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IN THE COURT OF DISTRICT & SESSIONS JUDGE
KARACHI SOUTH.

BEFORE MR. FAHIM AHMED SIDDIQUI
S.C. NO. 472 OF 2007.

State. Versus

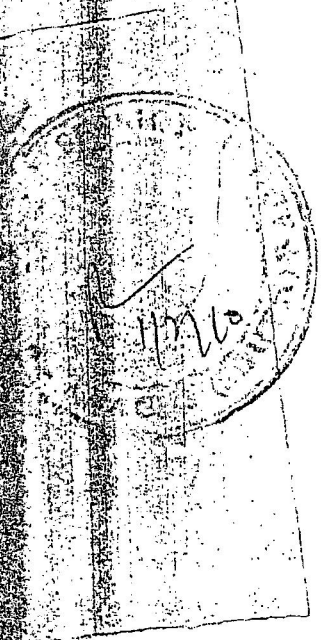
1. Shahzado son of Badho
2. Abdul Jabbar son of Badho
3. Anwar Hussain son of Long Khan
4. Khadim Hussain son of Long Khan
5. Ali Hassan son of Long Khan
6. Shah Baig son of Long Khan
7. Bashir Ahmed son of Jamil Din.Accused

F.I.R. # 07/2007.
P.S. Ubaro.
U/S. 354-A, 452, 337-A(i), 376-B,
147, 148 & 149 PPC.

23.01.2010. JUDGMENT

In the instant Sessions Case, a final report (challan) has been submitted by the SIO of Police Station Ubaro under section 354-A, 452, 337-A(i), 376-B, 147, 148 and 149. Through the final report, the accused namely Long Khan Shahzado, Abdul Jabbar, Anwar Hussain, Khadim Hussain, Ali Hassan, Shah Baig and Bashir Ahmed were sent up to face the trial. The complainant Hamzo moved the law in motion by lodging F.I.R. # 07/2007 under the aforementioned sections at PS Ubaro wherein nominating the accused sent up for trial so also absconding accused Abdul Sattar, Morzado and Munawar. Consequently, the charge was framed against the accused persons, and the trial was commenced against them.

Tersely, the prosecution story as narrated in the FIR lodged on 27-01-2007 is as under:

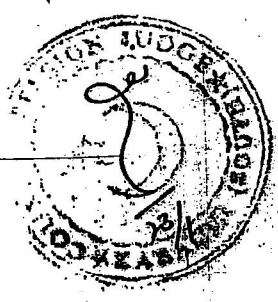


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The complainant in his F.I.R. expressed that he lived on the above given address. Sometimes back a quarrel taken place between him and Abdul Sattar etc. on the affairs of children because of which they were annoyed and used to say that by extending hands to the honor of complainant so that he would not able to survive in the society. He then stated that he was working as laborer in Anglo Factory. Mst. Nasima aged about 18 years is his daughter who is unmarried and virgin. On that day as per routine, he went to factory for work when at about 3.00 PM, his son Asghar Ali came to him and told him that accused Abdul Sattar and others forcibly took his sister Nasima to his home while beating her and committed Zina with her and sent her back to home after stripping her cloths. The complainant after listening that immediately rushed back to his home and found his daughter Nasima weeping, who told him that she and her mother Naziran were available at home. At about 1.00 PM, accused (1) Abdul Sattar, (2) Shahzado, (3) Morzado, (4) Abdul Jabbar (all sons of Budho by caste Labano resident of village Habib Labano, Taluka Ubaro) (5) Munawar Hussain son of Habibullah Labano resident of village Habib Labano, Taluka Ubaro (6) Anwar Hussain (7) Khadim Hussain (8) Ali Hassan (9) Shah Baig (all sons of Long Khan) (10) Long Khan son of Ismail (11) Bashir Hussain son of Jamaluddin (all by caste Labano resident of Dharki; out of them accused Abdul Sattar and Munawar Hussain had guns. Anwar had rifle. All the accused after beating her (Nasima) and her mother Naziran and accused Abdul Sattar caught hold of her (Nasima) from arms and dragged her along with other accused took her to the house of Abdul Sattar. Accused Abdul Sattar took her (Nasima) to a room and stripped of her cloths and committed zina with her. Thereafter accused Abdul Sattar entered in the room and committed Zina with her. She pleaded the accused persons in the name of Allah by asking that what was

her fault and why her modesty being ruined. On her cries her relatives (1) Sardar Ali s/o. Waryam & (2) Jamauddin s/o. Bungal and other co-villagers came there and rescued her. Thereafter she in naked condition returned back to home and worn other clothes. On listening such story, he (complainant) then appeared at PS and reported that the accused above-named in furtherance of their common object have trespassed in his house and forcibly took her daughter Mst. Nasima and have committed Zina with her and return her back to home after stripping of her cloths. They also beaten Mst Nasima and his wife Mst. Nazeeran.

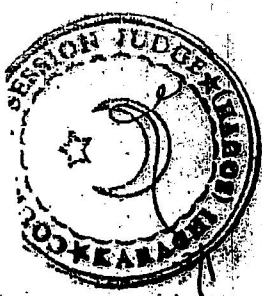
The matter was investigated by the police. The accused sent up for trial were arrested amongst them accused Loung was later on expired while the remaining accused remained absconders and later on they were declared proclaimed offenders. After completing investigation, the final report was submitted against the accused as mentioned above. The trial was initially assigned to the learned IIIrd Additional Sessions Judge. Almost the whole trial was completed before the learned IIIrd Additional Sessions Judge, Mirpur Mathelo. It was transferred by the Honorable High Court of Sindh to this Court but after sometime it was again transferred to IIIrd Additional Sessions Judge, Mirpur Mathelo. The case was then retransferred from IIIrd Additional Sessions Judge, Mirpur Mathelo to this court and assigned to VIIth Additional Sessions Judge. It was then transferred to this Court by the Honorable High Court and R & Ps received to this court on 20-04-2009. The case was adjourned for couple of dates because of non-appearance of previous defense counsel or non-production of accused. On 09-05-2009, Mr. Syed Muhammad Iqbal



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Advocate and Mr. Atta Muhammad Advocate filed power on behalf of the accused persons.

As some of the accused persons remained absconders and after recording statements of Process Servers ASI Muhammad Hashim dated 18-04-2007 and 28-05-2007 respectively (Ex. 1 and 2), the proceedings under Sections 87 and 88 were initiated and they were declared proclaimed offenders on 10-07-2007 under Section 88 Cr.P.C. (Ex. 3). Thereafter, the copies of the documents were supplied to the accused persons sent up for trial under receipt on 12-07-2007 (Ex.1). As one of the accused namely Loung was reportedly expired therefore death report was called and on 17-01-2009 after statement of Process Server SIP Akber Ali, the proceedings against expired accused was abetted (Ex. 7). On 28-02-2009, charge against the present accused was framed (Ex. 8) to which they pleaded not guilty and claimed trial (8/A to 8/G). On 15-05-2009, deposition of PW-1, victim Nasima was recorded (Ex. 10) who produced certified copy of 164 statement (Ex. 10/A). The cross of this witness was reserved on the request of defense counsel. She was cross examined on 10-06-2009. On 01-07-2009, PW-2 Hamzo was examined (Ex. 11), who produced copy of FIR (Ex. 11/A). On 28-07-2009, deposition of PW-3 Dr. Zaib-un-nisa was recorded (Ex. 12), who produced Provisional M.L. Certificate (Ex. 12/A), Final M.L. Certificate (Ex. 12/B), Chemical Examiner Report (Ex. 12/C). On the same day deposition PW-4 Asghar Ali was recorded (Ex. 13). On the same day PW-5 Jamal Din was examined (Ex. 14), who produced certified copy of his 164 Statement (Ex. 14/A). On



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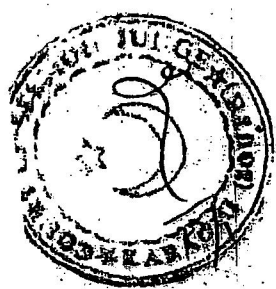
01-09-2009, the PWs Sardar, Rajab and Manzoor were present but the prosecution has given up them under the Statement of the learned DDPP (Ex. 15). On 18-09-2009, the learned DDPP under his statement has given up the PW Pairoos Khan (Ex. 16). On 26-09-2009; deposition of PW-6 Mehrab was recorded (Ex. 17), who produced the memo of recovery of pair of scissors from the place of incident (Ex. 17/1) so also memo of arrest of accused Loung, Anwar Hussain, Shah Beg, Ali Hassan, Shahzado and Abdul Jabbar (Ex. 17/2). He also produced the Produced the Article viz. pair of scissors (Art.A/1). On 06.10.2009, the deposition of PW-7, SIO Aftab Hussain was recorded (Ex. 18), who conducted investigation and produced medical letter handed over to Mst Nasima (Ex. 18/1), memo of arrest of accused Bashir Lubano (Ex. 18/2) and memo of arrest of accused Khadim Hussain (Ex. 18/3). On 29-10-2009, PW-8 Muhammad Islamul Haque Azain (Judicial Magistrate) was examined (Ex. 19), who produced request letter of SIP Aftab Hussain Farooqui for recording of 164 Cr.P.C. statements of prosecution witnesses (Ex. 19/A). He also produced original copies of statement of PW Mst. Nasim u/s 164 Cr.P.C. (Ex. 19/B), statement of PW Jamal Din recorded u/s 164 Cr.P.C. (19/C) and statement of PW Sardar Ali recorded u/s 164 Cr.P.C. (19/D). Thereafter, the learned DDPP closed the prosecution side under his statement (Ex.20).



Then the statements U/S. 342 Cr.P.C. of accused Shahzado, Abdul Jabbar, Anwar Hussain, Khadim Hussain, Ali Hassan, Shah Beg and Basheer Ahmed (Ex. 21 to 27) were recorded.

Subsequently, on 05-11-2009, the statements of accused Shahzade, Abdul Jabbar, Anwar Hussain, Khadim Hussain, Ali Hassan, Shah Beg and Basheer Ahmed were recorded w/s 342 Cr.P.C. (Ex. 21 to 27). All the accused denied the prosecution case by pleading that the witnesses have deposed against them due to old enmity and the alleged victim is not a virtuous lady. However, neither preferred to examine themselves on oath nor produced any defense witnesses.

The learned DDPP while assisted by learned counsel for the complainant has submitted the closing and final arguments. He emphasized that the prosecution has successfully brought the guilt of the accused at home. According to him the prosecution has produced in all 8 witnesses and under the testimony of the prosecution witnesses, the cases against the accused persons have been proved. The witnesses are consistent and coherent on the vital points and aspects of the case. According to him, there are minor contradictions which usually drag in due to various reasons and the same can be ignored. On the other hand, the learned Defense Counsel while defying with the learned DDPP has assailed the prosecution case from different corners. He read over nearly the entire evidence recorded during which pointed out certain portion of the evidences of different witnesses in which, under his opinion, convincing contradiction is observable. He especially questioned the credibility of victim as witness so also other witnesses. According to him the contradictions are not minor and the same are on the vital points of the prosecution case. According to him the pearls of doubts are scattered here and



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there in the whole of the prosecution case. He also accentuated the Defense Theory revealed from the statement of the accused persons recorded U/S. 342 Cr.P.C. According to Defense Theory, the accused were involved on the ground of old enmity between the father and grandfather of the accused and complainant party. The second aspect of defense theory was that the victim is not a virtuous lady and she was already pregnant and the detected semen might have been of the previous act of intercourse. He also contradicted the chemical report by submitting that cross matching of semen was not done. It is his opinions that the prosecution case is full of contradictions and it remains fail to discharge its burden and case is not proved against the accused persons.

After perusing the case papers and hearing the learned DDPP and the learned defense counsel, the following points for determination were formulated:-



1. Whether the victim Mst. Nasima Lubano has subjected to Zina-hil-jabr?
2. Whether the accused persons trespass in the house of complainant having made preparation of causing heart and wrongful restrain during which they beaten the victim Mst. Nasima Lubano and took her out of the house? .
3. Whether the accused persons stripped of the clothes of victim Mst Nasima and exposed her to public?
4. Whether the accused persons are responsible for gang rape to Mst. Nasima?
5. What offence has been committed by the accused persons and what should the judgment be?

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FINDINGS.

POINT NO. 1	IN AFFIRMATIVE
POINT NO. 2	IN NEGATIVE
POINT NO. 3	AS UNDER
POINT NO. 4	THE ACCUSED PERSONS CONVICTED AS UNDER.

REASONS.

POINT NO. 1. It is the prosecution case that the victim Mst. Nasima Lubano has been subjected to sexual assault by the accused. In this respect the prosecution is equipped with ocular and medical testimonies. The factum of sexual assault (Zina-bil-jabr) has been described by the victim herself. She leveled allegation of Zina against the accused Abdul Sattar and Anwar Hussain both. In this respect the medical account is also available with the prosecution to support their case. In this respect the prosecution has examined PW-3, Dr. Zaib-un-nisa (WMO), of Maternity Home at RHC, Dharki and also performing function of WMLO. Being Medico Legal Officer, she has examined the victim Mst. Nasima Lubano. The W.M.L.O. has noted the following injuries on the person of the victim.



1. Abrasion 4 cm x 2 cm on interior aspect mid left upper arm
2. Multiple abrasion on back of chest measuring 5 cm x 5 cm, 3 cm x 3 cm, 3 cm x 1.5 cm, 2 cm x 0.5 cm.

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3. Abrasion 7 cm x 3 cm on left scapular region.
4. Abrasion 1.5 cm x 0.5 cm on left buttock.

On genital examination, the WMLO found pubic and auxiliary hair well developed, breast well developed, V/V normal, hymen intact and healed, cervix soft, uterus enlarged, her height of fetus at about 08 weeks. Two fingers passed easily, no genital violence seen, pregnancy test positive.

During examination, internal and external cotton vaginal swabs were taken and duly sealed and labeled and sent for chemical examination. She was also referred to Civil Hospital Sukkur for ultra-sound and x-rays. The opinion was reserved in provisional medical certificate for want of chemical analysis and radiologist reports.

The Radiology Report was received by WMLO through MS Ghulam Muhammad Medical College Hospital Sukkur which reads as:

PATHOLOGICAL REPORT: Pregnancy Test Positive

ULTRASOUND REPORT: A single alive fetus with

gestational age of 08 weeks plus/minus 01 week. According to WMLO, no bony lesion was seen in X-Rays. However, it was disclosed in Chemical Analyzer Report that human blood and human semen were detected in internal and external vaginal swab.

On the basis of these reports and physical examination done by herself, the WMLO has opined that the victim has been subjected to Zina-bil-jahr. It is worth noting that the victim Mst.

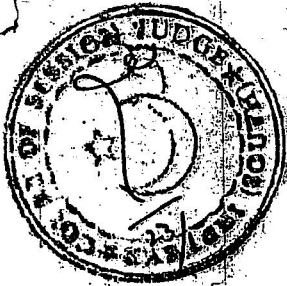


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Nasima has already stated that she was subjected to act of gang rape. Consequently this point is proved and replied in affirmative.

POINT NO 2

To prove this point the prosecution has relied upon the testimony of prosecutrix Nasima Lubano, her father Hamzo and her brother Asghar Ali. It transpires from the FIR and other documents that there was another alleged eye-witness of the alleged incidence of house trespass that is the mother of victim namely Naziran but the her name was missing from the calendar of witnesses and prosecution did not try to bring her in the witness box. The testimony of the father of victim is of hearsay evidence as he was not present at the time of alleged incident. It was contended by Mst. Nasima so also PW Asghar Ali in their depositions that the accused persons were armed with fire-arm weapons and sticks at the time of alleged house trespass. The accused persons were arrested and remained in the hand of investigation agency for quite some time but no weapon was recovered. Even the police could not recover a stick allegedly used by some of the accused persons during the occurrence of the incident. Nasim and her brother Asghar Ali has deposed that the accused persons after entering into the house beaten the inmates but none from the inmate except victim Nasima was sent for MLO opinion. It is also worth noting that Mst. Nasima has stated in her deposition that there are houses in between her house and house of Abdul Sattar but no one of the inmates of those houses come forward to act as witness. In this respect,



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during investigation no other credible evidence has been collected. The place of incident was inspected by the I.O. in presence of marginal witness PW-6 Mehrab Ali. He produced the memo of the place of incident and recovery (Ex. 17/1) the contents thereof are meaningful regarding under consideration point for determination. It is mentioned in the memo (Ex. 17/1) that no foot prints were found in the house of complainant or in open space and the adjacent street. Even no traces of having meal etc were mentioned in the memo. It is also mentioned in the same memo that the house of complainant is Katcha built and having a wooden door and in front of his house there is a shade (Chapra) from where it was said that Mst. Nasima was taken by the accused persons. It is worth noting that it reveals from the memo of inspection of the place of incident (Ex. 17/1) that there was no boundary wall or hedges periphery (known as Lorha in Sindh) around the dwelling place. The shad or CHAPRA from where Mst. Nasima was allegedly taken away is situated outside the katcha built area. It means that the accused persons have not entered inside the house and even they did not cross the door. In the instant matter 164 Statement of Mst. Nasima has also been recorded and the same is available on the record (Ex. 19/B). In the said statement of Mst. Nasima, it is not stated that she and her mother were available inside their house. It is also worth noting that she has stated in 164 that 11 accused persons came while armed with rifles at the place where she was available with her mother. It is not mentioned in her 164 statement that the place where she was available with her mother was actually inside her house. Then she stated in her

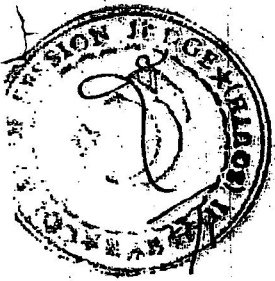


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164 that accused Anwar was armed with rifle while accused Sattar and Munawar were armed with guns. It is worth noting that the statement no 164 is silent about the entrance of the accused persons inside the house. It is also silent about availability of other brothers and sisters at the place. It is also silent about the beating by the accused persons to other inmates of house. It is also silent about taking meals at the time of incident. All these things are later on crop up in her statement recorded before this court. Thus there appears certain contradictions if compare with 164 statement of Mst. Nasima. It creates serious doubt regarding the happening of the affair of house trespass as stated by her or her brother Asghar Ali. I therefore safely held that this point is not proved.

POINT NO. 3.

It is the case of prosecution that the victim Mst. Nasima was stripped of her cloths and exposed to public. In an attempt to establish this point, the prosecution has examined the victim herself (Ex. 10) the complainant PW-2 Hamza (Ex. 11), PW-4 Asghar Ali (Ex. 13) and PW-5 Jamaldin (Ex. 14). Victim Nasima has stated that she was taken by accused persons in a room of the house of accused Abdul Sattar, where Accused Abdul Sattar has stripped by tearing her cloths and then subjected to gang rape by Abdul Sattar and Anwar Hussain. According to her after sexual assault by both the persons, they brought her outside the room, where the remaining accused played with the private parts of her body. She was later on rescued by PWs Sardar and Jamaldin and then she ran to her



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home in naked condition. It means till her rescuer intervention, she remained inside the house and not visible to other people. After intervention of her rescuer, she came out and ran to her home. Although, PW-4 Asghar Ali has stated that only Jamaldin and Abdul Sattar came there to rescue her sister Nasima while other people were standing at a distance. He also told that he had no idea that how many people were standing at a distance. PW-5 Jamaldin has stated that he and Sardar Ali listen the cries and attracted to the place of incident. This witness has also stated that outside the house of accused Abdul Sattar, he has seen PW-4 Asghar Ali. It means that no one except Asghar Ali were present outside the house. The Accused persons are allegedly available in the house of the accused Abdul Sattar. Neither they dragged the victim in the street or open space in naked condition nor did they strip of her cloths in the open space. Even no person was available nearby to see the victim in such a condition. The prosecution has also failed to establish that accused persons even took part of taking her from the house of complainant. The enmity is also alleged by the accused in their 342 statements. The cloths of the victim allegedly torn could not be recovered by the prosecution. Even, I.O. could not collect any evidence regarding the lost of the cloths. Although, a pair of scissors was shown to be recovered from the scene of offence but it has no link at all with the alleged offence or even with the accused person. It has been contended that all the accused were armed with some weapon but not a single stick was recovered from the accused persons. It has been said by PW Asghar that some people were available at



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distance but surprisingly no impartial person has been cited as witness by the prosecution. PW Asghar is the brother of victim. It has also come on the record that PW Jamaldin is the maternal uncle of the victim. Similarly, PW Sardar is also the relative of the complainant party. It is usually happens in our rural areas that in the fit of rage and revenge, after commission of offence by one person, the whole family is roped in the offence. In this respect even availability of the accused namely Shahzade, Abdul Jabbar, Khadim Hussain, Ali Hassan, Shah Baig and Hashir Ahmed at the scene of offence is engulfed in the thick clouds of doubt. I therefore came to conclusion that this point is also not proved.

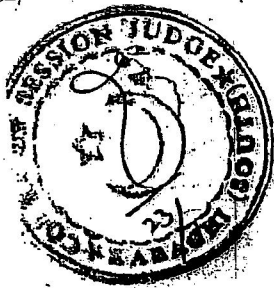
POINT NO. 4.

It is also the case of prosecution that the victim Mst. Nasima was gang rape by two persons namely Abdul Sattar and Anwar Hussain. In this respect, the prosecution is equipped with the evidence of victim Mst. Nasima and WMLO Dr. Zaib-un-nisa. Mst. Nasima in her deposition has stated that she was taken by the accused Abdul Sattar in a room of his house where her clothes were torn to make her nude and thereafter, she was raped by accused Abdul Sattar. Thereafter, accused Anwar Hussain entered in the room and also raped her. She has specifically leveled the allegations of rape against accused Abdul Sattar and Anwar Hussain. Accused Abdul Sattar is absconder and he has yet not been arrested. As per medico-legal report (although not produced by any witness) Accused Anwar Hussain is potent. It is evident from the medico-legal certificate



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duly produced by PW-3 Dr. Zaib-un-nisa, the victim Mst. Nasima has been subjected to Zina-bil-jabr. Although, she found her pregnant for eight weeks \pm one week but Mst. Nasima has explained in her testimony that it was because of a previous rape committed upon her by one of the absconding accused Munawar. The WMLO also found injuries on her boy regarding which her opinion is that the injuries are Ghayr Jaifah Damiyah and these injuries were fresh in nature. W.M.L.O. also disclosed that semen and human blood were detected on the cotton swab and on the basis of injuries and chemical report she declared that zina-bil-jabr was committed upon her. It was contended by the learned counsel that victim is not a virtuous lady and the detected semen is of previous act of sexual intercourse. In this respect, he accentuated his point of view on the basis of the opinion of W.M.L.O. that semen may be detected after three months of the sexual intercourse. The opinion of the W.M.L.O. may be true but there is another aspect to be considered. As per chemical analysis, there was not only semen but also human blood was detected. After a few days the blood cells would be destroyed due to autolysis. Thus availability of blood cells on the cotton swab is a clear indication of fresh act of zina. It is also contended that the victim is not a virtuous lady because she was found pregnant. In this respect, my opinion is that she has already explained about the pregnancy by saying that absconding accused Munawar is responsible for the same as he has raped her earlier. She has not leveled the charge of gang rape on Munawar. However, she made responsible him for earlier rape causing pregnancy. The absconcion of accused



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Munawar itself fortifies the contention of the victim about the earlier rape by him. Even if it is admitted for arguments sake that she is already used to sexual act then it does not give license to everyone to satisfy his lust with her. The learned counsel also pointed out a great contradiction that during cross he has said that the second assaulter was Munawar. It is a fact that she has quoted name of Munawar instead of Anwar Hussain as second assaulter during cross but in my view it is not a great contradiction while she has already stated in her chief that second assaulter was Anwar Hussain. Besides, she has already stated that she was earlier raped by Munawar and might be in a perplexing mind she has confused between the second assaulter and earlier assaulter. The outcome of the above discussion is that it has been proved that she was raped by two culprits amongst them one is accused Anwar Hussain. Thus this point is replied in affirmative.

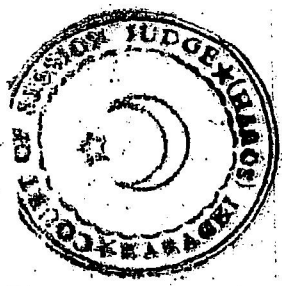
POINT NO. 5.

In view of my findings regarding Points No. 1 to 3, I am definite that neither the offence of house trespass nor the outrage of the modesty of victim has been taken place. I therefore extending the benefit of doubt to accused Shalizado, Abdul Jabbar, Khadim Hussain, Ali Hassan, Shah Baig and Rashid Ahmed and acquit them from the charge. The case of accused Anwar Hussain 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



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him to undergo R.I. for life. He is 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. The accused Anwar Hussain who produced in custody from jail and he is remanded back to jail to undergo the sentence awarded to him, whereas acquitted accused be released forthwith, if they are not required in any other custody case. The case against absconding accused in the case be kept on dormant file to be revived as and when the police arrested the absconding accused and cause appearance of said accused before this court. However, benefit of section 382 (b) Cr.P.C. is extended to accused Anwar Hussain for the period he has remained in judicial custody.



Announced in open court.

Fahim
 23-1-2010
 (Fahim Ahmed Siddiqui)
 District & Sessions Judge, Karachi South
 (SOUTH)

Case Property Order.

The case property of this case to be kept preserved till further orders as still the few accused in the case are absconding.

Given under my hand and the seal of the court this the 23rd day of January, 2010.

Fahim
 23-1-2010
 (Fahim Ahmed Siddiqui)
 District & Sessions Judge, Karachi South.
 SESSIONS JUDGE KARACHI
 (SOUTH)