

IN THE SUPREME COURT OF PAKISTAN

(Appellate Jurisdiction)

PRESENT:

Mr. Justice Mazhar Alam Khan Miankhel
Mr. Justice Qazi Muhammad Amin Ahmed
Mr. Justice Jamal Khan Mandokhel

**Criminal Appeal No.3-Q and
Criminal Petition No.29-Q of 2021**

(Against the judgment dated 22.02.2021 passed by the High Court of Balochistan, Sibbi Bench in CrI. Revision and Appeal No.(S)30 & 114 of 2019)

Abdul Ghani

(in both cases)

...Appellant/Petitioner (s)

Versus

The State through P.G. Balochistan & another

(in Cr.A.3-Q/2021)

The State through P.G. Balochistan

(in Cr.P.29-Q/2021)

...Respondent(s)

For the Appellant/
Petitioner(s):

Mr. Ahsan Rafiq Rana, ASC
(in both cases)

For the State:

Mr. Abdul Razzaq Sher, ASC
(in both cases)

For the Complainant:

Mr. Noor Jahan Kahor,
Addl. Prosecutor General Balochitan
(in both cases)

Date of hearing:

03.11.2021.

ORDER

Qazi Muhammad Amin Ahmed, J.- The appellant, indicted for violating Fazeela prosecutrix, 9, was returned a guilty verdict by a Juvenile Court at Naseerabad, District Dera Murad Jamali; convicted under section 376(1) of the Pakistan Penal Code, 1860 he was sentenced to 10-years R.I. vide judgment dated 07.08.2019, enhanced to imprisonment for life by a learned Division of Bench of the High Court of Balochistan vide impugned judgment dated 22.02.2021, *vires* whereof, are being assailed through the captioned petition as well as appeal as of right.

2. According to the prosecution, the prosecutrix Fazeela Bibi (PW-1) accompanied by her sister Shireen (PW-2) was grazing goats when the appellant, no other than her father's first cousin, taking advantage of solitude violated her within the view of her younger sister; she was found lying unconscious when pursuant to information

conveyed by Shireen, the family approached her lying unattended. This happened on 12.7.2018 at 4:00 p.m. whereas the report was laid with the police at 5:00 p.m. followed by medical examination of the victim on 13.7.2018 that clinically confirmed carnal assault; samples dispatched for generation of D.N.A. profile as well as confirmation of seminal stains were returned in the negative.

2. Learned counsel for the appellant contends that the prosecutrix as well as her younger sister, being impressionable children of extreme tender age, respectively 9 and 8 years, were not worthy of credit and, thus, implicit reliance upon their testimony is an option fraught with the potential risk of error, a fundamental flaw that escaped notice by the courts below; negative forensic report inescapably casts shadow on the reliability of prosecution case, benefit whereof cannot be withheld; it is alternately argued that in any case there was no occasion for the High Court to enhance the legal sentence particularly in view of tender age of the appellant with no history to haunt his past; tried as a juvenile, the wage settled by the learned trial Judge could not be viewed as inappropriate warranting interference by the High Court, concluded the learned counsel. The learned Law Officer has faithfully defended the impugned judgment; according to him, wage settled by the High Court is most conscionable in circumstances.

2. Heard. Record perused.

3. The incident occurred in a remote rural part of the Province of Balochistan when the prosecutrix's father was away to Quetta and rushed back upon receipt of information. In this backdrop, the crime is reported with a remarkable promptitude; petitioner being a close family relation, the timeframe does not space any hypothesis of consultations or deliberations. The child being in tender nubility is clinically established to have been violated, a circumstance that required no further forensic corroboration. Negative reports do not reflect upon the veracity of prosecution case for reasons more than one. D.N.A. profile generation though a most meticulous method with unfailing accuracy, nonetheless, requires an elaborate arrangement about storage and transportation of samples, a facility seldom available. Even a slightest interference with the integrity of samples may alter the results of an analysis and, thus, the fate of prosecution case cannot be pinned down to the forensic findings alone, otherwise merely presenting a corroborative support, hardly needed in the face of overwhelming evidence, presented by the prosecution through sources most

unimpeachable. Penetration is sufficient to constitute the offence and there are many factors, physical as well as psychological, that may intervene during a carnal assault, impeding complete consummation of carnal assault. Such subsequent failures do not redeem the enormity of initial assault, a case otherwise established to the hilt. Given the violence inflicted upon the child, enhancement of appellant's sentence by the High Court, his juvenility notwithstanding, nonetheless, cannot be viewed as excessive or harsh. Petition as well as appeal fail. Dismissed.

Judge

Judge

Judge

Quetta, the
3rd November, 2021
Azmat/-