

Stereo. H C J D A 38.  
**Judgment Sheet**  
**IN THE LAHORE HIGH COURT AT LAHORE**  
**JUDICIAL DEPARTMENT**

**Crl.Appeal No.2019/2012**  
(Muhammad Akmal vs. The State etc)  
**Crl.Revision No.267-2013**  
(Khalid Pervaiz vs. The State etc)

**JUDGMENT**

Date of hearing: 25.04.2014.

Appellant by: Mr.Muhammad Afzal Shad, Advocate for the appellant.

State by: Mr.Saeed Ahmed Sheikh, Addl. Prosecutor General.

Complainant by: Mian Muzaffar Hussain, Advocate for the complainant.

-----

**AALIA NEELUM, J:-** Muhammad Akmal son of Hamaad Ali, Caste, Muslim Sheikh, resident of Chak No.400 G.B. Tehsil Tandlianwala, District, Faisalabad being involved in case FIR No.294, dated 12.05.2011, offence under Section 376 PPC, registered at Police Station, Saddar Tandlianwala, District, Faisalabad was tried by Muhammad Saleem, Additional Sessions Judge, Tandlianwala District, Faisalabad. The learned trial court seized with the matter in terms of judgment dated 05.12.2012 while convicting the appellant under Section 376 PPC and sentenced him to ten years Rigorous Imprisonment along with fine of Rs.30,000/- and in case of default thereof, further undergo three months S.I. The benefit of Section 382-B Cr.P.C was also extended in favour of appellant.

2. Feeling aggrieved by the judgment of the learned trial court, Muhammad Akmal-appellant has assailed his conviction through filing Crl. Appeal No.2019 of 2012 whereas Khalid Pervaiz-complainant of instant case has preferred a Criminal Revision bearing No.267 of 2013 for enhancement of sentence, awarded to the appellant.

3. Prosecution story as contained in the FIR (Ex.P.D) lodged on the complaint (Exh.P.A) of Khalid Pervaiz (PW-1)/complainant is that on 12.05.2011 at about 05:00 p.m. when his real niece namely Mst.Raheela Nawaz, victim was playing in front of her house, the accused took her with him to his house and committed rape with her and due to her hue and cry, Ata Muhammad and Naik Muhammad came there and witnessed the alleged occurrence, hence, F.I.R., in hand.

4. On the basis of the complaint submitted by the complainant, formal FIR (Ex.P.D) was chalked out by Ali Mard, A.S.I., (PW-7). After registration of case, initially the investigation was entrusted to Muhammad Aslam, S.I. (PW-8), who arrested the accused-appellant and thereafter by preparing the recovery memo (Ex.P.E), he got medically examined Mst.Raheela Nawaz and Muhammad Akmal. He also got recorded the statements of PWs under Section 161 of Cr.P.C and prepared the un-scaled site plan of place of alleged occurrence as (Ex.P.F).

5. Having found the accused guilty, the Investigating Officer prepared report under Section 173, Cr.P.C. and sent the same to the court of competent jurisdiction. On 25.08.2011, the learned trial court formally

charge sheeted the appellant to which they pleaded not guilty and claimed trial. Prosecution in support of its version produced as many as eight (08) prosecution witnesses.

6. Ocular account of first part of occurrence in this case has come out from the mouth of Mst.Raheela Nawaz (PW-3) whereas Khalid Pervaiz (PW-1)/complainant reported the incident to the police and Naik Muhammad (PW-2) witnessed the alleged occurrence, while, Lady Doctor, Rehana Tamkeen, Women Medical Officer, Tehsil Headquarter Hospital, Tandlianwala (PW-5) had conducted the medical examination of victim and found the following observations:-

**External Examination.**

1. Small perinial tear 0.5 x 0.5 cm on the midline. Oozing of the blood was present.
2. Her breast was not developed., axillary and pubic hair were developed.

**Internal Examination.**

No fresh injury was found on vulvae.

Hymen was torn in the midline and back sides.  
Fresh tears and oozing of blood was present.

**Opinion.**

After perusing the Chemical Examiner Report, Doctor opined that victim was subjected to reason intercourse at the time of examination.

Ex.P.B is the correct carbon copy of medical of victim whereas Ex.P.C is injury statement issued by the said lady Doctor, after putting her signatures over them.

7. The statements of remaining prosecution witnesses are formal in nature.

8. On 15.11.2011, learned Deputy District Public Prosecutor gave up Ata Muhammad being un-necessary and closed the evidence of prosecution by tendering the reports of Chemical Examiner as (Ex.P.H).

9. The appellant was also examined in terms of Section 342, Cr.P.C; wherein he opted not to appear as his own witness in disproof of the allegations levelled against him in the prosecution version. In response to a particular question why this case against him and why the PWs deposed against him, Muhammad Akmal-appellant made the following deposition:-

*“This case was registered against him due to previous enmity and party friction in the village. Pws deposed against him due to close relationship and friendship with the complainant and due to enmity with him and his family.”*

The appellant closed the defence evidence after tendering the birth certificate of Mst.Raheela Nawaz as Ex.D.D.

10. Learned trial court after evaluating the evidence available on record in light of arguments advanced from both sides, found the prosecution version proved beyond shadow of reasonable doubt resulting into conviction of the appellant in the afore stated terms.

11. Learned counsel for the appellant argued that an enmity was prevailing between the parties. The witnesses by narrating a false and concocted story, have falsely roped the appellant in the instant case by suppressing the true account. The learned counsel further stated that appellant was juvenile, which needed due consideration. In the end, indulgence of Court is sought by the learned counsel for the appellant.

12. On the other hand, learned counsel for the complainant as well as learned Law Officer argued that prosecution has successfully proved its case against the convict. The report of Chemical Examiner in respect of vaginal swabs was also positive.

13. Arguments advanced pro and contra have been heard. I have also gone through the record available on file with the able assistance of learned counsel for the parties.

14. Admittedly, the incident took place on 12.05.2011 at about 5:00 p.m. and was promptly reported to the police by the complainant-PW.1, paternal uncle of victim. The star witness namely Mst.Raheela Nawaz aged about eight years was playing in the Bazar in front of complainant's house when she was taken away by the appellant to his house and thereafter, accused-appellant forcibly committed rape with her due to which she was soaked with the blood, on her hue and cry, she was rescued by the prosecution witnesses and accused fled away. The evidence of victim (minor) namely Mst.Raheela Nawaz is of much importance. In her statement, she fully

implicated the appellant in the commission of alleged offence. The victim in her statement had specifically deposed that accused committed forcibly rape with her and this part of the evidence has not been questioned in the cross-examination. The statement of the victim is fully corroborated by the medical evidence. Dr. Rehana Tamkeen, Women Medical Officer-PW.5 has categorically stated that hymen of the victim was torn in the midline and back sides, fresh tears and oozing of blood. It was further stated by her that victim was subjected to intercourse and she took two perinial tear and vaginal swabs and handed over to police for chemical analysis for presence of semen and grouping also. According to report of Chemical Examiner, (Ex.P.J), the swabs were stained with semen. The medical evidence (Exh.P.B), Chemical Report (Exh.P.J) along with statement of victim, supported the prosecution version. The above referred medical evidence produced by the prosecution, therefore, furnishes sufficient corroboration to the ocular account.

15. The contention of the learned defence counsel that complainant had involved the appellant due to previous enmity and party friction has no force, as no evidence has come on record to indicate that the previously the complainant had animus against the appellant to implicate him falsely in the case. No one would like to bring stigma on the chasity of the ladies or minors of his family with a view to implicate some one for the offence and put at stake honour of females for party friction or any enmity. The defence has failed to prove

previous ill-will or party friction to falsely involve the appellant in the instant case.

16. Now question before this Court is that whether from the facts and circumstances available on the record, the sentence already inflicted by the learned trial court is sufficient to meet the ends of justice or same can be reduced. In order to resolve this proposition, I have scanned the material available on record with due care and diligence. Admittedly, the commission of offence in question was not more than an act of mere juvenile delinquency and the appellant has no previous criminal record of involvement in any case of such like nature. Since the accused is not a habitual offender, therefore, chance of his rehabilitation can not be ruled out. The quantum of sentence provided under Section 376, P.P.C., is provided as under:-

**376 P.P.C. Punishment for rape.**

1) *Whoever commits rape shall be punished with death or imprisonment for either description for a term which shall not be less than ten years or imprisonment for life or more than twenty-five years and shall also be liable to fine.*

2) -----

17. The learned trial court while taking a lenient view already inflicted minimum sentence of ten years with fine of Rs.30,000/-to the appellant.

18. Learned counsel for the appellant has miserably failed to show any misreading, non-appraisal of

evidence or illegality in the impugned judgment. On careful analysis of the entire evidence available on record, I have come to the conclusion that the case against the appellant stands proved beyond any shadow of reasonable doubt and he has been rightly convicted and sentenced under Section 376 P.P.C. for a period of ten years Rigorous Imprisonment, as such the same is maintained and the appeal having no merits is accordingly **dismissed**.

19. As far as **Criminal Revision No.267 of 2013** is concerned, for the foregoing reasons, I have not been persuaded to take a contrary view that already taken by the learned trial court with regard to quantum of sentence, hence, the same is **dismissed**.

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

**Approved for reporting.**