

IN THE HIGH COURT OF SINDH, AT KARACHI

Criminal Appeal No. 504 of 2022

Appellant: Ali Shah Khan through Mr. Abdul Majeed Khoso, advocate

The State: Mr. Khadim Hussain Khuharo, Additional Prosecutor General Sindh

Date of hearing: 07.08.2023

Date of judgment: 07.08.2023

J U D G M E N T

IRSHAD ALI SHAH, J- The appellant is alleged to have committed rape with Baby Faiza, a girl aged about 12 years, for that he was booked and reported upon. On conclusion of trial, he was convicted under Section 376 PPC and sentenced to undergo rigorous imprisonment for 10 years and to pay fine of Rs.10,000/- and in default whereof to undergo simple imprisonment for 03 months with benefit of section 382(b) Cr.P.C by learned II-Additional Sessions Judge, Karachi Central vide judgment dated 27.07.2022, which he has impugned before this Court by preferring the instant 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 FIR of the incident has been lodged with unexplained delay of about 08 days; DNA report is not implicating the appellant in commission of incident and evidence of the PWs being doubtful in its character has been believed by the learned trial Court without lawful justification. By contending so, he sought for acquittal of the appellant by extending him benefit of doubt.

3. Complainant Khalid Ali and PW-Mst. Faiza by filing their affidavits have recorded no objection to the acquittal of the appellant. However, learned Addl. PG for the State by supporting the impugned judgment has sought for dismissal of the instant appeal by contending that the prosecution has been able to prove its case against him beyond shadow of doubt.

4. Heard arguments and perused the record.

5. The complainant is not eyewitness of the incident, therefore, his evidence hardly lend support to the case of prosecution. The FIR of the incident has been lodged with delay of about 08 days; such delay having not been explained plausibly could not be overlooked. It is reflecting consultation and deliberation. Mst. Komal who actually was intimated about the incident by PW Faiza has not been examined by the prosecution. The inference which could be drawn of her non-examination in terms of Article 129(g) of Qanun-e-Shahadat Order, 1984, would be that she was not going to support the case of prosecution. PW-Mst. Faiza has been subjected to medical examination with further delay of about 03 days even to FIR such delay could not be overlooked. As per DNA report, no seminal material was identified on vaginal swabs of PW-Mst. Faiza, which apparently absolves the appellant from allegation of rape leveled against him by Mst. Faiza. She even otherwise as per Medical Officer Dr. Mehak Irfan was found to be sexual active. The appellant has pleaded innocence. In these circumstances, it would be safe to conclude that the prosecution has not been able to prove the involvement of the appellant in commission of incident beyond shadow of reasonable doubt.

6. In case of *Mehmood Ahmed & others vs. the State & another (1995 SCMR-127)*, it was observed by the Apex 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 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 by way of impugned judgment are set aside, consequently, he is acquitted of the offence for 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. The instant Criminal Appeal is disposed of accordingly.

JUDGE