

**IN THE HIGH COURT OF SINDH CIRCUIT COURT,
HYDERABAD.**

Criminal Appeal No.D-44 of 2020

Present:

Mr. Justice Muhammad Iqbal Kalhoro.

Mr. Justice Amjad Ali Sahito.

Appellants : Ghulam Sarwar @ Sarwar and others
through Mr. Muhammad Sachal Awan
advocate.

Complainant : Saleem through Mr. Qalandar Bux
Leghari advocate.

Respondent : The State through Mr. Nazar Muhammad
Memon, Addl. P.G. Sindh.

Date of hearing: 10.08.2022.

Date of decision: 10.08.2022.

J U D G M E N T

AMJAD ALI SAHITO, J.- By this judgment, we intend to dispose of this Cr. Appeal No.D-44 of 2020 filed by the appellants namely Ghulam Sarwar @ Sarwar, Muhammad Hanif @ Hanif, Saddam Hussain @ Saddam and Mashooque Ali @ Mashooque against the judgment dated 23.07.2020 passed by learned Ist. Additional Sessions Judge, Tharparkar @ Mithi in Sessions Case No. 19/2020 "re: State vs. Ghulam Sarwar @ Sarwar and others" emanating from Crime No. 89/2019, registered at PS Chachro for offences under sections 376, 365, 342 and 34, PPC, whereby he convicted the appellants Muhammad Hanif @ Hanif, Saddam Hussain @ Saddam and Mashooque Ali @ Mashooque and sentenced to suffer imprisonment for life and to pay fine of Rs.50,000/- each and in case of default thereof to suffer SI for six (06) months more, whereas appellant Ghulam Sarwar @ Sarwar has also been convicted and sentenced to death with the direction that he be hanged by the neck till he is dead subject to confirmation by the High Court of Sindh as

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required u/s 374, Cr.P.C. He shall also pay a fine of Rs.200,000/- and in case of default thereof, to suffer Si for six (06) months more. All the sentences of imprisonment awarded to the appellants shall run concurrently. However, benefit of section 382-B, Cr.P.C. was extended to the appellants.

2. The facts of the prosecution case as unfolded in the F.I.R. are that the complainant namely Saleem s/o Jalaluddin Bajeer lodged the instant F.I.R. at police station Chachro on 15.12.2019 at 1330 hours whereby he stated that he has one son namely Nizamuddin who has got married to Mst.Haleema d/o Barkat Ali Bajeer about two years back in their village and that no issue has yet born from the wedlock. Due to the rainy season, he and his son Nizamuddin were sleeping at their granary on their land and his wife namely Mst. Rani who was deaf and his daughter-in-law namely Mst. Haleema both were sleeping in the house (situated in village Meenhal Bajeer, Taluka Chachro, District Tharparkar). In the early morning of 13.12.2019, his wife informed him through phone that she and Mst. Haleema were sleeping in the room of the house in the nighttime but when she woke up she found Mst. Haleema was not present on her cot and she was not available in the house and the house of their relatives. Thereafter, the complainant and his son Nizamuddin came together at their village/ home and apprised such facts to the notable persons namely Haji Muhammad Ameen s/o Muhammad Ramzan and Muhammad Habib s/o Hyder Ali and others and followed the footprints together and found footprints of Mst. Haleema alongwith footprints of two persons with the marks of dragging leading from western side of the house and missed at the metal road from Veejhiar to Thahario Halepoto. Thereafter he alongwith village people continued searching themselves in the surroundings as well as in Umerkot and Mithi informing through telephone but there was no clue. In the night of 14.12.2019 at about 9 O'clock one Ameen s/o Ramzan Bajeer informed him that his daughter-in-law was said to be available towards the house of one Jumo Bajeer; on which he alongwith

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his neighbourers reached at the house of Jumo and saw that about 10/15 persons were standing there and his daughter-in-law Mst. Haleema was sitting there and seems harassed and there was sand and dust on her head and her clothes were torn; complainant brought her at their house where in spite of being harassed she on inquiry while crying disclosed that in the night of incident she and her mother-in-law Mst. Rani were sleeping in their room where at about 11 p.m. one namely Sarwar s/o Noor Muhammad and Mashooque s/o Ameen Bajeer r/o Meenhal Bajeer entered the room who tied her mouth with piece of cloth and dragged her from the house towards western side and reached at the road where one car was available in which two persons were sitting to whom she identified as Sadam s/o Haroon and Hanif s/o Abbas Bajeer but she could not identify the driver who all forcibly got her seated in the car and abducted her towards unknown place in the jungle where she was detained in one 'chownra' (hut) in which fodder was lying where one namely Sarwar s/o Noor Muhammad and Mashooque s/o Ameen Bajeer had been committing rape with her forcibly for two nights and used to go away after throwing her in same fodder/ chownra after tying her hands, feet and mouth with piece of cloth. After hearing such facts from his daughter-in-law, complainant stayed at the village due to nighttime and after arranging conveyance, he appeared at police station on 15.12.2019 and lodged complaint for investigation with a request for issuing letter for medical check-up of his daughter-in-law Mst. Haleema.

3. After completion of usual investigation, I.O. submitted challan against the appellants before the competent Court of law.

4. Copies of the relevant documents were supplied to the appellants as Ex.01. Thereafter the learned trial Court framed the charge against the appellants as Ex.02, in which they pleaded not guilty and claimed to be tried, vide their plea(s)

as Ex. 3 to 6.

5. In order to establish their case, prosecution examined abductee/victim lady Mst. Haleema as PW-1 at Ex. 7, PW-2 Complainant Saleem at Ex. 8, and he produced copy of F.I.R. No. 89/ 2019 of P.S. Chachro at Ex. 9, PW-3 Dr. Usha Lohano, W.M.O. Civil hospital, Mithi at Ex. 11, she produced police letter at Ex. 12, Medico-Legal Certificate of victim lady Mst. Haleema at Ex. 13, copy of the letter addressed to the Incharge, Forensic & Molecular Biology Laboratory, LUMHS, Jamshoro / Hyderabad, for DNA Test and Analysis, bearing No. CS/ CH/ Mithi/ MLC/-219(1515/1518) date 16-12-2019, at Ex. 14, Report of Forensic & Molecular Biology Laboratory for DNA Test (DNA Test Report) bearing No. LUMHS/FML/61/2020 dated 23-01-2020, (consisting on 2 pages) at Ex. 15, and DNA Report/ Semen Analysis bearing No. CS/CH/Mithi/(197/200) dated 28-01-2020, at Ex. 16, PW-4 Dr. Mumtaz Ali, M.O. Taluka Headquarter Hospital Chachro at Ex. 17, he produced copy of police letter bearing No. 39/ 2019 dated 20.12.2019, at Ex. 18, and DNA Report/ Semen Analysis bearing No. MS/THQ/Chachro(159/62) dated 31-01-2020, at Ex. 19, mashir Anwar, Mst. Rani (complainant's wife) and Nizamuddin (complainant's son) were given up by the prosecution vide statement at Ex. 21 & 22., PW-5 mashir Muhammad Amin at Ex. 23, he produced mashirnama of place of incident (sarzameen) at Ex. 24, Mashirnama of handing over of sealed cloths of victim lady and her vaginal swabs by W.M.O. Dr. Usha to I.O./ ASI Kamal Khan at Ex. 25, Mashirnama of arrest of accused Saddam Hussain & Muhammad Hanif at Ex. 26, Mashirnama of arrest of accused Ghulam Sarwar at Ex. 27, Mashirnama of handing over of sealed cloths of accused Saddam Hussain, Ghulam Sarwar & Muhammad Hanif and their semen samples and blood samples by M.O. Dr. Mumtaz Ali to I.O./ ASI Kamal Khan at Ex. 28, Mashirnama of arrest of accused Mashooque Ali at Ex. 29, Mashirnama of handing over of sealed cloths of accused Mashooque Ali and his semen sample and blood sample by M.O. Dr. Mohan to I.O./ ASI Kamal Khan at Ex. 30, and affirmed his signatures thereon.

PW-6 Dr. Mohan, M.O. Taluka Headquarter Hospital Chachro was also examined at Ex. 31, he produced police letter bearing No. 89/ 2019 dated 29-12-2019 at Ex. 32, DNA Report/ Semen Analysis bearing No. MS/THQ/Chachro (155/58) dated 31-01-2020, at Ex. 33, PW-7 HC Abdul Sattar at Ex. 34, P.W. Habib was given up by the prosecution vide statement at Ex. 35. PW-8 PC Shah Muhammad at Ex. 36, PW-9 Investigation Officer ASI Kamal at Ex. 37, he produced Roznamcha entries No. 11, 12, 19, 28, 38, 06, 10 and roznamcha entries No. 16 at Ex. 38 to 45, respectively, receipt of depositing laboratory charges and receipt of depositing sealed parcels containing cloths of victim lady, her vaginal swab, cloths of accused Saddam Hussain, Ghulam Sarwar, Muhammad Hanif and their semen and blood samples at Ex. 46 & 47, respectively, Roznamcha entry No. 35 & Roznamcha entry No. 03 at Ex. 48 & 49, and receipt of depositing sealed parcels containing cloths of accused Mashooque Ali and his semen and blood samples at Ex. 50. Thereafter, learned ADPP for the State closed the side of prosecution's evidence vide statement at Ex. 51.

6. Statements of appellants U/S 342 Cr.P.C. were recorded at Ex. No. 52, 53, 54 & 55, whereby they denied the allegations of the prosecution levelled against them and stated that they are innocent and case is false. But all four appellants opted not to examine themselves on oath nor did they lead any evidence in their defence; however, they produced various documents in support of their plea(s) and version. They further stated that victim lady Mst. Haleema has deposed falsely at the instance of complainant and the allegations are false, complainant is inimical towards them as they had moved application to DSP Chachro against P.W. Muhammad Amin who is near relative of complainant, W.M.O. Dr. Usha managed all the documents/ certificates and case articles in collusion with the complainant party and she was not concerned W.M.O, P.W. Muhammad Amin is on inimical terms with them due to their near relative Haroon (father of appellant Saddam) moved application to DSP Chachro against him and due to this enmity

he deposed falsely against them and produced false documents/ Mashirnama(s), and HC Abdul Sattar and PC Shah Muhammad are subordinate of I.O. who is in league with complainant party and so they are interested witnesses. They further stated that I.O. has not conducted fair investigation due to influence of complainant party and he has managed all Roznamcha entries and other documents produced with malafide intention. Accused Ghulam Sarwar further stated that M.O. Dr. Mumtaz Ali deposed falsely and he submitted false DNA report against him as his semen samples were replaced with semen sample of husband of victim; but accused Saddam Hussain and accused Muhammad Hanif stated that DNA report is not against them. Accused Mashooque Ali stated evidence of M.O. Dr. Mumtaz Ali is not related to him. Accused Ghulam Sarwar, Saddam Hussain and Muhammad Hanif further stated that evidence of M.O. Dr. Mohan is not related to them; but accused Mashooque Ali stated that DNA report is not against him. On the question why this case against them, they replied that this case has been managed due to previous dispute and enmity with P.W./Mashir Muhammad Amin and complainant Saleem and no any alleged incident had taken place. Accused Ghulam Sarwar also stated that he was innocent and he was falsely implicated in this case by the complainant and his daughter-in-law Mst. Haleema; he never ever entered the house of complainant, nor did he abduct her nor did he keep her in any confinement nor had he committed forcible rape with her; victim was not recovered from him and no any independent witness is shown in this case rather important witnesses have been given up as they were not in support of complainant. Accused Saddam Hussain also stated that he was innocent and he had nothing to do with alleged offence and this case is false one and managed by complainant, police and P.W./ Mashir Muhammad Amin as prior to this incident his father namely Haroon had moved one application dated 05-11-2019 against P.W./ Mashir Muhammad Amin & others, to DSP Chachro and on such application complainant party turned inimical towards them & his other

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relatives and registered this false case; he had not kidnapped victim lady nor had he committed rape with her. In support, accused Saddam Hussain produced attested copy of said application made to DSP Chachro by his father namely Haroon at Ex. 53-A. Accused Muhammad Hanif also stated that he was innocent; no offence as alleged is committed by him; he is old T.B. patient which is matter of record before this court and he also remained under treatment in jail and he was unable to perform sexual intercourse due to his serious illness but due to enmity this false case is managed against him by the complainant party. In support, accused Muhammad Hanif produced his medical record/ documents including a medical certificate of his illness as a T.B. patient at Ex. 54-A, to 54-E. Accused Mashooque Ali also stated that he was innocent; he used to work in a cabin in Karachi since a long time; at the alleged time of the incident, he was in Karachi; during the course of the investigation, he had requested several times to I.O. for collecting his mobile phone data record for determining his location on the date & time of the alleged incident but I.O. refused due to influence of complainant party; so he moved such application through jailor, sub-jail Chachro, to the D.I.G. Police, Mirpurkhas, forgetting his C.D.R. w.e.f. 10-12-2019 to 15-12-2019; and on his application, D.I.G. directed the I.O. to collect C.D.R. of his mobile phone No. 0348-8592808, but even after collecting such record, I.O. did not submit the same with final challan. In support, accused Mashooque Ali produced C.T.C. of his C.D.R. alongwith his application at Ex. 55-A to 55-B (consisting on 04 pages), for showing his location at the time and date of the alleged crime. Accused Mashooque Ali further stated that he was arrested from Karachi by the I.O. but he falsely showed his arrest from here. Accused Mashooque Ali further stated that he had not kidnapped the alleged victim lady nor had he committed rape with her. All four accused persons finally prayed for justice.

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7. After hearing the learned counsel for the parties, the trial Court convicted and sentenced the appellants as mentioned (supra).

8. Learned advocate for the appellants contended that the appellants are innocent and have been falsely implicated in this case and there is delay of three days in lodging the F.I.R. for which, no plausible explanation has been furnished by the prosecution and there is no eyewitness of the alleged incident including the complainant. He next contended that the complainant is inimical towards the appellants as their relative namely Haroon (father of appellant Sadam Hussain) had filed an application before DSP Chachro against Mashir of this case namely Muhammad Amin, therefore, appellants have been falsely implicated in this case by the complainant in collusion with victim Mst. Haleema (his daughter-in-law) and Mashir Muhammad Amin and no such alleged incident had taken place and the appellants never entered into the house of the complainant nor abducted Mst. Haleema nor kept her in any confinement nor they have committed forcible rape with her; no independent witness is shown in this case rather important witnesses have been given up as they were not in support of the complainant; the DNA report is false and managed the same is not against the appellants except appellant Ghulam Sarwar; that Mashooque Ali used to work on a cabin at Karachi since a long time and at the time of the alleged incident he was at Karachi; in this regard, he has produced C.T.C. of C.D.R. of his mobile phone, but I.O. during the course of investigation did not collect C.D.R. therefore, he moved an application to D.I.G.P. for collecting C.D.R. then I.O. collected the same but he did not submit the same with final challan. He also contended that appellant Muhammad Hanif is an old T.B. patient which is a matter of record before the court and he also remained under treatment in jail and is unable to perform sexual intercourse due to his serious illness. He pointed out that the swab taken in this case was delivered for chemical analysis with delay without explanation and statements of witnesses were recorded by I.O.

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with delay without proper explanation; that the complainant and witnesses are close relatives to each other and no independent witness has been cited in this case; that as per contents of F.I.R, the abductee Mst. Haleema disclosed to the complainant that rape was committed by two persons namely Sarwar s/o Noor Muhammad and Mashooq son of Ameen Bajeer but as per the medical record she stated before the concerned WMO that four persons committed rape with her which creates serious doubts in the case which required further inquiry. He further contended that it is also admitted position that the alleged abductee was not recovered from the custody of any of the accused persons. It is also the astonishing fact that one Jumo Bajeer from whose house the alleged abductee was brought by the complainant to his house is neither accused nor shown as a witness in this case. It is also admitted fact that the appellants were not found available in the house of said Jumo Bajeer and there is no recovery of the alleged car nor its details available in the case file of prosecution. He further contended that the medical report is highly doubtful because of the reason that the alleged abductee has no marks of violence on her body which suggests that rape has not been committed by the appellants. He pointed out that driver of the car was neither shown in the charge sheet as accused nor such investigation was conducted in this regard and there is a material contradiction in medical and ocular evidence. He further contended that there is a contradiction in the statements of P.Ws recorded U/S 161 Cr.P.C. and the statement of the victim. He next contended that given up P.W. Mst. Rani was not deaf as per I.O. but she was not examined because she was not in support of the complainant; in this regard, he referred to Article 129 of Qanun-e-Shahadat. He further contended that no marks of dragging were found on the spot and the house of Jumo Bajeer from where the abductee was recovered was not inspected by the I.O. In view of the above, learned counsel for the appellants prayed for acquittal of the appellants. In support of his contentions, he relied upon the case laws reported as

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2018 MLD 371, 2017 P.Cr.L.J 848, 2019 P.Cr.L.J Note 74, 2018 MLD 508, 2020 MLD 995, 2017 SCMR 486, 2010 P.Cr.L.J 1296, 2017 SCMR 986, 2015 YLR 1576, 2010 SCMR 1009, 2017 SCMR 1710, 2013 YLR 1827, 2017 P.Cr.L.J 1435, 2017 P.Cr.L.J Note 93, 2018 YLR 2592, 2013 YLR 1905, and 2017 YLR 243.

9. On the other hand, learned advocate for the complainant contended that all PWs have fully supported the case of the prosecution and there are no material contradictions in their evidence; that appellants are nominated in FIR with a specific role and have committed the serious offence of heinous nature and the DNA test report is positive against one appellant Ghulam Sarwar; though it is not the requirement of law to confirm the semen through the chemical analysis or DNA report to prove the ingredients of section 376 P.P.C. and penetration is sufficient to constitute the offence. He further contended delay in lodging of FIR has been well explained in the evidence of the complainant; that testimony of the victim and her medical examination are important pieces of evidence in this case and the victim has fully implicated the appellants in her evidence and conviction could be based on the solitary statement of the victim. Per learned counsel, minor contradictions in the evidence will not affect the credibility of the evidence of the victim or create any doubt or dent in the prosecution case; there is nothing, which has come on record that the semen samples were replaced.

10. Learned Addl. P.G adopted the arguments advanced by the learned counsel for the complainant and prayed that the prosecution has proved its case against the appellants beyond any shadow of reasonable doubt; therefore, this appeal may be dismissed.

11. We have heard the arguments of learned counsel for the respective parties and have gone through the material available on record with their able assistance.

12. On the evaluation of the material brought on the record, it appears that there are major contradictions in the evidence of prosecution witnesses and also the victim, the alleged abductee made a different story as to the story narrated by the complainant in his F.I.R. The complainant disclosed in his FIR that as per the information given by the abductee the appellants Sarwar and Mashooque had been committing rape with her forcibly for two nights. Whereas, PW-1 alleged abductee Mst. Haleeman (Ex.7) deposed that on the night of the incident she was sleeping in the house along with her mother-in-law Mst. Rani. She also disclosed that the accused persons used to commit rape with her at night time for two nights and did not provide any food or water. On the third day, they again blindfolded her and threw her near their village from where she went to the house of one Jumoon Bajeer, who sent Ameen to the complainant's house, who informed her family about her reaching. Thereafter the complainant and alleged abductee Mst. Haleeman went to the police station and after obtaining the police letter went to Civil Hospital where she was medically examined by a lady doctor. Whereas in her cross-examination she admitted that ***"I reached my house at about 9.00 pm. When I reached at my house, my father-in-law called police through phone. Police came at 4.00 pm.It is correct that I was present at the hospital and my father-in-law went to PS for obtaining letter. We reached at Mithi hospital at 2.00 pm."***

13. In her cross-examination, she admitted that she did not receive any bruise on her body during the incident. Accused persons left her on the third day in the jungle and thereafter she went to the house of Jumoon Bajeer by covering a distance of about 500 yards. She in cross-examination also admitted that she travelled in the said car for about half an hour. It is humanly impossible that four persons have committed continuously rape with a lady and have not provided any food or water, but she was still conscious and travelled about 500 meters to reach the house of one Jumoon Bajeer. In her

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examination-in-chief, she disclosed that on the third day again she was blinded fold and thrown in their village, but in cross-examination, she admitted that **"They tied me with two towels. I tried to untie me when I was alone with my teeth."** However, she denied the suggestion that she passed urine and stool in her wearing clothes when she was at the unknown place in the jungle.

14. On the other hand, she has given a history to Doctor Usha PW-3 Ex.11 and admitted that she has not taken bath, twice urine was passed, her mental condition was normal and no injury or bruise was found in the body. As per the medical certificate worn clothes were sealed and sent for Chemical Analysis & DNA testing. If it is true the clothes worn by the victim were sent by the Doctor for DNA testing then the clothes which were worn by the alleged abductee at the time of Zina were changed by her, which were not sent to the office of Chemical Analysis or DNA testing. In cross-examination, she admitted that **"It is correct that after reaching at my house I refreshed myself by changing my clothes"**. She in her examination-in-chief deposed that after obtaining a police letter they went to Civil Hospital, Mithi wherein she was examined by the lady doctor. The complainant has disclosed that on the disclosure of his daughter-in-law he went to the police station and obtained a police letter for her medical examination. After conducting her medical examination on 15.12.2019 he lodged the F.I.R. Police also inspected the place of incident and prepared mashirnama/memo in presence of mashirs namely Haji Amin and Anwar Ali. The I.O of the case ASI Kamal PW-No.9 deposed that on 15.12.2019 he was present at the police station the complainant along with Mst Haleeman appeared at the police station and as per his verbatim FIR was lodged against the accused persons. He issued a letter for a medical checkup of victim Mst Haleeman from Taluka Hospital Chachro. In cross-examination, he admitted that **"It is correct that no police letter is issued without seeing the injured or victim... It is**

correct that I did not recorded the statement of the victim on the same day. Statement of the victim was delayed due to the complainant was not willing to get recorded the statement of the victim on the same day.”

15. It is important to note that neither the alleged abductee shown the place of the incident viz. chowra/jungle nor the police has prepared such a memo, whereas the alleged abductee has admitted that after travelling some distance she reached Jumoon Bajeer’s house. The complainant admitted that **“It is correct to suggest that in F.I.R, it is mentioned that accused Sarwar and Mashooque committed zina with my daughter-in-law as per statement of my daughter-in-law. On the next day of the incident, the wife of the complainant informed to the complainant Saleem about the missing of the alleged abductee Mst. Haleeman, but he has not reported the matter to the police about the abduction of the lady. It is correct that I did not inform the police at once after I received information from my wife through the phone. It is correct to suggest that no marks of violence were apparent on the face of my daughter-in-law.”** The complainant as well as the alleged abductee claimed that Mst. Rani is dumb, but she informed them at 6.00 am through the phone about the incident to the complainant. Whereas I.O of the case in his cross-examination admitted that **“It is correct that I did not feel that Mst Rani is deaf during recording her statement.”** The place of incident is a thickly populated area and about 30/40 houses in their Muhalla and about 300 houses in their village. The complainant admitted that all four accused persons are residing in his village. In the cross-examination, the complainant has admitted that accused Mashooque works and resides in Karachi along with his brother. PWs Mst. Rani and Nizamuddin were given up by the prosecution vide statement dated 06.05.2020. It is also surprised to note that Mst. Rani wife of the complainant who was allegedly present in the house of the complainant and she has informed the complainant through the phone was not

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examined by the prosecution for no obvious reasons, therefore, the presumption will be drawn under illustration (g) of Article 129 of Qanun-e-Shahadat Order, 1984 that if she had been produced and examined in the case then the same would have been unfavourable to the prosecution.

16. If the prosecution story is believed in toto still the same must be strengthened from the attending circumstances. In the instant case, the alleged abductee claims that all four accused persons have committed zina with her. The I.O of the case has not supported the version of the abductee. In cross-examination, he admitted that *"It is correct that in FIR allegations of committing Zina is against only accused Mashooque and Sarwar.* Further after the arrest of the accused persons they were produced before the PW-4 (Ex.17) Dr. Mumtaz Ali and examined the accused Ghulam Sarwar, Saddam Hussain, Mashouque and then Muhammad Hanif and obtained their blood and semen samples and sent the same to the chemical examination through PC Abdul Sattar and on 29.01.2020 he received a photocopy of DNA report from WMO Dr. Usha and thereafter he prepared final medico-legal certificate and as per DNA report obtained from item 3.0 and item 5.0 (blood sample of accused Saddam Hussain, accuse Masooque and accused Muhammad Hanif were not matched, however, the blood sample of Ghulam Sarwar s/o Noor Muhammad was matched. In the instant case, the ocular evidence does not find support from the medical evidence/ DNA, as per the DNA report of the accused Muhammad Hanif, Mashooque and Saddam Hussain were not matched, therefore, the question arises before us that as per DNA report three accused were/are not involved in the commission of an offence, now on the same set of evidence reliance can be made on the fourth accused Ghulam Sarwar. The prosecution has not examined Jumoon Bajeer, for which, the alleged abductee first time reached his house.

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17. The Investigating Officer PW-9 ASI Kamal did not collect the phone record of the complainant regarding receiving information from his house about the incident. In cross-examination, he further admitted that *"It is correct that as per the statement of victim lady there were five accused person in said car and one was driving the car.. It is correct that in challan no any fifth accused is showing even as absconder... It is correct that as per said CDR report of mobile phone of accused Mashooque the location of mobile phone on the date of the incident was Karachi and not the place of incident."*

18. Turning to the defence taken by the appellants while recording their statement under section 342 Cr.P.C. The appellants denied the allegation levelled against them and claimed that they are innocent. Accused Ghulam Sarwar stated his semen sample was replaced with the semen sample of the husband of the victim. The accused Saddam Hussain, Muhammad Hanif and Mashooque Ali stated that the DNA report is not against them. The accused Muhammad Hanif claimed that he is an old T.B patient and unable to perform sexual intercourse. In support of his claim, the appellant produced a medical record. Whereas Accused Mashooque Ali stated that he used to sit in a cabin and reside in Karachi. He has also pleaded enmity with the complainant party. He has produced a CDR report and stated that at the time of the incident he was present in Karachi and the CDR report shows his location in Karachi. The other accused person also pleaded enmity with the complainant party.

19. So far the evidence of prosecution witnesses is concerned; still, the truth from the mouth of important witnesses has not come on the record to believe the story of the complainant or the alleged abductee in the case in hand as the prosecution has failed to establish their case against the appellants beyond any shadow of a doubt. The FIR shows that all the appellants abducted Mst. Haleeman towards chowra/jungle where they committed rape with her

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continuously at night time for two days without providing her food or water. The complainant implicated two accused Sarwar and Mashooqe whereas the victim implicated four accused persons. The victim disclosed that after her recovery her father-in-law called the police. The complainant in his evidence deposed that he went to the police station after obtaining a police letter he went to the hospital along with the victim for a medical checkup. The I.O. of the case deposed that on 15.12.2019 complainant and victim appeared at the police station and he registered FIR and gave the letter to the complainant for a medical checkup. The ocular evidence did not find support from the medical evidence, therefore, in the circumstances, we can safely be gathered that the PWs lie before the Court and no truth has come on record, which is fatal to the prosecution case, hence the presumption can be drawn in favour of the appellants that they have been falsely implicated in this case. A Court of law cannot grant a license to a witness to tell lies or to mix truth with falsehood and then take it upon itself to shift the grain from the chaff when the law makes perjury or testifying falsely culpable offence. Truth is the foundation of justice and justice is the core and bedrock of a civilized society, thus, any compromise on truth amounts to a compromise on a society's future as a just, fair and civilized society. If a single circumstance created a reasonable doubt in a prudent mind regarding the guilt of the accused, the benefit of the doubt must be granted to the accused. The accused is entitled to the benefit of such doubt not as a matter of grace, but as a matter of right. No matter how heinous the crime in question should not influence the mind of the Judge as the court is under a duty to assess the probative value of every piece of evidence in a dispassionate, systematic and structured manner without being influenced by the nature of allegations. The conjecture and probability were not substitutes for proof and if courts were to decide criminal matters on high probabilities **"the golden rule of granting benefit of the doubt to the accused person, which is a dominant feature of the**

criminal justice system. The court should punish the guilty once the guilt is proved in accordance with the law and not to punish someone suspected of having committed a crime". This definition is essential to ensure the safety of the criminal justice system, as at stake on the one hand is the ability of criminal justice to bring the offender to justice and on the other hand what is at stake is human life and liberty, guaranteed by Article 9 of the Constitution. It is a settled proposition of law that the prosecution is bound to prove its case beyond a shadow of a doubt. If a reasonable doubt arises in the prosecution case, the benefit of same must be extended to the accused not as grace or concession, but as a matter of right. Likewise, it is also a well-embedded principle of criminal justice that it is not necessary that there must be so many doubts in the prosecution case if there is a reasonable doubt arising out of the prosecution evidence pricking the judicious mind, the same would be considered sufficient for giving its benefit to the accused. In this respect, reliance can be placed upon the case of **MOHAMMAD MANSHA V. THE STATE (2018 SCMR 772)**;-

"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." Reliance in this behalf can be made upon the cases of Tarique Parvez v. The State (1995 SCMR 1345), Ghulam Qadir and 2 others v. The State (2008 SCMR 1221), Mohammad Akram v. The State (2009 SCMR 230) and Mohammad Zaman v. The State (2014 SCMR 749)."

20.

It is well-settled principles of criminal administration

of justice that no conviction can be awarded to an accused until

and unless reliable, trustworthy and unimpeachable evidence containing no discrepancy casting some cloud over the veracity of the prosecution story is adduced by the prosecution. We are of the view that in the present case, the prosecution story is engulfed under the thick clouds of doubt and the learned trial Court has not evaluated the evidence in its true perspective and thus arrived at an erroneous conclusion by holding the appellants guilty of the offence. Resultantly, an instant appeal was **allowed**. The conviction and sentence awarded to the appellants were set aside and they were **acquitted** of the charge by extending the benefit of the doubt vide short order dated **10.08.2022**. The death reference No.16/2020 sent under section 374, Cr.P.C by the trial court was replied in **Negative**. These are the reasons of our short order.

Davis
22/8/2022
JUDGE

[Signature]
JUDGE

[Signature]
22/8/2022