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Before Abdullah Baloch, J

HAMIDULLAH---Appellant

Versus

The STATE---Respondent

Criminal Appeals Nos.43 and 44 of 2017, decided on 27th October, 2017.

(a) Penal Code (XLV of 1860)---

----Ss. 377, 341, 342, 500, 506, 190 & 34---Unnatural offence, wrongful restraint, wrongful confinement, defamation, criminal intimidation, threat of injury to induce person to refrain from applying for protection to public servant, common intention---Appreciaiton of evidence---Sentence, reduction in---Ocular account supported by medical evidence---Prosecution case was that accused persons on gun point committed unnatural offence with complainant and they also made a video and threatened that in case he informed anyone they would show the video to others---Complainant of the case appeared as witness and reiterated the contents of FIR and narrated the entire story in line with complaint---Victim correctly identified all the accused persons in the Trial Court---Evidence of said witness was subjected to lengthy cross-examination, but nothing benefit or advantageous had come on record---Even otherwise, the defence had failed to put any suggestion to the victim for false implication of the accused persons---Prosecution case had been strengthened by the medical evidence produced by the Medical Officer---Medical Officer opined that the accused persons were mentally and physically fit to perform the act of sexual intercourse---Medical Officer also opined that the victim was sexually assaulted by many persons due to which tone of anal splinter was less and duration was old---Medical evidence was in line with the ocular testimony---Prosecution had produced corroborative and confidence inspiring evidence and the defence had failed to cause any dent in the evidence of prosecution---Circumstances established that accused persons failed to point out any material illegality or irregularity in the impugned judgment---Trial Court had awarded sentence of seven years to accused persons by the impugned judgment,being harsh was reduced to three years in circumstances---Appeal against conviction was dismissed.

(b) Penal Code (XLV of 1860)---

----Ss. 377, 341, 342, 500, 506, 190 & 34---Qanun-e-Shahadat (10 of 1984), Art. 40---Unnatural offence, wrongful restraint, wrongful confinement, defamation, criminal intimidation, threat of injury to induce person to refrain from applying for protection to public servant, common intention---Apreciation of evidence---Disclosures of accused persons---Admissibility---Prosecution case had been supported by the disclosures of the accused pesons, who admitted their guilt and narrated the entire story for making plan to blackmail and commit sodomy with the victim---Discloures of the accsused persons discovered new facts, whereby the accused persons made plan to compel the victim to bring his younger brother, the same was admissible under Art.40 of Qanun-e-Shahadat, 1984.

(c) Penal Code (XLV of 1860)---

----Ss. 377, 341, 342, 500, 506, 190 & 34---Unnatural offence, wrongful restrain, wrongful confinement, defamation, criminal intimidation, threat of injury ot induce person to refrain from applying for protection to public servant, common intention---Appreciation of evidence---Hostile witnesses---Effect---Defence objected that father and uncle of victim, who appeared as witnesses but did not support the case of prosecution and thus were declared hostile, which had made the case doubtful---Record showed that father and uncle of victim were not direct witnesses of the case and Investigating Officer unnecessarily associated both the said witnesses in the case---Evidence of said witnesses had not made any dent or damage to the case of prosecution, when the prosecution had produced direct and medical evidence against the accused persons.

(d) Penal Code (XLV of 1860)---

----S. 377---Unnatural offence---Solitary statement of victim---Evidentiary value---Solitary statement of the victim was sufficient to convict the accused.

Fayyaz alias Fayyazi and another v. The State 2006 SCMR 1042 and Mushtaq Ahmed and another v. The State 2007 SCMR 473 rel.

(e) Criminal Procedure Code (V of 1898)---

----S. 154---First Information Report---Delay in lodging---Effect---Mere delay in lodging FIR was not of any help for defence to claim acquittal of the accused.

(f) Penal Code (XLV of 1860)---

----Ss. 377, 341, 342, 500, 506, 190 & 34---Unnatural offence, wrongful restrain, wrongful confinement, defamation, criminal intimidation, threat of injury to induce person to refrain from applying for protection to public servant, common intention---Appreciatin of evidence---Delay inlodging FIR---Effect---Allegedly, matter was reported to the police after the delay of 44 days without any plausible explanation-Facts remained that in such like cases, the prestige of family, risk and honour was involved and people were reluctant in filing report to the police---In the present case, the victim kept mum due to the fear that accused might show the video---Accused persons, however, started blackmailing the victim and forced him to bring his younger brother for unnatural offence---Said facts compelled the victim to inform his elders and to lodge FIR---In these circumstances, delay in filing FIR was natural.

Kamran alias Kami v. The State 2012 PCr.LJ 1200 rel.

Ahsan Rafiq Rana for Appellant (in Criminal No.43 of 2017).

Muhammad Hassan Khan Sherani and Abdul Zahir Kakar for Appellants (in Criminal No.44 of of 2017).

Abdul Mateen, D.P.G. for the State.

Date of hearing: 13th October, 2017.

JUDGMENT

ABDULLAH BALOCH, J.---This judgment disposes of Criminal Appeals Nos.43 and 44 of 2017 filed by the appellants Hamidullah, Sabir Hussain and Ameer Shah, against the judgment dated 3rd August 2017 passed by learned Additional Sessions Judge-I, Quetta, (hereinafter referred as "the trial Court") whereby the appellants were convicted under Section 377 P.P.C. and sentenced to suffer seven (07) years' R.I. each with fine of Rs.30,000/- each and in default thereof to further suffer six (06) months' S.I. each, with the benefit of Section 382-B Cr.P.C.

2. Facts of the prosecution case are that on 14th September 2015 the complainant Sidhant Kumar son of Pardeep Kumar, lodged FIR No.249 of 2015 at Police Station Brewery Road Quetta, under Sections 377, 341, 342, 500, 506, 196, 34 P.P.C., stating therein that he is actual resident of Sibi and for spending summer vacation, he had come to Quetta to the house of his uncle. On 2nd August 2015 the accused-appellant Sabir Hussain, who resides in Sibi and also ply Taxi requested the complainant to accompany him for guiding and purchasing mobile phone battery for his father, hence the complainant accompanied the appellant Sabir Hussain in his vehicle, whereafter the accused taken him in an uninhabited house near BMC, where accused Ameer Shah, Hameedullah Domki and Dado were already present, who on gun point committed unnatural offence with him and they also made a video and threatened that in case he informs anyone, they will show the video to others, therefore, due to fear he could not tell the elders, but in the garb of said video the accused persons are further blackmailing him.

3. After registration of FIR, the investigation of the case was entrusted to PW-8 Noor Hussain, SI/IO, who during investigation inspected the site and prepared site map; recorded the statements of witnesses under Section 161, Cr.P.C.; arrested the accused-appellants and subjected them to investigation, who recorded their disclosure and pointed out the place of occurrence; obtained the mobile data of accused Sabir Hussain; conducted the medical examination of accused-appellants and obtained MLCs; on completion of investigation the challan of the case was submitted in the trial Court.

4. At the trial, after initiating proceedings under Sections 87 and 88 Cr.P.C. the accused Dado was declared as proclaimed offender. The prosecution produced eight (08) witnesses. The appellants were examined under Section 342 Cr.P.C. The appellants neither recorded their statements on oath under Section 340(2) Cr.P.C. nor produced any witness in their defence. On conclusion of trial and after hearing arguments, the trial Court vide impugned judgement dated 3rd August 2017 convicted and sentenced the appellants as mentioned in para-1 above, whereafter instant appeals have been filed before this Court.

5. Learned counsel for the appellants argued that the evidence produced by the prosecution suffers from material contradictions and dishonest improvements; that the FIR was lodged after the delay of 44-days without any plausible explanation; that the prosecution version is lacking independent corroboration as only interested witnesses were produced; that no medical evidence has been produced to establish the charge of sodomy against the appellants; that the prosecution has miserably failed to prove the charge against the appellants beyond any shadow of doubt and the learned trial Court while awarding conviction and sentence to the appellants has badly erred in appreciating the evidence available on record.

6. Learned D.P.G. while supporting the impugned judgement contended that the judgment of Court below is based on cogent and concrete evidence and the appellants have failed to rebut the allegations of sodomy; that in such like cases the sole statement of a victim

is enough to establish the charge and it needs no further supportive evidence; that the prosecution version was duly supported by the witnesses at the trial and the conviction awarded to the appellants is based upon proper appreciation of evidence by the Court below.

7. Heard the learned counsel and perused the available record. In order to substantiate the case, the prosecution has produced the evidence of eight (08) witnesses perusal of statements of witnesses justifies the conviction order passed by the trial Court. The complainant of the case appeared as PW-1, who fully reiterated the contents of FIR and narrated the entire story in line with Fard-e-Bayan Ex.P/1-A and the FIR. PW-1 in his Court statement narrated the story with regard to accompany the appellant Sabir Hussain on his request for purchasing and guiding a mobile phone battery from the shop for his father, whereafter the Appellant on the pretext of taking some money from someone else taken the victim/PW-1 to an uninhibited house, where already the accused-appellants Hamid Ullah, Ameer Shah and absconding accused were present and on gun point committed unnatural offence with him and also made his video, whereafter the victim/PW-1 was let free with the threat that in case of informing someone else the video will be shown to others and will also be downloaded in Net. The victim/PW-1 correctly identified all the accused/appellants in the trial Court. The evidence of said witness was subjected to lengthy cross-examination, but nothing beneficial or advantageous has come on record in favour of the appellants. Even otherwise, the defence has failed to put any suggestion to the victim/PW-1 for false implication of the accused-appellants. The victim/PW-1 has kept mum for 44-days due to fear of video made by the accused-appellant, but on account of blackmailing of the accused-appellants to bring his younger brother for them, the victim/PW-1 under compelling circumstances informed his elders and resultantly the FIR was lodged.

8. The case of prosecution has also been supported by the disclosures of the accused/appellants Ex.P/2-B, Ex.P/2-C and Ex.P/2-D, who admitted their guilt and narrated the entire story for making plan to blackmail and commit sodomy with the victim, for such purpose the appellant Sabir Hussain, who was the friend of victim brought him in the place of occurrence and all the accused committed sodomy with him and also made video and naked pictures and thereafter started blackmailing him to bring his younger brother, who thereafter lodged FIR against them. The disclosures of the accused-appellants disclose the discovery of new facts, whereby the accused-appellants made plan to compel the victim to bring his younger brother, hence the same is admissible under Article 40 of Qanun-e-Shahadat Order, 1984.

9. The case of prosecution has further been strengthened by the medical evidence produced by the prosecution as PW-6 Dr. Ali Mardan, Police Surgeon, Bolan Medical College, who examined the accused-appellants and accordingly issued medical certificates/MLC Ex.P/6-A, Ex.P/6-B and Ex.P/6-C wherein it has been opined that the accused-appellants are mentally and physically fit to perform the act of sexual intercourse. PW-6 has also examined the victim/PW-1 and accordingly issued MLC Ex.P/6-D, wherein it has been opined that the victim/PW-1 was sexually assaulted by many persons due to which tone of anal splinter is less and duration is old. Admittedly, the medical evidence is in line with the ocular testimony.

10. So far as the objection of defence that the PW-4 Pardeep Kumar son of Deewan Chand and PW-5 Sutesh Kumar son of Deewan Chand did not support the case of prosecution and thus were declared hostile, which has made the case of prosecution as doubtful. It has been observed that PW-4 is the father of victim while PW-5 is the uncle of

the victim, though they were not direct witness of the case, but the facts were informed to them by the victim, their hostile cannot be ruled out of threat of appellants because being belong to minority community, they were afraid to disclose the facts and put them at risk, be that as it may such like offences are committed within the boundary walls, where the presence of general public or third person or witnessing the crime is not possible. It appears that the Investigating Officer unnecessarily associated both the witnesses in the case, who neither witnessed the crime nor their statement in any manner was helpful to the case of prosecution, thus no dent or damage has been caused to the case of prosecution, when otherwise the prosecution has produced direct and medical evidence against the appellants. It may be observed that in case of sodomy or Zina the solitary statement of victim is sufficient to convict the accused if it is confidence-inspiring. Reliance in this regard is placed on the case of Fayyaz alias Fayyazi and another v. the State, 2006 SCMR 1042, the relevant portion reads as under:

> "... It has also been rightly observed by the learned Federal Shariat Court that conviction could be based on the solitary statement of the victim provided the same is capable to implicit reliance and is corroborated by any other piece of evidence if so available in the case. Undisputedly victim of the offence namely Khadim Hussain at the time of commission of offence was aged about 10 years and a school going boy, who did not carry any ill-will, grudge or malice against the appellants to falsely implicate them in the case. It has also been not disputed or challenged at the trial that Khadim Hussain was school going boy, who in his deposition before the Court stated that after attending the class he was on his way for the home through pavement where wheat crop was standing. He was ambushed by accused persons out of whom accused Abbas caught hold of his arms while accused Fayyaz committed sodomy upon him and thereafter accused Fayyaz caught hold of him and sodomy was committed upon him by accused Abbas. He also stated that accused was armed with a pistol who threatened him of serious consequences. The testimony of the victim could not be impeached or discredited though subjected to test of cross-examination by the learned defence counsel. Dr. Atta Muhammad Zafar, the Medical Officer appeared as PW.4 who stated that on 24-4-1998 he medically examined Khadim Hussain aged about 10 years was brought to him by Constable Munir Ahmed as a case of sexual assault. The victim was allegedly subjected to unnatural lust on 23-4-1998 and the matter was promptly reported to the police, which was entered as Roznamcha Rappet No.3 on 23-4-1998 at about 2-30 p.m. and subsequently on 25-4-1998 at 9-30 p.m. FIR was registered against the nominated accused persons most probably in view of the MLR of the victim produced by the complainant. The findings noted in the MLR after the examination by the Medical Officer mentioned above clearly indicate that the injuries were caused by insertion of some blunt object within a duration of 20 to 40 hours. The Medical Officer was subjected to cross-examination by the learned defence counsel and it was not even suggested to him that the noted injuries could be result of any insensate object, therefore, in absence of any other indication or material available on record it could not be said that the same were not caused by penetration in respect whereof the victim expressly stated that he was subjected to sexual intercourse one after the other by the accused persons. Also, no suggestion was given to the Medical Officer in cross-examination that no injury of the like nature as noted in the MLR could be noticed on examination if conducted after 20 to 40 hours approximately on the person of the victim if so caused or inflicted. Hence, it could not be said that any symptom or injury on the person of a victim of unnatural offence could not have been noticed during the medical examination after 20 hours subsequent to the commission

of the act. The Medical Officer admittedly was an independent person having no reason to issue a false certificate favouring the victim, therefore, this piece of evidence in view of the contentions raised on behalf of the appellants could not have been discarded and rightly so believed by the learned Federal Shariat Court."

Similar view has also been taken in the case Mushtaq Ahmed and another v. the State, reported in 2007 SCMR 473, wherein it has been held as under:

"It is consistent view of this Court that in rape cases mere statement of the victim is sufficient to connect the appellants with the commission of offence in case the statement of the victim inspires confidence. In the present case both the Courts below have given concurrent conclusions that statements of both the victims (P.W.9 and P. W. 10) inspire confidence and connected the appellants with the commission of offence. They had faced lengthy cross-examination by the defence but defence had failed to shake their veracity. The statement of P. W. 9 was duly corroborated by the medical evidence of Dr. Tahira Afzal Durrani who had categorically stated that her 'hymen was absent and she was pregnant. Her statement was also corroborated by the statement of Dr. Malik Saeed Akhtar Radiologist P.W. who had examined P.W.9 and also performed her ultra-sound according to which she was pregnant of about 18 weeks. Both the Courts below were justified to believe the statements of the aforesaid witnesses after reappraisal of evidence. The trial Court was justified to disbelieve the defence version and upheld by the learned Federal Shariat Court. It is not believed or appealed to reason to observe that a sane person would ever like to put at stake his or her family honour as well as career of young unmarried daughter for such petty disputes as alleged by the defence." (underlines provided emphasis)

11. So far as, the delay in registering the FIR is concerned, in my view mere delay alone in lodging the FIR is not helpful for defence to claim acquittal of the appellants. In such like cases the prestige of family, risk and honour is involved as the child of someone was defamed, people were reluctant in filing report to the Police and it was a natural course that the guardian of victim must have consulted his relatives, whether to file report or not. In the case in hand, the victim/PW-1 kept mum and due to fear of showing video he did not inform his elders, but the accused-appellants started blackmailing him and forced him to bring his younger brother for that ( ). These are the facts that compelled the victim/PW-1 to inform his elders and to lodge FIR. Hence, the delay in filing FIR in the circumstances, was natural and same was not material to the case. Where a young child could be defamed for whole life, no father or elder brother would involve an innocent person in the false case. The prosecution has produced corroborative and confidence inspiring evidence and the defence has failed to cause any sort of dent in the evidence of prosecution, therefore, the objection so taken by the defence is without any substance. Reliance in this regard is placed on the case of Kamran alias Kami v. the State, 2012 PCr.LJ 1200. For facilitation, the relevant portion is reproduced herein below:

"Another argument of the counsel for the appellant is that the FIR is delayed by four and half hours. This delay is unexplained; therefore, the conviction cannot be passed on the basis of this FIR. We have examined the whole record. From the record it is evident that the occurrence took place on 12-00 pm and when the convict-appellant released the victim, he went to his home and narrated the incident to his father, who filed the report. It may be observed that in our society, such like incidents where family prestige or respect is involved and child of someone is defamed, people are

reluctant in filing reports to the Police. It is a natural course that the father of victim must have consulted his relatives whether, to file report or not and after consultation he filed the report. In the matters of family honors where a child of 11 years can be defamed for whole life, no ,father will involve an innocent person in a false case. The delay is natural and such delay is not material to the case."

12. Throughout the case, the appellants have failed to take any specific plea with regard to their false implication. In their examination under section 342, Cr.P.C., the appellants simply denied the allegations and even did not record their statements on oath and also not produced any witness in their defence, whereas on the other hand the prosecution has produced direct, circumstantial and medical evidence, which cannot be brushed aside merely on the basis of bald denial of the appellants. The trial Court has rightly appreciated the evidence in its true perspective. The learned counsel for the appellants have failed to point out any misreading and non-reading of evidence and major contradiction in the statements of PWs or any material illegality or irregularity in the impugned judgments, warranting interference by this Court. The case laws so referred by the learned counsel for the appellants are not helpful to the defence. However, the trial Court has treated harshly to the accused/appellants by awarding sentence of seven (07) years to them, thus the impugned judgement requires interference only to the extent of quantum of sentence, which is accordingly reduced from seven (07) years to three (03) years and the fine amount is reduced from Rs.30,000/- to Rs.15,000/- and in default thereof the appellants shall further suffer one month S.I., with the benefit of Section 382-B, Cr.P.C.

For the above reasons, while modifying the quantum of sentence, the appeals being devoid of merits are dismissed. The appellants are on bail; be taken into custody and sent to Jail to serve their remaining period of sentence.

JK/140/Bal. Appeals dismissed.