

IN THE SUPREME COURT OF PAKISTAN  
(APPELLATE JURISDICTION)

**PRESENT:**

MR. JUSTICE ATHAR MINALLAH  
MR. JUSTICE IRFAN SAADAT KHAN  
MR. JUSTICE MALIK SHAHZAD AHMAD KHAN

**JAIL PETITION NO. 481 OF 2019**

(On appeal against the judgment dated 20.06.2019 passed by the Lahore High Court, Lahore in Cr. Appeal Nos. 200049-J/2018, 104943/2017 and Cr. Revision No. 104946/2017)

1. Asif Masih
2. Qasim Iqbal
3. Sajid Majeed

...Petitioner(s)

**Versus**

The State

...Respondent(s)

For the Petitioner(s): Mr. Faiz Muhammad Cheema, ASC  
(For petitioner No. 1)

Mr. Shahid Azeem, ASC  
Ms. Aisha Tasneem, ASC  
(For petitioner Nos. 2 & 3)

For the State: Mr. Sajjad Hussain Bhatti, DPG

For the Complainant: In person

Date of Hearing: 12.02.2025

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**JUDGMENT**

**MALIK SHAHZAD AHMAD KHAN, J.-** Asif Masih,

Qasim Iqbal and Sajid Majeed, petitioners, were tried by the learned Additional Sessions Judge, Faisalabad, pursuant to a case registered vide FIR No. 847/2013 dated 14.08.2013 under Sections 365-B, 376, 109 PPC at Police Station Madina Town, Faisalabad. The learned Trial Court vide its judgment dated 11.10.2017 convicted and sentenced the petitioners as under:-

**Asif Masih**

Under Section 376(i) PPC

Sentenced to rigorous imprisonment for 25 years along with fine of Rs.50,000/- or in default thereof to further undergo three months simple imprisonment. He was also directed to

pay compensation amounting to Rs.500,000/- to the child namely Maryam or in default thereof to further suffer imprisonment for a period of six months. Benefit of Section 382-B Cr.P.C. was also extended to the petitioner.

**Qasim Iqbal @ Moon and Sajid Majeed**

**Under Section 365-B PPC**

Sentenced to life imprisonment along with fine of Rs.50,000/- each or in default thereof, each accused was ordered to further undergo simple imprisonment for three months.

**Under Section 376(ii) PPC**

Sentenced each of the petitioner to rigorous imprisonment for life along with fine of Rs.50,000/- each or in default thereof each convict was ordered to further undergo simple imprisonment for three months.

2. In appeal, the learned High Court while maintaining the convictions and sentences of Qasim Iqbal and Sajid Majeed, petitioners, under Section 365-B PPC, set aside their convictions and sentences under Section 376(ii) PPC. However, to the extent of Asif Masih, petitioner, the learned High Court upheld the judgment of the learned Trial Court.

3. Arguments heard. Record perused.

4. According to the contents of the FIR, on 13.08.2013 at 04:30 AM, Qasim Iqbal @ Moon, petitioner, Mst. Ishrat Bibi, co-accused (since acquitted), Mst. Aqsa daughter of Muhammad Iqbal, co-accused (since acquitted) and Mst. Hameeda Bibi, co-accused (since acquitted) abducted the daughter of the complainant namely Mst. Aqsa Riaz through inducement and thereafter handed her over to Sajid Majeed, petitioner. Gold ornaments weighing three tolas and cash amount of Rs.40,000/- along with clothes were also stolen from the house of the complainant. The complainant started search for his daughter Mst. Aqsa Riaz and during the said search, he was told by Muhammad Niaz (PW-4) and Lashkar Ali Dogar (PW-5) that

Qasim Iqbal @ Moon (petitioner) and his above-mentioned co-accused had abducted his daughter and handed her over to Sajid Majeed, petitioner, hence, the FIR of this case.

5. The ocular account of the prosecution was furnished by Mst. Aqsa Riaz, alleged abductee (PW-1), Muhammad Niaz (PW-4) and Lashkar Ali (PW-5). It is true that the alleged abductee Mst. Aqsa Riaz (PW-1) had given birth to a female illegitimate child and according to the DNA test report (Exh.PM), Asif Masih, petitioner, was found to be her biological father but the moot point for determination before this Court is that as to whether it was a case of forcible abduction and rape as envisaged under Section 365-B and 376 PPC or it was a case of *zina* with consent punishable under Section 496-B PPC.

It is noteworthy that according to the prosecution evidence on the night of occurrence i.e. on 13.08.2013 at 04:30 AM, the complainant along with his other family members and Mst. Aqsa Riaz, abductee (PW-1), was sleeping at the roof of his house when his daughter was allegedly abducted by four (04) accused. In the contents of the FIR, it was not alleged that the accused persons were carrying any weapon at the time of abduction of Mst. Aqsa Riaz (PW-1). Under the circumstances, it is not understandable that as to why Mst. Aqsa Riaz (PW-1) did not raise any hue and cry at the time of her abduction from the roof of her house at night time (04:30 AM) when her other family members were also sleeping on the same roof. Although, Mst. Aqsa Riaz while appearing in the Court has given a contradictory story to that of the story mentioned in the FIR wherein she stated that the accused persons abducted her at pistol point but

no such allegation was levelled in the FIR. Moreover, no pistol was recovered from any accused during the investigation of this case. It is further noteworthy that Muhammad Niaz (PW-4) was real brother of the complainant who saw the accused persons while abducting Mst. Aqsa Riaz but he did not raise any hue and cry when he saw the abduction of his real niece Mst. Aqsa Riaz at the odd hours of night i.e. 04:30 AM. The conduct of said witness was highly unnatural which makes his evidence and the evidence of his companion Lashkar Ali Dogar (PW-5) as unreliable.

It is further noteworthy that Mst. Aqsa Riaz (PW-1) was statedly abducted on 13.08.2013 and she came back to her parent's house from *Darul Aman* on 11.12.2014 i.e. after one year and four months from the occurrence. She candidly conceded during her cross-examination that she appeared before the Magistrate about 3/4 times during her stay in *Darul Aman* but she never levelled the allegation of her abduction or rape against the petitioners/accused. The relevant parts of her statement in this respect are reproduced hereunder for ready reference:-

*"It is correct that I appeared before the Magistrate three/four time during my stay in Dar ul Aman. It is correct that whenever I appeared before the Magistrate I never stated before the Magistrate about my abduction and commission of rape. It is correct that on the day of my release I appeared before the Magistrate and it is also correct that on that day I also did not state before the Magistrate about my abduction and commission of rape. It is correct that many police officials were present in the Katchery premises always."*

.....

*"It is correct that I always got recorded my statement before the Magistrate to stay further in the Dar-ul-Aman."*

It is, therefore, evident that the prosecution story of forcible abduction and rape of the alleged abductee was result of an afterthought of the abductee and her family members after return of the alleged abductee to her parent's house. It is further noteworthy that no ornament or cash amount was recovered from any accused. As per medico legal report, no mark of violence was noted on the body of Mst. Aqsa Riaz (PW-1).

6. In the light of above, we have come to this irresistible conclusion that neither it was a case of forcible abduction punishable under Section 365-B PPC nor it was a case of forcible intercourse/rape punishable under Section 376 PPC. It is evident from the perusal of above-mentioned evidence that Mst. Aqsa Riaz (PW-1) had left her house with her free will and consent, whereafter, Asif Masih, petitioner, committed intercourse with her with her consent due to which an illegitimate child was born. The ingredients of offence of commission of *zina* with consent punishable under Section 496-B PPC are, however, proved in this case only to the extent of Asif Masih, petitioner, on account of the evidence of Mst. Aqsa Riaz and medical evidence brought on the record through Dr. Sumera Ashraf (PW-12), as well as, positive report of DNA test (Ex.PM), whereby Asif Masih (petitioner) was found to be the biological father of the illegitimate child of Mst. Aqsa Riaz (PW-1). Although, it is argued by the learned DPG that while keeping in view the provisions of Section 496-B PPC, Mst. Aqsa Riaz (PW-1) is also liable to be convicted and sentenced for offence of *zina* with consent but we have noted that she was not made an accused in this case by the Police. No charge was framed against her by the learned Trial Court and she has not been provided a chance to cross-examine the

prosecution witnesses and defend herself, therefore, it will not be justified to convict and sentence her in absence of fulfilment of the legal requirements. Reference in this context may be made to a majority judgment passed by this Court (approved for reporting) in the case of Muhammad Imran vs. The State in Criminal Misc. Application No. 374/2024 in Criminal Petition No. 725/2023. In the light of above, the conviction and sentence of Asif Masih, petitioner, for the charge under Section 376(i) PPC is set aside. He is, however, convicted under Section 496-B PPC and sentenced to undergo five years rigorous imprisonment. He is also directed to pay fine amounting to Rs.10,000/- or in default thereof to further undergo three months' rigorous imprisonment. Benefit of Section 382-B Cr.P.C. is also extended to Asif Masih, petitioner. To the extent of Asif Masih, petitioner, this petition is converted into an appeal and is partly allowed in the above-mentioned terms. The impugned judgment is modified accordingly.

7. Insofar as the case of Qasim Iqbal and Sajid Majeed, petitioners, are concerned, we have noted that the said petitioners have already been acquitted by the High Court from the charge under Section 376(ii) PPC and they have been convicted and sentenced only for the offence under Section 365-B PPC but, as mentioned earlier, the case of abduction of Mst. Aqsa Riaz as envisaged under Section 365-B PPC could not be proved by the prosecution. The prosecution evidence in this respect is not worthy of reliance. We have already held that the alleged abductee Mst. Aqsa Riaz with her free will and consent had left her house, whereafter, Asif Masih, petitioner, committed intercourse with her with her consent. Consequently, to the extent of Qasim Iqbal and Sajid

Majeed, petitioners, this petition is converted into an appeal and allowed. The impugned judgment to their extent is set aside. They are acquitted of the charge. They shall be released from the jail forthwith unless required to be detained in any other case.

8. Above are the detailed reasons of our short order of even date.

JUDGE

JUDGE

JUDGE

Islamabad, the  
12<sup>th</sup> of February, 2025  
Approved For Reporting  
Khurram