

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

Mr. Justice Syed Mansoor Ali Shah
Mr. Justice Qazi Muhammad Amin Ahmed

Criminal Petition Nos.92-K and 100-K of 2021

*(Against the order dated 9.3.2021 passed by the High Court of Sindh
at Sukkur in Cr. A. Nos.4 & 79/2015)*

Manzoor Ahmed and others

(in Cr. P. No.92-K/2021)

Akbar

(in Cr. P. No.100-K/2021)

...Petitioner(s)

Versus

The State

(in both cases)

...Respondent(s)

For the Petitioner(s):

Raja Jawad Ali Saahar, ASC

(in Cr. P. 92-K/2021)

Mr. Ejaz Ahmed Awan, ASC

(in Cr. P. 100-K/2021)

For the State:

Mr. Zafar Ahmed Khan,

Addl. Prosecutor General Sindh

(in both cases)

Date of hearing:

12.10.2021.

ORDER

Qazi Muhammad Amin Ahmed, J.- Mst. Pathani, 16, was forcibly abducted from her house located within the precincts of Police Station Khairo Diro District Jamshoro at 11:00 p.m. on 19.3.2012; her father Hamzo Khan (PW-1) nominated Baqir, Akbar sons of Ghulam Hussain, Fida Hussain, Aslam son of Akbar Rodani, Ahmad son of Ghulam Hussain, Manzoor, Ali Muhammad sons of Ahmed, Ilahi Bukhsh, Taj Muhammad, Dawan Hussain sons of Faiz Muhammad, Niaz Hussain son of Haji Muhammad as suspects; according to him, the accused, variously armed, barged into his dwelling house and took away the prosecutrix within the view of the family members, who upon resistance were thrashed by the intruders; the injured were medically

examined on 20.03.2012. As the investigation progressed, the prosecutrix was recovered from Baqar's house, absconding co-accused, who himself fled from the scene on 24.07.2012; medical examination on the following day confirmed carnal assault on the prosecutrix with a pregnancy of nine weeks; in her statement, she blamed Akbar petitioner (*in Cr. P.100-K*) alongside Baqar, Fida Hussain and Aslam, absconding till date, for having repeatedly molested her. Barring the absconders, the accused were indicted by a learned Addl. Sessions Judge at Sehwan who returned them a guilty verdict, vide judgment dated 04.01.2014, detailed as below:

"All the accused

U/s 147/148/149 PPC

U/s 337-L(ii) PPC

U/s 337-A(ii) PPC

U/s 363 PPC

Akbar, accused

U/s 376(2) PPC

3-years with fine of Rs.200/- each in default 20-days SI

2-years RI with Daman/fine of Rs.300/- each injured, in default SI for one month and also Daman of Rs.500/- to Sain Bux injured and SI for one month in default.

1-year RI with fine/Arsh @ 5% i.e.1,07000/- jointly payable by all accused to Mazhar Hussain injured with further 3-years RI

5-years RI with fine of Rs.10,000/- to be paid to victim Mst. Pathani and six months SI in case of default

Life imprisonment with fine of RS.50,000/- to be paid to the victim or SI for six months in default of payment

Benefit of Section 382-B Cr.P.C. is extended to all the accused

all the accused, except Akbar, were acquitted from the charge of rape."

The High Court upheld the convictions as well as sentences consequent thereupon vide impugned judgment dated 23.06.2021, being separately assailed by the convicts through captioned captions; bound by a common thread, these are being decided through this single judgment.

Raja Jawad Ali Saahar, ASC for Manzoor Ahmed, Ali Muhammad, Niaz Hussain Illahi Bux, Taj Muhammad, Dawan and Ahmed (*in Cr. P. No.92-K/2021*) does not contest convictions and instead prays for

reduction of sentence to the period already undergone by them, in view of the riders provided under subsection 2 of section 337 N of the Pakistan Penal Code, 1860I; he pledges payment of compensation to the injured as directed by the learned trial Court. Learned Law Officer is not averse to the prayer made at the bar, as according to him, the case of aforesaid convicts, being first offenders, is covered by subsection 2 of section *ibid*. Criminal Petition No.92-K of 2021 is dismissed as not pressed, however, sentences awarded to the petitioners therein are reduced to the period already undergone by them; upon payment of compensation, they shall be released forthwith, if not required to be detained in any other case.

2. Learned counsel for Muhammad Akbar petitioner contends that in the absence of a D.N.A. analysis, the petitioner cannot be saddled with the responsibility of carnal assault merely on solitary statement of the prosecutrix; adds that the prosecutrix was not recovered from petitioner's custody, a circumstance that escaped notice of the learned courts below; complainant cast a wider net and it would be unsafe to maintain the conviction with a lifetime incarceration, concluded the learned counsel. The learned Law Officer contends that an hapless minor girl callously dragged out from the safety of her home was jointly molested, a beastly act, medically confirmed with a fetus in the uterus, the petitioner, being one of the offenders, has already leniently been visited with the alternate penalty of imprisonment for life; he has taken us to the statement of the prosecutrix to argue that petitioner's guilt is proved to the hilt.

3. Heard. Record perused.

4. Five members of the family with stamp of injuries unanimously blamed the petitioner and co-convicts for having intruded into the dwelling to abduct the prosecutrix; she was recovered by the police after almost four months from the house of Baqir co-accused, still away from law; medical evidence confirmed carnal assault with a fetus in its aftermath, leaving no space to entertain any hypothesis other than sexual assault; witnesses in a comfortable unison faced directionless cross-examination, mostly comprising of suggestions vehemently denied, without embarrassment; most inspiring is statement of the prosecutrix, having endured the trauma, she related graphic details of abduction and subsequent treatment meted out during her captivity. In a rural neighbourhood, it is hard to believe that

a family would join hands to level a false accusation at the cost of a perennial stigma, that too, without any motive or reason. Even investigative conclusions do not admit the hypothesis of a false case nor the learned counsel his persistent denial, notwithstanding, has not been able to point out any flaw or infirmity in the statements of the witnesses. In particular, statement of the prosecutrix does not admit a slightest doubt and as such by itself constitutes formidable evidence to independently drive home the charge with the support of irrefutable clinical evidence, preponderance whereof does not require a confirmatory D.N.A. profile generation, a facility otherwise scarcely available way back in the year 2012; appraisal of evidence by the courts below, being in accord with the principles of safe administration calls for no interference. Petition fails. Leave declined.

Judge

Judge

Islamabad, the
12th October, 2021
Azmat/-