**IN THE HONOURABLE SUPREME COURT OF PAKISTAN**

(APPELLATE JURISDICTION)

Criminal Petition for Leave to Appeal No.\_\_\_\_\_\_\_\_ of 2020

1. Naseema Lubano

Daughter of Humzu Lubano

Muslim, Adult,

Resident of District Ghotki,

Taluka Ubaro, Near IBA Community

College, Langho Road, Ubaro

1. Humzu Lubano,

Son of Gaman Khan,

Muslim, Adult,

Resident of District Ghotki,

Taluka Ubaro, Near IBA Community

College, Langho Road, Ubaro……………………………………….....Petitioners

Versus

1. The State
2. Anwar Hussain,

Son of Loung Khan,

Muslim, Adult,

Resident of Goth Near Haq

Chok Dharki, Tehsil Dharki,

District Gothki, Sindh................…………………..............................Respondents

**CRIMINAL PETITION UNDER ARTICLE 185(3) OF THE CONSTITUTION, 1973, FOR GRANT OF LEAVE TO APPEAL AGAINST THE JUDGMENT DATED: 15-04-2020 PASSED BY THE HONOURABLE HIGH COURT OF SINDH, AT KARACHI, IN CRIMINAL APPEAL NO. 72 OF 2010**

HUMBLY SHEWETH:

Being aggrieved by the Judgment dated: 15-04-2020 (‘Impugned Judgment’), passed by the Honourable High Court of Sindh, at Karachi, in Criminal Appeal No. 72 of 2010, the Petitioners above named prefer the instant Criminal Petition for Leave to Appeal on following, inter-alia, facts and grounds:

**QUESTIONS OF LAW**

1. Whether the Honourable High Court, in the Impugned Judgment, has erroneously held that the settled principle of law that the sole and reliable testimony of the Petitioner No.1/Rape survivor is sufficient for conviction is not applicable in cases of abduction of rape victims from non-isolated places, even though the law laid down by the Superior Courts make no such distinction between isolated and non-isolated places in cases of abduction of rape victims?
2. Whether the Honourable High Court, in the Impugned Judgment, has erroneously held that the testimony of the Petitioner No.1/Rape survivor is untrustworthy being motivated by malafides, even though there was no evidence on the record regarding the malafides of the testimony of the Petitioner No.1/Rape survivor?
3. Whether the Honourable High Court, in the Impugned Judgment, has completely failed to properly examine the evidence on record, and failed to notice that the allegation of rape by the Petitioner No.1/Rape-survivor was corroborated by other ocular evidence and medical evidence?
4. Whether the Honourable High Court, in the Impugned Judgment, has erroneously held that the testimony of the Petitioner No.1/Rape survivor was untrustworthy because she failed to disclose at the time of her Section 164, Cr. P. C., 1898, Statement as well as during her medical examination that she was already eight weeks pregnant due to an earlier rape incident, even though such disclosure was made in her testimony before the Trial Court?
5. Whether the Honourable High Court, in the Impugned Judgment, has erroneously held that the testimony of the Petitioner No.1/Rape survivor could not be believed because she showed no sign of psychological trauma during the medical examination, even though it is settled law as laid down by the Superior Courts that the absence of severe psychological trauma at the time of medical examination cannot be a reason for disbelieving the testimony of the Petitioner No.1/Rape survivor?
6. Whether the Honourable High Court, in the Impugned Judgment, has erroneously held that since there were no genital violation or marks of violence, thus, there was no rape, even though it is settled law as laid down by the Superior Courts that absence of marks of violence does not show the absence of rape?
7. Whether the Honourable High Court, in the Impugned Judgment, has erroneously held that since there was a delay of a few days for sending the swabs obtained from the Petitioner No.1/Rape survivor’s body for chemical examination, thus, this made the chemical examiner’s report unreliable, even though it is settled law as laid down by the Superior Courts that such delay is not prejudicial or fatal?
8. Whether the Honourable High Court, in the Impugned Judgment, has erroneously held that since no DNA testing or semen-matching was conducted in this particular case, thus, the allegation of rape cannot be proved, even though it is settled law as laid down by the Superior Courts that the absence of DNA testing or semen-matching is not prejudicial or fatal in rape cases?
9. Whether the Honourable High Court, in the Impugned Judgment, has erroneously held that a delay of a few hours in the lodging of a F.I.R. in a rape case raises doubts about the guilt of the accused persons, even though it is settled law as laid down by the Superior Courts that delay in the lodging of the F.I.R. of a few hours is insignificant?
10. Whether the Honourable High Court, in the Impugned Judgment, has erroneously held that since the accused persons were relatives, thus, the allegation of rape cannot be believed, even though it is settled law as laid down by the Superior Courts that the accused persons being relatives is no grounds for their acquittal in a rape case.
11. Whether the Honourable High Court, in the Impugned Judgment, has erroneously held that since the eye witnesses were relatives/interested witnesses, thus, their evidence could not be relied upon, even though it is settled law as laid down by the Superior Courts that the reliable evidence of interested witnesses cannot be disregarded simply on the ground that they are interested witnesses?

**FACTS**

1. That the subject matter of this present Appeal is the Impugned Judgment dated: 15.04.2020, passed by the Honourable High Court of Sindh, at Karachi, [‘Honourable High Court’] in, inter alia, Criminal Appeal No. 72 of 2010 filed by the Respondents No.2 [‘Anwar Hussain’] against the Judgment dated: 23.01.2010 of the Learned Court of District & Sessions Judge, Karachi South [‘Learned Trial Court’] in Session Case No. 472 of 2007, arising out of FIR No. 07 of 2007, P.S. Ubaro for offences under Sections 376(2), 354-A, 452, 337-A(i), 337-F(i), 147, 148, and 149 P.P.C., 1860, in relation to the gang rape of the Petitioner No.1 [‘Naseema Lubano’]. Through the said Judgment dated: 23.01.2010 of the Learned Trial Court, the Respondent No.2 [‘Anwar Hussain’] was convicted and awarded sentence of rigorous imprisonment for life for the offence under Section 376(2), P.P.C., 1860, rigorous imprisonment for two years for the offence under Section 337A(i), P.P.C., 1860, and was further imposed with the liability to pay daman of Rs. 50,000/-. As explained in detail below, through the Impugned Judgment, the Criminal Appeal No. 72 of 2010 has been allowed and the conviction and sentence, including life imprisonment, of the Respondent No.2 has been set aside, and directions have been given for his release forthwith.
2. That the Petitioner No. 1 is the rape survivor/victim in the gang rape criminal case numbered as Session Case No. 472 of 2007 and the Petitioner No. 2 is the father of the Petitioner No.1 i.e. rape survivor/victim, and the Complainant in FIR No. 07 of 2007 and Session Case No. 472 of 2007. Both the Petitioner No.1 and the Petitioner No.2 were represented through a Counsel in Criminal Appeal No. 72 of 2010. Therefore, the Petitioners have the locus standi to prefer the present Criminal Petition for Leave to Appeal.
3. That on 27-01-2007 in Ubaro, District Ghotki, Sindh, the Petitioner No.1 [‘rape survivor’] was abducted, beaten, raped and stripped naked in the public view by Abdul Sattar, Loung, Ghulamullah alias Morezado, Munawar, Shahzado, Abdul Jabbar, Anwar Hussain, Khadim Hussain, Ali Hasan, Shah Baig and Bashir Ahmed. It is submitted that a F.I.R. No. 07/2007, dated: 27-01-2007 was initiated 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.
4. That in view of the grave threats from the accused persons and their supporters, the Petitioners and their family was forced to shift from their village to the city of Karachi. In view of this forced shifting, the Petitioner 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 13th, 2008, disposed off the Criminal Transfer Application, by transferring the Session Case No. 472 of 2007, to the District & Session Court (Karachi South).
5. That subsequently, the Learned Single Judge of the Honourable High Court of Sindh through Order dated: April 16th, 2008, retransferred 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 Petitioners filed a complaint before the Supreme Judicial Council against the said Judge. It is important to note here that the said Learned Single Judge has since resigned from his judicial office.
6. That in view of the gross illegality of the abovementioned Order dated: April 16th, 2008, the Honourable High Court through Order dated: June 7th, 2008, recalled the abovementioned Order dated: April 16th, 2008, and retransferred the case from IIIrd ADJ (District Dadu) to the District & Session Courts (Karachi South), and accordingly, Session Case No. 472 of 2007 proceeded for trial before the District & Session Courts (Karachi).
7. That it is submitted that initially, three of the accused persons named in the abovementioned F.I.R. i.e. Abdul Sattar, Morezado and Munawar, absconded and were declared proclaimed offenders and their case was kept on dormant file. It may also be noted that one of the accused persons i.e. Loung, who was on bail, died during the pendency of this criminal 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 Section 354-A, 452, 337-A(i), 376-B, 147, 148 & 149, P.P.C., 1860, hence, the first Trial proceeded against the aforementioned accused persons only.
8. That the prosecution examined eight (08) witnesses i.e. Naseema [Ex. No. 10], Humzu [Ex. No. 11], Dr. Zaibunnisa [Ex. No. 12], Asghar Ali [Ex. No. 13], Jamaldin [Ex. No. 14], Mehrab [Ex. No. 17], Aftab Hussain [Ex. No. 18] and Muhammad Islam-ul-Haque Arain [Ex. No. 19]. The ocular/eye witness evidence confirming the involvement of the aforementioned accused persons was provided by the following witnesses: (a) Asghar Ali (PW-4), (b) Jamaluddin (PW-5) and Sardar Ali (He is the Uncle of Petitioner No.1/ Naseema Lubano who rescued Petitioner No.1 and an eye witness to the offences committed by the accused persons. He recorded his statement under Section 164, Cr.P.C., but was later dropped by the prosecution as a witness). The Medical evidence confirming rape/zina-bil-jabbar was provided by the following witnesses: (a) Petitioner No.1 i.e. rape survivor (PW-1) and Dr. Zaibunnisa (WMLO) – PW-3. The evidence of PW-3 was based on her independent assessment as well the following reports:

|  |  |  |
| --- | --- | --- |
| **S. No.** | **Medical Evidence** | **Exhibit** |
|  | Provisional Medical Certificate dated: 28.01.2007 | 12/A |
|  | Final Medical Certificate dated: 04.02.2007 | 12/B |
|  | Chemical Examiner Report dated: 03.02.2007 | 12/C |

1. That it is submitted that the said witnesses confirmed the allegations against the accused persons as stated in the abovementioned Charge. On the contrary, all the seven accused persons recorded their statements under Section 342, Cr. P. C., 1898, before the Learned Trial Court. It is submitted that no defence witnesses were called by the accused persons nor did any of the accused persons record their statements on oath.
2. That the Learned Trial Court, through Judgment dated: 23rd January, 2010, in Sessions Case No. 472 of 2007 acquitted the following accused: Shahzado, Abdul Jabbar, Khadim Hussain, Ali Hasan, Shah Baig, and Bashir Ahmed from all the charges/offences. However, the Respondent No.2 was convicted by the Learned Trial Court through the Impugned Judgment dated: 23.01.2010 in the following terms:

“**The case of accused Anwar Husain is different. The offence of rape by accused Anwar Hussain and absconding accused Abdul Sattar has been proved beyond reasonable doubt. I, therefore, convict accused Anwar Hussain for an offence u/s 376(2) and sentence him to undergo R.I. for life.** He also required to undergo R.I. for two years for an offence U/S.337 A(i) PPC and he is also liable to pay daman of Rs. 50,000/- to victim as tazir” [Emphasis and underlying supplied]

It is important to submit that the Respondent No.2 [‘Anwar Hussain’] is the only accused who has been convicted through the Judgment dated: 23.01.2010 for **ONLY** the offences under Section 376(2), and Section 337A(i), PPC., 1860. However, through the same Judgment, he has been acquitted of other offences i.e. he has been acquitted from the offences under Sections 354-A, 452, 337-F(1), 147, 148, 149, P.P.C., 1860.

1. That against the aforementioned Judgment dated: 23rd January, 2010, two Appeals were filed before the Honourable High Court of Sindh, at Karachi:
   1. Criminal Appeal No. 72 of 2010 was filed by the Respondent No.2 [‘Anwar Hussain’] to challenge his conviction and sentence;
   2. Criminal Acquittal Appeal No. 80 of 2010 was filed by the Petitioner No.1 and No.2 against the accused i.e. Shahzado, Abdul Jabbar, Khadim Hussain, Ali Hasan, Shah Baig, Bashir Ahmed as well as Respondent No.2 [Anwar Hussain] to challenge their acquittal from the charges/offences specified in FIR No. 07 of 2007.

It is pertinent to mention that after the Learned Trial Court’s Judgment dated: 23.01.2010, both the absconding accused i.e. Munawar and Ghulamullah alias Morezado appeared before the Learned Trial Court to obtain pre-arrest bail, but were subsequently sent for trial. However, through Judgment dated: 05.05.2014 passed by the Learned Trial Court, the aforementioned accused i.e. Munawar and Morezado were acquitted. Therefore, the Petitioner No.1 and Petitioner No.2 filed Criminal Acquittal Appeal No. 161 of 2014 before the Honourable High Court of Sindh, at Karachi, against the aforementioned Judgment dated: 05.05.2014.

1. That the Honourable High Court of Sindh, at Karachi, through the Impugned Judgment dated: 15-04-2020, has allowed the Criminal Appeal No. 72 of 2010 and dismissed the Criminal Acquittal Appeal No. 80 of 2010 and Criminal Acquittal Appeal No. 161 of 2014 in the following terms:

“27. For what has been discussed above a conclusion is inescapable and irresistible that the prosecution had failed to prove its case against the accused persons beyond reasonable doubt in terms of questions set out as the prosecution evidence is inconsistent, suffering from material and glaring contradictions, contaminated with serious doubts, flimsy and as such not trustworthy. Criminal Appeal No. 72/2010, therefore, is allowed and the impugned judgement of learned trial court to the extent of conviction and sentence of appellant Anwar Hussain is set aside and he is acquitted of the offences for which he was charged, tried and convicted. He shall be released forthwith if not required in any other case. However, Criminal Acquittal Appeal No.80/20 and Criminal Acquittal Appeal 161/2014 being devoid of merits are hereby dismissed”.

1. That it is most respectfully and most humbly submitted that the Petitioners are aggrieved by the abovementioned Impugned Judgment and having no alternative remedy, the Petitioners challenge the abovementioned Impugned Judgment on, inter alia, following grounds:

**GROUNDS**

1. That it is most respectfully and most humbly submitted that whilst passing the Impugned Judgment, the Honourable High Court has failed to observe that the conviction of the Respondent No.2 [‘Anwar Hussain’] by the Learned Trial Court through Judgment dated: 23.01.2010 was based on the following findings:
   1. That the Prosecution is equipped with ocular and medical testimonies;
   2. That the factum of sexual assault has been described by the Victim herself against the accused Abdul Sattar and Anwar Hussain;
   3. That there is medical evidence and PW-3/WMLO declared that the victim has been subjected to zina-bil-jabbar;
   4. That Naseema i.e. the Victim has stated that “she was taken by Abdul Sattar in a room of his… thereafter she was raped by Accused Abdul Sattar, thereafter Accused Anwar Hussain entered the room and raped her” and she has specifically levelled accusations against Abdul Sattar and Anwar Hussain;
   5. That as per the medico legal reports, accused Anwar Hussain is potent and reference of WMLO’s medico legal report, which reflect the availability of blood cells on the cotton swab being a clear indication of fresh act of zina, with the resultant outcome that it had been proved that she was raped by, inter alia, Anwar Hussain.

However, through the Impugned Judgment, the Honourable High Court has failed to give any reason as to why the findings of the Learned Trial Court are erroneous and/or inconsistent with the law and to the facts involved in the present case, to the extent of the conviction of the Respondent No.2 [‘Anwar Hussain’]. The Honourable High Court has also failed to give reasons as to whether there was any misreading or non-reading of evidence by the Learned Trial Court and as to the propriety of the sentence awarded against the Respondent No.2 through Judgment dated: 23.01.2010 of the Learned Trial Court. Therefore, the Impugned Judgment is contrary to the settled principles of law and inconsistent and contrary to the law and facts of this case, and accordingly, the Impugned Judgment is liable to be set aside.

1. That it is most respectfully and most humbly submitted that through the Impugned Judgment, the Honourable High Court, whilst completely ignoring the contention of the Petitioners that the sole testimony of the rape survivor i.e. the Petitioner No.1 is reliable, confidence inspiring and sufficient for conviction of Respondent No.2 [‘Anwar Hussain’] has given a completely erroneous finding in respect thereof. It is submitted that with regards to the evidence i.e. deposition and statement under Section 164, Cr.P.C., 1898, provided by the Petitioner No.1 for the offence of zina-bil-jabbar, committed by inter alia, Respondent No.2 [‘Anwar Hussain’], the Honourable High Court through the Impugned Judgment has erred in observing that a distinction must be drawn between the testimonies of the rape victims in cases involving abduction of rape victims from isolated places from that involved in the case of the Petitioner No.1. The Honourable High Court erroneously held that in the former, conviction could be upheld entirely resting on the statement of the rape victim, whereas in the latter case such as that of the Petitioner No.1, the statement of the rape victim would require proof on each part or if some parts of the prosecution case are disbelieved then before convicting the accused for zina alone, strong corroboration would always be requirement for safe criminal administration of justice. It is submitted that the aforementioned finding is completely contrary to the settled principles of law laid down by the Honourable Supreme Court of Pakistan that the sole testimony of rape victim is enough for conviction in case it inspires confidence and appears reliable. Furthermore, great sanctity is attached to the statement of the victim, particularly in view of the fact that the Honourable Courts have observed that the offence of rape is not usually committed in public view and there are generally hardly any witnesses other than the rape victim herself, in which case the version of the rape victim ought to be believed. The aforementioned distinction drawn by the Honourable High Court in respect of statements given by rape victims depending on their place of abduction is completely contrary to the settled principles of law laid down by the Honourable Supreme Court. Even otherwise, the aforementioned testimony of the Petitioner No.1 was strongly corroborated by the aforementioned medical evidence provided by PW-3/WMLO in the form of Provisional and Final Medico Legal Reports as well as Chemical Examiner’s Report (Exhibit 12/A to 12/C) as well as evidence of other prosecution witnesses. Therefore, the Impugned Judgment is contrary to the settled principles of law and inconsistent and contrary to the law and facts of this case, and accordingly, the Impugned Judgment is liable to be set aside.
2. That it is most respectfully and most humbly submitted that in view of the contentions stated in Para B above, it submitted that the Honourable High Court through the Impugned Judgment has erred in observing that the evidence of the “alleged victim girl is substandard, flimsy, untrustworthy but contaminated with ill motivation”. It is submitted that the Honourable High Court has failed to observe that there is no evidence to the effect that the Petitioner No.1 had any malafide or ill motive against the Respondent No.2 [‘Anwar Hussain’] and other accused persons to implicate them falsely in the aforementioned FIR No. 07 of 2007 and to level severe accusations of, inter alia, zina-bil-jabbar, abduction, trespass, and exposing her naked to public view. It is further submitted that the aforementioned finding is completely contrary to the settled principles of law laid down by the Honourable Supreme Court of Pakistan that the sole testimony of rape victim is enough for conviction in case it inspires confidence and appears reliable. Furthermore, great sanctity is attached to the statement of the victim, particularly in view of the fact that the Honourable Courts have observed that the offence of rape is not usually committed in public view and there are generally hardly any witnesses other than the rape victim herself, in which case the version of the rape victim ought to be believed. Even otherwise, the aforementioned testimony of the Petitioner No.1 was strongly corroborated by the aforementioned medical evidence provided by PW-3/WMLO in the form of Provisional and Final Medico Legal Reports as well as Chemical Examiner’s Report (Exhibit 12/A to 12/C) as well as evidence of other prosecution witnesses. Therefore, the Impugned Judgment is contrary to the settled principles of law and inconsistent and contrary to the law and facts of this case, and accordingly, the Impugned Judgment is liable to be set aside.
3. That it is most respectfully and most humbly submitted that whilst reading and giving findings on the evidence of the Petitioner No.1 i.e. the rape survivor, the Honourable High Court failed to observe that the deposition of the rape survivor i.e. the Petitioner No.1 before the Learned Trial Court and her statement under Section 164, Cr.P.C., 1898, before the Judicial Magistrate inspires confidence because, firstly, she has consistently given the same testimony to her father (Complainant/Petitioner No.2) and other family members, secondly, before the WMLO, thirdly, in her statement under Section 164, Cr. P.C., 1898, before the Judicial Magistrate, and fourthly, in her evidence recorded before Learned Trial Court that she was gang raped and molested by the accused persons, clearly indicating the involvement of Respondent No.2 [‘Anwar Hussain’] and other accused persons. In all the above statements, Petitioner No.1 has clearly identified the role of Anwar Hussain and Abdul Sattar i.e. that in addition to the offences under Sections 354-A, 452, 337-F(1), 147, 148, 149, P.P.C., 1860, Anwar Hussain has also committed the offence of Section 376(2), PPC., 1860. The evidence of Hamzu/Petitioner No.2, Asghar Ali and Jamaluddin corroborates the aforementioned evidence of Petitioner No.1. The Honourable High Court also failed to observe that the testimony of the Petitioner No.1 is corroborated by the fact that immediately after the incident of rape she disclosed the rape incident to the WMLO/PW-3 which disclosure is consistent with her FIR and her evidence before the Learned Trial Court. Importantly, no malafide motive has been proved against the rape victim to show that she has made allegedly false allegations. Therefore, the Impugned Judgment is contrary to the settled principles of law and inconsistent and contrary to the law and facts of this case, and accordingly, the Impugned Judgment is liable to be set aside.
4. That it is most respectfully and most humbly submitted that the acquittal of the Respondent No.2 [‘Anwar Hussain’] through the Impugned Judgment is based on the Honourable High Court’s erroneous observation to the effect that “*the situation becomes more vulnerable when the victim girl was found already pregnant of 8 weeks which fact was not disclosed by her to the Doctor or even during the recording of her statement under Section 164, Cr. P.C., 1898, before the concerned Magistrate*”. It is further submitted that the Honourable High Court has erred in observing that the Petitioners have failed to lodge any separate FIR against Munawar who was nominated for the previous act of rape. Hence, the Honourable High Court on such frivolous and baseless contention has extended the benefit of doubt to the Respondent No.2 in respect of his involvement in, inter alia, the rape/zina-bil-jabr of the Petitioner No.1. It is submitted that the Honourable High Court had erred in observing that it has been held in various pronouncements by the Honourable Courts that it is understandable that the rape victim had not disclosed the previous rape committed on her as it may not have been easy for her to explain about the previous rape due to the future repercussions of such disclosure on her family, life, honour, career and particularly the honour of the family. Even otherwise, the aforementioned testimony of the Petitioner No.1, which was strongly corroborated by the aforementioned medical evidence provided by PW-3/WMLO in the form of Provisional and Final Medico Legal Reports as well as Chemical Examiner’s Report (Exhibit 12/A to 12/C), is sufficient to convict the Respondent No.2 for the alleged offences. Therefore, the Impugned Judgment is contrary to the settled principles of law and inconsistent and contrary to the law and facts of this case, and accordingly, the Impugned Judgment is liable to be set aside.
5. That it is most respectfully and most humbly submitted that the Impugned Judgment is completely based on the misreading and non-reading of the medical evidence recorded in the present case. It is submitted that with regards to the medical evidence i.e. the deposition of PW-3, Dr. Zaibunnisa/WMLO as well as the Provisional and Final Medico Legal Reports as well as Chemical Examiner’s Report (Exhibit 12/A to 12/C) for the offence of zina-bil-jabr, committed by inter alia, Respondent No.2 [‘Anwar Hussain’], the Honourable High Court through the Impugned Judgment has given the following erroneous findings:
   1. “The behaviour and mental status of the Petitioner No.1 was normal and it observed that how a girl of 17/18 years old after such traumatic experience, behave normally, which certainly reflects that there were no signs of any psychological symptoms, like prominent fear, shock, nightmare, tenseness, anger embarrassment, shame, guilt or contamination during the physical examination”.
   2. No genital violation was observed on the physical examination of the Petitioner No.1 and that her hymen torn and healed
   3. The swabs obtained from the Petitioner No.1’s body were sent for chemical analysis with an approximate delay of four days but no explanation is offered as to what happened to those vaginal swabs in the said four days.

It is submitted that the Honourable High Court had failed to read the medical evidence in its totality and has picked certain pieces of the medical evidence whilst excluding others which strongly prove the factum of rape by Respondent No.2. It is further submitted that the Honourable High Court had failed to observe that there is no doubt about the fact that rape has occurred and the doctor’s evidence proves it amply. The evidence of Dr. Zaibunnisa before the Learned Trial Court opining that the nature of all injuries mentioned in above-said medico-legal certificate is Ghayr-Jaifah Damiyah, caused by hard and blunt substance, and the probable time / duration of injuries is fresh, in the light of which as well as chemical examiner’s report, it is proved that the act of zina-bil-jabr has been committed upon the Petitioner No.1 has been completely ignored by the Honourable High Court. Furthermore, the human semen detection on the body of the Petitioner No.1 as observed in the chemical examiner’s report could only be due to the fresh act of zina, which was also ignored by the Honourable High Court. Even otherwise, it is submitted that as laid down by the Honourable Supreme Court in various pronouncements that even if doctor’s evidence is negative, rape conviction can be upheld. The Honourable Supreme Court has also held that the absence of resistance and absence of marks of violence on the private parts of the rape survivor victim does not prove that rape has not occurred. Therefore, the Impugned Judgment is contrary to the settled principles of law and inconsistent and contrary to the law and facts of this case, and accordingly, the Impugned Judgment is liable to be set aside.

1. That it is most respectfully and most humbly submitted that the Impugned Judgment is completely based on the misreading and non-reading of the medical evidence recorded in the present case. It is submitted that with regards to the medical evidence i.e. the deposition of PW-3, Dr. Zaibunnisa/WMLO as well as the Provisional and Final Medico Legal Reports as well as Chemical Examiner’s Report (Exhibit 12/A to 12/C) for the offence of zina-bil-jabr, committed by inter alia, Respondent No.2 [‘Anwar Hussain’], the Honourable High Court through the Impugned Judgment has given the following erroneous findings:
   1. “When no DNA test has been conducted nor any semen matching was undertaken, so as to conclusively establish that the semen found on the vaginal swabs of the alleged victim belonged to Respondent No.2 [‘Anwar Hussain’], co-accused or someone else, it would be difficult to blindly rely on the evidence of the alleged victim girl”.
   2. “In the wake of peculiar circumstances of alleged rape victim girl being used to sexual intercourse and pregnant, the DNA and group semen test in this case, which would have been strong supporting to the testimony of the alleged victim, was of immense importance which could have scientifically determined as to whether intercourse with the prosecutrix was committed only by a specific person or by a group of persons”.

It is submitted that the Honourable High Court has failed to observe that the Provisional Medical Certificate, Final Medical Certificate and Chemical Examiner Report, sufficiently reflect the involvement of Anwar Hussain in the commission of the offence of Section 376(2), PPC, 1860. The Chemical Examiner Report is sufficiently based on the semen test. It is further submitted that as a settled principle of law, even otherwise, ‘Semen Grouping’ or ‘DNA Testing’ is not necessary or mandatory for a conviction of rape. It has also been held that the omission of scientific test of semen status and grouping of sperms is neglect on the part of prosecution but does not materially affect the other evidence, hence its omission cannot be used to extend benefit of doubt in favour of the Respondent No.2 [‘Anwar Hussain’] for the offence of zina-bil-jabbar. Therefore, the Impugned Judgment is contrary to the settled principles of law and inconsistent and contrary to the law and facts of this case, and accordingly, the Impugned Judgment is liable to be set aside.

1. That it is most respectfully and most humbly submitted that the Honourable High Court has erroneously relied on the fact that there is a delay of “5.30 hours” in the lodging of FIR, that has not been explained and the explanation provided has material contradictions and inconsistencies, which creates doubts in the prosecutions’ case. It is submitted that in various pronouncements, the Honourable Supreme Court has held that mere delay in lodging of the F.I.R. by a rape victim does not render the prosecution’s case in doubt nor is it fatal to the prosecution’s case if other evidence inspires confidence. It has also been held that the rape victim is usually traumatized after the incident of rape, hence her mental agony is understandable which could result in delay in lodging of F.I.R. Even otherwise, FIR not a piece of substantive evidence and undue importance should not be given to it. Therefore, the Impugned Judgment is contrary to the settled principles of law and inconsistent and contrary to the law and facts of this case, and accordingly, the Impugned Judgment is liable to be set aside.
2. That it is most respectfully and most humbly submitted that the Honourable High Court has erroneously observed that all the accused persons are relatives hence, the offences as alleged cannot be committed by them. It is submitted that such contention and presumption is clearly erroneous, false and baseless as the same does not find any support of legal provision or case law. Hence, the said theory or presumption cannot be the basis of acquittal of the accused i.e. Anwar Hussain. Therefore, the Impugned Judgment is contrary to the settled principles of law and inconsistent and contrary to the law and facts of this case, and accordingly, the Impugned Judgment is liable to be set aside.
3. That it is most respectfully and most humbly submitted that with regards to the prosecution witnesses, the Honourable High Court has erroneously observed as follows:
   1. That material witnesses i.e. Mother of Petitioner No.1 (Naziran) and other occupants of the house at the time of alleged abduction of Naseema, as well as other villagers were not examined as prosecution witness (who resided between the house of Petitioner No.1 and Abdul Sattar), hence, their non-examination provides lawful inference that had they been examined, they would not have supported the prosecution.
   2. That only interested eye witnesses were produced, hence, no implicit reliance could be placed on evidence of interested eye-witnesses.

It is submitted that as a settled principle of law, it is the quality, not quantity of evidence which must be considered. It is admitted fact that Asghar Ali was also witness to the incident of trespass, in addition to being witness to the involvement of 11 accused persons in the exposing Petitioner No.1 naked to public and playing with her body. Furthermore, as a settled principle of law, the mere fact that witnesses are related to the rape victim does not mean that the witnesses are necessarily interested/bias witnesses. The witness’s bias or partiality has to be proved which has not been done during the trial by the defense, nor has any such observation of partiality been observed in the Learned Trial Court’s Judgment dated: 23.01.2010. The testimony of Mr. Jamaluddin, Mr. Sardar Ali and the brother Mr. Asghar Ali provides ocular evidence of the incident for which the accused persons are charged. The statement of Mr. Jamaluddin [Exhibit 14], Mr. Sardar Ali and Mr. Asghar Ali [Exhibit 13] had been consistent before the Court and Police and furnishes convincing evidence after having resolutely withstood the test of cross examination. Therefore, the Impugned Judgment is contrary to the settled principles of law and inconsistent and contrary to the law and facts of this case, and accordingly, the Impugned Judgment is liable to be set aside.

1. That it is most respectfully and most humbly submitted that the Honourable High Court has erroneously observed that the Respondent No.2 i.e. Anwar Hussain as well as other accused persons are hardened and desperate criminals. This is evident from the fact that in view of the grave threats from Anwar Hussain and other accused persons, the Petitioners and their family were forced to shift from their village to the city of Karachi. In view of this forced shifting, Hamzu Lubano, 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: 13th August, 2008, disposed off the Criminal Transfer Application, by transferring the Session Case No. 472 of 2007, to the District and Session Court, Karachi South. Although subsequently, another Order dated: 16th April, 2008, was passed which transferred the case from the Karachi to Dadu, however, through Order dated: 07th June, 2008, the above illegality was rectified and the Session Case No. 472 of 2007 was transferred to District & Session Courts, Karachi (South). Therefore, the Impugned Judgment is contrary to the settled principles of law and inconsistent and contrary to the law and facts of this case, and accordingly, the Impugned Judgment is liable to be set aside.
2. That it is most respectfully and most humbly prayed that the Petitioners may graciously be allowed to urge further grounds in addition to the above at the hearing of this present case.

**P R A Y E R**

It is, therefore, most respectfully prayed that leave to appeal against the Impugned Judgment dated: 15-04-2020 passed by the Honourable High Court of Sindh, at Karachi in Criminal Appeal No. 72 of 2010, may graciously be granted.

**DRAWN BY FILED BY**

FAISAL SIDDIQI

ADVOCATE SUPREME COURT ADVOCATE-ON-RECORD

OF PAKISTAN SUPREME COURT OF PAKISTAN

KARACHI ISLAMABAD

**CERTIFICATE**

Certified under instructions that prior to this no other petition against the Impugned Order was filed by the petitioner before this Honourable Court.

**ADVOCATE ON RECORD**