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Before Abdullah Baloch and Rozi Khan Barrech, JJ

ABDUL HAYE ---Appellant

Versus

The STATE--- Respondent

Criminal Jail Appeal No. 51 of 2021, decided on 11th August, 2022.

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

JUDGMENT

ABDULLAH BALOCH, J. ---This judgment disposes of Criminal Jail Appeal No.51 of 2021 filed by the appellant Abdul Hayee Son of Moulvi Dad Muhammad through Superintendent Central Prison Mach, against the judgment dated 19th April 2021 passed by learned Additional Sessions Judge -IX/Child Court Quetta, ("the trial Court") whereby the appellant was convicted under Section 376, P.P.C. and sentenced to suffer imprisonment for life, with fine of Rs.100,000/ - and in default thereof to further suffer six (06) months S.I. He was also convicted under Section 363, P.P.C. and sentenced to suffer imprisonment for a period of five (05) years R.I., with fine of Rs.50,000/ - (rupees Fifty Thousand) or in default thereof to further suffer two (02) months S.I., with the benefit of Section 382- B, Cr.P.C.

2. Facts of the prosecution case are that on 22nd March 2019, the complainant Ain -ud-Din son of Abdul Rehman, lodged FIR No.44/2019, at Police Station Pashtoon Abad Quetta, under Sections 376, 511, P.P.C., stating therein that on the day of occurrence he was present in his house situated at Baloch Khan Chowk Pashtoon Abad Quetta, when at about 2.00 p.m. his minor daughter Bibi Hafia aged 4- years and his niece Bibi Saima aged 5 - years whilst weeping entered in the house and on query his daughter Hafia disclosed that she along with Saima were going to the house of aunt and in the street found coming a beard person, who took them to a shop, purchased ice cream for them and taken them to a house, where he attempted to commit Zina with Saima. Hence, he taken his daughter and niece to the said house and on query it was known that the said house belongs to appellant Abdul Hayee.

3. After registration of FIR, appellant was arrested, who was investigated and on

completion thereof, was challaned in the trial Court, which indicated the charge and after denial by the appellant, the prosecution produced seven (07) witnesses. The appellant was examined under Section 342, Cr.P.C. The appellant neither recorded his statement on oath under Section 340(2), Cr.P.C. nor produced any witness in his defence. On conclusion of trial and after hearing arguments, the trial Court vide impugned judgment dated 19th April 2021 convicted and sentenced the appellant as mentioned in para -1 above, whereafter instant appeal has been filed before this Court.

4. Heard the learned counsel and perused the available record. According to the case of prosecution, on 22nd March 2019, the victim Bibi Saima having the age of 5- years was accompanied by her cousin Bibi Hafia were taken by the appellant in a house and committed Zina with Bibi Saima. In order to establish the charge, the prosecution produced the evidence of seven witnesses. The complainant appeared as PW -1, who reiterated the contents of his fard-e-bayan Ex.P/1 -A and narrated the story with regard to his absence in his house on the day of occurrence, entrance of his daughter Bibi Hafia and victim Bibi Saima whilst weeping and crying and on query they disclosed that a beard person committed Zina with Bibi Saima. This witness immediately taken both the minors in the said house, where such offence was committed and on query it was confirmed that the said house was owned by the appellant. This witness immediately lodged the FIR by nominating the appellant as the culprit, who committed Zina with the minor Bibi Saima. The statement of PW -1 was fully corroborated by the PW -3 Nizamuddin, who is the father of victim Bibi Saima. This witness has brought on record that when he arrived in his house, his housemates informed about the occurrence. This witness identified the appellant in the trial Court.

5. The star witness of the prosecution is the victim of case namely Bibi Saima, who appeared in the Court as PW -5. Since, PW -5 is minor aged about 5- years, thus in order to ascertain her mental condition and conscious, certain questions were put upon her, which were replied correctly by this witness and thereafter her statement was recorded. PW- 5 in her statement stated that she along with Bibi Hafia were taken by the appellant in his house, purchased ice cream for them, gave them Rs.5/ -, took out her Shalwar and committed bad act (Zina) with her and thereafter let them free. PW -5 identified the appellant in the trial Court.

6. Admittedly, PW -5 is a minor, but at the time of her examination in chief the Court asked several questions from her and found her mentally mature and fit to answer the questions correctly and even during cross examination she replied the questions correctly, which establishes the soundness of her mind and her statement cannot be thrown aside merely on the ground of her being minor age of 5/6 -years rather alone her statement is enough to establish the charge against the culprit. Even otherwise, there is nothing on record showing that this witness was tutored by her elders. Thus, nothing adverse has come on record to disbelieve the evidence of PW -5. Her statement suggests that immediately after the occurrence she came to her house, informed elders, correctly identified the place of occurrence as well as the culprit/appellant, who committed hateful act with her and even the defence despite lengthy cross examination has failed to give dent or jolt to her statement.

Reliance in this regard is placed on the case of Muzammil Shah v. State 1991 MLD 1944, wherein it has been held as under:

"10. We have gone through the evidence of Mst. Irshad (P.W.5) with care. Before recording her statement, the learned trial Judge had recorded a note after putting her certain questions that he was satisfied that the witness was intelligent and was capable of making rational answers to questions put to her. Besides, she has been subjected to fairly lengthy cross -examination which she had withstood to an astonishing degree. A perusal of her statement shows that she made the statement in a frank and straightforward manner. Curiously there was no suggestion to her in her cross - examination that she did not know the appellant. Then there are no circumstances to indicate that she might have been tutored. She had seen the appellant in the course of committing sodomy over the victim with his trousers loosened. She was intelligent enough to understand as to what had been done to her brother and neither she nor her father had any motive to falsely implicate him. We see no reason whatsoever why the statement of such a child witness should not be believed though a suggestion was made to Naeem Gul (P.W.4) that there was enmity of her relatives with the appellant. Nonetheless, the appellant when examined under section 342, Cr.P.C. did not take up this plea. We have- not been able to discover any valid reason to reject the testimony of Mst. Irshad (PW.5).

7. The prosecution produced medical evidence through PW -2 Dr. Ayesha Faiz, Lady

Police Surgeon, who examined the victim/PW -5 on 22nd March 2019 and after examination
of victim, PW -2 issued MLC Ex.P/2- A and opined the victim was physically and mentally as
well as well- oriented to time and place. PW- 2 further opined that the hymen of PW -5 was not
intact and sexual assault has been performed upon her, besides redness was found around the vagina as well as fresh signs of sexual intercourse and old signs also found. The perusal of MLC Ex.P/2 -A establishes the fact that Zina was committed with the victim/PW- 5. PW -2
also took samples for analysis i.e. Vaginal Sulab, Shalwar and Buccal Swab of victim/PW -5
as well as she also took samples of appellant i.e. Shalwar, Chadar, Blood, Buccal Swab and
Fluid. After examination of appellant, the PW -2 was of the opinion that the appellant was
physically and mentally healthy and was able to perform the act of Sexual intercourse.

8. The samples so taken from the victim as well as from the appellant were sent to FSL
for analysis, which after examination issued its report as Ex.P/7- A, perusal whereof confirms
that seminal material was found Shalwar of victim Bibi Saima. We have taken into consideration the medical evidence with ocular testimony and observed that both the ocular and medical evidence are in line with each other. In ocular testimony the witnesses have alleged that Zina was committed with the victim/PW -5 by the appellant and the medical
evidence has established the ocular testimony that offence was committed with the victim. Even otherwise, soon after the commission of crime, the victim was taken to hospital and within 24 -hours she was examined by a lady doctor. Besides, the FIR has been lodged
promptly without any delay, thus the prompt lodging of FIR has ruled out the possibility of deliberation or consultation.

9. So far as the second limb of argument in the contention that the solitary statement of
the victim was not sufficient to base conviction thereon is concerned, it may be pointed out here that it is not the number of witnesses but quality and credibility of the evidence which is to be considered. In cases of Zina and sodomy, there are generally hardly any witnesses other than the victim, as it is very rare that such offence takes place in view of others or at public place, thus the Superior Courts in this country have attached great sanctity to the statement of the victim and it has been repeatedly laid down that sole testimony of the victim would be sufficient to base conviction thereon if it inspires confidence. The contention, therefore, has

no force. 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 al so 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 P.W.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)

10. It has further been observed that the appellant has failed to take any specific plea regarding his false implication. In his examination under Section 342, Cr.P.C. he simply denied the questions put to him, whereas he has also not recorded his own oath statement and failed to produce any single witness in his defence. While to the contrary, the prosecution has produced ocular evidence supported by the medical evidence, which are fully corroborating with each other on all material counts, thus the evidence so produced cannot be thrown aside merely on the basis of bald denial of the appellant. It has also been observed that in such like cases the prestige of family, risk and honour is involved as the child of someone was defamed for whole of her life, hence it is not possible that a person may falsely involve any innocent person in such like heinous crimes and that too without existence of previous enmity or grudge. Undoubtedly, where a young child could be defamed for whole life, no elder would like to involve both their own child, who has to face the society for whole of her/his life as well as to an innocent person just for nothing. 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:

"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."

11. The trial Court has rightly appreciated the evidence in its true perspective. The learned counsel for the appellant has 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 being distinguishable are not helpful to the defence.

For the above reasons, the appeal being devoid of merits is dismissed.
JK/132/Bal. Appeal dismissed.