

IN THE COURT OF VITH ADDITIONAL SESSIONS JUDGE, KARACHI SOUTH.

BEFORE:

MRS. SHAZIA ASIF.

SESSIONS CASE No. 1224 OF 2015.

The State.....Vs.....Fayyaz MeeraniAccused.

FIR No. 323/2014.

U/s 365-B, 376, PPC.

P.S. A Section Dadu, Sindh.

Mr. Ahmer Halo, ADPP, for the State.

Mr. Ali Asghar, Advocate for the accused.

J U D G M E N T.

19-02-2019.

This judgment will lead to decide fate of above sessions case in which accused Fayyaz Meerani son of Munir Ahmed Mirani was charged and tried in Crime No. 323/2014, registered at P.S. A Section Dadu, Sindh, for the offences punishable under section 365-B, 376, PPC.

Facts of the prosecution's case as per FIR lodged by complainant Benazir on 25.10.2014 for an incident taken place on the same date at about 1130 hours are that she is a student of B.A. Part-II and Fayyaz Mirani demanded her hand but her father refused due to which he annoyed. She also states that prior to this, the accused had detained her in a house and after committing Zina with her, he had recorded her video and threatened her that if she discloses such facts to anyone, he would upload her video on internet, therefore, she remained silent. The complainant further states that on 25.10.2014, when she alongwith her father was going towards Gils College and they reached at about 11.30 a.m. in Rickshaw near Old National Bank, Girls College Road, the accused alongwith co-accused Iqar got down from a car and took out pistol while asking her and her father to keep quiet, hence they remained calm due to fear and the accused forcibly put her in the car and folded her eyes closed. Thereafter, the accused took her to some unknown place where he committed Zina with her and then he went away and now she came to P.S. and lodged the FIR.

During investigation, present accused could not be arrested whereas accused Iqar Janwari was arrested and after completion of investigation, the challan was submitted in the Court of concerned Judicial Magistrate, Dadu which was submitted to the Hon'ble Sessions Judge Dadu and later on it was sent to learned 1st Addl. Sessions Judge, Dadu. The challan submitted in Court was showing present accused to be absconder and accused Iqar to be released under section 497(ii), Cr.P.C. and thereafter present accused got interim pre-arrest bail from the Hon'ble High Court of Sindh, Circuit Court Hyderabad and then joined trial of the case. Thereafter, this case was transferred from Dadu to Hon'ble District & Sessions Judge, Karachi South and later on the same was referred to this Court for trial.



It is pertinent to mention here that accused Fayyaz attending the Court on interim pre-arrest bail but he was taken into custody by this Court on 30.12.2017, as his interim pre-arrest bail granted to him in Criminal Bail Application No. 1394/2014 was recalled by the Hon'ble High Court of Sindh, Circuit Court Hyderabad vide order dated 07-12-2017 and was remanded to jail.

After supplying requisite copies, formal charge was framed against present accused by the learned Additional Sessions judge – I, Dadu at Ex.02 to which he vide his plea at Ex.03 did not plead guilty and claimed his trial.

In order to substantiate the charge against present accused, the prosecution has examined the following witnesses.

1. PW-01/Complainant/victim Benazir at Exh.03, who produced carbon copy of a letter moved to WMLO for her examination at Exh.03/A and FIR at Exh.03/B.
2. PW-02/ASIP Ghulam Muhammad at Exh.04, who being author of the FIR already produced at Exh.03/B, testified it to be the same.
3. PW-03 Muhammad Ali at Exh.05, who was father of the victim.
4. PW-04 Altaf Hussain at Exh.06, who being mashir for arrest of accused Iqrar and site inspection produced such memos at Exh.06/A and 06/B.
5. PW-05/SIP Benazir Jamali at Exh.07, who being author of Exh.03/A, letter moved to the WMLO testified it to be the same. She also produced memo for securing clothes of the victim at Exh.07/A.
6. PW-06/WMLO Dr. Shahzadi at Exh.08, who produced medico legal certificate at Exh.08/A, chemical report at Exh.08/B and final medico legal certificate at Exh.08/C.
7. PW-07/PC Mst. Momal at Exh.09, who being mashir of Exh.07/A, testified it to be the same.
8. PW-08 Mst. Jannat at Exh.10, who being mother of the victim testified memo for site inspection already produced at Exh.06/B, to be the same.
9. PW-09/ASIP Muhammad Umar at Exh.12, who being IO of the case produced copy of release order of accused Iqrar U/s 497 Cr.P.C. at Exh.12/A.

Thereafter, learned ADPP for the State closed the prosecution side vide a statement at Exh.13, accordingly, statement of present accused was recorded under section 342, Cr.P.C. at Exh.14, in which he denied the evidence against him duly led by the prosecution. He himself claimed to be innocent. He, however, did not examine himself on oath nor produced any defence witness.

It is also pertinent to mention here that learned ADPP for the State moved an application under section 540, Cr.P.C. praying therein to call PW-06/PC Momal as her further examination in chief was kept reserved for want of case property which could not be completed. On notice of the application, learned counsel for the accused raised no objection, therefore, the application was



allowed vide order dated 24.09.2018 and PW/PC Momal was called, it was pointed out by the investigation officer that the case property already deposited in the Malkhana of City Court by the order of Hon'ble District and Sessions Judge South at Karachi vide order dated 05-09-2015 which has been burnt in the fire incident occurred on 11-04-2018 in the Malkhana of City Court and such entry is available at City Courts Police Station therefore further examination of Pw Moomal was completed on which learned counsel for the accused also conducted cross examination and thereafter, learned ADPP for the State again moved a statement for closing the prosecution side at Exh.16.

Accordingly, statement of the accused was again recorded under section 342, Cr.P.C. at Exh.17, in which he similarly again denied the allegations leveled by the prosecution against him and claimed himself to be innocent. Neither the accused examined himself on oath under section 340(2), Cr.P.C. nor produced any defence witness.

I have gone through the record and proceedings and for the purpose of deciding the case, I find following points for determination:

POINTS.

1. Whether on 25-10-2014 at about 11.30 a.m. you alongwith another unknown duly armed with pistol kidnapped/abducted complainant/victim Benazir from Old National Bank Dadu near Girls College Road, Dadu, Deh Dadu and thereafter, confined her at a house situated at unknown place and committed Zina with her, as alleged?
2. What should the order be?

Heard the learned ADPP for the state, advocate for complainant, accused and perused the material available on record. My findings to the above points with reasons thereto are as follows:

FINDINGS.

Point No. 01.
Point No. 02.

Proved.
Accused is convicted.

REASONS.

Point No. 01.

Learned ADPP for the State with assistance of learned counsel for the complainant contended that the prosecution has examined the complainant/victim who furnished full accounts of the incident which appears to be a natural story and has no contradiction and the same is sufficient to record conviction against the accused. He further contended that when the complainant/victim was left by the accused after committing rape, she reached at P.S. and narrates story of the incident in which she nominated present accused. He further contended that other evidence brought on record is corroborative in nature. He further contended that as per final medical report act of Zina was committed with the victim and to this effect, chemical report is also brought



record which shows that clothes of the complainant/victim was having human sperm which is also sufficient to prove that the present accused committed Zina with the victim. He further contended that the accused committed a heinous offence, therefore, he may be convicted.

On the other hand, learned counsel for the accused contended that there is material contradiction in evidence brought on record which cannot be relied upon to record conviction against the accused. He further contended that the alleged offence of abduction was said to have been taken place at busy road near a market as per evidence of the complainant at about 11.30 a.m. and even then no any independent witness was cited as witness in the case which creates a reasonable doubt. He further contended that as admitted by the complainant, the accused was a student of the school where the complainant was teaching and even then she did not complaint against him for alleged committing Zina before the alleged offence which also makes the case highly doubtful. He further pointed out evidence of WMLO Dr. Shahzadi, who during her cross examination, specifically admits that as per her opinion the complainant was not subjected to rape for the last three days. He also pointed out that clothes of the victim was not sealed by the WMLO and the same were handed over to police officials, who sealed later on, therefore, chemical report brought on record regarding clothes of the victim cannot be relied upon under these circumstances, if the same has any human sperm. He further contended that as per medico legal certificate brought on record no mark of violence was found on body of the victim which makes statement of the victim as false and frivolous that the accused committed Zina bil jabr with her. He further contended that there is no evidence against the accused in the case, therefore, prayed for acquittal of the accused.

As per prosecution story the complainant reported that she was kidnapped by present accused with the collusion of co-accused Iqrar Janwari on gun point from Old NBP Bank Dadu near girls College Road, Dadu, Deh Dadu Town, when she was going in rickshaw towards her college and she was taken to some unknown place with the help of co-accused where she was forcibly raped by the present accused. After committing rape they ran away from the spot, the victim / complainant proceeded to Women Police Station where SIP Muhammad Umar Bughio got her medically examined through WMLO Civil Hospital Dadu and MLC No.1138. Thereafter she returned back to police station and got registered the FIR. Prosecution produced nine witnesses to prove the guilt of present accused. The victim / complainant examined before the court as Ex.03. She deposed before the court in following manner:



"I am student of B.A in Girls College at Dadu. I am residing at Najam Colony Dadu. The family of Fayyaz Mirani son of Muneer Ahmed Mirani sent proposal for me to my parents, but my father refused to get me marry with the accused. Whereupon accused became annoyed, he raped me at some place and recorded my video. He also threatened me that "if I will disclose to any one he will upload the said video on internet", due to such fear I did not disclose to anyone. On 25.10.2014 I was going to my college situated at Dadu in

Rickshaw, at about 10.30 a.m. suddenly one car of brown color stopped in front of my Rickshaw at Old National Bank Dadu, 4 persons got off from the car namely Fayyaz Mirani, Iqrar Janwari and two other persons. Iqrar Janwari pointed the pistol on my temple. Fayyaz Mirani pulled me from my hair outside the said rickshaw. Thereafter they got me seated in the brown car they also tied my eyes. Thereafter they took me to some unknown place. After reaching there they opened my eyes. Iqrar Janwari again pointed the pistol on my head, accused Fayyaz beaten me, extended threats to me for killing, he also tied my hands; he also pushed me, thereafter committed Zina forcibly with me. Thereafter he worn his cloths, he also opened my hand then I also worn my cloths. Iqrar Janwari and Fayyaz both again threatened me that if I will disclose to anyone about such incident they will kill me. The room where Zina was committed by the accused with me was upward as soon as I took chance I came downward. On seeing the person in the Gali I made noise, the friend of Fayyaz Mirani gave explanation to the person that she is unsound mind and she is our sister. Thereafter by running I reached at woman police station. I met with SHO Benazir Jamali. I informed her about the said incident; she immediately referred me to lady doctor at Civil Hospital. I produce the referred letter No. 2869 dated 25.10.2014 as Ex-3/A, it is same and correct. I was sent by SHO through Sobaidar Muhammad Umer Vegio to hospital for medical examination. Doctor examined me and after examination I returned back to police station, police officials directed me to handover the cloths for examination, which I handed over to police after changing the dress. Then my FIR was lodged. I produce FIR No.323/2014 as Ex-3/B, it is same, correct and bears my signature. After Registration of the case I went to my sister house. On the next day at about 8.00 a.m. police officials Zainab, Shahzadi and Muhammad Umer Vegio inspected the place of occurrence in my presence on my pointation. Thereafter I used to visit the Court to attend the date of hearing of my case, whereupon accused Fayyaz again started to extend threats to me for killing, whereupon I moved application to Honourable District and Sessions Judge, Dadu for protection. I also moved an application to Human Right Commission Karachi; on my application they shifted me from Dadu to Pannah Shelter Home, Karachi. I pray for justice. Accused Fayyaz Mirani is present in Court is same, who kidnaped me and committed Zina forcibly with me alongwith his friends."

In cross-examination the victim / complainant has deposed in following manner:

"It is correct that the incident was taken place at 11.30 a.m. It is correct that I was doing job as a teacher in private school at Dadu. My school timing was started at 8.00 a.m. It is correct that the leave timing of my school was 2.00 p.m. It is correct that the timing of my college was also from 9.00 a.m. It is correct that the place of occurrence is situated at a busy Road there is a market situated there. It is correct that from Gharibabad (place of occurrence) I directly went to the police station. It is correct that from police station after getting referred letter I went to hospital. It is correct that accused Fayyaz Mirani was



studying in the same school, where I was working as a teacher. It is incorrect to suggest that during the period of his studies I never submitted any complaint against accused. I made complaint to the family members of the accused. It is incorrect to suggest that my father is the eye witness of this incident. It is incorrect to suggest that I am deposing falsely before Court as it is mentioned in the FIR I alongwith my father namely Muhammad Ali son of Ali Nawaz was going to college in rickshaw. It is incorrect to suggest that no such incident was taken place on the day of incident nor prior to that day. It is incorrect to suggest that I am deposing falsely before the Court."

During cross-examination not a single question was specifically put by the learned counsel for the accused Fayyaz Meerani for denial of incident of kidnapping as well as rape with the victim / complainant at the hand of present accused. The contention of the victim / complainant was supported by the Final Medico Legal Certificate as well as Chemical examination report produced as Ex. No.8-B, the finding of M.L. report are as under:

"After general local examination and report received from Director Laboratories and Chemical Examiner Government of Sindh, I am of the opinion that act of sexual intercourse has been committed with Benazir D/o. Muhammad Ali Jhatyal.

The report of chemical examiner produced as Ex.8-B, is also hereby reproduced as under:

Human Sperm detected into the above mentioned Article Nos. (1)(4) & (5)
Human Sperm not detected into the above mentioned Article Nos. (2) & (3).

Learned counsel for the accused has taken plea that the victim / complainant was examined by the learned WMLO and no any mark of violence was found on the body of victim / complainant and during cross-examination it is admitted by the WMLO that as per her opinion the victim / complainant was not subjected to rape for the last three days. I have gone through the MLC (Ex.8-A) wherein the WMLO opined that:

"On General and local examination of Mst. Benazir D/o. Muhammad Ali Jhatyal was examined by me that she is not virgin. The act of rape couldn't be ascertained with available findings. Therefore high vaginal swab was taken to detect the human sperm and fresh act of sexual intercourse, as per statement."

Such certificate duly signed by her, issued after examination of the victim / complainant and vaginal swabs were also taken for chemical examination to detect the sperm and fresh act of sexual intercourse which shows that the WMLO improved the evidence and negate her own opinion I am of the view she cannot go beyond the contents of certificate issued by her. Further final medico legal certificate duly signed and issued by her wherein the column of Final opinion sh



opined that act of sexual intercourse has been committed with Benazir daughter of Muhammad Jhatyal within 72 hours therefore such contradiction in the evidence of WMLO will not be helpful to the accused. The learned counsel for the accused has also taken stand while cross-examining Pw. Momal that she had checked the clothes of victim / complainant before sealing and did not find any spot or stain or any sign of human sperm on the clothes of victim / complainant but such contention of the learned counsel is also not helpful for him in presence report of chemical examiner. So far as non appearance of any mark of violence on the person of victim / complainant is concern the victim / complainant herself deposed that the accused put her on the bed and on pointation of weapon committed such act therefore she could not make any resistance due to fear and did not receive injury. It is a matter of record that during the course of evidence the learned counsel for accused has failed to disclose any enmity between complainant and accused for the leveling such allegations upon the accused on the contrary the complainant deposed in her examination in chief that the father of accused came and demand the hand of victim / complainant for his son but her father refused. Such version of the victim / complainant also remained unchallenged. The victim / complainant is unmarried girl / lady who lives in a narrow society where normally people avoided to expose herself and to take the risk of such blame and presumption would be that she would not have dishonored herself or her family without any reason. The learned counsel for the accused has taken stand that the F.I.R. was lodged by the victim / complainant with the unexplained delay as record shows that at about 5.30 p.m. she came to police station, whereas F.I.R. was lodged at about 2200 hours record reveals that before 5.00 p.m. she reached at police station, letter for medical examination was issued by the police officials, therefore she examined at hospital through police official at about 5.00 p.m. and thereafter her medical examination was conducted and after about one hour she returned back to police station but F.I.R. was lodged at about 2200 hours which clearly shows that delay was not on the part of complainant.

Learned defence counsel during cross-examination to the investigation officer put questions confronting the contents of Medico Legal Report "that no any fresh tear and bleeding P/ no any vaginal discharge seen." It is admitted position that the medico legal report contains such remarks but the examination-in-chief of the victim clearly shows that it was not the first time she was subjected to sexual intercourse by the accused. She clearly deposed in examination-in-chief that the family of Fayyaz Meerani S/o. Munir Ahmed Meerani sent proposal for her to her parents but her father refused to get her marry with the accused, whereupon accused became annoyed, he raped her at some place and recorded her video and also threatened her that if she will disclose to anyone he will upload the same on internet due to such fear she did not disclose anyone, and such version neither challenged by the learned counsel for the accused nor put at question as suggestion denying such allegation, therefore mere saying that there is no mark fresh tear and bleeding does not have any relevancy or force. So far as non conducting inspection of place of incident is concerned it is clearly mentioned / deposed by the victim / complainant that the accused after tying, blind fold on her eyes. She was taken by the accused persons to unknown place therefore the same could not be pointed out by the victim / complainant. I am of the view that

Sessions

mere some improvement variation and minor contradiction do not fatal the prosecution case, in presence of solitary, strong and confidence inspiring evidence of the victim / complainant which is supported by Medical and chemical reports. Reliance is placed on PLD 1995 SC 46, which is reproduced hereunder:

---S.302---Appraisal of evidence---Variation in the evidence of prosecution eye-witnesses—Effect---All variations in the evidence does not destroy the intrinsic value of the evidence of such witnesses---Variations which do not relate the material part of the prosecution story or the salient and important features of the case can be ignored.

Further there was no previous enmity and it is impossible for a lady to implicate an innocent leaving the actual culprit. The learned counsel for the accused has mainly relied upon the case of Mst. Mukhtaran Mai reported in PLD 2011 SC 544, but the facts of such case are totally distinguishable as the said case relates to gang rape. In this respect I would like to refer here case law reported in 1975 SCMR 69, wherein it has been held as under:

---S. 376---Prosecutrix a girl of 12/13 years overpowered, threatened with death in case she raised alarm, raped, and found lying unconscious —Medico Legal report clearly revealing commission of rape—Tears on lateral margins found bleeding on touch by lady doctor---Vaginal swabs found by Chemical Examiner stained with semen—Mere absence of mark of injury or violence on prosecutrix's person, held, would not imply non-commission of rape, nor possible for a girl of 12/13 years to falsely implicate in cases of such type.—Petition dismissed:

It has also been observed by the Honorable Supreme court of Pakistan in another case reported in PLD 1991 SC 412 wherein it has been held as under:

--S. 10---Zina-bil-Jabr—Appreciation of evidence—Sole testimony of victim is enough for conviction in case it inspires confidence.—

So far as the case law, relied by the learned counsel for the accused are concerned, same are distinguishable from the facts of the case as such are not applicable.

In view of the above discussion I am of the considered view that prosecution has proved its case against the accused Fayyaz Meerani son of Munir Ahmed Meerani without any shadow of doubt therefore the point No.1 is answered in affirmative.



Point No.2.

In view of the findings on points No. 1, accused namely Fayyaz Meerani son of Munir Ahmed Meerani found guilty for the offence U/s. 376 and 365B, P.P.C. therefore, accused Fayyaz

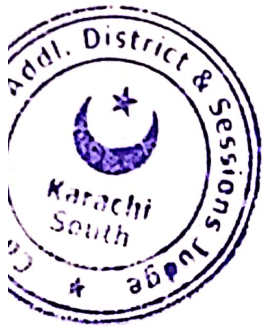
Meerani son of Munir Ahmed Meerani is hereby convicted U/s 265-H(ii) Cr. P.C. to suffer Rigorous Imprisonment (R.I.) for the offence U/s. 376 P.P.C. for a period of 10 years with fine of Rs.25,000/=, and for the offence U/s.365B, P.P.C. for life imprisonment with fine of Rs.25,000/= in default of payment of fine, he shall suffer one month more (S.I) against each fine. The benefit of section 382-B Cr. P.C. is hereby extended to accused. However both the sentences will run concurrently.

Announced in open Court

Given under my hand and the seal of Court on this 19th day of February 2019.

20/2-2019

(MRS. SHAZIA ASIF)
ADDL. SESSION JUDGE - VI, KARACHI SOUTH



Date of Application 22-2-19
Fees Estimated on 22-2-19
Fees Deposited on 22-2-19
Case Number 23-2-19
Stamp Submitted on 23-2-19
Case Submitted on 23-2-19
Copies Delivered on 23-2-19
Comprising Charges 1/1

[Signature]
23/2/19
Compared By
[Signature]
23/2/19
Prepared By

CERTIFIED TO BE TRUE COPY

[Signature]
23-2-19
VI-Addl. District & Sessions Judge
Karachi South