

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

Criminal Appeal No.S-188 of 2020

Appellant: Ali Raza Son of Shahabuddin Panhwar through
Mr. Sajjad Ali Gopang, Advocate.

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

Date of hearing: 08-04-2022.

Date of decision: 08-04-2022.

JUDGMENT

IRSHAD ALI SHAH, J: The appellant, being boy of 18 years of age, for allegedly committing rape with baby Saira, a girl aged about 10/11 years was convicted u/s: 376 P.P.C and sentenced to undergo R.I for ten (10) years with fine of Rs.100,000/- and in default whereof to undergo simple imprisonment for ten months with benefit of section 382-B Cr.P.C by learned Additional Sessions Judge-IV/Gender Based Violence Court Dadu vide judgment dated 29.10.2020 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 party; the complainant is not eyewitness of the incident; the F.I.R of the incident has been lodged with delay of about three days; 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 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 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. Initially the incident was recorded in *Roznamcha*; such entry having been produced in evidence by I.O/ASI Shamsuddin is not containing the name of the appellant; it was disclosed subsequently by complainant Ali Nawaz by lodging his F.I.R on 3rd day of the incident, such disclosure obviously is based on consultation and deliberation, which has made the involvement of the appellant to be doubtful. PW Saddam, who allegedly witnessed the incident together with Mst. Haleeman @ Guddi, has not been examined by the prosecution. His non-examination suggests that he was not going to support the case of prosecution. PW Mst. Haleeman @ Guddi and PW/victim Baby Saira no doubt have supported the case of prosecution by leveling allegation of rape against the appellant but DNA report produced by woman medical officer Dr. Samina is not

supporting the allegation of rape against the appellant. As per such report the profile/semen and stains/Sperm Fractions obtained from Viginal/Rectal swabs of the victim are not matched with blood samples of the appellant; such report could not be overlooked. It obviously has absolved the appellant from the allegation of rape with PW/victim Baby Saira. 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 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 *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".

8. 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.

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

JUDGE

Muhammad Danish*