

IN THE SUPREME COURT OF PAKISTAN

(Appellate Jurisdiction)

PRESENT:

Justice Muhammad Hashim Khan Kakar
Justice Ishtiaq Ibrahim

25/25

Jail Petition No. 419/2022

(Against the order/judgment dated 14.04.2022
passed by the Lahore High Court, Lahore in
Crl. A. No.44197-J/2021, Crl. Rev.No. 55132/2021
and PSLA No. 55131/2021)

Safdar Ali

Petitioner(s)

Versus

The State

Respondent(s)

For the Petitioner(s):

Mr. Umer Hayyat Bhatti, ASC
(through video link, Lahore)

For the Complainant(s):

Mr. Azmat Hussain, ASC
(through video link, Lahore)

For the State:

Mr. Tariq Siddiqui, Addl. P.G Punjab

Date of hearing:

07.04.2025

JUDGMENT

Muhammad Hashim Khan Kakar, J. Through the instant petition for leave to appeal under Article 185(3) of the Constitution of the Islamic Republic of Pakistan, 1973, the petitioner, Safdar Ali, has called in question the vires of judgment dated 14.04.2022, passed by the Lahore High Court, Lahore whereby his appeal was dismissed whilst upholding his conviction.

2. In summary, the facts of the case are as follows: On the intervening night of 11-12.01.2020, the complainant, Muhammad Ashfaq, arrived home late from work to discover that his daughter, Mst. Humna Bibi (PW-2), was absent. He and his wife initiated a search for their daughter, and Sabir informed them that the accused Nadeem and two unknown individuals had arrived. The complainant's daughter claimed that she was assaulted and held against her will by the accused individuals, but she also managed to escape. She claimed that Safdar (the petitioner), Nadeem and Sarfraz forcibly entered the residence. Safdar pointed his pistol at her and she was subsequently abducted by boarding a motorcycle and being transported to a different location. She

was held there from 11.01.2020 to 13.01.2020. The complainant also contended that the investigating officer's failure to comply with the law resulted in a delayed medical examination, which was subsequently conducted through the order of magistrate.

3. The FIR (Exh.CW-4/A) of the case was lodged on 16.01.2020 after an unexplained delay of approximately 3/4 days despite the fact that the occurrence in this case took place during the night on 11.01.2020. In the same vein, the victim reportedly returned on 13.01.2020, but she was medically examined on 24.01.2020. The magistrate recorded her statement on 24.01.2020 under section 164 Cr.P.C., and the petitioner's name was first recorded. The inexplicable delay in filing the FIR raises suspicion and undermines the credibility of the prosecution's narrative. It is imperative that the police are provided with early information regarding the crime in order to prevent criticism of the report as a result of consultation, deliberation and manipulation.

4. Another discrepancy in the prosecution case is that the complainant stated in the FIR that Sabir had witnessed the occurrence. Consequently, Sabir was the important witness of the prosecution. However, the prosecution failed to present him before the court to substantiate the allegations against the petitioner thereby withholding its best evidence. This Court in the case of *Lal Khan v State* (2006 SCMR 1846) held that the non-production of most natural and material witnesses to the occurrence would strongly suggest prosecution's misconduct. This would be regarded as a source of undue advantage for the prosecution and a suppression of material facts that would cause prejudice to the accused. It has also been established that the act of withholding the most natural and material witness of the occurrence would create the impression that the witness would not have supported the prosecution if he had been brought into the witness box. Consequently, the prosecution would not be able to whitewash the consequences in such an event.

5. It is also important to note that in the case in hand, Mst. Humna Bibi (PW-2) was the sole witness and no one else witnessed the occurrence in question. The entire rape incident was associated with her. Consequently, her testimony is the determining factor in the entire case.

The courts below in acquitting the co-accused Nadeem and Sarfaraz determined that the statement of Mst. Humna Bibi was unreliable in that context. This raises a substantial query about the credibility of the same statement when applied to the petitioner. It is now a well-established principle in criminal jurisprudence that the conviction of an accused person cannot be exclusively based on the testimony of a witness if that testimony has been disbelieved in relationship to another accused person. The testimony of a single witness is only admissible if it is determined to be reliable and unimpeachable. In the present case, the reliability of the statement of PW-2 regarding the co-accused has directly undermined by the courts' decisions to discard it against the petitioner.

6. The High Court's reliance on the victim's statement, which has been disregarded in relation to the co-accused, is not only contradictory but also raises significant concerns about the integrity of the prosecution's case. The principle of "*falsus in uno, falsus in omnibus*" is no longer strictly applicable; however, the necessity for corroboration remains paramount, particularly in cases involving severe charges. The victim was examined by Dr. Fatima Alla-ud-Din, who was not present at the court. The medico-legal certificates were produced by the record clerk of DHQ Hospital Sheikhupura. This is an acknowledged aspect of the case. According to the medical certificate, there was no indication of recent or fresh vaginal intercourse or penetration. A conviction cannot be upheld if the only evidence is a single statement that lacks corroboration.

7. In light of the above considerations, it is evident that the prosecution has failed to establish the guilt of the petitioner beyond a reasonable doubt, as such, the instant petition is converted into an appeal and the same is allowed by setting aside the impugned judgment. The appellant is acquitted of the charges levelled against him and he is ordered to be released forthwith if not required in any other case.

Judge

Judge

ISLAMABAD

07.04.2025

(Farrukh)

12/4 (Approved For Reporting)