

Ex. No. 21

IN THE COURT OF ADDL. SESSIONS JUDGE-XTH, KARACHI WEST
BEFORE:- (IRSHAD HUSSAIN)(J) |

Sessions Case No. 1874/2019

The State
Versus

Abdul Ghani S/o Muhammad Yousuf

..... Accused

Offence under section 376 PPC
(Cr. No. 131/2019 of P.S Mochko, Karachi)

Mr. Abdul Haleem Jamali, Learned Counsel for Accused
Mrs. Asia Munir and Mr. Afridi advocate for the complainant.
Ms. Jameela Saeed Otho, Learned ADPP For The State

J U D G M E N T
22.01.2022

1. The above named accused was sent up by S.H.O of P.S. Mochko, Karachi West to face his trial, for offence punishable under section 376 PPC bearing crime No.131/2019 registered at P.S Mochko, Karachi West.

2. Brief facts of prosecution case as narrated in the FIR by complainant Mum Sher S/o Bahadur Sher are that his daughter namely Bakhtawar aged about 09 years was student of IInd Class and studying in TCF School, Mowach Goth, Karachi. It is further narrated that his daughter complained pain in her stomach as such his sister namely Bus Bibi took his daughter to Civil Hospital for medical treatment. During her medical treatment, several medical tests were conducted and it came to know that his daughter has been victimized of rape. It is further narrated that his sister Bus Bibi made inquiry from his daughter, on which his daughter disclosed to her that her friend namely Aliza Batool's father namely Abdul Ghani S/o Muhammad Yousuf posted as Chowkidar in her School has committed rape on her repeated time and on 01.08.2019, last time he has forcibly committed rape of her. It is further narrated that his sister Bus Bibi disclosed all the facts to him on phone call as such he also reached at hospital, where complete medical examination of his daughter has been conducted by WMLO/Dr. Summiya Saeed and issued ML Certificate No. 4059/19 and has given her opinion that his daughter has been subjected to sexual intercourse. Meanwhile, he approached to P.S and lodged the instant FIR. Meanwhile the above named accused was arrested, identification parade of accused was conducted, statement of prosecution witnesses were examined and after usual investigation the above named accused was challaned.

3. The necessary documents were supplied to the accused vide receipt at Ex.1.

4. Thereafter a formal charge was framed against the accused at Ex.2, to which he pleaded not guilty to the charge and claimed to be tried vide his plea at Ex.2/A.

5. To just strengthened its case, the prosecution has examined its witnesses as P.W-1, Complainant Alam Sher at Ex. 3, who produced

statement U/s. 154 Cr.P.C at Ex. 3/A, Copy of FIR at Ex. 3/B; Memo of arrest of accused at Ex. 3/C and Memo of site inspection at Ex. 3/D, P.W-02, Victim/minor baby Bakhtawar at Ex. 4, who produced identification parade at Ex.4/A, P.W-3 Bass Bibi at Ex. 5, P.W-4, ASI Muhammad Nawaz at Ex.8, who produced Roznamcha entry No. 40 at Ex. 8/A, Letter addressed to WMLO Civil Hospital at Ex. 8/B, Qyami entry No. 19 at Ex. 8/C, P.W-5, Civil Judge and Judicial Magistrate Tahir Rehman at Ex. 9, who produced an application addressed to him by I.O at Ex. 9/A, P.W-6, WMLO/Dr. Summayia Saeed at Ex. 10, who produced ML Certificate No. 1050 at Ex. 10/A, Supplementary Final Report at Ex. 10/B, Two attested Ultrasound reports at Ex. 10/C and 10/D, P.W-7, MLO/Dr. Abdul Jabbar at Ex. 11, who produced letter addressed to him by I.O at Ex. 11/A and ML Certificate No. 4177/19 at Ex. 11/B, P.W-8, I.O/SIP Muhammad Rafique at Ex. 12, who produced Entry No. 4 at Ex. 12/A, Arrival Entry No. 20 at Ex. 12/B, Departure Entry No. 24 at Ex. 12/C, Entry No. 42 at Ex. 12/D, Entry No. 21 at Ex. 12/E, Entry No. 29 at Ex. 12/F, Entry No. 13 at Ex. 12/G, Entry No. 15 at ex. 12/H, Departure and Arrival Entry at Ex. 12/I and 12/J. Thereafter, learned ADPP for the state closed the side of the prosecution vide her statement at Ex. 13.

6. The statement of accused was recorded under section 342 Cr.P.C at Ex.14 wherein he denied the allegations levelled against him and contended that he is innocent and has falsely been implicated in this case by complainant party. The accused also examined himself on oath under section 340(2) Cr.P.C. to disprove the allegations levelled against him by the prosecution at Ex.16 in which he denied the allegation and he was also cross examined by the learned ADPP for the state. He also produced three witnesses in his defence, to disprove the allegations levelled against him by the prosecution. The all the three defence witnesses namely Mst. Saba Naz, Sameer and Mst. Kainat were examined at exhibits 17 to 19. All the defence witnesses were cross examined in length by the learned ADPP for the state dully assisted by the learned counsel for the complainant. Thereafter the learned counsel for the complainant has closed the side of accused, vide his statement at exhibit 20.

I have heard learned counsel for accused, learned counsel for complainant and learned ADPP for the State at length.

8. The learned counsel for the accused mainly contended that the accused is innocent and has falsely been implicated in this case. It is further contended that there are so many contradictions and inconsistencies in the prosecution case due to which the prosecution case become doubtful. It is further contended that complainant is not the eye witness and according to the prosecution case the statement under section 154 Cr.P.C. of the complainant was recorded in the hospital while according to the statement of PW Mst. Bass Bibi deposed that her brother was on his job when his alleged statement was recorded, which shows that at the alleged time of recording of statement under section 154 Cr.P.C. the complainant was not available in hospital then how the statement of the complainant was recorded in the hospital. It is further contended that there is no signature of the complainant on the FIR therefore FIR has lost its value. It is further contended that medical certificate was signed by one Pari and victim Bukhtawar and said Pari was not examined by the prosecution and PW Mst. Bass Bibi has not stated anywhere that she is Pari. It is further contended that PW Mst. Bass Bibi was not aware that victim Bukhtawar was studying in which class and when victim used to go to school despite of the fact that PW Mst. Bass Bibi stated that she used to take and bring back the victim from the school. It is further contended that there is ground in between

the room of watchman and main gate of the school. It is further contended that victim Bukhtawar was not going to tuition while on Thursday there is sports day. It is further contended that the alleged victim was without her mother and the complainant party was not properly looking after her and that victim was not going school with her own wish and will. It is further contended that alleged victim remain silent upto 8 days and thereafter she complained about the alleged occurrence. It is further contended that in fact the brother of PW Mst. Bass Bibi intended to get the job of watchman for her brother in said school in place of accused therefore the above named accused has falsely been booked in this case. It is further contended that police recorded the statement of victim but her statement was not converted in the FIR. It is further contended that no original roznamcha entries produced in court and all the entries produced in court was prepared with hand writing and even the carbon copies of such entries have not been produced. It is further contended that here in this case WMLO has examined the victim without any police letter. It is further contended that no samples of swab of the victim have been taken for the purpose of chemical or DNA analysis. It is further contended that time 1730 hours on the MLC has been written with another pen. It is further contended that complainant remained silent upto 8 days and police prior lodging of FIR has not verified the claim of the complainant by visiting the school. It is further contended that since the victim was already aware with the accused being the watchman of the school then why the identification parade was held. It is further contended that addresses and CNIC number of dummies are not mentioned. It is further contended that one spy informer was already included in the identification parade being one of dummy who pointed the accused to the alleged victim. It is further contended that the accused was already arrested prior the identification test parade and he had already been seen by the alleged victim at the police station. It is further contended that name of doctor of peeds department is not mentioned who made telephone call to WMLO and got entry to ASI Aamir. It appears that weight of the victim is 34 KG and height of the victim is four feet and six inches. It is further contended that ultrasound reports of the alleged victim are doubtful as according to the first ultra sound report the alleged victim was two months pregnant and according to the second ultrasound the victim was not pregnant therefore ultrasound reports are doubtful. It is also contended that original supplementary report is not produced and MLC number is not written on the ultrasound report and report of CMO is not produced. It is further contended that there is no marks of violence on the private part or in person on the body of the victim noted by the WMLO. It is further contended that final report was issued after four months delay. It is further contended that WMLO has admitted that first ultrasound report was wrong. It is further contended that according to the WMLO the alleged offence was taken placed on 9th August, while according to the prosecution the alleged offence was taken placed on 1st August. It is further contended that I/O does not remember the MLC number. It is further contended that blood sample of accused has not been secured. It is further contended that reasons for such delay in lodging of FIR is not known to the I/O. It is further contended that according to the I/O the alleged victim was the student of the first shift while the victim was the student of the second shift. It is further contended that one cousin of the alleged victim was also acting as teacher in the same school but the alleged victim has not made any complaint to her as well. It is also contended that according to the I/o he recorded the statement of the alleged victim on 15th August while according to the record the statement of the victim was recorded on 9th August. It is further contended that there is no signature of the I.o on the statements

under section 161 Cr.P.C. It is further contended that according to the victim the alleged offence of Zina was taken placed in the Guard Room and prior that she was kept confined in the class room but the alleged victim has not shown any class room to the I/o. It is further contended that according to the Memo there was a bed while in evidence I/o stated that there was a "Chader". It is further contended that there was no official seal of the police station on the parcel produced in court except red colour lock seal. It is further contended that there is difference in the signatures of washers on the seal parcel and memo. It is further contended that there is not date on the parcel and even I/o admitted that he has not signed any of statement recorded by him under section 161 CrPC. It is further contended that the first ultrasound was taken at 12:40 pm which shows that victim was six weeks pregnant. It is further contended that not statement under section 164 CrPC of the victim was recorded. It is further contended that on the statement recorded under section 154 CrPC. time is written with another pen. It is further contended that statement under section 154 CrPC has become doubtful and even the medical report has also become doubtful. It is further contended that arrest of accused is also doubtful as the accused was arrested from school one day prior of his alleged date of arrest and such fact is supported by the DW Sameer. It is further contended that till arrest of accused no FIR was lodged. It is further contended that alleged victim has given the name of the present accused mere on the instance of her father. Lastly it is contended that there are so many contradictions and inconsistencies in the statements of the prosecution witnesses and the version of the victim has not been supported by any witnesses medical reports has become doubtful therefore the statement of the victim is not inspiring confidence and same is not reliable. It is further contended that prosecution has miserably failed to prove the case against the above named accused therefore doubts have been created in the prosecution case and accused is entitled for such benefit of doubts. In support of his contentions learned counsel for accused relied upon case laws reported as 2012 YLR 2228, 2009 SCMR 230, 1995 SCMR 1345, 2008 SCMR 1221, 1996 P.Cr.L.J 1161, 1997 P.Cr.L.J 1107, 2006 SCMR 348, 2012 YLR 2701, 1995 SCMR 127, 2012 YLR 2701, 1995 SCMR 127, 2012 P.Cr.L.J 1321, PLD 19781 S.C 142, 2002 SCMR 1439, 2019 YLR 1585, 2014 SCMR 749, 2018 SCMR 772, 2004 YLR 602, 1999 P.Cr.L.J 1044, 2006 YLR 675 and 2005 YLR 1634.

On the other hand the main contention of the learned counsel for the complainant is that all the witnesses are independent and have no malafide on their part to falsely involve or implicate the accused. It is further contended that the witnesses including the complainant and victim have no enmity with the accused. It is further contended that accused is working as watchman in the same school and his presence in the school was proved while the victim was student of the same school and her presence on the alleged date of occurrence is proved as per muster her attendance register. It is further contended that after the alleged incident the victim never visited school due to fear of accused. It is further contended that DW Saba has not supported the version of the accused who was the class teacher of the alleged victim. It is further contended that DW Sameer has also not supported the version of the accused and he has clearly stated that he is unaware about the facts of the present case. It is further contended that defence witnesses have not supported the version of the accused. It is further contended that accused used to leave school in the last being the watchman of the school and alleged incident was also taken placed after the ending of the school timing and DW Kaintat has verified such fact that accused used to go in the last. It is further contended that the alleged offence was taken placed in the guard room. It is further contended that

alleged victim has clearly stated in her deposition that accused has removed her shalwar and as well as his own shalwar and then committed her rape in the guard room. It is further contended that the reason to be remain silent was that accused has shown the knife to the alleged victim with the alleged threat that if she will disclose such fact he will kill her therefore the victim was under threat. It is further contended that if the complainant was any ill will against the accused then he will directly go to the police station but here in this case at first complainant brought the victim to the hospital and when doctor has confirmed that rape was committed with the victim then he lodged FIR against the accused as per discourse of the victim. It is further contended that victim has clearly stated that she was raped. It is further contended that accused was also identified during the identification parade. It is further contended that identification test parade was necessary as there were two watchmen in the school. It is further contended that WMLO has confirmed that the victim was raped. It is further contended that I/o has not recorded the statement of principal and any teacher. It is further contended that accused being watchman was having the keys of whole school. It is further contended that no doubt that accused in his statement recorded under section 340 sub clause 2 of CrPC denied such allegation but his statement was not supported by any defence witness. It is further contended that accused has admitted that water colour was kept in his guard room. It is further contended that simple penetration is enough to prove zina and according to the MLQ the hymen of the victim is torn which shows that penetration was there. It is further contended that life of the victim has been ruined by the accused as she is still under psychological problem. It is further contended that version of the complainant is very much supported by the medical report. It is further contended that accused has not challenged he medical certificate issued by the WMLO. It is further contended that accused is entitled for punishment according to law. It is further contended that the version of the victim is fully supported by the medical evidence as WMLO has confirmed that the victim was subjected to sexual intercourse. It is further contended that PW Pari is nick name of PW Bass Bibi. It is further contended that accused with the pretext of giving cold water to the minor used to victimize them and the victim has finally dare to inform the real facts her aunty and father against the accused who then reported the matter to police after confirmation from the WMLO about the alleged act of zina. It is further contended that accused is not entitled for any leniency and liable to be convicted according to law. Meanwhile the learned DDPP for the state has adopted the same arguments contended by the learned counsel for the accused and further contended that the prosecution has successfully proved the case against the above named accused beyond any reasonable shadow of doubt, therefore accused is entitled for conviction for the offence punishable under section 376 PPC. Meanwhile the learned DDPP for the state adopted the same arguments of the learned counsel for the complainant. In support of his contention the learned counsel for the complainant relied upon the case laws cited as NLR 1980 529, 1984 P.Cr.L.J 1438, 1985 P.Cr.L.J 349, 1968 P.Cr.L.J 1743, 2020 SCMR 590, 2011 SCMR 1665, 2006 SCMR 1042, 2006 SCMR 338, 2007 SCMR 473, 2014 PLJ FSC 33, 2005 PLJ SHC 75 (AJ&K), 2016 PLJ CR.C 555, 2007 SCMR 473, 1996 PLJ FSC 80, 2000 PLJ CR.C 357, 2021 YLR 380, 2014 P.Cr.L.J 1280.

10. My points for determination are as under:-

POINTS FOR DETERMINATION

1. Whether accused Abdul Ghani S/o Muhammad Yousuf has

committed forcibly rape of alleged victim/minor baby Bakhtawar daughter of Complainant Alam Sher S/o Badhur Sher and on last time i.e 01.08.2019, after school timing i.e at 05:15 pm, he has committed rape of alleged victim/minor baby Bakhtawar at inside TCF School, situated at Main SUPARCO Road, Mowach Goth, Karachi?

2. What offence, if any, has been committed by the accused?

11. I have given due consideration to the arguments advanced by the learned counsel for accused, learned counsel for complainant and learned ADPP for the State and perused the entire evidence produced by the prosecution as well as relevant record.

12. My findings coupled with reasons on the above points are as under:-

FINDINGS

Point No.1----- Proved

Point No.2----- The accused Abdul Ghani S/o Muhammad Yousuf is hereby convicted U/s. 265-H(ii) Cr.P.C 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 09.08.2019.

REASONS

POINT NO.1

13. In order to prove its case, the prosecution has examined as many as eight witnesses. The allegation against above named accused is that he had committed rape of victim Bakhtawar daughter of Complainant Alam Sher in the school.

14. In order to prove its case, the case of prosecution opens with the deposition of complainant Alam Sher, who has been examined as P.W-1, at Ex. 3. During his examination in chief he deposed that on 08.08.2019, at 03:00 A.M, his daughter Bakhtawar aged about 09 years felt pain in her abdomen. He told to his sister Bas Bibi to take his daughter Bakhtawar to Civil Hospital for treatment. On 08.08.2019 in morning time, his sister took his daughter to Civil Hospital and during medical treatment different tests of his daughter ascertained that Zina has been committed with his daughter. He further deposed that his sister Bas Bibi asked his daughter about the matter, who disclosed that the father of her friend Aliza Batool namely Abdul Ghani S/o Muhammad Yousuf who was chowkidar in TCF School had committed zina with her for several times. In the lastly he committed zina with her on 01.08.2019 in the TCF School. He further deposed that his sister disclosed this fact to him on phone. He reached to

Civil Hospital where MLO Dr. Summiya Saeed examined his daughter medically and given in written that Zina has been committed with his daughter. Therefore, he reported the matter to police. The police recorded his statement U/s. 154 Cr.P.C, which he produced at Ex. 3/A and copy of FIR at Ex. 3/B. He further deposed that on 9.08.2019 at 12:00 O'clock the police arrested the accused from football ground Mowach Goth and police prepared memo of arrest in his presence, which he produced at Ex. 3/C. He further deposed that the police made search of accused and recovered one purse containing different cards and his own CNIC. His daughter has pointed out the place of incident to police and same was inspected by the Inspector Rafique and prepared memo of site inspection which he produced at Ex. 3/D. The co-mashir was Mujeeb ur Rehman. He further deposed that the police secured the bed and pillow of accused from the place of incident. Lastly, he identified the accused present in Court as same. He was cross examined in length by the learned counsel for the accused.

15. During his cross examination, he stated that there were nine women and six gents in his house. He admitted that the phone number has not been mention in the FIR and as well as in his statement U/s. 154 Cr.P.C through which his sister called him. He further stated that the TCF School is situated from his house at the distance of 10 minutes. His paternal niece Shaista is teacher in the same TCF School. He denied that on 01.08.2019, his paternal niece Shaista was on her duty at TCF School. Further said that she was on vacation. She further stated that the contents of FIR were read over to him. He admitted that the Shaista is not witness in this case. He admitted that prior to 01.8.2019, his daughter did not disclose to any family members that accused used to commit zina with her. He admitted that bed and pillow of accused is not present in Court today. He further stated that his daughter used to go to school along with other mohallah children and come to house. The TCF School used to ff at 05:30 P.M. He admitted that the time of arrival of his daughter at house is not mentioned in his statement U/s. 154 Cr.P.C on the day of incident. He admitted that after 01.08.2019, his daughter also sued to go to school every day till 08.08.2019. further said that she was frightened to go to school. He admitted that he did not make inquiry from school that his daughter is not willing to study in the school. He denied that as per test reports his daughter was pregnant for about two months. He admitted that the other staff of school including Massi are present in the School. He further stated that he went to school at 6:45 P.M for site inspection and at that time nobody was present in school and gate was locked. He further stated that the Inspector called the second watchman for opening the gate of school. He admitted that this fact is not mentioned in his statement U/s. 154 Cr.P.C and FIR. He further stated that it took about one hour in inspecting the school and return back to P.S. He admitted that TCF School is double storey. He further stated that police read over the contents of site inspection to him. He admitted that his daughter did not lead the police at first floor and ground floor of school. He admitted that his nephew and niece used to visit his house. He denied that one of his nephew who is Rickshaw driver has committed zina with his daughter. He denied that he has falsely implicated the accused in this case only to save his nephew.

16. Thereafter, prosecution has examined alleged victim/minor baby Bakhtawar as P.W-02 at Ex. 4. During her examination in chief, she deposed that accused who is father of her friend namely Eliza. He is chowkidar in TCF School situated in their area. On 01.08.2019, it was her game period and she was playing game. She further deposed that all the student kept their school bags in a Box so she also kept her own bag in that

box and at the time of leaving school, she went to take her bag from the box but her bag was missing. She searched her bag but could not find anywhere, therefore, she asked from chowkidar Baba, who told her that her bag was lying in her class room. She went in her class but also could not find, meanwhile, Chowkidar Baba came in class room and locked the door from outside. She knocked the door for its opening but Chowkidar did not open the same. She further deposed that after sometime, Chowkidar Baba came in the class room, he caught hold with her hairs and tied her hands and took her in his guard room. He also put her into fear by showing churri and told her that if she disclosed to anyone else or her father, he would kill her father, therefore, she did not disclose to anyone else as she was frightened. She further deposed that accused put off his own shalwar as well as put off her shalwar and committed zina with her. She further deposed that on 08.08.2019, she felt pain in her stomach and her aunty took her to Civil hospital where medical treatment was provided to her. She further deposed that she was also examined by WMLO. She disclosed to MLO about the commission of Zina with her on her inquiry. She further deposed that thereafter, she was called in the Court of Judicial Magistrate for identification parade of accused, where her statement was recorded. She produced memo of identification parade at Ex. 4/A. Lastly, she identified the accused present in Court as same. She was cross examined in length by the learned counsel for the accused.

17. During her cross examination, she admitted that her school is double storey building. Her class room is situated at first floor. She did not remember how many classes are adjacent to her class. She admitted that there is KG class on the ground floor of school. She admitted that first student of KG class leave the school then their classes leave the school. She admitted that her cousin Shaista is also teacher in the same school. She denied that her class is situated in front of class of her cousin Shaista. She further stated that she usually got to school with the other students of her mohallah and she did not remember that how many period of study in a day in her class room. She further deposed that her school began at 12:00 O' Clock and school used to off 05:00 P.M. She admitted that on 01.08.2019, her last period was science. She admitted that there are female servants/Massies in her school. She denied that five minutes prior to leave to school her teacher put down her head on the desk after hanging their bags on the shoulder. She admitted that their class room is situated on first floor and guard room is situated at ground floor near the main gate. She further stated that there were no rope marks on her hand. Her aunty Bass Bibi used to wash her school uniform. She denied that the incident took place on 01.08.2019 and she was going to school up to 07.08.2019. further said that she did not go to school after the incident. Her aunty Bass Bibi is unmarried and only her family members were residing in her house. She admitted that she was not taken to hospital on the night when she felt pain in her stomach. She also admitted that sister of her friend Eliza is also teacher in their school. She further stated she did not remember the time when Chowkidar Baba locked the door of her class room. On the day of incident, she went to her house at 05:45 P.M after incident. Her sister namely Zecnat inquired from her about her late coming from school but none of her family members came to school to search her. She further stated that she did not remember the date when summer vacations were over. She admitted that two sons of her aunty Zainab one is rickshaw driver and second is policeman. She denied that the son of her aunty Zecnat namely Bablu has committed rape with her. She further stated that at the time when she knocking the door of her class room nobody was available in the school. She denied that she was deposing falsely on the instruction of her

family members.

18. P.W-03, Bass Bibi was examined at Ex. 05. During her examination in chief, she deposed that it was 08.08.2019, at between 0300 to 0400 hours (midnight), her niece Bakhtawar whose aged 9 years was feeling extreme pain in her abdomen and was weeping seriously. She served her the available medicine to reduce her pain but the same was ineffective. When the son arose, she alongwith her mother brought the victim at Civil Hospital in child emergency department of the hospital. Her niece was medically examined by lady doctor. Thereafter after examination by the lady MLO it was informed to her that her niece had been subjected to sexual intercourse and she faced the offence of Zina. After a while, a police officer also arrived who enquired from the child, whereupon child while crying recorded her statement with police officer that the Chowkidar Abdul Ghani Baba of the school had subjected her forcibly of Zina after school hours while taking her into guard room of the school. The police officer further enquired from her that why she had not disclosed this fact to her elders whereupon her niece informed him that the accused had shown him Chhuri and had extended her threats that if she would share about the offence with anyone, he would commit her murder and murder of her family members as such she out of fear remained silent. She further deposed that her statement was recorded by police officer in her presence. Her niece was treated and thereafter she brought her back at her house. When her brother Alam Sher also arrived at home from his work, she shared all information with him thereupon he went at police station and registered the FIR of the present offence. IO also recorded her statement U/s 161 Cr.P.C. She further deposed that the accused was previously known to her and she also identified the accused in court. She was also cross examined in length by the learned counsel for the accused.

19. During her cross examination, she admitted that the mother of Bakhtawar has died. She admitted that she was looking after the children of Alam Sher. She admitted that she has knowledge about the contacts of babies and even she keep eye on their movements. She denied that she has not stated before this Court that she resided with her brothers (perused and found not written), further said that they resided with their brothers for they have no other support. She further stated that she has not disclosed before Court in her statement that in which class and in which school the baby studies and she has also not disclosed the timings of baby when she goes to school and when she returns back. She further stated that she has not produced any document before Court that she had taken the baby at hospital, further said the doctors have all the record of the baby. She further stated that it was mentioned in her statement recorded before this Court that doctors had informed her that the victim was subjected to rape. She had not produced any document pertaining to medical checkup of alleged victim. She admitted that prior to informing by doctors, the baby had not disclosed about the alleged offence to them. She stated that she has seen the school of baby/alleged victim. The class of the baby Bakhtawar is on the first floor and she has also visited her class. She further stated that she had not observed that the windows of the same class are broken and she did not remember the date when police had recorded her statement. She further stated that it is not mentioned in her statement recorded U/s 161 Cr.P.C that baby Bakhtawar had disclosed her that accused had shown her Chhuri, further said that she had disclosed such fact to IO but maybe he has not written the same. She denied that her paternal niece is the teacher in the same school, further said that it was her maternal niece and she had already left the school quite prior to the present incident. She further stated

that they used to pick the baby Bakhtawar on and off. She had frequently observed the watchman/present accused inside the school. The guardroom of the accused was adjacent to gate. She has not measured the distance of building and the guardroom but it could be about 200 feet. She admitted that there is ground in between guardroom and the school building. She further stated that the baby Bakhtawar did not go for tuition. She has the knowledge about the school activities of baby Bakhtawar, further said that the lady teachers used to keep the copies and books for each day. She further stated that the sports period is regularly on Thursday but the sports period also fixed on the days when there is no subject teacher more particularly on Saturday day. She denied that they did not take proper care of the baby for she was motherless child (at this point there are tears in the eyes of witness), further said that they took much more care of her but she was victimized at her school. She denied that no present incident took place with the baby Bakhtawar in the school where accused was Chowkidar. She admitted that after the incident with baby, she still went to school, further said that she was unwilling to school and she used to resist to go to school after the incident but they forcibly sent her to school for they thought she had failed in her class therefore she was unwilling to go to school. She further stated that it is not mentioned in any of her statements that baby was not willing to go to school. She denied that it is not mentioned in her statements that the school authorities or teachers had not made any complaint that the child was not doing well, further said that the teachers had the complaint that the baby was performing poorly when she had visited the school after the incident. She further stated that it is not mentioned in her statements that prior to 08.08.2019, the baby had not made complaint about pain, further said that she did not made complaint out of fear and when the severity of pain increased, she had made complaint about the pain but she used to have pain prior to above date which she tried to control. She denied that the accused has not committed any offence. She denied that no any offence has taken place with the minor. She also denied that in order to adjust her brother in the post of Chowkidar, they have filed the present complaint against accused to remove him from school and she has deposed falsely before Court.

20. P.W-04 ASI Muhammad Nawaz was examined by prosecution at Ex.08. During his examination in chief he deposed that on 08.08.2019, he was posted as ASI at P.S Mochko as Duty officer. His duty timing was from 08:00 A.M to 08:00 P.M. He was present at the P.S, meanwhile, he received a police control message through ASI Aamir that one Dr. Samiya lady MLO posted at Civil Hospital, Karachi has informed that one baby victim Bakhtawar D/o AlamSher aged about 09 years resident of Bukhari Mohallah, SAPARCO Road, Mowach Goth, came at the Civil Hospital being a victim of rape along with her paternal aunty (Phophu) namely Bas Bibi and that said victim having pregnancy of two months and such ML No. 4050/19 is under process. Thereafter, he accordingly left the P.S vide entry No. 08 at about 1210 hours and proceeded to the Civil Hospital. He produced such departure entry at Ex. 08/A. Thereafter, he reached to the Civil Hospital and he met with the MLO. He found that victim Bakhtawar was available in the children Ward in the Civil Hospital in the Emergency. Thereafter, he issued a letter to WMLO Civil Hospital for recording statement of victim baby. He produced such letter addressed to WMLO at Ex. 08/B. Meanwhile, lady MLO examined the victim and confirmed that victim was subjected of rape and sexual intercourse so many times. He also recorded statement U/s. 154 Cr.P.C of father of victim namely AlamSher at Children Ward Emergency, Civil Hospital, Karachi at about 1730 hours. He further deposed that he read over the contents of statement before him and then

He admitted the same true and correct and put his signature. Thereafter, he came back to P.S Mochko on the same day at about 1830 hours and lodged FIR No. 131/2019 U/s. 376 PPC as per the contents of statement U/s. 154 Cr.P.C against the accused Abdul Ghani S/o Muhammad Yousuf. He also produced qaymi entry No. 18 under which he lodged instant FIR at Ex. 08/C. Thereafter, he handed over the investigation of the case along with all the documents to SIO of P.S Mochko and thereafter investigation was further entrusted to SIP Rafique. He lastly deposed that I.O recorded his statement U/s. 161 Cr.P.C. He was also cross examined in length by the learned counsel for the accused.

21. During his cross examination, he stated that he has been serving in police department for last 27 years. He is Matric passed. He has passed recruitment test, lower and inter test during my police service. He further stated that it is fact that Qanoon-e-Shahadat, Cr.P.C and PPC are being taught them during their training. He further stated that they used to keep entry in register No. 2 which is known Roznamcha register. He did not remember the relevant section of police rule under which they enter any entry in the Roznamcha register, it might be correct to suggest that every entry keeps in Roznamcha register U/s. 46 of Chapter XXII of police rule. He admitted that they used carbon for making further copies of entries of Roznamcha Register. He admitted that it is a copy prepared by hand writing and it is not a carbon copy. He admitted that the sentence that it is a copy made original, is not mentioned on it. He admitted that he has not produced carbon copy of entry No. 08. Further said that they used to give the carbon copy to I.O and to other high ups while original remained in the Roznamcha Register. He denied that the entry No. 08 was kept by me at 2040 hours. Further said that he kept such entry at 1210 hours. He admitted that he has not issued any letter to victim for her medical test/examination. Further said that victim did not come to P.S and directly went to hospital, however, they had issued a letter to WMLO for recording statement of victim and thereafter, he recorded statement of her father as victim was minor. He admitted that WMLO has not secured or collected blood sample or vaginal swab for the purpose of chemical examination or DNA test. Meanwhile learned counsel for accused requested to confront MLC NO. 4050/19 to the witness. Learned ADPP for the State produced MLC No. 4050/19 issued by Dr. Summiya Syed, WMLO. He admitted that no swabs could be made for the purpose of chemical and DNA test. He deposed that WMLO disclosed to him that due to lapse of time i.e 08 days, she has not collected such swabs. He admitted that WMLO had not handed over to him any other document except ML 4050/2019. He admitted that he handed over ML Certificate No. 4050/19 to the I.O of the case. He reached Civil Hospital within next 45 minutes after leaving from P.S. He remained in the hospital up to recording statement U/s. 154 Cr.P.C of father of victim which was recorded by me at 1730 hours. He admitted that he remained in the hospital upto recorded statement U/s. 154 Cr.P.C while victim and her father was remained in hospital. He admitted that ultrasound proceeding of victim was also made by WMLO at Civil Hospital. He further stated that he has not seen the report of ultrasound. Further said that the same was seen by the WMLO. ML Certificate 4050/19 is self-explanatory. He admitted that FIR lying on record at Ex. 03/B does not bear the signature of complainant. Further said that statement U/s. 154 Cr.P.C available on Court record at Ex. 03/A bears the signature of complainant and he has converted statement U/s. 154 Cr.P.C into FIR accordingly, which bears his signature. He further stated that no complaint was received against the same accused Abdul Ghani prior lodging of this FIR before him. He admitted that accused Abdul Ghani is residing within the jurisdiction of P.S Mochko. He admitted that according

to the contents of statement U/s. 154 Cr.P.C and FIR accused Abdul Ghani was working as Chowkidar at TCF School where alleged incident was taken place at the time of alleged offence. He admitted that no complaint was received from the management of said TCF school to the P.S against the present accused. He has lodged the FIR on the basis of statement U/s. 154 Cr.P.C of father of victim and after perusing MLC No. 4050/19. He admitted that father of victim did not come to the P.S prior recording his statement U/s. 154 Cr.P.C in respect of alleged offence. He admitted that as per contents of FIR that the alleged incident was taken place on 01.08.2019 while victim was produced in hospital on 08.08.2019 and on the same day, he recorded statement U/s 154 Cr.P.C at the hospital. He has not visited TCF School prior registration of FIR in order to verify the alleged offence. He denied that he has managed the instant FIR with collusion of the complainant. He denied that he was deposing falsely.

22. P.W-05, learned Civil Judge and Judicial Magistrate Tahir Rehman was examined by prosecution at Ex.09. He deposed that on 10.08.2019, he was posted as Judicial Magistrate-XIV, District West, Karachi having jurisdiction of P.S Mochko. On the same day, SIP Muhammad Rafique of P.S Mochko moved an application for conducting identification parade of the accused Abdul Ghani through victim/witness Bakhtawar in FIR No. 131/2019, U/s. 376 PPC of P.S Mochko and the same was allowed and fixed the date for identification test. He produced such application at Ex. 09/A and he identified his signature and his order on it. Thereafter, on 10.08.2019, I.O of the case produced the accused Abdul Ghani in custody having muffled face and handcuffs. The accused was made to sit in his Court room. After sometime, the I.O informed that the victim/witness namely Bakhtawar D/o Alam Sher was also present in the Court who was made to sit in the Court of J.M-XIII, Karachi West. After arrangement of 09 dummies, the door of the Court room was shut and muffle as well as handcuff of the accused was ordered to be removed and I.O of the case did so. Thereafter, the accused was asked to stand on any position of his choice in the row of dummies and accused stood at serial No. 2 from left. Thereafter, the victim/witness was called through peon of the Court namely Khalid. After appearance of the witness/victim she was asked as to where she is present and she replied that she is present in Court. She was further asked by him whether the identification of accused was disclosed to her at any point during investigation to which she denied. Thereafter, the victim witness was asked to identify the accused amongst the persons standing in the row of dummies. The witness/victim correctly identified the accused by saying that the accused is standing at serial No. 2 from left of the row of dummies and she further assigned role to accused of committing her rape. Thereafter, the victim also requested him to let her beat the accused with slaps as he has ruined her life. After completing other formalities and having signature as well as right hand thumb impression on both of the pages of memo of identification, he affixed such certificate and signed the said memo. He see Ex. 04/A, it is same memo of identification parade and he identified his signature as well as certificate with official stamps on it. The memo also bears the RTI and signature of witness/victim baby Bakhtawar. He identified the accused Abdul Ghani being the accused who was correctly identified by the victim Bakhtawar during identification parade before him. He was also cross examined in length by the learned counsel for the accused.

23. During his cross, he stated that the copy of FIR was available when I.O moved application for recording conducting identification parade of accused through victim/baby Bakhtawar. Perhaps he had gone through the

contents of FIR before conducting identification parade. He see at Ex.03/B. He is FIR No. 131/2019. He admitted that the name of accused Abdul Ghani is mentioned in the FIR being a watchman of TCF School, Main SUPARCO Moch Goth, Karachi where the alleged offence was committed. He admitted that the name of accused Abdul Ghani is mentioned in application moved by I.O for conducting his identification parade before him. He see memo of identification parade at Ex. 04/A. He admitted that there are names and percentage of 09 dummies are mentioned. He admitted that CNICs numbers and addresses of said dummies are not mentioned in memo of identification parade. He admitted that such fact is not mentioned in the memo of identification parade that he had checked the CNICs of said dummies. He admitted that there were 09 dummies and accused were standing during the identification parade in a row. He denied that one spy of I.O was included in the dummies who allegedly pointed out the identification of accused to the victim during identification test, therefore, victim had rightly identified the accused before him. He denied that accused made complaint to me prior identification test that he was shown to the victim/witness at the police station. He denied that identification parade was not necessary in this case as witness/victim was already known to accused who was the watchman of the same school where victim/witness was studying. Further said that identification parade was a requirement of law in such type cases.

21 PW-06 Dr. Summaiya Syed was examined at Ex.10. She deposed that on 08.08.2019, when he was posted as Incharge ML Section, Civil Hospital Karachi at about 11:00 am, she was informed from emergency about baby Bakhtawar aged 9 years D/o Sher Alam who had presented with abdominal pain to the peads department. The doctor suspected sexual abused and had contacted her for examination. She examined the baby girl at 11:40 am after obtaining consent from both the baby girl and her paternal aunt (Phuphi) namely Bas Bibi @ Pari. She obtained signatures in Urdu and right thumb impressions of both Bakhtawar and Pari on the original MLC. She also made an entry at police control to ASI Amir vide entry No.18.

The girl gave history of repeated rape as alleged with the last act on 01.08.2019. As per the girl statement, she was sexually abused by "school ka Baba" who put her on the floor and then she felt a lot of pain. At the time of examination she was running fever and had urinary burning as well as pain in the hypo-gastric/umbilical region.

GENERAL PHYSICAL EXAMINATION: Height 4 feet 6-1/2 inches.
Weight 34 kg. Teeth 6/6, 6/6. Menarche not attained.

As per report received vide MR Code No.10190895865 dated 08.08.2019 11:38:57 from peeds emergency: patient came with history of abdominal pain, anxious, fearful behaviour. She gave history of repeated sexual abused from school guard, multiple times, recent one last Thursday i.e. 01.08.2019. At the time of examination the girl was conscious and oriented, in pain and non-cooperative.

PER VAGINAL EXAMINATION:

- External genitalia normal.
- Pubic hair nil.
- Vestibule: gaping, tender.
- Vulva gaping tender.
- Vagina: gaping tender
- Hymen: torn at '1'O'clock' position.

- Labia majora: not completely approximated on adduction of legs.
- Fourchette: old torn healed.
- Posterior commissure: Intact.
- Patient refused for any further examination and was very fearful of the entire process.
- Discharge per vaginally: slight and odourless.
- Hygiene: good.
- No swabs could be made because of lapse of time (8 days) either for chemical or DNA.

She advised ultrasound pelvis.

OPINION: On the basis of chemical examination victim baby Bakhtawar was subjected to sexual assault/intercourse. Hymen: torn at '1 O'clock' position.

She prepared Medico-Legal Certificate No.4050, which she produced at Ex.10/A and she identified her signature and official stamp on it. On the same day, one ASI Muhammad Nawaz of police station Mouchko came and moved an application for recording statement of victim Bakhtawar. She see Ex.8/B, which is same letter, bear ML No.4050/2019 with official stamp of ML section. Meanwhile said ASI recorded statement U/s 154 Cr.P.C of Alam Sher father of victim at Children Emergency Ward Civil Hospital Karachi.

After receiving and perusing ultrasound report she issued final supplementary report with his opinion as "As per report received from Department of Paediatrics, Civil Hospital Karachi through Child Life Foundation (CLF-A2SL), dated Wednesday, December 11, 2019 02:56 pm "ultrasound repeated" which ruled out pregnancy (dated 08.08.2019 04:28 pm), Physician's notes dated wed, December 16, 2019, 11:22 am "Ultrasound pelvis shows normal pelvis with prepubertal size uterus". Hence at the time of MLC examination she was not pregnant. She issued supplementary final report on 16.12.2019, which she produced attested copy at Ex.10/B and she identified her signature and official stamp on it. She also produced two attested ultrasound reports of baby Bakhtawar of dated 08.08.2019, at 02:09:50 pm and dated 08.08.2019 at Ex.10/C and Ex.10/D.

25. During her cross, she admitted that victim baby Bakhtawar presented to the paedics department for complaints of abdominal pain. She admitted that victim Bakhtawar came in the hospital after a week of alleged last act of rape. She admitted that victim was not referred by the police at the time of her examination, further said that however she herself had informed the police about arrival of victim vide entry No.18 through ASI Amir, again said the doctors at paedics emergency and later on at department of pediatric department Civil Hospital Karachi strongly suspected sexual abuse of the victim after her examination and history therefore she was called for her medical examination. She informed police through entry No.18 when she started the medical examination of victim Bakhtar at about 11:40 am. She admitted that she was called by the doctors of department of pediatric Civil Hospital Karachi for medico-legal examination. She was called after arrival of ultrasound report and initial examination of baby bakhtawar by the doctors of pediatric department Civil Hospital Karachi. She see Ex.10/C it is first ultrasound report of baby Bakhtawar conducted at 11:36 am. She admitted that first ultrasound at Ex.10/C which shows 6 weeks pregnancy. She admitted that first ultrasound report was found incorrect on the same day after repeat ultrasound after referral to department of radiology for repeat ultrasound pelvis. She has no knowledge about the ultrasound machines were out of order due to any technical issues on the same day.

She denied that medico-legal examination was started after receiving the ultrasound mentioning pregnancy. She do not know the exact time when the victim was brought to Civil Hospital Karachi. She further said that however she came to me at 11:00 am. Meanwhile learned counsel for the accused confronted one registration slip dated 08.08.2019 issued by Civil Hospital Karachi. Witness pointed out that same is available with police file. She produced such registration slip at Ex.10/E, which states the presenting complaint of baby Bakhtawar as abdominal pain and working diagnosis of child abuse. Her vital signs at the time of examination by doctor on duty and the treatment plan initiated. She admitted that such registration slip was issued at 10:59 am. She admitted that ultrasound of Pelvis was done after this registration, further said that victim was sent for ultrasound with a working diagnoses of child abuse. An ultrasound of child like victim takes around five minutes. She admitted that prior to her examination the complete medical examination had been carried out by the doctor on duty. She examined her at 11:40 a.m. and completed within 10 minutes and prior to that the victim was examined and ultrasound done may be within 20 to 25 minutes. She admitted that she had examined the girls after her examination by the department of pediatric. She see late/time of arrival mention on MLC No.4050 Ex.10/A, shows that victim arrived at 08.08.2019 at 11:00 am. further said that this time of arrival mentioned on the MLC is the arrival time of victim in the hospital and not before her and she examined her at 11:40 am. MLC number 4050 was issued by ML section of Civil Hospital Karachi. She admitted that ML number is issued at the time of examination of the victim. She admitted that MLC number is not mentioned on first ultrasound report at Ex.10/C, further said that however MLC number is mentioned in second ultrasound report. Meanwhile learned counsel for accused confronted one physician notes dated 08.08.2019 04:28 pm and 04:59:57 pm to the witness. Witness pointed out that the same are available with police file, which she produced at Ex.10/F and Ex.10/G, which are physician notes written by Dr. Uzma and Dr. Zareen Qasmi. She admitted that code number 10190895865 is the same on all reports received for the victim. She completed the MLC after examining victim Bakhtawar. She admitted that she has not mentioned in the MLC that the victim girl was pregnant at the time of her examination, further said that she had knowledge that a pregnancy report had been given for the victim which showed her to be six weeks pregnant and that did not match with her examination findings, hence she referred her for ultrasound pelvis from department of radiology Civil Hospital Karachi. She denied that she prepared the MLC on the basis of suspicion, further said that the doctors on duty at the department of pediatric suspected child abuse at the initial examination of the child hence she was called. She received second ultrasound report on the very same date showing non pregnant and prepubertal uterus of victim Bakhtawar sometime before closing of the department of radiology. She denied that she received the report from child life foundation at any time during the entire day of 08.08.2019, further said that her final opinion was based on physical examination and report from department of radiology Civil Hospital Karachi which she received before closing time of department. She admitted that no time is mentioned on Ex.10/D and only date is mentioned. She admitted that such fact is not mentioned in Ex.10/D that the victim was pregnant, further said that this was ultrasound KUB in other words ultrasound of kidney and urinary bladder, again said that ultrasound report of pelvis is lying in police file she produced the same at Ex.10/D-1, which shows that the girl was not pregnant on 08.08.2019. She admitted that no time is mentioned on Ex.10/D-1. She admitted that it is clearly not mentioned in words that

victim was not pregnant, further said that however ultrasound report shows that scan of pelvis was normal and size of uterus was prepubertal which means that she was not pregnant and physiologically was immature. She admitted that she saw and documents no marks of resistance on the body of child. She denied that she has not mentioned time with the code number mentioned on the MLC. There are several ways to connect an offender who commits Zina with victim i.e investigation, corroborative evidences, eye witness account, medical examination of the victim where injuries and condition of victim will be connected with the history provided, samples obtained from the body of victim and offender for the purpose of chemical analyses. She has never been a police officer. She admitted that she has not collected samples of vaginal swab of victim, further said that the reason was a lapse of 8 days between last act of Zina and medico-legal examination. She denied that swabs can be obtained till next 21 days, further said that as per latest WHO protocol swabs from the victim of sexual violence can be collected within five days after the act. She admitted that she has mentioned on the MLC that her final opinion is based on my clinical examination. She denied that she did not examine the victim. She admitted that she has produced attested photocopy of final supplementary report at Ex.10/B, however it is attested by her with her signature and official stamp today. She admitted that final supplementary report was issued by her on dated 10.12.2019, further said that she got a repeat ultrasound done on 11.12.2019 and then she issued such report. She admitted that she has not produced ultrasound report dated 11.12.2019, further said that the girl remained under treatment for about two months and she remained also under treatment of psychologist and still requires psychological help. She admitted that she has not mentioned the two finger rule on the MLC as it is an unethical and considered obsolete. She denied that she intentionally did not take swabs of victim in order to save any alleged real offender. She denied that victim was not subjected to sexual assault, further said that the findings given under the heading of per vaginal examination clearly indicates sexual assault even after a gap of 7 days. She denied that no alleged act of rape took place. She admitted that she has examined the girl herself. She denied that she has not produced any ultrasound reports and receipts of any treatment which was carried out within the medico-legal section, further said that medico-legal section are established right next to the major hospitals where MLO physically examines the victim and refers her to relevant department. She denied that any of the ultrasound report can be considered as nil, further said that first ultrasound report was done in the hospital premises but mistakenly reported. She denied that she is deposing falsely before the Court today under the instigation of complainant.

26. PW-07 Dr. Abdul Jabar was examined at Ex.11. He deposed that on 14.08.2019, he was posted as MLO at Civil Hospital, Karachi. His duty timing was from 03:00 pm to 09:00 pm. On the same day, the accused Abdul Ghani S/o Muhammad Yousif aged about 50 years came with police letter of PS Mouchko with the history of rape case as active agent as alleged, which letter he produced at Ex.11/A and he identified official stamp of ML Section on it. The said accused Abdul Ghani brought by ASI Muhammad Rafique of PS Mouchko with identification marks as (i) Mole on left forehead and scar on right forehead. He examined the accused and had seen the following things on his body.

Clothes changed, parts washed, urine passed.

No hydrocele, no hernia.

Secondary sex characters are well developed.

On prostatic massage, erection of penis seen.

On self-stimulation erection of penis noted.

OPINION: *On above clinical examination he is of the opinion that the above named accused is fit to perform sexual intercourse in ordinary life of nature. He examined him at about 03:05 pm. He produced such MLC No.4177/2019 at Ex.11/B and he identified his signature and official seal on it. He see accused Abdul Ghani present in Court is the same accused who was examined by him.*

27. During his cross, He denied that date mentioned on the police letter is on 08.08.2019, further said that in fact it is 13.08.2019. He denied that it is 14.07.2019 on his receiving endorsement, further said that it is 14.08.2019. He admitted that the history about the case in which he examined the accused present in Court was provided to him through police letter given by SI Muhammad Rafique. The alleged incident was taken place on 09.08.2019 as informed by police. He denied that neither the present accused was produced before him nor he has examined him. He denied that the medical certificate produced by him in Court is managed one.

28. PW-8 Muhammad Rafique was examined at Ex.12. He deposed that on 08.08.2019, he was posted at the PS Mouchko in Investigation Branch. On the same day, he received investigation of case/FIR No.131/2019 U/s 376 PPC lodged by the complainant Alam Sher against the accused Abdul Ghani in respect of alleged offence of rape committed by the accused with his daughter Bakhtwer. He see FIR at Ex.3/B. He received the investigation on the same day at about 08:30 pm. He perused the FIR. On 09.08.2019, he left the police station alongwith complainant for the purpose of arrest of accused vide entry No.4 at about 10:15 am. He produced such entry No.4 at Ex.12/A. During the proceedings he reached at main SPARCO road football ground at about 1200 hours where he found that one accused was standing there. He arrested him on the pointation of complainant Alam Sher. He made personal search of accused but nothing was recovered from his possession. Thereafter he prepared such memo of arrest of accused in presence of complainant Alam Sher and PC Banaras. He see Ex.3/C, which is same memo of arrest and he identified his signature on it. Thereafter he came back at the police station vide arrival entry No.20 at about 1240 hours. He produced such arrival entry at Ex.12/B. He interrogated the accused and recorded his statement, thereafter he left the police station for the purpose of inspecting the place of alleged incident vide departure entry No.24 at about 1615 hours. He produced such departure entry at Ex.12/C. Thereafter he reached at the alleged place of incident i.e TCF school and inspected the same on the pointation of complainant and victim Bakhtawer in presence of Mujeeb Rehman and PC Banaras under a written mashirnama. He see Ex.3/D, which is same mashirmana of site inspection and he identified his signature on it. He secured one Chadar, one purse containing copy of CNIC and some documents in presence of said mashirs. Thereafter he came back at the police station vide entry No.42 at about 2040 hours. He produced the same at Ex.12/D. He also got CRO of accused during the investigation vide entry No.21 through SIP Abdul Nabi and PC Banaras under entry No.21 on 09.08.2019, which he produced at Ex.12/E. Thereafter vide entry No.29 on the same date 09.08.2019 police party came back. He produced the same at Ex.12/F. On 14.08.2019, he left the police station alongwith accused and police party vide departure entry No.13 at about 1330 hours for the purpose of medical of accused from Civil Hospital, Karachi. He produced such departure entry at Ex.12/G. Thereafter he produced the accused before MLO Civil Hospital, Karachi through his letter dated 13.08.2019. He see Ex.11/A, which is same police letter for medical of accused addressed to MLO and he identified his signature on it.

Thereafter the accused was medically examined by MLO vide MLC No.4177/2019. After examining the accused MLO had given his opinion that the accused was capable to perform sexual intercourse. He see MLC No.4177/2019 at Ex.11/B. Thereafter he brought back the accused to the police station vide arrival entry No.15 about 1:00 hours. He produced such entry at Ex.12/H. On 10.08.2019 he also received application before concerned Magistrate for conducting identification parade of accused and his said application was allowed and date was fixed as 16.08.2019 for identification test. He see Ex.9/A, which is same application and he identified his signature on it as well as order of learned Magistrate. Thereafter on 16.08.2019 he produced the accused before the concerned Judicial Magistrate for identification test through victim baby Bakhtawer. Meanwhile victim Bakhtawer identified the accused before the learned Judicial Magistrate during identification parade. Meanwhile he also obtained final medical certificate of baby Bakhtawer. He also produced departure and arrival entry dated 16.08.2019 at Ex.12/1 and Ex.12/J under which he left the PS and came back after obtaining final medical certificate. He see Ex.10/B, which is supplementary medico legal report of baby Bakhtawer. The accused was remanded to judicial custody on 19.08.2019. After completing the investigation he submitted charge sheet against the accused U/s 376 PPC as he committed rape with baby Bakhtawer daughter of complainant. He see accused Abdul Ghani is present in Court is same accused.

20. During his cross, he stated that he had served in police department for about 34 years now he has been retired. During his police service he passed A-1, B-1, lower and upper course and as well as elite course, He has studied all the relevant books during his courses i.e police rules, Cr.P.C fingerprints etc. He received FIR and Roznamcha entry under which FIR was lodged alongwith medical of victim. He admitted that he has not deposed that he also received Roznamcha entry under which FIR was lodged. He admitted that he also not disclosed that he also received medical certificate of victim, further said that he received medical certificate of victim through ASI Nawaz. He has perused all the documents. He do not remember the MLC number of victim. He see MLC No.4050 of victim Bakhtawer available on Court record. According to his knowledge the WMLO has given the positive medical certificate. He admitted that according to MLC WMLO has not secured the vaginal swab of victim for chemical or DNA analyses. He admitted that MLO has also not collected blood samples of accused at the time of his examination, further said that since so many days have been passed, therefore, vaginal swab of victim and blood sample of accused were not secured by the WMLO and MLO. The duties of one investigation officer is to collect evidences for proper investigation in order to know the correct facts and innocence or guilt of accused. He had not given any notice to complainant for late lodging of FIR. He admitted that medical of victim was conducted on 08.08.2019 while alleged incident was taken on 01.08.2019. As per contents of FIR the alleged offence was taken place inside the TCF School on different places. He admitted that he has not issued any notice to Principal or any School Teacher for giving evidence in this case, however he met with the principal who informed him that she used to lock the school building while the keys of main gate remained with the present accused/chowkidar. He admitted that there are two shifts in TCS School, further said that the victim was studying in first shift in the said school. He denied that one cousin of present victim was also teaching in the same school at the time of alleged incident, further said that the cousin of victim was teaching in the same school but she left the school prior the alleged

incident. He admitted that no complaint was received against the accused from alleged date of incident till registration of FIR. He was posted for last seven years when he received the investigation. He admitted that he had not received any complaint against the present accused during his tenure except the present case. He recorded statement U/s 161 Cr.P.C of victim on 15.08.2019. He see police file which shows that statement of victim was recorded by him on 09.08.2019, further said that he left the police service two years ago therefore lapse of time he did not disclose the correct date of statement of victim. He himself recoded statement of victim U/s 161 Cr.P.C. He admitted that statement of victim Bakhtawar does not bear her signature. He admitted that such statement bears signature and thumb impression of victim Bakhtawar, further said that such statement is recorded by him in my own handwriting. He admitted that according to statement of victim she was studying in class-II in second/noon shift. He admitted that he deposed in his examination that victim was in first shift, further said that due to lapse of time he deposed such fact. He denied that the alleged incident of rape was taken place inside the class room. Further said that alleged incident of rape was taken place inside the guard room as per statement of victim recorded by him. He admitted that victim had not showed me class room. Further said that victim pointed out the guard room to be the alleged place of commission of zina. He admitted that word "Chaddar" is not mentioned in memo of site inspection. Further said that however, word "Bistar" is mentioned in memo of site inspection which was taken into possession and the "Bistar" is the same "Chaddar" produced by him in Court as article "A". He admitted that purse with color copy of CNIC and other documents is not mentioned in memo of site inspection. He admitted that the sealed parcel cloth does not bear any official stamp of police station. Further said that there are three stamps/seals which used for sealing the parcel is available on the parcel. He see sealed parcel cloth which shows that it is written on the parcel one "Chadar" having red and black color. He denied that there are differences in his signature available on sealed parcel cloth. He denied that the signatures of both the mashirs on sealed parcel cloth are also different from the signatures available memo of site inspection. Further said that however, some variation dup to signing of cloth can be noted. (Note: At this stage, learned counsel requested that this Court take judicial notice in respect of differences in signatures of mashirs Alam Sher and P.C Banaras. After perusing the signatures of mashirs available on sealed parcel cloth and signatures available on both the mashirnamas it appears that there is some variation). He admitted that there is no date mentioned on sealed parcel cloths. Further said that however, he prepared the parcel on 09.08.2019. He denied that neither the victim pointed out the alleged place of incident nor he himself inspected the alleged place of incident. He denied that he prepared the mashirnama of site inspection at the police station. He denied that he sealed the seal parcel cloth at the police station. He see 161 Cr.P.C statements of witnesses namely Bakhtawar, Alam Sher, Mst. Bas Bibi and Nazcera. He denied that he has not signed all the statements recorded U/s. 161 Cr.P.C. further said that all the statements available on police file U/s. 161 Cr.P.C with computerize typing bear his signatures. Further said that however, he himself has recorded statements of all the prosecution witnesses with his own hand writing which was later on typed with computer typing. He admitted that the statements recorded by him with his own hand writing of all the witnesses do not bear his signature. Further said that however, the same were written by him own hand writing and after typing the same with computer typing, he put his signature on all the statements. He denied that the football ground available at SUPARCO road near TCF School remained

occupied with the persons. Further said that only one holidays football ground occupied with the accused persons. He denied that at the time of arrest of accused, private persons were available in the football ground from where accused was arrested. He denied that due to school leaving time so many students were available there at the time of arrest of accused. He admitted that he was already aware with the accused. Further said that since he was in intelligence and used to maintain the record of watchmen of all the schools, therefore, he was with the accused being watchman of accused. He arrested the accused from road near the football ground. He see mashirnama which shows that he arrested the accused from inside the football ground. He admitted that it is mentioned in memo of arrest that accused disclosed his name as Abdul Ghani S/o Muhammad Yousuf. He arrested the accused on the pointation of one Mujeeb-ur-Rehman, who has given me spy information. He admitted that it is not mentioned in the mashirnama that on whose pointation, he arrested the accused. He denied that accused was not arrested at 1200 noon. He denied that accused was arrested at 10:00 A.M from inside the TCS School during his duty time. He inspected the place of incident at about 1630 hours and came back to the P.S at 1730 hours. He see memo of site inspection, which shows that memo of site inspection at 1955 hours. At the time of his site inspection, one watchman was present, when he inspected the place of incident who opened the lock. He admitted that he has not made watchman who opened the lock as mashir in the memo of site inspection. Further said that name of said watchman is mentioned on said mashirnama of site inspection. He challanged the accused on the basis of statements of victim and other witnesses and other material including medical certificate etc. He admitted that there is no eye witness of alleged commission of rape except the victim herself. He admitted that twice ultrasound of victim was conducted by the doctors. He do not remember if according to ultrasound the victim was pregnant for 6 weeks. He do not remember if according to another ultrasound victim was not pregnant. Further said that such fact will be known to the WMLO. He is not aware if on dated: 08.08.2019, there was breakdown of electricity due to which ultrasounds of machines of Civil Hospital were not working properly. According to medical certificate and supplementary final medical certificate, the victim was subjected to rape. He see Ex.10/B, it is final supplementary medico-legal report, which shows that victim was not pregnant. He has not issued any notice to the complainant for not producing the victim within time for medical examination. As per his knowledge, the mother and paternal aunty of victim went with victim at the time of her medical examination. Roznamcha registered maintained at P.S under the police rules. He do not remember the rule at present. There are so many rules under which we perform our functions but he do not remember exact rule. He see Ekh. 12/A, 12/B, 12/C, 12/D, 12/E, 12/F, 12/G, 12/I and 12/J. He admitted that these all are hand written separate copies of roznamcha entries with his signatures. He admitted that the word as attested or compare copy is not mentioned on all the entries produced by him. Further said that these all are written by him with his own hand writing. He admitted that they used to keep duplicates roznamcha registered under the law. He admitted that he has not produced any carbon or duplicate copy. He admitted that mostly his name is mentioned being police person who left and came back in the police entries. He admitted that name of accused is mentioned in FIR and in the statement of victim. He admitted that despite of fact that name of accused was already mentioned in the FIR and statement of victim, he got conducted identification test memo of accused through victim before the learned Magistrate. Further said that in order to verify, the proper identification of

accused, he got conducted identification test memo of accused through victim. He denied that there was doubt upon accused by the victim, therefore, he got conducted identification parade. He admitted that the column of property in the charge sheet is lying blank. Further said that due to burning of Malkhana of City Court, it was ordered to keep the case property at the relevant police station. He do not remember the time of burning of Malkhana of City Court. He admitted that in the contents of mashirnama of arrest, the name of complainant is not mentioned, Further said that the name of complainant is mentioned being mashir of arrest. He admitted that name of complainant is also not mentioned in the body of contents of memo of site inspection. Further said that however, name of complainant is mentioned as mashir of memo of site inspection. He admitted that he has not produced any laboratory report before this Court. He denied that he has falsely challaned the accused. He denied that he has not done proper investigation. He denied that complainant is his brotherly fellow. Further said that he is rind while complainant is by cast Khattak. He denied that he is deposing falsely.

30. It is pertinent to mention here that in order to disprove the case of prosecution the accused was recorded his statement on oath and also produced his defense witnesses namely Saba, Kainat and Sameer.

31. The statement U/s. 340(2) Cr.P.C of accused Abdul Ghani was recorded at EX. 16. In his statement, he deposed that prior of his arrest in this case, he was working as watchman in TCF School situated at Main SUPARCO Road Mawach Goth, Karachi for last twb/three years. He is illiterate. He was arrested on 08.08.2019 at about 01:30 pm from his school when he was on his duty at the gate of the same school. Another watchman of the same school namely Sameer was also arrested with him. He was kept at the police station over the night and in the morning the said watchman Sameer was released and police informed him that one alleged victim baby Bakhtawar student of the same school raised allegation against him for committing her rape. The police interrogated him and he denied such allegation before the police. His duty was to open the main gate of school and after school timing to close the school gate in presence of headmistress of the school. The baby Bakhtawar regularly attending the school since 01st August 2019 till 07th August 2019 but she did not make any complaint against him before the school administration or anywhere else. He has not committed alleged rape of victim Bakhtawar as alleged by her. The alleged victim Bakhtawar used to come school alongwith her female cousin namely Shaista. He is innocent. He has not committed any alleged offence as alleged by the victim. His daughter Mst. Kainat is also teacher in the same school. His daughter Mst. Kainat and another school teacher namely Saba and watchman Sameer are his defense witnesses. He is innocent, therefore, he prayed that he may be acquitted from this Court. The above accused was cross examined by learned ADPP for the State.

32. During cross examination, he admitted that there are two schools, one is primary and another is secondary and he was appointed as watchman in primary school. He also admitted that DW is a watchman of High School and there is no allegation of alleged rape against DW Sameer as per contents of FIR. He denied that DW was not arrested or apprehended by police in this case, further added that he was apprehended with him by the police at the same time. He did not know whether alleged victim was

medically examined on dated 08.08.2019 where WMLO has given opinion that victim was subjected to sexual intercourse. He denied that on 01.08.2019 after school timing at guard room situated inside TCR school Main SUPARCO Road Karachi he had allegedly committed rape of baby Bakhtawar. He denied that after commission of alleged rape he had allegedly issued threats to baby Bakhtawar not to disclose such fact of alleged rape with anyone otherwise she would be killed. He further admitted that victim allegedly identified him during identification parade before learned Magistrate, further added that said victim was allegedly known to her being watchman of the same school. He admitted that baby Aliza is his daughter who is also student of the same school. He denied that said Bakhtawar made enquiry from him and he asked her that her bag was lying in the class room. He denied that baby Bakhtawar made such enquiry from him and at that time there was no one present there. He also denied that when all the students left the school and baby Bakhtawar went inside the class room in order to take back her school bag he closed the door of said class room and the bag of baby Bakhtawar was also allegedly not lying in the class room and thereafter he again opened the gate of class room and took baby Bakhtawar by holding from her hairs into guard room where he tied her hands and mouth with her Dupata. He denied that thereafter he removed her shalwar and Kameez and he also removed his shalwar and kameez and then on the point of knife he committed rape with baby Bakhtawar despite of the fact that she was weeping. He denied that thereafter allegedly committing Zina with her he issued threats to her not to disclose such fact to anyone otherwise she will be killed alongwith her father and thereafter released her from the guard room. He denied that due to alleged threat alleged victim did not disclose such fact to anyone till pain was started in her abdomen. He denied that he was arrested on 09.08.2019 at about 1200 hours from football ground, further added in fact he was arrested on 08.08.2019 at 01:30 pm from the gate of my school. He denied that on 14.08.2019 he was produced before MLO where his medical examination in respect of my capability to perform sexual intercourse was conducted and blood sample was secured. He admitted that he has not challenged the medical certificate issued by WMLO after examining the alleged victim to anywhere or any forum, further added that he was confined in jail. He admitted that his counsel has also not challenged the medical certificate of victim, further added that till filing of charge sheet he has not engaged any counsel. He admitted that he has also not challenged medical certificate issued by MLO in respect of his capability to perform sexual intercourse. He denied that alleged victim also pointed out alleged place of occurrence to police in his presence. He admitted that alleged victim appeared in Court and recorded her statement in his presence, further added that whatever deposed by the alleged victim is false. He admitted that he has also not challenged the alleged identification test parade memo. He admitted that he has no enmity with the victim or with her father prior the alleged incident, further added that in fact three or four days prior of his arrest father of victim came in the school and quarrelled with miss Saba and slapped her thereafter he was called from the gate and asked him to leave the school premises upon which he became annoyed from him and

...denied threats and thereafter booked him in this false case. He did not know whether Miss Saba moved application or any complaint against father of victim in respect of alleged maltreatment with her. He admitted that there is a water cooler of cold water in his guard room. He denied that there is no cold water available in other coolers lying in the school. He denied that with the pretext of cold water he used to call minor babies in the guard room for drink water in order to misbehave with them. He denied that after the alleged incident his daughter Aliza and Kainat both have been expelled from the school. He admitted that his family has shifted from their house where they were residing prior the alleged incident, further added that he is the only bread earner of his family and confined in jail and his son left education and doing labor job while his daughter herself left the school. He denied that his family left the residence due to alleged defamation. He denied that he was deposing falsely, further added he is innocent.

33. Accused produced Defence Witness No. 1 Saba Naz who was examined as Ex. 17. She deposed that she did not know anything about this case, therefore, she did not want to say anything. He was not cross examined by the learned DDPP for the state.

34. Accused also produced Defence Witness NO.2 Sameer who was examined as Ex. 18. He deposed that he did not know anything about this case, therefore, he did not want to say anything.

35. The learned counsel for accused declared the defence witness Sameer as hostile with permission to cross examine the witness. Request was allowed. The above said witness was cross examined by learned counsel for accused. During cross, he admitted that he has been serving in TCF School for last 10/11 years. He admitted that accused Abdul Ghani was also serving in TCF School. He had appointed after him. He also admitted that Kainat is a female teacher in the same school is the daughter of present accused Abdul Ghani and one Mst. Shaista was also working as teacher. He further stated that he did not know whether accused Abdul Ghani was arrested on 08.08.2019 from the premises of TCF School at about 01:30 pm by police in his presence, further added that he was not aware about the facts of the case however police had also arrested him alongwith accused Abdul Ghani and took both of them at PS Mouchko and where police locked them in a lock up and thereafter police interrogated him and he informed the police that his job was in secondary school as watchman, therefore, he was not aware about any alleged fact or case which was taken place in primary school where accused Abdul Ghani was serving as watchman and he also informed the police that he was not aware about the accused that when he used to come and go from primary school, meanwhile he was released from police station on personal bond while present accused was not released by police. He admitted that there is no internal wall in between primary and secondary school and both the schools are situated within one boundary wall but buildings and gates of both the schools are separate. He further stated that he did not know about this case. He also admitted that both the schools are running under one foundation but under separate managements. It is fact that DW Saba is also teacher in primary school. He admitted that both the schools are running in double shift i.e morning and

evening. He did not know whether DW Saba and DW Kainat are the teachers in evening shift in primary school. He did not know whether DW Saba is the class teacher of alleged victim Bakhtawar. He did not know alleged victim Bakhtawar. He admitted that it is a practice in both the schools that at first all the students leave the school and then teachers leave the school. He admitted that after leaving students and teachers female maid staff used to check all the class rooms, further added he was deposing all such facts related to his secondary school. He admitted that the keys of all the rooms remained with watchman who after receiving all the keys from teachers and female maid used to lock main gate from outside and then also leaves the school. He denied that he is under pressure of complainant of this case. The above said defence witness was also cross examined by learned ADPP for the State.

36. During his cross examination conducted by learned ADPP for the State, he admitted that he did not know any affairs related to the primary school. He admitted that whatever he deposed about school functions is related to secondary school. He denied that accused was in fact arrested on 09.08.2019 at 1200 hours from football ground SUPARCO road Mawachh Goth, further added that he did not remember the date of arrest however accused was arrested from inside the primary school and at the same time police also arrested him from secondary school. He also did not remember the time of arrest however it was working day and they were arrested during the time of second shift.

37. Accused also produced Defence Witness No. D.W-03, Kainat was examined at Ex. 19. She deposed that the accused Abdul Ghani is her father. She was teaching in TCF primary school in second shift. On 08.08.2019, she was present in TCF School Campus-IV situated at Mawachh Goth in second shift. On the same day, her father was available in school as he was working as watchman in both the shifts in TCF primary school campus-IV. Meanwhile on the same day at about 01:30 pm, some boys came in her class and informed her that police had apprehended her father accused who was present on his duty in the school; therefore, she came out from class and she came to know that police had been taken away her father as well as another watchman Sameer in police mobile. On her enquiry from her principle and concerned clerk, they informed her that police took away both the watchman for the purpose of enquiry in respect of theft took place during last two months vacations from the school premises. Thereafter she informed her mother about arrest of her father. Thereafter paternal granduncle and her mother took her from school to her house. Thereafter her paternal uncle went to the police station Mouchko where they were informed by police that her father was arrested in an alleged false case/FIR lodged by one Alam Sher father of one baby namely Bakhtawar in respect of her alleged rape. She had been working in the same school as teacher for last three years prior alleged occurrence. She produced produce her appointment letter at Ex.19/A, and letter of after noon allowance at Ex.19/B. She further deposed that she was class teacher of class-II blue. The said Bakhtawar was student of class-II green. She produced mobile phone screen shot of attendance sheet of Bakhtawar of her

class for the month of August 2019 which shows that Bakhtawar was in attendance w.e.f 01.08.2019 till 07.08.2019 at Ex.19/C. The complainant alleged allegations against her father on 08.08.2019 and since then she did not go to school and according to the attendance sheet of Bakhtawar she also did not come to school thereafter. She also produced attendance register of staff/teachers and the class teacher of Bakhtawar also attended the school on first and second august and thereafter she remained absent and then attended the school on 08.08.2019. She produced color copy of screen shot of attendance register at Ex.19/D. She also produced timetable of class-II green at Ex.19/E. She further deposed that there was no period for game and Bakhtawar falsely alleged that alleged offence had taken place during the period of game. She also produced time schedule of school at Ex.19/F. She further deposed that the parents of KG classes used to come at 04:15 pm and remained available at the main gate and during such period watchman also remained at the main gate till school timing ended at 05:15 pm. She also produced appointment letter of her father at Ex.19/G. She also produced copy of office card of national police foundation, appointment letter of national police foundation as security guard, copy of CNIC, copy of missing entry and domicile of my father at Ex.19/H to Ex.19/M. She further deposed that the teachers of second shift used to come at 12:00 noon while students used to come w.e.f 12:35 pm. The first shift ended at 12:30 pm. During such half hour madam used to discuss daily teaching plan with the teachers. 15 minutes consumed in assembly process and thereafter all the teachers went to their respective classes with attendance register. First period starts at around 12:55 pm. Every period was consisting of 40 minutes. The ending time of school is 4:35 for student of KG classes and 05:15 pm for students of class-I to V. After ending of last period we all the class teachers used to supervise departure process of all the students from class to main gate and we also checked all the desks in order to see all remaining articles of the students. There are two sections of classes two to five. Both the sections of class II are situated on first floor. At first class II green used to leave school and thereafter class II blue used to leave school. Thereafter students of class III, IV and V used to leave school. After departure of all the students all the teachers used to close their classes and then to go staff room in order to change our uppers. Thereafter all the Masies (female peon) used to lock all the doors of the all the classes. Thereafter the staff who had no personal transport leave the school. Thereafter the teachers and staff who had their transport facility from the school used to leave the school. Thereafter Masies used to lock principle office and staff office. In the last principle used to leave school and then Masies used to leave the school. Thereafter watchman used to close the main door of school from outside. She said that during such whole time there is 0% possibility of committing alleged offence with alleged victim by watchman or any other person within the premises of school. The cousin of Bakhtawar Miss Shaista is also teacher in the same school in second shift and she also always used to go with Bakhtawar being her cousin. According to the attendance register Miss Shaista attended the school on first and second day of August. She further deposed that her father/accused is innocent and he has not done the alleged offence. He has falsely been

implicated in this case by complainant party as prior the alleged occurrence the complainant Alam Sher came in the school as his another daughter became unconscious and he misbehaved with principle and class teacher of another daughter upon which her father being watchman stopped Alam Sher from misbehaving with principle and school teacher; therefore, said Alam Sher was annoyed upon her father. She was cross examined by the learned ADPP for the State.

38. During cross examination conducted by learned ADPP for the State she admitted that after leaving school after alleged occurrence now a days she has been working in a private company. She admitted that she has not produced any appointment letter of her company. She admitted that at present original appointment letter of her appointment is not lying with her, further added that the same is lying with her. She admitted that her appointment was on temporary basis. She admitted that after lodging of present FIR and arrest of her father she left school. She admitted that no school stamp or letter head is visible therein. She admitted that there is no signature on it of class teacher, further added that class teacher used to sign the same end of month. She admitted that Ex.19/D it is screen shot photo of staff attendance register. She admitted that her name is not appearing as teacher in Ex.19/D, further added that her attendance register was separate as she was teacher in Abdul Aziz campus while teacher Saba was teacher in Diyare Roshan campus. She admitted that there is some corrections with white in attendance register, further added that senior teachers do the same. She denied that teachers used to sign at attendance register, further added that principle used to mark P for attendance of teacher. She did not remember that in whose campus she was working as teacher, further added that such fact is written in her appointment letter. She admitted that on the top of the Ex.19/D it is mentioned as "August 2019-2020". She did not remember the campus name of teacher Saba, further added that due to lapse of time. She see Ex.19/E. It is timetable of class II green. She admitted that no date or year mentioned on it. She admitted that no date is mentioned under the signature of principle at Ex.19/E. She also admitted that original of Ex.19/E is not lying with her and the same is lying with school. She admitted that name of school is not mentioned on the Ex.19/F. She denied that Ex.19/F is self-created document. The name of principle is madam Zeenat and name of concerned clerk is Zubair who disclosed the reason of arrest of her father and another watchman Sameer in some theft matter. She did not remember the said child who informed her about arrest of her father by police while she was taking class. She denied that she had not seen police and her father and another watchman Sameer when they were arrested by police. Her school timing is 12:35 pm to 05:15 pm. There were three Masies in their school. There were one staff room, one clerk office, one principle office, one library and 12 class room for classes KG to fifth as all the classes have double sections. The school building consisting upon ground plus one. The students used to drink water from the cooler placed at the place where Masies used to sit on the ground floor near the kitchen. She admitted that she has deposed such details in respect of function of primary school of second shift. She admitted that there is a separate room of watchman in

their school. She denied that there was any water cooler lying inside the room of watchman for student, further added that there was a cooler of her father which he used to keep outside his room for drivers and other non-teaching staff only. She denied that students used to drink water from the cooler kept outside the room of watchman. It is fact that her father was watchman for both the shifts and her father being a watchman used to leave school after closing the same in last. She came to know on 08.08.2019 at evening time that complainant lodged FIR U/s 376 PPC against my father. She admitted that all the documents related to the school produced by her in Court are not attested by any principle of school. She denied that all the documents produced by her are fake and self-created. She denied that she was deposing falsely in Court being the real daughter of accused, further added that she has deposed before this Court because she was well aware with the facts and function of the school where alleged offence had allegedly taken place.

9. I have given due consideration to the arguments advanced by learned counsel for the parties and have carefully gone through the material placed before me as well as case laws cited by both the learned counsels.

10. From the minute sifting of evidence of prosecution witnesses as well as available material and record, it appears that the entire case of prosecution revolved around its star witness/alleged victim baby Bokhtawar who claimed that accused has committed her rape in the guard room of her school and the question which is required to be determined is that whether accused committed the alleged offence of rape or not. It appears that victim has clearly stated that on 01.08.2019 she went to school and in last period there was game period and she kept her bag in the box and after ending of game period she has not found her bag in the box therefore she went in her class but also could not find her bag, meanwhile, Chowkidar Baba came in class room and locked the door from outside. She knocked the door for its opening but Chowkidar did not open the same. She further deposed that after sometime, Chowkidar Baba came in the class room, he caught hold with her hairs and tied her hands and took her in his guard room. He also put her into fear by showing churri and told her that if she disclosed to anyone else or her father, he would kill her father, therefore, she did not disclose to anyone else as she was frightened. She further deposed that accused put off his own shalwar ad well as put off her shalwar and committed zina with her and then released her and she went to her house and did not disclose such fact of zina with her to anyone. She further deposed that on 08.08.2019, she felt pain in her stomach and her aunty took her to Civil Hospital where medical treatment was provided to her. She further deposed that she was also examined by WMLO. She disclosed to MLO about the commission of Zina with her on her inquiry. It appears that victim was examined by the WMLO who has confirmed that victim lost her virginity. It appears that meanwhile victim disclosed such fact to her father and then her father lodged the FIR against the accused and accused was arrested by the police and during identification parade victim identified the accused being the same chowkidar baba who committed her rape. It appears that alleged victim was cross examined in length by the learned counsel for the accused as discussed above and it also appears that other prosecution witnesses were also cross examined by the learned counsel for the accused as discussed above but nothing came on record that there was any ill-will, malice and malafide on the part of victim or on part of her family or on part of police to falsely implicate the accused

in the present offence. Though, learned counsel for the accused claimed that the victim has falsely implicated the accused at the instance of her father and aunty. It appears that the victim was confident enough when she appeared into witness box and has categorically implicated the present accused and fully supported the case of prosecution as discussed above. It appears that in her cross victim deposed that on that day she reached home at 5:45 pm and her sister made inquiry from her about such late coming. It appears that during the cross she denied that accused has not committed the alleged offence. It also appears that victim has also denied that she was in fact allegedly raped by her cousin Bablu but in order to save said Bablu she has falsely implicated the present accused. I have not found any major material contradictions in her statement nor did she resign from the accusation she had made against the present accused. The testimony of victim appears to be true, genuine and confidence inspiring. Nothing has come on record that her statement was tutored to her, as claimed by the learned counsel for the accused, in any manner to falsely implicate the present accused. It appears that the victim has uttered truth and only truth from her mouth and there appears no mixture of falsity in her statement when she has fully implicated the present accused for commission of act of rape with her. The victim proved her reliable witness and was physically examined by WMLO and the said WMLO has supported the version of victim and clearly deposed that at the time of examination of victim she found that Hymen was torn at '1'O'clock' position and she confirmed that on the basis of chemical examination victim baby Bakhtawar was subjected to sexual assault/intercourse. In the criminal cases, each accused has his own specific role in the crime, and yard stick to assess the evidence depends upon the role and thus, the same evidence though may be believable against the accused but nothing fruitful came on record to provide any benefit to accused and to create any dent in prosecution story. The testimony of victim appears to be true, genuine and confidence inspiring. The victim proved her reliable witness and was physically examined by WMLO and the said WMLO has supported the version of victim.

11. No doubt that there is delay of about 8 days in lodging of FIR but in rape case delay in lodging of FIR is not fatal. No doubt that WMLO has not secured vaginal swab of the victim but I am of the view that reason for not taking vaginal swab was the delay in medical examination of about 8 days. It is admitted fact that in first ultrasound report of the victim she appeared to be pregnant of 8 weeks but such ambiguity was confirmed on second ultrasound in which she was not found pregnant and according to WMLO the ultrasound machine of civil hospital was out of order. It appears that learned counsel for the accused has suggested some contradiction and inconsistencies such PW Bass Bibi was not present at the time of medical examination of victim as the woman who was with the victim whose name was Pari and WMLO has also admitted that the woman who gave permission was Pari but it appears at PW Bass Bibi has stated that Pari is her nick name. It appears that victim has stated that chowkidar baba has committed her rape and since there was no name of the accused and there was two chowkidar therefore I/o has rightly get identified the accused from victim during identification parade conducted by the learned Judicial Magistrate. I am of the view that other contradictions suggested by the learned counsel for the accused is immaterial and can be ignored as the I/o alleged that victim was the student of class of first shift while in fact the victim was the student of second shift and it appears that I/o has stated that due to laps of time he mistakenly disclosed the first shift instead of second shift while

the accused in his statement has admitted that victim was the student of first shift. I do not find any force in the contention of the learned counsel for the accused that why the family members of the victim did not come to school when the alleged victim did not reach back to home in time due to the reason that the ending of school timing is 05:15 pm and according to the victim she reached back to the house at 05:45 pm; therefore, delay of 30 to 45 minutes in coming back to home from school is not such a matter of great concern for the family and it appears that victim during cross deposed that she reached home at 5:45 pm and her sister made inquiry from him for such delay. I am not convinced with the contentions of the learned counsel for the accused that there are major contradictions and inconsistencies in the deposition of the prosecution witnesses and all such contradiction suggested by the learned counsel for the are well explained with the reasons as discussed here in above. The statement of victim proved the guilt of the accused beyond any shadow of doubt and statement of victim remained unshakey and unshattered. No doubt that accused has examined himself on oath and deposed that his duty was to open the main gate of school and after school timing to close the school gate in presence of headmistress of the school. He further deposed that the baby Bakhtawar regularly attending the school since 01st August 2019 till 07th August 2019 but she did not make any complaint against him before the school administration or anywhere else. He has not committed alleged rape of victim Bakhtawar as alleged by her. The alleged victim Bakhtawar used to come school alongwith her female cousin namely Shaista. He claimed that he is innocent. He has not committed any alleged offence as alleged by the victim. His daughter Mst. Kainat is also teacher in the same school. He also produced his daughter Mst. Kainat and another school teacher namely Saba and watchman Sameer being his defense witnesses and what they have deposed I have already discussed herein above but nothing came on record that alleged victim has falsely booked the accused in this case. DW Saba has clearly stated that she does not know anything about the alleged occurrence while DW Kainat is the daughter of the accused and no doubt she has produced some documents in order to show innocence of her father but no such fruitful things came on record which shows that alleged victim is deposing falsely against the accused. The main contention of the DW Kainat is that it was not possible for watchman to commit rape of any of student in presence of whole staff including other students, teachers, drivers, masi etc but here this case the victim alleged that accused committed her rape after leaving of all the staff of school as accused locked her in the class room and then brought her in the guard room where he committed the rape of victim and then issued her threats. DW Kainat also claimed that alleged victim attended the school even after the alleged incident on 2nd August and even on 8th August while the accused claimed that victim attended the school regularly from 1st August to 7th August. DW Kainat has also claimed that her father has falsely been implicated in this case by complainant party as prior the alleged occurrence the complainant Alam Sher came in the school as his another daughter became unconscious and he misbehaved with principal and class teacher of another daughter upon which her father being watchman stopped Alam Sher from misbehaving with principal and school teacher; therefore, said Alam Sher was annoyed upon her father and later on he booked her father through the alleged victim. It appears that accused has not produced any defence witness in order to prove previous quarrel as alleged between him and the

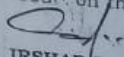
father of the victim. It appears that DW Sameer has stated that he does not know anything about the alleged incident however he supported the version of the accused that he was apprehended on 8th August along with him and later on police released him and did not release the above named accused while according to the police accused was arrested on 9th August but here in this case the question of determination is not that when accused was arrested the question for determination is whether accused committed the rape of victim on 1st August or not. It appears that presence of accused and victim is very much proved on the day and time of alleged occurrence. In the criminal cases, each accused has his own specific role in the crime, and you'd stick to assess the evidence depends upon the role and thus, the same evidence though may be believable against the accused but here in this case nothing fruitful came on record to provide any benefit to accused and to create any dent in prosecution story and so also as the evidence of the defence witnesses is not supportive for the accused to provide any benefit to him or to create any doubt in his favour. I do respect the case laws cited by the both the learned counsel for the accused and as well as for the complainant party. I am of the view that the case laws cited by the learned counsel for the accused is on different footings from the facts of the present case while the case laws cited by the learned counsel for the complainant are fully supporting the prosecution case. In view of above discussion as per testimonies of prosecution witnesses, it is crystal clear that the accused has committed the shameful act of zina with the victim as such point under discussion is answered in affirmative.

POINT NO. 2:

12. In view of forgoing facts, circumstances and discussions made in point No.1, this Court has reached to the conclusion that the accused aged about 50 years has committed shameful act of rape of victim baby Bukhtawer. The offence of rape U/s. 376 PPC has been fully proved against the accused beyond shadow of any doubt. The accused Abdul Ghani S/o Muhammad Yousuf is hereby convicted U/s. 265-H(ii) Cr.P.C 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 09.08.2019. 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 22nd day of January, 2022.


IRSHAD HUSSAIN
ADDITIONAL SESSIONS JUDGE-X
KARACHI-WEST

Date of Application 26/1/2022
Date Estimated on 22/1/2022
Date Deposed on 20/1/2022
Date Ready on 20/1/2022
Date Reported on 20/1/22


20/1/2022

27-1-2022