

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

Criminal Appeal No.S-86 of 2020

Date of hearings: 10.10.2022
Date of decision: 10.10.2022
Date of reasons 12.10.2022
Appellant: Shakeel
Through Mr. Imtiaz Ali Abbasi, advocate
The State: Through Mr. Fayaz Hussain Saabki, APG

JUDGMENT

MUHAMMAD IQBAL KALHORO, J:- Appellant stood a trial in Sessions Case No.129 of 2019 arising out of FIR No.93/2019 of PS SITE Kotri registered u/s 376, 337-F(vi), 337-L(2) PPC for committing rape with a minor daughter of complainant, Ameena aged about 10 years, in her house situated in Labour Colony Kotri on 11.03.2019 at about 05:00 pm and causing injuries to complainant who, when returned to home after running an errand, found appellant doing the said act to her daughter, tried to intervene, has been convicted and sentenced to rigorous imprisonment for 10 years and to pay fine of Rs.50,000/-, in default, to suffer SI for 03 months more u/s 376 PPC with benefit of Section 382-B CrPC, vide impugned judgment dated 10.03.2020, which he has challenged in the appeal in hand.

2. I have heard learned defense counsel and learned Assistant PG. The latter has supported the impugned judgment.

3. Learned defense counsel has, however, pleaded for acquittal of the appellant on the grounds that he is innocent and has been falsely implicated in the case; there is delay in registration of FIR; there are contradictions in the evidence of witnesses and PW Imdad Ali has not supported the manner of arrest of appellant and his evidence has created doubt over veracity of prosecution case; the Medico Legal Officer has clearly stated in her deposition that no marks of violence were found over the victim and there was no fresh blood oozing out of her vagina; there are no eyewitnesses and that there should be at least two witnesses to support the allegation of rape against a victim. In

support of his contentions, learned counsel has relied upon 2021 MLD 169, 2020 P Cr. L J Note 10 and 2017 YLR 1270.

4. In the trial, prosecution has examined 09 witnesses: complainant, victim minor Ameena, Medico Legal Officer, et al who have produced all the relevant documents: FIR, Medico Legal Certificates, DNA report, relevant memos etc. Appellant in his statement u/s 342 CrPC has simply denied prosecution case without however examining himself on oath or leading any evidence in defense. After a full-dressed trial and hearing the parties, the trial court has convicted and sentenced the appellant in the terms as stated above.

5. The incident took place on 11.03.2019 at about 05:00 pm, report of which however was made to the police in terms of Section 154 CrPC on 12.03.2019 when complainant appeared at Police Station concerned and narrated the entire incident. Nonetheless, the medical record produced by the lady doctor (PW-4) in her deposition (Ex-7) shows that the victim under the police docket was medically examined at about 06:35 pm. Meaning thereby the complainant had reached the police soon after the incident and informed them what had happened and obtained a letter for medical examination of the victim. This fact is further confirmed from the evidence of complainant. In the medical report, although it is stated that there was no marks of violence over the relevant region of the victim but there was swelling and redness of about 2 x 1 cm on left side of vagina and laceration of about 1 cm present at introitus which is a clear-cut sign of intercourse with her. Further, the report shows that her hymen was found ruptured and vaginal orifice irregular with one finger easily accepted. On the basis of such observation, the lady doctor formed an opinion that minor victim had lost her virginity but in order to crosscheck her opinion, she collected certain articles i.e. clothes of victim, vaginal swabs, ample of victim, her blood samples and handed over to the investigating officer for DNA report. The DNA Report (Ex.7/C) has in fact confirmed opinion of the lady doctor and has concluded that appellant is the contributor of semen stains/sperm fractions identified on clothes of victim Ameena.

6. It is important to note that articles belonging to the victim, under the permission of the SSP concerned, were deposited in the Lab. of Liaquat University Medical Hospital Jamshoro for DNA Test on 15.03.2019 before arrest of the appellant on 17.03.2019. After his

arrest, appellant was produced on 18.03.2019 before Medico Legal Officer for examination and blood sample for DNA Test. The investigating officer received blood sample of appellant on 25.03.2019 and deposited the same in the same Lab. for DNA profile. The samples / articles belonging to the victim Ameena were deposited on 15.03.2019 and after 10 days i.e. 25.03.2019 the blood samples of appellant were deposited in the Lab for DNA Report. So there was no chance of any manipulation in arranging blood samples of victim and of the appellant together for contriving evidence and getting positive report.

7. Complainant (PW-1) in her evidence (Ex-4) has supported the incident in unambiguous words. She has narrated the story in detail as to how she found the appellant in her home committing rape with her daughter and how he escaped after pushing her away when she tried to catch him; and that she then had called PW-3 Nawab Khatoon (Ex.6), her sister for help, who came and took the victim and her to hospital for medical examination. Victim Ameena has been examined as PW-2 (Ex.5). Being minor, she was subjected to intelligence test to ascertain her capacity to give evidence, which she successfully qualified. She has implicated the appellant in the offence in unequivocal words. She has narrated the whole story as to how from school appellant Shakeel, already known to her, brought her to home and under what pretext, and then committed rape with her. Although there are few variances over events occurring either before or after the incident in regard to completion of formalities and preparation of documents etc., but they being ancillary in nature do not impinge the intrinsic value of the prosecution case. Insofar as the main incident is concerned, no discrepancy is found in their evidence.

8. It is clear from above discussion that allegations of commission of rape are not only established from the oral evidence of the witnesses but also from medical evidence including DNA report in which in specific words it is mentioned that appellant is the contributor of semen stains/sperm fractions identified on clothes of victim. Victim Ameena, as confirmed by the lady doctor, has lost virginity at the age of 10 years. Non availability of marks of violence on her body would not negate the case of prosecution, resistance from a girl of 10 years, which may have resulted into violent marks on her body, in the face of aggression by a grownup man cannot be anticipated. Even otherwise, there is no motive on the part of the complainant and victim to falsely implicate the

appellant in a case of a serious nature such as this and substitute him with a real culprit. The prosecution has been able from all corners, to prove the case against appellant beyond a reasonable doubt. Appellant has failed to bring on record any material indicating that he has been implicated in this case falsely. The witnesses have stood ground in cross-examination and insofar as the incident is concerned, no material contradiction has come on record.

9. The case has been proved beyond a doubt and therefore this appeal is dismissed and conviction and sentence awarded to the appellant by the trial court is maintained. However, the notice given to the appellant u/s 439 CrPC is hereby discharged. The appellant is on bail. His bail is cancelled and surety discharged. He is taken into custody and remanded back to serve out the remaining sentence. These are the reasons of short order dated 10.10.2022.

10. Office is directed to send a certified copy of this judgment to the Senior Superintendent, Central Prison and Correctional Facility Hyderabad for onward submission to appellant Shakeel.

JUDGE