

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

Criminal Jail Appeal No.S-209 of 2021

Appellant: Gul Muhammad @ Javed Son of Gulsher Khoso
through Mr. Safdar Ali Charan, Advocate.

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

Date of hearing: 23-05-2022.

Date of decision: 27-05-2022.

JUDGMENT

IRSHAD ALI SHAH, J: The appellant was convicted u/s: 376 P.P.C for committing rape allegedly with Mst. Shaila, a young girl of 14/15 of age and was sentenced to undergo rigorous imprisonment for 14 years and to pay fine of Rs.100,000/- to the said victim and in default whereof to undergo simple imprisonment for seven months with benefit of section 382-B Cr.P.C by learned Additional Sessions Judge-IV/Gender Based Violence Court Dadu vide judgment dated 28.10.2020 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; DNA is not supporting the case of prosecution and evidence of the 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. None has come forward to advance arguments on behalf of the complainant. However, learned Assistant Prosecutor General, Sindh has sought for dismissal of instant criminal appeal by supporting the impugned judgment.

4. Heard arguments and perused the record.

5. It was stated by the complainant that on the date of the incident his sister Mst. Shaila went to make purchase of milk, she did not return, therefore, he and his mother Mst. Shahida went to make search for her, when they reached adjacent to the house of the appellant, there they heard cries of Mst. Shaila. On hearing of her cries, they went inside of the house of the appellant and found him committing rape with her, he then made his escape good. On inquiry, Mst. Shaila told them that the appellant has committed forcible rape with her. Mst. Zahida has not been examined by the prosecution, for no obvious reason. Inference which could be drawn of her non-examination in terms of article 129 of Qanoon-e-Shahadat 1984 would be that she was not going to support the case of prosecution. Mst. Shaila when was examined has supported the complainant by stating that the appellant has committed forcible rape with her. Surprisingly, the evidence of the complainant and Mst. Shaila is not taking support from the DNA report. As per DNA report which is produced in evidence by Dr. Irfana Pirzada, the

appellant is not found contributor of semen and stains/Sperm Fractions identified on Viginal/thigh swabs samples and clothes of the victim Mst. Shaila. Such report could not be overlooked. It obviously has absolved the appellant from the allegation of rape with PW/victim Mst. Shaila. Besides this I.O/ASI Ghulam Rasool during course of his examination was fair enough to admit that in charge sheet he has rendered his opinion that the appellant has not committed rape with the victim/PW Mst. Shaila. The opinion of the investigating officer based on investigation could not be lost sight of. In these circumstances, it could be concluded safely that the prosecution has not been able to prove the involvement of the appellant in alleged incident beyond shadow of doubt.

6. 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".

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

8. The instant appeal is disposed of accordingly.

JUDGE