

PRESENTED ON  
19-03-2019  
*[Signature]*  
Clerk Registrar (Jud.)

**IN THE HIGH COURT OF SINDH AT KARACHI**  
**Criminal Appeal No. 173 Of 2019**

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**Fayyaz Meerani**

Son of Munir Ahmed Meerani,  
Muslim, adult, resident of  
Mohallah Najam Colony,  
Near, Degree College, Dadu.  
Presently Confined in Judicial Custody,  
at Central Prison,  
Karachi.....Appellant

Versus

The State.....Respondent

FIR No. 323 of 2014  
U/s.365-B,376 PPC.  
PS. A Section, Dadu Sindh.

**APPEAL UNDER SECTION 410 Cr.P.C**



**IN THE HIGH COURT OF SINDH AT KARACHI**

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Criminal Appeal No. 173 of 2019

Appellant **Fayyaz Meerani**  
through Mr. Mehmood A. Qureshi, Advocate.

Respondent **The State**  
through Mr. Talib Ali Memon, APG

Complainant through Ms. Amna Usman, Advocate

**JUDGMENT**

**Omar Sial, J.:** Fayyaz Meerani was accused of kidnapping Benazir Jathial on 25-10-2014 and subsequently raping her. He was tried by the court of the learned 6<sup>th</sup> Additional Sessions Judge, Karachi (South). On 19-2-2019 Meerani was found guilty of both offences and thus convicted to rigorous imprisonment of 10 years for the offence of rape (section 376, P.P.C.) and to imprisonment for life for the offence of kidnapping (section 365-B, P.P.C.). He was also ordered to pay a fine of Rs.25,000/- for each offence or in default to undergo a further period of one month imprisonment on each count. Meerani through this appeal has challenged the judgment of the learned 6<sup>th</sup> Additional Sessions Judge, Karachi (South).

2. A background to the case is that on 25-10-2014 at 10:00 p.m. Benazir Jathial (the prosecutrix) went to the A-Section Police Station in Dadu and reported that in the past Fayyaz Meerani had sent a proposal for her but her father had declined to accept it. The refusal had angered Meerani who raped her in an undisclosed place and recorded the rape. She did not disclose the incident to anyone out of fear. She further recorded that earlier that day (i.e. on 25-10-2014) at about 11:30 a.m. in the morning, she along with her father were going to her college in a rickshaw. The rickshaw was intercepted by a brown car from which emerged Meerani armed with a pistol and one another, who she identified as being Iqrar Janwari. The two men pulled her out of the rickshaw and despite her screams for help they blindfolded her and put her in the car and drove away. She was taken to an undisclosed location where Meerani raped her. The two men then sat in their car and drove away. Benazir boarded an unspecified type of vehicle and went to the police station where A.S.I Vighio referred her to a doctor for a medical check-up. After the check-up she went and informed her elders and



after consulting with them had come to the police station. F.I.R. No.323 of 2014 under sections 365-B and 376, P.P.C was therefore registered against Meerani and Janwari. Janwari was subsequently let-of by the police (it appears from the challan filed in the case) on Benazir's father's statement that Janwari was innocent and that Benazir had involved him in this offence due to enmity. Further, investigation had revealed that Janwari was not even in town on the date the incident had allegedly occurred.

3. Meerani pleaded 'not guilty' to the charge against him and claimed a trial. In order to prove its case, the prosecution examined 9 witnesses. PW-1 was Benazir herself. PW-2 Ghulam Muhammad Panhwar was the police officer who registered the F.I.R. in the case. PW-3 Muhammad Ali Jathial was Benazir's father. PW-4 Altaf Hussain Sehar was Benazir's brother-in-law. PW-5 Benazir Jamali was the police officer at the police station to whom the complainant had gone and reported the incident. PW-6 Shahzadi Panhwar was the doctor at the Civil Hospital in Dadu who had examined Benazir. PW-7 Moomal Bhutto was the police officer who accompanied Benazir from the police station to Civil Hospital for the medical check-up. PW-8 Jannat Jathial was Benazir's mother. PW-9 was Muhammad Umar Vighio who was the investigating officer of the case. In his section 342, Cr.P.C statement Meerani denied all charges against him, pleaded his innocence and said that the complainant's own family had not supported her case. He however offered no explanation as to why she would falsely accuse him.

4. Learned counsel for the appellant Meerani has attacked the credibility of Benazir by identifying contradictions and improvements made by her in her testimony compared to what she had recorded in the F.I.R. He has also highlighted that the prosecution witnesses have not corroborated Benazir's version and that the medical evidence produced at trial does not support Benazir's version of events. Conversely, the learned counsel for the complainant primarily argued that Benazir had no reason to falsely implicate Meerani; that no lady would level a serious allegation such as rape falsely and that in cases such as the present one the statement of the victim should be enough for conviction. Learned counsel was also of the view that the contradictions and improvement pointed out by the learned counsel for Meerani were not material and should not have a bearing on the actual allegation of rape and kidnapping. Both counsels have cited a number of judgments, the specifics of which are not being listed



here, as all the judgments relied upon form part of the record. Both counsels argued their respective positions very well. The learned A.P.G. supported the judgment impugned and adopted the arguments of the complainant's counsel. My observations and findings are as follows.

5. **Medical Evidence:** The complainant in her testimony alleged that on 25.10.2014 (i) she was forcibly taken out of the rickshaw she was travelling in; pulled by her hair; beaten by Meerani; her hands tied; thrown on a bed; forcibly stripped of her clothes and subsequently (iv) forcibly raped. Immediately after the alleged rape she had gone directly to the police station and then for the medical examination. Dr. Shahzadi Panhwar (PW-6) who examined Benazir the same day at 5:00 p.m. testified that *"I did not find any marks of violence on the body"; "Her clothes were clean neither the same were torn nor any blood mark was found"; I also did not find any hymen or tear or fresh bleeding or any other discharge on the body of the victim"; "Intercourse committed by anyone can be ascertained within the period of 72 hours. It is correct that as per my opinion she was not subjected to rape for the last three days; "It is correct that as per my observation the victim was not subjected to rape."; It is correct that at the time of examination no mark of violence was found on the body of the victim. It is correct that I did not find any sign on the body of the victim"* Learned counsel for the complainant however argued that the final medical report that was issued by Dr.Panhwar on 16-11-2014 reflected that the doctor had concluded that Benazir had sexual intercourse within 72 hours of her coming for her medical examination. The submission of the learned counsel is correct. However, no question was asked from the doctor by the state prosecutor to clarify this discrepancy between the final medical report issued by her and what she had stated at trial. Further, more weight has to be given to what the doctor stated at trial under oath. Vaginal swabs were taken from the complainant at the time of her examination and subsequently the chemical analyzer had stated that human sperm was found in the vaginal swabs as well as the shalwar that she wore. The detection of human sperm without a determination that it was sperm from the accused cannot be the sole reason to uphold a conviction. There can certainly be situations where a rape is committed without any visible injury on the victim, however in the circumstances of this case and the complainant's own narration of how events unfolded and the fact that she had actively resisted her alleged





abduction as well as the assault on her, it seems improbable that absolutely no mark, injury or a scratch was sustained by her in the entire encounter. The medical evidence produced at trial by the prosecution does not reconcile with the version advanced by the prosecutrix.

6. **Prosecution witnesses:** The evidence given by the prosecution witnesses in this case was far from confidence inspiring.

Muhammad Ali Jhatial, the father of the victim, admitted in his cross-examination that he had not accompanied his daughter at the time of the incident. His evidence to the extent of narrating what had happened on the day of the incident thus remained hearsay. His statement, according to his own admission was not recorded by the police.

Jannat, the mother of the victim, testified that when the incident occurred she was in the village and that the next day she had gone to the police station along with her husband. Her testimony thus remained hearsay. Jannat was shown as one of the witnesses (the other being Altaf Hussain mentioned below) to the memos of inspection of the place of incident (from where the abduction took place) as well as Janwari's arrest. She however testified that it was at the police station that she put her thumb impression on the memos.

Altaf Hussain, the brother-in-law of the victim, testified that on the night of the incident at about 11:00 p.m. Benazir had come to his house and stayed there the night. He did not mention that she had narrated to him anything of what had happened that day. Altaf was shown by the police as a witness to the inspection of the place of incident as well as a witness to the arrest of Janwari. Doubt is cast on his testimony as far as him being the witness to the inspection of the place of incident (from where the abduction took place) as well as Janwari's arrest are concerned. The reason for this is that at trial he stated that he is illiterate and that he had affixed his thumb impression on the memos. The memos on record however show that his name is signed on them. Even though his thumb impression was not on the memos, he still testified that his thumb impressions were taken at the police station. Janwari was shown to have been arrested on 28.10.2014; however, according to Altaf when he had gone to the police station the very next day of the incident i.e. on 26-10-2014, Janwari was already under



arrest at the police station. These facts stated by Altaf suggest malafide on the part of the investigating officer and shed a negative light on the prosecution case.

Benazir Jamali, the sub-inspector of police at the women police station, created further doubts in the prosecution case by testifying that when Benazir had come to the police station she was accompanied by her father and that when she returned after being medically examined she was also accompanied by her father. This is contrary to what the other witnesses including Benazir stated.

Muhammad Umar Vighio, the investigating officer of the case, stated that contrary to what the witnesses were saying Muhammad Ali, the father of the victim, was an eye-witness to the occurrence; contrary to what the witnesses to the memo of arrest and memo of inspection of place of incident said, they were present when he made the inspection and when Janwari was arrested; that the purported eye-witness (Muhammad Ali) had told him that Janwari was innocent (even though his daughter had specifically identified him as being one of the kidnapers) and that due to a dispute concerning children playing on the street differences had arisen and thus his daughter had accused Janwari; he admitted that he had not inspected the place where the alleged rape took place and justified the lapse by saying that although the victim had stated that it was in the Ghareebabad area yet she had not pointed out the place to him; he admitted that the place where the kidnapping took place there were several bank employees, security guards and police constables but he had not recorded the statement of any one of them; that during investigation he had not tried to understand the medical examination report of the victim; he had not taken any blood sample from the accused for DNA purposes; that the reports of the chemical examiner and the medical certificate were in English and that he could not understand the English language and thus could not understand the reports; that (although he was the investigating officer) he had not prepared the memo of seizure of the clothes of the prosecutrix; In his cross-examination he further admitted that *"it is correct that according to the F.I.R. same allegations were leveled by the victim /complainant against both the accused persons and on the same set of evidence one of the accused was released u/s 497 Cr.P.C. while the other accused has been challaned."* In addition to all the lapses, he had admittedly made in the investigation, Vighio also made no effort to trace the rickshaw from which the alleged abduction took place, nor recorded the



statement of anybody from the place where the incident took place, made no effort to recover the vehicle used in the alleged kidnapping, did not recover the pistol Janwari had, did not record the statement of the sister of the victim, who, according to witness Moomal, was called to the police station after Benazir had come there following her medical examination, he made no effort to trace out the place where the rape occurred, made no effort to record the statement of any person in the Ghareebabad, who might have seen a traumatic girl run at distance of one kilometer to the police station, did not collect samples for DNA testing. In short, it appears that no investigation was carried out by the investigator and no effort was made by him to search the true facts of what had happened.

7. Learned counsel for the victim has not denied the contradictions and lapses in the prosecution case noted above but has argued that the same are not material and that the victim had no reason to falsely implicate the appellant in the crime. She, therefore, focused on the point that the sole testimony of the victim should be sufficient to convict the accused.

8. **Victim testimony:** Rape is a difficult crime to prove and in most cases, like the current one, it is a crime the commission of which is not witnessed by neutral and independent persons. This, coupled with the stigma it carries in our society, makes proving it a difficult task. It is therefore that courts have at times considered the sole testimony of the victim as being sufficient to base a conviction on. In an yet unreported case **Atif Zareef, etc vs The State (Criminal Appeal No.251/2020 & Criminal Petition No.667/2020)** the Honorable Supreme Court after noting the different nature of rape cases has observed that *"The courts, therefore, do not insist upon producing direct evidence to corroborate the testimony of the victim if the same is found to be confidence inspiring in the overall particular facts and circumstances of a case, and considers such a testimony of the victim sufficient for conviction of the accused person."* The acceptance of the fact that the sole testimony of a victim may form the sole basis of conviction has, however, over the years come with the rider that such sole testimony should be trustworthy, confidence inspiring and natural.

As far back as 1960, in the case of **Muhammad Abdul Khaleque and others vs The State (PLD 1960 SC (Pak) 325)** it was observed *"However that may be, on*





principle, in a case of this kind where the evidence and condition of the prosecutrix form the only evidence which the Court has to go upon, it is necessary in order to sustain a conviction, that it should at least be found that the woman's statement is in accordance with all the probabilities and has all the appearances of having been honestly made." In this case however the Court did not accept the sole testimony of the victim by observing that "we consider that to maintain the conviction upon her evidence which is unnatural in some respects and dubious in others will not be consistent with the safe dispensation of justice in cases of this kind."

In the case of **The State and others vs Abdul Khaliq and others (PLD 2011 SC 554)** the Court observed: "These are certain salutary principles of the criminal justice system which should be adhered to by the courts, in letter and spirit and there is no exemption to these rules, even in gang rape cases for otherwise, due to departure therefrom, the innocent person may suffer. However, at the same time the courts should keep in view that in such a class of cases, usually independent ocular evidence is not available, therefore due weight should be attributed to the statement of the victim buttressed by medical evidence, and strong attending circumstances, shall suffice to warrant the conviction." The Court went on to hold that "It depends upon the facts and circumstances of each case and has to be assessed by the Court on the basis of the entire evidence on the record whether the sole testimony of the victim should be believed or not, particularly in the light of her cross-examination, and the other evidence produced by the prosecution; if on account of totality of facts the Court is of the view that such a statement should not be believed and for that good reasons are assigned it cannot be said that any illegality has been committed by the Court in this behalf. Thus, rule of believing, of sole testimony pressed into service shall not apply to each and every case of rape, as a matter of routine and course, because it is not the command of any law/statute, that in deviation of the general principles of jurisprudence, the accused must be put to the test of strict liability and should be asked to prove his innocence because the prosecutrix's version under all circumstances should be taken as correct; the sole testimony view, should be applied with due care and caution in the cases where there is backdrop of arudge, rift and tiff between the parties, as has emerged in the present case. The possibility in such matter cannot be ruled out that the complainant side was trapped.





The Indian Supreme Court, in **Sadashiv Ramrao Hadbe v. State of Maharashtra** [2006] (10) SCC 92 : 2007 (1) SCC (Cri) 161 held that the sole testimony of the prosecutrix could be relied upon if it inspires the confidence of the Court: *"It is true that in a rape case the accused could be convicted on the sole testimony of the prosecutrix, if it is capable of inspiring confidence in the mind of the Court. If the version given by the prosecutrix is unsupported by any medical evidence or the whole surrounding circumstances are highly improbable and belief, the Court shall not act on the sole testimony of the prosecutrix. But there is no requirement of law to insist upon corroboration of her statement to base conviction of an accused."*

9. The delay in lodging the F.I.R. is not of much importance in the circumstances of the case although complainant stated in the F.I.R. that she had lodged the F.I.R. after consultations with her elders, but at trial no elder or other person came to support the version that the F.I.R. was lodged after they had been consulted. According to the prosecutrix herself, in her testimony too she stated that she came directly from her medical examination and lodged the F.I.R. One of the two versions was not correct. The prosecutrix's version of her past encounter with Meerani remained unproved. Had the investigating officer been diligent and responsible, an investigation into the past allegation, could have helped him unearth the true facts of the matter. In the circumstances of the present case, this lapse in investigation may be excused to the benefit of the complainant. I do note however that the allegation raised was extremely vague yet it forms basis of a possible grudge between the parties.

10. There were several places where Benazir changed the version of events at trial from what she had recorded in the F.I.R. In the first information that she recorded she stated that on the date of the alleged occurrence she was going to her college in a rickshaw accompanied by her father Mohammad Ali. She resiled from this statement at trial and testified that she was alone that day in the rickshaw and that her father was not an eye-witness. In the first information she recorded that only 2 men were in the vehicle, whereas at trial she stated that there were 4 men in the vehicle. In the first information she recorded that it was Janwari who held a pistol at her; at trial she testified that it was Meerani who held the pistol. In the first information she recorded that after the incident, both the accused drove away in their car and that she took a "conveyance" and came



to the police station. At trial her story was completely different; she testified that the accused were in the upper portion of the house and that she managed to escape and create noise outside the house, where there was a person standing, to whom Meerani's friend said that she is our sister and is of unsound mind but that she still managed to escape and ran all the way to the police station. I find this account unbelievable especially when the same remained uncorroborated. The incident was said to have taken place in the middle of the day in a crowded and busy market place. She herself admitted this at trial. Even though morals of the society at large may have arguably deteriorated, I do not believe that in a city like Dadu from a crowded market place a rickshaw would be stopped, men emerge ostensibly one armed with a pistol, pull a girl out of rickshaw by dragging her by her hair, blindfold her, forcibly put her in a car and drive away, yet the investigating officer, was unable to find any person who had witnessed the occurrence. It would be reasonable to expect that a kidnapping of such a nature (as narrated by the victim) would not go unnoticed and would cause ripples not only in the immediate locality of the place of occurrence but in the entire town. There appears to be much more to this case than meets the eye. For the foregoing reasons, coupled with the medical evidence at trial, I do not find the testimony of the prosecutrix to be trustworthy or confidence inspiring and it would be unsafe to convict on the basis of her sole testimony. The accused's version in his section 342 Cr.P.C. might be weak however the onus of proof to establish its case was on the prosecution, which it failed to do so.

11. To summarise the above:

- (i) It could not be proved that the prosecutrix was abducted from in front of the National Bank in Dadu from a rickshaw while on her way to college;
- (ii) The medical evidence did not support the testimony of the prosecutrix;
- (iii) The testimony of the prosecutrix as to how events unfolded was not convincing or trustworthy and at places unnatural, thus it would be unsafe to base a conviction solely on her testimony;



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- (iv) The prosecution witnesses did not corroborate the version of the prosecutrix, even pre or post the alleged rape incident;
- (v) Non-existent investigation and an extremely weak prosecution (in the absence of a convincing sole testimony) further created doubts in the prosecution case.
- (vi) The prosecution was unable to prove its case against the appellant beyond reasonable doubt.

12. For the above reasons, the appeal is allowed and the appellant acquitted of the charge. He should be released forthwith if not required to be detained in any other case.

Sd/- Omar Sial  
Judge

Announced by me

Sd/- 04/05/2021  
Arshed Hussain Khan J



THE HIGH COURT OF SINDH  
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