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Exh. 26

IN THE COURT OF VII-ADDITIONAL SESSIONS JUDGE KARACHI EAST/  
GENDER BASED VIOLENCE COURT

BEFORE: (JAVED HYDER PHULPOTO)  
SESSIONS CASE NO. 1878/2017

The State

Versus

1. Naeem Ahmed S/o Nizamuddin (In custody)
2. Mst. Kulsoom W/o Naeem Ahmed (On Bail) ..... Accused persons

FIR No. 660/2017

U/S. 376/337-A (i)/34 PPC

P.S. KIA, Karachi

MS. SAMREEN, LEARNED ADPP FOR THE STATE.  
MS. ASIYA MUNIR, LEARNED COUNSEL FOR THE COMPLAINANT.  
MR. RANA KHALEEQ MAZHAR JAMMU, LEARNED ADPP FOR THE STATE.  
MS. ISHRAT FATIMA, LEARNED COUNSEL FOR THE ACCUSED.

J U D G M E N T  
01.02.2022

Accused persons namely Naeem Ahmed and Mst. Kulsoom were sent up by  
SHO Police Station KIA, Karachi to face their trial in above said case/crime.

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2. The precise facts of prosecution case are that complainant Murad Ahmed is residing with his two children i.e., son Rehan aged about 05 years, daughter Reema aged about 03 years as complainant had divorced his wife. It is alleged that on 28.08.2017 at about 2 'o' clock complainant dropped his children at the house of their grandmother who resides in their neighborhood and left for work. It is alleged that complainant returned his house at 08:00 pm, his daughter Reema was not available at his house and complainant was informed by his son Rehan that their neighbor Naem (accused) had taken Reema to his house. Complainant rushed to the house of accused Naem and on enquiry Naem told complainant that his daughter Reema had gone along with his family for participating in marriage ceremony. Complainant was directed by the accused that next day he should receive his daughter from his house. It is further alleged that on 31.08.2017 complainant approached accused Naem at about 08:00 am but accused requested complainant for handing over his daughter to him on stamp paper but complainant refused. Complainant raised hue and cry hence accused Naem brought daughter of complainant from his house and accused Naem attempted to escape from the spot but he was apprehended. It is further alleged that complainant saw injuries at face and chest of Reema. Complainant called MADADGAR at 15. It is further alleged that accused Naem and his wife maltreated his daughter Reema and accused Naem committed sexual assault upon his daughter. Complainant was informed at hospital that his daughter was severely maltreated and she was subjected for sexual assault. Finally, complainant lodged F.I.R for offence punishable U/s. 376/337-L/34 PPC.

3. After usual investigation IO submitted CHALLAN for offence punishable U/s. 376 (iii)/337-L(i)/337-A (vi)/364-A PPC showing accused persons Naem Ahmed and Mat. Kulsoom in custody while accused Mat. Kulsoom was admitted in had the Court of learned III<sup>rd</sup> Additional Sessions Judge Karachi East. The R & Ps of above said case were received to this Court from the Court of learned III<sup>rd</sup> Additional Sessions Judge Karachi East as per directions of Honorable Sessions Judge Karachi East for disposal in accordance with law.

4. A formal charge for offence punishable U/s. 337-A (i)/34/376 PPC was framed against accused persons as Exh-5, to which they pleaded not guilty and claimed for their trial vide their pleas as Exh. 05/A and 05/B.

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5. In order to prove its case, prosecution examined PW-1/Murad Ahmed as Exh-06. He produced F.I.R as Exh-06/A, memo of place of incident as Exh-06/B and memo of arrest as Exh-06/C. PW-2/Dr. Summaya Syed was examined as Exh-07. She produced letter dated 31.08.2017 as Exh-07/A and medico legal certificate of Reema as Exh-07/B. PW-03/Mushtaq Ahmed was examined as Exh-08. PW-04/ASI Umar Hayat was examined as Exh-09. He produced ROZENAMCHA entry No. 35 as Exh-09/A. PW-Noor ul Ameer was given up by learned ADPP vide his statement as Exh-10. PW-05/ASI Momin Ali was examined as Exh-11. PW-6/Retired Inspector Aziz Muhammad was examined as Exh-12. He produced letter sent to WMLO as Exh-12/A, photostatic copy of WMLO report as Exh-12/B and DPP letter as Exh-12/C. PW-07/Jasim was examined as Exh-13. PW-08/Abdul Shukoor was examined as Exh-14. PW-9/Rehan Ahmed was examined as Exh-15. PW-Mst. Mumtaz was given by learned ADPP vide his statement as Exh-16. PW-10/Reema was examined as Exh-17. The learned ADPP closed prosecution side vide his statement as Exh-18. Statement of accused persons was recorded U/s. 342 Cr.Pc as Exh. 19 and 20. Learned ADPP moved application for re-opening the case and the same was allowed as Exh. 21. PW-11/Dr Abdul Chaffar was examined as Exh. 22. He produced letter dated 06.08.2017 as Exh. 22/A and ML certificate as Exh. 22/B. Learned ADPP for the State closed prosecution side vide his statement as Exh. 23.

6. Accused persons denied prosecution allegations in their statements recorded U/s. 342 Cr.Pc as Exh. 24 and Exh-25 and they claimed to be innocent. Accused Naeem stated that complainant sold out his house to him for Rs.300,000/- and he paid Rs. 250,000 to the complainant in installments. Accused further stated that he requested complainant for transferring his house after receiving remaining amount of Rs. 50,000/- but complainant refused and implicated him in this case. Accused Kulsoom stated that her husband Naeem purchased house from complainant in the sum of Rs. 300,000/- and Naeem paid Rs. 250,000/- to complainant. Accused Kulsoom further stated that Naeem requested complainant for transferring that property after receiving remaining amount but complainant refused. Accused Kulsoom further stated that complainant lodged F.I.R involving them in this case falsely. However, accused persons neither examined themselves on oath nor produced defense witnesses.

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Heard and perused the record.

8. Learned counsel for the accused persons contended that there is delay of about 07 days in lodging of the F.I.R for which no plausible explanation was extended by prosecution. She contended that there is no direct evidence against the accused persons. She argued that there are so many contradictions in the statements of PWs which creates doubt in the case of prosecution. She contended that victim has not supported the version of prosecution. She argued that accused Naeem had purchased house from complainant in the sum of Rs. 300,000/- and accused directed complainant for transferring disputed house in his favour after receiving remaining amount of Rs. 50,000/- but complainant refused. She contended that there is no DNA to support the allegations of prosecution. She contended that the accused persons are falsely implicated by the complainant due to dispute over the property. She argued that the allegations of prosecution are not supported by medical evidence. She contended that prosecution has failed to prove its case against the accused persons. She relied upon 2016 SCMR 274, 2021 PLD SC 550 to 559, 2017 SCMR 203, 2003 SCMR 1466, 2019 PCR LJ NOTE 74, 2008 SCMR 1572, 2002 SCMR 1009 and 2020 PCR LJ 895. She prayed that accused persons may be acquitted.

9. On the contrary, learned ADPP contended that the names of accused persons are specifically nominated in the F.I.R. He contended that the accused Naeem had committed sexual assault upon victim Reema violently. He contended that the PWs have supported the versions of prosecution and medical evidence also corroborates the allegations of prosecution. He contended that there is no animosity between the parties. He argued that such type of offences is increasing in our society. He contended that there are no material contradictions in the statements of PWs and the prosecution has proved its case beyond reasonable shadow of doubt. They prayed that accused persons may be convicted under the law.

10. On the other hand, learned counsel for the complainant contended that the accused Naeem has committed rape/zina upon Reema. She argued that Mst. Kulsoom alongwith Naeem maltreated Reema. She argued that the medical evidence supports the version of the prosecution. She argued that PWs have supported the version of prosecution. She argued that the prosecution has produced material witnesses who supported the version of prosecution. She prayed that the accused persons may be convicted in accordance with law.

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11. The points for determination are as under:-

i. Whether accused persons in between 28.08.2017 to 31.08.2017 caused injuries at the person of victim/Reema aged about 05 years and those injuries were verified by Dr. Summaya Syed (PW-2) as abrasion on left cheek, lower lip, inner gum, upper lip, circular burn marks on abdomen, chest and back (multiple), bruises measuring between 2 to 1.5 cm x 1 to 2 cm, all over the body involving shoulders, knees, heels and on occipital bone and accused Naeem committed rape/zina upon Reema inside house situated in sector 15, FAQIR Goth, Korangi Industrial Area, Karachi, as alleged by the prosecution?

ii. What offence, if any is committed by the accused persons?

12. The findings along with reasons on the above said points are as under:-

Point No.1: Answered accordingly

Point No.2: Accused Kulsoo is acquitted U/s. 265-H (i)

Accused Naeem is convicted U/s. 265-H (ii)

#### REASONS:-

#### POINT NO.1:-

13. To prove point No.1, prosecution examined complainant Murad Ahmed, victim/Reema, PW—Mushitaq Ahmed, PW—Abdul Shakoor, PW—Rehan, PW—Jasim, WMLD/Dr. Summaya, MLO/Dr. Abdul Ghaffar Shaikh, author of F.I.R/ASI Umer Hayat, ASI Momin Ali and SIO Aziz Muhammad.

14. PW-1 Murad Ahmed deposed in his examination in chief that he works in Garment Factory and his duty hours were from 08:00 am to 08:00 pm. PW-1 Murad Ahmed deposed that his son Rehan aged about 5 years and daughter Reema are residing with him. PW-1 Murad Ahmed deposed that he had divorced his wife. PW-1 Murad Ahmed deposed that on 28.08.2017 at about 08:00 pm after finishing his job he came at his house and found his daughter Reema missing while Rehan was present. PW-1 Murad Ahmed deposed that he searched for Reema in the street and also went at the house of his ex-mother in law but Reema was not available there. PW-1 Murad Ahmed deposed that he approached Naeem who was residing in the same vicinity but he replied that he had not seen his daughter. PW-1 Murad Ahmed deposed that he came back at his house and asked from Rehan who informed him that Naeem uncle was taking Reema to somewhere. PW-1 Murad Ahmed deposed that he again approached Naeem who replied that he had forgotten and disclosed that the baby had gone to attend marriage ceremony alongwith his wife and children. PW-1 Murad Ahmed deposed that Naeem also told him that his daughter was like his daughter. PW-1 Murad Ahmed deposed that on 29.08.2017 he approached Naeem and on that day it was drizzling, therefore Naeem replied to him that his daughter had still not come back. PW-1 Murad Ahmed deposed that he went to his workplace and when at about 08:00 pm he came back, he was informed that his daughter had still not come back. PW-1 Murad Ahmed deposed that Naeem

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further told him that she would come back at 30.08.2017. PW-1 Murad Ahmed deposed that on 30.08.2017 at 08:00 am, he again came at the house of Naem but he disclosed that his daughter was suffering from fever, therefore, he should take her on next morning. PW-1 Murad Ahmed deposed that on 31.08.2017 at about 08:00 am, Naem asked him to hand over the custody of his daughter to him on stamp paper but he refused and made hue and cry due to which MOHALLA people gathered and they asked him about the matter. PW-1 Murad Ahmed deposed that he narrated them the said facts and the MOHALLA people asked Naem to return the baby to him. PW-1 deposed that wife of Naem brought his daughter folded in blanket and she was naked. PW-1 Murad Ahmed deposed that he found that the dead body of his daughter was burnt on chest, mouth, face, cheeks, eyes and abdomen. PW-1 Murad Ahmed deposed that Naem and his wife tried to run but MOHALLA people apprehended them and called 15 Madadgar police. PW-1 Murad Ahmed deposed that police officials came at the spot and took accused to PS KIA. PW-1 Murad Ahmed deposed that police officials issued him letter for medical examination of his daughter. PW-1 Murad Ahmed deposed that he took his daughter to Civil Hospital where medical examination of his daughter was conducted and treatment was provided to her. PW-1 Murad Ahmed deposed that the police let off the accused for want of ML report. PW-1 Murad Ahmed deposed that he obtained ML report and on 05.09.2017 he lodged FIR No. 660/2017 which he produced as Exh. 06/A. PW-1 Murad Ahmed deposed that from the ML report it transpired that rape was committed with his daughter and he came to know that Naem had committed the rape. PW-1 Murad Ahmed deposed that on the same day police officials inspected the place of incident as he pointed out and prepared such memo. He produced memo of inspection of place of incident as Exh. 06/B. PW-1 Murad Ahmed deposed that on 05.09.2017 at night time police arrested Naem. He produced memo arrest as at Exh. 06/C. PW-10 Reema deposed in her examination in chief that she was playing with her brother Rehan outside of our house. PW-10 Reema deposed that Naem came there and Naem (accused) maltreated her. PW-10 Reema deposed that Naem put cigarette at her chest and she received burn injuries. PW-10 Reema deposed that Naem after removing her clothes bite at her chest. PW-10 Reema identified the accused in Court. PW-3 Mushtaq Ahmed deposed that he (Murad Ahmed) has two children namely Rehan Ahmed aged about 5 years and Reema aged about 3 years. PW-3 Mushtaq Ahmed deposed that his brother had given divorce to his wife. PW-3 Mushtaq Ahmed deposed that his brother used to do job in Garments Factory and his duty hours was from 09:00 am till 08:00 pm. PW-3 Mushtaq Ahmed deposed that when his brother used to go for work, he used to drop children at the house of his ex-mother in law. PW-3 Mushtaq Ahmed deposed that on 31.08.2017 he was present at his house, he heard noise in the neighborhood. PW-3 Mushtaq Ahmed deposed that he went there and saw that Naem was having custody of Reema (his niece) and he (Naem) was refusing to hand over the custody to Murad. PW-3 Mushtaq Ahmed deposed that he (Naem) was having the custody for the past three days. PW-3 Mushtaq Ahmed deposed that MOHALLA people were asking from Naem as to why he was not returning the custody of Reema to his father whereupon he (Naem) replied that he (Naem) would not return the custody. PW-3 Mushtaq Ahmed deposed that he and MOHALLA people put pressure upon Naem whereupon his wife Kulsoom went inside their house and brought Reema who was unconscious at that time and puss was oozing from her mouth, her body was having marks of cigarettes burns and beating/biting marks as well. PW-3 Mushtaq Ahmed deposed

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that she (Reema) was only wearing SHALWAR (trousers) at that time. PW-3 deposed that Naeem began to run along with the custody of Reema but MOHALA people caught hold him. PW-3 Mushtaq Ahmed deposed that he called up 15 MADADHAR police whereupon police came at the spot and took Naeem and his wife to PS Kinnori Industrial Area. PW-3 deposed that he, Murad alongwith some person from MOHALA also accompanied the police at PS. PW-3 deposed that the baby Reema was also with Murad. PW-3 deposed that police gave letter to Murad for medical examination of Baby Reema and police asked him to go to Civil Hospital. PW-3 Mushtaq Ahmed deposed that he and Murad took Reema to Civil Hospital for her medical examination where her medical examination was conducted where it was reported that child rape was committed with Reema. PW-3 Mushtaq Ahmed deposed that Baby Reema remained admitted in Civil Hospital for about 28 days out of which she was unconscious for 15 days and MLC was received by his brother on 05.09.2017. PW-3 Mushtaq Ahmed deposed that on the same day when they approached at PS along with MLC, police officials had released both the accused. PW-3 Mushtaq Ahmed deposed that on 05.09.2017 his brother Murad lodged FIR. PW-3 Mushtaq Ahmed deposed that police inspected the place of incident where SIP Momin Ali Mirani prepared the memo at the spot as pointed out by him. PW-3 Mushtaq Ahmed deposed that on 05.09.2017 he, Murad Ahmed, Noor ul Amin, Jasim, Abdul Shakoor and other MOHALA people apprehended Naeem at about 11.30 pm and took him to PS KIA where SIP Momin Ali Mirani prepared memo of arrest. PW-3 Mushtaq Ahmed deposed that IO also recorded his statement. PW-8 Abdul Shakoor deposed in his examination in chief that this incident took place on 31.08.2017. He was present at his house, he heard noise outside of his house and he went outside in common street. PW-8 Abdul Shakoor deposed that he saw accused Naeem in custody of some person of the locality. PW-8 Abdul Shakoor deposed that people were asking accused Naeem whereabouts of victim Reema aged about 3, 3-1/2 old years daughter of Murad but accused Naeem refused. PW-8 Abdul Shakoor deposed that people of the locality maltreated accused Naeem in the meantime wife of accused Naeem brought victim Reema. PW-8 Abdul Shakoor deposed that victim was only wearing Underwear/Niker (CHADDI). PW-8 Abdul Shakoor deposed that there were burn marks of cigarettes, bite marks at person of the victim and puss was oozing from her mouth of the victim. PW-8 Abdul Shakoor deposed that there were also bite marks at person of the victim. PW-8 Abdul Shakoor deposed that people of locality called police 15, police came there and rescued accused from the people of the locality. PW-8 Abdul Shakoor deposed that police took accused at Police Station and police took victim to Civil hospital for medical examination. PW-8 Abdul Shakoor deposed that IO recorded his statement. PW-9 Rehan deposed in his examination in chief that he alongwith his sister Reema was playing in the street and it was evening time. PW-9 Rehan deposed that accused Naeem took his sister namely Reema by taking her hand to his house. PW-9 Rehan deposed that he informed such facts to his grandmother. PW-9 deposed that his father came to house at night time and he also informed such facts to his father. PW-9 Rehan deposed that he alongwith his father went to the house of accused Naeem and on enquiry about his sister Naeem disclosed that his wife/children alongwith Reema had gone for participating in marriage ceremony. PW-9 Rehan deposed that the custody of his sister Reema was recovered from the possession of accused Naeem after about 02 to 03 days. PW-9 Rehan deposed that there were burn marks and bite marks at the person of Reema. PW-9 Rehan deposed that after recovery of his sister Reema his father took her to

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hospital for medical examination. PW-7 Jasim deposed in his examination in chief that this incident took place on 31.08.2017. PW-7 Jasim deposed that he was having breakfast and he heard some noise outside of his house. PW-7 Jasim deposed that he went outside of the house, he saw accused Nareem who is his neighbor, he was in custody of some persons and those persons were asking accused Nareem for returning Baby girl aged about 02-2.5 years. PW-7 Jasim deposed that the wife of accused Nareem brought Baby girl from her house. PW-7 Jasim deposed that the Baby girl was sustaining injuries, blood and puss was coming from her body. PW-7 Jasim deposed that people of the locality called police and police took accused Nareem to police station. PW-7 Jasim deposed that the custody of Baby girl was handed to her father namely Murad and Murad brought Baby girl to PH. Baby girl was referred to hospital for medical treatment by the police and the baby girl remained in the hospital for 1 month. PW-2 Dr. Summaiya Syed deposed in her examination in chief that on 03.09.2017 she was posted as Sr. WML-3 at Civil Hospital, Karachi and on the same day in the morning she received a call from PAEDS unit 2/ICU Bed No.6, CHK for examining Reema daughter of Murad Ahmed, aged about 3 years admitted there with suspicion of sexual/physical assault. PW-2 Dr. Summaiya Syed deposed that the girl was admitted in PAEDS-2 on 31.08.2017 at 11:00 am brought by her paternal uncle Mushtaq Ahmed. PW-2 Dr. Summaiya Syed deposed that as per the police letter given to her dated 31.08.2017 abrasions were mentioned only on face and chest. PW-2 Dr. Summaiya Syed deposed that she could not record any mark of identification visible on her body. PW-2 Dr. Summaiya Syed deposed that physical examination of Reema regarding height, weight and teeth could not be done because of her condition. PW-2 Dr. Summaiya Syed deposed that her breasts were not developed and there were no axillary and pubic hair present. PW-2 Dr. Summaiya Syed deposed that Reema had not attained menarche. PW-2 Dr. Summaiya Syed deposed that her (Reema) MR number was 012017/0831/35000. PW-2 Dr. Summaiya Syed deposed that Reema was brought to SMBB Trauma Centre after getting police letter from TS KIA. She produced letter as Exh.07/A. PW-2 Dr. Summaiya Syed deposed that during routine treatment and examination, sexual assault was suspected and medico legal department was given a call. PW-2 Dr. Summaiya Syed deposed that the girl had a GCS of 5/15 where E was 1, M was 3 and V was 1. PW-2 Dr. Summaiya Syed deposed that Reema had her dialysis done on 03.09.2017 at SIUT where she was diagnosed as Acute Kidney Injury (AKI) and second degree Rhabdomyolysis. her lab investigations were Hb-8, TLC 138, Urea 62, Creatinine 3.87, Sodium 139, Potassium 5.5, CPK 3869, vomiting positive, her GCS at the time of admission was 12/15 which dropped to 10/15 when CT scan Brain was done which showed Intra-Cranial bleed in the Posterior Fossa with mildly dilated ventricle. PW-2 Dr. Summaiya Syed deposed that the girl was catheterized with nasogastric intubation and was on constant oxygen, her final diagnosis was given as Acute Kidney Injury and Space Occupying Lesion (SOL). PW-2 Dr. Summaiya Syed deposed that two pints of blood and one pint of packed cells were transfused. PW-2 Dr. Summaiya Syed deposed that at the time of admission her HB was 5.8, BP was 94/50, pulse was 105 per minute, breathing was labored and respiratory rate was 64 per minute, drowsiness was positive, normal scan of Kidney, ureters and bladder (KUB). PW-2 Dr. Summaiya Syed deposed that at admission the attending doctor had noted "nail and bite marks on left side of chest, multiple burn marks and abrasion all over the body, pupils were bilaterally reactive to light". PW-2 Dr. Summaiya Syed deposed that fast scan at the time of admission was negative

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for pneumothorax, pleural and pericardial effusion, visceral injury in the three cavities. PW-2 Dr. Summaiya Syed deposed that the department of neurosurgery was considering to place a shunt in her cranial vault (Skull). The girl was wearing a diaper and a frock. PW-2 Dr. Summaiya Syed deposed that injuries noted on the examination were: infected abrasion on left cheek involving almost 5% of the cheek, lower lip abraded (in healing stage) and inner gums were congested, upper lip swollen with congestion of gums, circular burn marks in healing stage on abdomen, chest and back (multiple), multiple faded bruises measuring between 2 to 1.5 cm x 1 to 2 cm all over the body involving shoulders, knees and heels, bruises in healing stage on Occipital bone.

Per vaginal Examination:

External genitalia: Congested (bluish purple)

Introitus: bluish purple

Vestibule: Congested

Vulva: Bluish purple Congested

Vagina: Admits index finger

Hymen: Not visualized

Note: The girl was unconscious at the time of examination.

Vagina swabs could not be made because of medical intervention in the form of xylocaine gel during catheterization and use of ointments for vaginal injuries.

Opinion: On the basis of clinical examination she had been subjected to sexual Assault.

PW-2 Dr. Summaiya Syed deposed that her (Reema) injuries described above were dangerous to life, hence declared as other hurts sub section. PW-2 Dr. Summaiya Syed deposed that she prepared MLC No. 109/19 on both sides of the certificate numbering 1 and 2. She produced MLC as Exh. 07/B. PW-5 ASI Momin Ali deposed in his examination in chief that on 05.09.2017 he was ASI at P.S Koring Industrial Area in investigation wing and received F.I.R. bearing No.660/2017, registered U/s. 376,377 -L (i) PPC. MLO report of the victim through SDC. PW-5 ASI Momin Ali deposed that he inspected the place of incident in the presence of complainant and Mushtaq and he prepared memo of site plan. PW-5 ASI Momin Ali deposed that he recorded statements of PWs U/s. 161 Cr.Pc. PW-5 ASI Momin Ali deposed that complainant and PWs namely Noor ul Amin and Mushtaq produced accused Naeem Ahmed S/o. Nizamuddin at P.S K.I.A and he prepared Mashruma of arrest in presence of Mashirs. PW-5 ASI Momin Ali deposed that the co-accused Kulsoom who was wife of accused could not be arrested during the investigation. PW-5 ASI Momin Ali deposed that after completing investigation, he submitted CHALLAN before the concerned Magistrate. PW-6 Aziz Muhammad deposed in his examination in chief that on 14.05.2018 he was SHO/Inspector at P.S Awami Colony in the investigation wing. PW-6 Aziz Muhammad deposed that as per directions of SSP Investigation Illrd Korangi, he received police papers of crime No.660/2019 for further investigation on 18.05.2018. PW-6 Aziz Muhammad deposed that on 18.05.2018 he issued letter to senior WMLO seeking reasons for not handing over swab of victim Reema D/o. Murad Ahmed. He produced letter as Exh. 12/A. PW-6 Aziz Muhammad deposed that WMLO submitted her report stating in the report that it was necessary for saving the life of victim Reema hence she was sent to SIUT as the victim had suffered injuries in her kidneys. PW-6 Aziz Muhammad deposed that the victim was subjected to torture and she also suffered head injuries. She produced

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abdomen of victim/Reema. Murad Ahmed PW-01 deposed that accused Naeem had committed rape upon his daughter Reema as he came to know through medical certificate. Reema PW-10 deposed in her examination in chief that she was playing with her brother Rehan outside of their house and accused Naeem came there who maltreated her. Reema PW-10 deposed that accused Naeem maltreated her. Reema PW-10 deposed that accused Naeem put cigarette at her chest and she received burn injuries. Reema PW-10 deposed that Naeem after removing her clothes bite at her chest. Reema PW-10 frankly deposed in her cross examination that accused Naeem committed ZABARDASTI (Rape) with her. Reema PW-10 identified accused Naeem in the Court. Rehan Ahmed PW-09 deposed in his examination in chief that he alongwith his sister Reema were playing in street and accused Naeem took his sister Reema by taking her hand to his house. Rehan Ahmed PW-09 deposed that the custody of his sister Reema was recovered from the possession of accused Naeem for about 02/03 days. Rehan Ahmed PW-09 deposed that there were burn marks and bite marks at the person of Reema. Mushtaq Ahmed Pw-03 deposed in his examination in chief that he is uncle of Reema and Reema was in custody of accused for 03 days. Accused Naeem was refusing to hand over custody of Reema to complainant on 31.08.2017 and finally wife of accused Kulsoom brought Reema from her house. Mushtaq Ahmed Pw-03 deposed that Reema was unconscious at that time and puss was oozing from her mouth. Mushtaq Ahmed Pw-03 deposed that there were injuries of cigarette burning, beating, biting marks at the person of Reema. Mushtaq Ahmed Pw-03 deposed that Reema was wearing only trousers (SHALWAR) at that time. Mushtaq Ahmed Pw-03 deposed that accused Naeem tried to escape with the custody of Reema but he was apprehended by the people of neighbor.

17. PW-2/Dr. Summaiya Syed examined victim/Reema and her findings are reproduced as under: -

Injuries noted on the examination were: infected abrasion on left cheek involving almost ¼ of the cheek, lower lip abraded (in healing stage) and inner gums were congested, upper lip swollen with congestion of gums, circular burn marks in healing stage on abdomen, chest and back (multiple), multiple faded bruises measuring between 2 to 1.5 cm x 1 to 2 cm all over the body involving shoulders, knees and heels, bruises in healing stage on Occipital bone.

Per vaginal Examination:

External genitalia: Congested (bluish purple)

Introitus: bluish purple

Vestibule: Congested

Vulva: Bluish purple Congested

Vagina: Admits index finger

Hymen: Not visualized

Note: The girl was unconscious at the time of examination.

Vaginal swabs could not be made because of medical intervention in the form of xylocaine gel during catheterization and use of ointments for vaginal injuries.

OPINION: On the basis of clinical examination, she had been subjected to sexual Assault.

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PW-2 Dr. Summaiya Syed deposed that her (Reema) injuries described above were dangerous to life, hence declared as other hurts sub section PW-2 Dr. Summaiya Syed deposed that she prepared MLC No. 109/19 on both sides of the certificate numbering 1 and 2. She produced MLC as Exh. 07/B.

18. A potency test was also performed on the accused and PW-11 Dr. Abdul Ghaffar Shaikh deposed that the accused is potent and capable of performing sexual intercourse. Dr. Abdul Ghaffar Shaikh (PW-11) also testified against the accused and he too stood by his account during his cross examination.

19. Section 376 PPC defines rape and in explanations it has been mentioned that penetration is sufficient to constitute the sexual intercourse, which is necessary for evidence of rape. The prosecution has produced ample material on record showing that accused Naeem from 28.08.2017 to 31.08.2017 at unknown time inside his house committed sexual intercourse with Baby Reema.

20. Accused persons denied prosecution allegations in their statements recorded U/s. 342 Cr.Pc as Exh. 24 and Exh-25 and they claimed to be innocent. Accused Naeem stated that complainant sold out his house to him for Rs. 300,000/- and he paid Rs. 250,000 to the complainant in installments. Accused further stated that he requested complainant for transferring his house after receiving remaining amount of Rs. 50,000/- but complainant refused and implicated him in this case. Accused Kulsoom stated that her husband Naeem purchased house from complainant in the sum of Rs. 300,000/- and Naeem paid Rs. 250,000/- to complainant. Accused Kulsoom further stated that Naeem requested complainant for transferring that property after receiving remaining amount but complainant refused. Accused Kulsoom further stated that complainant lodged F.I.R involving them in this case falsely.

21. Murad Ahmed PW-01 denied suggestion in his cross examination that he entered into sale transaction with Naeem in respect of the house in which he is residing. Murad Ahmed PW-01 denied that he has falsely implicated accused Naeem in this case to usurp amount of sale consideration paid by accused Naeem to him. Mushtaq Ahmed PW-03 denied suggestion in his cross examination that there is dispute between Murad Ahmed and Naeem over selling of the plot.

22. The accused Naeem has neither produced sale agreement through which he purchased property from the complainant nor the witnesses of the agreement are examined by the accused in his defense. It does not appeal to common reason that why complainant would stake his honor for the dispute of meager amount. The record shows that there is no enmity between the parties. The accused Naeem has taken false stand to save himself.

23. There is no direct evidence against the accused Mst. Kulsoom showing that she caused injuries to victim Reema. Even Reema PW-10 has not deposed a single word in her statement that accused Kulsoom caused her injuries or she is involved in the present crime.

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24. As for contention of learned counsel for the accused that there is no DNA to support the version of prosecution is incorrect. Reema PW-10 deposed in her cross examination that accused Nareem committed ZABARDASTI rape with her PW-3/18. Sumaiya Syed stated in her examination in chief that on the basis of clinical examination Reema has had subjected to sexual intercourse. The allegations of victim are supported by medical evidence. Solitary testimony was enough for conviction if it inspired confidence as held in Mat. Nareem v. Reema Farooq Khan and another in PLS 1991 Supreme Court 412. The contention raised by the learned counsel for the accused is not sustainable under the law.

25. As for delay in lodging of the F.I.R. is concerned, complainant lodged F.I.R. with delay of about 05 days. Delay in reporting the crime to the police in respect of an offence involving a person's honour, reputation and society may view unsympathetically which could prey on the minds of a victim and her family and deter them to go to the police promptly. Delay in lodging of F.I.R. is immaterial as people naturally avoided rushing to the police because of family honour. The complainant has explained the reasons for delay in lodging of the F.I.R. Material brought on record by the prosecution cannot be discarded on the grounds of delay in lodging of the F.I.R. in present circumstances.

26. The statement of the victim is straight-forward and narrated the entire incident in a very innocent and natural manner and the defense failed to establish that there was any exaggeration in the statement of the said victim. The complainant/Murad Ahmed, PW-Mushtaq Ahmed, PW-Jasim, PW-Abdul Shakoer, victim/Reema and Rehman have specifically disclosed the date, time and manner in which the said incident took place. The medical evidence furnished by Dr. Sumaiya Saeed and Dr. Abdul Ghaffar Shaikh also corroborates the allegations of prosecution. IO/Umer Hayat, Retired Inspector Aziz Muhammad and ASI Momin Ali have also supported prosecution.

27. The learned counsel for the accused persons pointed out contradictions in the statements of PWs which are minor in nature and the evidence brought on record by the prosecution cannot be brushed aside on that sole ground. The alleged offence is heinous offence which can destroy the entire psychology of a victim by putting her and his family to public shame. It is a stigma with which the family has to face with and is the most hatred crime. Such kind of gruesome offence is not against the individual only but it is also against the good conscience of the society.

28. All the PWs have supported the version of prosecution on the date, time and place of the alleged incident. All the PWs identified the accused in the Court. The PWs were cross examined at considerable length but no discrepancy causing reasonable doubt in the veracity of the prosecution case was found. The prosecution has produced ample material on record leading to the conclusion that the accused Nareem has committed rape upon victim/Reema.

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29 In view of above discussion, prosecution has produced ample ocular account coupled with medical evidence which supports the allegations of prosecution. The evidence brought on record inspires confidence and there are no material contradictions in the statements of PWs creating reasonable doubt in the case of prosecution. The prosecution has proved its case against the accused Naeem for offence punishable U/s. 376 (i) and 337-a (i) PPC while prosecution has failed to prove its case against the co-accused Kulsoom. However, the case law referred by learned counsel for the accused are distinguishable hence do not attract to the present case in the present circumstances. The point No. 01 is answered accordingly.

POINT NO.2-

30 The upshot of discussion of point No. 01 is that the prosecution has brought home guilt against the accused Naeem Ahmed S/o. Nizamuddin for offence punishable U/s. 376 (i) & 337-a (i) PPC and the accused Naeem Ahmed S/o. Nizamuddin is convicted U/s. 265-H (ii) Cr.Pc. The accused Naeem Ahmed S/o. Nizamuddin is sentenced for offence punishable U/s. 376 (i) PPC to suffer simple imprisonment for 14 (fourteen) years and to pay fine of Rs. 50,000/- in case of default accused shall undergo further rigorous imprisonment for 06 months. Accused is also sentenced for offence punishable U/s. 337-a (i) PPC to suffer R.I. for 2 years and to pay Daman of Rs. 10,000/- to the complainant/victim in case of default accused shall undergo further simple imprisonment for 01 month. The accused Naeem Ahmed S/o. Nizamuddin is awarded for benefit as provided under section 382-B Cr.Pc for the period accused Naeem remained as under trial prisoner. The accused is produced in custody and he is sent back along with conviction warrant to serve out the sentence awarded to him in accordance with law. Accused Mst. Kulsoom w/o. Naeem Ahmed is acquitted U/s. 265-H (i) Cr.Pc by extending her benefit of doubt. Accused Mst. Kulsoom w/o. Naeem Ahmed is present on bail, her bail bond stands cancelled and surety is discharged.

Note: The copy of Judgment is provided to the accused free of cost under receipt and he was informed time/limitation for filing of the appeal before Honorable High Court, if he so desires under the law.

Announced in open Court.

Given under my hand and seal of the Court, this 01<sup>st</sup> day of February, 2022.

(JAVED HYDER KHAN POTO)  
VII-ADDITIONAL SESSIONS JUDGE  
GENDER BASED VIOLENCE COURT  
KARACHI, EAST

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265-H(ii) Cr.P.C for the offence punishable under section 364-A PPC and sentenced to rigorous imprisonment for seven (7) years and he is also liable to pay fine of Rs.100,000/- (One Hundred Thousand Rupees). In case of default in payment of fine, the accused shall further undergo simple imprisonment for a period of six (6) months. The accused also is hereby convicted U/s. 265-H(ii) Cr.P.C for the offence punishable under section 376 PPC and sentenced to rigorous imprisonment for ten (10) years and he is also liable to pay fine of Rs.200,000/- (Two Hundred Thousand Rupees). In case of default in payment of fine, the accused shall further undergo simple imprisonment for a period of six (6) months. The accused is also awarded benefit of section 382-B PPC. He is in custody since 14.07.2015. Both the sentences will run concurrently. The accused is produced in custody by jail authority, he is remanded back to prison to serve out the sentence strictly in accordance with law. Let the copy of Judgment be supplied to the accused as required under the law.

ANNOUNCED IN OPEN COURT.

Given under my hand and seal of the Court on this 19<sup>th</sup> day of February, 2022.

IRSHAD HUSSAIN  
ADDITIONAL SESSIONS JUDGE-X  
KARACHI WEST  
Xth Additional District & Sessions Judge  
Karachi West