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JUDGMENT SHEET

LAHORE HIGH COURT
BAHAWALPUR BENCH, BAHAWALPUR
JUDICIAL DEPARTMENT

Criminal Appeal No. 692/2022

Muhammad Ramzan Vs. The State and another

Criminal Appeal No. 704/J/2022

Saeed Akhtar Vs. The State

Criminal Revision No. 26/2023

Mst. Nawaz Bibi Vs. The State and another

JUDGMENT

Date of hearing:	28.01.2025
For the Appellants:	Malik Farooq Haider, Advocate, in Crl. Appeal No.692/22. Mr. Muhammad Sharif Bhatti, Advocate, in Crl. Appeal No.704/2022.
For the State:	Ch. Asghar Ali Gill, Deputy Prosecutor General.
For the Complainant:	Mr. Rab Nawaz Khan Baloch, Advocate.

Tariq Saleem Sheikh, J. – Through this consolidated judgment, we propose to decide Crl. Appeal Nos. 692/2022 and 704/J/2022 and Crl. Revision No. 26/2023 arising from the judgment dated 30.11.2022 delivered by the Additional Sessions Judge, Bahawalpur.

2. The brief facts of the case are that on 23.04.2022 at 1:30 a.m., PW-2, Nawaz Bibi (the “Complainant”), made a statement before Kamran Nawaz, SI (PW-6), stating that she was a resident of Basti Kacholian. On 22.04.2022, at *Iftar time*, she went to deliver a meal to her mother. Before leaving, she placed S.B. (name withheld for privacy), her 20/21 years old mentally impaired daughter, on a cot in the courtyard and turned on the light. When she returned home about 15 minutes later, she found the courtyard light turned off and S.B. missing. She cried for help, which attracted PWs Tariq Mehmood, Muhammad Waleed, and other

inhabitants. She and the witnesses searched for S.B. but could not find her.

3. Kamran Nawaz/SI (PW-6) reduced Nawaz Bibi's statement to writing and, after recording his note (police *karwi*) on the complaint (Exh. PB), sent the same to the police station through Muhammad Mazhar 278/C. Khizar Bilal/ASI (PW-9) registered FIR No. 171/2022 dated 23.4.2022 (Exh. PN) under section 365 PPC on its basis.

4. The investigation of the case was assigned to Kamran Nawaz/SI (PW-6). On 23.4.2022, he received a call at '15', informing him that S.B. was found unconscious in the fields of Chak No. 5/BC. He immediately summoned a lady constable from the police station and a crime scene unit team. Upon reaching the specified place, he found Complainant Nawaz Bibi and witnesses present. Nawaz Bibi recorded a supplementary statement (Exh. PK) with him, nominating Saeed Akhtar, Muhammad Rasheed, and Muhammad Ramzan alias Banna Malang, as accused in this case. She stated that while she and Muhammad Bilal were searching for S.B., they met Muhammad Afzal (PW4), who informed them that he had seen Saeed Akhtar and Muhammad Ramzan alias Banna Malang taking S.B. on a motorcycle. Consequently, she along with Tariq Mehmood and Muhammad Waleed, went to Saeed's land, where they found Saeed, Rasheed, and Ramzan alias Banna Malang present. Upon being questioned, they admitted to abducting and ravishing S.B. They also told that they had made S.B.'s nude video and threatened that they would upload it on the internet and make it public if she reported the matter to the police. Nawaz Bibi further stated that she was not unnerved by the threats and still approached the police.

5. Kamran Nawaz/SI (PW-6) investigated the case until his transfer. On 5.5.2022, Muhammad Imran Ashraf/SI (PW-7) took over and carried out further investigations. He concluded that Saeed, Rasheed and Ramzan alias Banna Malang had committed the offence. The report under section 173 Cr.P.C. was submitted accordingly.

6. On 15.7.2022, the Additional Sessions Judge, Bahawalpur, indicted Saeed, Rasheed, and Ramzan alias Banna under sections 365-B and 375-A PPC. They pleaded not guilty and claimed trial.

7. The prosecution produced eleven witnesses to prove the charge. Tayyaba Shabbir 2096/LC (PW-1) got S.B.'s medical examination conducted. Nawaz Bibi (PW-2) was the complainant of the case. She and Tariq Mehmood (PW-3), besides giving other details of the case, deposed about S.B.'s recovery, and extra-judicial confessions of the accused persons. Muhammad Afzal (PW-4) furnished the evidence of the last seen. Dr. Faseh Abid Sheikh (PW-5) conducted the potency test of the accused. Muhammad Shahid 1999/HC (PW-8) was the Moharrar of the police station and testified about safe custody of the case property. Khizar Bilal/ASI (PW-9) registered FIR No. 171/2022 dated 23.4.2022 (Exh. PN). Khalil Ahmad 1401/C (PW-10) was a recovery witness. Dr. Sidra Naz (PW-11) medically examined the victim. Kamran Nawaz/SI (PW-6) and Muhammad Imran Ashraf/SI (PW-7) provided the details of their investigation. The public prosecutor gave up PW Muhammad Waleed being unnecessary. In documentary evidence, he *inter alia* produced the forensic report Exh. PR.

8. After the completion of the prosecution evidence, the Additional Sessions Judge recorded the statements of Muhammad Ramzan alias Banna, Saeed Akhtar, and Muhammad Rasheed under section 342 Cr.P.C. They refuted the evidence recorded during the trial and pleaded innocence. However, they neither recorded statements under section 340(2) Cr.P.C. nor examined any witness in disproof of the charges levelled against them.

9. On the conclusion of the trial, vide judgment dated 30.11.2022, the Additional Sessions Judge acquitted Muhammad Rasheed but convicted and sentenced Muhammad Ramzan alias Banna and Saeed Akhtar as follows:

Muhammad Ramzan alias Banna

Convicted under section 365-B PPC and sentenced to imprisonment for life with a direction to pay a fine Rs.10,00,000/- and compensation of Rs.10,00,000/- to the victim and, in default thereof, to suffer simple imprisonment for six months. The amount of compensation was recoverable as arrears of land revenue.

Saeed Akhtar

- i) Convicted under section 365-B PPC and sentenced to imprisonment for life with a direction to pay a fine Rs.10,00,000/- and compensation Rs.10,00,000/- to the victim and, in default thereof, to suffer simple imprisonment for six months. The amount of compensation was recoverable as arrears of land revenue.
- ii) Convicted under section 376(3) PPC and sentenced to imprisonment for life with a direction to pay a fine Rs.10,00,000/- and compensation Rs.10,00,000/- to the victim and, in default thereof, to suffer simple imprisonment for six months. The amount of compensation was recoverable as arrears of land revenue.

Saeed's sentences of imprisonment were ordered to run concurrently, and the benefit of section 382-B Cr.P.C. was extended to both convicts.

10. Muhammad Ramzan alias Banna and Saeed Akhtar (hereinafter referred to as the "Appellants") have challenged their conviction and sentence through Criminal Appeal Nos. 692 and 704 of 2022, while the Complainant has sought enhancement of their sentence by filing Crl. Revision No.26/2023. Neither the State nor the Complainant has challenged Rasheed's acquittal.

11. In support of Crl. Appeal Nos. 692 and 704 of 2022, the counsel contended that the Appellants were innocent and they had falsely been implicated in this case. There were no eyewitnesses of the occurrence, and the entire prosecution evidence was concocted. They maintained that the prosecution evidence was replete with material contradictions. The Additional Sessions Judge had failed to consider them, which had resulted in a grave miscarriage of justice. The counsel further contended that the Additional Sessions Judge had convicted the Appellants on the same evidence that led to the acquittal of co-accused Muhammad Rasheed. Thus, the Appellants' conviction was unjustified and unsustainable. They prayed for the acceptance of the appeals.

12. The Deputy Prosecutor General opposed the above arguments. He argued that the prosecution had successfully proved the charges against the Appellants through credible evidence. There were no discrepancies or contradictions that would warrant any relief for them. The Deputy Prosecutor General asserted that medical and forensic

evidence connected the Appellants with the alleged offence. He maintained that the Appellants' case was distinguishable from that of their co-accused, Muhammad Rasheed (since acquitted). He prayed that Crl. Appeal Nos.692 and 704 of 2022 be dismissed, and the impugned judgment be upheld.

13. In support of Crl. Revision No.26/2023, the Complainant's counsel contended that the convicts had committed a heinous offence. The sentence awarded to them by the trial court was not commensurate with the nature of their offences. He prayed for the enhancement of their sentences.

14. Arguments heard. Record perused.

15. The prosecution's case is that on 22.4.2022, at about *Iftar* time, the Appellants and their co-accused Rasheed abducted S.B., took her to a distant place, and ravished her. The case against the Appellants essentially rests on the testimony of Muhammad Afzal (PW-4), the Appellants' alleged extra-judicial confessions before Complainant Nawaz Bibi (PW-2) and Tariq Mehmood (PW-3), and medical and forensic evidence. There is no eyewitness of the occurrence except the victim herself.

16. According to the prosecution, S.B. is deaf and dumb and of unsound mind. Nawaz Bibi (PW-2) mentioned this in her statement Exh. PB and Dr. Sidra Naz WMO (PW-11), who medically examined S.B. on 23.4.2022, noted it in MLC Exh. PP. Due to her condition, it is stated, the investigating officer did not record her statement under section 161 Cr.P.C.

17. During the trial, Dr. Sidra Naz (PW-11) testified that S.B. was deaf and dumb and unable to speak, that she was "mentally retarded and unable to tell about previous such incidents or give relevant gynecological history." On 12.8.2022, the prosecution also submitted an application before the trial court to determine whether S.B. was competent to testify. Consequently, the court summoned her, conducted a *voir dire* test and, through its order dated 10.9.2022, found her unable to testify. This order remains unchallenged by both the prosecution and the defence.

18. The trial court failed to explore whether S.B.'s testimony could have been recorded through alternative means. It declared her incompetent to testify under Articles 3 and 17 of the Qanun-e-Shahadat, 1984, without seeking the opinion of a qualified psychiatric or psychological expert. The absence of expert evaluation constitutes a serious procedural lapse, as mental incapacity does not automatically preclude a witness from providing testimony. The law does not rigidly assume that persons with disabilities are wholly incapable of expressing themselves. Instead, courts are required to ascertain, with expert guidance, whether accommodations could enable them to communicate their experiences. The trial court should have sought professional input to determine whether the victim, despite her condition, could express facts relevant to the case through limited verbalization, gestures, facilitated communication, or alternative interpretative means.

19. The rights of persons with disabilities, including those with cognitive, intellectual and psychosocial impairments, have evolved through international law, beginning with general human rights instruments and culminating in specialized treaties. The Universal Declaration of Human Rights (UDHR) (1948) recognizes the inherent dignity and equality of all individuals. Articles 7 and 8 guarantee equal protection and access to legal remedies before the law. The International Covenant on Civil and Political Rights (ICCPR) (1966) further reinforces these principles through Article 14, ensuring equal access to courts and due process. However, these instruments do not prescribe specific accommodations for disabled persons, particularly those unable to communicate conventionally, leaving courts to develop procedural safeguards.

20. Over time, regional human rights mechanisms addressed this gap. The European Court of Human Rights (ECHR), the Inter-American Court of Human Rights (IACHR), and the African Commission on Human and Peoples' Rights (ACHPR) have ruled that States must provide reasonable accommodations for effective participation of persons with disabilities in legal proceedings. These judicial interpretations marked a shift toward recognizing specialized protections for such persons in

criminal justice systems. This evolution led to the adoption of the Convention on the Rights of Persons with Disabilities (CRPD) (2006). The CRPD codifies and expands prior human rights principles, making procedural accommodations legally binding. Article 13 mandates that States ensure effective access to justice for persons with disabilities, including necessary adjustments for their participation in legal proceedings. Article 16 obligates States to protect them from exploitation, violence, and abuse, ensuring perpetrators are held accountable through accessible legal mechanisms. Unlike earlier treaties, the CRPD explicitly recognizes that mentally impaired victims may require specialized support, facilitated communication, or expert assistance to testify effectively.

21. Beyond treaty law, international best practices reinforce these obligations. *The UN Guidelines on Justice in Matters Involving Child Victims and Witnesses of Crime*, which extend to persons with disabilities, emphasize the need for trained professionals, privacy protections, and procedural adaptations to ensure meaningful participation. Many legal systems, including those in the United States, Canada, the United Kingdom, and Australia, have adopted frameworks ensuring that testimony from aforesaid victims is not excluded solely due to their condition. Courts in these jurisdictions have ruled that denying procedural accommodations amounts to discrimination.

22. Given the above, in criminal cases involving victims with cognitive or intellectual disabilities, their testimony should not be rejected outright due to their condition. Instead, appropriate procedural accommodations must be made to facilitate their meaningful participation in the legal process. The obligation extends beyond courts to law enforcement agencies, prosecutors, and the judiciary, requiring proactive measures to ensure their access to justice. The guiding principle is that disability should never become a barrier to legal redress, and legal systems must exhaust all reasonable means to enable disabled victims to present their evidence.

23. It is well settled that Article 10A of the Constitution of Pakistan (1973), which guarantees the right to a fair trial and due process,

applies equally to victims as it does to the accused. This protection extends fully to persons with disabilities. The constitutional guarantee under Article 10A reinforces the broader international obligation under Article 13 of the CRPD discussed above.

24. The recognition of procedural safeguards for individuals with mental disabilities is already well established under our domestic law. The Mental Health Ordinance, 2001, though primarily focused on the care and treatment of mentally disordered persons, provides for judicial oversight and expert evaluation in matters concerning their condition. Chapter V of the Ordinance regulates judicial proceedings related to the legal status of mentally disordered individuals, underscoring the necessity of medical assessments before determining mental capacity. After the 18th Amendment to the Constitution, “health” became a Provincial subject, and the respective Governments of Sindh, Punjab, Khyber Pakhtunkhwa, and Balochistan enacted their own statutes in this behalf. The Province of Punjab adopted the 2001 Ordinance and later amended it through the Punjab Mental Health (Amendment) Act 2014. Although these laws do not directly govern witness competency, they establish the broader principle that courts must not declare a person incapable of testifying without expert medical assessment.

25. We conclude that the trial court should have summoned an expert to assess whether S.B. could communicate her experiences through alternative means before declaring her incompetent to testify. Accordingly, we **accept** CrI. Appeal Nos. 692/2022 and 704/J/2022 and **set aside** the impugned judgment to the extent of the Appellants (Muhammad Ramzan alias Banna and Saeed Akhtar). Their conviction and sentence are hereby nullified. The matter is remanded to the trial court with the direction to summon a forensic psychologist or psychiatrist under section 540 Cr.P.C. to assess S.B.’s capacity to communicate and the feasibility of recording her testimony through alternative means. If her testimony is recorded, the trial court shall reassess the case in accordance with the law, considering the additional evidence in its entirety.

26. Since we have remanded the case, we refrain from commenting on the arguments raised by learned counsel, as doing so may prejudice future proceedings.

27. This judgment shall not affect Muhammad Rasheed’s acquittal because neither the State nor the Complainant has challenged it.

28. CrI. Revision No. 26/2023 is dismissed in light of the above.

(Muhammad Tariq Nadeem)
Judge

(Tariq Saleem Sheikh)
Judge

Naeem

Announced in open court on _____

Judge

Judge

Approved for reporting

Judge

Judge