

**JUDGMENT SHEET  
IN THE LAHORE HIGH COURT AT LAHORE  
JUDICIAL DEPARTMENT**

**Capital Sentence Reference No.13-T of 2020**  
(The State *versus* Muhammad Rafique)

**Crl. Appeal No.67706-J of 2020**  
(Muhammad Rafique *versus* The State.)

**JUDGMENT**

**Date of hearing: 06.11.2023.**

**Appellant by: Mr. Asad Jamal, Advocate.**  
**Mr. Abdul Majid Chishti, Advocate (Defence Counsel).**

**State by: Mr. Tariq Siddique, Additional Prosecutor General.**

**Complainant by: M/s Usama Khan Kakar and Asif Raza Naul, Advocates.**

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**AALIA NEELUM, J:-** The appellant-Muhammad Rafique, son of Muhammad Hussain, caste Faqueer, resident of Peeruwala, Tehsil & District Kasur, has assailed his conviction and sentence recorded by the learned Additional Sessions Judge/GBVC, District Kasur vide judgment dated 12.11.2021 in case FIR No.515/2019 dated 11.08.2019, registered under section 376 (iii) PPC, at Police Station Saddar, District Kasur, whereby the learned trial court convicted the appellant-Muhammad Rafique **under Section 376(iii) PPC** and sentenced to **Death**, with the direction to pay fine of Rs.1,00,000/- and in case of default thereof, to undergo 06-months S.I further. The appellant was also directed to pay compensation of Rs.2,00,000/- to the complainant in terms of section 544-A of Cr.P.C. and, in case of its non-payment, to undergo 06-months S.I further.

2. Feeling aggrieved by the judgment of the trial court, Muhammad Rafique, the appellant, has assailed his conviction by filing the instant jail appeal bearing **Criminal Appeal No.67706-J of 2020**. The trial

court also referred **C.S.R. No.13-T of 2020** (**The State. Vs. Muhammad Rafique**) for confirmation of the death sentence awarded to the appellant-Muhammad Rafique. The matters arising from the same judgment of the learned trial court are being disposed of through a single judgment.

3. The prosecution story as alleged in the F.I.R. (Ex. PC/1) lodged on the application (Ex.PC) of Abdul Majeed (PW-3)-the complainant is that on 10.08.2019 at about 07:00 p.m., Muhammad Rafique (the appellant), came to the house of the complainant and took his minor daughter, namely, Zunaira Fatima, aged about 11 months with him. When the appellant did not bring back the minor, the complainant (PW-3), alongwith Muhammad Sadiq (PW-4) and Allah Wasaya (given up PW), went in search of the child; they heard the voice of cries of the infant from the nearby agricultural fields, where they witnessed the appellant while committing rape with minor; on seeing them, the appellant fled away from the spot, whereas the minor was smeared with blood. The complainant (PW-3) took the child, Zunaira Fatima, to DHQ Hospital, Kasur, where she was medically treated/examined. After that, the case was registered.

4. After the occurrence, the appellant was arrested, and having found the accused/appellant guilty, the Investigating Officer prepared a report under Section 173, Cr.P.C. while placing the names of the accused in column No.3 of the Challan and sent the same to the court of competent jurisdiction. On 03.02.2020, the trial court formally charge-sheeted the appellant, to which he pleaded not guilty and claimed trial. In support of its version, the prosecution produced as many as six (06) witnesses.

5. After recording evidence and evaluating the evidence available on record in light of arguments advanced from both sides, the trial court found the prosecution version proved beyond any shadow of reasonable doubt, which resulted in the appellant's conviction in the aforestated terms.

6. We have given our anxious and most thoughtful consideration to the rival submissions of both sides and have minutely gone through the evidence on record.

7. The prosecution's case is based on the testimonies of Abdul Majeed (PW-3)-the complainant (father of infant Zunaira Fatima, aged about 11 months at the time of the incident), and Muhammad Sadiq (PW-4), nephew of the complainant. Per the prosecution case, the incident occurred on 10.08.2019 at 07:00 p.m. in the village Peeruwala, District Kasur, falling within the jurisdiction of Police Station Saddar, Kasur. The Police Station is at a distance of 03 kilometers away from the place of occurrence, and the matter was reported to the police on 11.08.2019 at 07:30 a.m. by Abdul Majeed (PW-3)-the complainant through the written complaint (Ex. PC) wherein the name of the appellant duly figures as main stalwart of the occurrence, for committing rape with the daughter of Abdul Majeed (PW-3)-the complainant, Zunaira Fatima, aged about 11 months. According to Abdul Majeed (PW-3)-the complainant, he has three children. Among them, Zunaira Fatima is a one-year-old minor. The accused/appellant, a next-door neighbor of the complainant, often used to take out his children to play. On 10.08.2019 at 07:00 p.m., the accused/appellant came to his house and took his minor daughter, Zunaira Fatima, outside the home. When the accused/appellant did not bring the minor back for some time, the complainant (PW-3), alongwith Muhammad Sadiq (PW-4) and Allah Wasaya (given up PW), went in search of the minor; they heard the minor's cries that were coming from the fields; they went to the fields and saw the accused/appellant was committing rape with the minor; on seeing them, the accused/appellant fled away from the spot. Whereas, the minor was smeared with blood. The complainant (PW-3) took the minor, Zunaira Fatima, to DHQ Hospital, Kasur, where she was medically treated/examined. Afterward, the complainant, Abdul Majeed (PW-3), reported the incident to the police. Both the prosecution witnesses, i.e., Abdul Majeed (PW-3)-the complainant, and Muhammad Sadiq (PW-4)-the eye witness, in their court statements, reiterated their statements made in the FIR as well as before the police and faced cross-examination conducted by the defence. The defence, through cross-examination, reaffirmed the genesis, mode, manner, and place of occurrence. Abdul Majeed (PW-3)-the complainant deposed during cross-examination that:-

“On the day of alleged occurrence, both of said PWs came to my house at 6:00 pm to see me in routine. Said PWs used to visit my house after 3/4 days in routine. Till registration of the FIR, both of said PWs remained with me. They also accompanied me to the hospital and also spent the night there. We straight away took the alleged victim/minor Zunaira Fatima to the hospital from the place of occurrence soon after. -----The agricultural fields of Ashraf Kamboh, where the alleged occurrence took place, is towards East from my house, at the distance of about 4 Kanals. No residential house falls on the way from my house to the place of occurrence. We saw the accused with infant/victim about 10 steps into the crop. It was maize crop about 4 feet high at that time. House of Rafique accused is parallel to my house. -----I went to the police station at about 7:30 am in the following morning and got drafted the complaint Ex. PC from a person, sitting outside the police station and then got the case registered. From the police station, I alongwith aforesaid PWs went to the hospital. The Thanedar visited the place of occurrence at about 11:00/12:00 noon on that day.-----At the time of occurrence, my wife was also in my house. She also saw the infant Zunaira Fatima after the occurrence, when we brought her from the place of occurrence. I produced the blood stained clothes of the victim to the Thanedar at the hospital, in the evening on 11.08.2019 and other PWs were not with me at that time.”

Similarly, Muhammad Sadiq (PW-4), the eye witness, deposed during cross-examination and reaffirmed his presence in the complainant's house and the mode and manner of the incident. He (PW-4) deposed during cross-examination that: -

“I use to visit house of the complainant, after 5 to 10 days in routine, who is my Chacha. On the day of alleged occurrence, we reached at the house of complainant at about 6:00 pm, to see him. Allah Wasaya PW also uses to visit the house of complainant like me. I alongwith Allah Wasaya went together to the house of

complainant. Accused Rafique took the infant Zunaira Fatima with him in our presence, who in routine used to do so. We worried on that day, for the reason that the accused did not come back as per his usual routine of five or ten minutes. The accused used to take the children with him for the last one year of the occurrence. When we came out of house of the complainant, the complainant knocked at the door of accused Rafique and his father told he was not at home, then we looked here and there around and thereafter, we went toward the maize crop. We went towards the maize crop together. -----

----- From the place of occurrence, we took the infant Zunaira Fatima to the hospital by motorcycle. We reached the hospital within 20 minutes. It was daylight at the time of occurrence. it was Maghrib prayer time, when we reached hospital. The complainant and other PW Allah Wasaya were also with me when we reached the hospital and we were on two motorcycles. We remained at the hospital for whole night. In the following morning, I accompanied the complainant to the police station. We got the complaint drafted from outside of the police station and it was about 7:30 am. The doctor removed the blood stained clothes of the infant Zunaira Fatima. The infant Zunaira was medically examined in between 10:00/11:00 pm, on the same day. -----

----- The doctor first time attended infant Zunaira Fatima within 15/20 minutes of our arrival at the hospital. She was medically examined for legal purpose thereafter. On the following day, we again went to the hospital from the police station after filling the application. ----- The Thanedar also accompanied us to the hospital, after his visit of the crime scene. The Thanedar observed the infant/victim. The Thanedar did not interrogate us at the hospital. We had MLC of the infant/victim with us when we went to the police station in the following of the occurrence. the complainant received the MLC from the doctor and handed over to the police. The complainant also delivered the blood stained clothes of the infant/victim Zunaira Fatima to the Thanedar, at the time when we went to the police station for getting the case registered.”

The above-said deposition of the prosecution witnesses reveals that Abdul Majeed (PW-3)-the complainant, and Muhammad Sadiq (PW-4)-the eye witness, fully supported each other on material points and proved the manner of occurrence. The argument of the learned counsel for the appellant that per the medico-legal certificate of Zunaira Fatima, she was medically examined by police, and it negates the prosecution case that after the occurrence, they took Zunaira Fatima to the hospital for medical examination has no force. The defence itself brought on the record that Zunaira Fatima was brought for medical examination by her parents in the company of a lady constable, and a docket was issued by the Front Desk established in DHQ Hospital. On perusal of the injury statement (Ex.PE), it reveals that the same was issued by the In-charge Police Khidmat Counter, DHQ Kasur, and it was mentioned that the father of the child stated that she was raped. Dr. Ayesha Batool (PW-2) deposed during cross-examination that: -

**“The alleged victim Zunaira Fatima was brought to the hospital by her parents, in company of lady constable Zaib-un-Nisa. There was no application of the Investigating Officer for medical examination of the alleged victim but at the Front Desk, in DHQ hospital, Kasur, the docket was issued. The docket was issued by the police official, present on duty on at that time on Front Desk. The docket is part of the record as Ex.PE. Lady constable Zaib-un-Nisa was on the Front Desk/Khidmat Centre. It is correct that the docket, Ex.PE, speaks that the victim Zunaira Fatima was not medically examined prior to that.”**

In view of the above, it is a fact that the accused had victimized an infant aged about 11 months. In the traditional, non-permissive bounds of our society, no parent of a minor or girl or woman of self-respect and dignity would depose falsely implicating somebody of ravishing her chastity by sacrificing and jeopardizing her future and would they be sacrificing her future. It is not the law that, in every case, a version of the complainant or victim must be corroborated in material particulars by independent evidence on record. Rape is an offence that is violative of the fundamental right of

every person. Sexual violence, apart from being a dehumanizing act, is an unlawful intrusion on the right of privacy and sanctity of a female. It is a serious blow to the victim's honor and offends her self-esteem and dignity, and it degrades and humiliates the victim, where the victim is a helpless, innocent child or a minor. It leaves behind a traumatic experience. A perusal of the record available on file reveals that both of the prosecution witnesses remained consistent on salient features of the prosecution version, particularly about the manner of the incident, hearing the noise of voice from fields, and after that, witnessing the mode and manner in which the appellant had committed the incident, after that his fleeing away from the place of occurrence. The prosecution witnesses' deposition is straightforward, confidence-inspiring, and appeals to reason. The fact also remains that despite lengthy cross-examination, the defence could not create any serious crack going to the roots of the case.

8. The medical evidence also supports the oral evidence. Dr. Ayesha Batool (PW-2), who medically examined the infant/victim, Zunaira Fatima, has observed the following: -

“EXAMINATION OF CLOTHES

At the time of examination, the clothes of the minor victim were changed, and the clothes the victim was wearing were blood-stained.

GENERAL AND PHYSICAL EXAMINATION

Zunaira was conscious and was crying. There was no bruise or sign of injury at any part of the body of the victim.

VAGINAL EXAMINATION

Hymen was freshly ruptured. In the posterior fornix of the vagina, a tear of 0.5 cm was found present, which was actively bleeding.

OPINION

In my opinion, fresh attempt of sexual assault was done to the baby victim, as hymen was found fresh ruptured, and there was also tear of 0.5 cm in the vagina.”

Dr. Ayesha Batool (PW-2) deposed during cross-examination that: -

**“I observed in the MLC, Ex.PE, that fresh attempt of sexual assault had been done with the victim, as there was fresh rupture of the hymen. By this I meant that the sexual act had been performed with the infant Zunaira Fatima. I do not understand in legal sense the meaning of attempt.”**

The above deposition of Dr. Ayesha Batool (PW-2) reveals that it was not the case of an attempt or vaginal injuries might be the result of the penetrating of some other object. Instead, she (PW-2) stated in reply to the specific question that a sexual act had been performed with the infant Zunaira Fatima. The Hymen was freshly ruptured. In the posterior fourchette of the vagina, there was a tear of 0.5 cm with active bleeding. In fact, the medical examination report (Ex. PE) of the victim held on 10.08.2019 at 10:10 p.m. with the incident occurring on 10.08.2019 at 07:00 p.m. has established the penetrative sexual assault on the victim. Exhibit-PE has corroborated the deposition of Abdul Majeed (PW-3)-the complainant, and Muhammad Sadiq (PW-4)-the eye witness on the factum of penetrative sexual assault on the victim. The evidence on record suggests that there was penetrative sexual assault by the appellant on the victim. The appellant has not drawn our attention to any material on record to suggest otherwise. The contention of the learned counsel for the appellant that no seminal material was found in the vaginal swabs of the victim makes the case of the appellant of attempt, is misconceived. The medical examination report (Ex. PE) of the victim reveals that the minor was medically examined by Dr. Ayesha Batool (PW-2) at 10:10 p.m. on 10.08.2019, whereas the occurrence took place at 07:00 p.m. and that clothes of the minor aged about 11 months were changed and changed clothes too were bloodstained. It is pertinent to mention here that the infant's body area of genitals requires cleaning, when becomes wet and dirty. Besides, Dr. Ayesha Batool (PW-2) handed over vaginal swabs to lady constable Zaib-un-Nisa (not cited as a witness), but the same was not secured as per SOPs. Tariq Mehmood S.I. (dismissed from service) (PW-5)-the investigating officer deposed during cross-examination that:

**“I received the MLC of the victim Zunaira from the doctor, formally. The first treatment notes,**



**dated 10.08.2019, of the victim were also handed over to me by the doctor. Parents of the victim shifted him to the hospital. I infact, received the MLC at about 1:00 p.m on 11.08.2019 from the constable, deputed at the Front Desk in the Hospital. I did not ask from the lady constable when she received the MLC from the doctor. I received the MLC as well as first treatment notes at the same time from the lady constable, at the Front Desk. I cannot tell the time when the victim Zunaira was first treated by the doctor after the occurrence.”**

The lapse of time between the time of the incident, the time of preparation of the parcel of vaginal swabs, and the date and time on which vaginal swabs were received is a relevant factor. The DNA report (Ex. PG) has to be read in the context of the collection of parcel of vaginal swabs by Tariq Mehmood S.I. (dismissed from service) (PW-5)-the investigating officer. The DNA report (Ex. PG) cannot be held to have raised a fair doubt based on reason and common sense. The accused has taken a plea that he has been falsely implicated in this case. The accused, during cross-examination, put his defence to Abdul Majeed (PW-3)-the complainant, as follows: -

**“It is incorrect to suggest that at the instance of my wife, Rafique accused was implicated in this case, as the accused did not assent to develop sexual relations with my wife. It is further incorrect to suggest that due to said grudge my wife told me false story and then we got the case registered.”**

At the end of the cross-examination, suggestions were put to the complainant (PW-3). Similar suggestions were made to Muhammad Sadiq (PW-4). The result of the discussion above is that the defence plea of the accused has no legs to stand. In support of his defence, he has not examined any witnesses. The accused improved its defense plea in the statement u/s 342 Cr.P.C., to the extent, “That offer was flatly refused by me and I about to leave when she attracted me and thrust her finger into the vagina of minor Zunaira after that victim cried and the blood started oozing.” The accused, to substantiate his plea put the suggestion to Muhammad Anwar ASI (PW-6), the subscriber of FIR, that mother of infant Zunaira had injured her by

inserting her finger in her vagina. Muhammad Anwar ASI (PW-6) denied the suggestions and negated the defence plea during cross-examination and deposed that: -

**“It is incorrect to suggest that accused Rafique stated before me in evening of 10.08.2019 that mother of infant Zunaira had injured her by inserting finger in her vagina and blood was oozing. It is incorrect to suggest that accused Rafique was arrested at that time by us and then fabricated the facts of prosecution case.”**

It is pertinent to note that the accused brought no evidence supporting the improved stand. Resultantly, the testimony of Abdul Majeed (PW-3)-the complainant, and Muhammad Sadiq (PW-4)-the eyewitness, prevails over the bald averment of the accused under Section 342 Cr.P.C. On the other hand, the testimony of Abdul Majeed (PW-3)-the complainant, and Muhammad Sadiq (PW-4)-the eyewitness, cannot be brushed aside on the flimsy plea raised by the accused. Given the settled legal proposition, the testimony of Abdul Majeed (PW-3)-the complainant, and Muhammad Sadiq (PW-4)-the eye witness, is sufficient to bring home the guilt of the accused, which, in the instant case, finds corroboration from the medical evidence. As such, the learned trial Court rightly convicted the appellant by holding that the prosecution had succeeded in establishing its case beyond reasonable doubt.

9. Given the above circumstances, we have concluded that the prosecution has proven its case against the appellant, Muhammad Rafique, beyond any doubt. However, the factors that have persuaded us not to uphold the capital sentence of the appellant are the negative DNA report and the appellant's age at the time of the incident. As the appellant has been convicted and sentenced to death, the same can be considered a mitigating circumstance in such an eventuality. Based on the grounds discussed hereinabove, we believe that mitigating circumstances exist about the quantum of the appellant's sentence. Therefore, we believe the death sentence awarded to the appellant is quite harsh. The well-recognized

principle is that the accused is entitled to the benefit of the doubt as an extenuating circumstance while deciding his question sentence.

10. In these circumstances, the **appeal bearing No.67706-J of 2020**, filed by the appellant, Muhammad Rafique, son of Muhammad Hussain, in case FIR No.515/2019, under section 376(iii) P.P.C, Police Station Saddar Kasur, District Kasur is **dismissed**. However, his (the appellant's) death sentence is converted into **imprisonment for life**. The benefit of Section 382(b) of Cr.P.C is also extended to the appellant. The compensation and acceptable amount and sentence qua non-payment of the compensation and fine amount imposed by the trial court shall remain intact upon the appellant (convict).

11. **Capital Sentence Reference No.13-T of 2020**, forwarded by the learned trial court for confirmation of the sentence of death inflicted upon the convict fails, which is answered in **Negative**.

**(Muhammad Waheed Khan)**  
**Judge**

**(Aalia Neelum)**  
**Judge**

Approved for reporting

**Judge**

**Judge**

*This judgment has been  
dictated, pronounced  
and signed after its  
completion on  
06.11.2023.*

*Ikram\**