

IN THE HONOURABLE HIGH COURT OF SINDH AT KARACHI  
(APPELLATE JURISDICTION)

Criminal Acquittal Appeal No. 161 of 2014

1. Naseema Lubano,  
Daughter of Humzu Lubano,  
Muslim, Adult,  
Resident of Flat No. 598,  
Lubar Square, Landhi,  
Karachi

PRESENTED  
31-10-2014  
Dr. Rezaul Karim (Adv.)

2. Humzu Lubano,  
Son of Gaman Khan,  
Muslim, Adult,  
Resident of Flat No. 598,  
Lubar Square, Landhi,  
Karachi.....

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Appellants

Versus.

1. The State,  
Through Prosecutor General, Sindh,  
New Sindh Secretariat,  
Shahrah-e-Kamal Ata Turk Road,  
Karachi

2. Munawar,  
Son of Habibullah,  
Muslim, Adult,  
Resident of Goth Habib Lubano,  
Tehsil Ubaro, District Gothki,  
Sindh

3. Ghulamullah [also known as Morzado],  
Son of Budhal,  
Muslim, Adult,  
Resident of Goth Habib Lubano,  
Tehsil Ubaro, District Gothki,  
Sindh.....

Respondents

**CRIMINAL ACQUITTAL APPEAL UNDER SECTION 417 (2-A),  
CRIMINAL PROCEDURE CODE, 1898**

It is most respectfully and most humbly submitted that being aggrieved and dissatisfied by the Judgment dated: May 05, 2014 [hereinafter referred to as the 'Impugned Judgment'], passed by the Learned Court of Sessions Judge, Karachi

(South), in Session Case No. 472 of 2007 [‘The State Versus Munawar & Others’ and herein after referred to as the ‘present Case’] in relation to offences under Sections 354-A, 452, 337-A (i), 376-B, 147, 148 & 149 P.P.C. 1860, as the Impugned Judgment acquits the Respondents No. 2 and No. 3 from the aforementioned Offences. Therefore, the Appellants above-named most respectfully and most humbly prefer this Appeal on the following, inter-alia, facts and grounds:

*A copy of the abovementioned Impugned Judgment dated: May 05, 2014, is annexed and marked as Annex ‘A’.*

**FACTS**

1. That the Appellant No. 1 is the rape survivor/victim in the gang rape criminal case numbered as Session Case No. 472 of 2007 and the Appellant No.2 is the father of the Appellant No.1 and the complainant in Session Case No. 472 of 2007.
2. That on 27-01-2007 in Ubaro, District Gothki, Sindh, the Appellant No.1 [‘rape survivor’] was abducted, beaten, raped and stripped naked in the public view by Abdul Sattar, Loung, Shahzado, Abdul Jabbar, Khadim Hussain, Ali Hasan, Shah Baig, Bashir Ahmed, Anwar Hussain and Respondents No. 2 and No. 3. It is submitted that F.I.R. No. 07 of 2007, dated: 27-01-2007 [herein after referred to as the present ‘F.I.R.’], was lodged in relation to this incident of, inter alia, gang rape. It is further submitted that the Challan was submitted by the police officials confirming the aforementioned incident.

*A copy of the abovementioned Challan is annexed and marked as Annex ‘B’.*

3. That in view of the grave threats from the above –named accused persons and their supporters, the Appellants and their family were forced to shift from their village in Goth Habib Lubano, District Gothki, to the city of

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Karachi. In view of this forced shifting, the Appellant No. 2 filed a Criminal Transfer Application No. 56 of 2007 before the Honourable High Court of Sindh at Karachi. It is submitted that the Honourable High Court through Order dated: August 13<sup>th</sup>, 2008, disposed off the Criminal Transfer Application, by transferring the present Case to the District and Session Court, Karachi (South). Although the present Case was re-transferred through Order dated: April 16<sup>th</sup>, 2008, the Honourable Sindh High Court through Order dated: June 07<sup>th</sup>, 2008, re-called the abovementioned Order dated: April 16<sup>th</sup>, 2008, and re-transferred the present Case from IIIrd ADJ (District Dadu) to the District & Session Courts, Karachi (South).

*A copy of the abovementioned Orders dated: 13-08-2007, 16-04-2008 and 07-06-2008 in Criminal Transfer No. 55 of 2007 is annexed and marked as Annex 'C' to 'C-2'.*

4. That it is submitted that Abdul Sattar and Respondents No. 2 and No. 3 were absconding when the present Case was tried against the accused persons namely Shahzado, Abdul Jabbar, Anwar Hussain, Khadim Hussain, Ali Hassan, Shah Baig and Bashir Ahmed. It may be noted that one of the accused person i.e. Loung, who was on bail, died during the pendency of the present Case. It is further submitted that the Charge dated: 28-03-2009 was framed against the remaining seven accused persons namely i.e. Shahzado, Abdul Jabbar, Anwar Hussain, Khadim Hussain, Ali Hasan, Shah Baig and Bashir Ahmed, under Sections 354-A, 452, 337-A(i), 376-B, 147, 148 & 149, P.P.C., 1860.

*A copy of the Charge dated: 28-03-2009 is annexed and marked as Annex 'D'.*

5. That it is submitted that through Judgment dated: January 23<sup>rd</sup>, 2010, Anwar Hussain was convicted for an offence under Section 376(2) P.P.C., 1860 whereas the accused persons namely Shahzado, Abdul Jabbar, Khadim Hussain, Ali Hassan, Shah Baig and Bashir Ahmed were

acquitted. It is submitted that the case against Respondents No. 2 and No. 3 was kept as dormant file with the direction that the present Case was to be revived as and when the Respondent No.2 and No.3 were arrested. The Appellants have filed Criminal Acquittal Appeal No. 80 of 2010 before this Honourable Court against the Judgment dated: January 23<sup>rd</sup>, 2010. It is further submitted that Criminal Acquittal Appeal No. 72 of 2010 has also been filed by Anwar Hussain [the convicted accused in the present Case] before this Honourable Court.

*A copy of the Judgment dated: January 23<sup>rd</sup>, 2010, Memo of Criminal Acquittal Appeal No. 80 of 2010 and Memo of Criminal Acquittal Appeal No. 72 of 2010 is attached and marked as **Annex 'E' to 'E-2'**.*

- 6. That it is submitted that the Respondent No. 2 and No. 3 surrendered before the Learned Court of Sessions Judge, Karachi (South) and filed a pre-arrest Bail Application, dated: March 09<sup>th</sup>, 2010. Through Order dated: August 03<sup>rd</sup>, 2011, the Respondent No. 2 and No. 3 were remanded to jail custody to face trial in the present Case. The Charge against the Respondents No.2 and No.3 was framed on December 02<sup>nd</sup>, 2011, in relation to offences under Sections 354-A, 452, 337-A (i), 337-F (i), 376 (2), 147, 148 & 149 P.P.C., 1860.

*A copy of the abovementioned Order dated: 03-08-2011 and Charge dated: 02-12-2011 is attached and marked as **Annex 'F' & 'F-1'**.*

- 7. That the Learned Trial court through Judgment dated: May 05<sup>th</sup>, 2014, in Session Case No. 472 of 2007 passed the following order:

“ .....it would be safe and in the interest of justice to extend the benefit of doubt to the present accused persons and they are being acquitted from the charged offence under section 265-H (i) Cr.P.C.....”

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8. That it is most respectfully and most humbly submitted that the Appellants are aggrieved and dissatisfied by the Impugned Judgment, the Appellant challenges the abovementioned Impugned Judgment on the, inter alia, following grounds:

GROUNDS

- A. That it is respectfully submitted that the Impugned Judgment is clearly contrary to the law and the facts of this case. It is further respectfully submitted that the Impugned Judgment is clearly contrary to the settled law as laid down by the Honourable Supreme Court and the Honourable High Courts.
- B. That it is submitted that it is accepted in the Impugned Judgment that the Appellant No.1 has been subjected to gang rape and hurt and for this reason Anwar Hussain has been convicted for these offences. It is submitted that for this conviction, the Learned Trial Court in the Judgment dated: January 23<sup>rd</sup>, 2010, relies on the evidence of the Appellant No.1 i.e. rape survivor/victim [Ex. No. 10 (Previous Trial)], the Dr. Zaibunnisa's evidence [Ex. No. 12 (Previous Trial) and other evidences. It is submitted that the Appellant No.1 i.e. rape victim, Dr. Zaibunnisa and other witnesses have also given evidence against the Respondents No.2 and No.3 for the charged offences under Sections 354-A, 452, 147, 148 & 149, P.P.C., 1860, and for the abetment of gang rape committed by two other accused persons which has not been considered or has been mis-read by the Learned Trial Court. Therefore, the Impugned Judgment is liable to be set aside.
- C. That it is an admitted fact that the prosecution examined witnesses i.e. Naseema [Ex. No. 8 (Present Trial)], Humzu [Ex. No. 5 (Present Trial)],

Dr. Zaibunnisa [Ex. No. 12 (Previous Trial) & Ex. No.11 (Present Trial)] Asghar Ali [Ex. No. 6 (Present Trial)] and Jamaluddin [Ex. No. 7 (Present Trial)]. Among these witnesses, there are eye witnesses to the various offences and there is also medical evidence. It is submitted that for the purposes of acquittal, the Learned Trial Court has erroneously relied on the alleged fact that no weapons were recovered or footprints were noticed. It is further submitted that it is settled law that the sole evidence of the rape survivor/victim is enough for the conviction of the rapists and their abettors. Even otherwise, any defect in the investigation cannot prejudice the case of the rape survivor. The Learned Trial Court has failed to give any findings on the issue of abetting the gang rape by the Respondents No.2 and No.3. The Learned Trial Court has also failed to explain as to how the rape survivor/victim was raped by Anwar Hussain and Abdul Sattar at Abdul Sattar's house because she could only have been raped at his house if there was trespass and abduction first by the Respondents No. 2 and No. 3 and the aforementioned accused persons. Therefore, in the presence of the aforementioned evidence, the Learned Trial Court has acted erroneously and illegally by acquitting the Respondents No. 2 and No.3 for offences under Sections 452, 147, 148 & 149, P.P.C., 1860. Therefore, the Impugned Judgment is liable to be set aside.

- D. That it is respectfully submitted that the Learned Trial Court had erroneously observed that the complainant i.e. Appellant No.2 had not been able to establish the motive behind the abovementioned offences committed by the Respondents No.2 and No.3 along with the other accused persons named above. It is submitted that the Learned Trial Court had also erred in observing that it is impossible to believe that the Respondents No.2 and No.3 along with the aforementioned accused persons would commit the abovementioned offences on the basis of minor disputes involving their children. It is also important to note that the

Learned Trial Court had also erred in not observing that in numerous Judgments of the Superior Courts, it had been observed that it is understandable that the rape victim may not disclose the previous rape committed on her on account of reasons which include, but are not limited to, honour of the family and future repercussions on her personal life and the future marital life. Therefore, the Impugned Judgment is contrary to settled law and is liable to be set aside.

E. That it is respectfully submitted that the Learned Trial Court had erred in observing that evidence provided by Dr. Zaibunnisa [Ex. No. 12 (Previous Trial) and Ex. No. 11 (Present Trial)] suggests that the no marks of violence or any sort of high handedness were seen on the body of Appellant No.1 to implicate the Respondents No. 2 and No.3 in the abovementioned offences. It is submitted that it is settled law that the absence of marks of violence does not prove that rape or abetment of rape had not occurred. It is settled law that marks of violence are not necessary for conviction of rape or abetment of rape. Therefore, the Impugned Judgment is contrary to settled law and is liable to be set aside.

F. That it is an admitted fact that the Respondent No.2 and No.3 absconded immediately after F.I.R. No. 07 of 2007 was lodged on January 01<sup>st</sup>, 2007 and appeared in the court only in the year 2010. It is submitted that the Learned Trial Court had erred in not observing that the absconsion of Respondents No.2 and No.3 was surprising because they live in the same village and were associated with the seven (07) co-accused persons who had been previously tried in the previous trial. It is submitted that the Learned Trial Court had erred in not observing that it is unbelievable that the Respondents No.2 and No.3 had no knowledge of the previous trial. It is further submitted that proceedings under Section 87 and 88 Cr.P.C. 1898 were conducted against Respondents No. 2 and No. 3 by the Trial Court during the previous trial before conducting the present trial and it is

impossible to believe that they had not known about the notices issued against them under Section 70, Cr.P.C. 1898 by the Trial Court. It is respectfully submitted that the Learned Trial Court had erred in not holding the absconion of the Respondents No.2 and No.3 heavily against the Respondents No.2 and No.3. Therefore, the Impugned Judgment is liable to be set aside.

G. That it is an admitted fact that the prosecution examined witnesses i.e. Naseema [Ex. No. 8 (Present Trial)], Humzu [Ex. No. 5 (Present Trial)], Dr. Zaibunnisa [Ex. No. 12 (Previous Trial) & Ex. No.11 (Present Trial)] Asghar Ali [Ex. No. 6 (Present Trial)] and Jamaluddin [Ex. No. 7 (Present Trial)]. Among these witnesses, there are eye witnesses to the various offences. It is submitted that for the purposes of acquittal, the Learned Trial Court has erroneously relied on the fact that no private person of the same locality has come forward to give evidence to implicate Respondents No.2 and No. 3 for the abovementioned offences. It is further submitted that it is settled law that quality, and not quantity of evidence is to be considered. It is an admitted fact that Asghar Ali [Ex. No. 6 (Present Trial)] was also a witness to the incident of trespass and abduction and therefore, the quantity of witnesses is irrelevant. Therefore, in the presence of the aforementioned evidence, the Learned Trial Court has acted erroneously and illegally by acquitting the Respondents No.2 and No.3 from offences under Sections 452, 147, 148 & 149, P.P.C., 1860. Therefore, the Impugned Judgment is liable to be set aside.

H. That it is an admitted fact that the prosecution examined witnesses i.e. Naseema [Ex. No. 8 (Present Trial)], Humzu [Ex. No. 5 (Present Trial)], Dr. Zaibunnisa [Ex. No. 12 (Previous Trial) & Ex. No.11 (Present Trial)] Asghar Ali [Ex. No. 6 (Present Trial)] and Jamaluddin [Ex. No. 7 (Present Trial)]. Among these witnesses, there are eye witnesses to the various offences. It is submitted that the Learned Trial Court has erroneously

given an opinion that the facts narrated by the Appellant No.2 are fabricated and false on the basis that among the abovementioned accused persons, there were family members of the same family [i.e. father and sons] who had allegedly committed the offence of gang rape and in our society, it is impossible to believe that the father and the sons of the same family can commit the abovementioned offences together. Therefore, in the presence of the aforementioned evidence, the Learned Trial Court has acted erroneously and illegally by acquitting the Respondents No.2 and No.3 from offences under Sections 452, 147, 148 & 149, P.P.C., 1860. Therefore, the Impugned Judgment is liable to be set aside.

I. That it is an admitted fact that the prosecution examined witnesses i.e. Naseema [Ex. No. 8 (Present Trial)], Hunzu [Ex. No. 5 (Present Trial)], Dr. Zaibunnisa [Ex. No. 12 (Previous Trial) & Ex. No.11 (Present Trial)] Asghar Ali [Ex. No. 6 (Present Trial)] and Jamaluddin [Ex. No. 7 (Present Trial)]. Among these witnesses, there are eye witnesses to the various offences and there is also medical evidence. It is submitted that for the purposes of acquittal, the Learned Trial Court has erroneously relied on the alleged fact that there were so-called contradictions in the evidence of the witness. It is further submitted that it is settled law that the sole evidence of the rape survivor/victim is enough for the conviction of the rapists and their abettors and as a consequence, so-called minor contradictions are irrelevant. Therefore, in the presence of the aforementioned evidence, the Learned Trial Court has acted erroneously and illegally by acquitting the Respondents No.2 and 3 from offences under Sections 354-A, 452, 337-A (i), 376-B, 147, 148 & 149 P.P.C, 1860. Therefore, the Impugned Judgment is liable to be set aside.

J. That it is an admitted fact that the prosecution examined witnesses i.e. Naseema [Ex. No. 8 (Present Trial)], Humzu [Ex. No. 5 (Present Trial)], Dr. Zaibunnisa [Ex. No. 12 (Previous Trial) & Ex. No.11 (Present Trial)]

Asghar Ali [Ex. No. 6 (Present Trial)] and Jamaluddin [Ex. No. 7 (Present Trial)]. Among these witnesses, there are eye witnesses to the offence under Section 354-A, P.P.C., 1860. It is submitted that it is admitted in the Impugned Judgment that the clothes of the rape survivor/victim were stripped and she was gang raped. These witnesses [i.e. Naseema [Ex. No. 8 (Present Trial)], Asghar Ali [Ex. No. 6 (Present Trial)] and Jamaluddin [Ex. No. 7 (Present Trial)] have testified that they saw the Respondents No.2 and No.3 and other accused persons in the present Case playing with the naked body of the Appellant No.1 and as a consequence of such acts, the naked body of the Appellant No.1 was exposed in public view. It is further submitted that it is settled law that it is irrelevant whether some outsider had actually seen her in the naked condition in the public view. It is also settled law that if the public had access to the place, it is irrelevant whether the incident took place on private land. It is also insignificant that the clothes were not recovered because any defect in the investigation cannot prejudice the case of the rape survivor. Therefore, in the presence of the aforementioned evidence, the Learned Trial Court has acted erroneously and illegally by acquitting the Respondents No.2 and No.3 from the offences under Section 354-A, P.P.C., 1860. Therefore, the Impugned Judgment is liable to be set aside.

K. That it is an admitted fact that the prosecution examined witnesses i.e. Naseema [Ex. No. 8 (Present Trial)], Humzu [Ex. No. 5 (Present Trial)], Dr. Zaibunnisa [Ex. No. 12 (Previous Trial) & Ex. No.11 (Present Trial)] Asghar Ali [Ex. No. 6 (Present Trial)] and Jamaluddin [Ex. No. 7 (Present Trial)]. Among these witnesses, there are eye witnesses to the various offences. Therefore, in the presence of the aforementioned evidence, the Learned Trial Court has acted erroneously and illegally by acquitting the Respondents No.2 and No.3 from the offences under Sections 354-A, 452, 337-A (i), 376-B, 147, 148 & 149 P.P.C, 1860 on alleged benefit of doubt,

whereas the case against them has been proved beyond reasonable doubt.  
Therefore, the Impugned Judgment is liable to be set aside.

L. That it is most respectfully and most humbly submitted that the Appellants seek the permission of this Honourable Court to raise further facts and grounds at the time of the hearing of this Appeal.

**PRAYER**

It is most respectfully and most humbly prayed that in view of the above mentioned, inter alia, facts and grounds, this Honourable Court may be pleased to graciously pass orders in the following terms:

- (i) Allow this Appeal by setting aside the Impugned Judgment dated: May 05, 2014 (Annex 'A') passed in Session Case No. 472 of 2007 and convict the Respondents No.2 and No.3.
- (ii) Pass any other Order, or further Order, as may be just and proper in the facts of this Appeal and case.
- (iii) Graciously grant the costs of this Appeal.

**APPELLANT NO.1**

**APPELLANT NO.2**

**ADVOCATE FOR THE APPELLANTS**

Karachi:

Dated: May \_\_\_\_\_, 2014

VERIFICATION

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I, Naseema Lubano, daughter of Humzu Lubano Muslim, Adult, resident of Flat No. 598, Lubar Square, Landhi, Karachi, do hereby affirm what is stated above to be true and correct to the best of my knowledge, information and belief.

DEPONENT

DOCUMENTS FILED:

As annexed with the Memo of Appeal and other relevant documents

DOCUMENTS RELIED UPON:

The above.

ADDRESS OF THE APPELLANTS:

Address has been filed

ADDRESS OF THE APPELLANTS

COUNSEL:

Faisal Siddiqi  
Advocate (HC 8504/HC/KHI)  
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Block 5, Clifton  
Karachi

DRAWN BY ME

ADVOCATE