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JUDGMENT SHEET

IN THE LAHORE HIGH COURT, MULTAN BENCH,

MULTAN.

JUDICIAL DEPARTMENT

Criminal Appeal No.812 of 2022.

Abdul Basit

vs.

The State etc.

JUDGMENT

Date of hearing:	14.10.2024.
Appellant by:	Sh. Muhammad Raheem, Advocate.
Complainant by:	Mr. Muhammad Akbar Khan Mughal, Advocate.
State by:	Mr. Shahid Aleem, District Public Prosecutor with Muhammad Ramzan Sub-Inspector.

MUHAMMAD AMJAD RAFIQ, J:- Abdul Basit, hereinafter to be called as “*accused/appellant*” faced trial before learned Additional Sessions Judge/GBV, Multan in case FIR No.354 dated 24.05.2018 under sections 365-B/376 PPC police station New Multan and on conclusion of trial vide judgment dated 23.07.2022 he was convicted under section 365-B PPC and sentenced to imprisonment for life with fine of Rs.50,000/-, in case of default to further undergo six month’s simple imprisonment. He was also convicted under section 376(i) PPC and sentenced to rigorous imprisonment for fifteen years with fine of Rs.50,000/-, in case of default to further suffer simple imprisonment for six months; both the sentences were ordered to run concurrently and benefit of section 382-B Cr.P.C. was extended, hence the instant appeal.

2. According to the prosecution case as reflected from FIR Ex.PA/2 lodged on the complaint of Nadia Shaheen (victim), she was unmarried and living with her parents, the accused/appellant and Mst. Haseena Bibi (since PO) used to visit her parents, thus she developed friendship with Mst. Haseena Bibi. On 09.04.2018 at 5.00 p.m. Mst. Haseena Bibi came to her house and took her along for making some

purchases from Gulshan Market. On their way near Chowk Kumharanawala the accused/appellant, already known to the victim came on a car and offered them a drive; the victim refused but Mst. Haseena forced, whereupon she sat in the car. At Vehari Chowk when the car stopped, the victim reminded Mst. Haseena Bibi to go for Gulshan Market, whereupon, Mst. Haseena pretended an urgent work there. After a while, the accused/appellant and Mst. Haseena brought sandwich and after eating it the victim became unconscious; both of them took her to the house of Mst. Haseena where accused/appellant committed rape with her with the help of Mst. Haseena and also prepared her nude pictures. On returning to senses the victim raised the voice, whereupon, both the accused while showing her nude pictures threatened to upload the same on internet. The accused/appellant continued committing rape with her and transferred her pictures to his mobile phone for the purpose of blackmailing. After two days when her health condition got worst, both the accused left her at Nishtar Hospital, Multan, where from her father and brother took her to the house. Because of intensive mental stress she did not tell anything to them, whereas, accused/appellant constantly threatened her to marry with him. She further narrated that as per her knowledge the pictures which the accused/appellant had shared with her, were still available in the mobile phone of the accused/appellant; ultimately the victim disclosed the entire facts to her parents and along with her complaint she also produced the pictures which the accused/appellant had thrown in her house.

3. After registration of FIR and completion of investigation finally report under section 173 Cr.P.C was submitted against the accused/appellant. When charge sheeted, the accused/appellant denied the charges and claimed to be tried, whereupon, the prosecution examined Mst. Nadia Shaheen (victim) as PW-1; Ghulam Akbar, father of the victim appeared in the dock as PW-2; Shakeela 944/LC (PW-3) who took the victim to hospital for her medical examination; Zafar Iqbal Sub-Inspector (PW-5) and Ghulam Mustafa (PW-7) had investigated the case; Dr. Nasir Javed (PW-6) conducted potency test of the accused/appellant; Waseem Akram Sub-Inspector (PW-9) got

issued non-warrants of arrest of the accused following by proclamation and Dr. Nighat Noureen (PW-10) medically examined the victim and rest of the witnesses appeared and made statements about the roles performed by them during the course of investigation. The accused neither opted to appear in the witness box as required by section 340(2) Cr.P.C. nor produced any evidence in defence and the trial ended in his conviction and sentence, as detailed above.

4. Learned counsel for the appellant seeks acquittal on the grounds of delay in FIR, delayed medicolegal examination of victim, un-supporting medical evidence without DNA, sole testimony of victim without corroboration with regard to act of rape. Learned District Public Prosecutor assisted by counsel for the complainant supported the impugned judgment due to trust worthy and confidence inspiring statement of victim, supported by res gestae evidence of her father, medicolegal opinion of old torn hymen being unmarried lady and nude pictures of victim prepared by the appellant wherein he is also visible.

5. Arguments heard. Record perused.

6. Here in the instant case, the prosecution intended to establish the charge against the accused/appellant through the ocular account, medical evidence and the nude pictures of the victim P-1 to P-5, which were allegedly thrown into the house of victim and those which were produced on behalf of the accused/appellant i.e., P-6 to P-10. The ocular account was furnished by Mst. Nadia Shaheen victim/complainant (PW-1) alone, whereas, statements of Ghulam Akbar (PW-2) father of the victim is about post occurrence events, including recovery of nude pictures P-1 to P5 produced before the police and P-6 to P-10 on the information of accused/appellant from his house. Conscious of the fact that the victim/complainant was the solitary witness of the occurrence, we have thoroughly and carefully gone through her statement to dig out that she may have falsely involved the accused/appellant in this case in order to wreck vengeance or it may have been a motivated attempt on the part of the prosecution to level some score against the accused/appellant, but in her examination-in-chief the victim reiterated the story as had been set

out in the complaint/FIR and deposed about step by step events in the same sequence. She was subjected to cross-examination at sufficient length but nothing damaging to the prosecution or favourable to the defence could be elicited from her mouth. By tenor of cross-examination the defence tried to bring on record that at one point of time the victim and the accused/appellant were residing in the same village and parents of the accused/appellant as well as victim had friendly relations, thus they both i.e. accused/appellant and the victim, were known to each other. Instead of lending any support to the defence, the admission of the victim on above aspects goes on to strengthen the prosecution's stance as it was the case of prosecution itself that because of such friendly relations the accused/appellant used to visit the house of the victim's parents along with Mst. Haseena Bibi, with whom the victim also developed relations and out of such linkage she left the house along with Mst. Haseena Bibi to make some purchases and fell prey to nefarious activity by the accused/appellant.

7. Since the statement of the victim, direct evidence, has been found to be worthy of credence, confidence inspiring, credible and irrefutable, therefore, even if there is a sole witness, her statement can safely be made basis to record conviction. As to the number of witnesses required to establish a charge, the Supreme Court of Pakistan in the case reported as “MUHAMMAD MANSHA versus THE STATE” (2001 SCMR 199) with reference to Article 17(1)(b) of Qanun-e-Shahadat, 1984 held that:-

“7. A bare perusal would reveal that the language as employed in the 'said Article 17(1) (b) is free from any ambiguity and no scholarly interpretation is required. The provisions as reproduced hereinabove of the said Article would make it abundant clear that particular number of witnesses shall not be required for the proof of any fact meaning thereby that a fact can be proved only by a single witness "it is not seldom that a crime has been committed in the presence of only one witness, leaving aside those cases which are not of uncommon occurrence, where determination of guilt depends entirely on circumstantial evidence. If the Legislature were to insist upon plurality witnesses, case where the testimony of a single witness only could be available in proof of the crime, would go unpunished. It is here that the discretion of the Presiding Judge comes into play. The matter thus must depend upon the circumstances of each case and the quality of the evidence of the

single witness whose testimony has to be either accepted or rejected. If such a testimony is found by the Court to be entirely reliable, there is no legal impediment to the conviction of the accused person on such proof. Even as the guilt of an accused person may be proved by the testimony of a single witness, the innocence of an accused person may be established on the testimony of a single witness, even though considerable number of witnesses may be forthcoming to testify to the truth of the case, for the prosecution. The Court is concerned with the quality and not with the quantity of the evidence necessary for proving or disproving a fact". (Principles and Digest of the Law of Evidence by M. Monir, page 1458).

The Supreme Court further held that:-

".....no yardstick can be fixed as to whether statement of a solitary witness must or must not be relied upon for the simple reason that each case has its own peculiar circumstances which shall play a significant role and is motivating factor to determine the reliability of a solitary witness as the said aspect of the matter is to be dilated upon in the light of surrounding circumstances which may be taken into consideration or otherwise. We may mention here that such circumstances also cannot be confined within a limited sphere of any definition because the same may be infinitely diversified by the situation and conduct of the parties concerned. "The only general rule that can be laid down is that the circumstances must be such as would lead the guarded decision of a reasonable and just man to the conclusion".

Thus, the well-recognized maxim remains that 'evidence has to be weighed and not counted' and here in this case as discussed above the ocular testimony though coming through one witness i.e. victim, yet the same is consistent, unimpeachable and confidence inspiring, therefore, is held to be sufficient to establish the charge. Reference may be made to the case reported as "MUHAMMAD EHSAN versus THE STATE" (2006 SCMR 1857). It has been held by Supreme Court in case reported as "ATIF ZAREEF and other v. THE STATE" (PLD 2021 Supreme Court 550) that rape victim stands on a high pedestal than an injured witness, because an injured witness gets the injury on physical form while rape victim suffers psychologically and emotionally, and single testimony is sufficient to uphold the conviction.

8. Ghulam Akbar PW-2 father of victim deposed res gestae evidence about condition of victim when he and his son Shahbaz met her in Nishtar Hospital, Multan. PW-2 narrated the situation as under;

"After two days, my daughter Nadia made a call on phone and informed us that she was present in Nishtar Hospital and her condition

was bad. I along with my son Shahbaz went to Nishtar Hospital wherefrom, we brought back Mst. Nadia to our home. We kept on asking what had happened with her but she did not tell us anything and used to weep.”

Similarly, during cross examination he responded as under;

“When we had been asking our daughter Mst. Nadia where she was for two days but she started to weep and remained silent. My wife had also been asking about the reason of her weeping but she said nothing to her.”

He has also stated the fact of collection of nude pictures from his house allegedly thrown by the appellant, which has a support to prosecution case. He deposed in his examination in chief that we had family relation with accused Abdul Basit and Haseena Bibi co-accused (since PO). He had no axe to grind against the accused/appellant, nor anything was spoken against him by the defence. His support to save her family honour is reflected from the fact that he is pursuing the case and is present before us even in this appeal proceedings.

9. In addition to the above, five nude pictures allegedly thrown by the accused/appellant in the house of the victim, were also produced before the Investigating Officer at the time of registration of case, however, were taken into possession after three days through recovery memo P-1 to P-5 (Ex.PC) and accused also produced similar pictures before the police P-6 to P-10 (Ex.PD) on call from his house. Though no evidence is available that who had produced such pictures from the accused side, likewise it has been admitted by the victim during cross-examination that no one knew that who had thrown the pictures (P-1 to P-5) in her house, but the pictures produced by the complainant party clearly show that first part of the prosecution story stands proved which was to the effect that accused after making nude pictures of the victim started blackmailing for commission of rape with her.

10. We have observed that in one of the nude pictures P-1 to P-5 and P-6 to P-10, the accused/appellant is also visible while sitting with the side of the victim who fell unconscious. The information contained in the picture clearly speaks about the story of the victim

that in a condition of unconsciousness her nude pictures were prepared by the accused/appellant, therefore, the question before us is as to whether such pictures could be used as evidence in support of prosecution case. It is trite that an audio/video clip including snaps/photographs as evidence maintains a dual character in the law of evidence; it is termed as document as well as a material thing (physical evidence), also known as real evidence. It does carry information that includes expression, gestures, voice and video; therefore, such clips/snaps are sought to be produced before the Court to prove the ‘information’ contained in it as evidence of facts recorded therein and oral account of which is to be spoken by a witness and not the document alone. While as material thing it is to be produced for the inspection of court. Principles of evidence relating to admissibility of documents are fully applicable on such type of evidence; permission and sanction of law to bring on record evidence if it is in the form of document is regulated under Article 139 of Qanun-e-Shahadat Order, 1984 (the Order). This Article in the light of illustration therein authorizes the Court to ask, when any witness is making statement about a fact, to support his contention with any document if such fact is incorporated therein. The room for such discretion of Court is obviously reflective of farsighted wisdom of legislature to cater to the requirement of an emerging need of evidence in a particular situation for the purpose of corroboration to fortify or strengthen the deposition; even otherwise best evidence rule says that documentary evidence runs over or defeats the oral evidence under the maxim “*res ipsa liquitor*”. The second status of such evidence is of material thing (physical evidence) or real evidence which is produced for the inspection of Court as ordained in second proviso to Article 71 of The Order: -

“Provided further that, if oral evidence refers to the existence or condition of any material thing other than a document, the Court may, if it thinks fit, require the production of such material thing for its inspection”

Articles 139 & 71 of the Order in detail in this context have been discussed and explained in a case reported as “NUMAN alias NOMI and others Versus The STATE” (2023 P Cr. L J 1394).

11. In a book “THE MODERN LAW OF EVIDENCE (Third edition) by Adrian Keane published by Butterworths (1994), the author while referring to a verdict of Sir Jocelyn Smith P, passed in a case reported as “The Statue of Liberty” [1968] 1 WLR 739 mentions as under;

“It is tempting, on the basis of these words of Sir Jocelyn Smith P, to conclude that photographs and films, the relevance of which can be established by the testimony of someone with personal knowledge of the circumstance in which the photographs or films was taken or made, are admissible items of real evidence and can never give rise to problems of a hearsay nature. If the evidence of a witness to certain events is admissible, it may be reasoned, then photographs or films recording those same events should be no less admissible.”

In *R v Cook [1987] 1 All ER 1049 (CA)* at page 1054, Watkins LJ has gone so far as to state that photograph, together with the sketch and photofit, are in a class of evidence of their own to which neither the rule against hearsay nor rule against previous consistent or self-serving statements applies.

In *R v Williams (1984) 79 Cr App Rep 220 (CA)*, the Court of Appeal entertained no doubt that photographs taken by security cameras installed at a building society office at which an armed robbery was attempted, were admissible in evidence, being relevant to the issue of both whether an offence was committed and, if so, who committed it. It seems that it is not necessary to prove that the photographic material is original or an authentic copy; proof that the material relates to the events in question will suffice. Case reported as “The Road We’re Travelling On, V Treacy” [1989] **New Law Journal (NLJ) 1079** is referred. In the attending circumstance and on the strength of above case laws, pictures P-1 to P5 can validly be used against the accused/appellant. In the case reported as “MUHAMMAD ZAMAN versus The STATE and others” (2014 SCMR 749), the Supreme Court of Pakistan apart from other evidence relied on the pictures produced in evidence during trial and converted acquittal of the accused into their conviction.

12. We have noted that such pictures were put to the accused/appellant during his statement under section 342 Cr.P.C. for seeking his explanation but neither he challenged such pictures in any

manner during cross-examination nor gave any explanation in his statement under section 342 Cr.P.C. Silence of the accused/appellant over such an important factor connotes that there was nothing to defend against such nude pictures, thus the requirement of law for using these snaps/pictures is complete as highlighted above and these can safely be used as evidence.

13. Here in this case, undoubtedly, the FIR was registered after almost one and half month of the crime having been committed but such delay in reporting the matter to the police is immaterial in the sense that throughout it has been stance of the victim that her nude pictures were taken by the accused/appellant, she was blackmailed and she fell victim number of times during her captivity under such pressure and fear, therefore, she kept mum in order to save her and the family honour but when her nude pictures were thrown in her house and the matter stood disclosed to family members, she narrated the whole occurrence. Delay in reporting the matter was responded by her during cross examination as under:-

“It is correct that I remained silent for about one and half month after the occurrence and did not get the case registered against the accused. There were thoughts in my mind for reporting the matter to police but due to intimidation of the accused, I abstained.”

Another reason for delay in registration of FIR was also deposed by PW-2 in following words:-

“I took my daughter with me to P.S., New Multan and the police of said police station sent us to women police center. For few days, the police had been putting off and ultimately on 21.05.2018, they received application from me which is Exh. P-A.”

Thus, victim being an educated lady with qualification of MA English had definitely been thinking hundred times about her family honour as well as her social and practical life before reporting the matter to police. Even otherwise, the fact that the modesty of a virgin girl was violated by sexual assault makes understandable the apprehension of the victim and her family in approaching the police immediately. Delay in reporting the crime to the police in respect of an offence involving a person's honour and reputation which society may view unsympathetically could prey on the minds of a victim and her family

and deter them to go to the police. Reliance in this respect is placed on case reported as “*HAMID KHAN Versus THE STATE*” (1981 SCMR 448).

14. Though the medical evidence does not contain any fact that sexual act was committed with the victim by force but it is clear from the statement of victim that she was under the effect of intoxication as well as fear of nude pictures, therefore, in either of the situation she could not resist the act of rape, but otherwise, of course the said act of intercourse was against her will and consent, which is the requirement of section 375 PPC. During medical examination Dr. Nighat Noureen PW-10 also found hymen of victim as old torn, though she was unmarried but doctor was not even cross examined by the defence about any fact contained in MLR. It is in the evidence that delayed medicolegal examination was due to the reason victim was terrified and this fact she has disclosed, while responding to questions during cross examination, as under;

“My father and my brother had asked me to take me to the doctor but I refused and insisted to take me to home. My parents were insisting me for my medical treatment but I was scared and terrified that I refused and I said that I would not get out of the room.”

15. Prosecution has also produced Dr. Nasir Javed PW-6 who had examined the accused/appellant on 14/10/2020 and found him potent to perform sexual act; his observations in this respect are recorded in MLR, Ex.PP; therefore, such examination is also a relevant fact showing ability of accused/appellant to commit rape with the victim.

16. Learned counsel for the complainant tried to show the Bench some FIRs registered against the appellant for his involvement in offences of murder and dacoity to assert his bad character. We are afraid such course is not permissible under the law, and even otherwise bad character of accused in criminal cases is not relevant under Article 68 of the Order; but perusal of evidence shows that defence itself conceded the involvement of the appellant in offence of dacoity while putting question upon the victim during her cross examination, which turned our attention to Article 27 of the Order dealing with relevancy of facts showing existence of state of mind, or

Crl. Appeal No.812 of 2022.

of body or bodily feeling. In the evidence of this case facts were brought on record that the appellant has affiliation with victim since her childhood and also wanted to marry her, therefore what he has done cannot be regarded as innocent mistake rather his state of mind and bodily feeling roasted her to commit such a heinous offence. Thus, his inclination and attraction towards victim is a relevant fact in this case which can safely be read against him for his intention to commit act of rape and preparation of nude pictures.

17. For what has been discussed above, it is evident that prosecution has proved the case against the appellant beyond shadow of reasonable doubt, a standard requisite to sustain a criminal charge. There is no legitimate exception to findings arrived at by the learned trial court with respect to conviction and quantum of sentence awarded to the accused/appellant. The instant appeal, therefore, being devoid of merit, is dismissed. The case property, if any, shall be dealt with as ordered by the learned trial court and the record of the learned trial court be sent back immediately.

(TARIQ SALEEM SHEIKH)
JUDGE

(MUHAMMAD AMJAD RAFIQ)
JUDGE

Signed on_____

Approved for reporting.

JUDGE.

JUDGE.

Javed*