

Stereo. HCJDA 38
JUDGMENT SHEET
LAHORE HIGH COURT, LAHORE
JUDICIAL DEPARTMENT

Writ Petition No. 75596/2022

Sumaira

Vs.

The State etc.

JUDGMENT

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| Date of hearing: | 10.03.2023 |
| For the Petitioner: | Mr Shaukat Rafique Bajwa, Advocate, with Mr Tauseef Ahmad Bajwa, Advocate. |
| For the Respondents: | Mr Sittar Sahil, Assistant Advocate General, with Zia/S.P., Jamshaid Ahmad/SHO and Samra Yousaf/S.I. |

Tariq Saleem Sheikh, J. – The Petitioner has lodged FIR No.1019/2022 dated 15.10.2022 under section 375-A PPC at Police Station Saddar Daska, District Sialkot, against four people accusing them of ravishing her. During the investigation, police found that it was not a gang rape and substituted section 375-A PPC with section 371-B PPC. The Petitioner disagrees with this finding and contends that it has no legal value because the entire proceedings were conducted in contravention of section 9 of the Anti-Rape (Investigation and Trial) Act, 2021 (the “Anti-Rape Act”). Through this petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 (the “Constitution”), she seeks quashing of the said proceedings and a direction to the Respondents to reinvestigate the case in accordance with the law, i.e., section 9 of the Anti-Rape Act.

2. The World Health Organization defines sexual violence as “any sexual act, attempt to obtain a sexual act, or other act directed against a person’s sexuality using coercion, by any person regardless of their relationship to the victim, in any setting. It includes rape, defined as the physically forced or otherwise coerced penetration of the vulva or anus with a penis, other body part or object, attempted rape, unwanted

sexual touching and other non-contact forms.”¹ Sexual violence is regarded as one of the most horrific and traumatic human rights violations. Although women and girls are more commonly the victims, sexual violence can occur at any age. Anyone can commit it, including parents, caregivers, acquaintances, strangers, and intimate partners. Worldwide, an estimated 20% of girls and 10% of boys are sexually abused.² It has serious short and long-term physical and mental health, behavioural and social implications. Girls and women bear the overwhelming burden of injury and disease from sexual violence and coercion because they are more vulnerable to sexual and reproductive health consequences such as unwanted pregnancy, unsafe abortion and a higher risk of sexually transmitted infections, including HIV, during vaginal intercourse. It is important to note that in cases of rape, men are also at risk of contracting HIV.³ Occasionally, murder is committed during or after sexual assault, and sometimes, an honour killing happens due to sexual violence.

4. The victims of sexual violence often avoid reporting the crime. One of the reasons is that criminal proceedings are traumatizing.⁴ The 84th Report of the Law Commission of India observed:

“It is often stated that a woman who is raped undergoes two crises, the rape and the subsequent trial. While the first seriously moves her dignity, curbs her individual, disturbs her sense of security and may often ruin her physically, the second is no less potent of mixture, inasmuch as it not only forces her to relive through the traumatic experience, but also does so in the grudge of publicity in a totally alien atmosphere, with the whole apparatus and paraphernalia of the criminal justice system focused upon her.”⁵

5. Pakistan is a signatory to almost all international conventions and agreements that protect the rights of women and children and oblige State Parties to curb all types of violence against them, including gender-

¹ World Health Organization, *Violence against women* (09 March 2021).
<https://www.who.int/news-room/fact-sheets/detail/violence-against-women#:~:text=Sexual%20violence%20is%20any%20sexual,the%20victim%2C%20in%20any%20setting>

² World Health Organization, *Injuries and Violence: The Facts 2014*
https://apps.who.int/iris/bitstream/handle/10665/149798/9789241508018_eng.pdf?sequence=1.

³ World Health Organization, *Understanding and addressing violence against women*.
https://apps.who.int/iris/bitstream/handle/10665/77434/WHO_RHR_12.37_eng.pdf

⁴ *Muhammad Aamar v. The State etc.* (2022 LHC 8114).

⁵ Law Commission of India, 84th Report on Rape and Allied Offences – Some Questions of Substantive Law, Procedure and Evidence. <http://lawcommissionofindia.nic.in/51-100/Report84.pdf>

based violence. Article 4 of Pakistan's Constitution (1973) stipulates that every citizen and every other person, for the time being within the country, has an inalienable right to enjoy equal protection of the law and be treated in accordance with the law. Chapter 1 of Part II lists the fundamental rights guaranteed by the Constitution. Over the last two decades, the Government has taken various steps to incorporate human rights values into its statutes, policies, and action plans.⁶ It has toughened the law to combat rape and sexual offences through the Criminal Law Amendment (Offences Relating to Rape) Act (XLIV of 2016) and the Criminal Laws (Amendment) Act (LVI of 2021).⁷

6. Parliament has enacted the Anti-Rape Act to assure various fundamental rights guaranteed by the Constitution and to discharge obligations under international law to address the issue of sexual violence and bring offenders to justice. To this end, the Act provides for efficient procedures, speedy trials, evidence and matters connected therewith or incidental thereto.⁸ It may be highlighted that being a special legislation, it has precedence over all other general laws on the subject it covers.

7. Indubitably, the Anti-Rape Act is a remedial social statute.⁹ Dodd makes the following observations about such enactments in *Statutory Interpretation in Ireland*:¹⁰

“The case law reveals that the courts are more disposed to the purposive approach in respect of particular types of enactments. Remedial social statutes, enactments relating to international or European law and paternal legislation, such as enactments relating to child welfare, are more readily interpreted in light of their purpose. In respect of such enactments, the courts are concerned with ensuring that the purpose or aim of a provision or Act is achieved. In contrast, other types of statutes and instruments favour a literal approach – criminal, taxation and conveyancing enactments dispose themselves to a strict literal approach. In respect of such statutes, what is typically valued is

⁶ For details see: Laws for Women's Rights, The Punjab Commission on the Status of Women. https://pcsw.punjab.gov.pk/womens_rights

⁷ This Act superseded the Criminal Law (Amendment) Ordinance (XVII of 2020), which was promulgated on 17.12.2020.

⁸ Preamble of the Anti-Rape (Investigation and Trial) Act, 2021.

⁹ Legislation is a tool for controlling, guiding, and restraining the behaviour of individuals and groups in a community. In a broad sense, all laws are social in character, but in a narrow sense, only the laws enacted for social welfare are classified as social legislation. Hence, social legislation may be defined as special laws which are passed to improve the socio-economic position of vulnerable groups such as women, children, the elderly, scheduled tribes, the physically and intellectually impaired, unorganized workers, and agricultural and landless labourers. (Ranjana Sehgal, *Social Legislation and Role of Social Worker in Legal Assistance*).

¹⁰ 1st Edn, Bloomsbury Professional 2008, para 6.51.

certainty and allowing those affected to rely on the ordinary and plain meaning.

‘Remedial social statutes’ and legislation of a paternal character favour a purposive interpretation and are said to be construed as widely and liberally as can fairly be done within the constitutional limits of the courts’ interpretative role. This formula has been repeated in a number of cases. It has been codified to some extent in some jurisdictions. Remedial social statutes are enactments which seek to put right a social wrong and provide some means to achieve a particular social result. The interpretative approach to remedial enactments can be related to the mischief rules and purposive approach, in that interpretations that promote the remedy that the legislature has appointed are preferred.”¹¹

8. In *LD v. Chief Appeals Officer*, [2014] IEHC 641 at para 38, Peart J. stated that remedial social statutes should be “interpreted as widely as the words reasonably permit in order to reflect the permissive nature of the legislation.”

9. In *Lalappa Lingappa & others v. Laxmi Vishnu Textile Mills Ltd., Sholapur* (AIR 1981 SC 852), the Supreme Court of India held that when construing a social welfare legislation, the court should apply the beneficent rule of construction. If there are two plausible readings of a provision, the one that best serves the Act’s policy and is more beneficial to the people for whom the Act was passed should be preferred. However, where the language is explicit, the court must give it effect regardless of the ramifications. The argument of inconvenience and hardship is only admissible in cases where the meaning of the statute is unclear and there are two ways to interpret it. In their eagerness to advance the beneficent purpose of the legislation, the judges must resist the temptation of seeking ambiguity where none exists. In *Edukanti Kistamma (Dead) through L.Rs. & others v. S. Venkatareddy (Dead) through L.Rs. & others* (AIR 2010 SC 313), the Supreme Court held that the Act must be read in its whole for purposes of statutory interpretation. The court must give full effect to the Act’s objective and intent by using the rules of purposive construction. It must construe the enactment in a way that promotes its object and advances the purpose for which it was passed and strongly oppose any construction that seeks to reduce a statute’s utility. In *Regional Provident Fund Commissioner v. Hooghly Mills Co. Ltd. & others* [2012 (2) SCC 489], the Supreme Court held that

¹¹ The Supreme Court of Ireland approvingly cited these excerpts in *Brigid Wilton McDonagh v. The Chief Appeals Officer and another* [2021] IESC 33.

the normal canon of interpretation is that a remedial statute or social welfare legislation receives liberal construction. In contrast, a penal statute calls for strict interpretation. If there is any doubt in the cases of remedial laws, it is resolved in favour of the class of persons for whose benefit the statute is enacted. In the cases of penal statutes, doubt is generally resolved in favour of the accused.

10. The Anti-Rape Act aims to effectively deal with the rape and sexual abuse crimes mentioned in its Schedules (which are hereinafter referred to as the “Scheduled Offences”) committed against women and children. It outlines a framework to check the said crimes by establishing (i) Anti-Rape Crisis Cell, (ii) Special Sexual Offences Investigation Units, (iii) Independent Support Advisors, (iv) Special Prosecutors, (v) Special Courts, (vi) a register of sex offences, and (vii) Fund to carry out the purposes of the Act. Each thread is meticulously braided; a break in any of them would render the statute ineffective. In light of the principles discussed above, the courts must interpret the Anti-Rape Act liberally and purposively. They must adopt the construction that advances rather than defeats the statute’s objectives.

11. Section 9 of the Anti-Rape Act provides a special procedure for investigating Scheduled Offences. It states:

- 9. Investigation in respect of scheduled offences.**— (1) For the purposes of investigation under this Act, special sexual offences investigation units (SSOIUs) shall be established in every district by the provincial governments and for the purposes of the Islamabad Capital Territory by the federal Government.
- (2) The SSOIU shall comprise police officers who have received training on investigation in relation to sexual offences and preferably one member of the unit shall be a female police officer.
- (3) The investigation in respect of offences mentioned under this Act shall be carried out as follows:
 - (i) for offences mentioned in Schedule-I, by the SSOIU; and
 - (ii) for offences mentioned in Schedule-II, by SSOIU under the supervision of a police officer not below the rank of BPS-17.
- (4) In case the complainant in relation to an offence under Schedule-II expresses dissatisfaction which is based on reasonable grounds, the investigation shall be transferred to the district head of investigation of the police.
- (5) The officers of the SSOIUs shall ordinarily be from the area in which the occurrence of the offence has taken place:
Provided that in exceptional circumstances, and where the dictates of fair, accurate and technical investigation warrant otherwise, officers

from areas other than the area of occurrence, may be deputed in the SSOIUs.

- (6) Upon completion of investigation, the SSOIU shall, through the prosecutor general or special prosecutors, submit the final report under section 173 of the Code before the Special Court.

12. In exercise of the powers conferred by section 19(1) of the Anti-Rape Act, the Ministry of Law and Justice, on the recommendation of the Special Committee established under section 15, has framed Anti-Rape (Investigation) Rules 2022, which were notified in the Gazette of Pakistan on 20 February 2023.

13. Sections 10 and 22 of the Anti-Rape Act are also relevant to discourse. Section 10 empowers the SSOIUs to take cognizance of the offences not specified in the Schedules if they are committed in connection with the Scheduled Offences. Section 22(1) makes the false investigation a crime. It stipulates that if the investigator fails to carry out the investigation properly or diligently, or causes a fraudulent investigation to be conducted, or fails to pursue the case in any court of law, he will be punished with imprisonment of either description up to three years and a fine. It is important to point out that section 22(2) makes the filing of a false complaint regarding the commission of the Scheduled Offence(s) subject to a similar sanction.

14. As adumbrated, the Anti-Rape Act is a special legislation that would prevail over any regular law on the subjects it addresses. But are the provisions of section 9 mandatory? Parliament has used the word “shall” in every sub-section thereof. Generally speaking, this word connotes that the provision is obligatory. However, the final test is the legislature’s true intent, which the court must discern. In *Province of Punjab through Conservator of Forest, Faisalabad, and others v. Javed Iqbal* (2021 SCMR 328), the Supreme Court held:

“In order to determine whether the aforesaid proviso is directory or mandatory, the duty of the court is to try to unravel the real intention of the legislature. The ultimate test is the intent of the legislature and not the language in which the intent is clothed. The object and purpose of enacting the provision provide a strong and clear indicator for ascertaining such intent of the legislature. The intention of the legislature must govern and this is to be ascertained not only from the phraseology of the provision but also by considering its nature, its object, and the consequences which would follow from construing it one way or the other. This exercise entails a careful examination of the scheme of the Act in order to discover the real purpose and object of

the Act. A provision in a statute is mandatory if the omission to follow it renders the proceedings to which it relates illegal and void, while a provision is directory if its observance is not necessary to the validity of the proceeding. One of the important tests that must always be employed in order to determine whether a provision is mandatory or directory in character is to consider whether the non-compliance of a particular provision causes inconvenience or injustice and, if it does, the court would say that that provision must be complied with and that it is obligatory in its character.”

15. Police investigation is a key component of the criminal justice system. It consists of identifying, collecting, conserving, and presenting evidence in a court of law. The majority of criminal cases fail in courts due to defective investigations. Rape and other sexual violence crimes require a thorough investigation, like any other criminal case. If the victim is not sent for medical examination on time, or if the evidence submitted by the medical officer is not processed and transmitted to the appropriate labs by the police, the entire case may become weak and thus benefit the perpetrator.¹² Section 9 of the Anti-Rape Act has introduced the concept of trained special units, SSOIUs, to investigate sexual offences more effectively. Because of their special training, SSOIUs can reduce the delays during the investigation and considerably raise the likelihood of conviction in sexual violence cases, which currently has an abysmally low rate.¹³ ***U.N. Handbook for Legislation on Violence against Women*** states:

“It is critical to ensure that those mandated to implement legislation regarding violence against women, including police, prosecutors and judges, have an in-depth understanding of such legislation and are able to implement it in an appropriate and gender-sensitive manner. When public officials involved in the implementation of the law are not comprehensively trained regarding its content, there is a risk that the law will not be implemented effectively or uniformly. There have been many and varied efforts to train public officials, and/or to include capacity-building on violence against women in the official curricula for these professions. Such trainings and capacity-building efforts have been found to be most effective, and implemented rigorously, when they are mandated in law and developed in close collaboration with non-governmental organizations.

“There is evidence that specialized units are more responsive and effective in dealing with violence against women. Experience has shown that the establishment of such units may facilitate the development of expertise in this area and may result in an increase in

¹² Shahzad Shaikh and Iqra Ahmed, *Pakistan's Flawed Forensic Investigation System in Sexual Assault Cases: A Policy Report*.

<https://cbs.lums.edu.pk/sites/default/files/2022-07/Policy%20report%20FINAL%20v2.docx.pdf>

¹³ Rida Tahir, *How to handle a rape case*, The News International, June 01, 2023

the number of cases investigated and a better quality and more efficient process for the complainant/ survivor.”¹⁴

16. Every SSOIU is required to have one female police officer as a member. This helps the victim feel comparatively comfortable during the investigation. The importance of a female officer increases manifold in cases involving children.

17. The above discussion leads me to an ineluctable conclusion that section 9 of the Anti-Rape Act is mandatory. Section 9 confers special jurisdiction on SSOIUs in respect of Scheduled Offences. For this purpose, it mandates the Federal Government to establish SSIous for the Islamabad Capital Territory and the Provincial Governments in every district.

18. During the hearing of this case, it was mentioned that the Punjab Government had not established SSIUOs in several districts even two years after the enactment of the Anti-Rape Act. If that is the situation, it is directed to constitute the requisite SSOIUs immediately and to arrange necessary training for the police officers assigned to them as required by law.

The case at hand

19. The District Police Officer Sialkot (Respondent No.2) has submitted a report that SSOIUs and Gender Crime Cells comprising female SIs/ASIs, who received training regarding sexual offences and gender crimes have been established in the Sialkot District under the supervision of the Sub-Divisional Police Officer. The S.P. Investigation is the overall in-charge of the Wing. The present case is being investigated by an SSOIU consisting of the following: (i) Abdul Hameed Virk DSP/SDPO Daska, (ii) Shahid Iqbal S.I./SHO, Police Station Saddar Daska, (iii) Samra Yousaf S.I., Police Station Saddar Daska. Respondent No.2 has categorically stated that the investigation of this case is compliant with section 9 of the Anti-Rape Act.

¹⁴ <https://www.un.org/womenwatch/daw/vaw/handbook/Handbook%20for%20legislation%20on%20violence%20against%20women.pdf>

20. This petition is disposed of in view of the above report of Respondent No.2.

(Tariq Saleem Sheikh)
Judge

Naeem

Announced in open court on _____

Judge

Approved for reporting

Judge