

Annex (A)

IN THE COURT OF II ADDL. DISTRICT & SESSIONS JUDGE
KARACHI EAST
BEFORE: MR. NADEEM AHMED KHAN.
Sessions Case No. 179 of 2008.

(21)

The State.....Complainant.

Versus

01. Khadim Hussain Shah
s/o Willayat Hussain Shah.
02. Arif Ansari s/o Anwar Ali Ansari.
03. Raja Muhammad Arif
s/o Raja Muhammad Afzal.....Accused.

FIR NO.50/2008.
U/S. 365-B/376(ii) of the
Protection of Women (Criminal
Laws Amendment) Act 2006.
P.S. Brigade, Karachi East.

Mr. Ghulam Mustafa Memon,
Advocate for the Accused Khadim Hussain Shah.

Mr. M.R. Syed, Advocate for the Accused Arif Ansari.

Mr. Maqbool-ur-Rehman,
Advocate for the Accused Raja Muhammad Arif.

Miss. Fareeda Moton & Mrs. Asia Muneer,
Advocates for the Complainant.

Mr. Muhammad Younus, DDPP for the State.

J U D G M E N T.
Dated:06.04.2013.

Accused persons above named have been sent up by the Brigade, police station; Karachi to face the trial for the offence punishable under Section 365-B/376(ii) of the Protection of Women (Criminal Laws Amendment) Act 2006, in FIR No.50 of 2008 of the same police Station.

Brief fact as narrated in the FIR are that complainant Bashir Ahmed lodged FIR stating therein that they came from

Punjab alongwith other family members on two buses to Sehwan Sharif for Ziarat purpose. Thereafter on 15.03.2008 they visited Karachi at the Mazar of Quaid-e-Azam Muhammad Ali Jinnah where they were visiting the Mazar and their buses were parked outside the Mazar. At about 2100 hours his son in law Fayyaz Hussain alongwith Fida Hussain and his daughter Razia Kubra (victim) and other 12 women went to see the museum whereas his daughter at the instance of her husband stood there. Her husband disclosed with her that he would bring the other family members and after 15 minutes when he came back his above said daughter was not present there. His son in law informed the complainant to make efforts to search her but could not find her. The complainant suspected on the employee of museum as well as employee of Mazar Quaid to kidnap his daughter with intent to commit zina.

After registration of the FIR abductee was recovered and her statement under section 164 Cr.P.C. was recorded before the concerned Magistrate wherein she disclosed that while her husband Fayyaz went to bring his sister that two persons came there, one of them put the handkerchief on her mouth and another person aimed pistol upon her and brought her in a room adjacent with the museum where three other persons came there and all five persons committed zina with her. Police arrested the accused persons above named.

Investigation Officer after conducting usual investigation has submitted charge sheet against the above named accused before concerned Magistrate. Case was received to this court on 07.06.2010 by the order of Hon'ble District & Sessions Judge, Karachi East for disposal according to law.

In compliance of section 265-C Cr.P.C, copies supplied to the accused persons above named at Ex.01 & Ex.2.

A formal charge under section 265-D Cr.P.C at Ex.03 framed and read over to the accused persons above named under

further produced letter dated 07.04.2008 issued by SSP South investigation alongwith copies of the FIR, Medico legal certificate of accused Arif Ansari and Raja Muhammad Arif at Ex.13/M to Ex.13/P respectively. He further produced first certificate of the accused Arif Ansari and Raja Muhammad Arif dated 24.04.2008 at Ex.13/Q, letter of second certificate dated 23.10.2008 at Ex.13/R, letter of SSP Investigation Zone-II South dated 02.10.2009 at Ex.13/S, another letter dated 16.10.2008 issued by SSP Investigation South at Ex.13/T and letter dated 08.05.2008 at Ex.13/U. Lastly he produced log sheet consisting of pages No.24, 25 & 31 at Ex.13/V. PW-10 WMLO Dr. Rohina Hassan examined at Ex.14, who produced medical certificate of Razia Kubra at Ex.14/A, letter dated 17.03.2008 address to MLO at Ex.14/B and final report at Ex.14/C. Statement of process server ASI Gul Dost Khan was recorded at Ex.15 wherein he reported that PW SI Sabir Hussain has been expired on 01.04.2010 and HC Muhammad Hayat has been retired from his service. PW-11 PC Zafar Iqbal examined at Ex.16, who produced memo of arrest & search of accused dated 24.03.2008 at Ex.16/A and memo of arrest and search of accused dated 24.04.2008 at Ex.16/B. PW-12 Inspector Abid Hussain Ansari examined at Ex.17. Since the IO of the case reported to be died, therefore, PW-13 Inspector Abid Ansari examined at Ex.18 being well conversant to the signature and handwriting of I.O. PW-14 Judicial Magistrate Javed Hussain examined at Ex.19, who produced letter dated 22.03.2008 for identification parade at Ex.19/A and memo of identification parade at Ex.19/B.

Thereafter prosecution closed its side vide statement at Ex.20.

Statements of accused persons were recorded u/s 342 Cr.P.C. at Ex.21 to Ex.22, wherein, they denied the allegation of prosecution leveled against them and pleaded to be innocent. Accused persons namely Arif Ansari s/o Anwar Ali Ansari and Raja



Muhammad Arif s/o Raja Muhammad Afzal neither examined themselves on oath nor produced any evidence in their defence while accused Khadim Hussain Shah s/o Willayat Hussain Shah inclined to examine himself on oath and produced witnesses in his defence.

Accused Khadim Hussain s/o Willayat Hussain Shah examined himself on oath u/s 342 (2) Cr.P.C. at Ex.24 and produced news clipping at Ex.24-D/1 & Ex.24-D/2. He deposed that on 15.3.2008 he was security assistant manager in night shift incharge of Affaf Company. On the same day he came on his duty at about 9.30.p.m. On the same day his associate Saqib also with him on duty. During duty hours they were checked the guards round a clock till completion of duty hours. After resuming his duty he came to know from day incharge that one woman was missing from the Mazar infront of Museum. After hearing of such news he informed to his security guards to become abort and he accompanied with Saqib search the whole mazar of Quid but they could not succeed to trace out the woman who missed from Mazar. After 3 & 4 days of the incident his incharge Mr. Arif called him in his office. He alongwith Riaz met with incharge Mr. Arif. In outside of the office of Mr. Arif one lady was present with the person belongs to NGOs might have namely Dr. Khalida Zia, who introduced/pointed out him as Khadim Hussain before the woman present with her. After 02 days police arrested him from Mazar-e-Qaid and brought at police station where Deputy Speaker Shehlah Raza and the person of NGOs also gathered. He produced photo graphs with news clipping which shows the presence of Deputy Speaker Shehlah Raza at Ex.24-D/1 and photo graph of Deputy Speaker with advocate



(31)

on the day when identification parade held before the Magistrate. He produced the same at Ex.24-D/2.

In his defence accused Khadim Hussain examined DW-1 Muhammad Qasim at Ex.25, who deposed that on 15.03.2008 he was serving at Mazar-e-Quaid as guard. He knows accused Khadim Hussain, he was supervising officer. On that day Khadim Hussain came on the duty at 10.00.p.m. he was on his duty at the gate situated towards Nomaish and there were also deployment of Rangers. On the same night two persons one male and one female before him and narrated him that their daughter was missing. When he inquired from them they apprised that one and half hours back their daughter was missing. He advised them to approach to the control room. They received direction from the control room that they should accompany with male and female in order to locate their daughter in missing area. At about 3.30.a.m. of the same night one young girl appears and stood at near the grill where rangers persons also standing there. Meantime police also arrived there and they said the girl that 200 persons in search of her. On inquiry of police official the girl disclosed that she was at the Mazar of Abdullah Shah Ghazi, she further deposed that she slipped from the Mazar-e-Quaid.

Thereafter statement of bailiff Abdul Wahab was recorded at Ex.26. DW-2 Naila Tabassum, Advocate, examined at Ex.27. She deposed that she has been authorized by Television Media Net Work Private Ltd (Express New) to appear before this court and produce the clipping of the incident which happened in the area of Shahrah-e-Quaid-e-Azam. She produced CD/News clipping/Drama Jorum ka Bad at Ex.26/B. During the cross examination she admitted that in the CD which she produced there are clips of Mohterma Shehla Raza Deputy Speaker of Provincial Assembly and victim Razia Kubra. He further admitted that in the CD there appears appearance of victim and Deputy Speaker before

the court. She is not in her knowledge and not seen in CD that (33) victim and Deputy Speaker Shehla Raza appears in police station.

Now the points for determination are as under:-

POINTS

Point No.1. Whether the accused persons above named kidnapped victim Razia Kubra d/o Bashir Ahmed with intention to commit illicit intercourse and took her in a store room situated near Museum situated within boundary of Mazar-e-Quaid-i-Azam where accused persons committed zina bil Jabbar with victim Razia Kubra?

Point No.2. What should the order be?

Heard the arguments of learned counsel of the accused persons, complainant and DDPP for State, gone through the entire record of the case and material placed thereon as well as evidence. Learned counsel for the accused persons in support of their arguments relied upon the case laws reported in 2011 SCMR (Supreme Court of Pakistan), 1985 SCMR 721, PLD 2005 Lahore 589, 2011 SCMR 769 (Supreme Court of Pakistan), 1997 SCMR 25 (Supreme Court of Pakistan), 1999 SCMR 2844 (Supreme Court of Pakistan), 1998 SCMR 854 (Supreme Court of Pakistan), and SBLR 2011 Sindh 1653 (High Court of Sindh (Hyderabad)).

My findings along-with the reasons on the above points

are as under :-

FINDINGS:

Point No: 1.....Not Proved.

Point No: 2.....Accused acquitted
u/s 265-H(i) Cr.P.C.

REASONS.

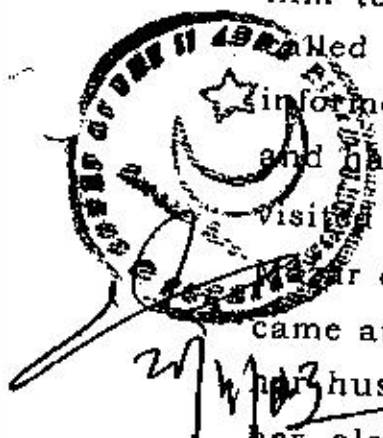
POINT NO.1.

The burden to prove this point lies upon the prosecution and the prosecution examined 14 witnesses, who gave the ocular account of the event.

20/4/13
2

(35)

PW-1 ASI Asghar Ali Chohan deposed that on 16.3.2008 he was assigned night patrolling duty with official mobile-1 of PS, the Mobile was driver-by driver PC Hafeez. HC Tariq, PC Abid were patrolling within the jurisdiction of PS Brigade. During the patrolling while they reached near the gate of Mazar-e-Quaid in front of Baab-e-Rehmat Mosque. One mobile bearing No. 8585 of Ranger was already available there. He was called by the HC Allah Ditta of Ranger 92 Wing "D" Company. He asked him about a girl, who was standing there that she was not disclosing anything with them, therefore, he asked him to inquire from that girl about her identity etc. He called the girl, who disclosed her name to be Razia. She informed that she belongs to District Lodhran, Punjab and had come with about 60 to 65 persons and they first visited Sehwan Shareef and then they came for visit at Mazar of Abdullah Shah Ghazi and on the next date they came at Mazar-e-Quaid for their visit. She disclosed that her husband and her father were also accompanied with her alongwith other relatives. She informed that while they entered within the boundary of Mazar-e-Quaid, she became separated from her relatives/companions. She further informed that inside the boundary of Mazar-e-Quaid two persons met with her and asked her as to why she was standing alone, for which she disclosed that had become alongwith her ladies which have missed from her. These persons asked her for helping to her in order to trace out her relatives. She informed that those two persons brought her at their place/premises. The lady was at that time semi-conscious, he brought her at PS and handed over her to SI Munir Ahmed Siyal and he returned back on his duty for patrolling. During the course of his cross examination he admitted that "it is



(37)

disclosed in my Entry that I informed to the father of the lady about the facts". He admitted that "I did not produce the lady before any medical officer for her treatment and certificate as she was appearing semi-conscious". He further admitted that "it is disclosed in Roznamcha Entry that the lady informed me that her relatives asked her for wait on the gate of tomb and her companions went inside of the Tomb". He further deposed that "I did not visit the Sewan Shareef while the victim alongwith her parent visited there. I also not witnessed if the victim had proceeded from Lodhran through Bus. I also am not the witness if the victim alongwith their relatives visited the shrine of Abdullah Shah Ghazi. I am also not the witness if the lady alongwith her relatives visited at Mazar-e-Quaid. It is incorrect to suggest that neither the lady was met with me in front of mazar-e-Quaid in alone condition nor she disclosed the facts, which facts I have disclosed in my deposition nor she was brought at PS by me and the Roznamcha Entry also made by me is factious".

PW-2 Mst. Razia Kubra w/o Fayyaz Rahim (victim) deposed that on 15-3-2008 she alongwith her husband, and other brotherly peoples came from Lodhran, Punjab by bus and first of all they went to visit Lal Shahbaz at Sahwan Shareef, thereafter went to Noorani Mazar and then proceeded to Karachi at Abdullah Shah Ghazi Mazar, Karachi and finally they reached at Qaid-e-Azam Mazar at 9.00 p.m. Her husband asked her to wait for him near by Museum of Qaid-e-Azam while he was going to find out other companions. In the meanwhile two persons came there, one of them kept handkerchief on her mouth and another person kept pistol on her head and took her to the underground dark room of Mazar-e-Quaid-e-Azam, they

(39)

brought of glass of water and asked her drink the same and she did drink the said water, they brought of further larger quantity of water and offered her the same which she also drunk. When as a result thereof she became unconscious of those persons became closed to her and touched her body and she pushed him back but inspite of that he again came closed to her and forcibly committed rape with her and thereafter the remaining five persons also turn by turn forcibly committed rape with her in the said room when she recovered from unconsciousness, because quite conscious she found herself at a Police Station and there police officials put to her some questions and inquired from her about the incident and after two days she was produced for appearance before the WMLO, Government hospital, Karachi for her medical examination by the lady doctor and after two days thereof she showed the place of incident and also the place where they kidnapped her, where police was prepared such mushirnama. Police also took her clothes in their custody and after two week thereof police produced her before the Magistrate for recording her statement under section 164 Cr.P.C. She saw her statement which was recorded by the Magistrate on which there are her three thumb impressions. She produced the statement under section 164 Cr.P.C at Ex. 5/A. She saw the accused persons who are present in court under custody and she identified accused Khadim Hussain bearing beard who had committed rape with her in the said dark rompm of Mazar-e-Quaid-e-Azam. While remaining two other accused are also present in court under custody but they were not identified by the witness/victim. After two week thereafter the identification parade was held and she identified the accused persons. Police also recorded her statement under section 161 Cr.P.C. During the course of cross examination she admitted that "I see the clothes as article II, it is not of me". She admitted that "after two days of the incident she had appeared before WMLO but she does not remember the exact time". She further admitted that "she does



26/4/17

(41)

not remember as how much time she remained in the said government hospital, Karachi". She admitted that "she does not remember that after her medical examination she went to police station or to her house". She added that After her medical examination from the said government hospital she was sent to Darul Aman, Karachi. She further admitted that "when they reached at Qaid-e-Azam Mazar she was accompanied by 11/12 ladies". She further admitted that "in her 161 Cr.P.C statement on 18-3-2008 which was recorded by police she has stated that the said ladies were accompanied with her at the time of reaching the Museum of Quaid-e-Azam Mazar".

PW-3 Bashir Ahmed (father of the victim Razia Kubra) deposed that the incident took place on:15.03.2008 at Mazar-e-Quaid, near Museum. His daughter Razia Kubra alongwith Fayyaza, Fida Hussain and other 10-12 women went to Mazar-e-Quaid at about 9.30 p.m. At that time he was available in Patel Para. PW-Iqbal informed the incident to one Pathan. The said Pathan disclosed the facts to him. He immediately rushed to Mazar-e-Quaid at about 11.00 p.m. Fayyaz and Fida Hussain told him that at about 9.15 Mst. Razia Kubra was standing near Museum. He further disclosed that his daughter mis-placed from the said place where she was standing. He and his brotheri people tried to search the victim till Fajar prayer but she could trace out. In the day they also tried to search the victim Razia Kubra and finally went to P.S. Brigade and lodged the FIR at about 7.40 p.m. At Ex: 6/A . After lodging the FIR he alongwith SIP Sabir again came to Mazar Quaid. SIP inspected the place of incident and prepared such memo. Investigating Officer recorded his statement U/s 161 Cr.P.C. During the course of his cross examination he admitted that "I do not know the name of Pathan. I had not seen any police official or military official at the place of incident when I reached at the place of incident. 60-70 persons came to Karachi in two Mazda Bus from Lodhran".

29/4/13

(43)

PW-4 Fayyaz Hussain (Husband of victim) deposed that on 15.03.2008 he alongwith his wife, 10-12 women and Fida Hussain came at Mazar-e-Quaid, at about 8.45 p.m. in two buses. He alongwith Fida Hussain and his wife and other women entered in the Mazar-e-Quaid. When they reached at Museum. He asked his wife to stand at museum and he went to main gate to receive other bus. When he returned back to museum and found his wife was not present there. All of them tried to search her whole night but could not find. On 16.3.2008 his father in law Bashir Ahmed lodged the FIR at P.S. Brigade at 7.40 p.m. On the same night at about 8.15 p.m. he alongwith SIP Sabir Hussain went to Mazar-e-Quaid where said SIP inspected the place of incident and prepared such memo at Ex:7/A. On 17.3.2008 his father in law received telephonic message that one girl found. He alongwith his father in law went to P.S. where his wife was present. She was un-conscious. On:18.3.2008 the police sent her at civil hospital Karachi for medical treatment. Thereafter his wife pointed out the place of incident to the police. On:19.3.2008 at about 3.00 a.m. police arrested the accused Khadim Hussain on the spy information from the gate of Bab-e-Tanzeem of Mazar-e-Quaid. Police prepared memo of arrest of accused in his presence at Ex:7/B. The accused Khadim Hussain present in court is same. During the course of his cross examination he replied that "I do not know whether my wife was recovered by the police on 16.3.2008 at about 4.00 a.m. from Quaid-e-Mazar. It is correct that on the said date my wife Razia was found in possession outside the Mazar-e-Quaid by Rangers". He further admitted that "the room where my wife was kept by the accused persons was under-ground"..... "The room of said lock was opened by the Administration of Mazar". He further admitted that "It is correct that the accused Khadim Hussain was not available there when the lock of said room was opened. It



27/4/13

4/15

(45)

is a fact that we again visited the place of incident when the team of Islamabad came including one Senator, Deputy Speaker Shahla Raza and other NGOs....He denied that "It is incorrect that my wife was identified the accused Khadim Hussain at the time when the team came from Islamabad". He further admitted that "It is a fact that on four corner of the Mazar-e-Quaid there was four military officials were present there but no other official was available there". He admitted that "It is correct that when I left my wife near museum of Mazar-e-Quaid the break-down of electricity took place, as such there was darkness".

PW-5 MO Central Jail, Karachi Nisar Ali Shah deposed that on 24.03.2008 he received the case of rape as alleged of Khadim Hussain son of Syed Wilayat Shah was brought by SIP Sabir Hussain to him for examination. He examined him properly and found following findings:-

The clothes changed several time, Urine passed any time and hernia/hydrocele not present. Secondary sexual character were well developed. Penis is extra ordinary short. Looking only glans and shaft was covered in it by bulging of skin and soft tissue of pubic area.

On self stimulation of penis no erection seen. On prostatic message erection of penis seen.

OPINION:

From external physical examination, I am of the opinion that he is capable to perform to sexual intercourse under normal course of life. I prepared slide for DNA and taken blood for blood group. I issued such medical certificate No:1331/2008 dated:24.3.2008.

He produced letter of police as Ex:8/A, and medical certificate as Ex:8/B.

20/4/13

(47)

PW-06 Nazeer Ahmed examined at Ex.09 who deposed that in the month of March, 2008 they came from Lodhran to Karachi. On:15.3.2008 they reached Abdullah Shah Ghazi Mazar in the afternoon. Thereafter they came at Mazar-e-Quaid, at about 8.30 p.m. in one bus. One bus remained at Abdullah Shah Ghazi. When they reached at Muscum, where Mst. Razia and her husband stood and look-after the shoes. They went to the museum. After some time the husband of Razia asked her to look-after the shoes and he was going to take other people. When they reached at the said place where Mst. Razia was not present there. In the meanwhile the electricity also failure. They tried to search her whole night but could not find. On:16.3.2008 they went to PS Brigade and Bashir lodged the FIR at P.S. 7.40 p.m. After registration of FIR they went to soldier Bazar. In the Fajar time they reached telephone from PS that Razia Kubra has been found. We rushed to PS and found that Mst. Razia Kubra was available there. On:18.3.2008 the police officer (SSP Niaz Khoso) inspected the place of incident in his presence so also in presence of Razia, she pointed out the place of incident. She also disclosed that she was taken to a room under the staircase, which was locked. The police broken the lock of said room and found that a chatai was available and other dirty clothes on the said chatai. The size of room was 4 x 4. The police secured the said clothes in his possession. Police prepared pointation memo in his presence at Ex:9/A. At the moment Abductee Razia further disclosed that she was kept in the said room and she was subjected to rape. He was examined by the I.O. He saw case property Article I and II present in court are same. During the course of cross examination he admitted that "no electricity was off when we visiting the Mazar-e-Quaid. He added that when we entered the museum then electricity was failure". He further admitted that "Deputy Speaker Shahla Raza was not present when police inspected the place of incident". He admitted that "police also inquired from the security guards about the incident but they



(49)

did not disclose anything. The abductee Razia is her niece". He further admitted that "clothes present in court are not sealed". He admitted that "clothes were sealed in white cloth". He admitted that "he himself had not seen stained on the clothes". "PW-Fayyaz is his son in law". "The abductee and other people departure Lodhran prior to one week of the incident".

PW-7 MLO Civil Hospital Dr. Ghulam Sarwar Channa examined at Ex.11. He deposed that on 5.4.2008 SIP Sabir Hussain brought two persons with the history of rape namely Arif Ansari and Raja Muhammad Arif. He examined firstly Arif Ansari, clothes were changed, parts were washed and urine was passed many time. Hernia and hydrocele not seen. No any congenital abnormality seen. Secondary sex character were well developed. On self stimulation erection of penis seen.

OPINION:

In my opinion he is capable to perform sexual intercourse in his normal life. I taken his blood and semen for DNA test. I issued such medical certificate No:1553.

He produced medical certificate at Ex:11/A.

He also examined Raja Muhammad Arif. Clothes were changed, parts were washed and urine was passed many time. Hernia and hydrocele not seen. No any congenital abnormality seen. Secondary sex character were well developed. On self stimulation erection of penis seen.

OPINION:

In my opinion he is capable to perform sexual intercourse in his normal life. I taken his blood and semen for DNA test. I issued such medical certificate No:1554.

He produced medical certificate at Ex:11/B and also produced police letter at Ex:11/C.

29/4/13

(51)

During the course of cross examination he admitted that "I have not seen any injury on the body of accused regarding rape".

PW-08 SIP Munir Ahmed examined at Ex.12. He deposed that on 16.03.2008 one Bashir Ahmed s/o Khuda Bukhsh alongwith his companion (15-20) came at P.S. at 1940 hours and lodged the FIR at Ex.6/A. During the course of his cross examination he admitted that "there was entry prior to lodging the FIR regarding missing of victim". He further admitted that "he has not mentioned about the said entry in the FIR".

PW-09 Principle Scientific Dr. Abdul Hameed examined at Ex.13. He deposed that he received letter dated:28.3.2008 from SSP investigation zone-II South on:1.4.2008 alongwith samples viz i)clothes secured from place of occurrence which include bed sheet, Banian, three pieces of clothes (six clothes total 11 articles seized and sealed by the I.O), ii)wearing clothes of victim Mst. Razia Kubra(Shalwar, Qameez and Dupatta, total 3 articles seized and sealed by the I.O), iii)swab slide of Mst. Razia Kubra collected and sealed by WMLO, iv) tube containing semen of accused Khadim Hussain obtained and sealed by MLO, v)blood samples of accused Khadim Hussain obtained and sealed by the MLO. He produced the letter dated:28.3.2008 issued by SSP South Zone Karachi alongwith attested copies of letter addressed to SSP dated:28.3.2008, FIR, two medico legal certificates of accused Khadim Hussain and Mst. Razia Kubra, memo of inspection of place of incident, pointation memo, memo of arrest of accused as Ex:13/A to 13/H respectively. He also produced original blood sample of accused Khadim Hussain as Ex: 13/I, blood

27/4/08

(53)

sample of Razia Kubra as Ex:13/J, original blood sample as Ex:13/K. He himself examined and matched. DNA from semen and blood sample of accused Khadim Hussain, swab slide blood and stained cloth of Mst. Razia Kubra was extracted and used for DNA analysis. No fresh stained of either blood or semen were observed on any of the items recovered from the crime scene and therefore not used for DNA extraction.

DNA profiling of DNA isolated from sample of accused Khadim Hussain and victim Mst. Razia Kubra was carried out by using ampflister profiler plus and co-filer. ABI set of genetic markers.

CONCLUSION:

The presence of sperm was detected in both DNA samples isolated from swab slide and stained clothes of Mst. Razia Kubra. The DNA profile of stained clothes of victim Mst. Razia Kubra matched with DNA profile obtained from the semen and blood samples of accused Khadim Hussain. He produced the original DNA report dated:10.4.2008 of accused Khadim Hussain as Ex:13/L.

On:11.4.2008 samples of two more accused namely Arif Ansari Son of Anwer and Raja Muhammad Arif son of Raja Muhammad Afzal. Blood and semen samples of both suspected collected and sealed by MLO were received alongwith the relevant documents. He produced letter dated:7.4.2008 issued by SSP South investigation alongwith copies of the FIR, Medico legal certificates of accused Arif Ansari and Raja Muhammad Arif as Ex:13/M to 13/P respectively. DNA from the blood samples of Arif Ansari Son of Anwer and Raja Muhammad Arif son of Raja Muhammad Afzal was isolated and analyzed alongwith previously isolated DNA from stained clothes of victim Mst. Razia Kubra. DNA profiling was carried out by using ampflister profiler plus and co-filer ABI of genetic markers on ABI 3130 genetic analysis. After analysis conclusion was drawn.



20/4/13

CONCLUSION:

(SS)

DNA profile of suspects accused Arif Ansari son of Anwer and Raja Muhammad Arif son of Raja Muhammad Afzal 100% matched with the DNA profile obtained from the DNA isolated from the stained clothes of victim Razia Kubra. Vol. says due to typographic error the name of accused Arif Ansari wrongly written as Asif Ansari son of Sarwar, mentioned in the report dated:24.4.2008, thereafter the same was rectified and corrected in the official record and duly issued correct letter on:23.10.2008. The said rectification was corrected on the letter issued by SSP Zone II South Karachi dated:2.10.2009, however further clarified that actually the letter dated:23.10.2009 instead of 2008. He produced the first certificate of the accused Arif Ansari and Raja Muhammad Arif dated:24.4.2008 as Ex:13/Q, and letter of second certificate dated:23.10.2008 as Ex:13/R and produce letter of SSP Investigation Zone-II South dated:2.10.2009 as Ex:13/S, another letter dated:16.10.2008 issued by SSP Investigation South as Ex:13/T. Thereafter He returned the samples through letter dated:8.5.2008. He produced such letter as Ex:13/U. He saw clothes of victim, viz Shalwar Qameez and Dupatta and say that these are same.

During the course of cross examination he admitted that "we had not examined the blood group". He admitted that "in semen no other mixture was available". He further admitted that "in the swab the semen of different persons can be mixed when more persons committed zina/sexual intercourse with one lady at a time". He has not sent any copy of report DNA to Deputy Speaker.

He further admitted that "the semen was isolated from the Shalwar of victim". He admitted that "he has only received the parcel of Shalwar but the same was not marked or signed by WMLO". He admitted that "no inward/out ward number was made when the DNA report was sent". He further admitted that "when I received samples of blood and semen it was not signed by MLO". He admitted that "word chemical



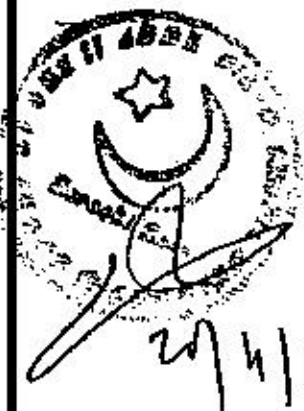
(59)

examiner has not been used in both reports". He admitted that "the log sheet consist upon all the procedure of DNA".

He admitted that "the samples were not sealed which create element doubt". He admitted that "after isolation of Shalwar of Razia Kubra red colour I have not signed the same". He further admitted that "I have also not signed the pieces obtained from the shalwar after cutting the same and I have not counted the semen available on Shalwar". He further admitted that "those pieces of Shalwar are not available in the court". He admitted that "on red colour shalwar the stain of semen comes in not visible condition". He admitted that "those articles viz slide, test tube and syringe were not returned nor produced in court so also not sent to SSP investigation Sought Zone Karachi". He admitted that "involvement of accused cannot be mentioned in DNA report". He further admitted that "samples were sealed therefore it was not necessary the appearance of accused, I.O. and witnesses and in case if the articles are not sealed the same is to be returned". He admitted that "blood sample and semen of accused Ansari were received after 10.4.2008". He further admitted that "test of blood and semen are same".

PW-10 WMLO Dr. Rohina Hassan examined at Ex.14. She deposed that on:17.3.2008 she was posted as WMLO at Civil Hospital Karachi. SIP Sabir Hussain of PS brigade brought a female Razia Kubra wife of Fayyaz Hussain aged about 18 years with the history of rape as alleged for purpose of medical examination. She examined her and found the following:-

There was no mark of violence on her body, patient was very sluggish. She was complaining of headache was not able to walk, her speech was slurred, her pupils were dilated. On examination external genitalia normal, hymen torn old healed, vestibule congested all around. Vaginal slides taken, sealed and handed over to I.O.



OPINION:

59

Based on clinical findings she is not virgo intacta. For fresh act opinion is kept reserved till report receive chemical examiner office of slides clothes and blood to rule out intoxication. She issued such medical certificate No:36/2008 and produced as Ex:14/A. She also produced police letter as Ex:14/B.

The final report was issued of Razia Kubra wife of Fayyaz Hussain by her. Photo copy of human No:HA/BGED/030/08 issued by Institute of Bio Medical and Genetic Engineering provided by SIP Sabir Hussain of PB Brigade which reference to the rape case incidents at Maza-e-Quaid as per report of DNA, calling sealed samples were received for forensic DNA analysis issued by the above institute on:23.10.2008 and corrected copy received through SIP Rana Muhammad Latif. Semen and blood sample of accused Khadim Hussain, Swab sample of clothe of Mst. Razia Kubra, 3. Items recovered from crime seal DNA sample of accused Khadim Hussain swab slide of Mst. Razia Kubra extracted used for DNA.

CONCLUSION:

The report concluded the presence of sperm in both DNA samples isolated from the swab slide and stained clothes of Mst. Razia Kubra.

2. DNA profile of Mst. Razia Kubra matched with DNA profile obtained from accused Khadim Hussain. In the case involvement of the accused Khadim Hussain interse. The samples of the two suspect Mr. Arif Ansari son of Anwer, Mr. Raja Muhamamd Arif Son of Raja Muhammad Afzal was received in sealed envelope for DNA forensit. DNA from blood sample of Mr. Arif Ansari son of Anwer and Mr. Raja Muhammad Arif son Raja Muhammad Afzal was isolated from previous isolated and stained clothes of Mst. Razia Kubra.

MY CONCLUSION.

20/4/13

61

The DNA profile of suspect Arif Ansari son of Anwer and Raja Muhammad Arif son of Raja Muhammad Afzal 100% matched with the DNA profile obtained from stained clothes of victim Razia Kubra, it confirm the involvement of both suspect of crime and also gang rape of Mst. Razia Kubra.

Hence I am of the opinion from the above findings all the three accused are involved in gang rape and issued such final report at Ex:14/C. During the course of her cross examination she admitted that Ex:14/C is without date. She admitted that "I prepared final report on the report of DNA test which was prepared at Islamabad and till date I have not received any report from chemical examiner". She admitted that "victim Mst. Razia Kubra is not present today".

She admitted that "I sealed the Qameez, red silky Shalwar, and black Burqa of victim in white cloth". She admitted that "I have not signed on all three articles viz Qameez, red silky Shalwar, and black Burqa, but I signed on white cloth after sealing the same". She admitted that "I have not seen any mark of semen on the red silky shalwar". She further admitted that "it is not specifically receiving by the I.O. regarding vaginal slides". She admitted that "I have not sent those articles to Chemical Examiner for chemical analysis".

PW-11 PC Zafar Iqbal s/o Muhammad Ashraf has been examined at Ex.16. He is mashir of memos of arrest of accused persons at Ex.16/A & 16/B.

PW-12 Inspector Abid Hussain Ansari examined at Ex.17. He arrested the accused persons namely Bashir Ahmed and Bagh Ali and prepared Ex.16/A.

PW-13 Inspector Abid Ansari examined at Ex.18. He is well conversant of handwriting and signature of Sub-Inspector Sabir Ali and verified that Ex.7/A, Ex.8/A, 9/A, Ex.11/C, 13/A and 16/B having handwriting and signature of Sub-Inspector Sabir Ali.

PW-14 Judicial Magistrate Javed Hussain examined at Ex.19, who deposed that on 22.03.2008 Investigation Officer ASI Pir



(63)

Sabir Hussain for P.S. Brigade submitted an application for holding identification parade of accused Khadim Hussain son of Walayat Shah through victim Mst. Razia Kubra in FIR No.50/2008 offence u/s 364 PPC. On that application he issued notice to the accused and also directed to IO to arrange the dummies. As many as 09 dummies were arranged who were of the same size, sex, and age as that of the accused. The accused was made to sit in his chamber and his hand-cuff were removed while the lady victim was made to sit in the court room. Middle door of the chamber and court room was closed so that the victim could not see the accused. Identification parade was held in the corridor behind court's chamber where all the dummies were arranged in a Queue/line and then the accused Khadim Hussain was called through court's peon. The accused was told to stand among the dummies at the position of his choice. He stood at serial No.5. Thereafter he called victim lady Mst. Razia Kubra and asked her to identify the accused from among the people standing in the queue. After having a thorough look at the faces of those persons she pointed at a person standing at serial No.5. Hence, she identified the accused. Then he prepared a memo of identification parade, appended a certificate hereunder and signed the same then and there. He produced memo of identification parade as Ex.19/A. Accused was produced for identification parade in muffled faces prior to holding identification parade then he directed to remove the such cloth. Accused present in the court is same. On the same day IO had also submitted another application for recoding statement u/s 164 Cr.P.C. of lady victim Mst. Razia Kubra in the above case. On this application he issued notice to the accused and directed the IO to provide all relevant documents to him. He fixed the matter for recording statement u/s 164 Cr.P.C on 26.03.2008. He produced such application of IO containing my order as Ex.19/B. On 26.03.2008 the IO produced the lady victim and also custody of accused Khadim Hussain. He recorded statement u/s 164 Cr.P.C. of the



said lady, given opportunity of cross examination to the accused but he requested to reserve the same till trial in the case. He appended the certificate under the statement u/s 164 Cr.P.C. of the victim lady, signed such certificate and the statement and also obtained RDR from the accused. During the cross examination he admitted that has not issued any notice to accused on 22.03.2008 prior recording the statement u/s 164 Cr.P.C. The identification parade of identification of accused Khadim and statement of victim u/s 164 Cr.P.C. both were recorded on different dates. He does not remember whether he maintained the diaries for above both proceedings. **He admitted that in the list of dummies the name of one Muhammad Amin son of Muhammad Hanif is mentioned at serial No.5. He admitted that he has not mentioned the moments of dummy of Muhammad Amin as where he has gone.**

On the same day due to urgent matter he conducted the identification parade of accused Khadim Hussain on the request of I.O. He has not instructed to IO prior to conducting the identification parade as to produce the accused with muffled face. He admitted that on the same day identification parade, accused, victim and IO appeared before him. He admitted that on his instruction the IO removed the hands cuff of accused. In veranda of the court he conducted the identification parade of the accused. Prior to identification parade, he asked to victim as to whom she as to identify. **He admitted that in identification parade victim has not specifically stated that accused Khadim Hussain was the person who committed the zina with her.**

From perusal of the testimony of complainant, victim and other witnesses it appears that are full with contradiction, discrepancies, improvement, tainted with forgeries. The same were highlighted and underlined above. When the medical evidence not inspiring confidence as MLO Civil Hospital Dr. Ghulam Sarwar Channa has admitted during his cross examination admitted that



27/4/12

(67)

"I have not seen any injury on the body of accused regarding rape", while Dr. Abdul Hameed Principle Scientific deposed that "No fresh stained of either blood or semen were observed on any of the items recovered from the crime scene and therefore not used for DNA extraction". He during his cross examination admitted that "It is correct that in semen no other mixture was available. It is correct that in the swab the semen of different persons can be mixed when more persons committed zina/sexual intercourse with one lady at a time". Dr. Rohina Hassan WMLO Civil Hospital deposed that "There was no mark of violence on her body". It is admitted position that after two days of the incident she was produced before WMLO for her medical examination which was conducted by the lady doctor. From perusal of the above medical evidence, there are so many dints upon the prosecution case.

It is admitted position that nobody known that from where victim was recovered and how she came with the Ranger personal, who called the police and handed over the victim to police. No Ranger personal was examined while they are very important witness. Whole the case of prosecution stand on one point that victim identified the accused Khadim Hussain during identification parade before concerned Judicial Magistrate. From perusal of the statement of Judicial Magistrate it appears doubtful that:

(69)

"Identification parade was held in the corridor behind court's chamber where all the dummies were arranged in a Queue/line and then the accused Khadim Hussain was called through court's peon. The accused was told to stand among the dummies at the position of his choice. He stood at serial No.5. Thereafter he called victim lady Mst. Razia Kubra and asked her to identify the accused from among the people standing in the queue. After having a thorough look at the faces of those persons she pointed at a person standing at serial No.5. Hence, she identified the accused. Then he prepared a memo of identification parade, appended a certificate hereunder and signed the same then and there. He produced memo of identification parade as Ex.19/A.

While in his cross examination he admitted that:

He admitted that in the list of dummies the name of one Muhammad Amin son of Muhammad Hanif is mentioned at serial No.5. He admitted that he has not mentioned the moments of dummy of Muhammad Amin as where he has gone.

He further admitted that:

He admitted that in identification parade victim has not specifically stated that accused Khadim Hussain was the person who committed the zina with her.

Offence of Zina is specific to the Islamic Jurisprudence and lays down the standard of proof, the rationale behind the standard of proof and the punishment. The purpose being to check licentiousness, lewdness, adultery or vulgarity committed at public places where four or more persons could witness the same. It is then that the State comes forward punishing those so involved because it is a crime against the society and not compoundable. So, amongst the standard of proof, there is a requirement of four witnesses because of its nexus with the rationale and not otherwise.



I have now to find out the rationale behind these dictates of Holy Qur'an. Reference may be made to Fafheem-ul-Qur'an Volume III, described by Syed Abu-ul-Aala Moudoodi, who in the commentary gives the following views in this connection:

(۱۷) جس کا زنا کی جگہ ممکن ثبوت سے یہ کہ شہادت اس پر نام ہو۔
 اس کے متعلق قانون کے اہم اجزاء میں من الف قرآن ندرج کرنا
 کر زنا کی جگہ سے کم چار یعنی شام ہونے یا صبح اس کی شہادت
 سورہ انسا آیت ۱۵ میں ہے کہ اگرچہ یہ اور آیت اس سورہ نور میں
 ہیں دو جگہ آ رہی ہے۔ شہادت کے بغیر کافی محض اپنے علم کی بنا پر
 قطع نہیں کر سکتا ہے خواہ وہ اپنی آنکھوں سے اور کتاب پڑھ کر
 ذلیقہ چکا ہو جب گوہ اسے لوٹ ہونے چاہیں جو اسلامی قانونی شہادت
 کی رو سے قابل اعتماد ہوں۔ مسئلہ یہ کہ وہ پہلے ہی صحت سے
 ہوئے گوہ ثابت نہ ہو ہو سکے ہوں۔ فاسی نہ ہو پہلے کے سزا یا قتل
 نہ ہو۔ مگر سے ان کی دشمنی ثابت نہ ہو۔ ولیہ پر حال نام قابل اعتماد شہادت
 کی بنا پر نہ تو کسی کو جرم کیا جا سکتا ہے۔ اور نہ ہی کسی کو بیگم پر کوڑے بہ سزا
 جاسکتے ہیں۔ (۲) گوہوں کو اس بات کی شہادت دینی چاہیے
 کہ انہوں نے ملزم اور ملزمہ میں حالت مباشرت میں دیکھا ہے۔ یعنی
 انہوں نے الملزمہ والہ مشار فی اللبس اس طرح سے سرور دانی
 میں ملتا ہے اور انہوں میں سے کسی (۲) کو سزا کو اس امر میں مشتبہ
 ہونا چاہیے کہ انہوں نے کب کیا۔ کسی کو کسی سے زنا کرتے دیکھا ہے۔
 ان بیباک امور میں اظہار ان کی شہادت کو موقوف کر دینا ہے۔
 شہادت کی یہ شرائط خود ظاہر کر رہی ہے۔ کہ اسلامی قانون کا
 منشا یہ نہیں ہے کہ فلانکیاں شہدی ہوں۔ اور روز لوگوں کی بیگم
 ہم کوڑے پر سے رہیں۔ بلکہ وہ اسی حالت میں یہ سخت سزا
 دینا ہے۔ جبکہ تمام اصلاحی اور اشد اور قداب سے باوجود اسلامی
 معاشرے میں کوئی جوڑا ایسا ہے جہاں بیگم کو چار چار آدمی اس
 جرم کرتے دیکھ لیں۔



27/4/13

(73)

The learned counsel for the complainant's side did not differ with the requirements for production of four witnesses in a Zina case, but went on to state that the offence was, anyhow, liable to Ta'zir.

Islam was not opposed to science and its achievements, rather it encourages pursuit of knowledge and research and the DNA test, which forms an important basis for determining genetically about a biological father, has a place in evidence. But the question is, can such an evidence be used against an evidence be used against an offence of zina under the Islamic Law which has prescribed a standard of proof for that purpose.

The DNA can be extracted from the cells of a variety of body fluids and tissues. While the majority of tests are carried out using DNA from blood cells, cells obtained from the lining of the cheek using a mouth wash or cells in the roots of a person's hair.

The DNA test may help in establishing the legitimacy of a child for several other purposes, its utility and evidentiary value is acceptable but not in a case falling under the penal provisions of Zina punishable under the Haddoo Laws having its own standard of proof. Otherwise who launch a charge of Zina are required to produce four witnesses to support their allegations and upon failure are liable to suffer punishment as prescribed in Ayat No.4 of Surah Al-Noor.

In this case the prosecution evidence which rest over the interested as well as independent evidence which or apparently no favoured to the prosecution and rendered one of setup story as in the light of above discussion. Prosecution has failed to produce four eye witness of the incident.

In the circumstances mentioned above I am fortified in my view by the case reported in 1996 SCMR 188, 2003 YLR 2958 (6) it has been held reproduce the same as under:-



(75)

"When ocular or direct evidence had stood the test of proof, supporting or corroborating evidence would lend support to prosecution case. If prosecution would fail to lead or produce direct evidence or connectivity of circumstantial evidence was not mentioned, the corroborative or supporting evidence would become immaterial. Rule of circumstantial evidence was that failure of prosecution to prove one link of the chain of circumstances would destroy all links. When conviction was based on circumstantial evidence alone, the facts proved must be incompatible with the innocence of accused and were incapable of being explained upon any reasonable hypothesis other than the guilt of accused. Burden lying on prosecution would never shifts. Duty of the court was to require prosecution to prove every part of its case affirmatively by evidence on which it had built up its case. Prosecution would not be given edge to shift otherwise when it felt that evidence relied upon was not supporting it. Prosecution had to display its weapon before. The court and then leave it to court to judge. Even if the court would find that proof adduced by prosecution had led to some suspicion and fell short of the assertion, it had made, case would be doubtful and its benefit would go to the accused".

It is a settled principle of law that:

"Single circumstance is enough to entitle the accused to benefit of doubt as matter of right if it creates reasonable doubt in a prudent mind."

In 2009 SCMR 230 relevant page 231 in which it has been held reproduce the same as under:

(c) Criminal Trial---

"---Benefit of doubt---Principles---For giving the benefit of doubt it is not necessary that there should be many circumstances creating doubts--- Single circumstances creating reasonable doubt in a



prudent mind about the guilt of accused makes him entitled to its benefit, not as a matter of grace and concession, but as a matter of right".

I also fortified the case law reported as PLJ 2006 Cr.C.(Lahore) 1070 (DB) in which it is held that:

(ii) Benefit of Doubt—

---A rule of prudence—Basis of—The rule of benefit of doubt; which is described as the golden rule, is essentially a rule of prudence which cannot be ignored while dispensing justice in accordance with law---Held: Such rule is anti thesis of haphazard approach for reaching a fitful decision in a case—Such rule occupies a pivotal place in the Islamic Law and is enforced rigorously in view of the saying of the Holy Prophet. [P.1080].



Maxim "It is better that ten guilty persons be acquitted rather than one innocent person be convicted". And saying of the Holy Prophet "The mistake of Qazi (Judge) in releasing a criminal is better than his mistake in punishing innocent".

Prosecution evidence tainted with forgeries, contradiction, improvements, omission, and substitution of evidence. Effects to falsely implicate the accused clearly appeared to have been made in this case would be doubtful and its benefit would go in favour of accused. Prosecution has miserably failed to prove the case against the accused persons beyond any shadow of doubt therefore, extended benefit of doubt in favour of the accused. Point No.2 answered as not proved.

POINT NO: 3:

For the above reasons and discussion, since the prosecution has been failed to prove its case against the accused persons namely (1) Khadim Hussain Shah s/o Willayat Hussain

79

Shah, (2) Arif Ansari s/o Anwar Ali Ansari and (3) Raja Muhammad Arif s/o Raja Muhammad Afzal, hence they are accordingly acquitted under Section 265-H(1) Cr.P.C. They are present on bail, their bail bond stands canceled and surety discharged.

Announced in open Court.

Given under my hand and seal of the Court on 06th day of April, 2013.



sd/- 06/04/13
(NADEEM AHMED KHAN)
II Additional Sessions Judge,
Karachi East
06.04.2013.

PROPERTY ORDER.

The case property mentioned in column No.5 of the charge sheet, is hereby confiscated in accordance with law, after expiry of appeal period.

sd/- 06/04/13
[Illegible text and stamps, possibly a court record or receipt, with some handwritten numbers like 20/1/13]

sd/- 06/03/13
(NADEEM AHMED KHAN)
II Additional Sessions Judge,
Karachi East
06.03.2013.

sd/- 04/13
[Illegible text and signature]