

**IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR**  
Criminal Jail Appeal No. S- 37 of 2022

Appellant: Nawab S/o Ghulam Qadir Lodro,  
**through** M/s Rukhsar Ahmed M. Junejo  
and Raja Iftikhar Hussain Ansari,  
Advocates

The State: Mr. Imran Mobeen Khan, Assistant  
Prosecutor General Sindh

Date of hearing: 01.12.2023  
Date of judgment: 01.12.2023

**J U D G M E N T**

**IRSHAD ALI SHAH, J-** The appellant is alleged to have committed rape with baby Hina a girl aged about 7/8 years, for that he was booked and reported upon. On conclusion of trial, he was convicted under Section 376(1) PPC and sentenced to undergo rigorous imprisonment for 10 years with fine of Rs.50,000/- and in default whereof to undergo simple imprisonment for 03 months with benefit of section 382(b) Cr.P.C by learned IV-Additional Sessions Judge, Khaipur vide judgment dated 12.05.2022, which he has impugned before this Court by preferring the instant Criminal Jail 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 DNA report is negative and evidence of the PWs being doubtful in its character has been believed by learned trial Court without lawful justification, therefore, the appellant is entitled to be acquitted by extending him benefit of doubt. In support of their contention they relied upon case of *Atif Zareef & others Vs. The State (PLD 2021 SC 550)*.

3. Learned Assistant PG for the State by supporting the impugned judgment by contending that the prosecution has proved its case against the appellant beyond shadow of reasonable doubt.

4. Heard arguments and perused the record.

5. The FIR of the incident does not contain the name and descriptions of the appellant, those were disclosed by complainant Sajjad Hussain later-on by way of further statement, which could hardly be treated as a part of FIR; the complainant, PW Hadi Bux and PW Baby Hina have implicated the appellant in commission of incident by identifying him at the trial. As per DNA report brought on record through Dr. Shams-u-Nisa, the vaginal swabs of the victim do not contain any male DNA Semen stain/Sperm fraction and the appellant is not contributor of semen stain/sperm fraction identified on her clothes. If such DNA report is believed to be true, then it absolves the appellant from allegation of rape with baby Hina as was alleged against him by the complainant and his witnesses. The evidence of PW/mashir Manzoor Hussain and that of Investigating Officer SIP Darya Khan is not enough to improve the case of prosecution. In these premises the plea of innocence which the appellant has taken at trial during course of his examination under section 342 Cr.P.C duly supported by his statement on oath and DW Muhammad Idrees could not be overlooked.

6. The conclusion which could be drawn of above discussion would be that the prosecution has not been able to prove its case against the appellant beyond shadow of reasonable doubt and to such benefit he is found entitled.

7. In the 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 the facts and reasons discussed above, the conviction and sentence awarded to the appellant under impugned judgment are set aside, he is acquitted of the offence with which he was charged, tried, convicted and sentenced by learned trial Court; and 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 Jail Appeal was allowed.

J U D G E