

IN THE HIGH COURT OF SINDH, AT KARACHI

Criminal Jail Appeal No. 214 of 2023

Appellant: Muhammad Adil through Mr. Naresh Kumar, advocate

The State: Through Ms. Seema Zaidi, Additional Prosecutor General for the State

Date of hearing: 16.05.2024

Date of judgment: 16.05.2024

J U D G M E N T

IRSHAD ALI SHAH, J- It is the case of the prosecution that the appellant allegedly subjected P.W Mst. Razia to rape and then threatened her with dire consequences, if she related the incident to anyone, for that he was booked and reported by the police. After completion of the trial, he was convicted u/s 376 PPC and sentenced to undergo rigorous imprisonment for 10 years with a fine of Rs.25000/- and in default in payment whereof to undergo simple imprisonment for two months; he was further convicted u/s 506 PPC and sentenced to undergo rigorous imprisonment for two years; both the sentences were directed to run concurrently with the benefit of Section 382(b) Cr.PC, by learned Jnd-Additional Sessions Judge, Karachi Central, vide judgment dated 29.03.2023, which is impugned by the appellant before this Court by preferring the instant Crl. Jail Appeal.

2. It is contended by learned counsel for the appellant that the appellant is innocent and has been involved in this case falsely by the complainant party and has been convicted and sentenced by learned trial Court based on misappraisal of evidence, therefore, he is entitled to his acquittal by extending him the benefit of the doubt, which is opposed by learned Additional Prosecutor General for the state by supporting the impugned judgment.

3. Heard arguments and perused the record.

4. Complainant Mst. Khursheed Begum is not an eyewitness to the incident, therefore, her evidence is of little help to the case of prosecution. P.W Mst. Razia who is crippled has implicated the appellant in the commission of the incident by stating that he has subjected her to rape in her house and has also threatened her with dire consequences; in case the incident is disclosed to anyone. As per Medical Officer Dr. Samia Seehar, no mark of violence was found all over the body of P.W Mst. Razia; her hymen was found torn and healed and she admitted in vagina two figures loosely. It prima facie suggests that Mst. Razia was not subjected to rape in the recent past. DNA report does not implicate the appellant in the commission of the incident. The lodgment of the FIR by the complainant with a delay of about three days with no plausible explanation which suggests deliberation and consultation. I.O/SIP Muhammad Zakir was fair enough to say that he did not record the statements of siblings or

paternal aunty of P.W Mst. Razia which was essential to prove the factum of the incident; such omission on his part prima facie suggests that the investigation of the present case was conducted by him casually. Evidence of P.W Mst. Irum Shaikh is only to the extent that she recorded 164 Cr.PC statement of Mst. Razia; it hardly needs discussion. The appellant during cross of his examination u/s 342 Cr.PC has denied the prosecution's allegation by pleading innocence and to prove his innocence, he has examined Mst. Rukhsana in his defence; such a plea of innocence on his part could not be lost sight of, in the circumstances of the present case.

5. The discussion involved a conclusion that the prosecution has not been able to prove its case against the appellant beyond a shadow of reasonable doubt and to such benefit he is found entitled.

6. In the case of *Mehmood Ahmed & others vs. the State & another* (1995 SCMR-127), it is held 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 is 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. Under the discussed circumstances, 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 and shall be released forthwith, if not required to be detained in any other custody case.
9. The instant Criminal Jail Appeal is disposed of accordingly.

JUDGE