**Ex. No.13.**

IN THE COURT OF ADDL. SESSIONS JUDGE-XTH, KARACHI WEST

**BEFORE:- (IRSHAD HUSSAIN)(J)**

S.C. No. 292 / 2020

The State

Versus

Iftikhar Ahmed alias Babu son of Ejaz Ahme…………………………….Accused

                                                Offence under section 376 PPC

                                                (Cr. No. 444/2019 of P.S Mominabad, Karachi)

**Mr. Farrukh Shareef, Learned Counsel for Accused**

**Ms. Jameela Saeed Otho, Learned ADPP For The State**

**Ms. Asia Munir, the leanred counsel for the complainant.**

**J U D G M E N T**

**07.02.2022**

1.         The above named accused was sent up by S.H.O of P.S. Mominabad, Karachi West to face his trial, for offence punishable under section 376 PPC bearing crime No.444/2019 registered at P.S Mominabad, Karachi West.

2.         Brief facts of prosecution case as narrated in the FIR by complainant Muhammad Sirajuddin Abbasi son of Shahabuddin are that his niece Fiza D/o Ali Muhammad aged about 15 years is residing at House NO.A-450, Hanifabad, Sector 10, Orangi Town, Karachi along with her parents, on 05.11.2019 he was on work, he informed through telephone by his inmates that  Fiza has drunk poison and now she is under treatment in Abbasi Shaheed Hospital, on this information he went to Abbasi Shaheed Hospital, his niece was under treatment in Emergency Ward, he inquired form Fiza, why she has drunk poison, Fiza informed him that her father’s friend Iftikhar alias Babu son of not known was vising term at her house and he was forcibly committing Zia with her for the last six months, she informed to her parents but both of them did nothing, whenever Ifikhar alias Babu come to her he brought something of eating for her and after eating that thing she become unconscious, on 05.11.2019 Iftikhar alias Babu came at her house, she became angry and drunk poison ( mouse killed medicine), her mother brought her in Abbasi Shaheed Hospital. He claimed against Iftikhar alias Babu to commit Zina with her niece for the last six months. On this police registered the FIR U/s 376 PPC against the present accused. Meanwhile the above named accused was arrested and after usual investigation he 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, Victim  Fiza  at Ex. 3, who produced memo of site inspection at Ex. 3/A, memo of arrest of accused at exhibit 3/and discharge cardat Ex. 3/C, P.W-02, complainant Muhammad Sirajuddin Abbasi was examined at exhibit  at Ex. 4, who produced FIR at  Ex.4/A, meanwhile PW Mubin was given up being formal witness by the learned ADPP for the state vide his stated at exhibit  5,  P.W-3 Dr. Samia Sehar  was examined at Ex. 6 who produced  letter of  SIP Durri Aman at exhibit 6/A, MLC NO.77/2019 at exhibit 6/B and  DNA Report NO.  SFDL-2020-524 dated 06.07.2020, PW No.4 SIP Muhammad Hanif was examined at  Ex.7 who produced roznamcha entry NO.41 under which FIR was lodged at exhibit 7/A, PW NO.5 SIP Muhammad Faris was examined at exhibit 8 who produced roznamcha entry No.56 at exhibit  8/A, roznamcha entry No.19 at exhibit 8/B, jail warrant of accused at exhibit 8/C, roznamcha entry No.36 at exhibit 8/D, letter addressed to the learned Judicial Magistrate at exhibit 8/E, copy of notice  under section 160 Cr.P.C. served upon complainant at Ex.8/F and  notice under section 160 Cr.P.C. served upon the accused at exhibit 8/G, PW NO.9 MLO Dr. Suhail Ahmed Yar Khan of  Abbasi Shaheed Hospital, Karachi was examined at exhibit 9 who produced letter of SIP Dariaman at exhibit 9/A, MLC NO.10724/2019 at exhibit 9/B and OPD slip at exhibit 9/C and PW NO.7 SIP Dary Aman was examined at exhibit 10. He was the investigating officer who produced roznamcha entry No. 43 at exhibit 10/A, Roznamcha entry NO.49 at exhibit 10/B, Roznamcha entry NO. 22 at exhibit 10/C, Roznamcha entry No. 36 at exhibit 10/D, letter addressed to incharge Chemical examiner at exhibit 10/E, letter addressed to SP Investigation West-1 at exhibit 10/F, Roznamcha entry NO.36 at exhibit 10/G, CRO record of accused at exhibit 10/H, order of interim pre arrest bail of accused at exhibit 10/I, roznamcha report NO.7 at exhibit 10/J and Chemical Report No.19686/87 dated 28.11.2020 at exhibit 10/K. Thereafter, learned ADPP for the state closed the side of the prosecution vide her statement at Ex. 11.

6.         The statement of accused was recorded under section 342 Cr.P.C at Ex.12 wherein he denied the allegations levelled against him and contended that he is innocent and has falsely been implicated in this case by complainant and alleged victim as the complainant intended to purchase his house. The accused however did not examine himself on oath nor produced any defence witnesses under section 340(2) Cr.P.C. to disprove the allegations levelled against him by the prosecution

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

8.         Learned counsel for accused mainly contended that accused is innocent and he has falsely been implicated by the complainant who intends to usurp the property of the accused. He has also contended that there is no statement under section 164 Cr.P.C. of the victim. He has also contended that there is no identification parade. He has also contended that there is no eye witnesses of the alleged incident. He has also contended that the mother and father of the alleged victim are not the eye witness even they have not appeared in the witnesses’ box. He has also contended that the victim has implicated the accused on the instigation of her parental uncle. He has also contended that DNA report is in negative. He has also contended that not a single witness has supported the version of the alleged victim. He has also contended that accused has never visited the house of the victim. He has also contended that there are so many contradictions in the statement of the victim and complainant which are creating serious doubt in the prosecution story therefore doubt has been created and accused is entitled for benefit of doubt. Lastly he prayed for acquitted of accused.

9.         On the other hand, learned ADPP for the stated assisted by the learned counsel for the complainant mainly contended that accused is nominated in the FIR. She has also contended that victim was examined by the I/O and in her statement under section 161 Cr.P.C. she has clearly implicated the above named accused. She has also contended that victim was examined by the WMLO who clearly stated that the victim was subjected to sexual intercourse. She has also contended that accused was identified before this court and the victim in her statement before this court has clearly implicated and identified the above named accused   being the same accused who committed her rape multiple time. Lastly she prayed that prosecution has proved the case against the accused beyond any reasonable shadow of doubt therefore accused is entitled for conviction for the offence punishable under section 376 PPC.

10.       My points for determination are as under:-

**POINTS FOR DETERMINATION**

1.       Whether accused Iftikhar Ahmed son of Aijaz Ahmed  during last six months prior registration of FIR on 06.11.2019  at inside house  NO. 450, Hanifabad, Sector 10, Orangi Town, Karachi has forcibly committed rape of victim Fiza D/o Ali Muhammad aged about 15 years, niece of complainant Muhammad Sirajuddin on different occasion on multiple times?

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 and learned DDPP 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:

**F I N D I N G S.**

Point No.1--------------------------. Proved.

Point No.2--------------------------The accused Iftikhar Ahmed alias Babu son of Ejaz Ahmed convicted U/s. 265-H(ii) Cr.P.C  for the offence punishable under section 376 PPC and is hereby 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 17.12.2019.

**R E A S O N S**

**POINT NO.1**

13.       In order to prove its case, the prosecution has examined as many as seven witnesses. The allegation against above named accused is that he had committed forcibly committed rape of victim Fiza niece of Complainant repeated time.

14.       In order to prove its case, the case of prosecution opens with the deposition of victim Fiza who has been examined as P.W-1 at Ex. 3. During her examination in chief she deposed that on 04.11.2019, she had consumed poison for at that time Iftikhar alias Babo had come at their house who had been committing zina with her for last 4 to 5 months. She had informed this fact to her mother but she had taken no action. On 04.11.2019, she had complaint to her father as well about the offence of accused but her father too did not take any action against accused and just asked him to go away for the accused had taken oath on Quran that she (victim) may have had seen the dream and he (accused) had committed no such offence. After the accused had gone, her mother had beaten her for why she had disclosed the matter to her father as such she consumed the poison which was kept at their house. After that her mother and daughter in law (Bahoo) of her paternal uncle had taken her at Abbasi Shahed Hospital, where she had been treated. One police constable had come to record her statement at hospital. She had been then shifted from Abbasi Hospital to Jinnah Hospital on very next day. After discharging from Jinnah Hospital, she had arrived back at her home. The FIR of instant case was lodged on 06.11.2019. On 06.11.2019, I.O had visited her house for site inspection. She produced such memo of site inspection at Ex. 3/A and identified her signature on it. Thereafter, the accused was also arrested and memo of arrest was also prepared, which memo she produced at Ex. 3/B and she identified her signature on it.  I.O had recorded her statement U/s. 161 Cr.P.C.  She identified the accused named above   in open court being the same accused who committed her rape.  She was cross examined in length by the learned counsel for the accused.

15.       During the cross she deposed that she herself filed application against her mother before this Court and no one has asked her to file the same. She denied that after consuming poison she had gone at the house of her paternal uncle. She deposed that after consuming poison her mother and the daughter in law (Bahoo) of her uncle had taken her to hospital. She admitted that house of her paternal uncle Noor Muhammad is beside her house. She admitted that her house is admeasured 40 Sq. Yards so also the house of her paternal uncle is situated on 40 Sq. Yards. She denied that relatives of complainant/her Phopha (husband of her paternal aunty) are employee at Abbasi Shaheed Hospital. The accused Iftikhar had come at her house during day time on 04.11.2019 and the timing was in between 1100 hours to 1200 hours. Her stomach was cleaned at hospital. She has not produced the medical record of hospital before this Court. She deposed that possibly the same record would be with her mother. She admitted that it is not mentioned in her statement recorded U/s. 161 Cr.P.C., that her mother had also accompanied her to Abbasi Shaheed Hospital. She had not spent any whole night at Abbasi Shaheed Hospital. She deposed that she had been shifted to Jinnah Hospital on the same day when the night has just approached and she had spent the whole night at Jinnah Hospital. She had no such consciousness so she cannot tell at what time she had been shifted to Jinnah Hospital from Abbasi Hospital. She has not produced the medical record of Jinnah Hospital. She has produced the copy of discharge card from hospital and the original discharge card is available with her. She deposed that she had produced the photocopy before High Court and can produce the original which is with her. Meanwhile the original discharge ticket of JPMC is produced by victim which is taken on record and exhibited at Ex. 3/C. She admitted that there is no any signature or stamp over the discharge ticket/Ex. 3/C. She admitted that the date of admission and date of discharge are the same date i.e. 05.11.2019. She has not met with her mother since the date of incident and she has not gone at her parent’s house. There is no any issue or quarrel on going between her parents and her Phopha Siraj. She deposed that her father is ill tempered and gets angry with everyone due to his ill health. She admitted that her my statement U/s. 164 Cr.P.C was not recorded before competent Magistrate. She deposed that it is not in her memory as to how many times police had obtained her signatures. She deposed that police had obtained her signatures for certain times. She signs in English as well as in Urdu. She admitted that it is mentioned in her statement recorded U/s. 161 Cr.P.C that accused Iftikhar had been committing the rape with her for 5 to 6 months. The contents of her statement U/s. 161 Cr.P.C were read over to her by police. She admitted that it is mentioned in her statement recorded U/s. 161 Cr.P.C that accused used to come after 2 or 3 days and used to come for sexual intercourse with her. She had not informed to any of her relatives about the offence of accused that he had been committing rape with her for last 5 to 6 months. She deposed that accused also used to commit sexual intercourse with her mother as well and she had also not disclosed the same fact to her other relatives. The house of her paternal uncle where she is residing is ground plus two building. She denied that her parent’s house can be seen from inside from the roof top of her paternal uncle’s house. She deposed that her parent’s house is fully covered with cement except around 06 feet Sehan (Courtyard) which too is covered with clothes curtains. She had spent only one night at Jinnah Hospital. She deposed that after night had fallen at Abbasi Hospital, she had been shifted the same night in Jinnah Hospital and that night was completely spent at Jinnah Hospital and in the morning she had been discharged from Jinnah Hospital. She admitted that it is not mentioned in her statement recorded U/s. 161 Cr.P.C that one police constable had also recorded her statement when she was at hospital. She deposed that she was not in much senses and had slightly informed him about the offence. She admitted that she has  not produced any medical proof of the fact that accused used to bring any intoxicated substances while he used to come at her  house and used to serve her the same prior to committing zina with her. She denied that accused Iftikhar did not commit any offence with her. She denied that she has deposed falsely against the accused. She deposed that it is not in her memory that prior to 04.11.2019, when she had consumed poison, when had the accused last time committed zina with her. She had firstly informed her father on 04.11.2019. When the accused committed rape with her, she had informed such fact to her mother. She had informed to her mother about the offence of accused on the very next day of the incident when accused had first time committed rape with her. She deposed that accused had committed rape with her and the next day he was in her room and weeping and accused had again come so she had informed her mother that the uncle was not a good man and he had committed wrong with her. She deposed that the accused used to have frequently breakfast and other meals at her house as and when he wanted. She had informed to her mother for several times during 5 to 6 months accused used to commit Zina with her and she had informed to her father for once i.e. on 04.11.2019. She deposed that whenever she had informed to her mother that uncle was committing zina with her she used to calm down her that uncle would go away and would not repeat his offence once he was married. She admitted that whenever accused committed zina with her, none had witnessed the same. She deposed that when accused had first time committed zina with her she was alone in her room while her other family members were on the roof top of her house. She deposed that whenever accused used to commit offence of zina with her either it was night time when her siblings had fallen asleep or it was the time when her family was present above the roof of her house for normally her family used to sleep above the roof of her house. She is the eldest of her six siblings and after her is her sister who is around 14 to 15 years old. She had informed to her father finally when she had become very upset about the repeated offence of accused with her. She denied that she has levelled false allegations against accused under the instructions of her Phopha (husband of her paternal aunty) and under the instructions of her paternal uncle for her Phopha wanted to buy the house of accused.

16.       Thereafter, prosecution has examined complainant Siraj Uddin maternal uncle of alleged victim as P.W-02 at Ex. 4. He deposed that on 05.11.2019, he was busy in his work and he received phone call from his younger daughter from his house in between 1600 hours to 1700 hours and she asked him to go at the house of Nani Amma (maternal grandmother of her daughter and his mother in law) and not come at his house. When she reached at the house of his mother in law he had received information that Fizza had consumed poison and then went at Abbasi Shaheed Hospital and he found that Fizza was bit conscious and could identify him. He is Phopha of Fizza. Fizza shared with him that for last six months Iftikhar alias Baboo has been committing  rape with her and when she had complaint with her father, her father had denied this fact as such she had consumed the poison for why her father had not believed her. The victim was at Abbasi Hospital and then from Abbasi Hospital, she was shifted to Jinnah Hospital. She was subsequently discharged from Jinnah Hospital and on 06.11.2019, the FIR of present crime was lodged. He produced such FIR at Ex. 4/A and identified his signature on it. On the same day i.e. 06.11.2019, police had inspected the place of incident and had prepared memo of site inspection and obtained my signature, which memo he identified at 3/A and identified his signature on it.  On 17.12.2019, the police had prepared the memo of arrest of accused and had obtained his signature, which memo he identified at Ex. 3/B and identified his signature. On 17.12.2019, police had recorded her statement U/s. 161, Cr.P.C. He identified the accused in open court. He was cross examined in length by the learned counsel for the accused.

17.       During the cross he deposed that he used to have the shop of sweets. He has two sons aged about 25 to 30 years old. He deposed that it is not in his knowledge that there are FIRs of street crimes lodged against his both sons at different police stations. He denied that he is interested to buy the house of accused. He denied that he had sent some people to accused to compel him. He admitted that his relatives work at Abbasi Shaheed Hospital but he has no contact with them. He admitted that one police official Rab Nawaz had come at Abbasi Shaheed Hospital and had met with the girl. He admitted that after the incident he has not gone at the house of parents of victim girl. He does not remember as to how many times police had obtained his signatures. Police has not obtained his signatures within court premises. The I.O had obtained his signature on memo of arrest at P.S. He admitted that he had signed the memo of site inspection at P.S. He deposed that the memo of site inspection was prepared at the place of incident but his signature was obtained by I.O the next day at P.S. He denied that he has falsely implicated the accused in order to grab his house.

18.       P.W-03,   WMLO Dr. Samia Sehar was examined at Ex. 06. During her examination in chief, she deposed that on 07.11.2019, when she was posted as WMLO at Abbasi Shaheed Hospital, at about 01:15 pm, ASI Darya Khan of P.S Mominabad was brought Fiza D/o Ali Muhammad aged about 15 years with history of rape as alleged. She produced police letter dated: 06.11.2019 at **Ex.06/A** and identified the ML number, date and seal of her office and her receiving endorsement. She has examined the victim Fiza D/o Ali Muhammad as under:-

MARKS OF IDENTIFICATION:

1.     Old scar on forehead

On examination, her height was 4 feet 5 inches, weight 35 kg teeth were 7/7, 7/7, breast were developed. Axillary and pubic hair were present.

MARKS OF VIOLENCE:

            No mark of injury seen on her body.

She was in conscious state.

PER-VAGINAL EXAMINATION:

            External genitalia was normal, hymen was torn and healed, vestibule congested, vaginal entry two finger loses and he had taken blood sample of victim for DNA analysis and secured vaginal swabs of victim and sealed the same and handed over to I.O for the purpose of chemical and DNA Test and obtained written endorsement of I.O.

OPINION:

            On the basis of clinical examination, she was not virgo intacta, however, for any fresh act opinion was reserved for DNA and chemical analysis. Meanwhile she issued MLC No.77/19, which she produced at **Ex.06/B** and identified her signature and official seal. Meanwhile she perused DNA report issued by Sindh Forensic DNA and Serology laboratory bearing No.2020524 which shows that no seminal material was detected on vaginal swab of victim Fiza (item-1) i.e vaginal swab, therefore no further DNA analysis was performed. She produced such DNA report bearing No.SFDL-2020-524 at **Ex.06/C**, which is same and correct and self-explanatory. On the basis of clinical examination she is of the view that the victim Fiza D/o Ali Muhammad was subjected to sexual intercourse. She was cross examined by the learned counsel for the accused.

19.       During the cross she deposed that the victim was brought before her for her medical examination by police on 07.11.2019. She does not remember the color of Shalwar Qameez wearing by the victim at the time of her medical examination. She deposed that she had not secured the clothes of the victim. The victim was normal and herself came to her without any problem. The victim disclosed the history of the case to her as that her father’s friend came at home daily for last 8 years and he also lived at her home and was doing such sexual assault with her. The victim was subjected to sexual intercourse but she cannot ascertained that when she was lastly subjected to sexual intercourse. She admitted that according to DNA report no seminal material was detected from the vaginal swab of victim, therefore no further DNA test was performed. It is fact that DNA report is in negative. She denied that no alleged offence of Zina or sexual intercourse was taken place with the victim.

20.       P.W-04 SIP Muhammad Hanif was examined by prosecution at Ex. 07. During his examination in chief he deposed that on 06.11.2019, he was posted as duty officer/SIP at P.S Mominabad. His duty timings were from 0800 hours to 2000 hours. On the same day, at about 2000 hours, complainant Muhammad Sirajuddin Abbasi S/o Shahabuddin R/o H.No.E-480 Mairaj Nabi Colony, Sector 10 Orangi Town Karachi came at P.S and deposed the facts of case cognizable in nature punishable under section 376 PPC against nominated accused namely Iftikhar @ Babu. He accordingly lodged FIR No. 444/2019 as per verbatim of complainant against the nominated accused. Thereafter he read over the contents of FIR before him to which he admitted the same as true and correct and then put his signature. He identified such FIR at Ex. 04/A and also identified his signature on it and as well as signature of complainant. He also kept such fact of lodging of FIR in Roznamacha Register in entry No.41 which he produced at **Ex.7/A**. Thereafter he handed over the investigation of the case to SIO. Thereafter, I.O SIP Dary Aman recorded his statement under section 161 Cr.P.C. he was cross examined by the learned counsel for the accused.

21.       During the cross he deposed that he lodged the FIR at 2000 hours. The victim was accompanied with the complainant when complainant came for lodging of FIR. At first complainant stated the facts of the case which were of cognizable in nature, therefore he lodged FIR as per verbatim of complainant. He denied that he had lodged FIR as per his own wording after hearing the complainant. He deposed that he lodged the FIR as per verbatim of complainant. The contents of FIR were read over before complainant who admitted the same as true and correct and put his signature. He had directly written the FIR without writing rough notes. He denied that he had written the FIR in his own wording. He admitted that according to the contents of FIR the alleged offence was being in progress for last six months till lodging of FIR. He had not referred the victim to any hospital.

22.       P.W-05, SIP Muhammad Faris was examined at exhibit 8. He deposed that on 17.12.2019, he was posted in investigation branch of PS Mominabad. One SIP Dury Aman was already busy in investigation of case/FIR No.444/2019 U/s 376 PPC against the accused Iftikhar @ Babu and the accused was in lock up as the IO SIP Dury Aman arrested him on the same day under a written mashirnama. Meanwhile on the same day SIP Dary Aman had transferred from PS Mominabad to PS Manghopir and SIO of PS Mominabad had transferred the investigation of subject case from SIP Dury Aman to him. He received the police file which shows that previous IO had also got medically examined the accused from MLO. Meanwhile accused was in lock up. He took out the accused from the lock up and interrogated him vide entry No.56 dated 17.12.2019, which he produced at **Ex.8/A**. On the following day on 18.12.2019, vide entry No.19 he left the PS alongwith accused, complainant and victim. He produced such entry at **Ex.8/B**. Meanwhile he produced the accused before learned Judicial Magistrate wherefrom the accused was remanded to judicial custody. Thereafter he handed over the custody of the accused under jail warrant, which he produced at **Ex.8/C**. Thereafter he came back at the police station vide arrival entry No.36, which he produced at **Ex.8/D**. Meanwhile he had moved application before learned Judicial Magistrate for recording statement U/s 164 Cr.P.C which he produced at **Ex.8/E and identified his signature on it** and order of learned Magistrate. He also issued notice to the victim for recording her statement U/s 164 Cr.P.C and served the notice upon accused which he produced at **Ex.8/F and Ex.8/G** and identified his signature on the same. Meanwhile the victim had shifted and did not come for recording her statement U/s 164 Cr.P.C. After completing the investigation he submitted charge sheet against the accused Iftikhar @ Babu. He identified the accused Iftikhar @ Babu in open court.  He was cross examined in length by the learned counsel for the accused.

23.       During the cross he deposed that he received police file only. He deposed that the case property of the case i.e vaginal swabs of the victim were already deposited in Malkhana in safe custody and previous IO had already deposited the same. He denied that he had intentionally not produced the victim before the Court for recording her statement U/s 164 Cr.P.C due to the reason that she was not allegedly supporting the prosecution case. He deposed that she was shifted to somewhere. She admitted that he had not recorded statement U/s 161 Cr.P.C of the victim or any other witness. He deposed that previous IO had already recorded the same. He denied that such fact had come into his knowledge that alleged victim intended to marry with the accused present in the Court. He denied that complainant and victim had falsely implicated the accused in this case. He denied that the whole investigation is based on malafide.

24.       PW-06 MLO/Dr. Suhail Ahmed Yar Khan was examined at Ex.09. He deposed that on 16.12.2019, he was posted as Senior MLO at Abbasi Shaheed Hospital, Karachi and on the same day, at 04:30 pm, one accused Iftikhar Ahmed S/o Aijaz Ahmed aged about 49 years brought by HC-28209 Umar of P.S Mominabad for medical examination in case FIR No. 444/2019, U/s 376 PPC, for the purpose of male potency test/examination on behalf of IO SIP Dary Aman. He produced such police letter at **Ex.09/A** and identified hisreceiving endorsement and official stamp. He examined the accused Iftikhar Ahmed S/o Aijaz Ahmed, aged about 49 years and observed the following things on his body as under:-

1.     He was conscious

2.     No marks of injury/violence at the body surface at time of his examination.

3.     His cloths were changed.

4.     His body parts were washed.

5.     Path washed due to laps of time.

6.     Chin, axillary, pubic hairs grown.

7.     External genital organ developed

8.     No Hydrocele and no any congenital deformity noted.

9.     On PR, PM examination, erection of penis seen.

**OPINION**:

                  On the basis of above clinical examination, he has given his opinion that the accused Iftikhar Ahmed S/o Aijaz is capable to perform the sexual intercourse in normal course of nature and he secured his blood sample and handed over the same to the HC Umar for DNA analysis and thereafter, he issued such provisional medico-legal certificate bearing No. 10724/19 which he produced at **Ex. 09/B** and identified his signature and official stamp. He also produce OPD slip at **Ex.09/C**. He also verified the DNA report at Ex.6/C. He identified the accused Iftihar  in open court. He was cross examined by the learned counsel for the accused.

**25.** During the cross he deposed that it is fact that he is not forensic expert. He deposed that he is MBBS Doctor. He denied that such examination of accused in order to determine his capability to perform intercourse does not come under his domain or assignment. He admitted that it is fact that DNA report is in negative due to non-availability of any semen maternal from the vaginal swab of victim. There is no difference in between rape or intercourse. He deposed that he is not expert of rape which is an offence. It is fact that he was aware about the fact of the case prior examination of accused that accused was involved in a case of rape falls U/s 376 PPC as per police letter. It is fact that as per his opinion the present accused is a fit person to perform sexual intercourse. It is fact that he has not found any marks of injury or violence on the body of accused.

26.       PW-07 SIP Dary Aman was examined at Ex.10. He deposed that on 06.11.2019, he was posted as SIP at P.S Mominabad in investigation branch. On the same day, he received investigation of case FIR No. 444/2019, U/s. 376 PPC against one nominated accused Iftikhar Ahmed alias Baboo. He received FIR. He identified Ex. 4/A being the same FIR. He perused the FIR. Meanwhile, the victim baby Fiza was present at the police station along with his paternal aunty (Phopho) Mst. Mubeena, therefore, he left the P.S along with both the ladies and went to Abbasi Shaheed Hospital under departure entry No. 43 at 2010 hours on the same day, which he produced  at Ex. 10/A. He reached to the Abbasi Shaheed Hospital but no WMLO was present there and he was asked by the concerned officials to come on the following day. Thereafter, he went to the alleged place of occurrence i.e. the house of the alleged victim i.e. H.No. A-450, Hanifabad, Sector 10, Orangi Town, Karachi and inspected the same on the pointation of complainant Muhammad Siraj Uddin Abbasi and on the pointion of victim in their presence. He prepared such memo of site inspection which he identified at Ex. 3/A and identified his signature on it. Thereafter, he came back to police station Mominabad under arrival entry No. 49 at about 2235 hours which he produced at Ex. 10/B. Thereafter, he recorded statements U/s. 161 Cr.P.C of the victim and complainant and other witnesses. Thereafter, he asked the victim and complainant to come on the following day for the purpose of medical. On the following day on 17.11.2019, he left the police station along with victim Mst. Fiza and her paternal aunty (Phopho) for medical examination at about 1150 hours. He produce such departure entry at Ex. 10/C. Meanwhile, he issued a letter to WMLO Abbasi Shaheed Hospital for examining victim Fiza which he identified at Ex. 6/A and also identified his signature and as well as reference endorsement as ML No. 77/19 dated: 07.11.2019 with officials signatures and stamp of WMLO/Dr. Sumiya Sahir. Meanwhile, victim was examined by the WMLO and meanwhile, WMLO secured sample of vaginal swabs of victim baby Fiza for the purpose of DNA and chemical and handed over the same to him. Meanwhile, MLC No. 77/2019 was issued in which WMLO opinioned that victim/baby Fiza was not virgo intacta and final opinion was reserved for want of final DNA report which he  identified at Ex. 6/B being the same MLCnumber 77/2019. Thereafter, he came back to P.S vide arrival entry No. 36 which he produced at Ex. 10/D.  Thereafter, on the following day i.e 08.11.2019, he deposited samples of vaginal swabs to Incharge Chemical Examiner Sindh under a covering letter which he produced at Ex. 10/E and identified  his signature on it and as well as official endorsement of receipt Incharge of office of chemical examiner. He also submitted sample of swabs for DNA Test to DNA Laboratory, Karachi University under a covering letter which he produced at Ex. 10/F. He remained busy in search of nominated accused Iftikhar but he did not find him. After completing his investigation, he submitted his report U/s. 168 Cr. P.C before High ups and thereafter he submitted interim charge sheet U/s. 173 Cr.P.C showing the nominated accused as absconder U/s. 512 Cr.P.C. meanwhile, on 12.12.2019, nominated accused Iftikhar appeared at P.S and produced interim bail order passed by this Court and joined the investigation. He interrogated him and recorded his statement. He kept such fact in entry No. 36 which he produced at Ex. 10/G. Thereafter, he got CRO record of accused. He produced the same at Ex. 10/H. He also produced copy of bail order at Ex.10/I. Meanwhile, on 17.12.2019, he came to know that interim bail order was recalled by the Court and bail application was dismissed. Thereafter, he arrested the accused on the same day from City Court in presence of complainant Muhammad Siraj Uddin and victim baby Fiza under a written mashirnama which he identified at Ex. 3/B and he identified his signature on it.  Thereafter, he brought the accused Iftikhar to the police station Mominabad as I was already transferred and handed over the custody of accused to SIO P.S Mominabad under entry No. 29 at about 1445 hours which he produced at Ex. 10/J. Later on SIP Faris was assigned the subject matter who produced the accused for his medical test before MLO and completed remaining proceedings. He identified the accused Iftikhar in open court. He was cross examined in length by the learned counsel for the accused.

27.       During the cross he deposed that he received the investigation of case as per SIO/Inspector Saleem Naz. He received FIR and entry related to registration of FIR. After receiving FIR, at first he entered entry in the Roznamcha registered and took the victim to hospital. The complainant and paternal aunty of victim baby Fiza were accompanied when he took the victim for her medical examination. It is fact that on the very first day, he directly came to the house of alleged victim from hospital for inspecting the same. The house number is A-450, Hanifabad sector 10, Orangi Town, Karachi. He admitted that there is no other private witness except victim and his paternal aunty Mst. Mubeena. He admitted that he has not recorded the statement of mother of victim. He deposed that mother of the victim refused to record her statement. He denied that the parents of the victim proposed the present accused to take the rishta of alleged victim but accused refused for the same, therefore, he has been booked in this case. He admitted that he himself has not given any application for recording of statement U/s. 164 Cr.P.C of the victim. He deposed that accused was not arrested and meanwhile, SIP Faris moved such application after arrest of accused but he does not know whether such statement U/s. 164 Cr.P.C was recorded or not. He admitted that DNA report is in negative. He admitted that according to chemical report human sperm was not detected from the vaginal swab of victim Fiza Ali. He produced such chemical report No. 19686/87 dated: 28.11.2019 at Ex. 10/K. He denied that accused has not committed alleged offence. He admitted that statement U/s. 164 Cr.P.C of the victim is not recorded. He denied that he has falsely submitted interim charge sheet against the accused.

28.       I have given due consideration to the arguments advanced by learned counsel for the parties and have carefully gone through the material placed so far. 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 Fiza.  It appears that victim Fiza during her examination in chief has clearly implicated the above named accused and stated that accused has committed Zina with her for last 5 to 6 months prior her statement before police. She also clearly stated that when accused very first time committed zina in her room while other family members were on roof and on the very next day she informed such fact to her mother that uncle (accused) is not a good man and he committed wrong with her but her mother ignored the same  and thereafter so many times uncle (accused) committed her rape and she informed such fact to her mother and her mother  replied that  uncle (accused) will not repeat the same next time and  used to calm down her and used to say that uncle (accused) would go away and would not  repeat the offence once he was married. She further deposed that he also complained to her father on 04.11.2019 but no action was taken  as  the above named accused was close friend of her father therefore despite of such complaint to her mother and father no actions was taken against the accused. It appears that since no action was taken by the parents of the victim and accused was bent upon to keep continue such shameful act of Zina with the victim therefore, she took poison in order to commit suicide. It appears that victim was cross examined in length by the learned counsel for the accused.  It appears that during the cross victim denied that accused has not committed the alleged offence of rape with her. She also denied that   her parent sent her proposal to the accused but accused denied and therefore under such revenge she falsely implicated the accused. She also denied that she on the instigation of complainant falsely implicated against the accused.  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 paternal uncle who intended to usurp the property of the accused. It appears that during the lengthy cross as discussed above the victim denied that he has falsely implicated the above named accused. The above named victim was cross examined at length by the counsel of 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. Nothing has come on record that her statement was tutored to her in any manner to falsely implicate the present accused. 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. Victim was cross examined at length by the counsel of accused yet no material contradictions emerged nor did she resign from the accusation she had made against the present accused. The victim proved her reliable witness and was physically examined by WMLO and the said WMLO has supported the version of victim and confirmed that victim was subjected of sexual intercourse. More so the accused was also examined by the MLO who has confirmed that the accused has capability to perform sexual intercourse.

29.       No doubt that DNA report is in negative and human sperm was also not detected from the vaginal swab of the victim but I am not convinced with the contention of the learned counsel for the accused that accused is innocent on the same ground that DNA report is negative. In present circumstances, the offence of ape with victim has been established against the present accused beyond any shadow of doubt. The DNA test to determine that the semen retrieved from the victim’s body and the accused were immaterial and such DNA testing was not required under the circumstances. Furthermore, their lordships in its recent Judgment **Farooq Ahmed Versus The State (PLD 2020 Supreme Court 313)** have held “DNA testing is not a requirement of law”. In the same judgment, their lordships have placed reliance upon **case title Haji Ahmed Versus The State (1975 S.C.M.R 69)*“omission of scientific test of semen status and grouping of sperms is neglect on the part of prosecution which cannot materially affect the other evidence”*.** In the judgment of their lordships, it has been categorically settled that when the testimony of victim girl was confirmed by chemical Examiner’s report and the report of Medico Legal Officer showing her to have been sexually assaulted, the report of DNA was immaterial.

30.       I am also not convinced with the contention of the learned counsel for the accused that there is no 164 Cr.P.C. statement due to the reason that accused was not arrested and he was challenged under section 512 Cr.P.C. and he was arrested later on,   more so the victim has clearly implicated the accused in her statement under section 161 Cr.P.C. before police and as well as before this court.

31.       Furthermore, 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 accused complainant intended to usurp the house of the accused but the accused neither examined himself on oath nor produced any defence witness in support of his contention.  I have also not found any force in the contention of the learned counsel  for the accused that parents of the victim has sent proposal of the victim for the accused but accused refused for the same therefore the alleged victim has falsely booked the accused in this case. It appears that accused not produced any proof or any defence witness in support of such alleged contention. From the above testimonies of prosecution witnesses, it is crystal clear that the accused has committed the shameful act of rape with the victim. All the prosecution witnesses were cross examined at length and nothing material came on record to shake and dent their testimonies. There are certain natural and immaterial contradictions and discrepancies in investigation such as the complainant admitted that he signed the memo of site inspection and memo of arrest at the police station but I am of the view that question for determination is not the arrest of accused or inspection of alleged place but question for determination is that whether accused has committed the offence of rape or not, it is therefore, which have not hampered the case of prosecution in any manner and prosecution case stands fully proved. I am satisfied that in the present case, the prosecution has established its case against the accused beyond reasonable doubt. I am of the firmed view that the present accused has committed the shameful offence of rape with the victim as such point under discussion is answered in affirmative.

**POINT NO. 2:**

34.       In view of forgoing facts, circumstances and discussions made in point No.1, this Court has reached to the conclusion that the accused has committed shameful act of rape of victim Mst. Fiza  as such he requires no leniency under the law. The offence of commission of rape U/s. 376 has been fully proved against the accused beyond shadow of any doubt. The accused Iftikhar Ahmed alias Babu son of Ejaz Ahmed convicted U/s. 265-H(ii) Cr.P.C for the offence punishable under section 376 PPC and is hereby 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 17.12.2019. 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 7th day of February, 2022.