

IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT:

MR. JUSTICE IJAZ UL AHSAN

MR. JUSTICE SAYYED MAZAHAR ALI AKBAR NAQVI

CRIMINAL PETITION NO. 75-Q OF 2021

(On appeal against the judgment dated 01.07.2021 passed by the High Court of Balochistan, Quetta in Criminal Appeal No. 31/2020)

Zahid son of Muhammad Ishaq

... Petitioner

VERSUS

The State

... Respondent

For the Petitioner: Mr. Kamran Murtaza, Sr. ASC

For the State: Mr. Baqir Shah, State counsel

Date of Hearing: 21.10.2021

ORDER

SAYYED MAZAHAR ALI AKBAR NAQVI, J.- Petitioner was proceeded against in terms of the case registered vide FIR No. 43/2020 under Sections 377-B/354/511 PPC at Police Station Noshki for sexually abusing the daughter of the complainant and for using criminal force to the complainant. The learned Trial Court vide its judgment dated 12.06.2021 convicted and sentenced the petitioner as under:-

- i) **Under Section 377-B PPC**
To suffer 5 years RI and to pay fine of Rs.500,000/- or in default whereof to further suffer six months SI.
- ii) **Under Section 354 PPC**
To suffer 2 years RI.

Both the sentences were directed to run concurrently. Benefit of Section 382-B Cr.P.C. was also extended to the petitioner.

2. In appeal, the learned High Court vide impugned judgment, upheld the conviction and sentences recorded by the learned Trial Court. Hence, this petition seeking leave to appeal.

3. The facts of the case as given in the impugned judgment are as under:-

"2. Precise facts of the case are that on 27th March, 2020 case FIR No. 43 of 2020 under Sections 377-B, 354, 511 PPC was registered with PS Noshki on the report of Mst. Najma wife of Ali Jan with the allegation that on 26.03.2020, at about 2:00 p.m. she sent her daughter

namely Shahida aged about 7 years to the shop for bringing matchbox but she did not return whereupon she herself went to the shop of Shafi Muhammad and asked him about her daughter, who told that her daughter did not come here, whereafter she searched her here and there, in the meanwhile she heard hue and cry of her daughter from the Baitak of her neighbor Zahid, as such she knocked the door of the Baitak, whereupon accused Zahid opened the door and she entered inside the room, where her daughter was fully naked but Zahid did not allow her to go ahead and attacked upon her and torn her shirt and also threw away her minor child from her lap thereafter she put clothes upon her daughter and went to her house along with her daughter, where her daughter Shahida told her that accused Zahid forcibly took her in his Baitak, removed her clothes and attempted to give his penis in her mouth." The convict has done so even earlier.

4. *After completion of the investigation, a challan under Section 173 Cr.P.C. was submitted before the Trial Court. The prosecution in order to prove its case produced five witnesses. In his statement recorded under Section 342 Cr.P.C the petitioner pleaded his innocence and also produced three witnesses in his defence.*

5. *Learned counsel for the petitioner contends that the FIR was registered after a delay of more than 22 hours, which shows that it was registered after deliberation and consultation to falsely frame the petitioner in the picture. Contends that the learned courts below have not appreciated the evidence in its true perspective and undue weight was given to the prosecution witnesses despite glaring contradictions. Contends that no independent witness was produced by the prosecution and all the witnesses who appeared before the Court are interested one. Contends that the medical evidence does not support the ocular account as no sign of injury was seen on the body of the victim. Lastly contends that the impugned judgment being contrary to law and facts, the same may be set aside and the petitioner may be acquitted of the charge.*

6. *On the other hand, learned State counsel defended the impugned judgment. He contended that the petitioner is involved in a heinous offence and the evidence available on record is sufficient to prove the case against him, therefore, he does not deserve any leniency by this Court.*

7. *We have heard learned counsel for the parties at some length and have perused the evidence available on record.*

In the instant case, the petitioner was proceeded against in pursuance of the aforesaid crime report wherein serious allegations are leveled against him. The most alarming allegation against the petitioner is that he tried to sexually harass a young girl aged about 7 years, which is a very disgusting act. The petitioner was investigated at length and was found involved as per accusation leveled in the crime report. During the course of trial, the learned Trial Court after taking into consideration all the facts and circumstances of the case and the evidence available on the record convicted the petitioner as stated above, which conviction and sentence was upheld by the learned High Court. Today during the course of proceedings before us we have carefully evaluated the testimonies of prosecution witnesses i.e. Mst. Najma, complainant (PW-1) and Mst. Shahida Bibi (PW-2). The whole prosecution case qua ocular account hinges upon the testimonies of these two witnesses. Amongst these two witnesses Mst. Shahida Bibi happens to be the victim of the occurrence. While making her statement in Court, she has narrated the whole occurrence in a very mature and natural manner touching the contents of the crime report on all aspects without any disconnection. Although the victim was of tender age, however, her statement depicts maturity of the highest level, which is in consonance with the statement of Mst. Najma (PW-1), who happens to be her mother. The victim has directly charged the petitioner for sexually abusing her while detailing the acts committed by him on the day of occurrence. She has further alleged that the petitioner was in the habit of doing this even earlier to the present incident. Although she was cross-examined at length but her statement remained in line and was testified in the most natural style, which reflects that whatever she has stated before the Court, she has stated the truth. As far as the identity of the petitioner is concerned, there is not an iota of doubt about his identity because he being the neighborer of the victim was conversant with her. It is an apathy to mention that such like cases are at the verge of rise in the society, which has to be curbed with iron hands. Although in the instant case, the statement of the victim is fully corroborated by the statement of PW-1 but law is very clear about this that the statement of the victim in isolation itself is sufficient for conviction if the same reflects that it is independent, unbiased and straight forward to establish the accusation against the accused. In a recent judgment reported as Atif Zareef Vs. State (PLD

2021 SC 550) this Court has categorically held that "rape is a crime that is usually committed in private, and there is hardly any witness to provide direct evidence of having seen the commission of crime by the accused person. The courts, therefore, do not insist upon producing direct evidence to corroborate the testimony of the victim if the same is found to be confidence inspiring in the overall particular facts and circumstances of a case, and considers such a testimony of the victim sufficient for conviction of the accused person. A rape victim stands on a higher pedestal than an injured witness, for an injured witness gets the injury on the physical form while the rape victim suffers psychologically and emotionally." The victim had specifically named the petitioner in his testimony before the Court and had fully identified him. There was no previous enmity between the parties, which could lead to false implication of the petitioner in the present case. So far as the delay in lodging the FIR is concerned, the learned High Court while relying on the judgment of this Court reported as Zahid Vs. State (2020 SCMR 590) has rightly held that in such like cases victims or their families are 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, therefore, the delay in reporting a sexual assault to the police is not very material. So far as the argument of learned counsel that according to medical evidence no sign of injury was found on the person of the victim is concerned, the prosecution case is that the petitioner had sexually abused the minor girl by firstly undressing her and then by touching his genital organ on the chest of the victim and he also tried to put his organ in the mouth of the victim. In such eventuality when the victim was only of seven years old and did not know as to what is happening with her and keeping in view the fact that the petitioner was known to her previously, the victim may not have resisted in front of the petitioner, therefore, mere non-availability of any sign of injury is of no help to the petitioner. We have perused the statements of the three defence witnesses produced by the petitioner and could not find any credibility in the same. The DWs only made general statements and did not mention about the happening of the occurrence or anything related to the occurrence. They even could not remember the date of the incident.

As far as the plea of the petitioner in his statement under Section 342 Cr.P.C. that the husband of the complainant (PW-1) was out of country and in his absence different people would visit her house and when she was forbidden, a quarrel took place between the complainant and his mother and due to this reason he was implicated in this case is concerned, suffice it is to say that no one would defame her minor daughter only on some minor quarrel because the honor of female daughter is always more precious for a mother to take revenge on a trifle issue, therefore, the same appears to be a concocted story just to save the skin.

8. *For what has been discussed above, this petition having no merit is accordingly dismissed and leave to appeal is refused.*

JUDGE

JUDGE

Islamabad, the
21st of October, 2021
Approved For Reporting
Khurram