

IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT:

MR. JUSTICE MALIK SHAHZAD AHMAD KHAN
MR. JUSTICE SALAHUDDIN PANHWAR

JAIL PETITION NO. 407 OF 2022

(On appeal against the judgment dated 10.05.2022 of the Lahore High Court passed in Cr. Appeal Nos. 40659, 40660/2020 & Cr. Revision No. 40662/2020)

Muhammad Abid Nawaz

... Petitioner

Versus

The State

... Respondents

For the Petitioner:

Mr. Muhammad Mumtaz Faridi, ASC
(Via video link from Lahore)

For the Complainant:

Mr. Tahir Maqsood, ASC
(Via video link from Lahore)

For the State:

Rai Akhtar Hussain, APG Punjab

Date of Hearing:

11.08.2025

ORDER

MALIK SHAHZAD AHMAD KHAN:- Muhammad Abid Nawaz

petitioner along with Muhammad Rizwan (co-accused since acquitted), was tried by the learned Sessions Judge, Pakpattan, pursuant to a case registered vide FIR No.01 dated 01.01.2016 under Sections 365-B/376 PPC, at Police Station Chakbedi, District Pakpattan. The learned Trial Court vide its judgment dated 08.07.2020, convicted the petitioner under Section 365-B PPC and sentenced him to ten (10) years rigorous imprisonment with fine of Rs.50,000/- and in default whereof to further undergo three (03) months simple imprisonment. The petitioner was also convicted under Section 376 (I) PPC and sentenced to ten (10) years rigorous imprisonment with fine of Rs.50,000/- and in default whereof to further undergo three months simple imprisonment. Both the

sentences of imprisonment were ordered to run concurrently. Benefit of section 382-B Cr.P.C, was also extended to the petitioner. The appeal filed by the petitioner was dismissed by the learned High Court vide impugned judgment dated 10.05.2022.

2. Arguments heard. Record perused.

3. Brief facts of the case as given by the complainant Muhammad Rafique (PW-1), in his complaint (Ex.PA), on the basis of which the formal FIR (Ex.PA/1), was chalked out, are that on 29.12.2015, at 10.00 p.m, Muhammad Abid Nawaz alias Abid Pasha (petitioner) and Rizwan (co-accused since acquitted), while armed with pistols entered the house of the complainant by scaling over the wall and they forcibly abducted the daughter of the complainant namely Mst. Sumera Bibi (PW-2), when she allegedly went to the washroom of her house to answer the call of nature. The petitioner and his co-accused took the victim Mst. Sumera Bibi (PW-2), at some unknown place situated in village Reet Pura, where Muhammad Abid Nawaz (petitioner), committed rape with her, whereas Rizwan (co-accused since acquitted), kept on standing at guard during the occurrence, hence the FIR of this case.

4. We have noted that it was the case of the prosecution that the petitioner and his co-accused forcibly abducted Mst. Sumera Bibi (PW-2), at pistol point and thereafter Muhammad Abid Nawaz (petitioner), committed rape with her, whereas according to the stance of the petitioner, Mst. Sumera Bibi (PW-2), contracted love marriage with him with her free will and consent. It is true that the claim of the petitioner regarding solemnization of his valid Nikah with Mst. Sumera Bibi (PW-2), has not been proved by the L.S

petitioner in accordance with the law because Nikah Registrar or any witness of Nikah has not been produced in the witness box in defence evidence of the petitioner. However, while keeping in view all the evidence and circumstances of the case, the moot point for determination before this Court is that as to whether it was a case of forcible intercourse/rape as envisaged under section 376 PPC or it was a case of *Zina* with consent/fornication punishable under section 496-B PPC. In order to determine the abovementioned question, we have noted that the story narrated by the prosecution to prove the charges of forcible abduction and rape punishable under sections 365-B/376 PPC, is not confidence inspiring. According to the prosecution case, on 29.12.2015, at 10.00 p.m, the abductee/victim namely Mst. Sumera Bibi (PW-2), went to the washroom of her house, in order to answer the call of nature and at that time, she was forcibly abducted at pistol point by Muhammad Abid Nawaz (petitioner) and Rizwan (co-accused since acquitted) but surprisingly the abductee/victim did not raise any hue and cry at that time, though she stated that later, on 31.12.2015, at 8.00 p.m, when the accused were shifting her from one place to another, she raised noise at Purani chungi Deepalpur, whereupon the accused let her off and fled away from the spot. It is not understandable that if the alleged abductee can raise hue and cry on 31.12.2015, in a different village i.e., Purani Chungi Deepalpur to get rid of the accused persons then as to why she did not raise hue and cry when she was being abducted at night time from her own house. It is also not understandable that as to how the accused persons knew that Mst. Sumera Bibi would go to the washroom of her house on 29.12.2015, at 10.00 p.m (night time) L

we have noted that as she was not challaned by the Police and no charge of fornication under Section 496-B PPC was framed against her by the learned trial Court, thus, she had no opportunity to defend herself, therefore, it will not be appropriate to punish her at this stage without providing her opportunity of defence.

5. Keeping in view all the abovementioned facts, we convert this petition into an appeal and partly allow the same. Consequently we set aside the convictions and sentences of the petitioner/appellant under Sections 365-B/376(I) PPC. However, the petitioner is convicted under Section 496-B PPC and is sentenced to five years rigorous imprisonment. He is also directed to pay fine of Rs.10,000/- or in default thereof to further undergo six months simple imprisonment.

6. The petition is converted into an appeal and partly allowed in the above terms and the impugned judgment is modified accordingly.

Islamabad, the
11th August, 2025
Not Approved For Reporting
Ahtzaz