

JUDGMENT SHEET
IN THE PESHAWAR HIGH COURT,
MINGORA BENCH (DAR-UL-QAZA), SWAT
(Judicial Department)

Cr.A No. 02-M/2021

Amani Rome (Appellant)

vs

The State & 02 others..... (Respondents)

Present: Mr. Mukaram Shah Khan, Advocate
for the appellant.

Hafiz Ashfaq Ahmad, Asst: A.G for
the State.

Mr. Yaseen Aman, Advocate for the
respondents No.2 & 3.

Date of hearing: 21.03.2023

JUDGMENT

Dr. Khurshid Iqbal, J.-

1. This criminal appeal was preferred by
Amane Rum (the appellant) against the judgment of
the Additional Sessions Judge/Izafi Zilla Qazi/
Judge Child Protection and Juvenile Court, Swat,
dated 23.09.2020, whereby he was convicted and
sentenced as under:

**“52. [...] Under section 376(3),
PPC, to imprisonment for life for
charge of committing rape of
victim child Samreena d/o Tanveer
Ali and fine of Rs.50,000/-. In
default of payment of fine he shall
undergo SI for 10 days. Benefit
u/s.382-B Cr.PC is extended in
favour of the accused.**

53. Since, victim child has suffered mental & physical anguish thus, compensatory fine amounting to Rs.100,000/- is awarded to victim u/s.544-A Cr.P.C to be payable in form of saving certificates to her upon attainment of age of majority. The compensation is to be payable by convict Aman-e-Rome s/o Bakht Rome, r/o Chalis Palaw, Charbagh, District Swat. Failing to pay same the amount will be recovered as arrears of land revenue from the convict Aman-e-Rome s/o Bakht Rome, r/o Chalis Palaw, Charbagh, District Swat”.

2. On 07.07.2017 at 17:00 hours, Tanveer Ali, a resident of Dando-Palao, took his minor daughter Ms. Samreena Bibi, aged about 6/7 years, to the Police Station Charbagh, where he reported the incident of the rape of his daughter. The germane facts of the incident are that on the eventful day, at 12:20 Noon, Ms Samreena while weeping came home. On query, she informed that after getting snacks(پاکڑ) from a shopkeeper Jehanzeb while on the way back to her home, the accused Aman-e- Rum forcibly took her inside a cattle-shed, where he tried to take off her clothes and sexually abuse her. On her screaming, the accused left her there and fled away. Dr. Uzma, a Medical

Officer examined the victim and found that the victim was raped. The case was registered against the appellant vide FIR No.371, dated 07.07.2017 u/s. 376, PPC and section 53 of the Khyber Pakhtunkhwa Child Protection and Welfare Act, 2010, at the Police Station Charbagh.

3. It is worth mentioning that during the course of investigation, the appellant recorded his confessional statement before the Judicial Magistrate. On the completion of investigation, challan was put in court against the appellant/convict before the trial Court. Copies were supplied to him in compliance of section 265-C, Cr.PC. Charge was framed against him u/s.376, PPC, read with section 53 of the Khyber Pakhtunkhwa Child Protection and Welfare Act, 2010, to which, he pleaded not guilty and claimed trial.

4. The prosecution examined as many as eleven (11) PWs. The appellant/convict was examined u/s. 342, Cr.PC, in which, he was afforded an opportunity of producing evidence in defence and/or recording statements on oath. He produced one Najibullah, Muharrir/SI, Police Lines Kabal,

as DW1, in his defence. DW1 produced a copy of DD No.15 dated 03.07.2017 and also exhibited an extract of the DD register as Ex:DW1/1. The appellant was also reexamined u/s.342, Cr.P.C., after recording the statement of his witness as DW1.

5. On conclusion of trial proceedings and hearing arguments of DPP for the State assisted by counsel for the complainant and counsel for the appellant/convict, the trial Court vide impugned judgment passed on 23.09.2020, convicted the appellant by awarding him the sentence mentioned above.

6. Arguments of counsel for both the parties as well as Asst. A.G for the State, heard and record gone through.

7. We shall begin with the ocular account furnished by Ms. Samreen (victim PW12), Tanveer Ali Khan (father of the victim/complainant PW10), and Tawqeer (her uncle PW8). A close reading of the statements of these PWs would transpire that on 07.07.2012, the victim entered her house at the relevant time. She was weeping. On being asked by her father (PW10), she replied

that after purchasing Papar (4) from a shop, on her way back home, the appellant took hold of her hand, took her to cattle shed (*Ghojal*), where he tried to strip her naked in order to molest her modesty but when she raised hue and cry, he ran away from the scene. He took her alongwith her blood stained *Shalwar* (trouser) to the Police Station, Charbagh, where he lodged the report. He was then accompanied by police personnel, including a lady constable, to the Tehsil Headquarter Hospital in Khwazakhela. The victim was medically examined. After receipt of the medical report, it was found that the appellant was raped the victim, for which he charged him. Then, he, in the presence of the victim, showed the crime scene to the Investigating Officer, who prepared the site plan of the crime scene. On 08.07.2017, the next day, he recorded a statement before the I.O.

Wahid

8. While under cross examination, PW10 was asked several questions, key amongst them, related to consultation with others regarding registration of the case, the time he and the victim alongwith the police personal reached to the hospital at the exact time of the victim's medical

examination; his non-association with proceedings conducted by the police; the presence of his brother Tawqeer Ali (PW8) in the village on the day of the incident, the identity of the appellant and the person to whom he had handed over the clothes of the victim. He replied that he made consultation with his relatives which caused delay in lodging the report. He, however, explained that in such like cases, where the honour and dignity of the entire family is at stake, that was necessary. He explained that there were blood spots on the *shalwar* of the victim. He could not recollect the exact time of the arrival and the medical examination of the victim in the hospital, for which, the explanation he offered was that sufficient time had passed so he could not tell the time with precise details. He further explained that it was sufficient time before the *Maghrib Azan*. The question about one Jehanzeb shopkeeper appears to be irrelevant as he did not mention him in his examination-in-chief. Then, he confirmed that his brother Tawqeer Ali (PW8), who had last seen the victim and the appellant shortly before the incident was present in the village on the day of the incident. Next, he identified the appellant,

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stating that he belongs to his village though not his relative. He further stated that he handed over the garments of the victim to the police and not to the doctor. He denied various suggestions, such as, his explanation about consultation with his relatives was an attempt to give false evidence and thereby mislead the Court. He denied that there were no blood stains on the *Shalwar* which the victim was wearing at the time of the occurrence. He also denied that he charged the appellant after having identified him. He denied that his statement was false and that he withheld the best available evidence. He also denied that he charged the appellant on the basis of ill-will.

W. M. A. Khan

9. The victim, being a minor girl of 09 years, was first subjected to rationality test by the trial Court. As many as 09 questions were asked from her. The questions were related to her name, the class in which she read, her friends, her father name, her age, the place where she was present (the court-room), the name of her school, the purpose for which she appeared before the Court and the counsel who was representing her. She successfully replied all the questions, including most particularly, giving

evidence as the purpose of her presence in the Court. After having passed the rationality test, the trial Court expressed its satisfaction that she was able to hear and understand the questions put to her and she was capable to answer the questions. Thereafter, she recorded the following statement as her examination-in-chief:

“Stated that on the day of occurrence I had gone to shop where I had purchased some snacks. I came back to the water pump and stand there. The accused asked me to press handle for releasing water. I pressed the pump then the accused kissed me on cheek. Thereafter, the accused told me to come after him and he took me to cattle shed. Inside the cattle shed the accused striped me off my shalwar and laid down me on a sack. Then he stripped off his shalwar as well. Then he started moving to and fro while laying above me. I started crying, accused told me that he will give rupees 10 more if I stop crying. I was bleed and I was crying and weeping due to pain. Then, I went to my home. I informed my grandmother and mother about the occurrence. Then, later on we went to police station for report. Thereafter, police took me to hospital for medical examination. We also pointed out the place of occurrence to police. (Today, the pictures available on case file Ex: PW11/3 were shown to the witness



regarding the pointation of place of occurrence to police which she verified) I charge accused facing trial for commission of offence. (subject to objection of the defense counsel that the witness has been tutored by her parents; neither her statement was record u/s.161 Cr.P.C nor her name was mentioned in the calendar of witnesses).”

10. While under cross examination, the victim correctly replied that her place of residence is called Dando-Palao Charbagh; that she was studying in Class-I in the Qaid-e-Azam Public School. She was cross examined about her close relatives, including the one whom she loves most. While answering these questions, she said that the one whom she loves the most is her grandmother. She then stated that if she disobeys her grandmother, the latter gets angry with her. She was then asked if it was correct that her father and grandmother told her to give evidence in the Court. She stated that it was correct. However, she termed it incorrect that her grandmother threatened her and warned her for dire consequences if she did not record her evidence according to her instructions. Next, she termed it correct that her grandmother had told her that if she recorded her statement according to her saying,


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she would reward her. Quite interestingly, she denied the next suggestion that being a minor girl she was a tutored witness. Counsel for the appellant vehemently stressed on this aspect of her cross examination, saying that the victim was tutored and even intimidated by her father and grandmother. We are not persuaded with his arguments. The main reason is that while evaluating evidence, the statement of a witness has to be seen as a whole, there could be no cherry picking of bits and pieces of a statement that could be given weight in favour of one party. In other words, the Court is required to read the evidence in toto and weigh it palpably not only in itself but also in tandem with other evidence, oral as well as documentary, in the whole spectrum of the facts and circumstances of the case. While we are conscious of the fact that the defence has a right to shatter the prosecution case in cross examination by putting a vast array of question to a witness, particularly the star witness of the prosecution, such as, the victim in the case in hand, we observe that the learned defence counsel endeavoured to establish that the witness was under the influence or duress of her father and/or grandmother. The victim was first asked as to whom


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she loves first. The answer she furnished was that it was her grandmother. A still closer analysis of the cross examination would clearly manifest that the defence was not successful in showing that the statement of the victim was prompted by influence or duress and not confidence inspiring. In this respect, her examination-in-chief reproduced above appears to be categorical in spelling out the event in all its natural details. More importantly, the victim remained firm and steadfast during her cross examination where she said:

“The person who took me to the cattle shed from the hand pump, I know him and his name is Aman-e-Room (accused).”

 **11.** The mere fact that the victim admitted that her father and grandmother told her to record her statement, by no stretch of imagination, means that she was told what evidence she was to give in the Court. She, as discussed above, denied from having been threatened or warned by her grandmother. Similarly, the mere fact that she admitted having been told by her grandmother that she would be rewarded for giving evidence in the Court, also in no way suggest, that she was tutored.

Indeed, a grandmother is a grandmother and we all love her and we love to obey her; we always listen to her; we do our best to obey her, and in the given circumstances, there is nothing wrong if the victim was told by the grandmother to give evidence in the Court. The victim has given the evidence which is evidence in fact and not something extraneous or something that her grandmother told her to state in her evidence. We are at loss to find something that may provide leverage to the defence. Moreover, the grandmother issue referred to above even if ignored for the sake of arguments, the statement of the victim needs to be seen whether it is corroborated by the rest of the evidence.

 12. The evidence of her uncle Tawqeer Ali (PW8), was that the victim was drinking water from the hand pump, situated near the road of village Dando-Palao, Sher Alam hujra, where the appellant Amane Rum son of Bakht Rum r/o Chalis-Palao was also standing. At that time, he himself was on the way towards a water channel situated in village Pampal. He asked the victim to go straight to her home. After some time, when he himself returned home, he learnt that the appellant had raped the victim.

13. Coming to the cross examination of PW8 (uncle of the victim), we see that he was not given a tough time during cross examination. He fully restated in his cross examination that he had seen the victim and the appellant near the water hand pump at about 12:00 noon, a short time before the incident. He recollected that even in his police statement he had deposed that he had seen the appellant standing near the water pump. It is for the reason that his admission that the police recorded his statement after four days of the occurrence, is not helpful to the defence. He denied that he was not present in District Swat at the time of the occurrence. He also denied that he recorded his statement before the police after consultation and deliberation about his nomination in the case.



14. We will now proceed to the medical evidence furnished by Dr. Uzma as PW7. She examined the victim at 06:50 PM on 07.07.2017, the day the incident occurred. She recorded her observations that at the time of her examination, the victim was conscious and she was weeping due to

sever vaginal pain. She recorded the following findings:

“Following are my findings:

1. Small laceration/tear on the upper part of vagina all around noted. Fresh bleeding noted.

2. On speculum examination/pre vaginal examination hymen was ruptured fresh active bleeding noted due to forceful penetration/entry.

3. Signs of recent rupture of hymen, laceration, erythema and vaginal walls are edematous, & hemorrhage from vaginal walls are also noted.

Gait normal.

Opinion: At this stage/time, in my opinion, recent forceful intercourse done with victim.”



15. The above findings leave no doubt whatsoever that the victim was raped. While under cross examination she admitted that lady constable Nahid produced before her the victim in the labour room in the hospital where entry of men is forbidden. The aforesaid lady constable Nahid was examined as PW1. She furnished evidence of the fact that she took the victim before Dr. Uzma, who examined her at 06:30 pm (*sham-vela*), in her presence. Though PW1 stated that the I.O and

other police officials were also present there, but Dr. Uzma clarified that inside the labour room, where she conducted the examination, no male person was present. However, she expressed her lack of knowledge about standing of other persons outside the labour room or not. She was asked about haemorrhage at the time of examination. She offered the following reply:

bleeding from مراد سے Haemorrhage" the ruptured vessels is called Haemorrhage ہے۔ Haemorrhage سے بلیڈنگ کچھ وقت کیلئے ٹوک بھی سکتی ہے اور دوبارہ ٹپھ ہونے سے یا ہلنے سے شروع ہو سکتی ہے۔ یہ exact تعین نہیں کیا جاسکتا کہ Heamorrhage سے بلیڈنگ کی کتنی دورانیہ تک 6 سے 7 سال تک بچہ ہوش میں رہ سکتا ہے۔ از خود کہا کہ یہ Haemorrhage کی نوعیت اور vessels کی قسم پر منحصر ہوتا ہے۔ میں نے اپنے رپورٹ میں یہ واضح کیا ہے کہ طفلكہ سے active bleeding/small lacerations ہو رہی تھی۔ وقت گزارنے کے ساتھ خون کا رنگ تبدیل ہوتا ہے۔ میں نے رپورٹ میں یہ اسلئے وضاحت نہیں کی ہے کہ artery یا vein bleeding سے ہے کیونکہ اس قسم کا تعین deep dissection کے بعد کیا جاتا ہے جبکہ میں نے اپنی رپورٹ میں small laceration ذکر کی ہے۔ شریان اور ورید کی خون کے رنگ میں تھوڑا فرق ہوتا ہے۔ از خود کہا کہ اگر دو قسم کے خون یعنی شریان اور ورید کو بالقابل رکھا جائے تو artery اور vein کی خون کے رنگ میں فرق کیا جاسکتا ہے۔ کیونکہ یہ اسپین لیول کے وجہ سے رنگ میں فرق ہوتا ہے اور صرف ایک قسم کا خون ملاحظہ کرنے سے یہ فرق واضح نہیں کی جاسکتی۔ یہ غلط ہے کہ خون کی نوعیت کے

Uzma

بارے میں نہ بتا کر میں غفلت کا مظاہرہ کیا ہے۔ میں exact
وقت نسبت tear نہیں بتا سکتی لیکن چونکہ بوقت ملاحظہ
active bleeding شروع تھی اسلئے زیادہ وقت نہیں
گزر رہا تھا۔ بوقت ملاحظہ tear سے خون ٹپچ کرنے دوبارہ شروع
ہوئی تھی جس سے یہ واضح تھا کہ tear تازہ ہے۔"

16. Next, she was asked about semen stains on the *Shalwar* of the victim. She further stated that semen stains could not be determined normally, so for proper determination, they are required to be examined in the FSL and it was for that reason that she forwarded the same to the FSL. She restated that her opinion was clear inasmuch as the victim was *recently* subjected to forceful intercourse. She denied a suggestion that she could not herself determine whether sexual intercourse was committed with the victim or not, so she sent the semen stains to the FSL. She then explained on her that she sent the semen stains to FSL for further confirmation of her opinion.

17. The next most important piece of prosecution evidence is the confessional statement of the appellant, which was recorded by Mr. Issa Khan Afridi, the Judicial Magistrate, on 12.07.20217. The questionnaire, the certificate

and the confessional statement coupled with the deposition of the Judicial Magistrate demonstrate that when the appellant was produced before him, he introduced himself as Judicial Magistrate first class and informed him that he needs to understand that he is not bound to make a confession and, if he made so, the same will be used against him as evidence. When asked as to why he wants to make a confession, the appellant replied that he has committed the offence. He satisfactorily answered before the Judicial Magistrate that he was making confession on his own free will, without compulsion of any body and further that he was neither threatened nor was induced nor was he told that he would be made an approver. He stated having remained in police custody for three days. He declined to meet with his counsel or relatives. The certificate appended to the statement reflects that he was produced at 12:30 hours and was given two hours to think about his decision to make his confession. The certificate further shows that the appellant gave his statement in Pashto, which the Judicial Magistrate translated into Urdu and then read it over to him and that he admitted the same as


W. J. Khan

correct, which he finally signed and thumb impressed. The confessional statement was certified u/s. 364, Cr.P.C.

18. While under cross examination, the Judicial Magistrate stated that he did not explain to him the difference between Police Station and Jail. However, he explained that the appellant was a police official, suggesting that it was not required. He deposed that during the process of recording the confession, he kept explaining and making the appellant understand each and every question of the questionnaire which he would reduce into writing what he would say himself. He denied a suggestion that it was a mistake on his part that he did not give a second opportunity to the appellant to think about his confessional statement. He also explained that after completion of recording the confessional statement, he handed over the appellant to the Naib Court. He testified that in the printed questionnaire he has recorded the answers of the appellant in his own handwriting. On a question about torture, he replied that apparently there were

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no signs of violence on his body; and that he apparently looked normal. However, he added that he noted from appellant's face reading that he was embarrassed and unhappy for having committed the offence. In light of the above analysis of the evidence, we find no anomaly in the process followed by the Judicial Magistrate while recording the confessional statement of the appellant.

 19. Learned counsel for the appellant vehemently argued that constable Babar Ali No.2446 (PW3), who deposed that during the police custody, no one else except the Investigating Officer subjected the appellant to torture. He invited our attention to the proceedings at the trial on 19.02.2018 (vide order No.11), when private counsel for the complainant submitted an application to declare the aforesaid constable Babar Ali as a hostile witness. A copy of the application is available on page 161 of this appeal. The reasons shown in the application was that the private counsel for the complainant went out of the Court during break for offering prayer. When he

came back to the Court, he found that the cross examination of the PW3 was completed. On that date of the hearing, while the proceedings were adjourned, when the private counsel for the complainant perused the statement of PW3, he found that the witness had given a concessional statement in his cross examination. The trial Court, vide its order No.7 dated 30.05.2018, decide the issue in such a way that the witness was ordered to be cross examined again. Thus, the cross examination was conducted on 28.11.2018, in which, he resiled from his earlier stance, categorically stating that no violence was committed on the appellant in his presence. He further stated that no one was tortured in the Police Station. Counsel for the appellant could not convince us that the cross examination has caused prejudice to the appellant. Indeed, the reason mentioned in the application was that the defence counsel cross examined the witness in the absence of the private counsel for the complainant. There is no explanation on the part of defence counsel in this regard. The contention of the appellant in his statement u/s. 342,



Cr.P.C., at the tail end of the trial, that he was subjected to torture during police custody is also of no legal value. The reason is that never before, at the time of recording his confessional statement as well as during the trial, he made any such complaint.

20. The appellant in his statement recorded u/s.342, Cr.P.C, requested the trial Court that the D.D of his departure from Kabal Police Line to the Peshawar, be requisitioned. The D.D was produced by one Moharrir Najibullah of Police Station Kabal as DW1. Under cross examination, DW1 stated that as per the D.D., the appellant was directed to leave for Peshawar. He expressed his lack of knowledge as to when exactly he left for Peshawar. He further stated that there is no record to suggest as to when he left for Peshawar. He explained that the appellant was not sent to Peshawar in an official vehicle. The appellant was again examined u/s.342, Cr.P.C with reference to the evidence given by DW1. When asked as to what he wants to say about the D.D produced by the DW1, he simply stated that he has no concern with it. He was also asked that if he wants to produce any other evidence. He replied in the negative.

21. The conclusion of our above discussion is that the prosecution has established beyond any reasonable shadow of doubt that the appellant raped the victim. Before the incident, he was seen present at the water hand pump where the victim was also present. Though the victim didn't specifically tell her father the factum of her rape but that is not fatal to the prosecution case for the reasons: *firstly*, the victim couldn't say it being, too, young; not able to understand the nature of the dastardly act of rape. *Secondly*, the medical examination categorically established the rape. The victim passed the rationality test before her testimony was recorded. She identified the appellant in the Court at the time of recording her statement. The defence couldn't establish that the victim was tortured or threatened or influenced by the grandmother Confirmatory questions were put to the Medical Officer during cross examination, which further strengthened the prosecution case. The FSL report of the semen stains was positive. The appellant recorded his judicial confession, which was found to have been given voluntarily reflecting the true version of the incident.



The defence couldn't establish the plea of torture, which was set up at a belated stage. The appellant was afforded full opportunity to establish his absence by examining defence evidence. His victim was a minor girl of 6/7 years whose rest of her life he has destroyed, creating an indelible stigma on her honour and on the dignity of her family. By his grisly act, he violated the victim's dignity—as a human being; and more so, as a little innocent child—which is her constitutionally guaranteed fundamental right. As a little child, she has yet to see the dawn of her adulthood to realize her dream of an enjoyable and peaceful family life. Of great significance is the vulnerability of a rape victim is to many possible negative effects, such as, fear, anxiety, anger, anguish, sadness and confusion. It may have long term health, physiological and behavioural effects on a victim. Another unfortunate aspect is that we have no community and public support measures for rape victim's rehabilitation.

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22. Consequent upon our above reappraisal of evidence and discussing legal aspect of the case, we have come to the conclusion that the

prosecution has successfully proved the charge against the appellant beyond any reasonable shadow of doubt. The evidence of the prosecution is direct, solid, cogent and confidence inspiring. The appellant has recorded judicial confession, from which he resiled in his statement recorded u/s.342, Cr.P.C. The same, however, is proved as voluntary, truthful and corroborated by ocular and medical evidence. The appellant failed to prove his departure from Kabal Police Line to Peshawar on the eventful day. We also find that the trial Court has properly appraised the evidence on the record.

23. Resultantly, we dismiss the instant appeal being devoid of merits, maintain the conviction and sentence awarded to the appellant by the trial Court vide judgment dated 23.09.2020.

Announced

Dt: 21.03.2023



JUDGE



JUDGE

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07/04/23