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Judgment Sheet

IN THE LAHORE HIGH COURT,

BAHAWALPUR BENCH, BAHAWALPUR

JUDICIAL DEPARTMENT

Criminal Appeal No. 276-J of 2023.

(Shahzeb Vs. The State)

JUDGMENT

Date of hearing:	06.03.2025
Appellant by:	Mr. Aftab Mubarak, Advocate.
State by:	Mr. Riaz Ahmad Khan, Deputy Prosecutor General.

SADIQ MAHMUD KHURRAM, J. Shahzeb son of Nazar Hussain (convict) was tried by the learned Additional Sessions Judge/Juvenile Court, Hasilpur in case F.I.R. No.131 of 2022, dated 16.02.2022, registered at Police Station City Hasilpur, District Bahawalpur in respect of offences under sections 376 (3), 324, 364-A and 511 of Pakistan Penal Code, 1860. The learned trial court vide judgment dated 08.06.2023 convicted **Shahzeb son of Nazar Hussain (**convict) and sentenced him as infra:-

Shahzeb son of Nazar Hussain:-

i) Imprisonment for life under section 376(3) of the Pakistan Penal Code,1860 and also directed to pay fine of Rs.200,000/- . In case of default of payment of fine, the convict was directed to further undergo simple Imprisonment of six months.

ii) Rigorous imprisonment of ten years under section 364-A P.P.C. and also directed to pay fine of Rs.50,000/- . In case of default of payment of fine, the convict was directed to further undergo simple Imprisonment of six months.

iii) Rigorous imprisonment of ten years under section 324 P.P.C. and also directed to pay fine of Rs.50,000/- . In case of default of payment of fine, the convict was directed to further undergo simple Imprisonment of six months.

The convict was extended the benefit provided under section 382-B of the Code of Criminal Procedure, 1898 by the learned trial court . All the sentences awarded to convict were ordered to run concurrently by the learned trial court.

2. Feeling aggrieved, Shahzeb son of Nazar Hussain (convict) lodged the instant Criminal Appeal No.276-J of 2023 assailing his conviction and sentence.

3. The brief facts of the prosecution case, as stated by Mst. Amina Bibi (PW-2), the victim of the case, in her statement before the learned trial court, are as under:-

> "I an (sic) my mother are living in the house of my maternal uncle Khan Muhammad. On the day of occurrence, I went to the house of Abdul Sattar for taking milk at 10/11:00 am. When I was returning Shahzeb accused put his hand on my mouth and took me in the sugarcane crop where he put off my shalwar and attempted to commit rape with me I asked him that I will tell this to my maternal uncle and mother. He took out knife and cut my neck with knife. Due to which I became un-conscious and thereafter when I was going towards my house in injured condition and again became un-conscious and fell down. My maternal aunt, my maternal uncle Khan Muhammad and PWs took me to hospital Thereafter when I became conscious I got recorded my statement before the police. Accused Shahzeb attempted to commit rape with me and cut my neck with the intend to kill me. "

4. After the formal investigation of the case report under section 173 of the Code of Criminal Procedure, 1898 was submitted before the learned trial court and the accused was sent to face trial. The learned trial court framed the charge against the accused on 22.12.2022, to which the accused pleaded not guilty, claimed trial and the learned trial court proceeded to examine the prosecution witnesses.

5. The prosecution in order to prove its case got recorded statements of as many as **ten** witnesses. Mst. Amina Bibi (PW-2), the *prosecutrix*, narrated the facts of the occurrence. Khan Muhammad (PW-1) stated that on 16.02.2022, he got recorded his oral statement (Exh.PA) and subsequently named the appellant as the accused. Muhammad Zafar (PW-4) stated that on 16.02.2022, he had seen the appellant coming out of the same sugarcane crop from where Mst. Amina Bibi (PW-2) had come out in an injured condition. Babar Ali Shah, ASI (PW-7) stated that he got recorded the formal F.I.R. (Exh.PA/2). Ghulam Abbas 755/HC (PW-9) stated that on 16.02.2022, he was handed over sealed parcels by the Investigating Officer of the case and on 22.02.2022, he handed over the said parcels to the Investigating Officer of the case for their onward transmission to the office of the Punjab Forensic Science Agency, Lahore and on 25.02.2022, the Investigating Officer of the case handed over to him two further sealed parcels and on 11.03.2022, he handed over the said two sealed parcels to the Investigating Officer of the case for their onward transmission to the office of the Punjab Forensic Science Agency, Lahore . Tariq Saleem 974/C (PW-10) stated that he got Mst. Amina Bibi (PW-2) examined from the Woman Medical Officer. Shamas ud Din , SI (PW-8) investigated the case from 16.02.2022 till 08.06.2022, arrested the appellant on 18.02.2022 and detailed the facts discovered during the investigation of the case in his statement before the learned trial court.

6. The prosecution also got Dr. Saba Khan (PW-5) examined, who on 16.02.2022 was posted as a Woman Medical Officer at THQ hospital Hasilpur and on the same day, conducted the medical examination

of the victim namely Mst. Amina Bibi (PW-2). Dr. Saba Khan (PW-5), after examining Mst. Amina Bibi (PW-2), observed as under:-

> "On Examination, an incised wound measuring 8 cm. X 1.5 cm x trachea cut situated in front of neck reigon standing from right sternocleidomastoid muscle up to left.
> ……
> FINAL OPINION
>
> a) KUO injuries. Injury NO. 1 is declared 337-L(i)
>
> b) Final opinion regarding sexual assault
>
> Internal vaginal swab of item NO.4 of Amna Bibi matches the DNA with Shahzeb item NO.SI."

The prosecution also got Dr. Waqas Saleem (PW-6) examined who stated that he had examined the appellant on 26.02.2022 and found him capable of having sexual intercourse.

7. On 14.03.2023, the learned Deputy District Public Prosecutor gave up prosecution witnesses namely Ellahi Bakhsh and Muhammad Khan as being unnecessary. On 30.05.2023, the learned Deputy District Public Prosecutor closed the prosecution evidence after tendering in evidence the report of Punjab Forensic Science Agency, Lahore (Exh.PM).

8. After the closure of prosecution evidence, the learned trial court examined the appellant Shahzeb son of Nazar Hussain, under section 342 Cr.P.C. and in answer to the question *why this case against you and why the PWs have deposed against you*, he stated that he had been falsely involved in the case. Neither the appellant opted to get himself examined under section 340(2) Cr. P.C nor he adduced any evidence in his defence.

9. On the conclusion of the trial, the learned Additional Sessions Judge/Juvenile Court, Hasilpur, convicted and sentenced the appellant as referred to above.

10. The contention of the learned counsel for the appellant precisely was that the whole case was invented and untrue and that the prosecution remained unable to prove the facts in issue and did not produce any unimpeachable, admissible and relevant evidence. Learned counsel for the appellant further submitted that the appellant was quite innocent and had nothing to do with the alleged occurrence. The learned counsel for the appellant further submitted that the prosecution had miserably failed to prove the charges against the appellant beyond the shadow of reasonable doubt and the learned trial court while passing the impugned judgment of the appellant's conviction, had erred in law and facts of the case, which warranted interference by this Court.

11. On the other hand, the learned Deputy Prosecutor General contended that the prosecution had proved its case beyond a shadow of doubt by producing independent witnesses. The learned Deputy Prosecutor General further submitted that there was no untoward delay in lodging the FIR. The learned Deputy Prosecutor General further submitted that it was a heinous offence and exploited the victim's future by the appellant at the expense of his lust; that the victim was a child and it could not be expected from her to put her future at stake for any reason to falsely implicate the appellant in this case for nothing; that delay in reporting the matter to the police had no adverse effect on the fate of the prosecution case because in

the cases where family honour was involved, immediate rushing to the police station for lodging the crime report and putting the honour at stake, was always difficult for anybody; that the medical evidence provided further corroboration to the ocular account; that the impugned judgment entailing the conviction and sentence of the appellant did not warrant interference by this Court. Lastly, the learned Deputy Prosecutor General prayed for the rejection of the appeal.

12. We have heard the learned counsel for the appellant, the learned Deputy Prosecutor General and with their assistance perused the record and evidence recorded during the trial carefully.

13. The learned counsel for the appellant has laid great stress on the reliability of the victim's testimony, the prosecution witness namely Mst. Amina Bibi (PW-2), because, as argued by him, she was a child witness and could have been tutored or influenced by elders. The learned counsel for the appellant has strenuously argued that it would not be safe to rely on the child witness’s testimony. By now, the law relating to the competence of the child witness to depose in a criminal case and its evidentiary value is well settled. It would, therefore, be relevant to discuss the precedent law in this regard. Article 3 of the Qanun-e-Shahadat Order, 1984 contemplates that all persons are competent to testify unless the court considers that they are prevented from understanding the questions put to them or from giving rational answers to those questions, by tender or extreme old age, disease, whether of body or mind or any other cause of the same nature. For a child witness, normally the courts conduct "*vior dire test*" under which the court before

examination puts certain preliminary questions to the child, which bear no connection with the case so as to judge the child's competency and understanding. If the child is capable of answering those questions properly and deposes in a smart manner, then the child is considered as a competent witness. A child is fully competent to depose before a court of law subject to his/her capacity and intellect to understand what he/she deposes about. Whether a child is a competent witness or not and whether he/she passes the 'rationality test' is something which is to be decided by the court in accordance with Article 3 read with Article 17 of Qanun-e-Shahadat, 1984 after carrying out the "*voir dire* test". The term "*Voir Dire"* has been defined in various lexicons as under:

According to Black's Law dictionary, voir dire connotes:

> *"A preliminary examination to test the competence of a witness or evidence"*

According to Webster's Unabridged Dictionary:

> "*An oath administered to a proposed witness or juror by which he or she is sworn to speak the truth in an examination to ascertain his or her competence*."

According to Advance Law Lexicon

> *A rule requiring that a party must call the best evidence that the nature of case will allow*.

According to Advance Law Lexicon

> *A special form of oath administered to a witness whose competency to give evidence in the particular matter before the Court is in question, or who is to be examined as to some other collateral matter*.

Voir dire is an inquiry within a trial to decide relevant ancillary issues which are material for the just decision of that trial. In the case titled "*Muhammad Jamal and others v. The State*" (**1997 SCMR 1595)**, the august Supreme

Court of Pakistan found the child witness's testimony as inspiring and credible and upheld the conviction because it was supported by medical evidence. In the case titled "*Mst. Razia alias Jia v. The State*" (**2009 SCMR 1428)**, the august Supreme Court of Pakistan upheld the conviction handed down, inter alia, on the basis of ocular testimony of two child witnesses. The apex Court had observed that the trial court had taken all possible and due steps to judge the level of intelligence and maturity of the child witnesses before recording their statements because they had given consistent accounts of the occurrence and the participation of their mother, i.e. the convicted accused. It was further observed that this ocular evidence had derived strength and corroboration from other evidence. The august Supreme Court of Pakistan, exercising its Shariat appellate jurisdiction, has observed and held in the case titled "*Fayyaz alias Fayyazi and another v. The State*" (**2006 SCMR 1042**) as follows:-

> "It has also been rightly observed by the learned Federal Shariat Court that conviction could be based on the solitary statement of the victim provided the same is capable of implicit reliance and is corroborated by any other."

In the case titled "*Mushtaq Ahmed and another v. The State*" (**2007 SCMR 473)**, the august Supreme Court of Pakistan, exercising its Shariat appellate jurisdiction, has observed and held as follows:-

> "It is consistent view of this Court that in rape cases mere statement, of the victim is sufficient to connect the petitioners with the commission of offence in case the statement of the victim inspires confidence."

In the case titled "*Ulfat Hussain v. The State*" (**2010 SCMR 247),** the august Supreme Court of Pakistan held that although in principle a conviction could be based on the testimony of an intelligent and understanding child witness. In the case of *"Raja Khurram Ali Khan And 2 others versus Tayyaba Bibi*

and another" **(P L D 2020 Supreme Court 146***)*, the august Supreme Court of Pakistan has laid down a complete code relating to the recording of the statement of a child who himself is a victim and has directed as under:

> "Competence and Evidential Value of a Child Witness
>
> 44. A child, irrespective of his age, is competent to be a witness, subject to his fulfilling the conditions precedent provided under Articles 3 and 17 of the Qanun-e-Shahadat Order, 1984 (Order). The said provisions read:
>
> "3. Who may testify
>
> All persons shall be competent to testify unless the Court considers that they are prevented from understanding the questions put to them, or from giving rational answers to those questions, by tender years, extreme old age, disease, whether of body or mind, or any other use of the same kind:
>
> Provided that a person shall not be competent to testify if he has been convicted by a Court for perjury or giving false evidence:
>
> Provided further that the provisions of the first proviso shall not apply to a person about whom the Court is satisfied that he has repented thereafter and mended his ways:
>
> Provided further that the Court shall determine the competence of a witness in accordance with the qualification prescribed by the Injunctions of Islam as laid down in the Holy Quran and Sunnah for a witness, and, where such witness is not forthcoming the Court may take the evidence of a witness who may be available.
>
> Explanation. A lunatic is not incompetent to testify, unless he is prevented by his lunacy from understanding the questions put to him and giving rational answers to them."
>
> "17. Competence and number of witnesses
>
> (1) The competence of a person to testify and the number of witness required in any case shall be determined in accordance with the Injunctions of Islam as laid down in the Holy Quran and Sunnah.
>
> (2) Unless otherwise provided in any law relating to the Enforcement of Hudood or any other special law:
>
> (a) in matters pertaining to financial or future obligations, if reduced to writing, the instrument shall be attested by two men, or one man and two women, so that one may remind the other, if necessary, and evidence shall be led accordingly; and
>
> (b) in all other matters, the Court may accept, or act on, the testimony of one man or one woman, or such other evidence as the circumstances of the case may warrant." (emphasis provided)
>
> 45. A close reading of the above provisions reveals that the essential conditions for a child, or for that matter any person, to appear and testify as a witness, is that the child or the person must have the capacity and intelligence of understanding the questions put to him, and also be able to rationally respond thereto. This threshold has been referred to as passing the "rationality test", and the practice that has developed with time in our jurisdiction is for the same to be carried out

by the presiding Judge prior to recording the evidence of the child witness. Moreover, we have noted that in our jurisdiction, the judicial acceptance of a child witness, as a safe piece of evidence, has been rather hesitant and cautious. This Court in the case of The State through Advocate General, Sindh, Karachi v. Farman Hussain and others (PLD 1995 SC 1), by a majority decision, while dilating upon the competence and evidential value of a child witness, opined that:

"Evidence of child witness is a delicate matter and normally it is not safe to rely upon it unless corroborated as rule of prudence. Great care is to be taken that in the evidence of child element of coaching is not involved ... In any case the rule of prudence requires that the testimony of child witness should not be relied upon unless it is corroborated by some evidence on the record."

46. In other common law jurisdictions, the Courts are more inter-active with the child witnesses during the recording of their entire evidence. Justice McLachlin, speaking for the Canadian Supreme Court in the case of R. v. Marquard [1993] 4 S.C.R. 223, has explained with precision the competency of the child witness, by stipulating the following criteria for testing the same in terms:

"... (1) the capacity to observe (including interpretation); (2) the capacity to recollect; and (3) the capacity to communicate.... The judge must satisfy him or herself that the witness possesses these capacities. Is the witness capable of observing what was happening? Is he or she capable of remembering what he or she observes? Can he or she communicate what he or she remembers? The goal is not to ensure that the evidence is credible, but only to assure that it meets the minimum threshold of being receivable ……. Generally speaking, the best gauge of capacity is the witness's performance at the time of trial….. [T]he test outlines the basic abilities that individuals need to possess if they are to testify. The threshold is not a high one. What is required is the basic ability to perceive, remember and communicate. [once] This established, deficiencies of perception, recollection of the events at issue may be dealt with as matters going to the weight of the evidence."

47. Reverting back to our jurisdiction, we note that, unfortunately, the standard of appreciating the testimony of a child witness, who is the victim of a crime, and the mode and manner of recording his evidence, warrants much needed change and innovation, which has been witnessed in other jurisdictions. And more particularly, the Courts are to appreciate the crucial distinction between a child witness, who is a witness to the crime, and one who is himself a victim thereof.

48. In this regard, we note that the "rationality test", which is applied by the presiding Judge at the commencement of the examination-in-chief of a child witness, should be made applicable throughout the testimony of the child witness. If at any stage, the presiding Judge observes any hindrance or reluctance in the narration of events, the evidence should be stopped, and remedial measures should be taken to ease the stress and anxiety the child witness might be under, and if required, the case be adjourned to another date. And further, in case the child witness is still unable to narrate his testimony with ease, then the presiding Judge ought to record his findings on the demeanour of the child witness, conclude his evidence, and relieve him as a witness.

49. In other jurisdictions, we note that great care is taken to ensure that such child witnesses are able to depose their testimony at ease, by taking measures in the court room to lessen their stress and anxiety of

court-room appearances in such a tender age. Such measures include child witness aid in testifying, screens in court rooms, closed courtrooms and counsellor aid before and after recording of evidence, which needs to be adopted and practiced in our jurisdiction in cases wherein a child victim is to appear as a witness. In this regard, we expect the respective governments to take appropriate legislative and administrative measures for ensuring the much needed protection and facilitation of child witnesses.

50. As for the presiding trial court judges, they should take appropriate steps during the court proceedings to ensure that the child witnesses depose their testimony with ease, and that too, in a stress-free environment. In cases where the child witness is unable to depose in the court room, and his evidence is "necessary" to find the truth, and it has a ring of "circumstantial trustworthiness", then courts, as practiced in other common law jurisdictions, may consider in appropriate cases, allowing out-of-court evidence, as an exception to the "hearsay rule". Wigmore, a notable American scholar on the law of evidence, in his book Wigmore on Evidence, Volume 5 (Chadbourn rev. 1974), identified two considerations, which may serve as an exception to the "hearsay rule": "a circumstantial probability of trustworthiness, and a necessity for the evidence".

51. In the Canadian jurisdiction, the Supreme Court in the case of R. v. Khan [1990] 2 S.C.R. 531, where the appellant, who was a medical doctor, was charged with sexually assaulting a three and a half year-old girl, allowed an out-of-court statement of a child witness, as an exception to the "hearsay rule", endorsing with approval, the need for "truth", as expressed by Wigmore. The extracts of the deliberations on the issue are recorded as under:

"The hearsay rule has traditionally been regarded as an absolute rule, subject to various categories of exceptions, such as admissions, dying declarations, declarations against interest and spontaneous declarations. While this approach has provided a degree of certainty to the law on hearsay, it has frequently proved unduly inflexible in dealing with new situations and new needs in the law. This has resulted in courts in recent years on occasion adopting a more flexible approach, rooted in the principle and the policy underlying the hearsay rule rather than the strictures of traditional exceptions.

"Because of the frequent difficulty of obtaining other evidence and because of the lack of reason to doubt many statements children make on sexual abuse to others, courts in the United States have moved toward relaxing the requirements of admissibility for such statements. This has been done in the context of the doctrine of spontaneous declarations. In McCormick on Evidence (3rd ed. 1984), at p. 859, n. 49, the authors refer to this development as the "tender years" exception to the general rule, and describe it as follows:

A tendency is apparent in cases of sex offences against children of tender years to be less strict with regard to permissible time lapse and to the fact that the statement was in response to inquiry."

"Similarly, Wharton's Criminal Evidence (13th ed. 1972), at p.84, states that while "[t]he res gestae rule in sex crimes is the same as in other criminal actions", the rule "should be applied more liberally in the case of children".

"These developments underline the need for increased flexibility in the interpretation of the hearsay rule to permit the admission in evidence of statements made by children to others about sexual abuse. In so far as they are tied to the exception to the hearsay rule of spontaneous

declarations, however, they suffer from certain defects. There is no requirement that resort to the hearsay evidence be necessary. Even where the evidence of the child might easily be obtained without undue trauma, the Crown would be able to use hearsay evidence...

"The first question should be whether reception of the hearsay statement is necessary. Necessity for these purposes must be interpreted as "reasonably necessary"... The next question should be whether the evidence is reliable. Many considerations such as timing, demeanour, the personality of the child, the intelligence and understanding of the child, and the absence of any reason to expect fabrication in the statement may be relevant on the issue of reliability.

"I conclude that hearsay evidence of a child's statement on crimes committed against the child should be received, provided that the guarantees of necessity and reliability are met, subject to such safeguards as the judge may consider necessary and subject always to considerations affecting the weight that should be accorded to such evidence. This does not make out-of-court statements by children generally admissible; in particular the requirement of necessity will probably mean that in most cases children will still be called to give viva voce evidence."

52. Now, reverting back to the facts of the present case, it is noted with concern that Tayyaba Bibi, the victim of the crime, was not treated with due care and caution during the investigation, and the trial proceeding. Tayyaba Bibi, who at the time of being taken into custody by Khalid Mehmood Awan, SHO (PW-16) from the house of convict Raja Khurram Ali Khan, was admittedly injured and required medical attention, but she was instead subjected to the process of questioning by the SHO, which he even video recorded (Ex PW). We further note that after her medical treatment at PIMS, Tayyaba Bibi, instead of being taken to a child care centre, was subjected to another bout of questioning, and this time by Ms. Nisha Ishtiaq, Assistant Commissioner, Islamabad (PW7). In these circumstances, it would be fair to note that Tayyaba Bibi, during the period in which she rendered her statements, was not completely free from pressure and influence of the police, local administration and the accused. In this regard, we have noted with appreciation that the trial Court applied the "rationality test", prior to commencing her examination-in-chief, by recording its finding that Tayyaba Bibi was intelligent to understand questions put to her, and had the capacity to correctly respond thereto. Thus, her testimony during the examination-in-chief can be considered relatively free from adverse negative influences. No doubt, during her lengthy cross-examination, she wavered from the initial stance she had taken during her examination-in-chief, when she was confronted with her previous video recorded statement obtained by Khalid Mehmood (PW-16). However, in view of the findings recorded by the trial Judge, regarding her stressed un-natural demeanour during her cross-examination, the said wavering stance cannot be given the same credence, as one may give to any adult witness of a crime. In fact, her cross-examination should have been stopped the moment the trial Judge noticed her reception of questions and responses thereto lacked intelligent rationality, which in fact is an essential attribute of a competent witness under Article 3 of the Order. The trial judge then surely erred by allowing her cross-examination to continue in her said disposition. It appears that the trial Judge wrongly treated Tayyaba Bibi to be a child witness of a crime, rather than as a child witness who was herself the victim of the crime. This lack of distinction on the part of the trial Judge led to his faulty conclusion of completely discarding the evidentiary value of her testimony."

It is, therefore, obvious from the above discussion that a child witness is not barred from entering the witness box. It is the satisfaction of the trial Court, which is of crucial importance. A child who also happens to be a victim of an offence is competent to testify as a witness, and the deposition would be worthy of reliance provided the Court is satisfied that he or she, as the case may be, is intelligent and understands the significance of entering the witness box. A conviction can also be handed down placing reliance on the sole testimony of a child witness. We have gone through the evidence recorded by the learned trial court and find that the prosecution witnesses, in a consistent and forthright manner gave evidence proving that the appellant had raped the prosecution witness namely Mst. Amina Bibi (PW-2) and had also attempted to commit her *Qatl-i-Amd*.

14. The statement of the prosecution witness namely Mst. Amina Bibi (PW-2) was further supported by Dr. Saba Khan (PW-5) , who on 16.02.2022 was posted as a Woman Medical Officer at THQ hospital Hasilpur and on the same day, had conducted the medical examination of the victim namely Mst. Amina Bibi (PW-2). Dr. Saba Khan (PW-5), after examining Mst. Amina Bibi (PW-2), observed an incised wound, measuring 8 cm. X 1.5 cm , situated in the front of *the neck region*, starting from the right sternocleidomastoid muscle up to the left, cutting the trachea of Mst. Amina Bibi (PW-2) . Dr. Saba Khan (PW-5) further opined that as the DNA Profile of the appellant was obtained from the internal vaginal swabs taken from the body of Mst. Amina Bibi (PW-2) , therefore, it was proved that the

appellant had raped Mst. Amina Bibi (PW-2) and had also attempted to commit her *Qatl-i-Amd*.

15. The report of the Punjab Forensic Science Agency, Lahore (Exh.PM) further supports the prosecution case against the appellant. The relevant portions of the report of Punjab Forensic Science Agency, Lahore (Exh.PM) are being reproduced under:-

"

Item No.	Sub-item No.	Description of evidence as provided by the submitting agency
1.		Soil taken into possession from the place of occurrence of Amina Bibi.
2.		Two swabs taken from suspected stain at crime scene.
3.		A knife recovered from Shah Zaib.
	3.1	Swab(s) taken from blade of the knife.
	3.2	Swab(s) taken from handle of the knife.
4.		Two internal vaginal swabs from Amina Bibi.
5.		One external vaginal swab from Amina Bibi.
6.		"Qameez" of Amina Bibi.
	6.1-6.4	Stain sections taken from the "qameez".
7.		"Shalwar" of Amina Bibi.
	7.1	Control section taken from the "shalwar".
	7.2-7.5	Stain sections taken from the "shalwar".
8.		"Dupatta" of Amina Bibi.
	8.1-8.4	Stain sections taken from the "dupatta".
9.		"Shalwar" of Shah Zaib.
	9.1	Stain section taken from the "shalwar".
V1.		Buccal swab standards of Amina Bibi.
S1.		Buccal swab standards of Shah Zaib.

Exh.PM/1-3

RANA ABDUL HAKEEM
Addl.District and Sessions Judge
HASILPUR
30-05-2023

.....

Results and Conclusion

Human blood was identified on item No. 1, 2, 3.1, 6.1, 6.2, 7.2, 8.1 and 9.1.

Seminal material was found on item No. 4.

.....

The DNA profile obtained from **sperm fraction of item No. 4 is a mixture of at least two individuals. Shah Zaib (item No. S1) and Amina Bibi (item No. V1) cannot be excluded** as being a contributor to this DNA mixture profile.

The possible contribution to the DNA obtained from sperm fraction of item No. 4 by Shah Zaib (item No. 51) is approximately 7.3 quintillion times more likely as compared to an unrelated Caucasian individual." (emphasis supplied)

The report of the Punjab Forensic Science Agency, Lahore (Exh.PM), conclusively proves the guilt of the appellant. The DNA Profile of the appellant was obtained from the internal vaginal swabs taken from the body of Mst. Amina Bibi (PW-2) and the appellant neither challenged the said report nor was there any doubt regarding the safe transmission of the items sent to the Punjab Forensic Science Agency, Lahore for DNA analysis. Reliance in this regard is placed on the case of "*ALI HAIDER alias PAPU Versus JAMEEL HUSSAIN and others"* **(P L D 2021 Supreme Court 362**) wherein the august Supreme Court of Pakistan has held as under:-

> "10. DNA evidence is considered as a gold standard to establish the identity of an accused. As a sequel of above discussion, it can safely be concluded that DNA Test due to its accuracy and conclusiveness is one of the strongest corroborative pieces of evidence. In Salman Akram Raja case[11] this Court has held that DNA test help provides the courts the identity of the perpetrator with high degree of confidence, and by using of the DNA technology the courts are in a better position to reach at a just conclusion whereby convicting the real culprits and excluding the potential suspects, as well as, exonerating wrongfully involved accused. DNA test with scientific certainty and clarity points towards the perpetrator and is, therefore, considered one of the strongest corroborative evidence today, especially in cases of rape. The usefulness of DNA analysis, however, depends mostly on the skill, ability and integrity shown by the investigating officers, who are the first to arrive at the scene of the crime. Unless the evidence is properly documented, collected, packaged and preserved, it will not meet the legal and scientific requirements for admissibility into a court of law.

16. Rape is crime which often occurs without witnesses, making direct evidence scarce. Courts can rely on the victim's testimony alone for conviction if it's credible and consistent with the facts of the case. A victim of rape endures psychological and emotional trauma, placing her in a unique position compared to other witnesses as the incident and the preparator of crime remain etched in her memory, never to be forgotten. In this specific case, the victim's testimony is supported by medical evidence, strengthening the prosecution's case and the report of Punjab Forensic Science Agency, Lahore (Exh.PM) makes this case against the appellant admitting no doubt regarding his culpability . Reliance in this regard is placed on the case of "*ATIF ZAREEF and others Versus The State"* **(P L D 2021 Supreme Court 550**) wherein the august Supreme Court of Pakistan has held as under:-

> " Rape is a crime that is usually committed in private, and there is hardly any witness to provide direct evidence of having seen the commission of crime by the accused person. The courts, therefore, do not insist upon producing direct evidence to corroborate the testimony of the victim if the same is found to be confidence inspiring in the overall particular facts and circumstances of a case, and considers such a testimony of the victim sufficient for conviction of the accused person. A rape victim stands on a higher pedestal than an injured witness, for an injured witness gets the injury on the physical form while the rape victim suffers psychologically and emotionally.[2] In the present case, the testimony of the complainant as to commission of rape on her on the day of occurrence is supported by the medical evidence, i.e., the medico-legal report (Ex-PA) and the statement of Dr. Shehla Waqar (PW-5). The potency test of the said appellants was also positive. The involvement of Sher Baz Khan alias Sheru and Atif Zareef in

> commission of this offence is corroborated by the DNA test report (Ex-PS), which is considered, due to its scientific accuracy and conclusiveness, as a gold standard to establish the identity of an accused and a very strong corroborative piece of evidence. The prosecution has thus proved its case against the appellants, Sher Baz Khan alias Sheru and Atif Zareef beyond reasonable doubt. "

17. We have also noted that according to the statement of the prosecution witness namely Mst. Amina Bibi (PW-2), she was aged about **10-11 years** at the time of the incident and according to Dr. Saba Khan (PW-5), the age of the prosecution witness namely Mst. Amina Bibi (PW-2) was about **10-11 years** on the day of her examination on 16.02.2022. No challenge was thrown to the age of the victim namely Mst. Amina Bibi (PW-2), therefore, on proving the allegation of rape against the appellant, the learned trial court rightly convicted the appellant under section 376(3) P.P.C.

18. In all criminal cases, normal discrepancies are bound to occur in the depositions of witnesses due to normal errors of observation, namely, errors of memory due to lapse of time or due to mental disposition such as shock and horror at the time of occurrence. Where the omissions amount to a contradiction, creating serious doubt about the truthfulness of the witness and other witnesses also make material improvement while deposing in the court, such evidence cannot be safe to rely upon. However, minor contradictions, inconsistencies, embellishments or improvements on trivial matters which do not affect the core of the prosecution case, should not be made a ground on which the evidence can be rejected in its entirety. The court has to form its opinion about the credibility of the witness and record a finding as to whether his deposition inspires confidence. Exaggerations per

se do not render the evidence brittle. But it can be one of the factors to test the credibility of the prosecution version when the entire evidence is put in a crucible for being tested on the touchstone of credibility. Therefore, mere marginal variations in the statements of a witness cannot be dubbed as improvements as the same may be elaborations of the statement made by the witness earlier. The omissions which amount to contradictions in material particulars i.e. go to the root of the case/materially affect the trial or core of the prosecution's case, render the testimony of the witness liable to be discredited but not otherwise. In the instant case, we find that the prosecution witness namely Mst. Amina Bibi (PW-2) has successfully evidenced her credibility, therefore, the learned trial court was quite justified to rely on her while finding the appellant guilty.

19. As mentioned above, the prosecution witness namely Mst. Amina Bibi (PW-2) was cross-examined by the learned counsel for the appellant, but her evidence relating to the fact of her being raped by the appellant has not been shaken at all. It is fully established by the statement of the prosecution witness namely Mst. Amina Bibi (PW-2) that the appellant raped her and had also attempted to commit her *Qatl-i-Amd*. The statement of Dr. Saba Khan (PW-5) and the report of the Punjab Forensic Science Agency, Lahore (Exh.PM) are corroborative pieces of evidence which lend assurance to the statement of the prosecution witness namely Mst. Amina Bibi (PW-2). There is material on the record to show that the appellant raped the prosecution witness namely Mst. Amina Bibi (PW-2) and had also attempted to commit her *Qatl-i-Amd*. The intention of the accused is the basis and the gravamen of offences under sections 376 and 324 P.P.C.

Consequently, we have no hesitation in holding that the learned trial court rightly convicted the appellant for the offence punishable under sections 376 (3),324 and 364-A P.P.C.

20. We have also examined the defence plea taken by the appellant namely Shahzeb son of Nazar Hussain, during the trial. The appellant namely Shahzeb son of Nazar Hussain claimed that he was involved in the case without any reason. The plea taken by the appellant namely Shahzeb son of Nazar Hussain is not appealable to the prudent mind as without suggesting any ill-will to the prosecution witnesses, it was not possible to allege rape and attempt to commit *Qatl-i-Amd* against the appellant, without any rhyme or reason.

21. We, as a result of the above discussion, are of the considered view that the prosecution has successfully proved its case against the appellant namely Shahzeb son of Nazar Hussain, beyond any shadow of reasonable doubt. Accordingly, we **dismiss** the instant Criminal Appeal No.276-J of 2023 and uphold the impugned judgment passed by the learned Additional Sessions Judge/Juvenile Court, Hasilpur and the conviction and sentence of the appellant, namely Shahzeb son of Nazar Hussain, as awarded by the learned trial court are *maintained and upheld.*

(CH. SULTAN MAHMOOD)
JUDGE

(SADIQ MAHMUD KHURRAM)
JUDGE

Raheel

APPROVED for REPORTING

JUDGE