

# IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD

**Criminal Appeal No.S – 15 of 2023**

**Appellant :** Yasir son of Abdul Jabbar by caste Magsi,  
Through M/s Noor-ul-Haq Qureshi and Saad  
Salman Ghani., Advocates.

**State :** Mr. Nazar Muhammad Memon, Addl.P.G,  
along with Complainant Abdul Wahid

**Date of hearing:** 15.03.2024

**Date of decision:** .05.2024

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

**KHADIM HUSSAIN SOOMRO, J.** The appellant was tried by learned Additional Sessions Judge-I, Tando Muhammad Khan, in Sessions Case No.130/2022, arising out of Crime No.16/2022, under Section 376 PPC, registered at Police Station Abadgar and by impugned judgment dated 04.01.2023, he has been convicted and sentenced to imprisonment for 15 years and fine of Rs.500,000/- (five lac) and in case of failure of payment of fine, he shall further suffer simple imprisonment for six months more.

2. The facts of the prosecution case in a nutshell are that the complainant, Abdul Wahid, registered an FIR that his daughter Mst. Ruksana W/o Abdul Malik, aged about 40 years, is the mother-in-law of the present appellant/accused who forcibly, on 07.03.2022 at about 11:30 pm, committed rape with her. The complainant further disclosed in FIR that on 09.03.2022, he and his son Irfan Gul Magsi went to the house of Mst Ruksana/victim, who disclosed such story of rape to them; therefore, on the same date 09.03.2022, such FIR was registered.

3. At trial, on 13.07.2022, a charge was framed against the accused U/S 376 PPC, to which he pleaded not guilty. The prosecution examined complainant Abdul Wahid at Ex.03, who produced an FIR at Ex.03/A. Victim Mst Rukhsana

was examined at Ex.04 and produced her statement U/S 164 Cr. P.C at Ex.04/A. PW Irfan Gul examined at Ex.05 who produced mashirnama of place of incident, mashirnama of bed sheet, mashirnama of cloth of victim, mashirnama of cloth of accused at Ex.05/A to Ex.05/D. Dr Muhammad Ayoub was examined at Ex.07, who produced a letter, provisional medical certificate, a carbon copy of a letter, DNA report, and final MLC at Ex.07/A to Ex.07/E. Dr. Zubaida was examined at Ex.08, who produced a copy of a letter, provisional MLC, and final MLC at Ex.08/A to Ex.08/E. Mashir/PC Wali Muhammad was examined at Ex.09, who produced mashirnama of arrest at Ex.09/A. PC Sher Muhammad examined at Ex. 10. IO/Inspector Ghulam Hussain examined at Ex.11 who produced entry No.16, letter, entry No.20, entry No.17, entry No.18, entry No.05, entry No.10, entry No.15, entry No.16 of register 19, entry No.22, entry No.15, at Ex.11/A to Ex.11/N. WHC Abbass Ali examined at Ex.12. Civil Judge & Judicial Magistrate Rozina Qambrani examined at Ex.13 who produced a statement at Ex. 13/A. Thereafter, learned ADPP closed the prosecution side of the evidence.

4. The appellant in his statement recorded under Section 342 Cr.P.C, denied the prosecution allegation by pleading innocence; however, he did not examine himself on oath or anyone in his defence.

5. On the conclusion of the trial, the appellant was found guilty of the above-said offence and was convicted and sentenced accordingly by the learned trial court by way of impugned judgment.

6. It is contended by learned counsel for the appellant that the appellant, being innocent, has been involved in this case falsely by the complainant. There is an unexplained delay in the lodgment of FIR. He further contended that the evidence from the prosecution witnesses, as well as Mst. Ruksana, being doubtful in its character, has been relied upon by a learned trial court without any lawful justification. He also contended that I.O., with malafide intentions, challaned the accused. He also contended that both P.W.s are interested; the complainant is the victim's father, and another PW is the victim's brother. He also

contended that the FIR, the statement of the victim U/S 164 Cr. P.C. and the examination-in-chief of the victim before this court are contradictory. He also contended that male medical officer Dr Muhammad Ayoub issued a report regarding the matching of sperms of the accused with bed sheet; it was also an issue at a belated stage. He also contended that the present case is the result of enmity between parties over agricultural land. By contending so, he sought the acquittal of the appellant.

7. Learned Addl. P.G for the State, by supporting the impugned judgment, has sought for dismissal of the appeal.

8. I have considered the above arguments and perused the record.

9. According to the details mentioned in the FIR, the incident of rape of Mst Rukhsana allegedly occurred on 07.07.20122 at 11:30 am. However, the matter was reported to the police on 09.03.2022, resulting in a 2-day delay. The distance from the police station to the place of occurrence is about 6 to 7 kilometers. No reasonable explanation for the delay, as mentioned above, has been provided. Even during their testimony in court, the prosecution witnesses did not mention the reason for the delay. Thus, the significant delay in initiating legal proceedings casts doubt on the credibility of the prosecution's case. The Reliance can be placed in the case of **"Haider Ali v. The State" (2016 SCMR 1554) and "Muhammad Siddique v. The State and others" (2019 SCMR 1048).**

10. No doubt, it is a well-established legal principle that in a rape case, the sole statement of the victim alone is enough to prove the charge against the accused. However, the statement must be independent, unbiased, and straightforward to establish the accusation. This particular case presents a distinctive set of circumstances, including the nature of the incident, conflicting statements from the victim and witnesses, lack of conclusive medical evidence, questionable recovery of the bed sheet, and flawed investigation. Later, I will delve into a comprehensive discussion of all these features.

11. The record reveals that the alleged incident took place on 07.03.2022, and the place of the incident was inspected on 10.03.2022. The memo of the place of the incident demonstrates the presence of a cart on which the alleged incident of rape took place, but the memo did not disclose the existence of a bed sheet. However, after half an hour on the same date, another memo was prepared by the I.O., which discloses that the alleged bed sheet was produced by the complainant to the I.O., but the contents of the memo are silent from where the alleged bed sheet was obtained by him. In his examination in chief, the complainant did not depose even a single word about the bed sheet. It is an admitted fact that the place of incident was inspected twice, as mentioned above, and the bed sheet was produced on the second time of inspection of the place of occurrence. Now, the question arises as to why the bed sheet was not presented when the place of occurrence was inspected the first time and a memo was prepared. Furthermore, the contents of the memo for the production of bed sheet do not show a semen stain over it. The existence of the bed sheet is not shown in the FIR, the 161 CrPC statements of all the P.W.s, or the 164 CrPC Statement of the victim. The bedsheet was dramatically recovered and produced by the complainant without producing it before the Doctor. The alleged bed sheet was retrieved on 10.03.2022, but it was sent to the Laboratory on 15.03.2022, after a lapse of five days, through PC Sher Muhammad; such delay in sending the bed sheet to the chemical examiner has not been explained. I.O. of the case admitted that at the time of inspection of the place of incident, one cart and iron box were there, but a bedsheet was not available. It is very strange that till the submission of the 173 report, the bed sheet was not produced before the I.O. In light of the above discussion, it is very much clear that the complainant manages the bed sheet.

12. It is imperative to note here that the appellant is the victim's son-in-law, but neither his wife recorded her statement nor was she produced before the trial court. As per the learned prosecutor, the matrimonial ties still exist between the spouses. It is highly unlikely for a daughter to have any kind of relationship with

the person who committed the rape of her mother. No independent witnesses from the vicinity came forward to support the prosecution's version despite the alleged occurrence taking place in a populated area.

13. Another important aspect of the present case is that the brother of the accused, Murtaza, has filed a Criminal Miscellaneous Application 87/2022 against the SHO PS Abadgar and others with the prayer for the transfer of the investigation from Inspector Ghulam Hussain Soomro to another police officer, citing concerns that said I.O had been influenced by the complainant party. The learned ADJ-II Tando Muhammad Khan dismissed the application through an order on 24.03.2022. However, the investigation officer was directed to record statements from independent witnesses in the vicinity. However, I.O. has not yet complied with these directions. Furthermore, as per the victim, on the day of the incident, all villagers/neighbours were going to attend the marriage ceremony at Hyderabad; however, as per the invitation card produced by the appellant at the time of the statement of the accused under section 342, CrPC. said marriage was fixed on 04.03.2022, which also falsify the instance of the victim. The I.O of the case admitted that the statement of independent witnesses had not been recorded, whereas the victim admitted that Hari Bheel and Kolhi used to reside just after the wall of the said house.

14. Another important piece of evidence worth discussing here is the evidence of Dr Muhammad Ayoob (PW4), who examined the appellant, but he did not find any marks of violence or abrasions on his body. His nails were normal, and no mud or debris were seen. He stated that all the DNA tests were negative. Dr. Zubaida, WMLLO, who examined the victim, categorically deposed that no abrasions, tears, bleeding, or discharge was seen. The uterus was A/V, N/size, with no adnexal pathology and no injury on the perineum. She stated that as per the DNA report and her final MLC, no rape was committed with the victim. It is also worth noting that the clothes worn by the appellant or by the victim on the day of the alleged incident were produced, but no semen stains were found on the clothes of either of them. Based on the aforementioned discussion, it is

clear that the ocular account does not align with the medical account. In this context the Reliance can be placed on a valuable insight in the case laws titled **"Muhammad Amir v. The State and another" (2018 YLR 2592) and "Muhammad Javed v. The State" (2019 SCMR 1920).**

15. A well-established principle in criminal law is that the prosecution must present every important piece of evidence to the accused while recording their statement under section 342, Cr.P.C. This allows the accused to answer the allegation leveled against him. It is well established that not meeting this mandatory requirement invalidates a trial. The only evidence that the prosecution has against the accused was a bed sheet, and no question was put in this regard in the statement of the accused under section 342 CrPC. On a query to the learned prosecutor submits that the matter be remanded to the trial for recording a fresh statement of the accused. Remanding the case is tantamount to address this gap. It is well-established in legal precedent that any evidence or circumstances that were not presented to the accused during the recording of his statement under section 342 of the Cr.P.C. cannot be used against them in the trial. In the specific situation, a significant gap had emerged in the prosecution's case due to an error or oversight by the court. It is important to note that the accused individuals should not be unfairly affected by this mistake or oversight. From my perspective, sending the case back to the trial court to address that gap, without considering the impact on the accused individuals, goes against the principles of justice. I have been guided by the unreported case law of the apex court in the case of Nusrat Ali Shar and other V/S The State In CR A No 24-K, 25-K, 26-K of 2018.

16. The burden of proof rests on the prosecution to establish its case beyond a reasonable doubt. If the prosecution fails to do so, the accused person is entitled to the benefit of the doubt. It is well-established that even a single circumstance that raises doubt in a reasonable person's mind is enough. A fundamental principle of law is that when there is uncertainty, the accused should

be granted the benefit as a matter of right, not as a favour. In the case of **Muhammad Mansha v. The State (2018 SCMR 772)**, the Hon'ble Supreme Court of Pakistan observed in paragraph No.4:

*"4... Needles 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 than ten guilty persons be acquitted rather than one innocent person be convicted. Reliance in this behalf can be made upon the cases of Tariq Pervez v. The State (1995 SCMR 1345), Ghulam Qadir and 2 others v. The State (2008 SCMR 1221), Muhammad Akram v. The State (2009 SCMR 230) and Muhammad Zaman v. The State (2014 SCMR 749)..."*

A similar view was taken in the case of **"Muhammad Imran v. The State" (2020 SCMR 857)**. The relevant part of the said judgment at Para No.5 reads as under:-

*".....It is by now well settled that benefit of a single circumstance, deducible from the record, intriguing upon the integrity of prosecution case, is to be extended to the accused without reservation; the case is fraught with many. It would be unsafe to maintain the conviction...."*

Reference can also be made to the cases of **Najaf Ali Shah v. The State (2021 SCMR 736)** and **The State through P.G. Sindh and others v. Ahmed Omar Sheikh and others (2021 SCMR 873)**.

17. Accordingly, the appeal is allowed. The conviction and sentence awarded to the appellant Yasir vide impugned judgment dated 04.01.2023 passed by learned Additional Sessions Judge-I, Tando Muhammad Khan, in Sessions Case No.130/2022, arising out of Crime No.16/2022, under Section 376 PPC, registered at Police Station Abadgar, is hereby set-aside. The appellant is acquitted of the charges. He shall be released forthwith if he is not required in any other custody case.

JUDGE