

IN THE HONOURABLE SUPREME COURT OF PAKISTAN  
(APPELLATE JURISDICTION)

Criminal Petition for Leave to Appeal No. 82-h of 2021

Benazir Jhutiya  
Daughter of Muhammad Ali  
Muslim, Adult,  
Resident of Village Tantni Taluka,  
Dokri, Goth Haji, Jhatial  
District Dadu,  
Sindh.....

Petitioner

Versus

1. The State
2. Fayyaz Meerani,  
Son of Munir Ahmed Meerani,  
Muslim, Adult,  
Resident of Mohallah Najam Colony,  
Near Degree College, Dadu,  
Sindh.....

Respondents

**CRIMINAL PETITION UNDER ARTICLE 185(3) OF THE  
CONSTITUTION, 1973, FOR GRANT OF LEAVE TO APPEAL AGAINST  
THE JUDGMENT DATED: 04.05.2021 PASSED BY THE HONOURABLE  
HIGH COURT OF SINDH, AT KARACHI, IN CRIMINAL APPEAL NO.  
173 of 2019**

HUMBLY SHEWETH:

Being aggrieved by the Judgment dated: 04-05-2021 ('Impugned Judgment'),  
passed by the Honourable High Court of Sindh, at Karachi, in Criminal Appeal  
No.173 of 2019, the Petitioner above named prefers the instant Criminal Petition  
for Leave to Appeal on following, inter-alia, facts and grounds:

**QUESTIONS OF LAW**

That this instant Petition raises the following questions of law for the kind  
consideration of this Honourable Court on which leave to appeal is sought:

- 2
- I. Whether the Honourable High Court, in the Impugned Judgment, has erroneously held that in the facts of this case, the evidence of the prosecutrix/rape survivor was not convincing or trust worthy and could not be the basis for the conviction of the accused person/Respondent No.2?
  - II. Whether the Honourable High Court, in the Impugned Judgment, has grossly mis-read, the medical evidence and the chemical examiner's report in this case which clearly corroborated the offence of Rape committed by the accused person/Respondent No.2?
  - III. Whether the Honourable High Court, in the Impugned Judgment, has erroneously held that DNA testing and semen matching is a legal requirement in order to rely on the medical evidence regarding the offence of Rape?
  - IV. Whether the Honourable High Court, in the Impugned Judgment, has erroneously held that proof of resistance in the form of marks of violence is a legal requirement for the conviction for Rape?
  - V. Whether the Honourable High Court, in the Impugned Judgment, has erroneously held that the testimony of the prosecutrix/rape survivor supported by the medical evidence could be nullified if the evidence of the other witnesses was contradictory and could not be relied upon?
  - VI. Whether the Honourable High Court, in the Impugned Judgment, has erroneously held that the testimony of the prosecutrix/rape survivor could not be relied upon because she failed to report the earlier rape committed on her by the accused person/Respondent No.2?

1. That the subject matter of this present Appeal is the Impugned Judgment dated: 04.05.2021, passed by the Honourable High Court of Sindh, at Karachi, ['Honourable High Court'] in Criminal Appeal No. 173 of 2019 filed by the Respondent No.2 ['Fayyaz Meerani'] against the Judgment dated: 19.02.2019 of the Learned Additional Sessions Judge-VI, Karachi ['Learned Trial Court'] in Session Case No. 1224 of 2015, arising out of FIR No. 323 of 2014, P.S. Dadu for offences under Sections 365-B and 376 P.P.C., 1860, in relation to the kidnapping and rape of the Petitioner ['Benazir Jhutiya]. Through the said Judgment dated: 19.02.2019 of the Learned Trial Court, the Respondent No.2 ['Fayyaz Meerani'] was convicted and awarded sentence of rigorous imprisonment for 10 years with fine of Rs. 25000/, for the offence under Section 376, P.P.C., 1860, and rigorous imprisonment for life for the offence under Section 365B, P.P.C., 1860 with fine of Rs. 25,000. Through the Impugned Judgment, the Criminal Appeal No. 173 of 2019 has been allowed and the conviction and sentence, of the Respondent No.2, has been set aside and directions have been given for his release forthwith.
  
2. That the brief facts of the above case are as follows: On 25.10.2014 at 11:30 am in Dadu, Sindh, the Petitioner was going to her college in a rickshaw which was intercepted by a car, in front of Old NBP Bank, from which emerged the Respondent No. 2 and one accused ['Iqrar Janwari'], with a pistol. The two men pulled her out of the rickshaw, blindfolded her, put her in the car and drove away. She was taken to an unknown location where the Respondent No. 2 raped her. It is submitted that a FIR No. 323 of 2014 at P.S. Dadu, dated: 25-10-2014 was initiated in relation to this incident of kidnapping and rape. It is further submitted that the Challan was submitted by the police officials on 09.11.2014, confirming the aforementioned incident.

3. That Iqrar Janwari [the co-accused] was released under Section 497(2), Cr.P.C, 1898, by the I.O. The victim challenged the aforementioned release before the IIInd Judicial Magistrate, Dadu, by filing an application under Section 190(3), Cr.P.C, 1898, praying therein that Iqrar Janwari be joined as an accused in the case. However, through Order dated: 02.12.2014, Iqrar Janwari was discharged from the case under Section 63, Cr.P.C, 1898, read with Section 173(B), Cr.P.C, 1898, for lack of sufficient material available on the file against him.
4. That Charge dated: 28.04.2015 was framed by 1<sup>st</sup> Additional Sessions Judge Dadu, and trial was initiated under Sessions Case No. 984 of 2014 for offences under Section 365B and Section 376, P.P.C., 1860. However, in view of the grave threats from the accused person, the Petitioner was forced to shift from her village to the city of Karachi. In view of this shifting, the Petitioner filed a Criminal Transfer Application No. 01 of 2015 before the Honourable High Court of Sindh at Karachi. It is submitted that the Honourable High Court through Order dated: 22.06.2015, disposed of the Criminal Transfer Application, by transferring the Session Case No. 984 of 2014, to Learned VIth Additional Sessions Judge, Karachi South.
5. That the prosecution examined eight (09) witnesses i.e. Benazir Ali Jhutiyaal [Ex. No. 03], Ghulam Muhammad [Ex. No. 04], Muhammad Ali Jhutiyaal [Ex. No. 05], Altaf Hussain [Ex. No. 06], Benazir Jamali [Ex. No. 07], Dr. Shahzadi [Ex. No. 08], Momal [Ex. No. 09] Mst. Jannat [Ex. No. 10] and Muhammad Umar [Ex. No. 12]. The Medical evidence confirming rape/zina-bil-jabbar was provided by Dr. Shahzadi (WMLO) – PW-06. The evidence of PW-06 was based on her independent assessment as well the following reports:

S. No.	Medical Evidence	Exhibit
1.	Provisional Medico Certificate dated: 26.10.2014	08/A
2.	Chemical Examiner Report dated: 14.11.2014	08/B

6. That it is submitted that the said witnesses confirmed the allegations against the Respondent No. 2 as stated in the abovementioned Charge. The Respondent No. 2 recorded his statement under Section 342, Cr. P. C., 1898, before the Learned Trial Court. It is submitted that no defence witnesses were called by the Respondent No. 2 nor did he record his statement on oath.

7. That the Honourable High Court of Sindh, at Karachi, through the Impugned Judgment dated: 04.05.2021, has allowed the Criminal Appeal No. 173 of 2019 in the following terms:

“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;
- 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 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.”

8. That it is most respectfully and most humbly submitted that the Petitioner is aggrieved by the abovementioned Impugned Judgment and having no alternative remedy, the Petitioner challenges the abovementioned Impugned Judgment on, inter alia, following grounds:

### GROUNDS

A. That it is respectfully and most humbly submitted that the Impugned Judgment is clearly contrary to the law and the facts of this case. It is submitted that through Para 8 and Para 11 of the Impugned Judgment, the



6

Honourable High Court, whilst completely ignoring the settled principles of law laid down by this Honourable Court that the sole testimony of the rape victim is enough for conviction in case it inspires confidence and appears reliable, has given a completely erroneous finding by observing that "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". It is submitted that in regards to the evidence i.e. deposition of the Petitioner/rape survivor, wherein the Petitioner very clearly disclosed that she was subjected to rape by the Respondent No. 2, is confidence inspiring and a great sanctity is attached to the statement of the victim, particularly in view of the fact that the Honourable Courts have observed that very rarely will a girl or a woman in a tradition bound non-permissive society make false allegations of sexual assault or would expose herself to ridicule and shame in a society like ours. Even otherwise, it is submitted that the aforementioned testimony of the Petitioner No.1 was strongly corroborated by the medical evidence provided by PW-6/WML0 in the form of Final Medico Legal Reports and the Chemical Examiner's Report (Exhibit 08/B to 08/C). Therefore, the Impugned Judgment being erroneous and against the principles of natural justice and violative of the fundamental rights of the Petitioner under Articles 4, 10-A, and 14, Constitution, 1973, is liable to be set aside.

B. That it is respectfully and most humbly submitted that the Impugned Judgment is clearly contrary to the law and the facts of this case. It is submitted that through the Impugned Judgment, the Honourable High Court has completely misread or selectively read the evidence of PW-6 Dr. Shahzadi by holding in Para 5 of the Impugned Judgment as follows:

- i. *"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. Furthermore, weight has to be given to what the doctor stated at trial under oath".*
- ii. *"The detection of human sperm without a determination that it was sperm from the accused cannot be the sole reason to uphold a conviction".*

- 7
- iii. *"The medical evidence produced at trial by the prosecution does not reconcile with the version advanced by the prosecutrix".*

It is submitted that the medico legal report relied upon by the Honourable High Court was not a conclusive report and merely a provisional medico legal certificate (Ex 08/A), whereas the chemical examiner report (Ex 08/B) and the final medico legal certificate (Ex 08/C) both explicitly concluded that sexual intercourse had been committed with the Petitioner. It is submitted that the discrepancy in the provisional and final medico legal reports is of no value as the conclusiveness is to be determined by the final medico legal report and the chemical examiner report. Furthermore, the discrepancy in the statement of the PW-06 as well as the final medical report is of no value when in the final medical report, it has been specifically mentioned that the act of sexual intercourse has been committed with the Petitioner within 72 hours. Even otherwise, without prejudice to the above, it is submitted that this Honourable Court in various pronouncements has held that even if doctor's evidence is negative, rape conviction can be upheld. It is further submitted that through the Impugned Judgment, the Honourable High Court, whilst completely ignoring the settled principles of law laid down by this Honourable Court has given an erroneous finding to the effect that the detection of human sperm without a determination that it was sperm from the accused cannot be the sole reason to uphold a conviction. It is submitted that as has been recently laid down by the Honourable Supreme Court, DNA testing and matching is not a requirement of law where rape has been established otherwise. Therefore, the Impugned Judgment being erroneous and against the principles of natural justice and violative of the fundamental rights of the Petitioner under Articles 4, 10-A, and 14, Constitution, 1973, is liable to be set aside.

- C. That it is respectfully and most humbly submitted that the Impugned Judgment is clearly contrary to the law and the facts of this case. It is submitted that the Honourable High Court has erroneously held in Para 5 of the Impugned Judgment that "the fact that she had actively resisted her alleged

8"

abduction as well as assault on her, it seems improbable that absolutely no mark, injury or a scratch was sustained by her in the entire encounter". It is submitted that the abovementioned finding is completely contrary to the settled principles of law laid down by this Court that proof of resistance and marks of violence are not necessary for a conviction of rape. Therefore, the Impugned Judgment being erroneous and against the principles of natural justice and violative of the fundamental rights of the Petitioner under Articles 4, 10-A, and 14, Constitution, 1973, is liable to be set aside.

D. That it is respectfully and most humbly submitted that the Impugned Judgment is clearly contrary to the law and the facts of this case. It is submitted that through the Para 6 and Para 11 of Impugned Judgment, the Honourable High Court has erred in holding that the "evidence given by the prosecution witnesses in this case was far from confidence inspiring" and "the prosecution witnesses did not corroborate the version of the prosecutrix, even pre or post the alleged rape incident". It is submitted that it is a settled principle of law that mere contradictions in statement of the witnesses do not destroy the intrinsic value of the evidence, as long as variations do not relate to the 'material' part of prosecution story. It is submitted that, in the present case, the minor contradictions between the prosecution witnesses do not affect the material part of prosecution story, therefore, it cannot destroy the intrinsic value of the entire evidence and cannot be made basis for the acquittal of the accused. Therefore, the Impugned Judgment being erroneous and against the principles of natural justice and violative of the fundamental rights of the Petitioner under Articles 4, 10-A, and 14, Constitution, 1973, is liable to be set aside.

E. That it is respectfully and most humbly submitted that the Impugned Judgment is clearly contrary to the law and the facts of this case. It is submitted that through Para 6 of the Impugned Judgment, the Honourable



9

High Court has erroneously held that there are following flaws in the investigation and the statement of the Investigation officer:

- i. *“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 kidnappers) and that due to a dispute concerning children playing on the street differences had arisen and thus his daughter had accused Janwari;*
- ii. *“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 pointed out the place to him;*
- iii. *“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;*
- iv. *“that during investigation he had not tried to understand the medical examination report of the victim;*
- v. *“he had not taken any blood sample from the accused for DNA purposes;*
- vi. *“that the reports of the chemical examiner and the medical certificate were in English and that he could not understand the reports;*
- vii. *“that (although he was the investigating officer) he had not prepared the memo of seizure of the clothes of the prosecutrix”;*
- viii. *“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 record the statement of any person in the Ghareebabad, who might have seen a traumatic girl run at distance of one kilometre 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”.*

It is submitted that it is a settled principle of law that the prosecutrix has no control over the investigating agency and the negligence of an investigating officer could not affect the credibility of the statement of the prosecutrix. Therefore, the Impugned Judgment being erroneous and against the principles

10

of natural justice and violative of the fundamental rights of the Petitioner under Articles 4, 10-A, and 14, Constitution, 1973, is liable to be set aside.

F. That it is respectfully and most humbly submitted that the Impugned Judgment is clearly contrary to the law and the facts of this case. It is submitted that through the Para 9 of the Impugned Judgment, the Honourable High Court has erroneously drawn a negative inference from the fact that the previous rape committed by the same accused/Respondent. 2 on the Petitioner was not investigated had further created doubts in the prosecution case. It is submitted that it is a settled principle of law that the prosecutrix has no control over the investigating agency and the negligence of an investigating officer could not affect the credibility of the statement of the prosecutrix. It is further submitted that it is also settled law that the non-disclosure of the factum of previous rape does not discredit the version of the prosecutrix, as there exist many compelling reasons for women in our society to remain silent in cases of sexual assault. It is further submitted that testimony of the Petitioner is corroborated by the fact that immediately after the incident she disclosed the rape incident to SIP Benazir Jamali (Ex. No. 07), Retired ASIP Muhammad Umar (Ex. No. 12) and Dr. Shahzadi (Ex. 8/A), which disclosure is consistent with her FIR and her evidence before the Trial Court and remained unshaken during the cross-examination. It is further submitted that the testimony of the Petitioner, other than the immediate disclosure, is also strongly corroborated by the medical evidence, and no malafide motive has been proved against the Petitioner to show that she has made allegedly false accusations. Therefore, the impugned Judgment is liable to be set aside.

G. That it is most respectfully and most humbly prayed that the Petitioners may graciously be allowed to urge further grounds in addition to the above at the hearing of this present case.

**PRAYER**

//

It is, therefore, most respectfully prayed that leave to appeal against the Impugned Judgment dated: 04.05.2021 passed by the Honourable High Court of Sindh, at Karachi in Criminal Appeal No. 173 of 2019, may graciously be granted, and the operation of the Impugned Judgment dated: 04.05.2021 may be suspended, and consequently, the Respondent No.2 may be convicted of the offences specified in the Charge dated: 28.04.2015 in Session Case No. 1224 of 2015.

**DRAWN BY**

FAISAL SIDDIQI  
ADVOCATE SUPREME COURT  
OF PAKISTAN  
KARACHI

**FILED BY**

(SYED MAHMOOD ABBAS)  
ADVOCATE-ON-RECORD  
SUPREME COURT OF PAKISTAN  
ISLAMABAD

**CERTIFICATE**

Certified under instructions that prior to this no other petition against the Impugned Order was filed by the petitioner before this Honourable Court.

(SYED MAHMOOD ABBAS)  
ADVOCATE ON RECORD