

ORDER SHEET  
IN THE HIGH COURT OF SINDH,  
CIRCUIT COURT, HYDERABAD.

Cr. Appeal No.S-168 of 2016

DATE	ORDER WITH SIGNATURE OF JUDGE
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• For hearing of main case.

30.01.2023.

Appellant is present on bail.

Mr. Imtiaz Ali Channa, Advocate for appellant.

Ms. Sana Memon, Asst. Prosecutor General, Sindh.

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The complainant has already shown his full faith and confidence in learned A.P.G. I have heard the learned counsel for the appellant and learned A.P.G. Reserved for judgment.

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\*Hafiz Fahad\*

Evidence of Victim Consolidated by 139  
medical evidence

IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD

Cr. Appeal No.S-168 of 2016

Dilshad

Versus

The State

Appellant : Dilshad (present on bail)	through Mr. Imtiaz Ali Chanio, Advocate
Respondent : The State	through Ms. Sana Memon, A.P.G. Sindh
Date of hearing	30.01.2023
Date of judgment	03.02.2023

J U D G M E N T

MOHAMMAD KARIM KHAN AGHA, J.-This criminal appeal is directed against the judgment dated 01.09.2016, passed by the learned Sessions Judge, Mirpurkhas, in Sessions Case No.199 of 2011 (re: State V Dilshad), emanating from Crime No.150 of 2011, registered at Police Station St. Town, under sections 376, 511 PPC, whereby the appellant has been convicted for an offence u/s 376 r/w section 511 PPC and sentenced to suffer imprisonment for a period of 05 years and to pay fine of Rs.50,000/-, to victim Baby Ayesha; and, in case of non-payment of the said fine, the appellant shall further undergo S.I for 03 months. He was awarded benefit of section 382-(b) Cr.P.C.

2. The brief facts of the prosecution case as per FIR are as under:-

*"The complainant Asif Ali on 31.07.2011 at about 1300 hours appeared at Police Station Satellite Town Mirpurkhas and lodged FIR stating therein that he is residing with his kith and*

kin. He has three daughters and two sons and elder daughter namely Aisha is aged about 8/9 years. On 29.07.2011 at 07:00 a.m morning, Aisha had gone to general store of Dilshad Rehmani (accused) for taking bread and after sometime Aisha came in street raising cries as such the complainant came out of his house and Baboo Pathan and Malis Irshad also reached there and in their presence Aisha informed him that she had gone to general store of Dilshad for obtaining bread, where Dilshad taken her inside the shop and attempted to commit zina upon her, on which she raised cries and succeeded in escaping from there. Thereafter, complainant lodged FIR."

3. After usual investigation police submitted challan before the court concerned and after completing necessary formalities, learned trial court framed charge against the accused/appellant, to which he pleaded not guilty and claimed trial.

4. At trial, the prosecution in order to prove its case examined 06 PWs and exhibited numerous documents and other items. The statement of the accused was recorded under section 342 Cr.P.C, whereby he denied the allegations leveled against him and claimed his false implication by the complainant party. He did not give evidence on oath or call any DW in support of his defence case.

5. Learned trial Court after hearing the learned counsel for the parties and evaluating the evidence available on record convicted and sentenced the appellant, as set out earlier in this judgment.

6. Learned advocate for the appellant has contended that the appellant is innocent and has been falsely implicated in this case by the complainant party as he was admitted in hospital at the time of the incident and he has produced a medical certificate to this effect; that the FIR was lodged after an unexplained delay of two days; that there are no eye witnesses to the incident; that the alleged victim has falsely implicated him at the behest of her father who is the complainant; that the medical evidence concerning the victim has been managed by the complainant; that he has no CRO and that for all or any of the above reasons the appellant should be acquitted of the charge by extending him the benefit of the doubt.

7. Learned Assistant Prosecutor General Sindh on behalf of the State, after going through the entire evidence of the prosecution



witnesses as well as other record of the case has fully supported the impugned judgment and submitted that the appeal should be dismissed because it was without merit.

8. I have heard the arguments of the learned counsel for the appellant, learned Additional Prosecutor General Sindh, gone through the entire evidence which has been read out by the learned counsel for the appellant and the impugned judgment with their able assistance and have considered the relevant law.

9. After my reassessment of the evidence I find that the prosecution has proved beyond a reasonable doubt the charge against the appellant keeping in view that each criminal case must be decided on its own particular facts and circumstances for the following reasons;

(a) It is true that the FIR was lodged with a delay of 2 days however I find that such delay has been fully explained as initially the victim Ms Aisha had to undergo a medical examination at hospital before the FIR could be lodged. Even otherwise in case of rape and attempted rape it is not uncommon for there to be a delay in lodging the FIR due to the trauma which the victim is subject to and sometimes the initial reluctance of the family to lodge an FIR or make any kind of complaint on account of shame and/or dishonor. I have also noted from the evidence that before the FIR was lodged an NC was also lodged at the PS. Thus based on the particular facts and circumstances of this case I do not find the delay in lodging the FIR to be fatal to the prosecution case. In this respect reliance is placed on the case of **Zahid Hussain V State** (2022 SCMR 50) which held as under;

*"So far as the delay in lodging the FIR is concerned, the learned High Court while relying on the judgment of this Court report as Zahid v. State (2020 SCMR 590) has rightly held that in such like cases victims or their families are reluctant to come forward to promptly report the crime because of the trauma that has been suffered and they may have a perception of shame or dishonour in having the victim invasively examined by a doctor, **therefore, the delay in reporting a sexual assault to the police is not very material.**" (bold added)*

(b) The appellant is named in the FIR with a specific role.

© The victim Ms Aisha knew the appellant who owned a local general store in the Mohalla where she had gone to buy bread. The incident happened in broad day light in close proximity in



the appellant's shop and as such there is no case of mistaken identity.

(d) That it is not particularly relevant that there was no eye witness to the incident as in cases of rape and/or attempted rape the act is carried out in secrecy and privacy so that the perpetrator can avoid detection and ensure that in most cases it is his word against that of the victim which discourages the victim from coming forward.

(e) I find that the prosecution's case primarily rests on the evidence of the victim eye witness and whether I believe her evidence which I will consider below;

(i) **Eye witness/victim PW 4 Ms Aisha** states in her evidence as under;

*"On 31-7-2011 at morning time at about 7-00 A.M I went at the shop of accused Dilshad Rehmani General Store for purchasing bread (Double Rooti), where other peoples were also standing for purchasing bread. The accused Dilshad present on the shop told me to come inside the shop and take bread. I entered into the shop for taking bread, the accused remained giving bread to other peoples and avoided to give me bread in spite of my repeated request when the accused given bread to other peoples and I alone was there accused Dilshad started to touch me and do obscene act and then pushed me and tried to commit rape (Ziyati) with me. He was continuously touching various parts of my body and further offered to me to eat some substance. I resisted all the bad acts and obscene act of accused. He further offered me to come again at his shop. I hardly saved myself from the bad acts of the accused, and succeeded to run-away towards my house. The accused attempted to commit rape (Ziyati) with me. When I was returned to my house uncle Arshad and Babo were also standing in the street. I was weeping due to the bad acts of the accused. Then I informed the whole facts to my father. Thereafter my father lodged FIR and I was also examined by the Dr. at Civil Hospital Mirpurkhas. Police also recorded my statement. Accused present in the Court is same".*

Admittedly the eye witness/victim was 8 to 9 years of age at the time of the incident however before giving evidence the trial judge tested her ability to give reliable evidence which he found to be the case. Her evidence accords with the FIR and there is no material improvement from her Section 161 Cr.PC statement. She gave her evidence in a mature, natural and straightforward manner and her evidence was not dented at all during cross



examination. She specifically names the appellant as attempting to rape her in reasonable detail and even explains how he deliberately kept her behind in the shop whilst he served others so that he could assault her in private in his shop. There is no evidence to suggest that she gave her evidence on the directions of her father. As mentioned earlier she knew the appellant and had no reason herself to implicate him in a false case. As such I believe her evidence which I find to be reliable, trust worthy and confidence inspiring. In this respect reliance is placed on the case of **Zahid Hussain** (Supra) which held as under;

*"Although in the instant case, the statement of the victim is fully corroborated by the statement of PW-1 but law is very clear about this that the statement of the victim in isolation itself is sufficient for conviction if the same reflects that it is independent, unbiased and straight forward to establish the accusation against the accused. In a recent judgment reported as Atif Zareef v. State (PLD 2021 SC 550) this Court has categorically held that **"rape is a crime that is usually committed in private, and there is hardly any witness to provide direct evidence of having seen the commission of crime by the accused persons. The courts, therefore, do not insist upon producing direct evidence to corroborate the testimony of the victim if the same is found to be confidence inspiring in the overall particular facts and circumstances of a case, and considers such a testimony of the victim sufficient for conviction of the accused person. A rape victim stands on a higher pedestal than an injured witness, for an injured witness gets the injury on the physical form while the rape victim suffers psychologically and emotionally."**(bold added)*

10. Since I have found the victim's evidence to be reliably, trust worthy and confidence inspiring the fact that she was related to the complainant will have no bearing on the same. In this respect reliance is placed on the case of **Ghulam Murtaza V State** (2021 SCMR 149)

(f) The evidence of the eye witness/victim of her attempted rape is also fully corroborated by PW 6 Dr.Tulsi who was the WMLO who examined the victim at the hospital who stated as under in her evidence;

*"Then I examined the said victim girl and found that; she was aged about 08 years; her marks of examination were Scar on forehead and Mole on left eye. She was well oriented, gait was normal. **Nail mark was found available on right side of***



*her cheek. Two scratches marks were found on left side of her cheek. She has changed her clothes before her examination. The axillary and pubic hairs of the said victim girl were not developed. From pelvic examination I found that; there was laceration on inner side of vulva; hymen was intact, but there was slight laceration on all around the hymen. There was no any mark of violence. After examination of the victim girl, I am of the opinion that; she has been attempted for sexual intercourse. The vaginal swabs of the victim girl were not taken because hymen was intact. I produce medico legal certificate of the victim girl at Ex.10-B and say that, it is same, correct and bears my signature".(bold added)*

(g) The evidence of the victim bar the actual assault itself is also corroborated/supported by the FIR and the evidence of the complainant which was not materially improved at the trial.

(h) That the evidence of the police also supports the prosecution case and since no enmity has been raised against the police I have no reason to disbelieve the same and can rely upon it which I do. In this respect reliance is placed on the case of **Mushtaq Ahmed V The State** (2020 SCMR 474).

(i) That all the PW's are consistent in their evidence and even if there are some contradictions in their evidence I consider these contradictions as minor in nature and not material and certainly not of such materiality so as to effect the prosecution case and the conviction of the appellant. In this respect reliance is placed on the cases of **Zakir Khan V State** (1995 SCMR 1793) and **Khadim Hussain v. The State** (PLD 2010 Supreme Court 669). The evidence of the PW's provides a believable corroborated unbroken chain of events from the time the victim left the house to buy bread to her reaching the general store where the appellant ensured he got her alone to the appellant sexually assaulting the victim to the victim escaping and returning home in tears and informing her father to the medical evidence which opined it was a case of attempted rape.

(j) Undoubtedly it is for the prosecution to prove its case against the accused beyond a reasonable doubt but we have also considered the defence case to see if it at all can caste doubt on or dent the prosecution case. The defence case is simply one of false implication by the complainant party as at the time of the incident the appellant had been admitted in hospital. The appellant however was not able to produce any document to show that he had been **admitted** into hospital and only

produced a medical certificate which was on the same day as the incident and was later in time and as such seems to have been produced in order to save his skin. The appellant did not give evidence on oath and did not call any alibi witness to show that he was **admitted** in hospital at the relevant time it being well settled by now if an accused claimed a particular defence he should produce evidence in support of it which the accused has failed to do in this case. In this respect reliance is placed on the case of **Anwar Shamim V State** (2010 SCMR 1791). Thus, for the reasons mentioned above I disbelieve the defence case in the face of reliable, trust worthy and confidence inspiring eye witness and other corroborative /supportive evidence against the appellant which has not at all dented the prosecution case.

11. Thus, for the reasons mentioned above, the appeal is dismissed and the appellant on bail shall be immediately taken into custody and returned to jail to serve out the remainder of his sentence.