

IN THE HIGH COURT OF SINDH, KARACHI

Present:

*Mr. Justice Mohammad Karim Khan Agha
Justice Mrs. Kauser Sultana Hussain,*

**Spl. Criminal A.T.Jail Appeal. No.198 of 2022.
Conf. Case No.11 of 2022**

Appellant: Amjad Ali @ Zakir @ Sajid s/o
Khairat Ali through Mr. Moula
Bux Bhutto, Advocate.

Respondent: The State through Mr. Muhammad
Iqbal Awan, Additional Prosecutor
General.

Date of hearing: 24.05.2023

Date of Judgment: 29.05.2023.

JUDGMENT

MOHAMMAD KARIM KHAN AGHA, J:- The appellant Amjad Ali @ Zakir @ Sajid s/o. Khairat Ali has preferred the instant appeal against the judgment dated 29.10.2022 passed by the Learned Anti-Terrorism Court No.X, Karachi in Special Case No.633/2018 arising out of Crime No.659/2017 U/s. 376 PPC read with section 7 of ATA, 1997 registered at P.S. Shah Latif Town, Karachi whereby the appellant was convicted and sentenced to death subject to confirmation by this court.

2. The brief facts of the prosecution case are that on 22.12.2017 at 2145 hours complainant namely Shahid Mehmood S/o. Faiz Muhammad recorded his statement U/s. 154 Cr.P.C. before the Police narrating therein that on the said day, viz. 22.12.2017, he was present at his work. In the meantime, his wife namely Mst. Sumaira Yasmeen informed him through mobile phone call to immediately reach home as some problem had occurred with their daughter namely Umm-e-Tayyaba. On receiving such information, complainant rushed to his home and reached there at about 07:00 p.m. where he was informed by his wife that she had sent their daughter Umm-e-Tayyaba for purchasing Roti (Bread) from Tandoor at Maghrib prayer time. According to the complainant, his wife further told him that at 06:00 PM, their daughter came back home while crying and

her worn Shalwar was stained with blood since somebody had forcibly committed Zina with her. To this, complainant inquired from his Daughter Umm-e-Tayyaba (aged 08 years "the victim") as to what had happened to which she informed to her father that she had been taken by someone in the bushes besides Railway Line and as per victim said person had forcibly committed Zina with her. Thereafter, complainant along with his wife took their injured daughter (victim) Umm-e-Tayyaba (aged 08 years) to Emergency Ward No.08, Gynae Ward at JPMC, Karachi where the minor victim was given medical treatment and her medical examination was also conducted by the concerned WMLO. Subsequently, in the light of above referred statement U/s. 154 Cr.P.C. of the complainant, instant FIR bearing No.659/2017 U/s. 376 PPC was registered at P.S. Shah Latif Town, Karachi against an unknown accused.

3. After registration of the FIR and after completion of formal investigation I.O. submitted the charge sheet against the accused.

4. The prosecution in order to prove its case examined 14 witnesses and exhibited various documents and other items. The statement of the accused was recorded under Section 342(1) Cr.P.C in which he denied all the allegations leveled against him and claimed his innocence. However, he did not give evidence on oath and did not call any DW in support of his defence case.

5. After hearing the parties and appreciating the evidence on record the trial court convicted the appellant and sentenced him as stated above, hence, the appellant has filed this appeal against his conviction.

6. The facts of the case as well as evidence produced before the trial court find an elaborate mention in the impugned judgment dated 29.10.2022 passed by the trial court, therefore, the same may not be reproduced here so as to avoid duplication and unnecessary repetition.

7. Learned counsel appearing on behalf of the appellant contended that he was innocent of any wrong doing and had been falsely implicated in this case by the police in order to show their efficiency; that there was no eye witness evidence against him, that there was no last seen evidence

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against him, that his confession before the police was inadmissible in evidence, that no hulla had been given of him in the FIR, that he was shown to the witness before the identification parade which was delayed by 14 days; that the DNA report could not be safely relied upon; that the CCTV footage was inadmissible and that for any or all of the above reasons he should be acquitted of the charge by being extended the benefit of the doubt. In support of his contentions he has placed reliance on the cases of Babar v. The State (2020 SCMR 761), Khan v. The State (1991 P Cr.L.J 433), Muhammad Akram v. The State (2009 SCMR 230), Tariq Pervez v. The State (1995 SCMR 1345), Ghulam Qadir and 2 others v. The State (2008 SCMR 1221), Muhammad Zaman v. The State and others (2014 SCMR 749).

8. On the other hand learned APG who was also representing the complainant has fully supported the impugned judgment and has contended that the prosecution has proved its case beyond a reasonable doubt based on the evidence of the victim who correctly identified the appellant as the person who raped her before an identification parade; that CCTV footage showed the victim and the accused together on the date of the rape; that a positive DNA report conclusively connected the accused to the rape of the victim as did the chemical report and medical evidence; that the appellant was a serial rapist of minors and had already been convicted by a trial court of one rape of a minor and his CRO showed that many other cases of a similar nature were outstanding against him and as such the appeal should be dismissed and due to the heinous nature of the crime the confirmation reference be answered in the affirmative. In support of his contentions he has placed reliance on the cases of Ali Haider alias Papu v. Jameel Hussain and others (PLD 2021 SC 362), Imran Ali v. The State (2018 SCMR 1372), Shahzad alias Shaddu and others v. The State (2002 SCMR 1009), Zahid and another v. The State (2020 SCMR 590), Atif Zareef and others v. The State (PLD 2021 SC 550) and Muhammad Zaman v. The State (2007 SCMR 813).

9. We have heard the arguments of the learned counsel for the appellant as well as learned APG who was also representing the complainant, gone through the entire evidence which has been read out by the counsel for the appellant, and the impugned judgment with their

able assistance and have considered the relevant law including that cited at the bar.

10. After our reassessment of the evidence we find that the prosecution has proved its case beyond a reasonable doubt through the evidence of PW's, especially the blood found at the wardat, the medical evidence and reports and DNA results that on 22.12.2017 at about 1800hrs minor girl Tayyaba (the victim) was raped at railway line, bushes, Zaffar Town, Malir, Karachi.

11. The only issue therefore before us is who raped the victim at the aforesaid time, date and location.

12. After our reassessment of the evidence we find that the prosecution has proved its case beyond a reasonable doubt against the appellant based on the particular facts and circumstances of the case and that each criminal case must be decided on its own merits for the following reasons:-

(a) The FIR was lodged by the complainant with promptitude and even prior to lodging the FIR an entry was made at the concerned PS where the complainant went to get a letter to enable the victim to be medically examined. As such there was no time to cook up a false case against the appellant. Even otherwise the FIR was against an unknown person so there was no attempt to falsely implicate the appellant whose identity at that time the victim did not know.

(b) The victim is the eye witness to the incident. Admittedly the victim was 10 years old at the time when she gave her evidence but after questioning the court found her to be competent to give evidence. According to her evidence on 22.12.2017 she had left home in order to buy bread as instructed by her mother. She went to the hotel in front of her house for this purpose where a man who said he was a friend of her father and offered to buy her a ball asked her to accompany him. She refused and he took her forcefully after slapping her. He then took her towards bushes where he removed her pyjama and thereafter he made her bleed from her anal and urinal parts. He then left her and she returned home and informed her mother about the incident who told her father (the complainant). Her father then informed the police and she was taken to the JPMC for medical examination. This aspect of the case is corroborated by the

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complainant in his evidence, the police witnesses including PW 2 Saleem Ahmed and PW 1 Dr. Khursheed who carried out her medical examination. According to the victim's evidence on 24.04.2018 she identified the appellant as the person who raped her before an identification parade conducted by magistrate PW 10 Azhar Kalhoro who also corroborated the same in his evidence.

Admittedly, the victim had not met the appellant before and she gave no hulia of him however the rape took place in day light and she would have been with him for at least 30 minutes while he took her away from the hotel to the railway line where he raped her. She would have also seen the appellant from less than 6 inches during this entire period and as such she could easily identify him before an identity parade with a specific role which she did only a few months after the incident. Such a face would have been branded in her memory and she would have been unable to forget it. She gave her evidence in a straightforward and natural manner and was not dented during cross examination. Neither she nor her father who was the complainant or any other witness, family or otherwise, had any reason to falsely implicate the appellant in this case and as such we believe her evidence, which is also supported by the medical evidence of her rape, and in particular the correct identification of the person who raped her being the appellant who she picked out at an identity parade. We can convict on the basis of her testimony alone if we find it to be reliable, trustworthy and confidence inspiring, which we do, provided that it is corroborated by evidence of rape. In this respect reliance is placed on the case of Zahid (Supra). The fact that the identification parade was also carried out with some delay is also not relevant as based on the particular facts and circumstances of this case the accused was only arrested in another case of attempted rape in which he confessed in this case. In any event he was brought before an identification parade within 14 days of his arrest and he did not deny the identification parade in his S.342 Cr.PC statement. In this respect reliance is placed on the case of Muhammed Zaman (Supra). Thus, we believe the evidence of the victim and her correct identification of the appellant who raped her.

(c) The evidence of the victim is corroborated by CCTV footage which was duly exhibited and was not denied by the appellant in his Section 342 Cr.PC statement which shows the appellant with the victim on the day of the incident around about the time of the incident which completely defeats his defence of being falsely implicated in the case by the police.

(d) As found earlier the medical evidence whereby the victim was examined on the day of the incident concluded as per the evidence of PW 1 Dr.Khursheed that the victim had been subject to a fresh case of sexual intercourse.

(e) That the chemical report found semen on the clothes of the victim as well as blood.

(f) Most significantly the DNA report was positive in that the semen found on the clothes and swabs of the victim when matched with blood of the appellant produced a positive report in the following terms;

**FORENSIC & MOLECULAR BIOLOGY LABORATORY
FOR D.N.A. TESTING LIAQUAT UNIVERSITY OF
MEDICAL & HEALTH SCIENCES, JAMSHORO.**

BIOLOGY LABORATORY, FOR DNA TESTING

Sample received:

Item No.	Description	Received from/Date	R/MLC/No:/Seals
1.	Blood sample of accused Amjad Ali S/o. Khairat Ali	By hand from ASI Abdul Rehman, P.S. Sachal Karachi on 07.04.2018	MLC N.3333, Dated 07.04.2018, No. of Parcel 01, No. of seals 01, MLO, JPMC Karachi.

Item Description:

1.0 Blood sample of accused Amjad Ali S/o. Khairat Ali

Methodology:

Deoxyribonucleic acid (DNA) was extracted from above items by Organic Extraction Procedures; and amplify Polymerase Chain Reaction (PCR) USING AmpFISTR® Identifiler ® PlusKit. The amplified products were analyze ABI 3130 Genetic Analyzer.

Results:

The DNA Profile obtained from Item: 1.0 (Blood sample of accused Amjad Ali S/o. Khairat Ali) shares the req alleles with the male DNA profile obtained from the evidences of 05 sexual assault cases mentioned as above.

Conclusion:

Mr. Amjad Ali S/o. Khairat Ali. (Item 1.0) is the contributor of Male DNA/Sperm fractions identified on all the mentioned above evidences of sexual assault case of District Malir Karachi. (bold added),

Sd/-
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Prof. Dr. Muhammad Akbar Kazi,
Chairman,
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(g) With regard to the safe chain of custody it was held in Zahid's case (Supra) which concerned rape and the safe custody of DNA swabs being sent to the chemical examiner as under at para 5 in material part;

"The chemical examiner's report produced by the lady doctor states that the seals of specimens sent for chemical examination were received intact and it was the chemical examiner who had broken open the seals, therefore, the contention of the petitioners' learned counsel regarding the safe transmission of the specimens is discounted both by this fact as well as by the fact that no question was put regarding tampering of the said seals."

The DNA correspondence and report mentioned above reveals that the same situation applies in this case.

We find that the report proves two things conclusively;

(i) That the complete chain of custody was maintained for all items which were sent for DNA testing. No allegation was even made of tampering with any part of the DNA report or the items which were sent for DNA testing and as such the DNA report was legally admissible in court and indeed went unchallenged by the appellants.

(ii) That the appellant raped the victim.

(h) With regard to the results of DNA testing it has recently been held by the supreme court in the case of Ali Haider @ Pappu v Jameel Hussain, etc (PLD 2021 SC 362) that DNA is the strongest piece of corroborative evidence and can even be regarded as the gold standard in this respect as set out below in material part:

"DNA, strongest corroborative piece of evidence today."

10. DNA evidence is considered as a gold standard to establish the identity of an accused. As a sequel of above discussion, it can safely be concluded that DNA Test due to its accuracy and conclusiveness is one of the strongest corroborative piece of evidence. In Salman Akram Raja case this Court has held that DNA test help provides the courts,

the identity of the perpetrator with high degree of confidence, and by using of the DNA technology the courts are in a better position to reach at a just conclusion whereby convicting the real culprits and excluding the potential suspects, as well as, exonerating wrongfully involved accused. DNA test with scientific certainty and clarity points towards the perpetrator and is, therefore, considered one of the strongest corroborative evidence today, especially in cases of rape. The usefulness of DNA analysis, however, depends mostly on the skill, ability and integrity shown by the investigating officers, who are the first to arrive at the scene of the crime. Unless the evidence is properly documented, collected, packaged and preserved, it will not meet the legal and scientific requirements for admissibility into a court of law. (bold added)

(i) That the police PW's had no enmity or ill will towards the appellant and had no reason to falsely implicate him in this case and in such circumstances it has been held that the evidence of the police PW's can be fully relied upon. In this respect reliance is placed on *Mushtaq Ahmed V The State* (2020 SCMR 474).

(j) That all the PW's are consistent in their evidence and even if there are some contradictions in their evidence we 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).

(k) All the PW's gave there S.161 Cr.PC statements with promptitude which left no time for collusion or concoction and there were no improvements in the evidence which they gave in court as PW's under oath so as to render their evidence at trial unreliable.

(l) None of the evidence of any PW was dented on cross examination so as to render their evidence unreliable. Rather such evidence was given in a straightforward manner and was confidence inspiring.

(m) That it does not appeal to logic, reason or commonsense that the complainant would allow the real rapist of his baby child to get off scot free by substituting him with innocent people. In this respect reliance is placed on *Allah Ditta V State* (PLD 2002 SC 52).

(n) That the appellant has already been convicted for the rape of one minor and from his CRO where he faces many cases of rape of minors he appears to be a serial rapist of minors.

(o) We have also examined the defence case which in effect is false implication. The appellant chose not to give evidence

on oath and did not call a single DW in support of his defence case and as such in the face of the above mentioned evidence we disbelieve the defence case especially as no witness, police or otherwise, had any reason to implicate him in a false case.

13. With regard to sentencing we find that the appellant has brutally raped a minor child and robbed her of her youth and innocence an event which may even cause her great trauma and psychosocial damage which might effect her whole future. The crime of rape is in any event an abhorrent crime. The rape of a child is an affront to society itself where each parent expects that their child can play freely and enjoy their childhood under the State's protection rather than worry themselves sick each time their child goes outside of their house. In such cases no leniency can be expected and instead a deterrent message must be sent by the courts to those who commit such crimes that if proven they will face the full might of the law and will be dealt with by an iron fist by being awarded the maximum sentence applicable under the law especially in a case like this where there are no mitigating circumstances and only aggravating circumstances and as such the appellant's death sentence is upheld with all the other sentences handed down in the impugned judgment.

14. The appeal is dismissed and the confirmation reference is answered in the affirmative.