

**IN THE SUPREME COURT OF PAKISTAN**  
(Appellate Jurisdiction)

PRESENT: Mr. Justice Qazi Faez Isa  
Mr. Justice Sardar Tariq Masood

**Jail Petition No. 324/2019**

(On appeal against the judgment dated 08.04.2019  
passed by the Lahore High Court, Lahore,  
in CrI. A. No. 1493/2016)

Irfan Ali Sher

Petitioner

Versus

The State

Respondent

For the Petitioner:

Ms. Ayesha Tasnim, ASC

For the State:

Mr. M. Sarwar Sidhu, Addl. PG

Date of Hearing:

17.04.2020

**ORDER**

**Qazi Faez Isa, J.** The sexual assault on a fifteen-year-old minor girl on 15<sup>th</sup> September 2014 was reported to the police on 16<sup>th</sup> September 2014 at 10.10 am and FIR No. 634/14 was registered at Police Station Saddar, District Kasur nominating the petitioner as the perpetrator of the crime. The petitioner was charged under sections 365-B and 376 of the Pakistan Penal Code ("**PPC**") however he was acquitted of the charge of abduction under section 365-B PPC but was convicted for rape under section 376 PPC. He was sentenced to rigorous imprisonment for fourteen years and ordered to pay a fine of twenty five thousand rupees and in default of payment of fine to undergo an additional six months simple imprisonment. The period of detention already undergone by the petitioner before his conviction was excluded from his sentence under section 382-B of the Code of Criminal Procedure, 1898 ("**the Code**"). The petitioner preferred an appeal to the High Court however the learned Judge of the High Court upheld the conviction

under section 376 PPC but reduced the petitioner's sentence of rigorous imprisonment from fourteen years to ten years.

2. Ms. Ayesha Tasnim, learned counsel, was appointed to represent the petitioner at State expense since he was unrepresented. The learned counsel submits that the FIR was lodged with a delay of a day; DNA report was not sought; the victim and her parents had earlier resorted to filing such type of cases; the clothes which the victim was wearing at the time of the stated crime were not provided to the investigation officer and the delayed medical examination of the victim took place on 17<sup>th</sup> September 2014 whereas the incident of rape is stated to have occurred on 15<sup>th</sup> September 2014.

3. We have heard the learned counsel and with her assistance also examined the documents on record. In rape cases victims and/or their families may be reluctant to come forward to promptly report the crime because of the trauma that has been suffered and they may have a perception of shame or dishonour in having the victim invasively examined by a doctor. The delay in reporting a sexual assault to the police is therefore not very material as held by this Court<sup>1</sup>. As regards the semen not being sent for DNA forensic determination with a view to link it with the perpetrator is not a requirement of law. In any event when the victim in this case was medically examined, which was two days after the crime was committed, semen was not detected therefore it could not have been taken and sent for a forensic analysis. The lady doctor who had examined the victim and prepared the Medico Legal Examination Certificate ("**MLC**") No. 48/14 (Exhibit PD) recorded that the "*Hyperemia present and evidence of fresh bleeding*", the victim's "*hymen is ruptured & fresh*" and that "*bleeding present*". The said lady doctor, Dr. Aisha Nasir (PW-9), confirmed the accuracy of the MLC, was cross-examined and stood by the MLC prepared by her. The prosecution also examined the victim (PW-1)

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<sup>1</sup> *Yasmin Butt v Majid Baig* (2008 SCMR 1602), *The State v Abdul Khaliq* (PLD 2011 Supreme Court 554) and *Zahid v State* (unreported judgment dated 3<sup>rd</sup> March 2020 in Jail Petition No. 712/2018)

who testified that she was raped by the petitioner, who was her teacher. The victim was extensively cross-examined yet nothing favourable to the accused emerged. There was no reason for the victim to falsely nominate her own teacher for the heinous crime nor was any question put to her in this regard. She was also not confronted with any purported lodging of similar FIR/s in the past. The prosecution also examined the mother (PW-5) of the victim and she too was not confronted with lodging of such type of FIR/s in the past. The investigation of the case was conducted by Muhammad Muzaffar (PW-10) who too was not put any question with regard to the victim or her family lodging such type of cases in the past. Therefore, there was no evidence that the victim and/or her mother would lodge such false cases to blackmail for financial gain. It is also unbelievable that a student would falsely implicate her teacher.

4. We note that the investigation in this case was conducted not by a lady police officer but by a policeman, which was inappropriate. This probably also accounts for the clothes of the victim not being handed over to him by the victim or her mother being shy and/or suffering from shame and/or trauma. In any event, it was the duty of the investigation officer to obtain the clothes from the victim. The victim cannot be made to suffer further on account of negligence by the investigation officer. In any event the investigation officer's failure to take into possession the clothes of the victim is not a material shortcoming when the crime is otherwise established. The "Standard Operating Procedure of Rape Cases" ("**SOP**") dated 29<sup>th</sup> August 2013 issued by the Investigation Branch of the Punjab Police to all the police officers of the province provides that in respect of female rape cases investigation should be conducted by lady police officers. In this regard, the relevant clauses are reproduced hereunder:

Clause 2 (iii) of the SOP states as under:

Investigation of the female Rape case shall be conducted preferably by a woman police officer (not less than ASI/SI).

In case, sufficient number of such I.Os are not available in a police station, the CPO/DPO of the district shall depute such an officer from elsewhere."

And, Clause 3 of the SOP provides as under:

"i. The victim should be handled with utmost sympathy and sensitivity. The behavior towards women victims should be courteous. No embarrassing or indecent questions should be put to her as she is already under shock/trauma.

ii. While talking to the victim, her psychology should be observed carefully and eliciting of information should be done in such a manner that she remains cool and calm. Proper account of the incident should be recorded in plain and simple language as early as possible in the informant's own words. If the complainant while making oral report suspects or alleges against a particular person, the ground on which suspicion is based be ascertained tactfully.

iii. The lady investigation officers should be very cautious while talking to the victim. DCO of the district would be requested to arrange help of female psychologist/psychiatrist as she can be of immense help in bringing out the victim from trauma and preparing her to cooperate with the investigation agency.

iv. The victim as well as the accused person (s) should be sent for medical examination after preparing the injury sheet by the I.O. Details of injuries/scratches, bruises and nail marks, if any, on their body should be clearly mentioned in the injury sheet.

v. A rape victim above 18 years of age can only be examined after her written consent and a rape victim under 18 years of age can be examined only after a written consent from her parents/guardians.

vi. The victim should be medically examined only by a lady doctor.

vii. The victim should not be called at the Police Station, I.O. should visit to the victim's house for ascertaining facts in the presence of her relatives/family members.

viii. Efforts should be made to get the statement of victim recorded u/s 164 Cr.P.C. at the earliest. (2013 SCMR 203)"

5. At the relevant time, the minimum punishment for rape under section 376 PPC was ten years rigorous imprisonment and the maximum was imprisonment for twenty five years. The Trial Court had shown leniency in sentencing the petitioner to only fourteen years and the High Court reduced his sentence to ten

years, which was the minimum prescribed by law. However, since neither the State, the victim or complainant have sought enhancement of sentence we need not comment upon the same except to state that the High Court has already shown maximum indulgence to the petitioner.

6. Therefore, for the reasons mentioned above and as no ground for leave to appeal is made, leave is declined and consequently this petition is dismissed.

Judge

Judge

**Approved for Reporting**

*Bench-IV*  
ISLAMABAD  
17.04.2020  
(Farrukh)