

JUDGMENT SHEET
IN THE LAHORE HIGH COURT, LAHORE
(JUDICIAL DEPARTMENT)

Criminal Appeal No195087 of 2018.

Amjad Ali versus The State etc.

J U D G M E N T

Date of hearing	15.04.2024
The appellant by	Ch. Abdul Mujeeb, Advocate (Defence counsel)
The State by	Mr. Abdul Rauf Wattoo, DPG & Miss Rahat Majeed, ADPP
The complainant by	Nemo for the complainant.

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MUHAMMAD AMJAD RAFIQ, J. Allegedly indicted in a crime of rape with Shagufta Parveen, Amjad Ali, appellant was prosecuted in case FIR No.537 dated 14.11.2016 registered under Section 376(i) PPC at Police Station City, Shorkot and vide judgment dated 30.03.2018 he was convicted and sentenced as under;

*“Rigorous imprisonment for fourteen years under section 376 (i) PPC with fine of Rs.10,000/-, in default thereof to further undergo six months simple imprisonment.
Benefit of section 382-B Cr.P.C. was extended to him.”*

2. Brief facts of the case are that on 09.11.2016, Shagufta Parveen (victim) being teacher went to the school and on the same day at 01:00 p.m. Amjad Ali, accused/appellant sent a message through a child that she is being called by her mother and brother. When she came out of the school, accused/appellant took her along with the pretext that her mother being indisposed is present in the house of Mst. Shamim Bibi co-accused under the care of her brother. She responded innocently to such sham arrangement and rushed towards the house of Shamim Bibi; as she entered in the house, Amjad Ali, accused/appellant closed the door, Shamim Bibi was appointed at

guard, and accused/appellant thereby started committing rape with her on pistol point; on her hue and cry, PWs attracted and accused/appellant after seeing them fled away from the place of occurrence.

3. Investigation of the case was conducted by Sikandar Hayat Sub-Inspector (PW-9) who visited the place of occurrence, recorded statements of witnesses including the victim, prepared un-scaled site plan (Ex.PE), got the victim medically examined through Nadia Rasheed 1678/LC who after examination produced before him two sealed phials along with two sealed envelopes which he took the same into possession through recovery memo (Ex.PC). On 20.11.2016, he arrested accused Amjad Ali, interrogated and produced him before the Area Magistrate for physical remand, recovered pistol 30 bore from his possession. Later he produced accused/appellant along with Mst. Shagufta Parveen to the office of P.F.S.A. Lahore where their DNA test was conducted. On 20.12.2016, Shamim Bibi co-accused joined investigation and was declared innocent duly verified by DSP. After completion of investigation, he submitted report under section 173 Cr.P.C, the accused were charge sheeted to which they pleaded not guilty, whereupon, the prosecution examined Dr. Ghulam Rasul SMO, THQ Hospital Shorkot (PW-1) as witness to potency test of the accused, Dr. Saima Sarwar WMO THQ Hospital Shorkot (PW-2) for medical examination of victim, Nadia Rashid 1678/LC (PW-3) who had brought the victim for medical examination, Asad Raza complainant (PW-5), Shagufta Parveen (victim) PW-6, Muhammad Ashraf (PW-7), Munir Ahmed (PW-8) and Sikandar Hayat SI (PW-9) investigating officer. After close of prosecution evidence, the accused persons were examined under Section 342 Cr.P.C. and appellant while responding to a question that why this case is against him and why PWs deposed against him? has stated as under;

“All the PWs are inter se interested, related and are inimical to me. I, Asad Abbas, complainant and Shagufta Parveen, alleged victim are residing in the same Basti, i.e., Chah Tharkana Wala. PW-5, PW-6 and I are neighbours. Mst. Shagufta Parveen had suspicious character. Muhammad Ashraf PW-7 and Munir Hussain PW-8 used to visit the house of Mst. Shagufta Parveen. I being neighbourer of Shagufta

Parveen restrained them not to come in the house of Shagufta Parveen frequently. Asad PW-5, PW-6, PW-7 and PW-8 felt insult and disgraced and due to the above said grudge, leveled this false and baseless allegation against me and my co accused who is my sister. PW-7 and PW-8 are resident of faraway places from the place of occurrence.”

Neither he produced any evidence in defence nor appeared as his own witness in terms of section 340(2) Cr.P.C., and the trial ended in the terms as detailed above.

4. Heard. Record perused.

5. Admittedly, complainant was not the eye witness of occurrence who reported the matter with the delay of five days on 14.11.2016 and stated that Shagufta Bibi did not inform him about the occurrence from her cell phone on the same day. Though the complainant in his statement before the Court stated to have reported the matter through application (Ex.PD) on 12.11.2016 which by itself is after three days of the occurrence however, FIR was further delayed for two days as registered on 14.11.2016. In any manner there is apparent delay in reporting the matter to the police and lodgment of the FIR and no explanation whatsoever is available on the record for such delay. Thus, the possibility of due deliberation and consultation by the complainant before reporting the occurrence to the police cannot be ruled out of consideration. Reliance is placed on the case reported as “FARMAN AHMAD Versus MUHAMMAD INAYAT and others” (2007 SCMR 1825), wherein the Supreme Court of Pakistan has held as under;

“The F.I.R. was lodged by the complainant after considerable delay of 17 hours without explaining the said delay in spite of the fact that complainant had stated in the written complaint that there was two eye-witnesses at the spot and none of them informed the police before filing a written complaint by the complainant. 17 hours delay in F.I.R. provides sufficient time for deliberation and consultation when complainant has given no explanation for delay in lodging the F.I.R.”

This first loophole in the prosecution case in the form of delay in FIR is further attended in the light of remaining evidence.

6. The complainant claimed production of broken string, shirt and torn Shalwar of victim before the Investigating Officer but Sikandar Hayat SI (PW-9) controverted such fact by stating that “*The complainant or the victim did not produce the clothes and broken string. I also did not ask the complainant and the victim to produce the clothes and the broken*

string”. Prosecution levelled allegation against two accused, Amjad Ali, appellant and Shamim Bibi; place of occurrence was reportedly house of Shamim Bibi and allegation against her as of guarding the act of rape is not possible when it was admitted by the PWs that parents and kids of Shamim Bibi were residing in the same house; so much so said house consists of only one room which was at a distance of 35 to 40 feet and 5/7 karams from main gate as deposed by PWs differently, that was the reason Investigating Officer found Shamim Bibi not involved in the commission of offence, therefore, she stood acquitted after trial.

7. It was a setback for prosecution that proof for involvement of Shamim Bibi co-accused (since acquitted) was not available to knit the story complete, and the place of occurrence was also disputed because acclaimed eye witnesses Muhammad Ashraf (PW-7) and Munir Ahmad (PW-8) could not describe or explain it clearly when they deposed that they do not remember that cots were lying in the room and conceded that they did not see any other house-hold articles in the room where alleged occurrence took place. Place of occurrence was further disputed when investigating officer did not collect anything incriminating from that place and though PWs claimed hearing of hue and cry of victim when they reached near the shop of Ghazanfar Bhatti which was opened yet said Ghazanfar Bhatti whose workshop was shown adjacent to the house of occurrence was not associated into the investigation nor produced during the trial. From the above narration of PWs it can safely be held that neither they were not present at the place of occurrence nor in any manner witnessed the occurrence.

8. Medical examination of victim was got conducted and accused/appellant along with Shagufta victim were also produced before the office of PFSA Lahore where their DNA test was conducted. Though it was the prosecution case that accused/appellant took the victim from the school under the pretext that her mother being indisposed and is being treated in the house of Shamim Bibi but Investigating Officer did not join into investigation any Chowkidar, teacher, student or any other person from the school where victim was teaching on the day of

occurrence. He also did not join Ghazanfar Bhatti owner of adjacent workshop or any labourer working there. It is in the evidence that a petrol-pump was situated just opposite to the place of occurrence but he also did not record statement of any person from the said petrol pump, who could have seen the victim going with the accused/appellant, or approaching of witnesses at the crime scene later; therefore, prosecution could not prove the place of occurrence where rape was committed.

9. It is in the evidence that school was also adjacent to the place of occurrence and the star witness Shagufta Perveen (PW-6) conceded during cross-examination that *“one security guard remains present in school timing at the gate of the school.”* *“The intervening wall of the school and that of the house of Shamim is about three/four feet high”*. Victim being grownup lady working as teacher in Al-Syed School was not expected to blindly follow the appellant towards the house of Shamim Bibi because she herself conceded that no clinic of a doctor or a nurse was in the house of Shamim Bibi co-accused (since acquitted). She exaggerated during cross-examination that accused/appellant caught hold her from the gate of the school, dragged her towards the house of Shamim Bibi and in that process she received abrasions on the hands and other parts of her body during the scuffle but admitted that she did not show such abrasions to WMO at the time of her medical examination. As highlighted above, alleged place of occurrence was adjacent to school, workshop of Ghazanfar Bhatti and opposite to a petrol pump, therefore, it cannot be expected that one could drag the victim without notice or alarm to anyone around. The fact of dragging has not been deposed by any other witness, therefore, this expression was created by the victim to earn a favour that she was helpless against the masculine aggression. Her contention about abrasions on her body during such scuffle could not be materialized through the medical opinion. Therefore, she is not truthful witness; however, her claim of resistance/scuffle with accused/appellant could have been taken as a corroborative effect if her complete medical examination throws some other form of aggression on or around the perineal area, which was missing.

10. The occurrence was of 09.11.2016, victim took five days to appear before the doctor for her medical examination on 14.11.2016. Dr. Saima Sarwar (PW-2) examined her and expressed her opinion with respect to examination of cloth as *“No cut, no tear and no hole etc., was present on the clothes. No blood, no urine or vomit was present”*. For local/specific examination observation was that *“No bruise, abrasion, laceration or other type of injury was present. Vagina admitted one finger. Old healed and hymen was ruptured.”* But the doctor withheld the final opinion and made it conditional to DNA report. During cross-examination doctor has deposed that she has not received the reports of DNA from PFSA Lahore, and also stated that she cannot tell exact period of *“simple healed rupture of hymen”* and *“old healed rupture of hymen”* and also conceded that prior to 14.11.2016 victim did not appear before her. According to research by National Library of Medicine, National Center for Biotechnology time for healing Hymen was focused as follows;

“The hymenal injuries healed at various rates and except for the deeper lacerations left no evidence of the previous trauma. Abrasions and “mild” submucosal hemorrhages disappeared within 3 to 4 days, whereas “marked” hemorrhages persisted for 11 to 15 days. Only petechiae and blood blisters proved to be “markers” for determining the approximate age of an injury. Petechiae resolved within 48 hours in the prepubertal girls and 72 hours in the adolescents. A blood blister was detected at 34 days in an adolescent.”

Above study shows that only mild submucosal hemorrhages disappeared within 3 to 4 days, whereas “marked” hemorrhages persisted for 11 to 15 days; therefore, if the rape was committed with the victim forcibly, then in five days hymen should not have been healed up. Reliance is also placed on case *“Chandran vs State of Kerala”* of the High Court of Kerala at Ernakulam, wherein it has been held that:-

“The authorities on Medical Jurisprudence categorically state that it will take a minimum of a week’s time for a tear of hymen to heal completely. The relevant portion of Dr. K.S. Narayana Reddy’s Medical Jurisprudence and Toxicology reads thus:

“The semilunar hymen usually ruptures on both sides. In the case of annular hymen, several tears are produced. Soon after the act, the margins of the torn hymen are sharp

and red which bleed on touch, the tissues round about them are tender. After 3 to 4 days, the edges of tear are congested and swollen, which completely heal in a week.”

Medical Jurisprudence and Toxicology (Law Practice & Procedure) in 3rd Edition 2010 by Dr. K.S. Narayan Reddy mentions the causes of rupture of hymen as follows;

Causes of Rupture of Hymen: (1) An accident, e.g., a fall on a projecting substance or by slipping on the furniture or fence or while playing at seesaw. In these cases, tearing of the perineum occurs and usually injuries on other parts of the body will be seen. Such hymenal tears are never associated with abrasion and bruising of the margins. Accidental straddle injuries usually involve periurethral tissues, labia, hymen and mons. Separation of things forcibly in children will not rupture the hymen, unless perineum is ruptured. Hymen does not rupture by riding, jumping, dancing, etc. (2) Masturbation, especially with some large foreign body. Hymen is not injured in most cases because manipulation is usually limited to the parts anterior to the hymen. Labia minora and clitoris are enlarged in such cases. The vaginal orifice may be dilated and edges of the hymen may show scratches. (3) Surgical operation and gynaecological examination. (4) Foreign body, e.g., sola pith introduced into vagina for rendering very young girls fit for sexual intercourse (aptae viris). Vaginal stretching through the insertion of increasingly larger objects (sex toys, vegetables or household objects) may be performed. (5) Ulceration from diphtheria, fungus or other diseases. (6) Scratching due to irritation of the parts from lack of cleanliness. (7) Sanitary tampon may sometimes rupture the hymen.

In the light of above, the story put forth by the prosecution with respect to commission of rape with the victim falls to the ground, because medical examination of victim after five days shows ‘old healed rupture of hymen’ which is not possible in five days. More so, Sikandar Hayat SI (PW-9) conceded during cross-examination that PFSA report was received with the opinion that no seminal material was found on the vaginal swabs. Therefore, no support to prosecution story is available in the form of medical evidence.

11. In the circumstances, the case of the prosecution case filled with fraught, and flaws, seem result of padding and plantation cannot be termed as having ample evidence to prove the case beyond reasonable doubt, therefore, charge in this case against the appellant fails. The Supreme Court of Pakistan in case reported as “*Najaf Ali Shah vs. The State*” (2021 SCMR 736) has held as under;

“It is well settled principle of law that for the accused to be afforded this right of benefit of the doubt it is not necessary that there should be many circumstances creating uncertainty and if there is one doubt, the benefit of the same must go to the petitioner.”

Therefore, in the given circumstances, I have no option except to allow the titled appeal, resultantly, the same is **ALLOWED**, the conviction and sentence of the appellant is *set aside* and he is acquitted of the charge by extending him benefit of doubt. He is in custody; he be released forthwith if not involved in any other criminal case. The case property, if any, be disposed of in accordance with law and the record of the learned trial Court be sent back immediately.

(Muhammad Amjad Rafiq)
Judge

Signed on: 26.04.2024

Approved for reporting

Judge

*Jamshaid**