

# IN THE HIGH COURT OF SINDH, AT KARACHI

Criminal Jail Appeal No. 13 of 2023

Appellant: Khurram Nasir through Mr. Ahmed Khan Khaskheli, advocate

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

Date of hearing: 22.09.2023

Date of judgment: 22.09.2023

## J U D G M E N T

**IRSHAD ALI SHAH, J-** The appellant is alleged to have committed rape with Mst. Mahnoor, a young girl aged about 21 years, for that he was booked and reported upon by the police. 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.25,000/- and in default whereof to undergo simple imprisonment for 01 month with benefit of Section 382(b) Cr.P.C by learned IInd-Additional Sessions Judge, Karachi Central vide judgment dated 29.11.2022, 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 on account of his refusal to marry with the alleged victim; the FIR of the incident has been lodged with unexplained delay of about 25 days and evidence of the PWs being doubtful in its character has been believed by the learned trial Court without assigning cogent reasons, therefore, the appellant is entitled to be acquitted of the charge by extending him benefit of doubt, which is opposed by learned Addl. PG for the State by contending that the

prosecution has been able to prove its case against the appellant beyond shadow of doubt.

3. Heard arguments and perused the record.

4. It was stated by PW Mst. Mahnoor that on 25.08.2019 when she was sleeping in her house; she woke up on hearing knock at the main door of her house; there she find the appellant who disclosed to her that he has come to know about the health of her mother Mst. Shamsa Mahjabeen being friend of his brother-in-law; he then forcibly took her inside of the room of her house, locked its door and then committed rape with her; on her cries there came her mother, on inquiry she related the incident to her; she then got woke up her father Muhammad Gohar Khan and then on 19.09.2019 her mother lodged report of the incident with PS Joharabad Karachi. It was lodged with delay of about 25 days to actual incident. No plausible explanation to such delay is offered by the complainant party which prima facie suggests deliberation and consultation. It was further stated by PW Mst. Mahnoor that she then was got examined medically by the police. As per Medical Officer Dr. Saima Sehar, no mark of injury was seen on all over the body of Mst. Mahnoor; her external genitalia was normal, her hymen was torn and healed and her vagina was admitting two fingers loosely; her vaginal swabs were taken and then were sent for DNA report. As per DNA report no male semen stain/sperm fraction was found in vaginal swab of Mst. Mahnoor. However, the appellant was found to be contributor to semen stain/sperm fraction on her trouser. It is strange to note that trouser was kept with her by Mst. Mahnoor, without being washed for about 25 days that too without lodgment of formal FIR of the incident. As per the

complainant and PW Muhammad Gohar Khan they responded to the incident on cries of PW Mahnoor; such response on their part is unnatural; they being elders of the family have responded to the knock allegedly made by the appellant at their house to prevent the occurrence, which they failed to do, which prima facie suggests that they are not natural witnesses to the incident. Even otherwise, their evidence is of little help to the case of prosecution for the reason that they allegedly responded to cries of PW Mahnoor at the time when the incident was virtually over. I.O/SIP Aijaz Ahmed could not be examined by the prosecution on account of his death. The appellant in his statement recorded under Section 342 Cr.PC has pleaded innocence; such plea on his part could not be lost sight of.

5. The discussion involved a conclusion 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.

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 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. Above are the reasons of short order of even date, whereby the instant Criminal Appeal was allowed.

JUDGE