando Khan, nephew Mazar are residing. Their houses are surrounded with hedge. On 19.3.2012 at about 11:00 p.m. accused Baqar, Akber, Fida Hussain, Aslam, Ahmed, Manzoor, Ali Mohammad, Illahi Bux, Taj Mohammad, Dawan, Niaz Hussain duly armed with weapons forcibly entered in the house of complainant and accused Baqar dragged his daughter namely Mst. Pathani aged about 14 years, on which she raised cries. Complainant along with his son Abbas, brother Qurban, Sain Bux, relative Kando Khan resisted with the accused, on which all accused started abusing and firing in the air and all armed persons caused injuries of butts of weapons, hatchets and lathies. The complainant party due to fear of their lives remained silent. Accused Baqar and other persons forcibly kidnapped Mst. Pathani with intention to commit rape with her. Such FIR was registered.

3. After registration of FIR, police conducted investigation, arrested accused and collected material against the accused persons and on completion of investigation submitted challan against them in the concerned court. After completing all the legal formalities, the trial court initiated trial by supplying copies to the accused as required under section 265-C Cr.P.C. The charge was framed against them to which they pleaded not guilty and claimed trial.

4. The prosecution in support of its case examined P.W.1 complainant Hamzo Rodnani at Ex.17, who produced copy of FIR at Ex.17/A; P.W-2 Mst. Pathani (victim) at Ex.18, She produced her statement at Ex.18/A and her 164 Cr.P.C at Ex.18/B, P.W-3 M.O. Dr. Ghulam Sarwar at Ex.19 who produced police letter received by him from SHO at Ex.19/A for examination and report of 06 injured persons. He further produced medical certificate of Hamzo Rodnani, Sain Bux Rodnani, Qurban Rodnani, Manzoor Hussain, Abbas Rodnani and Kando Khan at Ex.19/B to 19/J respectively. P.W-4 injured / eye witness Kando Khan was examined at Ex.20; P.W-5 injured / eye witness Qurban was examined at Ex.21. P.W-6 injured / eye witness Abbas was examined at Ex.22. P.W-7 Muzaffar Hussain injured / eye witness was examined at Ex.24, P.W-8 injured / eye witness Sain Bux was examined at Ex.25; P.W-9 mashir Imdad Hussain was examined at Ex.26, who produced memo of injuries, memo of place of occurrence, memo of arrest of accused Manzoor Ahmed, Ali Mohammad, Niaz Mohammad and memo of recovery of crime items from the possession of accused Manzoor Ahmed and Ali Mohammad at Ex.26/A to 26/D respectively. P.W-10 H.C. Abdul Hameed Khokhar was examined at Ex.28, who produced memo of recovery of abductee, arrest of accused Akber at Ex.28/A and 28/B, P.W-11 WMO Dr. Mehr-u-Nisa Soomro was examined at Ex.29, who

produced police letter at Ex.29/A, ultrasound report at Ex.29/B and final medical certificate of Mst. Pathani at Ex.29/C. P.W-12 SIP / SHO Manzoor Ali Khokhar was examined at Ex.30, who produced certified true copy of order dated 25.7.2012 at Ex.30/A and then side of prosecution evidence was closed.

5. The trial court recorded the statements of accused Manzoor Ahmed, Ali Mohammad, Akber, Niaz, Illahi Bux, Taj Mohammad, Dawan Hussain and Haji Ahmed under section 342 Cr.P.C at Ex. 32 to 39 respectively; whereby they neither examined themselves on oath nor lead any evidence in their defence and simply said that they are innocent and due to matrimonial dispute they have falsely been implicated by the complainant party and prayed for justice. The trial court in order to reach at the conclusion framed following points for determination.

1. *Whether on the night between 19.3.2012 and 20.3.2012, injured persons namely Hamzo, Sain Bux, Qurban, Mazar Hussain, Abbas and Kando received injuries or otherwise?*
2. *Whether on the night between 19.3.2012 and 20.3.2012, all accused persons by sharing vicarious liability duly armed with deadly weapons by forming unlawful assembly committed rioting, thereafter, caused injuries to all injured persons, also made aerial firing and forcibly kidnapped away Mst. Pathani on the force of weapons or otherwise?*
3. *Whether Mst. Pathani was virgin and she was raped between 19.3.2012 till 24.7.2012 or otherwise?*
4. *Whether from the date of forcible abduction till recovery of Mst. Pathani on 24.7.2012 accused Akber along with absconding accused Aslam, Baqar and Fida Hussain committed rape with her or otherwise?*
5. *What should the Judgment be?*

6. After assessment of the evidence and hearing the parties, learned trial court convicted and sentenced the accused as stated above, which they have impugned through the instant appeals.

7. Learned counsel for the appellants has argued that there is delay of 3-1/2 hours in lodging the FIR; no independent person was associated as witness; no specific role is attributed for causing injuries by any accused to any injured, no incriminating material was recovered from the possession of accused except Manzoor Ahmed and Ali Mohammad and same is foisted upon them; no motive is alleged against the appellants and they have been falsely implicated. Learned counsel further contended that the case registered against the appellants is false and has been registered due to enmity on matrimonial dispute; that prosecution case is highly doubtful; that the evidence so brought on record is contradictory on material particulars of the case; therefore, the same cannot be safely relied upon for maintaining conviction. He further contended that learned trial Court has passed the impugned judgment which is based upon surmises, conjectures, same is perverse and against the norms of natural justice so also against the principles of criminal justice; that learned trial court while passing impugned judgment has failed to apply judicial and prudent mind; that impugned judgment is against the law, facts and as such cannot be upheld; that it was the case of acquittal but learned trial court wrongly discussed the points for determination and convicted the appellants; that material points and issues involved in the case were not discussed by learned trial court; that all the PWs are interested and false implication of the appellants was not ruled out; that learned trial court has misread and non-read the evidence of witnesses and as such has not appreciated the same and passed impugned judgment in hasty manner; that prosecution evidence is not trustworthy; that learned trial court while passing the impugned judgment has ignored the material contradictions in the prosecution evidence which have made entire case doubtful. He prayed that the appeal may be allowed and appellants may be

acquitted. In support of his contention, learned counsel has relied upon the case of **Shabbir Ahmed v. The State (2020 MLD 995)**, **Ali Gul v. The State (2020 MLD 952)**, **Muhammad Ibrahim and another v. The State (2019 P.Cr.L.J 1378)**.

8. Learned counsel for appellant Akbar adopted the same arguments of learned counsel in appeal No. 04 of 2016, and further submits that ocular evidence is in conflict with the medical evidence; that no DNA test was conducted; that the prosecution has not produced the evidence in respect of the rape; that appellant was involved due to enmity; that at the time of recovery of girl/victim the appellant was not arrested; that the prosecution story is false and doubtful. Lastly, he prayed that appeal of the appellant may be allowed and he may be acquitted.

9. Learned A.P.G. vehemently opposed the submission of the learned counsel for the appellants; She argued that the FIR is promptly lodged at police station as the incident took place at 11:30 p.m. (i.e. night of 19.3.2012) while the FIR was registered in the same night at 1:30 a.m. (i.e. 20.3.2012). The distance between the place of occurrence and police station Khero Dero is about 20 kilometers; that appellants have jointly caused injuries to the complainant party and kidnapped a virgin girl and committed rape with her for about 2/3 months and she was recovered in pregnant position; that all the injured persons were produced by the prosecution before the trial court and they supported the case; that the medical evidence is in support of ocular evidence; that the victim girl was also examined and she fully supported the case of prosecution; She lastly prayed that the appeals filed by the appellants may be dismissed and the conviction and sentence awarded to them by the trial court may be maintained.

10. I have heard learned counsel for the parties and have gone through the evidence read out by defence counsel and the material available in the file with their able assistance.

11. After reassessment of the evidence produced by the prosecution it is established that the prosecution has prove its case against the appellants beyond a reasonable doubt by producing reliable, trustworthy and confidence-inspiring evidence, oral as well as medical evidence and other supportive evidence including the recoveries.

12. The prosecution examined complainant Hamzo PW-1, who deposed that on 19-03-2012 he along with his son Abbas, brother Qurban, Sain Bux, nephew Mazar, cousin Kando were sleeping in the house where at 11:30 pm they walkup on the crises and saw accused Bakar was dragging his daughter Mst. Pathani for the purpose of rape. He deposed that accused Bakir, Fida Hussain, Akber, Aslam, Ahmed, Ali Muhammad, Manzoor, Niaz Hussain, Dawan Hussain, Illahi Bux and Taj Muhammad came there and they (complainant party) exchanged harsh words with them. All accused persons gave them lathi, hatchet, soti and butt blows and also they fired upon them. They received injuries on different parts of body and remained silent due to fear of weapons, the accused persons forcibly had taken away Mst. Pathani. Complainant by making an arrangement of vehicle went to police station, where SIP/SHO Manzoor Ali inspected their injuries and referred them to hospital for treatment and thereafter FIR was registered. He deposed that police inspected the place of wardat wherefrom recovered copy of CNIC of accused Bakir, four empties of red colour cartridges and two of white and five empties of pistol. He further deposed that on 24-07-2012 he was called by the police and was informed that they have an

information that his daughter was staying in Nawabshah then they left towards pointed place and from a hut his daughter was recovered and all accused ran away, her statement was recorded by the police and she was referred for medical examination and was also produced before the magistrate for recording her statement. The other eye/injured witnesses namely Kando Khan PW-4, Qurban PW-5, Abbas PW-6, Nazar Hussain PW-7 and Sain Bux PW-8 they all person received the injuries from the hands of appellant party and were medically examined and injuries received by them were confirmed by the doctor. They all six PWs deposed on one and the same line. They were cross-examined but their evidence was not shattered. Their presence was established from their evidence which was further corroborated by the medical evidence produced by the prosecution by examining Dr. Ghulam Sarwar.

13. To prove the ocular/direct evidence of above **six injured eye witnesses** the prosecution examined Dr. Ghulam Sarwar who deposed as under:-

”On 20.3.2012, I was posted at M.O at RHC Bhan. Through a police letter No. 145 P.S. Khero Dero six injured came for treatment and admission and for medical certificate. I examined injured No. 1 **Hamzo Rodnani son of Mushtaq**, aged about 60 years R/O village Muhammad Rahpoto Taluka Sehwan and found injury No. 1 contusion, swelling left upper arm measuring 6 cm in diameter, injury No.2 bruise on back of side of right scapular region measuring 6 cm x 2, injury No. 3 bruise on left side back of chest measuring 4 cm x 2 cm. Injuries No.1 to 3 declared 337-L(2) PPC. Kind of weapon used hard and blunt substance. I issued final medical certificate.

I examined injured **Sain Bux Rodnani son of Mushtaq** Rodnani and found following injuries.

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|---------------|---|
| Injury No.1: | incised injury on left side of cheek near nose measuring 2.5 cm x 0.5 cm x skin deep. |
| Injury No.2: | Contusion with swelling on right scapular region measuring 6 cm x 2 cm. |
| Injury No. 3: | Contusion with swelling on left scapular region measuring 6 cm x 2 cm. |
| Injury No.4: | Contusion with swelling on back of chest measuring 6 cm x 2 cm. |

Injury No.1 declared Shajjah-i-Khafifah (337-A(i) and injury Nos. 2 to 4 declared at 337-L (2). Kind of weapon used injury No.1 sharp cutting and injury Nos. 2 to 4 with hard and blunt substance. I issued final medical certificate of injured Sain Bux on 21.3.2012.

I examined injured **Qurban son of Mushtaq** Rodnani and found following injuries:

Injury No.1: Contusion with swelling right lower 1/3rd of upper arm measuring 10 cm x 2 cm.

Injury No.1 declared 337-L(2) PPC. Kind of weapon used hard and blunt substance. I issued final medical certificate of injured Qurban on 21.3.2012.

I examined injured **Mazar Hussain** and found following injuries:

Injury No.1: Lacerated injury on front of the skull measuring 8 cm x 1 cm x born exposed.

Injury No. 2: Contusion with swelling on the right upper arm measuring 4 cm x 2 cm.

Injury No. 3: Contusion with swelling on left upper arm measuring 4 cm x 2 cm.

Injury No.4: Contusion with swelling right scapular region measuring 6 cm x 2 cm.

The x-rays of injured sent for radiological expert opinion. I issued provisional medical certificate of injured on 21.3.2012. After receiving the report I declared the injury No.1 as Shajja-i-Mudihah and injuries No.2 to 4, 337-L(2). Kind of weapon used hard and blunt substance. I issued such final medical certificate on 23.4.2012.

I examined injured **Abbas Rodnani** and found the injury as contusion with swelling on back of chest measuring 10 cm x 2 cm and declared injury as 337-L(2). Kind of weapon used hard and blunt substance. I issued such final medical certificate on 21.3.2012.

I examined injured **Kando Khan** and found following injuries:-

Injury No.1: Contusion with swelling on right shoulder measuring 10 cm x 2 cm.

Injury No.2: Contusion with swelling on left hand measuring 4 cm x 2 cm.

X-ray of injured sent for radiological opinion. I issued provisional medical certificate of injured on 21.3.2012. Injuries No.1

and 2 kept reserved. After receiving the report I declared that the injury No.1 and 2 as 337-L(2). Kind of weapon hard and blunt substance and I issued such final medical certificate on 04.4.2012.”

The doctor produced all the MLC of the above six injured witnesses and he was cross-examined by the defence counsel but could not succeeded to shattered his evidence, which in my view can safely be relied upon.

14. The prosecution examined **important witness/ victim Mst. Pathani** the daughter of complainant she deposed that incident took place about 12/13 months ago. Incident took place at 11:00 p.m time. After taking night meals, she was sleeping in her house along with her father Hamzo, brothers Abbas and Peral and her mother Begum along with other family members. She was sleeping when accused Baqar tried to drag her from her arms, on which she raised crises and on her crises her father Hamzo, brother Abbas, uncle Qurban and Hussain Bux and maternal uncle Kando and Marot Mazar got up. She further deposed that her relatives exchanged harsh words with accused, but accused persons with lathis and guns fought with them and caused them injuries and fired in the air. Accused persons said them that in case they went near to them they will directly fire upon them. Accused persons were dragging her with an intention to commit rape with her. Accused persons took her to Nawabshah District. **Accused Baqar, Akber, Fida Hussain and Aslam were committing rape day and night with her and she was in wrongful confinement for the period of four months. After passage of four months Subedar Manzoor Ali conducted raid and accused persons ran away and her father was also with police, police secured her.** Thereafter, she was brought at P.S, where Subedar recorded her statement. She deposed that she was also produced before WMO for examination and report and she was

examined by WMO. Police also produced her in the court, where her statement was recorded in the court. She was cross-examined but nothing favourable to the appellants comes on record. The victim was produced before the doctor for examination and also before the magistrate for recording her statement under section 164 Cr.P.C.

15. The prosecution in support of the evidence of victim girl who was firstly kidnapped from her house and was subjected to rape by the accused persons for a period of about four months, examined lady doctor, Dr. Mehrunisa as P.W-11, she deposed that on 25.07.2012 she was posted as Chief W.M.O at RHC Bhan, where she received police letter No.350, along with **abductee /victim Mst. Pathani D/o Hamzo Khan Rodnani, aged about 16 years** sent by SHO PS Bhan for examination, treatment and certificate. She examined her and found during general physical examination as under:-

A girl aged about 16 years, average built, conscious, co-operative and well oriented to time, place, pulse 76 per minute, B.P 110/70 mm/Hg, temperature 98 Fahrenheit.

Local examination: Black colour auxiliary hair present.

Breast: normal well-developed, normal nipples, dark brown areola.

P/V examination: black colour pubic hair present.

Vulva: normal- Vagine normal- **Hymen absent**- Cervix soft, Os=close-Uterus 08-10 weeks size-**Vagina admit two fingers.**

Investigation: **urine for pregnancy test positive.**

Ultrasound: shows single alive 09 weeks pregnancy. She produced ultrasound report as Ex.29/B, that is same.

After receiving ultrasound report, investigation and examination she opined that **act of rape has been performed on Mst. Pathani.** On 26.7.2012 she issued such final medical certificate, which she produced at Ex.29/C.

16. In support of the above direct evidence, supported by the medical evidence as discussed above, the prosecution produced Imdad Hussain P.W-9, he is **mashir** and in his presence injuries of the injured were inspected by the police and memo of injuries was prepared in the hospital, co-mashir was Manzoor Hussain. He deposed that on the same date at 09:00 a.m. police inspected the place of wardat and recovered one NIC copy of accused Bakir, 06 empties of 12 bore, five empties of pistol and 10-11 persons footprint marks were available there such mashirnama was prepared. On 23.03.2012 at 3:00 P.M police arrested accused Manzoor, Ali Muhammad and Niaz in their presence and prepared such memo. On 28.03.2012 SHO called them at PS and in their presence accused Manzoor Ahmed and Ali Muhammad were taken out from lock-up. Both accused admitted before police that both were ready to lead the police party for recovery of crime items. Accused led police party to their village and from the back side of hedge from their own house took out one un-erased Babur lathi by accused Manzoor Ahmed and accused Ali Muhammad also took out one un-erased Laee lathi about 4-1/2 feet in their presence such memo was prepared by police. He was cross-examined by the defence counsel and during cross-examination he also stated that the accused are his relatives. Therefore in my view he has no reason to depose against the accused nor was any enmity suggested against him for falsely implication.

17. The prosecution also produced another mashir HC Abdul Hameed as P.W-10, who deposed that on 24.07.2012 he was posted as HC at PS Khero Dero, where Inspector/ SHO Manzoor Ali Khokhar left PS along with him and PC Mohammad Yakoob, Rahm Ali and Barkat Ali for arresting accused in crime No. 01/2012, PS Khero Dero. SHO Manzoor Ali Khokhar **recovered Mst.Pathani** near village

Bakir Rodnani near the house of Bakir Rodnani and prepared such memo of her recovery in his presence and in presence of co-mashir Rahm Ali. He further deposed that on 26.07.2012 SHO also arrested accused Akbar in their presence near Sukhia Mori and prepared such memo. He was cross-examined but nothing favourable to accused comes on record.

18. The prosecution also produced and examined an important witness, the **investigation officer** namely Manzoor Ali as PW-12, who deposed that on 20.03.2012 he was posted as SIP/SHO at PS Khero Dero, where complainant Hamzo Khan Rodnani came at PS, who disclosed story of cognizable offence, hence he lodged crime No.01/2012. He deposed that he prepared memo of injuries of injured Hamzo, Saeen Bux, Kando, Mazar, Qurban and Abbas in presence of mashirs Manzoor Hussain and Imdad on the same day and injured were also referred to RHC Bhan for treatment and report. At the pointation of complainant he inspected place of occurrence in presence of same mashirs. From place of occurrence he secured original CNIC of accused Bakir, 12 bore six cartridges, out of which four were red and two white and five empties of pistol. There were foot print marks of 10-11 persons and prepared such memo. He also recorded 161 Cr.P.C statements of Saeen Bux, Kando, Abbas, Mazar and Qurban. On 23.03.2012, He arrested accused Manzoor, Ali Mohammad and Niaz Ahmed near Sukhia mori in presence of same mashir and prepared such memo. On 28.03.2012 he secured lathies used in the commission of offence at the pointation of accused Manzoor Ahmed and Ali Mohammad from their house and prepared such memo. On 30.03.2012 he submitted challan in the Court of law. He further deposed that on 24.07.2012 he was available at PS Khero Dero, where he got spy information that absconding accused Bakir

alongwith abductee Mst.Pathani were making their house with straw hut in village Mathiyoon Jatiyoon and on such information he left PS vide Roznamcha entry No.06 at 1100 hours along with subordinate staff H.C Abdul Hameed, PC Barkat Ali, PC Rahim Ali, PC Mohammad Yakoob and complainant Hamzo and kept such entry at PS Babjha District Benazirabad and proceeded towards pointed place and reached at the house of accused Bakir. The abductee Mst. Pathani, who seeing police party and her father came there running. Due to non-availability of private mashirs in presence of HC Abdul Hameed and PC Rahmat Ali prepared such memo of recovery of girl. On 25.03.2012 Mst. Pathani was referred to WMO for examination and report and after her examination she was produced before the court of magistrate for recording her 164 Cr.P.C. statement and her 164 Cr.P.C statement was got recorded and thereafter she was handed over by court to her legal heirs according to her wishes. On 26.07.2012, he arrested absconding accused Akber Rodnani from Sukhia Mori in presence of H.C Abdul Hameed and PC Rahmat Ali and prepared such memo and thereafter he submitted supplementary challan before the competent court. He was cross-examined but his evidence not been shattered.

19. The evidence produced by the prosecution as discussed above is full of confidence-inspiring, reliable and trustworthy. The six injured eyewitnesses fully supported the case on each respects and their evidence was further corroborated by the medical evidence. Most of them are the inmates of the house and some of them are residing adjacent the house of the complainant and are natural witnesses. The victim girl Mst. Pathani the daughter of the complainant aged about 16 years which was kidnapped by the accused persons was recovered after about four months which she

remained with the accused persons, from the accused. The victim girl was examined by the lady doctor where her pregnancy test was conducted and the result of test was positive. **An ultrasound was also conducted from the private clinic which shows single alive 09 weeks pregnancy.** During cross-examination lady doctor explained by stating that in the government hospital facility of ultrasound was not available therefore the same was conducted at the private clinic. The evidence of all these injured witnesses cannot be discarded only for the reasons that they are related to the complainant party in absence of strong enmity or ill-will, which however was not suggested against them during the cross-examination. Reliance can be placed on the cases of **Lal Khan v. State (2006 SCMR 1846)**, **Farooq Khan v. The State (2008 SCMR 917)**, **Nazir v. The State (PLD 1962 SC 269)** and **Sheruddin v. Allhaj Rakhio (1989 SCMR 1461)**.

20. The plea raised by the learned counsel for the appellants that there were general allegations against the appellants of causing injuries to the injured eyewitnesses and it has not been established beyond doubt as who caused the injuries to whom has no force, as all the witnesses deposed that the appellants actively participated in the commission of offence and caused injuries to six persons and the evidence of witnesses was corroborated by medical evidence including the recovery of crime empties from the place of wardat, and recovery of crime weapons from some of the appellants, Reliance can be placed on the case of **Muhammad Riaz and another V. The State and another (2007 SCMR 1413)**, it was held as under:-

6. A glance at the particulars of injuries would clearly show that these injuries were caused from some distance. In the ordinary course of events, it would thus, be difficult to ascertain as to which of the injuries was caused by which of the appellants. Even one of the injuries could have been caused by the fire attributed to

co-accused Abdul Khaliq who stands acquitted at the trial and is, no longer available before this Court in the present appeal and petition for leave to appeal. The Medical Officer has pointed out that both injuries were sufficient to cause death in the ordinary course of nature. It would thus, mean that both the injuries were individually and collectively sufficient in the ordinary course' of nature to cause the death of the deceased. During the course of cross-examination, Medico-Legal Expert did not deny the possibility that both the injuries on the person of the deceased could be the result of a single fire. **Since it is very difficult and not easily ascertainable as to which of the accused out of three assailants was responsible for causing these injuries, discretion in the matter of sentence exercised by the trial Court in our considered view does not suffer from perversity or any arbitrariness.**

21. As regards to the contention of learned counsel for the appellants that crime weapon used by the appellants at the time of offence was not recovered from all the appellants, therefore, the appellants cannot be connected with the alleged offence, has no force in view of the fact that all the prosecution witnesses supported the case of prosecution and their direct evidence is further corroborated by medical evidence, and the recovery of the empties of from the place of wardat. The evidence of victim girls was also supported by the medical evidence as discussed above. It is settled by now that where charge was proved by other direct, natural and confidence inspiring evidence, then non-recovery of crime weapon was not fatal to the prosecution case. Reliance is placed on the case of **Sikander Teghani alias Muhammad Bux Teghani V. The State (2016 Y L R 1098)**.

22. No doubt there are some minor contradictions and discrepancies in the case which in my view are not sufficient to discard the evidence of **six injured eye witnesses and victim girl who was recovered from the house of accused having pregnancy of 09 weeks** and was remained with accused persons for about four months after she was kidnapped by them. It is settled by now that

when the courts are deciding a criminal case they must keep in mind that they are also guardians of the citizens and that the complainant/victims' rights cannot be ignored and where in the evidence prosecution established its case beyond reasonable doubt then if there may some minor contradictions which always are available in each and every case as no one can give evidence like photograph, such may be ignored, Reliance is placed on the case of **Zakir Khan V. The State (1995 SCMR 1793)**, wherein Honourable Supreme Court has held as under:-

“13. The evidence recorded in the case further indicates that all the prosecution witnesses have fully supported each other on all material points. However, emphasis has been laid by Mr. Motiani upon the improvements which can be found by him in their respective statements made before the Court and some minor contradictions in their evidence were also pointed out. A contradiction, unlike an omission, is an inconsistency between the earlier version of a witness and his subsequent version before the Court. The rule is now well established that only material contradictions are to be taken into consideration by the Court while minor discrepancies found in the evidence of witnesses, which generally occur, are to be overlooked. There is also a tendency on the part of witnesses in this country to overstate a fact or to make improvements in their depositions before the Court. But a mere omission by witness to disclose a certain fact to the Investigating Officer would not render his testimony unreliable unless the improvement made by the witness while giving evidence before the Court has sufficient probative force to bring home the guilt to the accused.”

23. I have carefully scanned the entire evidence produced by the prosecution and on reassessment of the evidence; found that the prosecution has proved its case against the appellants beyond a reasonable doubt by producing independent, trustworthy, reliable and confidence-inspiring evidence in the shape of oral evidence as well as medical evidence coupled with other corroborating evidence. Thus based on the discussion made hereinabove I, uphold all the sentences, fines, and penalties for each offence in the judgment whilst dismissing the Cr. Appeals No.S-04 of 2014 and S- 79 of 2015.

24. These are the reasons of my short order dated: 21-06-2021, wherein the Cr. Appeals No.S-04 of 2014 and S-79 of 2015,

were dismissed and the appellants Manzoor Ahmed, Ali Muhammad, Niaz Hussain, Illahi Bukhsh, Taj Muhammad, Dawan and Ahmed, who were present on bail and were taken into custody. They were remanded to Central Prison Hyderabad to serve out their remaining sentence, their bail bonds were cancelled and surety was discharged.

J U D G E