

**IN THE HIGH COURT OF SINDH, CIRCUIT COURT,
HYDERABAD**

Criminal Appeal No.S-87 of 2020

Appellant: Shafique Ahmed Son of Muhammad Siddique
through Mr. Noor-ul-Haq Qureshi, Advocate.

Respondent: The State, through Ms. Sana Memon, A.P.G for
the State.

Date of hearing: 09-05-2022

Date of decision: 09-05-2022

JUDGMENT

IRSHAD ALI SHAH, J: It is alleged that the appellant with two unknown culprits by committing trespass into house of complainant Ghulam Mustafa attempted to abduct his sister-in-law Mst. Afshan with intention to subject her to rape for that he was booked and reported upon. After due trial, the appellant was convicted for offence punishable under section 365-B/511 P.P.C and sentenced to undergo imprisonment for Ten years and to pay fine of Rs.50,000/- and in default whereof to undergo simple imprisonment for five months by learned Additional Sessions Judge-IV/Gender Based Violence Court Dadu vide Judgment dated 29.02.2020, which is impugned by the appellant before this Court by preferring the instant criminal appeal.

2. 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; the F.I.R of the incident has

been lodged with delay of about 4½ hours and evidence of prosecution's witnesses being doubtful in its character has been believed by the learned Trial Court without lawful justification, therefore, the appellant is entitled to his acquittal by extending him benefit of doubt.

3. Learned A.P.G for the State by supporting the impugned judgment, has sought for dismissal of instant criminal appeal by contending that the prosecution has been able to prove its case against the appellant beyond shadow of doubt.

4. Heard arguments and perused the record.

5. As per complainant and PW Zaheer Ali the appellant with rest of two culprits came at their house, on their motorcycle and attempted to abduct Mst. Afshan with intention to subject her to rape. The appellant was apprehended, who sustained injuries on account of his fall on the ground while rest of the culprits made their escape good. The appellant then was produced before the police with formal registration of F.I.R. It was lodged with delay of about 4½ hours. Where the appellant was kept about 4½? It is not made known by the prosecution. In that situation, delay in lodgment of F.I.R could not be lost sight of. PW Muzafar Ali who happened to be available at place of incident has not been examined by the prosecution. The inference which could be drawn for his non-examination would be that he was not going to support the case of prosecution. PW Mst. Afshan when was examined was fair enough to admit that

her 161 Cr.P.C statement was recorded on 05.12.2018. It was with delay of 12 days to the incident. No explanation to such delay is offered, therefore, such delay could not be ignored which apparently has put her within ambit of managed witness. Nothing has been brought on record which may suggest that the appellant has actually sustained injuries on account of his fall on the ground when was apprehended allegedly by the complainant party. SIO/SIP Mukhtiar Ali was fair enough to admit that he did not record statement of independent person from the vicinity, such failure on his part to ascertain the correctness of the incident could not be overlooked. It is not appealing to common sense that the appellant being stranger together with rest of two unknown culprits while riding on a single motorcycle would go to abduct a married lady from her house that too in presence of her family members. Something wrong in between has occurred. In these circumstances, it could be concluded safely that the prosecution has not been able to prove its case against the appellant beyond shadow of doubt and to such benefit he is found entitled.

6. In case of *Mehmood Ahmed & others vs. the State & another* (1995 SCMR-127), it was observed by the Hon'ble Court that;

"Delay of two hours in lodging the FIR in the particular circumstances of the case had assumed great significance as the same could be attributed to consultation, taking instructions and calculatedly preparing the report keeping the names of the accused open for roping in such persons whom ultimately the prosecution might wish to implicate".

7. In case of *Abdul Khaliq vs. the State (1996 SCMR 1553)*, it has been held by Hon'ble Court that;

"Late recording of statements of the prosecution witnesses under section 161 Cr.P.C. Reduces its value to nil unless delay is plausibly explained."

8. In case of *Muhammad Mansha Vs. The State (2018 SCMR 772)*, it has been held by the Hon'ble Apex court that;

"4. Needless to mention that while giving the benefit of doubt to an accused it is not necessary that there should be many circumstances creating doubt. If there is a circumstance which creates reasonable doubt in a prudent mind about the guilt of the accused, then the accused would be entitled to the benefit of such doubt, not as a matter of grace and concession, but as a matter of right. It is based on the maxim, "it is better that ten guilty persons be acquitted rather than one innocent person be convicted".

9. In view of the facts and reasons discussed above, the appellant is acquitted of the offence, for which he was charged, tried and convicted by learned Trial Court in present case, he shall be released forthwith, if not required to be detained in any other custody case.

10. Above are the reasons of short order of even date whereby the instant criminal appeal was allowed.

JUDGE

Muhammad Danish*

