

IN THE HONOURABLE HIGH COURT OF SINDH AT KARACHI
[APPELLATE JURISDICTION]

Criminal Acquittal Appeal No. 313 of 2010

Kainat Soomro
through her Father and Guardian
Ghulam Nabi Soomro
Currently resident of
Al-Noor Plaza,
Flat No.417, 4th Floor,
Khatri Jammal Khanna Road,
Bheim Pura,
Karachi.....APPELLANT

Versus

1. The State
2. Ahsan alias Noomi
son of Roshan Ali Thebo
Muslim, Adult,
Resident of village Lutfullah Thebo,
Meher, Dadu District
3. Roshan
son of Bambu Khan
Muslim, Adult,
Resident of village Lutfullah Thebo,
Meher, Dadu District
4. Kaleem ullah
son of Fazal Ullah Thebo
Muslim, Adult,
Resident of T.B. Hospital,
Kotri, Jamshoro
5. Shaban Shaikh
son of Shaikh Muhammad,
Muslim, Adult,
Resident of Sheikh Mohalia,
Shahi Bazar, Meher Taluka,
Dadu District.....Respondents

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

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It is most respectfully and most humbly submitted that being aggrieved and dissatisfied by the Judgment dated: May 6th, 2010 [Herein after referred to as the 'Impugned Judgment'], passed by the District and Session Judge, South (Karachi), in Session Case No.471 of 2007 ['The State Versus Ahsan Ali & Others'] under Sections 337-J, 365(B), 376(2), 343, 506(2) & 34, P.P.C., 1860, through which Impugned Judgment the accused persons/Respondents No.2 to No.5 have been acquitted from the offences in Session Case No.471 of 2007. Therefore, the Appellant 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 6th, 2010, is annexed and marked as **Annex 'A'**.*

FACTS

1. That this Appeal arises out of a criminal case in which the Appellant, who is a Minor girl of around 16 years, has accused the Respondents No.2 to No.5 of gang raping the Appellant.
2. That in relation to the abovementioned criminal offence of gang rape, the Police registered F.I.R. No.22/2007 against the Respondents No.2 to No.5. It is submitted that the Session Case No.471 of 2007 [Old Number was Session Case No.112 of 2007] was registered under Sections 376(2), 343, 365-B, 506/2 and 337-J, P.P.C., 1860, which was sent by the Session Judge, Dadu, to the IIIrd Additional Session Judge, Dadu, and the Charge in Session Case No.471 of 2007 was framed against the Respondents No.2 to No.5 on May 15th, 2007.

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A copy of the abovementioned F.I.R. No.22 of 2007, alongwith the translation, is annexed and marked as Annex 'B'. A copy of the abovementioned Charge is annexed and marked as Annex 'C'.

3. That the abovementioned gang rape criminal case of the Appellant was widely covered by the press and the abovementioned gang rape criminal case of the Appellant became a case of public importance.

A copy of the newspaper clippings is annexed and marked as Annex 'D' to 'D-3'.

5. That in view of the grave threats from the Respondents No.2 to No.5, the Appellant filed a Criminal Transfer Application No.55 of 2007 before the Honourable High Court of Sindh at Karachi. It is submitted that the Honourable High Court through Order dated: August 13th, 2008, disposed off the Criminal Transfer Application, by transferring the Session Case No.471 of 2007, to the District & Session Court (Karachi South).

A copy of the abovementioned Order dated: 13-8-2007 in Criminal Transfer No.55 of 2007 is annexed and marked as Annex 'E'.

6. That as already stated above, the Criminal Transfer Application No.55 of 2007 filed by the Appellant had been disposed off. To the utter surprise and shock of the Appellant, a Learned Single Judge, Justice Muhammad Afzal Soomro, of this Honourable Court through Order dated: April 16th, 2008, re-transferred the case from the District & Session Court (Karachi South) to the Session Court, Dadu. It is submitted that in view of the applicability of the constitutional provisions of Article 209 to the abovementioned Order dated: April 16th, 2008, the Appellant filed a complaint before the Supreme Judicial Council against Justice Muhammad Afzal Soomro. It is important to note here that Justice Muhammad Afzal Soomro has since resigned from his judicial office.

~~High Court for bail in the gang rape Session Case No.471 of 2007 but all~~

~~his bail applications had been rejected. It is submitted that in May, 2009~~

10. That to the shock and surprise of the Appellant, on May 21st, 2009, at the time of the announcement of orders on the abovementioned bail application, the court of the Learned VIIth, Additional Session Judge, Karachi (South), was attacked by the supporters of the Respondents No.2. As a result of this attack, the Learned VIIth, Additional Session Judge, Karachi (South), was prevented from conducting his court and the life of the Deputy District Public Prosecutor, Abdul Maroof, as well as the counsels of the Appellant were put in danger. It is submitted that this incident of the attack on the trial court was widely reported in the press.

A copy of the newspaper clippings is annexed and marked as Annex 'I' & 'I-1' respectively. A copy of the Order dated: 21-5-2009 is annexed and marked as Annex 'J'.

11. That the Learned District and Session Judge, Karachi (South), has submitted his inquiry report Dated: 15-6-2009 in the abovementioned incident of the attack on the court. It is submitted that on the basis of the abovementioned statements of witnesses, the Learned District & Session Judge, Karachi (South), in his inquiry report concluded as follows:

"Fact as emerged from the inquiry is that accused Shaban Ali and Others are facing trial in S.C. No.471 / 2007 and since the accused are in custody, as such, on the fateful day viz 21.05.2009 the incident shown in the application/complaint had taken place which being serious in nature was rightly reported by the applicant/complainant Mr. Faisal Siddiqi, Advocate" [Emphasis and underlying added].

It is submitted that although the Criminal Original Miscellaneous Application No.02 of 2010 and Cr.H.C.A. No.1 of 2010 has been dismissed but the findings in relation to the attack on the trial court have not been disturbed by the Honourable High Court. It is further submitted that in view of the danger to the live of the Appellant, the Appellant instituted a C.P. No.1292 of 2009 before this Honourable Court.

trial court. It is submitted that the counsel for the Appellant submitted

A copy of the abovementioned Written Arguments is annexed and marked as Annex 'O'.

- 16. That through the Impugned Judgment Dated: May 6th, 2010, the District and Session Judge, South (Karachi), in Session Case No.471 of 2007 ['The State Versus Ahsan Ali & Others'] under Sections 337-J, 365(B), 376(2), 343, 506(2) & 34, P.P.C., 1860, acquitted all the accused persons/Respondents No.2 to No.5 from the offences in Session Case No.471 of 2007.
- 17. That it is most respectfully and most humbly submitted that the Appellant is aggrieved and dissatisfied by the Impugned Judgment. Therefore, the Appellant files this present Appeal on the herein stated, inter alia, facts and grounds.

GROUND

- A. That the Impugned Judgment itself refers to the issue of jurisdiction and the judgment of the Supreme Court reported as PLD 1984 SC 95. It is submitted that the trial court had two options either it could have decided the issue of the validity of marriage itself or could have stayed the criminal trial till the decision by the family court. It is further submitted that the trial court has neither decided the issue of the validity of marriage itself nor stayed the criminal trial till the decision by the family court but instead abdicated it's jurisdiction to decide this issue. Therefore, the Impugned Judgment is clearly illegal and liable to be set aside.
- B. That the Impugned Judgment has wrongly held that the return of the plaint of the suit for jactitation of the Appellant was not agitated. It is submitted

that in line with the Order dated: 24-12-2009 in Family Suit No.1770 of 2007 returning the plaint of the suit for jactitation of the Appellant, Family Suit No. Nil of 2010 was filed before the Family Judge (South), Karachi. The Family Suit (South), Karachi, through Order dated: 16-1-2010 returned the plaint of the suit for jactitation of the Appellant. It is further submitted that the Appellant filed a Family Appeal No.9 of 2010 and this Family Appeal No.09 of 2010 through Order dated: 2-4-2010 was rejected. The Appellant has filed a Constitution Petition No.440 of 2010 against the aforementioned Order dated: 2-4-2010, which is pending adjudication. Therefore, the Impugned Judgment is clearly illegal and liable to be setaside.

A copy of the abovementioned Order dated: 24-12-2009, Order dated: 16-1-2010, Order dated: 2-4-2010 and memo of C.P. No.440 of 2010 is annexed and marked as Annex 'P' to 'P-3' respectively.

- C. That the Impugned Judgment has wrongly held that the prosecution has chosen not to disclose the so-called purported marriage with Ahsan. It is submitted that a bare reading of the record of the trial court shows that the prosecution has disclosed this so-called purported marriage. Therefore, the Impugned Judgment on this issue is illegal and liable to be setaside.

A copy of the Order dated: 16-2-2007 is C.P. No.9/2007 is annexed and marked as Annex 'Q'.

- D. That at the stage of final arguments, detailed arguments were heard by the trial court. It is submitted that the counsel for the Appellant submitted written arguments of 81 pages in which over 50 cases were relied upon. It is submitted that the Impugned Judgment doesnot refer to a single case relied upon the prosecution/complainant counsel nor discusses in detail the detailed written arguments put forward by the prosecution/complainant counsel. It is further submitted that the Impugned Judgment is in clear

- I. That the Impugned Judgment has wrongly held that due to the use of the

- J. That the Impugned Judgment has wrongly held that there is no proof for gang rape. It is submitted that there is ample proof of gang rape e.g. the evidence of the rape survivor, medical evidence. Therefore, the Impugned Judgment on this issue is illegal and liable to be set aside.
- K. That the Impugned Judgment has wrongly held that marks of violence are necessary for a conviction of rape. It is submitted that it is settled law that marks of violence are not necessary for a conviction of rape. Therefore, the Impugned Judgment on this issue is illegal and liable to be set aside.
- L. That the Impugned Judgment has wrongly held that the doctor has opined that zina was not forcibly committed. It is submitted that there is ample proof of gang rape e.g. the evidence of the rape survivor, medical evidence. Therefore, the Impugned Judgment on this issue is illegal and liable to be set aside.
- M. That the Impugned Judgment has wrongly relied upon the so-called purported freewill, Nikahnama and photographs. It is submitted that these documents were clearly in-admissible and even otherwise, clearly forged. Therefore, the Impugned Judgment on this issue is illegal and liable to be set aside.
- N. That the Impugned Judgment has wrongly held that the burden to prove the so-called purported marriage was not on the defence. It is submitted that it settled law that the burden of a defence plea is on the defence. Therefore, the Impugned Judgment on this issue is illegal and liable to be set aside.
- O. That the Impugned Judgment has wrongly relied on the evidence of the Nikkah Registrar and the registration of the so-called purported marriage.

It is submitted that the aforementioned cannot prove marriage. Therefore, the Impugned Judgment on this issue is illegal and liable to be setaside.

P. That the Impugned Judgment has wrongly held that the Appellant was not a minor. It is submitted that no contradictory evidence in relation to the minor age of the Appellant has come on the record. Therefore, the Impugned Judgment on this issue is illegal and liable to be setaside.

Q. That the Impugned Judgment has wrongly relied upon the report of the handwriting expert, which was clearly inadmissible and even otherwise, irrelevant. Therefore, the Impugned Judgment on this issue is illegal and liable to be setaside.

R. That it is most respectfully and most humbly submitted that the Appellant seeks the indulgence of this Honourable Court to raise further grounds at the time of the hearing of this Appeal.

PRAVER

It is most respectfully and most humbly prayed that in view of the abovementioned, 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 6th, 2010 (Annex 'A'), passed in Session Case No.471 of 2007, and consequently, this Honourable Court may convict the Respondents No.2 to No.5;

(ii) Graciously grant the costs of this Appeal.

(iii) Pass any other Order that this Honourable Court may deem fit and proper in the facts of this case.

APPELLANT
[Kainat Soomro]

APPELLANT
[Lawful Guardian of the Appellant
Ghulam Nabi Soomro]

ADVOCATE FOR THE APPELLANT

Karachi;
Dated: June 3rd, 2010

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

Criminal Acquittal Appeal No. _____ of 2010

Kainat Soomro.....Appellant

Versus

Ahsan Ali & Others.....Respondents

SUPPORTING AFFIDAVIT TO THE APPEAL

I, Kainat Soomro, daughter of Ghulam Nabi Soomro, Muslim, resident of Flat No. 417, Noor Plaza, Khatri Jammal Khanna, Bhimpura, Karachi, do hereby state on oath as under:

1. That I am the Appellant in this present Appeal and I am well conversant with the facts of this case.
2. That the accompanying Appeal has been drafted, instituted and filed under our instructions and for the sake of brevity, the entire contents of the accompanying Appeal, may be read as part of this affidavit.
3. That we have not filed any other Appeal, before any forum, involving the issues raised in or the cause of action, that is the subject matter of this Appeal. All the relevant facts have been placed before this Honourable Court and no material facts have been concealed.
4. That what ever is stated above is true and correct to my knowledge and belief, and the law as stated in the accompanying appeal is believed to be correct in view of the advice received from my counsel.

DEPONENT

The deponent above named is known to me and is identified by me to the Commissioner for taking Affidavits.

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ADVOCATE

Solemnly affirmed on oath before me at Karachi on this 3rd day of June, 2010, by the deponent, above named, who has been indentified to me by Mr. Nadeem Ahmed, Advocate, who is personally known to me.

COMMISSIONER FOR TAKING AFFIDAVITS

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

Criminal Acquittal Appeal No. _____ of 2010

Kainat Soomro.....Appellant

Versus

Ahsan Ali & Others.....Respondents


SUPPORTING AFFIDAVIT TO THE APPEAL

I, Ghulam Nabi Soomro, son of Muhammad Dawood, Muslim, Adult, resident of Flat No. 417, Noor Plaza, Khatri Jamnat Khanna, Bhimpura, Karachi, do hereby state on oath as under:

1. That I am the father and lawful guardian of the Appellant in this present Appeal and I am well conversant with the facts of this case.
2. That the accompanying Appeal has been drafted, instituted and filed under our instructions and for the sake of brevity, the entire contents of the accompanying Appeal, may be read as part of this affidavit.
3. That we have not filed any other Appeal, before any forum, involving the issues raised in or the cause of action, that is the subject matter of this Appeal. All the relevant facts have been placed before this Honourable Court and no material facts have been concealed.
4. That what ever is stated above is true and correct to my knowledge and belief, and the law as stated in the accompanying appeal is believed to be correct in view of the advice received from my counsel.

DEPONENT

The deponent above named is known to me and is identified by me to the Commissioner for taking Affidavits.


ADVOCATE

Solemnly affirmed on oath before me at Karachi on this 3rd day of June, 2010, by the deponent, above named, who has been indentified to me by Mr. Nadeem Ahmed, Advocate, who is personally known to me.

COMMISSIONER FOR TAKING AFFIDAVITS

The contents of the abovementioned Affidavit has been truly and audibly read over to the deponent in my presence in his native language, as the deponent is not well conversant in the English language. He appears perfectly understood the contents of the abovementioned Affidavit and affirmed these contents in my presence.

COMMISSIONER FOR TAKING AFIDAVITS