

IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT:

MR. JUSTICE SAYYED MAZHAR ALI AKBAR NAQVI
MR. JUSTICE SYED HASAN AZHAR RIZVI

CRIMINAL PETITION NO. 596-L OF 2022

(Against the judgment dated 24.02.2022 passed by the Lahore High Court, Lahore in Cr. Appeal No. 75142/2019)

Atta ul Mustafa

...Petitioner(s)

VERSUS

The State and another

...Respondent(s)

For the Petitioner(s):

Mr. Muhammad Sohail dar, ASC
(Via video link from Lahore)

For the State:

Mirza Abid Majeed, DPG Punjab

Date of Hearing:

11.08.2023

JUDGMENT

SAYYED MAZHAR ALI AKBAR NAQVI, J.- Petitioner along with co-accused was tried by the learned Additional Sessions Judge, Sialkot, pursuant to a case registered vide FIR No. 269/2018 under Sections 376-II/337-J PPC at Police Station Neikapura, Sialkot for committing zina with the complainant. The learned Trial Court vide its judgment dated 19.11.2019 while acquitting the co-accused, convicted the under Section 376 PPC and sentenced him to rigorous imprisonment for 10 years. He was also directed to pay fine of Rs.50,000/- or in default whereof to further undergo two months SI. Benefit of Section 382-B Cr.P.C. was also extended to the petitioner. In appeal the learned High Court maintained the conviction and sentences recorded by the learned Trial Court.

2. The prosecution story as given in the impugned judgment reads as under:-

"2. As per story narrated by the complainant Mst. Azmat Sultan in her written application EX.P.B, 8/10 months ago, accused Ata Mustafa came to her house and requested her to resolve the dispute between his father and mother as she deal with social welfare work. Then she went to the house of

accused Ata-UI-Mustafa on his request where she met three ladies namely Samina, mother of accused Ata-UI-Mustafa and Aisha and Khadija, sisters of accused Ata-UI-Mustafa who caused to drink her some intoxicated juice and after that she became unconscious. Thereafter complainant was shown a blue film which was captured by accused Ata-UI-Mustafa after administering her intoxicating liquid. Thereafter accused Ata-ul-Mustafa kept on blackmailing and threatening the complainant, and used to obtain money from her on different occasions. On 08.05.2018 at about 3/4:00 p.m, complainant called accused Ata-UI-Mustafa on mobile phone and requested him to delete her video and pictures as she is having a family. On the same day at about 9:00 p.m, accused called the complainant outside and with the assurance of deleting the video and pictures, took her to his house on a Rickshaw and again administered intoxicating juice to her and accused persons Ata-UI-Mustafa and Habib committed rape with the complainant one by one. When complainant gained conscious she found herself in Civil Hospital, Sialkot. Then complainant narrated whole story to her son and brother-in-law, and also informed the police for taking action."

3. After completion of the investigation, report under Section 173 Cr.P.C. was submitted before the Trial Court. The prosecution in order to prove its case produced seven witnesses. In his statement recorded under Section 342 Cr.P.C, the petitioner pleaded his innocence and refuted all the allegations leveled against him. However, he did not opt to appear as his own witness on oath as provided under Section 340(2) Cr.P.C in disproof of the allegations leveled against him. He also did not produce any document in his defence.

4. Learned counsel for the petitioner/convict contended that the prosecution case is based on whims and surmises and it has to prove its case without any shadow of doubt but it has miserably failed to do so. Contends that there is no evidence to prove the guilt of the petitioner except the solitary statement of the victim. Contends that the medical evidence did not corroborate the stance of the victim. Lastly contends that the reasons given by the learned High Court to sustain conviction of the petitioner are speculative and artificial in nature, therefore, the impugned judgment may be set at naught.

5. On the other hand, learned Law Officer has defended the impugned judgment. He contended that there is no material contradiction in the prosecution evidence and the prosecution has proved its case

beyond any shadow of doubt by producing convincing evidence, therefore, the petitioner does not deserve any leniency from this Court.

6. We have heard learned counsel for the parties at some length and have perused the evidence available on the record with their able assistance.

7. In the present case, the complainant/victim Azmat Sultana, who appeared as PW-5 is the star witness of the prosecution. In her deposition, she reiterated her stance as narrated in the crime report and alleged the petitioner and his co-accused to have committed rape with her. By now it is well settled that the testimony of a victim in cases of sexual offences is vital and unless there are compelling reasons which necessitate looking for corroboration of a statement, the courts should find no difficulty to solely rely on the testimony of the victim of a sexual assault to convict the accused. However, the strict condition for this is that the same shall reflect that it is independent, unbiased and straightforward to establish the accusation against the accused and if the court finds it difficult to accept victim's version, it may seek corroboration from some evidence which lends assurance to her version. In the present case, we have noted that the victim Mst. Azmat Sultana was 49 years of age while the petitioner was a young lad of 20 years old at the time of commission of the alleged offence. Although it is not impossible that a twenty years old boy cannot commit *zina* with such an older woman but the story told by the victim is not plausible. According to her, the petitioner's mother and his two sisters gave her some intoxicating drink, which made her unconscious and during this period, the petitioner and his friend committed rape with her. It is generally seen in our society that no matter how morally bad one is, he cannot do such kind of act in front of his mother and sisters. On our specific query, learned Law Officer admitted that the story narrated by the victim does not appeal to reason to the mind of a prudent man. In such circumstances, this Court is duty bound to weigh the other materials and evidence on record to come to the conclusion on guilt or otherwise of the petitioner. The victim was examined by Dr. Ayesha Aman (PW-1) and as she was admittedly a

married lady, therefore, medico legal report showing her hymen to be old ruptured was inconsequential. The blood sample of the victim was taken and sent to Punjab Forensic Science Laboratory for forensic toxicology and according to the Forensic Toxicology Analysis Report, "Alprazolam" was detected in her blood. Alprazolam is used to treat anxiety and panic disorder. The same is in a class of medications called 'benzodiazepines' and it works by decreasing abnormal excitement in the brain. It seems the victim was a patient of depression and she had some mental problems. The victim had leveled a specific allegation of intoxicating material being administered to her but neither anything containing intoxicating material was recovered nor any intoxicating material was found in her blood in the medico legal report. A bare perusal of record reflects that the victim had lodged a similar kind of case against another person but the same ended in compromise later on. This conduct of the victim adversely reflects on her credibility and does not require a flattering commentary. There is no denial to this fact that DNA test report revealed that possibility cannot be ruled out that the petitioner is the contributor of the semen detected on the vaginal swabs of the victim. It shows that the DNA report is not conclusive and certain about the guilt of the petitioner. The victim had leveled allegation of rape against two persons but according to the report of PFSA the co-accused of the petitioner was eliminated as being the contributor of male DNA. This means that whatever the victim said was not entirely true. Even otherwise, the DNA report cannot be treated as primary evidence and can only be relied upon for the purposes of corroboration and as stated above the evidence of the victim is not of such character, which can solely be relied upon to sustain conviction of the petitioner. When all the above-narrated circumstances are juxtaposed i.e. the implausible stance of the victim, her lodging of similar kind of case against another person and then patching up the matter after receiving hefty amount and the dubious DNA test report, it makes the prosecution case not free from doubt. These are the dents, which are so grave and sensational that they are squarely hampering the authenticity of the prosecution case. Therefore, it can safely be concluded that the prosecution has miserably failed to substantiate its case.

8. Mere heinousness of the offence if not proved to the hilt is not a ground to punish an accused. It is an established principle of law and equity that it is better that 100 guilty persons should let off but one innocent person should not suffer. The peculiar facts and circumstances of the present case are sufficient to cast a shadow of doubt on the prosecution case, which entitles the petitioner to the right of benefit of the doubt. It is a well settled principle of law that for the accused to be afforded this right of the benefit of the doubt, it is not necessary that there should be many circumstances creating uncertainty and if there is only one doubt, the benefit of the same must go to the accused. Reliance is placed on Mst. Asia Bibi Vs. The State (PLD 2019 SC 64), Tariq Pervaiz v. The State (1995 SCMR 1345) and Ayub Masih v. The State (PLD 2002 SC 1048) and Abdul Jabbar vs. State (2019 SCMR 129). The conviction must be based on unimpeachable, trustworthy and reliable evidence. Any doubt arising in prosecution case is to be resolved in favour of the accused. However, as discussed above, in the present case the prosecution has failed to prove its case beyond any reasonable shadow of doubt.

9. For what has been discussed above, we convert this petition into appeal, allow it and set aside the impugned judgment. The petitioner is acquitted of the charge. He shall be released from jail unless detained/required in any other case. The above are the detailed reasons of our short order of even date.

JUDGE

JUDGE

Islamabad, the
11th of August, 2023
Approved For Reporting
Khurram