

**JUDGMENT SHEET**  
**ISLAMABAD HIGH COURT, ISLAMABAD,**  
**JUDICIAL DEPARTMENT**

**Criminal Appeal No.382/2019**

Tanvir Hussain

*versus*

The State & another

Appellant by: M/s Raheema Khan, Minahil Ali and Saad Satti,  
Advocates for appellant.

Respondents by: Mr. Zaheer Ullah Jan, Advocate for Respondent  
No.2.  
Mr. Hasnain Haider Thaheem, State Counsel.  
Nadeem Mughal, S.I., P.S. Secretariat, Islamabad.

Date of Hearing: 15.07.2020.

**MOHSIN AKHTAR KAYANI, J:** Through this criminal appeal, the appellant has called in question judgment of the learned Additional Sessions Judge (East)/Gender Based Violence Court East-West, Islamabad, dated 04.11.2019, whereby Tanvir Hussain (appellant) has been convicted in case FIR No.101, dated 05.06.2017, under Section 365-B/376 PPC, P.S. Secretariat, Islamabad and sentenced to imprisonment for life (R.I.) along with fine of Rs.100,000/-, in default whereof, the appellant shall further undergo six (06) months simple imprisonment. Benefit of Section 382-B Cr.P.C. has been extended to the appellant.

2. Brief facts referred in the instant case are that on the complaint filed by Muhammad Sibtain (Respondent No.2) the aforesaid FIR No.101/17 has been registered against the appellant having allegations that on 22.05.2017, her sister namely Mst. Umm-e-Kalsoom went missing and despite hectic efforts she was not traced out. On further inquiry, it came to the knowledge of Respondent No.2 that the appellant used to tease and follow Mst. Umm-e-Kalsoom. After the arrest of appellant, report under Section 173 Cr.P.C. was sent up against the appellant to face trial, whereupon charge under Section 365-B/376 PPC was framed against the appellant on 07.11.2017, to which the appellant pleaded not

guilty and claimed trial. Accordingly, the prosecution produced five witnesses in order to bring guilt of the appellant home, whereafter the appellant recorded his statement under Section 342 Cr.P.C. on 04.10.2019. Ultimately, the learned trial Court, vide impugned judgment dated 04.11.2019, sentenced the appellant to undergo imprisonment for life (R.I.) along with fine of Rs.100,000/-, in default whereof, the appellant shall further undergo six (06) months simple imprisonment. Benefit of Section 382-B Cr.P.C. has been extended to the appellant. Hence, the instant criminal appeal.

3. Learned counsel for appellant contends that impugned judgment is contrary to law having been passed in a hasty manner and without appreciation of evidence; that impugned judgment is the result of mis-reading and non-reading of the evidence brought on record; that alleged abductee i.e. sister of Respondent No.2 herself refused to get medically examined, which otherwise negates the entire story of the prosecution; that the learned trial Court has not appreciated the record brought in shape of Nikahnama, which has also been verified by the ASI; that the alleged abductee solemnized marriage with the appellant before registration of the present case, who filed private complaint, accompanied with an affidavit, wherein she categorically contended that she willfully left her house and she being sui-juris has a right to contract marriage; that the learned trial Court fell in error while passing the impugned judgment that a suit for jactitation of marriage has been filed, but a decree of conjugal rights in favour of the appellant has been awarded; that impugned judgment is based on surmises and conjectures having been passed in a slipshod manner, therefore, the same may be set-aside and appellant be acquitted of the charge.

4. Conversely, learned State Counsel as well as learned counsel for respondent No.2 opposed the filing of instant criminal appeal on the grounds that prosecution has produced sufficient and unimpeachable evidence to connect the appellant with the commission of offence; that the Nikahnama produced by

the defence is fake and fictitious one and this fact has been proved from the statement of complainant coupled with the statement of complainant's sister; that the prosecution has succeeded to establish its case beyond any shadow of doubt, on the basis of which the learned trial Court has rightly passed the impugned judgment, which is liable to be maintained.

5. Arguments heard, record perused.

6. Perusal of record reveals that PW-1 Muhammad Sibtain (complainant) lodged the complaint Exh.PA on 05.06.2017, which has been converted in FIR (Exh.PB), having allegations that he is permanent resident of District Hangu and currently residing within vicinity of Bari Imam along with his family, whereas his sister namely Mst. Umm-e-Kalsoom, being a student of B.A. in IMCG, Sector F-10/2, Islamabad, went to the said college on 22.05.2017, at about 7 a.m., but she did not return till evening. On inquiry, it revealed that one Tanveer Hussain (appellant) i.e. wagon driver of Route 120, chased and abducted his sister for the purpose of Zina, whereupon the said accused person was tried to be contacted on his phone, but he was not reachable, even his family members were contacted, but to no avail. After the arrest of appellant and recovery of Mst. Umm-e-Kalsoom, the latter recorded her statement under Section 164 Cr.P.C. before the learned Magistrate on 05.07.2017, referred as Exh.PH/1-6. The police completed investigation and submitted final report under Section 173 Cr.P.C. against the appellant in terms of Section 365-B/376 PPC and he was charged by the learned Trial Court in same offences vide charged dated 07.11.2017.

7. The prosecution in order to prove the case has produced PW-1 Muhammad Sibtain (complainant) i.e. real brother of alleged abductee, who reiterated his stance referred in complaint Exh.PA and contends that after registration of FIR the police has arrested the appellant and recovered his sister Mst. Umm-e-Kalsoom from Bhara Kahu, whereafter the latter recorded her statement under Section 164 Cr.P.C. before the concerned Magistrate and herself

opted to go with him. During the course of cross-examination, PW-1 Muhammad Sibtain acknowledged that he moved application Exh.PA on 05.06.2017 and the delay in filing of complaint is due to the fact that he was personally searching for her sister. He also went to Muzaffarabad on 28.05.2017 and on most occasions the sister used to go to college with the appellant. It was also confirmed from the evidence that complainant was not aware whether his sister was abducted by the appellant on 28.05.2017, rather it was assured to him on 04.06.2017 that his sister was abducted by appellant.

8. The star witness of this case is Mst. Umm-e-Kalsoom i.e. alleged abductee who appeared as PW-2 and contended that on 22.05.2017, she left her home to attend the college as per her routine and when she boarded in the public transport wagon, she was told by the appellant that a route has been arranged by the police and he will drop her to the college. She further stated that she was taken to Faizabad instead of to her college and on her inquiry from appellant that why he had brought her to Faizabad the appellant told her to stay silent and they are going to Muzaffarabad. She was also directed to stay silent otherwise he will kill her brothers. As per her stance, she was taken to Muzaffarabad and locked in a room, where appellant used to torture and sexually abuse her. After three (03) days of such incident, she was taken to another place where she was forced to sign and affix thumb impression on blank papers. After a month, PW-2 Mst. Umm-e-Kalsoom convinced the appellant to return home at Islamabad and while on their way back to home, they were apprehended by the police in Bhara Kahu.

9. During the course of cross-examination, PW-2 Mst. Umm-e-Kalsoom acknowledged the following facts.

- i. *Appellant was driving taxi at that time. He was alone in said taxi. I cannot tell the time of reaching Muzaffarabad as I was not having a watch with me.*
- ii. *I reached Faizabad during morning time.*
- iii. *We went to Muzaffarabad through coaster.*
- iv. *Other passengers were also traveling in said coaster.*
- v. *My eyes were not closed at that time.*

- vi. *I remained silent in coaster due to fear.*
- vii. *Accused has not showed me any gun or pistol etc.*
- viii. *My family members were aware about the contact with accused.*
- ix. *I was provided food by the accused in above said room.*
- x. *I never went to court in Muzaffarabad. I remained in Muzaffarabad for more than a month.*
- xi. *When I marked my thumb impression on the alleged blank papers, I was not intoxicated.*
- xii. *I am waiting for my result of graduation.*
- xiii. *I can read sign board easily, I have not seen any sign on the day of our arrest.*
- xiv. *It is correct that thumb impression and signature on Exh.DA are mine.*
- xv. *It is correct that I have refused to be medically examined. Volunteered that I did so to save respect of my family.*
- xvi. *It is correct that I have not applied for Khula till today. Volunteered that there was no Nikah solemnized between me and accused, there is no need to filing any suit for Khula or dissolution of marriage.*
- xvii. *I came back to my house on 05.07.2017.*

10. The prosecution has produced Investigating Officer of this case i.e. PW-4 Imran Haider/ASI, who acknowledged that he went to Muzaffarabad on 23.06.2017 to search for the accused person, where it was transpired that the appellant and Mst. Umm-e-Kalsoom have solemnized Nikah, regarding which he also obtained certified copy of Nikahnama, referred as Exh.PE. On 04.07.2017, appellant and alleged abductee were arrested from Bhara Kahu on spy information. Mst. Umm-e-Kalsoom recorded her statement under Section 164 Cr.P.C., whereafter offence under Section 376 PPC was incorporated in the report. He also acknowledged that there is no medical evidence for the offence under Section 376 PPC and it was added due to statement of alleged abductee recorded under Section 164 Cr.P.C. The abductee refused to get herself medically examined. Investigating Officer further confirmed that he recorded two witnesses of Nikah. He has no knowledge of the fact that any statement of abductee was recorded by the Magistrate at Muzaffarabad nor he recorded the statement of any passenger of coaster in which Mst. Umm-e-Kalsoom had

travelled. The prosecution has produced PW-5 Malik Farrukh Nadeem, Ex-Magistrate, 1<sup>st</sup> Class, who recorded the statement of Mst. Umm-e-Kalsoom.

11. After recording of abovementioned evidence the statement of appellant was recorded under Section 342 Cr.P.C. in which he denied the entire incident, rather took the stance of marriage with alleged abductee and produced attested copy of complaint under Section 107 Cr.P.C., affidavit of cursory statement of Mst. Umm-e-Kalsoom recorded by learned Judicial Magistrate at Muzaffarabad, copy of Nikahnama and attested copy of ex-parte judgment and decree dated 28.06.2019, passed by Judge Family Court, Islamabad. All the documents have been referred as Mark-C to Mark-F. The principal stance of appellant has been recorded in his answer to Question No.2, which is as under:

*Q. No.2: It is in the prosecution evidence that on 22.05.2017, you abducted Mst. Umm-e-Kalsoom upon which PW-1 Muhammad Sabtain submitted application Exh.PA against you in PS Secretariat upon which FIR No.101/17, dated 05.06.2017 U/S 365-B Exh.PB was registered against you by PW-4 Imran Haider ASI. What do you say about it?*

*Ans: It is incorrect that I abducted Mst. Umm-e-Kalsoom on 22.05.2017 but the real facts which complainant (Muhammad Sabtain) has deliberately suppressed from the police and this Honourable Court are that on 22.05.2017, the alleged abductee herself went to my home along with me situated at Muzaffarabad with her own free will. She lived with my family for some days and his brother (complainant) visited our house to persuade her sister to come back but she refused. On 25.05.2017, Mst. Umm-e-Kalsoom went to the Court of Judicial Magistrate Muzaffarabad and filed a complaint under Section 107 Cr.P.C. against the complainant Muhammad Sibtain and three others in which she contended that she is sui juris and her family wanted to marry her with an old man and threatening her. She also reaffirmed the same story before the learned Judicial Magistrate in her cursory statement recorded before the Court. Even after filing the said complaint against her own family, his brother complainant visited our home at Muzaffarabad and tried for compromise with her own sister on pretext that they will manage her marriage as per customs of the locality and to come back to their house as her act would bring*

*disgrace to their family. It is worth mentioning here that Mst. Umm-e-Kalsoom (alleged abductee) insisted that she knew her family very well and that she will go back only to her family if her Nikkah is performed with me. Thereafter Nikkah was conducted on 04.06.2017 with her own free will. Upon this complainant got enraged and he lodged a fake and fictitious criminal case against me. It is further noteworthy that we both came back to Islamabad as family of Mst. Umm-e-Kalsoom was insisting that they will only compromise if we both came to their house and seek forgiveness. When both of us reached Islamabad, the complainant's family got arrested me and threatened Mst. Umm-e-Kalsoom to give statement as per their direction otherwise they would kill her. Thereupon Mst. Umm-e-Kalsoom got recorded statement under undue influence and coercion. Complaint made a false complaint against me after consultation and deliberation and in connivance with local police got registered this fake case against me. Mst. Umm-e-Kalsoom is my legally wedded wife and I also instituted a suit for conjugal rights in Family Court Islamabad and the same has been decreed ex-parte in my favour on 28.06.2019.*

12. While considering the entire background of the case in the light of above evidence, there is no evidence qua the offence under Section 376 PPC and the appellant was acquitted of said charge by the learned Trial Court, therefore, the only question left for determination of this Court is to the extent of abduction of PW-2 Mst. Umm-e-Kalsoom in terms of Section 365-B PPC.

13. In order to understand the proposition, it is necessary to go through requirement of Section 365-B PPC, whereby the primary ingredients are as under:

- a) Who kidnaps or abducts any woman;
- b) With intent that she may be compelled, or knowing it to be likely that she will be compelled, to marry any person against her will; and,
- c) Or in order that she may be forced, or seduced to illicit intercourse.

14. While considering the above referred principles, it is obligatory to the prosecution to prove that PW-2 Mst. Umm-e-Kalsoom was forced by the appellant for her removal from one place to another under compulsion or

through inducement by deceitful means and objection of such removal must be to compel her to marry against her will or in order that she could be forced or seduced to illicit intercourse. Whereas, there is no element of illicit intercourse in this case as she was not medically examined, therefore, the only issue left is to the extent of simple abduction or kidnapping, which has to be seen in the light of definition of kidnapping, meaning "*whoever takes or entices any person without his or her consent*" and abduction, meaning "*whoever by force compels or by any deceitful means induces any person to go from any place is said to abduct that person in terms of Section 362 PPC*". Therefore, in order to prove these ingredients it is necessary to go through the contents of statement of PW-2 Mst. Umm-e-Kalsoom, who acknowledged that she travelled from Bari Imam to Faizabad in the appellant's taxi, from where tickets to Muzaffarabad were purchased and when she seated in the passenger coaster along with other passengers she never made hue and cry, rather remained silent despite the fact that the appellant was not allegedly armed with any gun or pistol at that time. This particular scenario provided by PW-2 Mst. Umm-e-Kalsoom reflects that the element of inducement by threat is not visible in this case. When the appellant has neither used force nor ordered its use and there is no deceitful means used in this case, the element of abduction is not proved. Reliance is placed upon PLD 2009 SC 814 (Mian Muhammad Nawaz Sharif vs. The State).

15. PW-2 Mst. Umm-e-Kalsoom also recorded her statement in terms of Section 164 Cr.P.C. which is *prima facie* case against the appellant, however she has given the stance similar to her statement before the learned Trial Court, but certain differences have been noted, especially when she acknowledged that:

"منظر آباد میں مجھے تین دن تک دوست کے پاس رکھا۔ اور بعد میں مجھے کسی عدالت کچہری میں لے گیا۔ اور مجھ سے کچھ کاغذات پر دستخط

کروائے۔ انگوٹھے بھی لگوائے اور وکیل نے ایک مولوی کو بلوایا۔ اور میرا تنویر کے ساتھ نکاح پڑھوایا۔"

16. While considering the above stance recorded under Section 164 Cr.P.C. Exh.PH/1-6, the abductee acknowledged the execution of Nikah in presence of a



lawyer and Moulvi (Nikahkhwan), rather used the wordings that, "تویر کے ساتھ نکاح". This aspect left nothing in favour of the prosecution, rather demolished the entire case, especially when a girl like Mst. Umm-e-Kalsoom, who is a graduate from a college, aged about 21/22 years, fully understands the nature of her statement and the concept of Nikah, whereas this factum, if placed in juxtaposition with the Nikahnama Mark-E, which is admitted by the Investigating Officer along with the documents placed in defence as Exh.DB/1 to Exh.DB/4 containing the proceedings under Section 107 Cr.P.C. as recorded by the learned Judicial Magistrate at Muzaffarabad, wherein statement of alleged abductee was recorded on her own application, as a result of same Nikah was solemnized/executed. The Investigating Officer further confirmed the Nikah from two of its witnesses and placed certified copy of Nikahnama along with final report.

17. In addition to above, the appellant has produced certified copy of suit for restitution of conjugal rights along with decree passed by the Judge Family Court (East), Islamabad, dated 28.06.2019, in which PW-2 Mst. Umm-e-Kalsoom never put her appearance despite awarding of a number of opportunities. Resultantly, she was proceeded ex-parte. All these elements cumulatively create an effect that a disgusting trend in our society is emerging, whereby firstly a girl elopes with her paramour, solemnizes marriage with him and then she takes a somersault on joining her parents, even implicates her husband and in-laws on asking of her parents, whereas such kind of disputes have to be decided by the concerned Family Court being the suitable forum.

18. The learned Trial Court has referred in Para-10 of the impugned judgment that, "*whereas the learned counsel for complainant also stated that Mst. Umm-e-Kalsoom also filed suit for jactitation of marriage*". This aspect has specifically been confronted to the complainant side to produce any document in this regard but it has been conceded before this Court by the complainant side that no such suit

was ever filed nor available on record, therefore, the learned trial Court has incorrectly passed such observation. On the other hand, the decree passed by the Family Judge, Islamabad in suit for restitution of conjugal rights titled, "*Tanveer Hussain vs. Mst. Umm-e-Kalsoom*" holds the field. It is trite law that decision of superior Courts, including the Hon'ble Supreme Court, on the plea of Nikah will have effect on same issue before the Family Court and the decision on behalf of Family Court will have binding effect on the decision in criminal trial. In such type of cases the apex Court in case reported as **PLD 1984 SC 95 (Muhammad Azam vs. Muhammad Iqbal)** has held that as under:

*"That the decision of a superior Court including the Supreme Court on the plea of Nikah will have effect on the same issue before a Family Court;*

*That at the trial level the decision in this behalf of the Family Court will have binding effect on the decision in criminal trial;*

*That unless there is pressing unavoidable need to proceed with the criminal trial (as is in the present case to record essential evidence only regarding which there might be danger of it being lost) the Criminal Court should stay the proceedings and await the result of the contest on issue of Nikah before the Family Court, if the suit is already pending or is filed during the criminal trial proceedings; That otherwise too it can ask the party/person concerned to seek a decision on that issue from the Family Court and on refusal or failure in this behalf to raise the necessary presumptions That in the last-mentioned eventuality the criminal trial would Proceed with no change except firstly, as aforementioned about certain presumptions, and secondly, that the issue concerned shall be decided as nearly as possible in accordance with the spirit underlying the procedure prescribed by the Family Courts Act and the rules thereunder, in so far as they do not come in conflict with the procedure for the criminal trial-the provisions regarding compulsory two efforts at compromise would then not apply;*

*That in case the proceedings of the criminal trial are stayed the accused; might be released on bail so as to enable him them to pursue the; Family Court case and refuse/cancel the same in exceptional appropriatel cases;*

*That in case it is just and proper and the Sessions Judge or Additional Sessions Judge is empowered to try both the matters under both system of laws, the trial by the same Court would not be illegal provided the case under the Family Law is decided in the first instance ;*

*That when any case on the criminal side has reached the appeal stage but the issue is still pending before the Family Court, the hearing of the*

*appeal should be stayed for a reasonable time to await the decision by that forum and in case of intentional or otherwise inordinate delay, to take appropriate measures in re-consideration of any concession including bail and the stay, whether it is not being misused.*

*That when the same question is pending before the Federal Shariat Court and the High Court the latter would await the decision by the former Court."*

19. In view of the above factual legal position, the forced removal of PW-2 Mst. Umm-e-Kalsoom from one place to another by compulsion or through deceitful means is not proved, and even her removal to compel her to marry against her will is not justified in the light of judgment and decree passed by the Family Court. Reliance is placed upon 2020 YLR 404 Quetta (Humayoun Saeed vs. The State).

20. The bare perusal of statement of PW-2 Mst. Umm-e-Kalsoom discloses that it is not believable that she was abducted from Bari Imam and taken to Faizabad for onward travelling to Muzaffarabad as despite availability of numerous opportunities she never raised any hue and cry, rather moved along with the appellant, which is against the concept of kidnapping and abduction, as such, offence under Section 365-B PPC is not attracted. Reliance is placed upon 2015 P.Cr.LJ 197 Lahore (Ghulam Hussain vs. The State). Even her testimony remained uncorroborated and based upon untrustworthy evidence, which seems an unreliable story and even the very registration of case with delay of one month is not justified. Reliance is placed upon 2014 P.Cr.LJ 1753 Lahore (Muhammad Qasim vs. The State), 2018 MLD 508 Lahore (Rehmat Ali vs. The State), 2019 SCMR 1048 (Muhammad Siddique vs. The State) and 1969 SCMR 491 (Hussain Ali Shah vs. Crown).

21. Another important aspect creating a marked difference in entire prosecution case is the registration of FIR with delay of almost a month of the alleged incident with no plausible explanation and even date of alleged abduction i.e. 22.06.2017 was not proved independently by the prosecution,

whereby it was settled that in absence of any plausible explanation, the apex Court had always considered the delay in lodging of FIR to be fatal and it casted suspicion on the prosecution story, extending the benefit of doubt to the accused. Reliance is placed upon PLD 2019 SC 64 (Mst. Asia Bibi vs. The State).

22. From the facts and circumstances narrated above, I am persuaded to hold that prosecution has badly failed to bring the guilt of appellant home and the learned Trial Court was not justified in convicting the appellant which is based on the untrustworthy and uncorroborated evidence produced by PW-2 Mst. Umm-e-Kalsoom, which even otherwise is full of material contradictions, especially when there is no explanation that why she remained silent on her way from Bari Imam to Faizabad and then to Muzaffarabad during her journey in public transport. Furthermore, the unexplained delay in lodging crime report and the absence of medical evidence further cast serious doubt, benefit of which shall be extended to the appellant as a matter of right. Reliance is placed upon 1995 SCMR 1345 (Tariq Pervez vs. The State).

23. In view of above, the instant appeal is ALLOWED, the impugned judgment dated 04.11.2019 is hereby SET ASIDE, the appellant is ACQUITTED of the charge in case FIR No.101, dated 05.06.2017, under Section 365-B/376 PPC, P.S. Secretariat, Islamabad and he shall be released forthwith, if not required in any other case.

(MOHSIN AKHTAR KAYANI)  
JUDGE

Announced in open Court on: 24.07.2020.

JUDGE

Khalid Z.