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**IN THE COURT OF II ADDL. DISTRICT & SESSIONS JUDGE
KARACHI EAST**

Sessions Case No. 179 of 2008.

- 01. Khadim Hussain Shah
s/o Willayat Hussain Shah.
- 02. Arif Ansari s/o Anwar Ali Ansari.
- 03. Raja Muhammad Arif
s/o Raja Muhammad Afzal.....Accused.

Versus

The State.....Complainant.

FIR NO.50/2008.
U/S. 365-B/376(ii) of the
Protection of Women (Criminal
Laws Amendment) Act 2006.
P.S. Brigade, Karachi East.



Mr. Ghulam Mustafa Memon,
Advocate for the Accused Khadim Hussain Shah.

Mr. Arshad H. Lodhi, Advocate for the Accused Arif Ansari and
Raja Muhammad Arif.

Mrs. Amna Usman, Barrister at law,
Advocate for the Complainant.

Miss. Nuzhat Qamar, ADPP for the State.

J U D G M E N T.
Dated:05.10.2021.

By this judgment I intend to dispose this case in
which accused persons above named have been sent up by the
Brigade, police station, Karachi to face the trial for the offence
punishable under Section 365-B/376(ii) of the Protection of

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Women (Criminal Laws Amendment) Act 2006, in FIR No.50 of 2008 of the same police Station. Prior to this judgment the accused persons above named have been acquitted by this court vide judgment dated 06.04.2013. The Complainant being dissatisfied challenged the judgment of this court before the Hon'ble High Court of Sindh Karachi, in Criminal Acquittal Appeal No.135/2013. The Hon'ble High Court of Sindh vide order sheet dated 21.05.2021 set aside the judgment of this court and remanded back the matter for passing fresh judgment strictly in accordance with law after hearing the parties without being influenced by impugned judgment as recorded by the trial court. However, District Court shall decide the same preferably within three months. Since accused were on bail, therefore, they shall be considered on bail on same bail bonds.

Brief fact as narrated in the FIR are that complainant Bashir Ahmed lodged FIR stating therein that they came from Punjab alongwith other family members on two buses to Sehwan Sharif for Ziarat purpose. Thereafter on 15.03.2008 they visited Karachi at the Mazar of Quaid-e-Azam Muhammad Ali Jinnah where they were visiting the Mazar and their buses were parked outside the Mazar. At about 2100 hours his son in law Fayyaz Hussain alongwith Fida Hussain and his daughter Razia Kubra (victim) and other 12 women went to see the museum whereas his daughter at the instance of her husband stood there. Her husband disclosed with her that he would bring the other family members and after 15 minutes when he came back his above said daughter was not present there. His son in law informed the complainant to make efforts to search her but could not find her. The complainant suspected on the employee of museum as well as employee of Mazar Quaid to kidnap his daughter with intent to commit zina.



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After registration of the FIR abductee was recovered and her statement under section 164 Cr.P.C. was recorded before the concerned Magistrate wherein she disclosed that while her husband Fayyaz went to bring his sister that two persons came there, one of them put the handkerchief on her mouth and another person aimed pistol upon her and brought her in a room adjacent with the museum where three other persons came there and all five persons committed zina with her. Police arrested the accused persons above named.

Investigation Officer after conducting usual investigation has submitted charge sheet against the above named accused before concerned Magistrate. Case was received to this court on 07.06.2010 by the order of Hon'ble District & Sessions Judge, Karachi East for disposal according to law.

In compliance of section 265-C Cr.P.C, copies supplied to the accused persons above named at Ex.01 & Ex.2.

A formal charge under section 265-D Cr.P.C at Ex.03 framed and read over to the accused persons above named under section 265-E Cr.P.C on 02.08.2008, to which they had not pleaded guilty at Ex.03/A and claimed for trial, therefore, evidence was called against the accused persons in compliance of section 265-F Cr.P.C.

In order to prove the case against the accused persons above named, prosecution has examined 14 witnesses i.e. PW-1 ASI Asghar Ali Chohan examined at Ex.04, who produced Roznamcha Entry No.29 dated 16.03.2008 at Ex.04/A. PW-02 Razia Kubra examined at Ex.05. She produced her statement u/s 164 Cr.P.C. at Ex.5/A. PW-03 Bashir Ahmed examined at Ex.6, who produced FIR at Ex.6/A. PW-4 Fayyaz



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Hussain examined at Ex.7 who produced memo of inspection of place of incident at Ex.7/A and memo of arrest of accused Khadim Hussain & search at Ex.7/B. PW-5 M.O. Central Jail, Karachi Nisar Ali Shah examined at Ex.08, who produced letter 24.03.2008 for medical examination at Ex.8/A and medical certificate No.1331/2008 at Ex.8/B. PW-06 Nazeer Ahmed examined at Ex.09, who produced memo of pointaiton of recovery of victim at Ex.9/A. DDPP for the State filed statement dated 21.10.2009 to give up PW Ameer at Ex.10. PW-07 MLO Dr. Ghulam Sarwar Channa examined at Ex.11, who produced medical certificate No.1553/2008 of accused Arif Ansari at Ex.11/A, medical certificate No.1554/2008 at Ex.11/B and letter dated 05.04.2008 address to MLO at Ex.11/C. PW-8 SIP Munir Ahmed examined at Ex.12. PW-09 Dr. Abdul Hameed examined at Ex.13, who produced letter dated 28.03.2008 issued by SSP South Zone Karachi, alongwith attested copies of letter address to SSP dated 28.03.2008, FIR, two medical legal certificate of accused Khadim Hussain and Mst. Razia Kubra, memo of inspection of place of incident, pointation memo, memo of arrest of accused at Ex.13/A to 13/H respectively. He also produced original blood sample of accused Khadim Hussain at Ex.13/I, blood sample of Razia Kubra at Ex.13/J, original blood sample at Ex.13/K, original DNA report dated 10.04.2008 of accused Khadim Hussain at Ex.13/L. He further produced letter dated 07.04.2008 issued by SSP South investigation alongwith copies of the FIR, Medico legal certificate of accused Arif Ansari and Raja Muhammad Arif at Ex.13/M to Ex.13/P respectively. He further produced first certificate of the accused Arif Ansari and Raja Muhammad Arif dated 24.04.2008 at Ex.13/Q, letter of second certificate dated 23.10.2008 at Ex.13/R, letter of SSP Investigation Zone-II South dated 02.10.2009 at Ex.13/S,



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another letter dated 16.10.2008 issued by SSP Investigation South at Ex.13/T and letter dated 08.05.2008 at Ex.13/U. Lastly he produced log sheet consisting of pages No.24, 25 & 31 at Ex.13/V. PW-10 WMLO Dr. Rohina Hassan examined at Ex.14, who produced medical certificate of Razia Kubra at Ex.14/A, letter dated 17.03.2008 address to MLO at Ex.14/B and final report at Ex.14/C. Statement of process server ASI Gul Dost Khan was recorded at Ex.15 wherein he reported that PW SI Sabir Hussain has been expired on 01.04.2010 and HC Muhammad Hayat has been retired from his service. PW-11 PC Zafar Iqbal examined at Ex.16, who produced memo of arrest & search of accused dated 24.03.2008 at Ex.16/A and memo of arrest and search of accused dated 24.04.2008 at Ex.16/B. PW-12 Inspector Abid Hussain Ansari examined at Ex.17. Since the IO of the case reported to be died, therefore, PW-13 Inspector Abid Ansari examined at Ex.18 being well conversant to the signature and handwriting of I.O. PW-14 Judicial Magistrate Javed Hussain examined at Ex.19, who produced letter dated 22.03.2008 for identification parade at Ex.19/A and memo of identification parade at Ex.19/B.



Thereafter prosecution closed its side vide statement at Ex.20.

Statements of accused persons were recorded u/s 342 Cr.P.C. at Ex.21 to Ex.22, wherein, they denied the allegation of prosecution leveled against them and pleaded to be innocent. Accused persons namely Arif Ansari s/o Anwar Ali Ansari and Raja Muhammad Arif s/o Raja Muhammad Afzal neither examined themselves on oath nor produced any evidence in their defence while accused Khadim Hussain Shah s/o

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Willayat Hussain Shah inclined to examine himself on oath and produced witnesses in his defence.

Accused Khadim Hussain s/o Willayat Hussain Shah examined himself on oath u/s 342 (2) Cr.P.C. at Ex.24 and produced news clipping at Ex.24-D/1 & Ex.24-D/2. He deposed that on 15.3.2008 he was security assistant manager in night shift incharge of Affaf Company. On the same day he came on his duty at about 9.30.p.m. On the same day his associate Saqib also with him on duty. During duty hours they were checked the guards round a clock till completion of duty hours. After resuming his duty he came to know from day incharge that one woman was missing from the Mazar infront of Museum. After hearing of such news he informed to his security guards to become abort and he accompanied with Saqib search the whole mazar of Quid but they could not succeed to trace out the woman who missed from Mazar. After 3 & 4 days of the incident his incharge Mr. Arif called him in his office. He alongwith Riaz met with incharge Mr. Arif. In outside of the office of Mr. Arif one lady was present with the person belongs to NGOs might have namely Dr. Khalida Zia, who introduced/pointed out him as Khadim Hussain before the woman present with her. After 02 days police arrested him from Mazar-e-Qaid and brought at police station where Deputy Speaker Shehlah Raza and the person of NGOs also gathered. He produced photo graphs with news clipping which shows the presence of Deputy Speaker Shehlah Raza at Ex.24-D/1 and photo graph of Deputy Speaker with



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advocate on the day when identification parade held before the Magistrate. He produced the same at Ex.24-D/2.

In his defence accused Khadim Hussain examined DW-1 Muhammad Qasim at Ex.25, who deposed that on 15.03.2008 he was serving at Mazar-e-Quaid as guard. He knows accused Khadim Hussain, he was supervising officer. On that day Khadim Hussain came on the duty at 10.00.p.m. he was on his duty at the gate situated towards Nomaish and there were also deployment of Rangers. On the same night two persons one male and one female before him and narrated him that their daughter was missing. When he inquired from them they apprised that one and half hours back their daughter was missing. He advised them to approach to the control room. They received direction from the control room that they should accompany with male and female in order to locate their daughter in missing area. At about 3.30.a.m. of the same night one young girl appears and stood at near the grill where rangers persons also standing there. Meantime police also arrived there and they said the girl that 200 persons in search of her. On inquiry of police official the girl disclosed that she was at the Mazar of Abdullah Shah Ghazi, she further deposed that she slipped from the Mazar-e-Quaid.



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Thereafter statement of bailiff Abdul Wahab was recorded at Ex.26. DW-2 Naila Tabassum, Advocate, examined at Ex.27. She deposed that she has been authorized by Television Media Net Work Private Ltd (Express New) to appear before this court and produce the clipping of the incident which happened in the area of Shahrah-e-Quaid-e-Azam. She produced CD/News clipping/Drama Jorum ka Bad at Ex.26/B. During the cross examination she admitted that in the CD which she produced

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there are clips of Mohterma Shehla Raza Deputy Speaker of Provincial Assembly and victim Razia Kubra. He further admitted that in the CD there appears appearance of victim and Deputy Speaker before the court. She is not in her knowledge and not seen in CD that victim and Deputy Speaker Shehla Raza appears in police station.

Now the points for determination are as under:-

POINTS

Point No.1. Whether the accused persons above named kidnapped victim Razia Kubra d/o Bashir Ahmed with intention to commit illicit intercourse and took her in a store room situated near MUSEUM situated within boundary of Mazar-e-Quaid-i-Azam where accused persons committed zina bil Jabbar with victim Razia Kubra?

Point No.2. What should the order be?

I have heard the learned counsels for the respective parties and perused the record. The learned counsel for the accused Khadim Hussain contended that accused Khadim Hussain is old age person and he is not capable to perform sexual intercourse. He argued that as per certificate of MLO Dr. Nisar Ali that on self-stimulation of accused, his penis no erection seen. On prostatic message erection of penis was seen. After entering finger in the Anus the penis was erected. He further argued that as per evidence of MLO Dr. Nisar Ali penis of accused Khadim Hussain is extra ordinary short. Looking only glans and shaft was covered in it by bulging of skin and soft tissue of pubic area. Hence, he prayed that accused may kindly be acquitted.

The learned counsel for the accused Raja Muhammad Arif and Arif Ansari has contended that victim Razia



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Kubra, herself did not identify the accused persons in the court during her examination in chief. He argued that the names of accused are not mentioned in the FIR nor any specific role attributed to them. He stated that one PW deposed that size of room as 10 X 12 feet and another PW deposed that size of room as 4 X 4 feet. He further argued that the sample was sent after 15 days delay to Islamabad on 17.03.2008 but sample received at Islamabad on 01.04.2008, which was not explained by the prosecution. He further contended that WMLO Dr. Rohina deposed in her evidence that she seized clothes of victim on 17.03.2021 i.e. Kamiz, Shalwar and Burqa and Dr. Hameed in his evidence that these Kameez, shalwar and Dupatta were not sealed. Hence, he prayed that accused above named may kindly be acquitted. In support of his arguments relied upon the case law reported in PLD 2005 SC 181, 2007 SCMR 437, 2008 CR.LJ 555, 2013 Cr.LJ 1716, 2016 PCr.LJ 558, 2017 PCr.LJ 848, 2008 SCMR 1572, 2013 YLR 2563, 2009 SCMR 230, PLD 2002 Supreme Court 1048 and 1995 SCMR 1345.



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The learned counsel for the complainant has argued that the prosecution has examined as many as 14 witnesses. All the witnesses have fully implicated the accused persons in their evidence. The learned counsel further argued that the accused persons have not been pointed out any malafide at the part of complainant regarding their false implication in this case. The learned counsel further contended that the evidence of prosecution witnesses are inspiring confidence to each other, minor contradiction came on record due to passage of time which are not fatal to the prosecution case. The prosecution produced solid and concrete evidence with sufficient material to connect the accused persons and established the case against the accused persons while the learned counsel for the accused

argued their case only on assumption that accused persons are innocent without discussing and pointed out contradiction in the evidence of the prosecution witnesses in their favour. The learned counsel for the complainant further argued that offence is belongs to the prestige of victim, woman as well as her family. No one can made such type of false allegation against any one. The learned counsel for the complainant stated that victim herself deposed against the accused with confidence and also identified the accused in identification parade held before concerned Judicial Magistrate Javed Hussain. Lastly she prayed to convict the accused persons above named under section 376 and 365-B PPC. In support of her arguments she relied upon the case law reported in PLD 2021 SC 362, PLJ 2013 SC 107, PLD2010 FSC 215, PLD 2011 SC 554, 2018 SCMR 1372, 2002 SCMR 1009, 1969 Pcr.LJ 1333, PLD 2020 SC 313, 2011 SCMR 1665, PLD 2010 SC 47, 2002 SCMR 1009, 2018 MLD 1164, (1983) 3 SCC 218, PLD 1989 SC 742, PLD 2005 SC 252, 2015 PCr.LJ 1633, PLD 2019 Lahore 366 (Justice Qazi Muhammad Amin), PLD 1991 SC 412, (1996) 2 SCC 384, PLD 1950 Baghdad-ji-Jadid 71, 1987 PCr.LJ 1979 Para-13, side mark A; PLD 1995 SC 46, 2012 SCMR 1869, PLD 2001 SC 222, PLD 1978 SC 10, PLD 1964 SC 26, 2020 SCMR 618, AIR 2012 SC 1357, PLD 2010 SC 47, PLD 2005 SC 252, 2005 SCMR 1936, 1975 SCMR 69, 2011 SCMR 1665, 2018 MLD 1164, PLD 1977 SC 529, PLD 1978 SC 10, PLD 1964 SC 26, 1992 MLD 1522, 1983 (3) SCC 217, 1999 YLR 101, (1998) 8 SCC 635, 2008 PCr.LJ 943, (1998) 8 SCC 635, and PLD 2009 FSC 65.

Learned ADPP for the State supported the arguments of learned counsel for the complainant.

My findings along-with the reasons on the above points are as under :-



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FINDINGS:

Point No: 1.....Not Proved.

Point No: 2.....Accused acquitted
u/s 265-H(i) Cr.P.C.

REASONS.

POINT NO.1.

In order to prove its case prosecution has examined as many as 14 witnesses namely: PW-1 ASI Asghar Ali Chohan examined at Ex.04, PW-02 victim Razia Kubra examined at Ex.05. PW-03 Bashir Ahmed examined at Ex.6, PW-4 Fayyaz Hussain examined at Ex.7, PW-5 MLO Central Jail, Karachi Nisar Ali Shah examined at Ex.08, PW-06 Nazeer Ahmed examined at Ex.09, PW-07 MLO Dr. Ghulam Sarwar Channa examined at Ex.11, PW-8 SIP Munir Ahmed examined at Ex.12. PW-09 Dr. Abdul Hameed examined at Ex.13, PW-10 WMLO Dr. Rohina Hassan examined at Ex.14, PW-11 PC Zafar Iqbal examined at Ex.16, PW-12 Inspector Abid Hussain Ansari examined at Ex.17. Since the IO of the case reported to be died, therefore, PW-13 Inspector Abid Ansari examined at Ex.18 being well conversant to the signature and handwriting of I.O. PW-14 Judicial Magistrate Javed Hussain examined at Ex.19.



PW-1 ASI Asghar Ali Chohan deposed that during the patrolling he reached near the gate of Mazar-e-Quaid in front of Baab-e-Rehmat Mosque, one mobile bearing No. 8585 of Ranger was already available there. He was called by the HC Allah Ditta of Ranger 92 Wing (D) Company, who handed over a girl for inquiry purpose namely Razia. On query she disclosed that she belongs to District Lodhran, Punjab and she first

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visited Sehwan Shareef then they came at Mazar of Abdullah Shah Ghazi. On the next day they came at Mazar-e-Quaid for visit alongwith her father and husband accompanied with other relatives. She became separated from her relatives/companions. She further informed that inside the boundary of Mazar-r-Quaid two person met with her and asked her why she was standing alone, for which she disclosed that her ladies which have missed. These persons asked her for helping to her. They both brought at their place. The lady was at that time semi-conscious; she brought at PS and handed over to SI Munir Ahmed Siyal. In the cross examination he admitted that it is fact that he did not produce the lady before any medical officer for her treatment as she was appearing semi-conscious. He further admitted that it is mentioned in his entry that he informed to the father of the lady about the fact. Further admitted that it is mentioned in the roznamcha entry that lady informed her relatives asked her for wait on the gate of tomb and her companions went inside of the Tomb. He further admitted that he had not made any entry while they recovered the lady.



PW-2 Mst. Razia Kubra w/o Fayyaz Rahim (victim) deposed that same facts of the FIR, therefore, there is no need to discuss her examination in chief. She further deposed in her examination in chief that two other accused (are also present in the court under custody but they were not identified by the victim, she only identified the accused Khadim Hussain). In cross examination she deposed that she seen the cloths as article 2 it is not of her. She further

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admitted that after two days of the incident she had appeared before WMLO but she does not remember the exact time". She further deposed that "she does not remember whether after her medical examination she went to the police station or to her house". Vol. says that after her medical examination she went to Darul Aman, Karachi. In cross examination she admitted that her statement under section 161 Cr.P.C. recorded by the police on 18.03.2008 in which she stated that said ladies were accompanied with her at the time of reaching the Museum of Quaid-e-Azam Mazar.

PW-3 Bashir Ahmed (father of the victim Razia Kubra) has deposed that on 15.03.2008 his daughter Razia Kubra alongwith Fayyaza, Fida Hussain and other 10/12 women went to Mazar-e-Quaid at about 9.30 p.m. At that time he was available at Patel Para. PW-Iqbal informed the incident to one Pathan, who disclosed the facts to him. In cross examination he admitted that he does not know the name of Pathan. He had not seen any police official or military official at the place of incident. When he reached at the place of incident 60/70 persons came to Karachi in two Mazda Bus from Lodhran".



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PW-4 Fayyaz Hussain (Husband of victim) has deposed that abductee Razia Kubra has his wife and on 15.03.2008 he alongwith his wife, 10/12 women and Fida Hussain came at Mazar-e-Quaid, at about 8.45 p.m. in two buses then they entered in the Mazar-e-Quaid. When they reached at Museum, he asked his wife to stand at museum and he went to main gate to receive other bus. When he returned back to museum and found his wife was not present there. Then he tried to search her whole night but could not find. On 16.3.2008 his father in law Bashir Ahmed lodged FIR at P.S. Brigade. On 17.3.2008 his father in law received telephonic

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message that one girl found then who went to P.S. where his wife was present in un-conscious. In cross examination he deposed that the room where his wife was kept by the accused persons was under-ground. The size of room was hardly 10 X 12 feet. He further deposed that his wife Razia was found outside of Mazar-e-Quaid by rangers. He admitted in his cross examination that four corners of the Mazar-e-Quaid there was four military officials were present there but no other official was available there". He further admitted that when he left his wife near museum of Mazar-e-Quaid the breakdown of electricity took place, therefore, there was darkness.

PW-5 MLO Central Jail, Karachi Dr. Nisar Ali Shah has deposed that he examined the accused Khadim Hussain, his penis is extra ordinary short. Looking only glans and shaft was covered in it by bulging of skin and soft tissue of bulging area. On self-stimulation of penis no erection seen. On prostatic message erection of penis seen. In cross examination he disclosed that he had not measured the length of Penis. Further admitted that after entering finger in anus the penis was erected.

PW-06 Nazeer Ahmed examined at Ex.09. He has deposed that the police broken the lock of said room and found chatai was available and other dirty clothes on the same chatai and the said room was 4 x 4. In cross examination he admitted that police inquired from the security guards about the incident but they did not disclose anything. The abductee Razia is his niece". He further admitted that "clothes present in court are not sealed". He himself had not seen stained on the clothes". "PW-



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Fayyaz is his son in law". He further admitted that forces available at any time at Mazar-e-Quaid.

PW-7 MLO Civil Hospital Dr. Ghulam Sarwar Channa examined at Ex.11. He deposed that he has examined the accused Arif Ansari and Raja Muhammad Arif. They are capable to perform sexual intercourse in their normal life. In cross examination he admitted that after sealing blood and semen he has not given the same to IO. He further admitted that he not seen any injury on the body of accused regarding rape".

PW-08 SIP Munir Ahmed examined at Ex.12. He was posted duty officer at PS from 8.00.a.m. to 8.00.p.m.. In cross examination he disclosed that there was entry prior to lodging FIR regarding missing of victim. He has not mentioned said entry in the FIR.

PW-09 Principal Scientific Dr. Abdul Hameed examined at Ex.13. He deposed the same contents of his report and further deposed that due to typographic error mentioned the name of accused Arif Ansari wrongly written as Asif Ansari and mentioned the date 24.04.2008, the same was rectify and correct in the original record as 23.10.2008. The said rectification was corrected on the letter issued by SSP Zone-II South Karachi dated:2.10.2009. Further clarified that actually the letter dated:23.10.2009 instead of 23.10.2008. In cross examination he admitted that swab the semen of different persons can be mixed when more persons committed zina/sexual intercourse with one lady at a time. Further he admitted that he has only received the parcel of Shalwar but the same was not marked or signed by WMLO. The samples of blood and semen were not signed by MLO. He



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further admitted that word chemical examiner has not been used in both reports. He admitted that the log sheet consist upon all the procedure of DNA. Further admitted that the samples were not sealed which create element doubt. He further admitted that he has not signed the pieces obtained from shalwar after cutting the same, those pieces of shalwar are not available in the court. Vol. says that those pieces of shalwar damaged due to use. He further admitted that semen not visible condition on red color shalwar. Further admitted that articles viz slide, test tube and syringe were not returned nor produced before court so also not sent to SSP investigation South Zone Karachi. He further admitted that involvement of accused cannot be mentioned in DNA report. Further admitted that he has not received blood and semen sample of accused Ansari after 10.4.2008.



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PW-10 WMLO Dr. Rohina Hassan examined at Ex.14. She has deposed that she examined Razia Kubra wife of Fayyaz Hussain aged about 18 years with the history of rape. During her examination in chief she deposed that there was no mark of violence on her body. Patient was very sluggish. She admitted in her cross examination that she prepared final report after report of DNA test which was prepared at Islamabad. She has not received any report from chemical examiner". She further admitted that she sealed the Qameez, red silky Shalwar, and black Burqa of victim but she signed on white cloth after sealing the same". She admitted that she has not seen any mark of semen on the red silky shalwar". Further admitted that; "she has not sent articles to Chemical Examiner for analysis.

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PW-11 PC Zafar Iqbal examined at Ex.16. He is mashir of memos of arrest of accused persons at Ex.16/A & 16/B.

PW-12 Inspector Abid Hussain Ansari examined at Ex.17. He arrested the accused persons namely Bashir Ahmed and Bagh Ali and prepared Ex.16/A.

PW-13 Inspector Abid Ansari examined at Ex.18. He is well conversant of handwriting and signature of Sub-Inspector Sabir Ali and verified that Ex.7/A, Ex.8/A, 9/A, Ex.11/C, 13/A and 16/B having handwriting and signature of Sub-Inspector Sabir Ali.

PW-14 Judicial Magistrate Javed Hussain examined at Ex.19, who has reiterated the same contents of memo of identification parade at Ex.19/B. During cross examination he admitted that he has not issued any notice to accused on 22.03.2008 prior recording the statement u/s 164 Cr.P.C. The identification parade of accused Khadim and statement of victim u/s 164 Cr.P.C. both were recorded on different dates. He does not remember whether he maintained the diaries for above both proceedings.



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I have considered the arguments advanced by the learned counsels for the respective parties and also have gone through the evidence brought by the prosecution through their witnesses, it appears that in the evidence of prosecution witnesses material contradiction came on the record viz ASI Asghar Ali has deposed that I did not produce the lady before any medical officer for her treatment. Victim Razia Kubra herself did not identify the co-accused Arif Ansari and Raza Muhammad Arif in her examination in chief before the court. She also did not identify cloths as article II. She appeared before WMLO after two days of the incident. PW Bashir Ahmed is not eye witness of the

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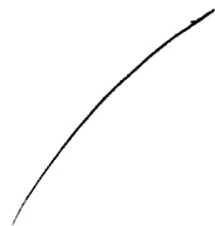
incident. His evidence is hearsay evidence. PW Fayyaz Hussain, who is husband of victim Razia Kubra has deposed that the size of room is hardly 10 X 12 feet on this point. PW Nazir Ahmed who deposed that size of room was 4 X 4 feet. PW Fayyaz Hussain admitted that military officer are present at four corners of Mazar-e-Quaid. PW-Nazir Ahmed disclosed that police enquired from the security guards, but they did not disclose anything about his niece abductee Razia. Cloths present in court are not sealed. He had not seen blood stained on the cloths. Dr. Ghulam Sarwar Channa has stated that he had not seen any injury on the body of the accused regarding rape. Dr. Nisar Ali Shah stated that on self-stimulation of penis of accused Khadim Hussain no erection seen on prostatic message erection of penis seen. Further stated that after entering finger in the anus the penis erected. Dr. Abdul Hameed has stated that swab the semen of different persons can be mixed when more persons committed sexual intercourse with one lady at a time. Further stated that he had only received shalwar but the same was not marked or signed by WMLO and also sample of blood and semen are not signed by MLO and the samples were not sealed which create element doubt. PW-10 WMLO Dr. Rohina Hassan deposed that there was no mark of violence on her body. Patient was very sluggish. On examination external genitalia normal, hymen torn old healed, vestibule congested all around.



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PW-14 Judicial Magistrate Javed Hussain admitted in cross examination that victim has not specifically stated that accused Khadim Hussain, who committed the zina with her.

The DNA can be extracted from the cells of a variety of body fluids and tissues. While the majority of tests are carried



out using DNA from blood cells, cells obtained from the lining of the cheek using a mouth wash or cells in the roots of a person's hair.

The DNA test may help in establishing the legitimacy of a child for several other purposes, its utility and evidentiary value is acceptable but not in a case falling under the penal provisions of Zina punishable under the Haddood Laws having its own standard of proof. Otherwise who launch a charge of Zina are required to produce four witnesses to support their allegations and upon failure are liable to suffer punishment as prescribed in Ayat No.4 of Surah Al-Noor.

In this case the prosecution evidence which rest over the interested as well as independent evidence which or apparently no favoured to the prosecution and rendered one of setup story as in the light of above discussion. Prosecution has failed to produce sufficient evidence through their witnesses of the incident.

In the circumstances mentioned above I am fortified in my view by the case reported in 1996 SCMR 188, 2003 YLR 2958 (6) it has been held reproduce the same as under:-

"When ocular or direct evidence had stood the test of proof, supporting or corroborating evidence would lend support to prosecution case. If prosecution would fail to lead or produce direct evidence or connectivity or circumstantial evidence was not mentioned, the corroborative or supporting evidence would become immaterial. Rule of circumstantial evidence was that failure of prosecution to prove one link of the chain of circumstances would destroy all links. When conviction was based on circumstantial evidence alone, the facts proved must be incompatible with the innocence of accused and were incapable of being explained upon any reasonable hypothesis other than the



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guilt of accused. Burden lying on prosecution would never shifts. Duty of the court was to require prosecution to prove every part of its case affirmatively by evidence on which it had built up its case. Prosecution would not be given edge to shift otherwise when it felt that evidence relied upon was not supporting it. Prosecution had to display its weapon before. The court and then leave it to court to judge. Even if the court would find that proof adduced by prosecution had led to some suspicion and fell short of the assertion, it had made, case would be doubtful and its benefit would go to the accused".

It is a settled principle of law that:

"Single circumstance is enough to entitle the accused to benefit of doubt as matter of right if it creates reasonable doubt in a prudent mind."

I have relied upon the unreported case law of Hon'ble High Court of Sindh Branch Sukkur passed judgment in criminal appeal No.S-20/2018. I produced the para No.13, para No.18 and 20 wherein it is observed that:



Para NO.13.

"Single infirmity creating reasonable doubt regarding truth of the charge makes the whole case doubtful".

Para No.18.

"The swabs, taken from her vagina allegedly on 28.09.2016, were delivered to the chemical examiner for chemical analysis on 03.10.2016 with approximate delay of five days. What was done with those vaginal swabs for five days? No explanation to it is offered by the prosecution".

PARA NO.20.

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If the Court disbelieves evidence for one of accused then no conviction could be recorded on same set of evidence without availability of independent corroboration to the extent of such other person.

It is admitted fact that as per evidence of Dr. Abdul Hameed had admitted that he has received the samples on 11.04.2008 after lapse of 06 days, those samples for those day no explanation it is offered by the prosecution.

I have taken guidelines from the case laws reported in PLD 2005 SC 181, 2007 SCMR 437, 2008 CR.LJ 555, 2013 Cr.LJ 1716, 2016 PCr.LJ 558, 2017 PCr.LJ 848, 2008 SCMR 1572, 2013 YLR 2563, 2009 SCMR 230, PLD 2002 Supreme Court 1048 and 1995 SCMR 1345 wherein it is reported that:

1. PLD 2005 S.C. 181.

Further plea raised by the accused was that as per medical evidence. neither any mark of violence was found on the body of abductee, nor she was subjected to the act of rape.

2. 2007 SCMR437.

No report of Chemical Examiner regarding swabs of victim was available, in spite of the fact that according to prosecution, the parcel was sent to Chemical Examiner--- Effect Such piece of evidence having been withheld by prosecution, therefore, adverse inference could be taken against the prosecution.

3. 2008 CR. L. J. 555.

Unless role to each accused in the crime is attributed at the very outset, his identification at the identification parade or subsequently in the Court would be of no use to prosecution.

4. 2013 P. CR. L.J. 1716.

Victim lost the most important occasion to narrate the actual act necessary to convict the accused even could not point out the accused present in the court to be those



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who committed the offence---- Medical Officer stated that no marks of violence were detected on any part of body of the victim except on the back of both hands----Genitalia vulva was found healthy, no swelling or scratch mark or injuries were noted over vulva region and vagina admitted two fingers.

5. 2016 P. CR, L.J. 558.

Victim was the only relevant witness of alleged occurrence, but her statement was not safe to be relied upon. Woman Medical Officer deposed that she had noted hymen was ruptured with old healed margin, and there were no tear laceration bruises swelling-- Medico legal examination certificate showed that although victim had experienced sexual intercourse, but no signs of resistance were present, - Clothes of victim which she was wearing at time of alleged occurrence, were not taken into possession by Investigation Officer, nor were same produced at time of medical examination.

6. 2017 P. CR, L.J. 848.

Benefit of doubt always go in favour of accused Prosecution was duty bound to prove its case beyond any reasonable doubt, and if any slightest doubt was created, its benefit to be extended necessary to the accused.

7. 2008 S.C.M.R. 1572.

Identification parade had been held after six days of the arrest of the accused and without satisfying the requirement of law.

---Single infirmity creating reasonable doubt in the mind of a reasonable and prudent mind regarding the truth of the charge makes the whole case doubtful.

8. 2013 Y.L.R. 2563.

---No bleeding occurred at the time of occurrence and if girl of 15 years was forcibly raped by 2 young boys then there must have been symptoms of the same on the body of the victim but no marks of violence were found on her body and mere redness of the virginal area could be self-suffered ---- DNA report did not support the prosecution version and no penetration took place as the hymen of the victim was found to be intact which against negated the entire story of the victim and the complainant.



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9. 2009 S.C.M.R, 230.

(c) Criminal Trial-- Benefit of doubt-Principle.-For giving the benefit of doubt it is not necessary that there should be many circumstances creating doubts. Single circumstance creating reasonable doubt in a prudent mind about the guilt of accused makes him entitled to its benefit, not as a matter of grace and concession, but as a matter of right

10. PLD 2002 Supreme Court 1048.

b) Penal Code (XLV OF 1860) Rule of benefit of doubt was essentially a rule of prudence which could not be ignored while dispensing justice in accordance with law---Doubt must be reasonable and not imaginary-----Said rule was based on the maxim "It is better that ten guilty persons be acquitted rather than one innocent person be convicted"

11. 1995 SCMR1345.

Art. 4 Benefit of doubt, grant of---For giving benefit of doubt to an accused it is not necessary that there should be many circumstances creating doubts-----If a simple circumstance creates reasonable doubt in a prudent mind about the guild of accused, then he will be entitled to such benefit not as a matter of grace and concession but as a matter of right.



It is well settled law that for extending benefit of doubt if simple doubt arose in the prudent mind the same would be extended to accused not as a matter of grace or concession but as a matter of right, in this regard I respectfully rely upon the case law reported in 2005 Cr.L.J.1086, wherein it has been held:

"It is not necessary that there should be many instances of doubt in a case. Only one doubt about prosecution case is enough, if it appeals to mind of prudent man."

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The prosecution has not produced solid and concrete evidence through victim and other witnesses. It appears that they have not deposed inspiring confidence evidence to each



other, many contradictions made out between the evidence of prosecution witnesses. Further prosecution tried to improve its case same were discussed between the evidence of witnesses as above when the medical evidence not inspiring confidence as MLO Civil Hospital Dr. Ghulam Sarwar Channa has admitted during his cross examination admitted that "I have not seen any injury on the body of accused regarding rape", while Dr. Abdul Hameed Principle Scientific deposed that "No fresh stained of either blood or semen were observed on any of the items recovered from the crime scene and therefore not used for DNA extraction". He during his cross examination admitted that "It is correct that in semen no other mixture was available. It is correct that in the swab the semen of different persons can be mixed when more persons committed zina/sexual intercourse with one lady at a time". Dr. Rohina Hassan WMLO Civil Hospital deposed that "There was no mark of violence on her body". It is admitted position that after two days of the incident she was produced before WMLO for her medical examination which was conducted by the lady doctor. From perusal of the above medical evidence, there are so many dents in the prosecution case.

Resultantly, relying on the supra case laws and in the case in hand position is quite similar where many instances of doubt arose in the mind with regard to the genuineness of the case, as such accused persons are entitled for benefit of doubt, hence point No:1 answered as not proved.

POINT NO: 2:

In view of the aforementioned circumstances, discussions and citation, I would say that the prosecution has



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miserably failed to prove its case against the accused persons beyond any shadow of doubt. As such accused persons namely (1) Khadim Hussain Shah s/o Willayat Hussain Shah, (2) Arif Ansari s/o Anwar Ali Ansari and (3) Raja Muhammad Arif s/o Raja Muhammad Afzal are given benefit of doubt and acquitted them under section 265-H(i) Cr.P.C. They are present on bail, their bail bond stands canceled and surety discharged.

Announced in open Court.

Given under my hand and seal of the Court on 05th day of October, 2021.



[Signature]
(GHULAM MUSTAFA LAGHARI)
IInd Additional Sessions Judge,
Karachi East

PROPERTY ORDER.

The case property mentioned in column No.5 of the charge sheet, is hereby confiscated in accordance with law, after expiry of appeal period.

[Signature]
(GHULAM MUSTAFA LAGHARI)
IInd Additional Sessions Judge,
Karachi East

Date of Application 05/10/21
Date of Estimation 02/10/21
Date of Deposit 02/10/21
Copy Ready on
Copy Certified on 02/10/21
Copy Delivered on
Stamp & Note on
Copying Charges 100/-
Composing Charges 25/-
Press Charges 125/-

Compare by/ Prepared by *[Signature]*
Certified to be true Copy

[Signature] 08/10/21
SERISHTEDAR
IInd Addl District & Sessions Judge