**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. Munawar

Son of Habibullah,

Muslim, Adult,

Resident of Goth Habib Lubano,

Tehsil Ubaro, District Gothki,

Sindh

1. Ghulamullah [Also known as Morzado]

Son of Budhal,

Muslim, Adult,

Resident of Goth Habib Lubano,

Tehsil Ubaro, 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 ACQUITTAL APPEAL NO. 161 OF 2014**

HUMBLY SHEWETH:

Being aggrieved by the Judgment dated: 15-04-2020 (‘Impugned Judgment’), passed by the Honourable High Court of Sindh, at Karachi, to the extent of Criminal Acquittal Appeal No. 161 of 2014, 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 settled law laid down by Superior Courts makes no such distinction between isolated and non-isolated places in cases 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 mis-read the evidence on record, and failed to notice that the allegation for the offence under Section 354-A, P.P.C.,1860, 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 completely mis-read the evidence on record, and failed to notice that the allegation of offences under Sections 452, 337-A(1), 337-F(1), 147, 148 and 149, P.P.C., 1860, by the Petitioner No.1/Rape-survivor was corroborated by other ocular evidence?
5. 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 raises doubts about the guilt of the accused persons, even though it is settled law that the delay in the lodging of the F.I.R. of a few hours is insignificant?
6. Whether the Honourable High Court, in the Impugned Judgment, has erroneously held that since the accused persons were relatives, thus, the allegation of rape and offence under Section 354-A, P.P.C., 1860, cannot be believed, even though it is settled law that the accused persons being relatives is no ground for their acquittal in a case of offence under Section 354-A, P.P.C., 1860.
7. 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 that the reliable evidence of interested witnesses cannot be disregarded simply on the ground that they are interested witnesses?
8. Whether the Honourable High Court, in the Impugned Judgment, has completely misinterpreted the principles laid down by the Honourable Supreme Court for overturning the Judgment of acquittal particularly in the presence of evidence of guilt of accused persons/Respondents No. 2 and No.3?
9. Whether the Honourable High Court, in the Impugned Judgment, has completely failed to consider that the offence committed by the Respondents No. 2 and No.3 was not only an abetment, but a substantial offence and not merely an appendage to the principal offence of rape?
10. Whether the Honourable High Court, in the Impugned Judgment, has erroneously held that since the Petitioner No.1 was inside the house when she was rescued and there is no evidence of her being dragged in the street or open space in naked condition, even though in terms of the provision of Section 354-A, P.P.C., 1860, it is irrelevant whether some outsider had actually seen her in the naked condition, if the public had access to the place where the incident happened and it is irrelevant that the incident took place at a private land?
11. Whether the Honourable High Court, in the Impugned Judgment, had failed to consider the unexplained absconsion of Respondents No.2 and No.3 immediately after the initiation of F.I.R. No. 07 of 2007, in the adjudication of the criminal charge against them?
12. Whether the Honourable High Court, in the Impugned Judgment, had failed to consider that the acquittal of co-accused in the first trial did not entitle the Respondents No.2 and No.3 to acquittal in the subsequent trial, even though it is a settled principle of law that each trial must be decided only on the basis of evidence adduced therein?

**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 Acquittal Appeal No. 161 of 2014 filed by the Petitioners against the Judgment dated: 05.05.2014 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: 05.05.2014 of the Learned Trial Court, the Respondents No.2 and No.3 were acquitted from all the charges/offences. As explained in detail below, through the Impugned Judgment, the Criminal Acquittal Appeal No. 161 of 2014 has been dismissed and the Respondents No. 2 and No.3 have been acquitted of all the charges/offences.
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 had filed Criminal Acquittal Appeal No. 161 of 2014. 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, Ghulamullah alias 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 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, Anwar Hussain 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 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 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 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 Ghulamullah alias 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 Charge for offences under Sections 354-A, 452, 337-A(i), 337-F(ii), 376(2), 147, 148 and 149, P.P.C., 1860, against the Respondents No.2 and No.3 was framed on 02.11.2011. The Prosecution examined the following seven witnesses who, inter alia, provided medical evidence as well as ocular evidence:

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| --- | --- | --- | --- |
| **S. No.** | **Witnesses** | **Nature of evidence** | **Exhibit** |
| 1 | Hamza (father/PW-1) | Complainant in FIR | Exhibit No.5 |
| 2 | Asghar Ali (brother/PW-2) | Eye witness | Exhibit No.6 |
| 3 | Jamaluddin (uncle/PW-3) | Eye Witness | Exhibit No.7 |
| 4 | Naseema (PW-4) | Rape Survivor testimony | Exhibit No.8 |
| 5 | Muhammad Islam ul Haq Arain (PW-5) | Judicial magistrate who recorded, inter alia, statements under Section 164, Cr,P.C., 1898 | Exhibit No.9 |
| 6 | Dr. Zaibunnisa (WMLO/PW-6) | Medical evidence | Exhibit No.11 |
| 7 | Aftab Hussain (PW-7) | SIO | Exhibit No.12 |

1. That the Honourable High Court of Sindh, at Karachi, through the Impugned Judgment dated: 15-04-2020, has dismissed the 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 may be noted here that this present Appeal is only to the extent of Criminal Acquittal Appeal No. 161 of 2014. The Impugned Judgment has already been challenged to the extent that it allows Criminal Appeal No. 72 of 2010, through Criminal Petition for Leave to Appeal No. 57-K of 2020 before the Honourable Supreme Court of Pakistan. The Impugned Judgment will be challenged to the extent that it dismisses Criminal Acquittal Appeal No. 80 of 2010 by the Petitioners by instituting separate Appeal.
2. That it is most respectfully and most humbly submitted that the Petitioners are aggrieved by the abovementioned Impugned Judgment to the extent of Criminal Acquittal Appeal No. 161 of 2014 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 the Honourable High Court had completely failed to observe that the unexplained absconscion of Respondents No.2 and No.3 should have weighed heavily against them in the adjudication of the criminal charge against them. It is an admitted fact that the Respondents No.2 and No.3 absconded immediately after the initiation of F.I.R. No. 07 of 2007 on 27-01-2007 and appeared in the court in the Year 2010. Therefore, their absconsion is surprising because they live in the same village and were associated with the 7 co-accused persons who had been previously tried in the previous trial. It is unbelievable that the Respondents No.2 and No.3 had no knowledge of the previous trial. Moreover, proceedings under Section 87 and 88 Cr.P.C. 1898 were conducted against them by the Learned Trial Court during the previous trial before conducting the present trial. It is also unbelievable that they had not known about the notices issued against them under Section 70, Cr.P.C. 1898 by the Learned Trial Court. Therefore, by completing ignoring the aforementioned fact and by failing to give any finding on the same, the Impugned Judgment is clearly perverse and 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 had completely failed to observe that the acquittal of co-accused in the first trial did not entitle the Respondents No.2 and No.3 to acquittal in the subsequent trial. The Judgment dated: 23.01.2010 of acquittal of seven co-accused in the first trial is wholly irrelevant in the case of the Respondents No.2 and No.3 who are being tried separately as the case of acquitted co-accused was decided on the basis of evidence led in the first trial, while the case of the present co-accused/Respondents No.2 and No.3 must have been decided only on the basis of evidence adduced during the course of their trial (i.e. second Trial). It is important to note here that the Petitioner No.1/rape victim [P.W. 1, Exhibit 10 (Previous Trial)] and [P.W. 4, Exhibit 8 (Present Trial)] had made specific allegations against the Respondents No.2 and No.3 in both the first and the second trial and had categorically implicated the Respondents No.2 and No.3 for all the charged offences and their guilt is also further evident from the following: (I) Statement of Petitioner No.1 before the Magistrate U/s 164 Cr.P.C., 1898 [Exhibit: 9/1 (Present Trial, Exhibit 19/B (Previous Trial)], (II) The Eye Witness, Jamaluddin [P.W. 5] has also implicated the Respondents No.2 and No.3 in Statement u/s 164 Cr. P.C. as well as deposition before the Trial Court [Exhibit: 19/C (Previous Trial)] and [Exhibit No. 7 of Present Trial], (III) The Eye Witness, Asghar [P.W. 2] has also implicated the Respondents No.2 and No.3 in his deposition before the Trial Court [Exhibit No. 6 of the Present Trial]. Therefore, by completely ignoring the aforementioned fact and by failing to give any finding on the same, the Impugned Judgment is clearly perverse and 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 passing the Impugned Judgment, the Honourable High Court was bound to consider the principles laid down by the Honourable Supreme Court for overturning the judgment of acquittal as granted to the Respondents No. 2 and No.3 by the Learned Trial Court through Judgment dated: 05.05.2014. The principles which the Honourable High Court ought to have considered whilst deciding the Criminal Acquittal Appeal No. 161 of 2014 were, inter alia, that whether or not the Learned Trial Court through the Judgment dated: 05.05.2014, has come to the conclusion that no reasonable person would conceivably reach the same and it was impossible for such conclusion to have been reached, particularly in the presence of overwhelming evidence of guilt of accused persons/Respondents No. 2 and No.3. It is submitted that the findings on which the Respondents No.2 and No.3 were acquitted through Judgment dated: 05.05.2014 were completely artificial and shocking and resulted in grave miscarriage of justice, and in such a situation the Honourable High Court should have overturned the sentence of acquittal of the Respondents No.2 and No.3 granted by the Learned Trial Court. The benefit of doubt was unreasonably given by the Learned Trial Court, hence, the Judgment dated: 05.05.2014 was liable to be set aside. Therefore, the Impugned Judgment through which Criminal Acquittal Appeal No.161 of 2014 has been dismissed, thereby upholding the Judgment dated: 05.05.2014 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 whilst passing the Impugned Judgment, the Honourable High Court failed to consider that the offence committed by the Respondents No. 2 and No.3 was not only an abetment, but a substantial offence and not merely an appendage to the principal offence of rape committed by, inter alia, the accused i.e. Anwar Hussain. The accused persons/Respondents No. 2 and No.3 abetted the offence of gang rape, thereby committing a substantive offence and not merely an appendage of the principal offence. Therefore, by completing ignoring the aforementioned fact and by failing to give any finding on the same, the Impugned Judgment is clearly perverse and 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 whilst passing the Impugned Judgment, the Honourable High Court had erroneously held that when the alleged rescuers (i.e. Jamaldin and Sardar Ali) entered to intervene, the victim was alleged to have remained inside the house, therefore, there is no evidence of her being dragged in the street or open space in naked condition nor did stripping of her clothes in open space. It was further erroneously held that even no impartial person was cited who was present nearby has seen the victim in such a condition. It is submitted that the Honourable High Court has failed to ignore that there were eye witnesses who testified that they saw the Respondents No. 2 and No. 3 play with the naked body of Petitioner No.1, and she was exposed in the public view. It is settled law that it is irrelevant whether some outsider had actually seen her in the naked condition, if the public had access to the place and it is irrelevant that the incident took place at a private land, particularly in view of the provision of Section 354-A, P.P.C., 1860, for which the Respondents No. 2 and No.3 were charged. The plain reading of above provision of law reveals that to attract the said penal provisions, two conditions must be fulfilled, firstly, there should be stripping of the clothes and secondly, the victim in that condition be exposed to the public view. When both the conditions co-exist the prosecution’s case can be brought within the ambit of section 354-A, P.P.C., 1860. However, by completing ignoring the aforementioned fact and by failing to give any finding on the same, the Impugned Judgment is clearly perverse and 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.
6. That it is most respectfully and most humbly submitted that the Honourable High Court, through the Impugned Judgment, has unnecessarily given benefit of doubt in favour of the Respondents No.2 and No.3 on the following frivolous considerations which have no significance in a gang-rape case:
   1. *Para 20: Admittedly, there were some houses situated in between the said two places, but none from the neighbourhood has come forward or acted as witness.*
   2. *Para 20: She has not disclosed about Asghar’s appearance at the house of accused Abdul Sattar.*
   3. *Para 20: Moreover, she has also not deposed to corroborate statement of her brother, PW Asghar Ali who stated that he visited his father at his work place to report the matter and then they both came back together.*

* 1. *Para 20: It is unbelievable that none from the surrounding residents witnessed the occurrence. Though, as per statement of P.W. Asghar Ali some mohallah people also gathered in the street but no one was examined during investigation.*
  2. *Para 20: It is also observed other material witnesses, brothers, sisters and mother of victim were also not examined.*
  3. *Para 20: No implicit reliance could be placed on evidence of interested eye-witnesses.*
  4. *Para 20: No Weapon was recovered from any of the accused persons though they remained in police custody for considered period.*

In respect of the aforementioned frivolous considerations, the following is important to observe: (I) Firstly, the Honourable High Court has failed to take into the account the very fact that the Honourable Supreme Court has laid down the criteria of weightage to be given to the sole testimony of the rape survivors as conclusive evidence if the same inspire confidence, particularly in rape cases, only for the reason that rape is often committed in secluded premises where there are no witnesses to testify. The Honourable High Court has failed to observe as to why would there be a criterion for sole evidence, if all the relevant witnesses are required to produce during the trial; (II), Secondly, through the Impugned Judgment, unnecessary emphasis is given on the absence of other witnesses i.e. the villagers and the other family members of the Petitioner No.1, when in fact it is the settled principle of law that it is the quality of the evidence and not the quantity of evidence that must be taken into account for conviction of the charged offences; (III) Thirdly, even otherwise, prosecution had produced material witnesses i.e. the eye witnesses and the medical evidence which corroborated the testimony of the Petitioner No.1 that sufficiently proved the guilt of the Respondents No.2 and No.3, which fact had been completely ignored by the Honourable High Court; (IV) Fourthly, unnecessary significance is given to the absence of or lack of recovery of weapon, from the place of incident, when in fact it is abundantly clear that the alleged offences, including the gang-rape, was not committed using any weapon. Even otherwise, as a settled principle of law, any flaw in the investigation should not prejudice the case of the rape survivor/victim, if there is other incriminating evidence regarding the guilt of the accused persons. Therefore, by completely ignoring the aforementioned fact and by unnecessarily giving importance to the aforementioned considerations, the Impugned Judgment is clearly perverse and 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, through the Impugned Judgment, has unnecessarily given benefit of doubt in favour of the Respondents No.2 and No.3 on the following frivolous considerations which have no significance in a gang-rape case:
2. *Para 21: Her statement under Section 164, Cr.P.C., 1898, is completely silent about act of trespass, into her house, so also availability of other siblings, having her meal with family and act of violence and beating by the accused persons.*
3. *Para 21: The Memo of inspection of place of incident did not indicate regarding any boundary wall of periphery around the house of the complainant.*
4. *Para 21: It is mentioned in the Memo of the place of incident that no foot prints were found in the house of complainant or in open space and the adjacent street.*
5. *Para 21: Even no traces of having meal etc., were mentioned in the said memo, hence, trespass of the accused persons into the house of the complainant is not free of serious doubts.*
6. *Para 21: It is further observed that allegation and charge of exposing her publicly alleged commission of rape have not been substantiated through any reliable evidence.*
7. *Para 21: PW-Jamaldin in his statement under section 164, Cr.P.C. did not state the time of occurrence as well as reasons of his presence in the street. As per his statement he was attracted by the cries of victim girl coming from inside the house of Abdul Sattar.*
8. *Para 21: It is worthy noted here that one important factor was missing which is the family of victim girl, who all were said to be with her when she was taken away forcibly from her house by accused persons. It should have prompted them to naturally cause havoc with an outburst reaction, calling attention of neighbourhood. A material question arises, why they all did not follow her and just left their young girl at the mercy of miscreants.*
9. *Para 21: Even Jamaldin who was present in the street did not hear the cries of victim girl while she was being dragged by the accused persons towards the house of accused Abdul Sattar.*
10. *Para 21: Absence of minimum natural reaction of calling for help from the neighbours and villagers is sufficient to cast a shadow of doubt on the prosecution’s version of facts.*
11. *Para 21: It is not understandable that how both PWs entered into the house, when according to the evidence of Asghar Ali the iron gate was closed.*
12. *Para 21: PW Asghar Ali deposed that there were other people standing at some distance whereas P.W. Jamaldin stated that he and Sardar Ali after hearing the noise, coming inside the house Jamaldin, came at the place of incident where they saw Asghar Ali standing outside the house of the accused Abdul Sattar, therefore, from such piece of evidence it cannot be threshed out that whose version is correct.*
13. *Para 21: Complainant Hamza and PW-04 Asghar Ali admitted that PW Jamaladin was real maternal uncle (Mamo) of the victim similarly P.W. Sardar (given up) was also close relative of the victim. Apart from the unrealistic fact that if a young girl is forcibly removed and dragged away in presence of her family members they all would at least raise outburst to call for help from natives and to put in their efforts to save modesty of their girl, it is noted that the victim categorically denied her relationship with PW Jamaldin which brings a question about veracity and credibility of her statement.*
14. *Para 21: The clothes of the victim allegedly torn, could not be recovered by the police and even there is no evidence available on record that the same were lost.*
15. *Para 21: Admittedly, no name of any person from public/mohallah who had witnessed the episode of exposure of victim girl is available on record.*
16. *Para 21:It is worthy to note that if brother, real Mamo and uncle have reached inside the house of accused and found her in naked condition, none had tried to immediately cover her from his own shirt and let her go outside the street in same condition.*

In respect of the aforementioned frivolous considerations, the following is important to observe: (I) Firstly, the Honourable High Court, through the Impugned Judgment has given unnecessary importance to all the aforementioned considerations, including but not limited to i.e. the Section 164 Cr.P.C. statement of Petitioner No.1 being silent about trespass into her house, the memo of inspection of place of incident not clear on presence of boundary wall, no traces of meal in the Memo of place of incident, the evidence of PW-Jamaldin, lack of hue and cry created by the family members and relationship of Jamaldin and Sardar, which have no significance or co-relation to the ultimate offence committed by the Respondents No. 2 and No.3. The aforementioned considerations neither prove that the Respondents No.2 and No.3 have not committed the alleged offences nor they create doubt in the prosecution’s case against them. In fact, there was overwhelming proof in the form of testimony of the Petitioner No.1 corroborated by the eye witnesses and medical evidence, which reflect the guilt of the Respondents No.2 and No.3. (II) Secondly, unnecessary significance is given to the absence of clothes as a piece of evidence, even though as a settled principle of law, any flaw in the investigation should not prejudice the case of the rape survivor/victim, if there is other material and incriminating evidence regarding the guilt of the accused persons. Therefore, by completely ignoring the aforementioned fact and by unnecessarily giving importance to the aforementioned considerations, the Impugned Judgment is clearly perverse and 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 submitted that the Honourable High Court has taken contradictory stance in creating doubts on the prosecution’s case. On one hand, the Honourable High Court has observed that Mr. Jamaluddin and Mr. Sardar are relative of the Petitioners as evident from the statement of Petitioner No.2 and the witness i.e. Asghar Ali,, and on the other hand, had stated that the Petitioner No.1 denied her relationship with PW-Jamaldin, which considerations are completely frivolous and have no bearing on the prosecution’s case and the overwhelming evidence which point towards the guilt of the Respondents No.2 and No.3. Therefore, by completely ignoring the aforementioned fact and by unnecessarily giving importance to the aforementioned considerations, the Impugned Judgment is clearly perverse and 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 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 Respondents No.2 and No.3 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, Anwar Hussain and offences under Sections 354-A, 452, 337-A(1), 337-F(1), 147, 148 and 149, P.P.C., 1860, committed by the Respondents No.2 and No.3, 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 WMLO in the form of Provisional and Final Medico Legal Reports as well as Chemical Examiner’s Report 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 in view of the contentions stated in Para I 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 Respondents No.2 and No.3 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 WMLO in the form of Provisional and Final Medico Legal Reports as well as Chemical Examiner’s Report 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.
4. 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 Respondents No.2 and No.3. In all the above statements, Petitioner No.1 has clearly identified the role of Respondents No.2 and No.3 in committing the offences under Sections 354-A, 376(2), 452, 337-F(1), 147, 148, 149, P.P.C., 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.
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 WMLO as well as the Provisional and Final Medico Legal Reports as well as Chemical Examiner’s Report for the offence of zina-bil-jabr, committed by inter alia, Anwar Hussain and for other offences committed by the Respondents No.2 and No.3, 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.
   4. “It is pertinent to note the observation of WMPLO, disclosing that her vagina admitted two fingers easily and hymen had got healed tear, prima facie and simply gives different story as regards to the character of the victim girl in juxtaposition with her normal behaviour observed during her examination that the real story could have been totally different from that which was being alleged.

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 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 Respondents. 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: 05.05.2014. 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, Mr. Sardar Ali and Mr. Asghar Ali 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 through the Impugned Judgment, the Honourable High Court has given erroneous interpretation to the concepts i.e. “proof beyond reasonable doubt” and “presumption of innocence” to the facts of the prosecution’s case, by erroneously holding that “if the view of the sole testimony of the victim as sufficient evidence is accepted, as absolute without any exception thereto, what shall be the outcome of a case, where a lady claims being raped or gang raped, but the medical evidence negates it, what/who should be believed then, the point is, that it is not in every gang rape case, that the sole testimony should be accepted and relied upon, but each case should be assessed and adjudicated on its own facts.” It is submitted that the Honourable High Court has completely failed to observe that in the case of the Petitioner No.1, the testimony of the Petitioner No.1 inspires confidence, because it has been consistently made and is corroborated by the eye witnesses as well as the medical evidence. Therefore, in the presence of the aforementioned overwhelming proof, no presumption of innocence can be extended in favour of the Respondents No.2 and No.3 and the above evidence is sufficient to prove the prosecution’s case beyond reasonable doubt. 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 failed to observe that the Respondents No.2 to No. 8 are hardened and desperate criminals. This is evident from the fact that in view of the grave threats from Respondents No.2 and No. 3, 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.
3. 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, to the extent of Criminal Acquittal Appeal No. 161 of 2014, 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**