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**Judgment Sheet**  
**IN THE LAHORE HIGH COURT LAHORE**  
**(JUDICIAL DEPARTMENT)**

Criminal Appeal No.56786 of 2017

Istikhar @ Iftikhar                  versus                  The State etc.

**Date of hearing** 13.02.2024

The Appellant by M/S Mirza Nasr Hussain Shahid  
and Shehnaz Balqees, Advocates.

The State by Ch. Muhammad Ishaque,  
Addl. Prosecutor General.

**Asjad Javaid Ghural, J.** Through this appeal under Section 410 Cr.P.C. appellant Istikhar @ Iftikhar has challenged the vires of judgment dated 17.07.2019 passed by the learned Additional Sessions Judge, Nankana Sahib in case FIR No.124/18 dated 27.03.2018, in respect of an offence under Sections 376 PPC, registered at Police Station, Faizabad, District Nankana Sahib, whereby he was convicted and sentenced as under:-

### Under Section 376 (3) PPC

Imprisonment for life with fine of Rs.25,000/- and in default thereof to further undergo SI for two months.

He was held entitled to the benefit of Section 382-B Cr.P.C.

2. The prosecution story unfolded in the crime report (Ex.PA/1) registered on the complaint of Babar Ali (PW-1) was that on 27.03.2018, his daughter namely, Mst. Asma Bibi, aged about 4/5 years, went outside the house for playing and did not turn back after considerable time. He alongwith witnesses Riaz Ahmad and Muhammad Boota, started searching her and when about 12.40 p.m. they went towards tube-well of Hanif Arain, they heard hue and cry of girl. They went towards the tube-well and saw appellant was committing *Zina-bil-Jabr* with the victim. On seeing the witnesses, appellant fled away while leaving the victim in a naked condition. Hence, this case was registered.

3. Sabar Hussain, SI (PW-9)/Investigating Officer, visited the place of occurrence on the same day and recorded the statements of witnesses including the victim under Section 161 Cr.P.C. He arrested the appellant on 30.03.2018, got conducted the DNA test of the victim as well as the appellant. After completion of the investigation, he submitted report under Section 173 Cr.P.C.

4. Lady doctor Saima Aslam (PW-6) conducted the medico-legal examination of the victim on the same day i.e. 27.03.2018 and observed perianal bruising alongwith multiple tears of varying sizes at different position. She also observed dried blood around perianal area and on buttocks. Three anal and one vaginal swab were taken and sealed for DNA analysis. According to her opinion, sexual assault was committed with the victim.

5. At the commencement of the trial, learned trial Court had framed a charge against the appellant to which he pleaded not guilty and claimed to be tried.

6. The prosecution examined 10-witnesses besides the report of DNA and Serology Analysis (Ex.PJ). The appellant in his statement recorded under Section 342 Cr.P.C., had denied and controverted all the allegations of fact leveled against him. He neither opted to make statement under Section 340(2) Cr.P.C., nor produced any evidence in his defence.

7. Learned trial Court, upon conclusion of the trial, convicted and sentenced the appellant as stated above. Hence, this criminal appeal.

8. Learned counsel for the appellant submits that the appellant is quite innocent and has falsely been implicated in the alleged occurrence; that infact brother of the appellant who was serving abroad transferred an amount of Rs.5,00,000/- in the account of Maqsoodan Bibi, aunt of the complainant, and when parents of the appellant demanded said amount, she in connivance with the complainant roped him in this criminal case; that according to the opinion of the medical officer vaginal area was intact, as such at the most it is a case of attempt to rape; that the report of DNA has been received with negative result, which negates the prosecution case; that at the time of alleged occurrence the appellant was juvenile; that conviction and sentence

handed down by the Trial Court is very harsh and does not commensurate with the act of the appellant. In the end, learned counsel for the appellant has made an alternate prayer for suitable reduction in the sentence.

9. Conversely, learned Addl. Prosecutor General appearing for the State submits that it was a day light occurrence and in such like cases question of mistaken identity of real culprit is out of question; that the ocular account is fully supported with the medical evidence; that the victim girl furnished a natural and straightforward story without any concoction or consultation; that in case of rape of a female child involving family honour and dignity, there was no occasion for the complainant to falsely implicate the appellant while letting off the real culprit; that the prosecution has successfully proved the charge against the appellant beyond shadow of any reasonable doubt; that the act of the appellant ruined the entire life of the little girl and as such he does not deserve for any leniency. At the end, he prays for dismissal of the appeal in hand.

10. I have heard learned counsel for the appellant, learned Addl. Prosecutor General appearing for the State and perused the record.

11. This unfortunate incident had taken place on 27.03.2018 at about 12:40 noon and the crime report was lodged on the same day at 03:45 p.m. i.e. within almost three hours of the occurrence. This promptness in lodging the crime report not only confirms presence of the eye witnesses at the spot but also excludes every hypothesis of deliberation, consultation and fabrication prior to the registration of the case.

12. The prosecution case hinges upon the testimony of Babar Ali, (PW-1)/complainant/father of the victim, Riaz Ahmad, (PW-2), Muhammad Boota, (PW-4)/eye-witnesses of the occurrence and Mst. Asma Bibi, (PW-3)/victim. The complainant while appearing in the dock in the court room reiterated the contents of the crime report deposing that on 27.03.2018 her daughter namely, Mst. Asma Bibi, aged about 4/5 years, went outside the house for playing and did not turn back after considerable time. He alongwith Riaz Ahmad (PW-2) and Muhammad Boota (PW-4), started searching her and when about 12.40 p.m. they reached near the tube-well of Hanif Arain, they heard screams of the girl. He saw appellant was forcibly

committing *Zina-bil-Jabr* with the victim. On seeing the witnesses, appellant succeeded to flee away. Riaz Ahmad, (PW-2) and Muhammad Boota (PW-4), unflinchingly supported the complainant while stating that they witness the appellant committing rape with the minor girl. They were subjected to lengthy cross-examination but the defence could not shatter their credibility on material particulars of the incident.

13. The most crucial and star witness of the occurrence was victim Mst. Asma Bibi (PW-3). This little angel was about five years old at the time of recording of evidence and the Trial Court before recording her testimony put some queries to her in order to determine whether she was competent to understand the questions and after satisfying it on this point, recorded her statement. Victim girl in her statement, in categorical terms raised accusing finger towards the appellant to be a person, who took her towards a tube-well, removed her cloths and committed rape with her. She faced the test of cross-examination with full confidence and gave graphic details of the incident in a quite natural manner. During cross-examination, she not only gave the name of her teacher but also her immediate neighbors and class fellows. From the tenor of the statement of the star witness, I am convinced that what she deposed while appearing in the dock in the Court room was confidence inspiring and no one has tutored her in this regard. The statement of the victim child was quite natural, straightforward, convincing and confidence inspiring leaving no room for the Court to draw any adverse inference.

14. Lady doctor Saima Aslam (PW-6) conducted medico-legal examination of the victim on 27.03.2018 and observed that “*There is bruising of perianal area alongwith tears of varying sizes and at different positions. Vaginal area seems intact on naked eye examination. There were signs of dried blood around perianal area and on buttocks.*” According to her opinion sexual assault was committed with the minor girl.

Learned defence counsel laid much emphasis that according to the opinion of Medical Officer vaginal area was intact, therefore, at the most it could be regarded as an attempt to commit the rape. I am not in agreement with the submission of the learned counsel for more than one reasons.

Firstly, Section 375 PPC defined the “rape”. Explanation 1 of the said section reads as under:-

*“For the purpose of this section, “vagina” shall also include labia majora”*

In the instant case Medical Officer has observed bruising upon perianal area alongwith tears of different sizes at different position, which when read in context with Explanation reproduced supra, fully constitute that the ‘rape’ was committed with the victim.

Secondly, a Forensic Scientist Mr. C.K. Parikh in “ Parikh’s Textbook of Medical Jurisprudence, Forensic Medicine and Toxicology at page 5.37 mentions as under:-

*“Soon after the act, the torn margins are sharp and red, and bleed on touch”.*

Moreso, H M V Cox “Medical Jurisprudence and toxicology” (Seventh Edition) by Dr. PC Dikshit, Professor and Head of Forensic Sciences, Maulana Azad Medical College, New Dehli, explains the situation in Chapter of Sexual Offences at page 591 as under:-

*“ In case of incomplete penetration, the only sign which may be seen are reddening and inflammation of vestibule within the labia or a small tear of the posterior fourchette. There may also be contusion of the hymen.”*

The situation when rape is committed with a child has been well explained in the above chapter in the following manner:-

*“In the case of small children, the genital injuries found are either absolutely minimal or of such magnitude that one is unable to perform the examination without general unaesthetic. It must be remembered that it requires a great amount of force, exerted via penis, to effect full penetration into the small under-developed child, because of this many rapists of small children are satisfied to commit what is described as rape without full penetration.”*

Further that;

*“Bodily injuries, because of the lack of resistance by the child are usually absent in this type of case.”*

Furthermore, extent of penal insertion is highlighted in Simpson Forensic Medicine (Tenth Edition) by Bernard Knight in the following manner:-

*“Sexual intercourse means nothing less than penile insertion, even if this is only just between the labia. Full penetration is not necessary and rupture of the hymen is irrelevant, but unless some degree of penile introduction can be proved, a charge of rape cannot be sustained and anything less is ‘indecent assault.’ An orgasm or ejaculation of semen is not relevant, only penetration. (emphasis supplied)”*

The nature of injuries endured by the victim and described by the Medical Officer perfectly matched with the observations highlighted above and sufficient to attract the offence of ‘rape’ on the touchstone of penetration. Reliance is placed on case reported as “*Madan Gopal Kakkad .Vs.. Naval Dubey and another (1992 SCR (2) 921, 1992 SCC (3) 204*” wherein a rape was committed upon a minor girl of aged about eight years and upon examination of the victim after five days of the occurrence, the Medical Officer observed an abrasion on the medial side of labia majora and redness around labia minora with white discharge but the hymen was intact and in view of absence of signs of full penetration the Medical Officer opined that there was an attempt to rape but the Supreme Court observed as under:-

*“Under the basis of medical findings, it can safely be concluded that there was partial penetration within the labia majora or vulva or pudenda which in legal sense is sufficient to contribute to rape and convicted the accused for the offence of rape.”*

In view of above, I am of the considered view that it was a case of complete rape and not an attempt to rape as urged by the defence.

Learned defence counsel also stressed that in the report of DNA analysis, no semen stain was detected, which is fatal for the prosecution. This submission is also not helpful for the defence for more than one reasons. *Firstly*, according to the Medical Officer, private area of the victim was washed prior to her examination, as such there seems no possibility of availability of semen at the time of examination. *Secondly*, detection of seminal material in the vaginal swabs of the victim is just a corroboratory piece of evidence and merely due to its non-detection the other overwhelming ocular and medical evidence cannot be discarded. The Apex Court case reported as “**Abdul Ghani ..Vs.. The State through P.G. Balochistan and another**” (2022 SCMR 544) has observed as under:-



“The child being in tender nobility is clinically established to have been violated, a circumstance that required no further corroboration. Negative reports do not reflect upon the veracity of prosecution case for reasons more than one. DNA profile generation though a most meticulous method with unfailing accuracy, nonetheless, requires an elaborate arrangement about storage and transportation of samples, a facility seldom available. Even a slightest interference with the integrity of samples may alter the results of an analysis and thus, the fate of prosecution case cannot be pinned down to the forensic findings alone, otherwise, merely presenting a corroborative support, hardly needed in the face of overwhelming evidence, presented by the prosecution through sources most impeachable.”

15. Having scanned the entire prosecution evidence, this Court is of the view that the prosecution has successfully proved the charge against the appellant as alleged for to the hilt beyond shadow of reasonable doubt through cogent, reliable and confidence inspiring evidence. It was a day light occurrence which was reported to the police with much promptitude. The minor victim herself categorically stated that the appellant forcibly committed *Zina-bil-Jabr* with her. The statements of the victim, her father and other eye-witnesses, finds full support from the medical evidence. No self-respect girl would falsely come forward in a Court just to make a humiliating statement against her honour as the victim of rape. The appellant in his statement recorded under Section 342 Cr.P.C. though had denied the charges yet the story for his false implication put forward by him does not inspire confidence. He neither opted to appear under Section 342 (2) Cr.P.C. nor produced any evidence in his defence. Appellant in order to fulfill his sexual lust has molested a little girl of just 4 ½ years old, who has not even developed sexual characteristics. It was a nightmare for a little angel, who endured inhumane act of the appellant and undisputedly, it will haunt her for the rest of her life. Appellant has stigmatized the entire future of a little girl, as such he deserves no leniency from the Court.

16. The nutshell of above discussion is that I have no legitimate exception to differ with the conclusion arrived at by the trial Court qua the conviction and sentence of the appellant, as such instant appeal being devoid of any force stands **dismissed**.

(Asjad Javaid Ghural)  
Judge

APPROVED FOR REPORTING.

JUDGE