

SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

52/25

PRESENT:

Justice Muhammad Hashim Khan Kakar
Justice Ishtiaq Ibrahim
Justice Ali Baqar Najafi

Jail Petition No. 252 of 2020

[Against the judgment dated 17.03.2020
passed by Lahore High Court, Lahore in
Crl.A.No.1302/2013]

Rehmat Ali

... Petitioner(s)

Versus

The State

....Respondent(s)

For the Petitioner(s) : Mr. Muhammad Usman Mirza, ASC.
For the Respondent(s) : Mr. Sajjad Hussain Bhatti, Deputy PG
Punjab
Date of Hearing : 26.05.2025

JUDGMENT

ALI BAQAR NAJAFI, J.- Through this jail petition leave to appeal is sought against the impugned judgment passed by the Lahore High Court, Lahore whereby the conviction of life imprisonment under section 376(1) PPC along with payment of fine of Rs.35,000/- to the petitioner awarded by the learned trial court was maintained.

2. Briefly the prosecution case against the appellant is that on 02.10.2010 at 2.00 p.m. Mst. Tayyaba/victim (PW-3) the minor daughter informed her mother/complainant (PW-1) and her maternal uncle Muhammad Nawaz (PW-2) that the appellant her own father had committed rape with her whereafter the matter was reported to the police and after obtaining permission from the

concerned Ilaqa Magistrate the medical of the victim (Exh.PB) was got conducted and the FIR (Exh.PA/2) was registered.

3. After arrest of the appellant, the report under section 173 Cr.P.C. was submitted before the trial court where he was indicted but he pleaded not guilty and claimed trial. The prosecution produced both documentary as well as oral evidence and tendered report of Chemical Examiner (Exh.PD). Learned trial court relied upon the statement of the victim (PW-3) and the corroborated medical report (Exh.PD) convicted the petitioner vide judgment dated 28.09.2013. The CrI.A.No.1302 of 2016 was preferred before the High Court which was dismissed on 17.03.2020, hence this jail petition.

4. The prosecution produced the complainant/Sakina Bibi (PW-1) mother of the victim and the wife of the appellant and according to her she was married to appellant 13/14 years before and during the wedlock 04 sons and 02 daughters were born. Before the occurrence, the appellant had kicked her out of his house after giving her a severe beating, whereafter she went to the house of her parents situated adjacent to the house of her husband/the appellant. He also snatched the children from her. On 02.10.2010 her daughter Tayyaba (PW-3)/victim aged 6/7 years came to her and disclosed before her while weeping that her father/appellant had committed "*wrong act*" with her. She felt severe pain.

5. According to the complainant (PW-1), the appellant had committed zina with Tayyaba (PW-3) when she was alone in her house. The police recorded her statement (Exh.PA) and Tayyaba (PW-3) was got examined by the doctor (PW-6) and she produced

the last worn clothes before the doctor. In her cross-examination, the complainant (PW-1) stated that the age of elder son was 12 years, younger/Umair 11 years, Zubair 09 years and then is Tayyaba¹ (6/7) whereas Hadia was 3/4 years. According to her Nauman 6/7 years son was killed by the appellant but she had not lodged any FIR regarding his murder. She admitted that the appellant had not divorced her so far though a month ago she had filed a suit for dissolution of marriage against the appellant. She admitted that she was residing in the house of the appellant at the time of recording of evidence. She admitted that she was not present in the room when Tayyaba (PW-3) was examined by the doctor and that Muhammad Nawaz (PW-2) her brother and two police officials were present outside. She admitted that Bushra, Rasheeda and Khurshid Bibi related to the appellant were present there. It was noon time when she went to the hospital. Some clothes were washed by the victim on the instructions of the appellant and some were not washed. She could not remember the exact date on which the appellant had expelled her from his house but after her expulsion, the children did not meet her in her father's house. She had denied the suggestion that on 01.10.2010 Mst. Bushra and Rashida came to her for a compromise.

6. Muhammad Nawaz, her brother (PW-2) supported the statement of her sister but admitted in cross-examination that occurrence had taken place on 02.10.2010 which was confronted with his previous statement (Exh.DA) and likewise the factum of washing of clothes was also confronted with his previous statement. He had admitted that Rehmat/appellant is sole son of

his parents and he has 07 sisters. He has denied the suggestion that Mst. Tayyaba/minor (PW-3) was handed over to Sakina Bibi (PW-1) on 01.10.2010 by Mst.Bushra and Rashida. He denied the suggestion that he was not present at the time of occurrence.

7. Besides, we have noticed that Mst. Tayyaba (PW-3) was not asked any question by the court and had also not recorded separate note that she was fit to make a statement. However, she admitted that she was studying in class 3 and she came to the house after studying from school without giving exact date. According to her, the appellant punished her to hold her ears and had beaten her with a bat and "Bailon". He directed her to jump from the rooftop or inflict a churri injury or die through an accident by running over by a car. This way she would receive some injury and then the complainant/her mother would come to take her. Her brother was in the courtyard when her father switched off the lights of the room and then he took her to other room where he switched on the lights and directed her to put off the clothes and started the "mischief". Meanwhile, someone knocked at the door. Her brother told her father that her aunt had come outside. His father gave "Mukka" blow on her belly and then had thrown her on the other side. She started bleeding and her shalwar was also stained. He directed her to wash her clothes. After 2/3 days she went to her mother/complainant and narrated her the story while weeping. In cross-examination she admitted that her father was working in Bata factory and after work he used to come back at about 6.00/7.00 p.m. Her father did not allow her

to go outside the house. The paternal grandfather remained at home on the day as he did not work on the day. She was confronted with her previous statement that after 2/3 days she went to her mother. She admitted that she did not narrate anything to lady doctor. According to her, she had come to the court from the house of her father.

8. Naheed Suhaib WMO (PW-6) gave the medical evidence and according to her on 03.10.2010 Tayyaba (PW-3) the daughter of the appellant was brought by the police for medical examination at 6.00 p.m. where she was also accompanied by her mother and with whose permission her daughter was medically examined who narrated that victim was raped by her father after when she went to her "Mehka" after quarrel with her husband 08 days ago. Last time the act was statedly committed on 01.10.2010 at 2.00 p.m. The relatives of Rehmat/appellant, according to her, requested her to come back to home but she refused and asked her children to come to her whereafter Bushra, Rashida and her husband, Zafar, brought the girl and gave her custody to her mother. On examination minor scar mark on her hip were present which the girl said that she had been beaten with brush. On perineal examination, hymen was torn, multiple fresh and healed tears were present. Bleeding was positive. A deep tear in the vagina in the mid line extending superficially and oozing of blood was positive. Vagina admitted one finger easily. According to the Chemical Examiner report the swabs were not stained with semen and blood and there were less chances of detection of semen after

lapse of four days and in the final opinion on the basis of clinical examination and findings the victim was subjected to the sexual act. However, in the cross-examination, she had improved her opinion on the basis of the report of Chemical Examiner and DNA test, according to which no sexual act might have been committed with the victim.

9. Mushtaq Ahmad SI (PW-5) conducted the investigation who admitted that the complainant had not produced any clothes of Tayyaba (PW-3) to him. Ijaz Ali SI (PW-7) stated that he collected the DNA report and that inhabitants of locality were not got associated by him during investigation. He admitted that exact date of commission of zina was not mentioned in contents of FIR. He also admitted that Mst.Sakina Bibi disclosed during investigation that she moved application for taking custody of children. He admitted that he had not seen any blood spot on the body of the victim nor any mark of violence on the body of the victim were noted. No bed or bed sheet was collected during the investigation. Muhammad Yousaf ASI (PW-8) drafted the formal FIR (Exh.PA/1). Karamat Ali 11107/C (PW-9) received the parcels of clothes of victim/Tayyaba (PW-3) which he deposited to the office of Chemical Examiner on the same day but its report was not available.

10. Even in the statement under section 342 Cr.P.C. the appellant denied all the suggestion and in question "why this case against you and why the PWs deposed against you?", he replied as under:-

"Ans. Mst. Bushra, Mst. Rasheeda and her husband namely Zafar brought the girl to her mother. Further Mst. Sakina Bibi managed whole occurrence and lodged false FIR against me on petty matters and went to the house of her parents time and again. She demanded the house of my father namely Ibrahim that same be given to her. She compelled me and my father in respect of documents of the house in favour of the complainant. In this regard, my aged father prepared agreement/Iqrar Nama in favour of Mst. Sakina Bibi, complainant wherein it was written that house is given to the complainant. The photo copy of this document earlier prepared when this document was written. At the same time, the original Iqrar Nama was not given to the complainant. She made hue and cry to take this document. She also compelled me and my father to leave the house at once but my father denied to do so and said agreement was burnt at the same time. This is one of the reason. The other reason is that she left my house without any reason. I then submitted an application before the Nazim Union Council for compromise and notice was issued to Mst. Sakina Bibi. The photo copy of the agreement and application are herewith attached as Annex-A and B."

11. In defence, the appellant produced Muzaffar Ali Azad @ Zafar (DW-1) and according to him 5/6 days before the occurrence the appellant visited his house and informed that his wife had left his house after quarrel on petty matter whereafter he went to the house of Rehmat Ali at evening time along with his wife, Rasheeda and Bushra to effect a compromise. They also went to the house of parents of Sakina Bibi (PW-1) who sought time as the brother (PW-2) of Sakina Bibi was not present at house. Sakina Bibi (PW-1) asked them to bring the daughters though he was brought to her which made her happy. The minor Hadia was also handed over to Sakina Bibi (PW-1). On the following day, the compromise was not effected, therefore, the false FIR was lodged.

12. Arguments heard. Record perused.

13. **Scanning the prosecution evidence** it has come on record that the complainant (PW1) is still the wedded wife of the appellant though she had already filed a suit for dissolution of marriage against her husband after a quarrel when she went to the house of

her father which was just adjacent to the house of her husband. The appellant then informed his brother (DW-1) about the dispute/quarrel upon which his wife and other ladies came to his house. Thereupon, a meeting took place in the house of the complainant (PW-1) during which two daughters, namely, Hadia and Tayyaba (PW-3) were handed over to her mother (PW1) but, unfortunately, the compromise could not be effected. However, the case of the complainant (PW-1) is that Tayyaba (PW-3) was subjected to rape by the appellant at 2.00 p.m. 2/3 days ago when she was at home. However, the statement of victim recorded without certification of the Presiding Officer about the capacity of the child creates doubt about her credibility and, therefore, requires strong corroboration. Even otherwise her statement reveals that she was beaten and threatened in the presence of her maternal-grand father and brother but no one objected. According to the complainant (PW-1) the victim was brought to the hospital where she was examined in her presence. However, the doctor's opinion is self-contradictory as in her examination in chief she (PW-4) stated that the victim was subjected to rape but in the cross-examination she categorically stated that on the basis of Chemical Examiner's report no rape was found to have been committed with her. This leaves the court to a serious question on the credibility of the statement of the victim (PW3) and the possibility of false implication of the appellant, Why such serious allegations were levelled against the appellant, may be due to the fact came on record that there was a dispute between the complainant (PW-1) and the appellant who otherwise is the only son, with six sisters, of

his parents. Besides, the appellant and the complainant (PW1) are also first cousins. According to the complainant (PW-1) no time and date of occurrence was narrated by the victim. Whenever a serious allegation of being an incestuous father is levelled higher standard of proof by the credible prosecution witnesses is required. A rare allegation of one of the most serious offences committed in the presence of other children and old father of the convict in the house had been levelled. According to the victim herself, she was beaten by the appellant, therefore, her statement is to be weighed with due care and caution.

14 We have also noticed that the trial court had also not put the Rationality Test to the child witness (PW-3) prior to recording of her statement. Under Article 3 of the Qanun-e-Shahadat Order, 1984, a child is a competent witness if he/she passes a standard of the sufficient maturity of understanding about the facts which were to be narrated by her.¹ A note/observation by the court, based on the relevant questions and their answers would make such statement credible.² In the given situation the statement of victim (PW-3) needs strong corroboration. In the present case the complainant (PW-1) and her brother (PW-2) are not the eye witnesses but are the hearsay witnesses, thus it was an unseen occurrence.

15. In this view of the matter, we find the prosecution evidence deficient of its trust worthiness, therefore, is discarded. Resultantly, we converted this petition into appeal which is

¹ Amjad Javed Vs. The State (2002 SCMR 1247)

² Raja Khurram Ali Khan & 02 others Vs. Tayyaba Bibi & another (PLD 2020 SC 146)

allowed accordingly. The sentence and conviction of the appellant is set-aside. He be released forthwith if not required in any other case.

ISLAMABAD
26.05.2025
A.Qadoos

Approved for reporting.