

IN THE COURT OF SESSIONS JUDGE KARACHI SOUTH

S.C. NO. 472 OF 2007.

State.

Vs. 1. Munawar S/o. Habibullah.
2. Ghulamullah Chohan @ Morzado
S/o. Budhal @ Budho..... Accused.

FIR. NO. 07/2007.

P.S. UBARO.

U/S. 354-a, 452, 337-A(i),
376-B, 147, 148 & 149 PPC.

05.05.2014.

JUDGMENT.

Instant Sessions Case was tried by this court in which accused Shahzado S/o Budho 2) Abdul Jabbar S/o. Budho, 3) Anwar Hussain, 4) Khadim Hussain, Ali Hassan and Shah Baig all sons of Loung Khan and Bashir Ahmed S/o. Jamil Din were facing the trial and judgment dated 23.01.2010 was passed by the then learned Presiding Officer Mr. Fahim Ahmed Siddiqui and he had pleased to convict to accused Anwar Hussain for an offence under section 376(2) PPC whereas he had pleased to acquit the other accused persons by giving to them benefit of doubt and the case against the absconding accused was kept on dormant file with the direction to be revived and when they would be arrested by the police.

Accused Munawar S/o. Habibullah and Ghulamullah Chohan @ Morzado S/o Budhal @ Budho had surrendered to themselves before this Court and filed the pre-arrest bail application on 09.03.2010 and the interim relief was withdrawn through the order dated 03.08.2011 and they were remanded to jail custody to face the trial of this case.



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SIO of P.S. Ubaro had submitted the charge sheet based on F.I.R. No. 07/2007 falling under sections 354-A, 452, 337-A(i), 376-B, 147, 148, & 149 PPC and the accused persons namely Loung Khan, Shahzado, Abdul Jabbar, Anwar Hussain, Khadim Hussain, Ali Hassan, Shah Beg and Bashir Ahmed were shown as apprehended accused to face the trial whereas the present accused persons namely Ghulamullah Chohan @ Morzado and Munawar were shown as absconding accused alongwith another accused namely Abdul Sattar who is still absconding in this case and has been declared as proclaimed offender.

Facts leading to the case are that complainant Hamza S/o. Gamman Khan had lodged the report at P.S. Ubaro District Gothki on 27.01.2007 alleging therein that he is residing at the given address and the quarrel took place in between complainant and Abdul Sattar on the matter of children fight prior to the alleged incident and Abdul Sattar had issued the threat to the complainant by saying that he will disgrace to him in a way that he would not be able to show his face to anyone in the vicinity and he is rendering the services as laborer at Engro Fertilizer Company and his daughter namely Mst. Nasima aged about 18 years and she is bachelor was available at home. Complainant had gone to his job on the day of incident in Engro Fertilizer Company as per his routine and it was about 15:00 hours when his son namely Asghar Ali had appeared before him at his job and had informed that accused Abdul Sattar Labano and others had taken away to his daughter Mst. Nasima on the strength of force from her house and they had committed the zina with her at their house and so also torn her cloths. After coming to know such state of incident complainant had appeared at his office where he noticed that Mst. Nasima was whipping who informed to complainant that she alongwith her mother Mst. Naziran were available at home and it was about 13:00 hours when accused namely Abdul Sattar, Shahzado, Morzado, Abdul Jabbar, all sons of Budho Labano resident of village Habib Labano Taluka Ubaro, Munawar Hussain S/o. Habibullah Labano resident of Village Habib Labano, Anwar



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Ali, Khadim Hussain, Ali Hassan, Shah Beg, all sons of Loung Khan, Bashir Ahmed S/o. Jamaluddin were accompanying to main accused. Accused Abdul Sattar and Munawar were having the shotguns, Anwar Hussain was having the rifle, who had aimed the weapon at victim Mst. Nasima and Mst. Naziran and they had caught hold from the arms and accused Abdul Sattar alongwith other had taken-away to Mst. Tasleema and accused Abdul Sattar had committed the zina after confining to her in the room of house of Abdul Sattar by force and then accused Anwar Hussain had entered into the room who had also committed the zina with her though she had beseeched before them not to commit the zina with her and why they are disgracing to her. P.W. Jamaludin S/o. Bangal Labano and other villagers had attracted to the place of incident after hearing the alarms of victim Mst. Tasleema and she was naked and had appeared at her house where she worn another wearing cloths. Complainant alongwith victim had appeared at P.S. where F.I.R. was lodged and investigation was carried-out and some of the accused persons were apprehended by police and charge sheet was submitted before the court of law and the said case was being tried before the learned Illrd Additional Sessions Judge Mirpur Mathelo and it was transferred to this court as per directions of Honourable High Court of Sindh at Karachi.

Present accused were absconding at the earlier trial alongwith co-accused Abdul Sattar and all the legal formalities were completed during the course of earlier trial to declare to accused persons who were absconding at the relevant time as proclaimed offenders and they have joined the trial after pronouncement of judgment dated 23.01.2010. It is pertinent to mention here that accused Lounge Khan has been expired and the death report was called and SIP Akbar Ali was examined before court on 17.01.2009 who had produced the death certificate alongwith other documents in relation to death of said accused.

The police papers were supplied to the accused persons in compliance of section 265-C Cr.P.C. who had issued the acknowledgement at Ex.1 and formal

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Charge at Ex.2 was framed on 02.12.2011 against the present accused persons who had not pleaded guilt and their pleas were recorded at Ex.3 & 4 and they have pleaded that they are innocent and they are ready to face the trial.

The prosecution has produced to complainant S/o. Gamman Khan at Ex.5 who has seen the copy of F.I.R. to which had been produced at Ex.11-A at earlier trial. He has identified his signature.

P.W. Asghar Ali S/o. Hamzo has been examined at Ex.6 who has identified to the accused persons present in court as culprit of alleged offence.

P.W. Jamaluddin has been examined at Ex.7. He has seen the statement under section 164 Cr.P.C. to which he had produced at Ex.14/A in the earlier trial.

Mst. Nasima Labano, victim of this alleged incident has been examined at Ex.8.

Mr. Muhammad Islamul Haq has been examined at Ex.9 and learned counsels appearing on behalf of accused persons and complainant have resolved by mutual consent that to adopt the examination-in-chief of learned Judicial Magistrate as it is because he has recorded the examination-in-chief in the earlier trial and the same was adopted by both the sides of learned counsels only to save the time of the court and cross opportunity was extended to the learned defence counsel.

Learned defence counsel has filed the application at Ex.10 with a request to adopt the examination-in-chief of WMLO at Ex.12 of the earlier trial only to save the time and learned ADPP appearing on behalf of the State has extended the no objection and such application was allowed.

WMLO Dr. Zaibunnisa has been examined at Ex.11 and the examination-in-chief was adopted with the consent of learned counsel appearing on behalf of accused and complainant and cross opportunity was extended to the learned counsel appearing on behalf of accused who has exhausted such remedy.



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Learned ADPP appearing on behalf of the State has filed the application at Ex. 11-A to adopt the examination-in-chief of I.O. as it is to which had been recorded earlier to it and learned counsel appearing on behalf of accused has extended the objection to allow such request.

Inspector Aftab Hussain has been examined at Ex.12 and learned counsel appearing on behalf of accused has exhausted the remedy to put the cross questions to him. Learned ADPP appearing on behalf of the State has filed the statement at Ex.13 to close the side of prosecution because all the material witnesses have been examined.

The statement of accused under section 342 Cr.P.C. of accused Munawar Ali has been recorded at Ex.14 and he has disowned the state of allegations as alleged by the complainant party and he has asserted that no P.W. have deposed against him and he is innocent and has been falsely implicated by the complainant party and no concrete piece of evidence has been produced by the complainant to connect to him with the commission of crime so alleged. He has not recorded his statement on Oath under section 340(2) C.P.C. to disprove the state of allegation and nor he has produced any defence witness in support of his assertion.

The statement of accused under section 342 Cr.P.C. of accused Ghulamullah Chohan @ Morzado has been recorded at Ex.15 and he has disowned the state of allegations as alleged by the complainant party and he has asserted that no P.W. have deposed against him and he is innocent and has been falsely implicated by the complainant party and no concrete piece of evidence has been produced by the complainant to connect to him with the commission of crime so alleged. He has not recorded his statement on Oath under section 340(2) C.P.C. to disprove the state of allegation and nor he has produced any defence witness in support of his assertion.

It is submissions of the learned counsel appearing on behalf of the complainant that prosecution has succeeded to establish the prima facie case to

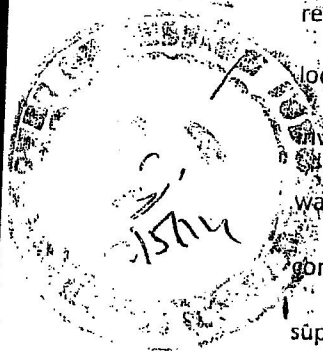


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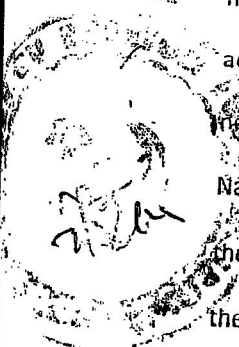
connect to accused persons with the commission of crime so alleged and sufficient evidence has been brought on record before the court to connect to them with the commission of crime and it is the heinous crime in which they have been involved by the prosecution and it was not ordinary crime because no person can level such type of state of allegations against the accused persons at the stake of respect of his family and such type of cases are to be dealt with an irony hands and with special attention so as to curb such type of crime from the society and the evidence of victim is inspiring the confidence who has leveled the specific allegations against the present accused persons during the course to record the evidence at trial and so also before the police at the stage of investigation and the names of the accused very much transpires in the F.I.R. and there is role attributed to them, while recording the statement under section 164 Cr.P.C. before the learned Judicial Magistrate. P.W. Jamaluddin has also implicated to the present accused persons with the commission of crime so alleged and showing their presence at the place incident and they were absconding intentionally at the time earlier trial though they were having the knowledge that case was being tried against the accused persons who were facing the trial and they had surrendered before the court after coming to know that all the accused persons have been acquitted except to one Anwar Hussain who was convicted to undergo life imprisonment and their such absconson is sufficient to establish the state of allegations as leveled by the prosecution against them to award the maximum punishment to which has been awarded to the co-accused in this this case and accused persons have not been able to shake the evidence of prosecution witnesses by producing any sort of defence and no material has been brought on record to show their innocence during the course of trial and the F.I.R. was promptly lodged by the complainant at P.S. just after incident took place and the question to involve to accused persons falsely in this case does not arise at all and the same F.I.R. was lodged in a very normal routine with specific role of accused persons, without consultation or deliberation from any one and the prosecution witnesses have supported the case of prosecution; hence the burden to disprove such state of



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allegation have been shifted to the shoulders of accused persons to discard such state of allegations by producing the some substantial piece of evidence to which is to be believable by the prudent mind and the acquittal of co-accused persons in the first trial does not entitle to the present accused to acquit to them in the present trial because prosecution witnesses have implicated specifically to them while recording their deposition before court and they have not been able to create any doubt in respect of their sanctity and the sole testimony of the victim in such type of cases can alone be made basis for conviction of the accused if the evidence of victim is inspiring the confidence and Mst. Nasim who is victim of this incident has specifically implicated to the present accused persons with the commission of crime so alleged before the court and so also while recording her statement under section 164 Cr.P.C. before the learned Judicial Magistrate and she had disclosed the names of present accused persons while recording her evidence in the earlier trial in their absentia and WMLO Dr. Zaibunisa has supported the state of allegations in respect of rape while recording her evidence before court and such fact of rape has been confirmed by her during the course of recording the evidence before court and the said evidence has not been shattered by the learned defence counsel while putting the cross questions. He has further argued that the testimony of P.W. Jamaluddin and brother Asghar Ali provide the ocular evidence of the alleged incident and their statement before court are in consistent and so also same evidence is very-much convincing to the prudent mind and learned defence counsel has not been able to shake the same while putting the cross question to them and it would be immaterial to consider that they are related to victim or complainant because their deposition are very-much natural and same cannot be discarded on the point of relationship and the present accused persons had facilitated to the main accused persons to achieve their nefarious designs and object while committing the gang rape with the victim Mst. Nasima and they are equally responsible to be awarded the maximum punishment to the scale of main accused Anwar Hussain and the learned counsel has relied upon the decisions of the Honourable superior courts as appeared in 2006 SCC 191, AIR



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1965 SC 1037, 2006 Cr.L.J. 1922, 1991 P.Cr.L.J. 2212, PLD 1991 S.C. 412, AIR 2004 S.C. 1290, 2005 SCMR. 1936, PLD 1989 S.C. 742, 1999 P.Cr.L.J. 699, PLD 1966 Karachi 101, 2007 P.Cr.L.J. 1408, 1977 P.Cr.L.J. 573, 1996 SCC 384, 1983 SCC 217, 2002 SCMR. 1009, PLD 2007SC 183, PLD 1950 Baghdad-ul-Jadid 71, 1990 SCC 550, 2004 P.Cr.L.J. 1039, 1988 P.Cr.L.J. 343, 1999 YLR. 101, 1975 SCMR. 69, AIR 1987 SC 1080, 1998 SCC 635, AIR 1992 SC 1161, PLD 2005 SC 252, 2012 P.Cr.L.J. 739, 2002 P.Cr.L.J. 1169, 2002 P.Cr.L.J. 807, 1987 P.Cr.L.J. 1979, 2004 MLD 440, PLD 1950 BaghdadOul-Jadid 71, 1996 SCC 394, 1977 P.Cr.L.J. 573, 2002 SCMR 1009, 1996 SCC 384, 1983 SCC 217, 199 YLR. 101, 1975 SCMR 69, 1977 P.Cr.L.J. 573, AIR 1987 S.C. 1080, 1987 Cr.L.J. 1541, AIR 1987 SC 1080, PLD 2005 S.C. 252, 2002 SCMR. 1009, 2005 SCMR. 1936, 1996 SCC 384, 1990 SCC 550, PLD 1989 S.C. 742, 1975 SCMR. 69, 1975 SCMR. 394, 1977 P.Cr.L.J. 573, AIR 1960 P&H 303, 1998 SCC 635, PLD 1966 Karachi 101, 2006 NLR. Cr.L.J. 294, 2006 NLR (AC) 537, NLR 2005 (AC) SC 96, 2001 SCMR. 199, 1994 SCMR. 1, PLD 2006 Peshawar 65, 1992 SCMR. 1036, PLD 2007 Peshawar 17, 2002 P.Cr.L.J. 1934, 2000 YLR. 1897, 2011 MLD 773, PLD 1968 Karachi 853, PLD 1966 Dacca 269, AIR 1953 Ajmer 12, AIR 1958 S.C. 813, PLD 1984 FSC 55, AIR 1967 S.C. 553, 1971 P.Cr.L.J. 890, PLD 1989 Peshawar 227, 2009 MLD 13, 1987 P.Cr.L.J. 312, 1990 SCMR. 267, 1999 YLR. 70 and 1996 P.Cr.L.J. 620.

Learned ADPP appearing on behalf of State has adopted the same arguments as advanced by the learned counsel appearing on behalf of the complainant and has prayed to award the maximum punishment to the accused persons.

Learned counsel appearing on behalf of accused has submitted that prosecution has miserably failed to establish the case against the accused persons beyond the shadow of doubt during the course of trial and there are glaring and material contradictions to which have created the serious doubt in respect of sanctity of such state of allegation as alleged by the prosecution and Mst. Nasima was not virgin and she was having the pregnancy of 08 weeks at the time of medical examination and WMLO has affirmed such fact while issuing the medical certificate

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and there was no any mark of violence available at the body of victim at the time of medical examination by the WMLO or her private parts of body and prosecution has not been able to produce any independent witness of the locality during the course of trial to substantiate such state of allegations and it is the specific claim of the victim that villagers had gathered at the place of incident after attracting to her alarms at scene but she has not been able to disclose the name of any other person except to Jamaluddin who is the relative of victim and co-accused persons have been acquitted on the basis of same set of evidence so recorded by the prosecution in this case except to accused Anwar Hussain and no specific overt act has been assigned to present accused persons by the victim or complainant as complainant is not eye witness of the incident and he had relied upon the state of allegations of his son and daughter while lodging the F.I.R. at P.S. and no independent person of the locality was accompanying to him to support his state of allegations before the police while lodging the F.I.R. and the victim of this alleged incident had not leveled the specific allegation against them while recording the statement under section 164 Cr.P.C. before the learned Judicial Magistrate or before this court while recording the deposition in this case or even at the earlier trial and complainant of this case has concealed the fact of having the pregnancy of 08 weeks by Mst. Nasima while lodging the F.I.R. at P.S. or during the course of recording the evidence before court and complainant party has managed whole story in respect of such state of allegation only to conceal the earlier crime in which was consenting party and he has contended that now after evidence there are two version available before court i.e. one by the complainant and victim and the other by the independent evidence of WMLO as according to him complainant claimed that his daughter was unmarried and on the other hand the medical report issued by the WMLO speaks about the pregnancy of 08 weeks and so according to him the possibility of false implication in no way can be ruled-out and it is settled law that benefit of doubt always to be extended in favour of the accused and it cannot be stretched in favour of the prosecution. He has further contended that under the



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scheme of criminology and the various celebrated dictums of the superior courts it has been often held that one single circumstance creating a reasonable doubt in the mind of the court is sufficient to extend to the same to the accused and in this case he has contended that there are sufficient grounds to believe that it is a managed case against the accused persons by involving to them falsely without any justification and prosecution has not been able to discharge the responsibility to establish the case against the accused beyond any shadow of reasonable doubt and so he has prayed for the acquittal of the accused from the charged offence.

I have heard the learned counsel appearing for the respective parties and in order to appreciate as to the contentions raised from both the sides and the available evidence on record, following points are formulated for determination:-

1. Whether the victim Mst. Nasima Labano was subjected to zina-bil-jabr by these accused?
2. Whether the present accused persons alongwith others had trespassed in the house of complainant having made preparation of causing hurt and wrongful restrain during which they had maltreated to the victim Mst. Nasima Labano and had taken to her out of the house?
3. Whether the present accused persons alongwith others had stripped of the clothes of victim Mst. Nasima and had exposed her to public in such state?
4. Whether the accused persons are responsible to extend the facilitation to the main accused for committing the gang rape to Mst. Nasima?
5. What offence has been committed by the accused persons and what should the judgment be?

My findings on the above points are as under:-

- | | |
|-------------|---|
| Point No.1. | As under. |
| Point No.2. | As under. |
| Point No.3. | As under. |
| Point No.4. | As under. |
| Point No.5. | Accused are acquitted of the charged offence by giving them benefit of doubt. |

REASONS.

POINTS NO.1 TO 4.



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These points are taken up together as they are inter-linked with each other and so it would be feasible if the evidence adduced at trial is discussed jointly to reach at the conclusion would save the time of the court.

Complainant Hamza has been examined at Ex.5 and he has deposed that incident took place on 27.01.2007 at Village Habib Labano, Taluka Ubaro when he was available at his job at Engro Urea Factory and his son Asghar Ali had appeared at his job at about 15:00 hours and had intimated that accused Abdul Sattar alongwith 11 persons who were having the weapons had entered into the house at about 13:00 hours and had started to maltreat to his son and other family members and they had taken to his daughter namely Nasima Labano by dragging and to maltreat to her and had shifted to her to the house of Abdul Sattar and she was raising the alarms and accused Abdul Sattar and Anwar Hussain had subjected to commit the zina to Mst. Nasima Labano. P.W. JamaJuddin and Sardar Ali had appeared at scene where they had found that 11 persons were playing with the body of Nasima Labano who was available in torn cloths and she had run-away from the house of Abdul Sattar and had reached at her house. Complainant had reached at his house where his daughter Nasima Labano had informed to complainant in respect of state of incident and she had also intimated to the complainant that accused Abdul Sattar and Anwar Hussain had committed the rape with her whereas rest of the accused persons had played with the private parts of her body. Complainant alongwith victim Mst. Nasima Labano had appeared at P.S. at about 17:00 hours where FIR was lodged at about 18:30 hours and he has affirmed the thumb impression available at the said F.I.R. He alongwith victim and police official had gone to government hospital for medical examination of the victim. He has identified to the accused persons present in court as culprit of the alleged offence.

Learned counsel appearing on behalf of accused persons has exhausted the remedy to put the cross questions to him and he has deposed that he has not been able to produce any proof of working in Engro Urea Factory. He has admitted that



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police station is located at half hour walking distance from his house at Village Habib Labano. He has denied the suggestion that accused persons are related to him. He has admitted that he had not disclosed about Masi who was accompanying to them while appearing at P.S. in the contents of F.I.R. He has admitted that he had not lodged any F.I.R. in respect of threats to which were extended by accused Abdul Sattar earlier to the alleged incident. He has denied the suggestion as put forth by the learned defence counsel that his daughter Mst. Nasima was having the pregnancy of two months prior to this incident. He has denied the suggestion that present accused Munawar and Morzada had not played with the private parts of the body of victim. He has denied the suggestion as put forth by the learned defence counsel that role of Munawar and Morzada are not mentioned in the contents of F.I.R. but later on he has admitted that role is specifically not given in the contents of F.I.R.

P.W. Asghar Ali has been examined at Ex.6. He is the star witness of the whole incident at site except to victim of alleged incident and he is brother of victim and son of complainant and he has deposed that they were taking the meal at their house on 27.01.2007 at about 13:00 hours when 11 persons had attacked at their house and they were Abdul Sattar, Shahzado, Morzado, Abdul Jabbar, Munawar Hussain, Anwar Hussain, Ali Hassan, Shah Baig, Loung, Bashir Ahmed and Khadiq Hussain and they were having the weapons and accused Abdul Sattar and Munawar were having the short gun. Anwar Hussain was having the rifle and they had started to maltreat to the said witness alongwith others and had dragged to Mst. Nasima by maltreating to her towards the house of Abdul Sattar and he had tried to rescue to Mst. Nasima but they were 11 persons who had overpowered to the said witness and had maltreated to him. He had raised the alarms and had caused to the people for help and P.W. Sardar Ali and Jamaluddin had attracted after hearing the alarm of said witness and he had informed to them in respect of such state of incident and had requested to save his sister Mst. Nasima. They had proceeded towards the



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house of Abdul Sattar where they saw that 11 persons were playing with the body of Mst. Nasima and accused persons had aimed their weapons at the. P.W. Sardar Ali and Jamaluddin had requested to release to Mst. Nasima and she was in naked position and by taking the chance she had run-away toward her house and when said witness had appeared at his house Mst. Nasima had worn the cloths, then he had proceeded to the place where his father was rendering the series and had narrated the state of incident and his father had appeared at home alongwith him and then his statement was recorded by police

Learned defence counsel has exhausted the remedy to put the cross questions to him and he has deposed that accused Abdul Sattar is not his maternal uncle whereas P.W. Jamaluddin is his maternal uncle. He has admitted that he had not disclosed in his statement under section 161 Cr.P.C. the mode of travelling through Engro Urea Factory while informing to his father in respect of such state of incident.

P.W. Jamaluddin has been examined at Ex.7 and he has deposed that incident took place on 17.01.2007 and he alongwith P.W. Sardar Ali were standing in the street of their village and they had noticed the alarms from the Eastern side and they had moved towards the alarms and they had come to known that said alarms were coming from the house of Abdul Sattar and they had reached near to said house where they found Asghar Ali who told that Abdul Sattar, Shahzad, Morzado, Abdul Jabbar, all sons of Budho Khan, Loung, Anwar Hussain, Khadim Hussain, Shah Baig, Ali Hassan, Bashir Ahmed and Munawar have whisked away his sister from his house. They had reached at the house of Abdul Sattar and had opened the door of house and had entered into the house where they say Nasima Labano who was in naked position and the persons mentioned above were found around to her and they were playing with her body in objectionable wild manner. They had proceeded ahead when Abdul Sattar had aimed his weapon at them, so also accused Anwar Hussain who was having the shotgun had pointed-out his gun at the P.Ws. and



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others were having the dandas in their hands. It is pertinent to mention here that P.W. Asghar Ali has deposed that all the accused persons 11 in numbers were having the weapons in their hands at the time of commission of alleged offence whereas present P.W. Jamaluddin who has been shown as eye witness of the alleged incident has deposed that only two accused persons namely Abdul Sattar and Anwar Hussain were having the weapons whereas other persons were having dandas in their hands. Said P.W. Jamaluddin and Sardar Ali had asked to the accused persons in the name of Allah and Quran-e-Majeed to desist from this act and during this time Mst. Nasima had taken the chance to flee-away from scene in naked condition and his statement under section 161 Cr.P.C. was recorded by police on the very same day of incident and thereafter his statement under section 164 Cr.P.C. was recorded before the learned Judicial Magistrate at Ubaro

Learned defence counsel has exhausted the remedy to put the cross questions to him and he has deposed that he is real uncle of Mst. Nasima Labano and his parents are residing near to the house of Mst. Nasima Labano and complainant Hamzo is his brother-in-law and he has disclosed that he has no knowledge that complainant Hamzo had lodged the F.I.R. against the present accused persons earlier to it. He has admitted that he had not involved to the present accused persons of molesting to Mst. Nasima Labano while recording the statement under section 161 Cr.P.C. before the police and his statement under section 161 Cr.P.C. was recorded after about 10/11 days of the occurrence. He has admitted that he was examined earlier to it in the same case and he had not assigned the specific role of molesting to Mst. Nasima Labano.

Specific question was asked by the learned defence counsel as he had not stated before the police or learned Judicial Magistrate as to whether he had heard the alarm coming from Eastern side during the course of investigation and he had replied that it is incorrect to suggest that I have not heard the voice from East. Voluntarily says I had heard the voice from the eastern side.



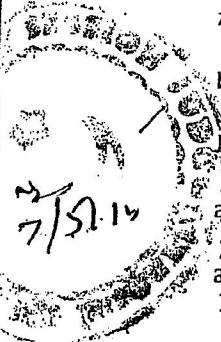
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P.W. 1 Asghar Ali has deposed in his deposition that he was raising the alarm at the time of alleged incident when accused persons were taking away Mst. Nasima Labano on the strength of weapons and P.W. Sardar Ali and Jamaluddin had appeared at scene and he has denied the suggestion as put forth by learned defence counsel to him stating that 'I had not stated above Asghar Ali to have informed me that they have seen taking Mst. Nasima Labano with them and he cannot say whether any such thing is mentioned in his statement under section 161 Cr.P.C. or in his statement under section 164 Cr.P.C. or not'. He has denied the suggestion as put forth by learned defence counsel that he had not opened the door of house of Abdul Sattar and the statement under section 161 Cr.P.C. and 164 Cr.P.C. were shown to him to affirm such contention of the P.Ws. and he has replied that it may not be available there and he has admitted that he had not informed to the police and on seeing to the incident he had gone to his house.

Mst. Nasima Labano has been examined at Ex.8 and is victim of the alleged incident and she has deposed that she was available at her house on 27.01.2007 and it was about 13:00 hours when she was taking the lunch alongwith her family members and 11 persons had attacked upon complainant party and they were as Anwar Hussain, Khadim Hussain, Shah Baig, Ali Hassan, Loung, Munawar, Bashir, Sattar, Morzado, Shahzad and Jabbar. Anwar was having rifle, Sattar was having shotgun and she had beseeched before them that she is virgin girl and Jamaluddin and Sardar Ali had appeared at scene to rescue to the victim and accused persons had brought to her to the house of Abdul Sattar by maltreating and she was confined in a room by them and accused Abdul Sattar and Anwar Hussain had committed the zina with her and she was weeping and was raising the alarm and so also she had beseeched before them for the sake of Almighty Allah but they did not care. P.W. Jamaluddin and Sardar had attracted on her alarms and they have saved to her from accused persons and she had run away from scene by taking the advantage of such and then she had worn the cloths at her house. She had informed to her brother in



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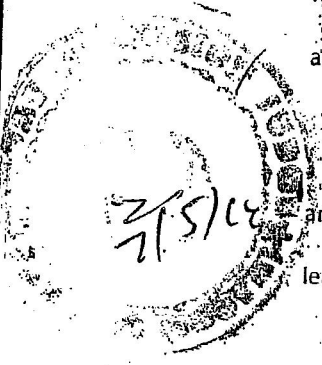
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respect of such incident and his brother Asghar Ali had intimated to her father at his work place and her father had appeared at house and then they had appeared at P.S. where F.I.R. was lodged at about 18:00 hours. She had appeared at hospital and medical report was come in which pregnancy for the period of 08 weeks was shown and as a matter of fact Munawar had committed the rape with her earlier to that and he had issued the threats as to not to disclose such fact to any of the family members otherwise he will commit the murder to his family members and due to fear of such threats she had not intimated to anybody else in respect of such high handedness of accused Munawar and her statement was recorded before learned Judicial Magistrate and she was also examined before this court at the earlier round of trial.

Learned defence counsel has exhausted the remedy to put the cross questions to him and he has deposed that P.W. Jamaluddin was her maternal uncle, whereas Sardar Ali was maternal grand-father. She has admitted that she had not disclosed before the police officer while recording the statement under section 161 Cr.P.C. that accused Munawar had committed the rape with her prior to alleged incident. She has also admitted that she had not disclosed such fact of pregnancy before the learned Judicial Magistrate while recording of her statement under section 164 Cr.P.C. and nor she had disclosed such fact before WMLO at the time of medical examination that accused Munawar had committed the rape with her about two months back of alleged incident. She has deposed that accused Munawar was residing at the house adjoining to her house at native place whereas other P.Ws. namely Asghar Ali, Jamaluddin and complainant Hamzo have deposed that accused Munawar was residing in the same village and they had not disclosed that said accused Munawar was residing adjoining to the house of complainant party.

Mr. Muhammad Islamul Haq has been examined at Ex.9 in the present trial and the examination-in-chief of the said P.W. was treated as it is with consent of learned counsel appearing on behalf of accused and complainant because he has



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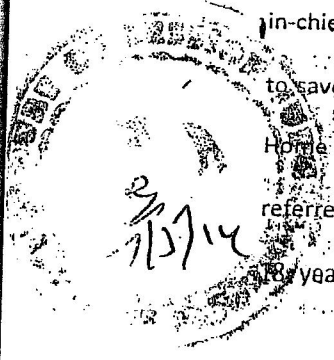
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been examined by his court in the earlier round of the trial on 29.10.2009 and he has deposed that he was having the posting as Ist Civil Judge & Judicial Magistrate Ubaro when SIP Aftab Hussain of P.S. Ubaro had submitted the request dated 07.02.2007 with a prayer to record the statement under section 164 Cr.P.C. of victim Mst. Nasima Labano, P.W. Jamaluddin and P.W. Sarwar Ali and six accused persons were arrested by police at the relevant time who were also produced before him. He had allowed the request of I.O. and had recorded the statement under section 164 Cr.P.C. of victim Mst. Nasima at the first instance and then he had recorded the statement under section 164 Cr.P.C. of other witnesses to which he has produced at Ex.19 / B to C & D respectively. He had extended the opportunity to cross over to the witnesses but they had refused to cross the witnesses.

Learned defence counsel has exhausted the remedy to put the cross questions to him and he has deposed that police officer had produced to the complainant alongwith victim of this incident and other witnesses for recording their witnesses under section 164 Cr.P.C. on 07.02.2007. He has admitted that victim Mst. Nasima did not disclose the name of accused Munawar and Ghulamullah @ Morzado for committing the zina with her but had disclosed that Anwer Hussain and Abdul Sattar they both had committed the zina with her whereas rest of the accused persons had played with her body. He has admitted that Mst. Nasima had not disclosed before him as to whether she was having the pregnancy of 08 weeks at the time to record the statement under section 164 Cr.P.C.

P.W. / WMLO Dr. Zaibunqisa has been examined at Ex.11 and has been examined earlier to it at Ex.12 during the course of earlier trial and the examination-in-chief of this witness was adopted as it is with the consent of both the parties only to save the time and she has deposed that she was having the posting at Maternity Home at HRC Dharki on 27.01.2007 when she had examined to Mst. Nasima who was referred by SIO Ubaro through the Police Letter No.CR-7/2007. She was aged about 18 years. She had mentioned the mark of identification in the certificate and



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according to victim some people had crossed the wall of her house, torn her cloth and they put to her on earth, dragged her and then disgraced. She had examined to Mst. Nasima Labano and she had noted the following the following injuries on the person of victim:-

- 1. Abrasion 4 c.m. x 2 c.m. on interior aspect mid left upper arm.
- 2. Multiple abrasion on back of chest measuring 5 c.m. x 5 c.m. x 3 c.m. x 3 c.m. x 1.5 c.m. x 2 c.m. x 0.5 c.m.
- 3. Abrasion 7 c.m. x 3 c.m. on left scapular region.
- 4. Abrasion 1.5 c.m. x 0.5 c.m. on left buttock.

On genital examination the WMLO found pubic and axillar hair well developed, breast well developed V/V normal, hymen torn and healed, cervix soft, uterus enlarged, her height of fetus at about 08 weeks. Two fingers passed easily on 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 ultrasound 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 Sykkur which reads:-

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 bonilien 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.

Learned defence counsel has exhausted the remedy to put the cross questions to her and she has deposed that she was examined earlier to it during the course of trial and Mst. Nasima Labano was in normal condition when she was produced before her for medical examination and SIO of P.S. was not accompanying to her and mother of Mst. Nasima Labano was accompanying to her and Mst. Nasima

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Labano was fully conscious condition when she was produced before her and she had not disclosed while preparing the history of victim as to whether she was having the pregnancy and so also her mother had not disclosed before medical officer as to whether Mst. Nasima Labano was having the pregnancy at the relevant time. She has admitted that usually victim will lose the senses after facing such type of situation of collective gang rape. She has admitted that Mst. Nasima Labano or her mother had not produced any wearing cloths of victim at the time of examination. She has admitted that she has mentioned in her report in the light of ultrasound report that fetus of 08 weeks was alive and according to her knowledge and believe if the heart beat is present then it would be presumed as alive. She has admitted that she had not noticed any injury to which was caused by hard or blunt substance at the body of victim and she has admitted that injuries as described by her in the medical certificate may be caused by nails and so also by dragging. She has admitted that she had deposed in her cross-examination in the earlier round that she had not noticed any injuries so serious at the body of victim Mst. Nasima Labano at the time of her examination and nor she had come to know in this regard. She has admitted that she was not having the opinion as to whether victim Mst. Nasima Labano was subjected to zina-bil-jabr if she had not disclosed before her in respect of such allegation. She has admitted that she had noticed after receiving the ultrasound report that Mst. Nasima Labano was having the pregnancy of 08 weeks and the fetus was alive.

SIO Aftab Hussain has been examined at Ex.18 at earlier round of this trial and the examination-in-chief of the said I.O. has been brought on record as it is with the consent of learned counsel appearing on behalf of accused and learned counsel appearing on behalf of the complainant with the purpose to save the time of court and he has been examined at Ex.12 in this trial and he has deposed in the examination-in-chief that he was having the posting as SIO on 27.01.2007 at P.S. Labano when he had received the copy of F.I.R. No. 07 / 2007 for the purpose of investigation at about 18:15 or 18:30 hours. Mst. Nasima Labano had also appeared

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before him at the same time and he had recorded her statement under section 161 Cr.P.C. and had issued the letter to WMLO, RHC Dharki to examine to herself. He has produced such letter at Ex.18/1. Complainant Hamzo Labano had also appeared at P.S. and S.I.O. alongwith complainant had proceeded to the place of incident situated in the village Habib Labano where he had inspected the place of alleged incident at about 19:20 hours in presence of witnesses namely Rajab and Mehrab and the place of incident was located in the house of Abdul Sattar to which is located at the distance of about 100 paces away from the house of complainant and during the course of inspection of the place of incident he had found a pair of scissor in the room where he was told that Mst. Nasima Labano was subjected to commit the rape by the accused persons and he had seized the pair of scissor in police custody under a proper memo of seizure which was prepared on the spot in presence of witnesses. He has seen the exhibit 17/1 and he has seen the scissor at Art. 'A' and so also he has seen the cover (cloth) at Art. A/1. He had come back to police station where witnesses had appeared and he had recorded the statements under section 161 Cr.P.C. of Asghar Ali, Sardar Ali, Jamaluddin and Mst. Naziran. It is pertinent to mention here that P.W. Asghar Ali has deposed that his statement was recorded at Village Habib Labano where police officer had appeared and he has specifically denied that his statement was recorded at P.S. during the course of cross-examination, whereas P.W. Jamaluddin has not disclosed in his examination-in-chief or cross-examination as to where his statement under section 161 Cr.P.C. was recorded by police officer. He had presented to Mst. Nasima Labano, Sardar Labano and Jamaluddin before the learned Civil Judge & J.M. Ubaro on 07.02.2007 to record their statements under section 164 Cr.P.C. where such statements were recorded and he had completed the investigation and had submitted the final report before the competent court of law.

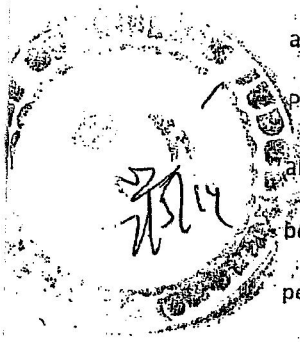
Learned defence counsel has exhausted the remedy to put the cross questions to him and he has deposed that he was examined earlier to it when the



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trial of this case was going on against the other accused persons and he has deposed that he had received the copy of F.I.R. at about 18:15 or 18:30 for investigation purpose and he had proceeded to the place of incident at about 19:20 hours alongwith complainant Hamza Khan and Mst. Nasima was referred to Taluka Hospital Dharki. He has admitted that place of incident is 100 paces away from the house of complainant and he has admitted that some of the family members of the victim and complainant were present at home at the time of his visit at Village Habib Labano but he had no recorded the statement under section 161 Cr.P.C. of any person at the time of inspection of the place of incident or at the house of complainant. He has admitted that he had not collected or recovered anything from the house of complainant at the time of inspection. He has admitted that P.W. Jamaluddin and Sardar Ali were not present at the place of incident at the time of inspection. He has admitted that complainant Hamza had disclosed in the contents of F.I.R. that dispute was going on in between accused persons and complainant party over the fight of children. He has admitted that complainant Hamza had disclosed that his daughter is virgin according to contents of F.I.R. He has denied that complainant Hamza had produced the P.Ws. before him at P.S. namely Mst. Naziran, Jamaluddin and Sardar Ali but they had appeared at P.S. at their own accord. He has admitted that P.W. Sardar Ali and Jamaluddin are relative of complainant. He has deposed that place of incident is located three /four kilometer away from P.S. and alleged incident took place at about 13:00 hours whereas F.I.R. was lodged at about 18:00 hours. He had denied the suggestion as put forth by the learned counsel appearing on behalf of accused that complainant had not disclosed the names of eye witnesses who had seen the alleged incident with the commission of crime so alleged. He had denied the suggestion as put forth by learned defence counsel that P.Ws. had not implicated to the accused persons to see to accused at the time of alleged offence. He has admitted that P.W. Jamaluddin and Sardar Ali had not stated before complainant before lodging the F.I.R. as to whether they had seen to accused persons while committing the crime so alleged. He has admitted that he had



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recorded the statement under section 161 Cr.P.C. of Mst. Nasima at P.S. and his signature is available at the last of such statement and he had not mentioned the time and place to record such statement. He has admitted that Mst. Nasima had never stated before him while recording the statement under section 161 Cr.P.C. as to whether accused Munawar had committed the zina with her earlier to the incident. He has admitted that he had produced to Mst. Nasima and P.W. Sardar Ali and Jamaluddin before the learned Judicial Magistrate to record their statement under section 164 Cr.P.C. on 07.02.2007 and their such statements were recorded after a lapse of about 10 days of lodging the F.I.R. and Mst. Nasima had not disclosed in her statement under section 164 Cr.P.C. as to whether accused Munawar had committed the zina with her prior to alleged incident. He has admitted that Mst. Nasima, complainant Hamza, P.W. Sardar Ali and Jamaluddin had not leveled any specific role to the present accused persons with the commission of crime to allege when the F.I.R. was being lodged at P.S. or to record the statement under section 161 Cr.P.C. before him or to record the statement under section 161 Cr.P.C. before the learned Judicial Magistrate. He has admitted that complainant Hamza Khan and his daughter Mst. Nasima were in proper senses when they had appeared before him at P.S. and he had handed-over the letter addressed to WMLO Taluka Hospital Dharki for medical examination. He has admitted that Mst. Nasima had not disclosed before me while recording the statement as to whether she is having the pregnancy and nor before the learned Judicial Magistrate while recording the statement under section 164 Cr.P.C. He has admitted that he had come to know after receiving the medical certificate as issued by WMLO that Mst. Nasima was having the pregnancy on 04.02.2007. He has admitted that he had not conducted any investigation in respect of having the pregnancy of Mst. Nasima after receiving the medical certificate of MLO on 04.02.2007. He has admitted he had not produced to Mst. Nasima before the medical officer to conduct the DNA test in respect of having the pregnancy of 8+1 weeks through the report dated 04.02.2007. He has admitted that he had not initiated any action against victim Mst.

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Nasima after receiving the medical report on 04.02.2007. He had denied the suggestions as put forth by the learned defence counsel in respect to involve to accused falsely in this case at the behest of complainant,

The accused persons have been examined under section 342 Cr.P.C. at Ex.14 & 15 after closing the side of the prosecution through the statement to which was submitted by the learned ADPP at Ex.13 and they both have denied to the state of allegations as alleged by the prosecution and they have pleaded that no concrete piece of evidence has been brought on record by the prosecution against them to which is the boundened duty of the prosecution and there are glaring and material contradictions to which creates the serious doubt in respect of sanctity of the case to involve to them in this case falsely.

Bare reading of the deposition of complainant, victim Mst. Nasima Labano, P.W. Asghar Ali and SIO Aftab Hussain reveals that same depositions are contradicting to each other on material facts because according to contents of F.I.R. to which was lodged by complainant Hamza who has stated that accused persons namely Abdul Sattar, Shahzado, Morezado, Abdul Jabbar, all sons of Budho, Munawar Hussain S/o. Habibullah (present accused), Anwar Hussain, Khadim Hussain, Ali Hassan, Shah Baig, all sons of Loung Khan, Loung Khan Ismail, Bashir Ahmed S/o. Jamaluddin had appeared at the house of complainant and accused Abdul Sattar and Munawar were having the shotguns whereas Anwar Hussain was having the rifle and he has deposed the number of accused persons as 11 while recording the evidence before the court with the allegation that all the accused persons were having the weapons when they had entered into the house of complainant. Complainant or victim Mst. Nasima Labano had not produced the torn cloth during the course of investigation before the I.O. to substantiate such state of allegation as to whether her wearing clothes were torn by the accused persons at the time of high handedness as alleged by the complainant party and so also I.O. of this case had not collected such torn clothes from the complainant party at the time of

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inspection of the place of incident or the house of complainant and not same were sent to the chemical examiner to substantiate the state of allegation in respect of committing the zina with the victim Mst. Nasima Labano and even said torn cloths were not sent to the chemical examiner till the submission of charge sheet before the court of law and I am at the humble view that it was most important piece of evidence to substantiate such state of allegation was to be collected by the S.I.O. during the course of investigation from the complainant party or it was the boundoned duty of the complainant to produce such piece of evidence before the I.O. to substantiate such state of allegation and such important piece of evidence is missing from the chain of events shown in relation to the captioned crime. No private person of the same locality has been cited by the prosecution during the course of investigation and nor any independent person was produced before the SIO to record the statement to connect to accused persons with the commission of crime so alleged and I have noticed that complainant Hamzo has leveled the allegation against the sons of two persons namely Loung Khan and Budhal @ Budho as four - four sons of these two persons are involved in this case as per state of allegations of the complainant and I am at the humble view that in our society it would be impossible to believe that four sons of the same family had participated in the commission of crime so alleged jointly in presence of their father and such state of allegations of complainant are not appealing to the prudent mind and the possibility of fabrication of story cannot be ruled-out as if the dispute over the fight of children was occurred in between complainant and accused party earlier to the alleged incident and it was absolutely impossible to believe that such drastic action was to be initiated by the accused persons on the basis of such low profile dispute, which otherwise complainant party has not been able to substantiate such motive during the course of trial by producing the concrete piece of evidence or ocular evidence and so also complainant has not been able to produce any witness before the I.O. in relation to such state of allegation during the course of investigation and such fact has been admitted by the SIO while recording his evidence before the court



that complainant had not produced any witness before him in relation to dispute over the children fight earlier to the date of the alleged incident shown.

The medical report so produced by the prosecution is absolutely fatal to the case of prosecution because it has been established by WMLO that victim Mst. Nasima was having the pregnancy of 08 weeks at the time of medical examination and she was not so virgin as claimed by the complainant and she had not noticed any sort of high-handedness at the time of physical examination of said victim and so also there was no any mark of violence available at her body to substantiate the state of allegations as leveled by the complainant or victim, P.W. Asghar Ali, Jamaluddin or Sardar Ali before the police. WMLO has admitted in her cross-examination that *'it is correct to suggest that I was not having the opinion as to whether victim Mst. Nasima Labano was subjected to zina-bil-jabr if she had not disclosed before me in respect of such state of allegations'* and this admission of the WMLO is sufficient to discard the state of allegations as leveled by the complainant party against the accused persons as it is alleged they were playing with the private part of the body of victim and from the above disclosure of WMLO who is independent witness and so also expert of her own field of medical has discarded the state of allegations so alleged by the complainant party and so I have no hesitation in observing that in this particular case the ocular version of the prosecution is in conflict with medical opinion of an expert witness and thus serious dent has been created in the prosecution case and the settled law being that one single circumstances sufficient to create reasonable doubt in the prosecution case is sufficient to extend the benefit of doubt and there will be no need to mention about the other circumstances and my this view gets support from the dictums of the Honourable superior courts as appeared in 1995 P.Cr.L.J. p. 1575 that 'even a single circumstance creating a reasonable doubt is sufficient to entitle an accused to acquittal' and in the decisions of the Honourable superior court as appeared in 2001 M.D. Karachi p.1333 and 1996 S.D. FSC. 281 it has been laid down that for

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extending benefit of doubt it is not necessary that there should be several circumstance and one single circumstance creating a reasonable doubt is sufficient to extend such benefit and to my view the trial court courts should be doubly conscious in assessing the evidence and the material on record.

The learned counsel appearing for the complainant has exhausted the remedy to advance the lengthy arguments and has pleased to refer number of decisions of Honourable superior courts as mentioned above and I am at the humble view that the facts as laid down in the abovesaid decisions of Honourable superiors are absolutely on different grounds from the instant case and the same decisions of Honourable superior courts are virtually distinguishable and prosecution cannot take the advantage of the observations so highlighted by the Honourable Judges of the Honourable superior courts while disposing of such cases.

The prosecution has not been able to substantiate the state of allegations as leveled during the course investigation or during the course of trial as to whether present accused persons had facilitated to the main accused persons in the commission of offence either to trespass the house of the complainant party or to drag to the victim or to tear the wearing clothes of the victim or to play with the private parts of body of victim so alleged by the prosecution, therefore the points in discussion are answered as not proved.

Point No.5:

On the basis of my above discussions under Points No.1 to 4, I have come to this irresistible conclusion that it is not safe to rely on the prosecution case to base conviction, rather it would be safe and in the best interest of justice to extend the benefit of doubt to the present accused persons and they are being acquitted from the charged offence under section 265-H(i) Cr.P.C. They are present in custody and they are remanded back to Central Prison, Karachi with direction to Superintendent

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Jail to release to them forthwith, if they are no more required in relation to any of the custody case. Office is directed to issue the release writ of these accused forthwith.

Announced in open court today this the 5th day of May, 2014.

Sd/- 05.05.2014.

(Ahmed Sabir)

Sessions Judge, Karachi South.



Date of Application... 05-5-14
 Fees Estimated on... 06-5-14
 Fees Deposited on... 07-5-14
 Order Issued on... 07-5-14
 Stamp Applied on... 07-5-14
 Copy Certified on... 07-5-14
 Copy Delivered on... 07-5-14
 Copying Charges Rs. last paid
 Computer Charges Rs. 1/-
 Paper Charges Rs. 1/-

Compared By

Prepared By

CERTIFIED TO BE TRUE COPY

Handwritten signatures and dates (07/5/14) over the stamp area.

OFFICE OF THE
SESSIONS JUDGE
KARACHI SOUTH