**Ex. No.14**

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

**BEFORE:- (Irshad Hussain)(J)**

**Sessions Case No. 1564/2019**

The State

Versus

**Khalil Ahmed S/o Muhammad Rafique**……………….……………..……….Accused

**FIR No.130/2019**

**U/S: 376 PPC**

**PS. Ittehad Town**

***Mr. Abdul Salam Lari, Counsel for the accused***

***Mr. Ashar Emanual, ADPP for the State***

***Assisted by Ms. Asia Munir Counsel for the complainant***

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

**29.01.2022**

By this judgment I will dispose of the subject case, wherein accused has been challaned to stand his trial for offence mentioned above.

2.       Brief facts of prosecution case as narrated in the FIR by complainant Muhammad Zahid are that he has four sons and three daughters. On 31.05.2019 his daughter Aqsa, aged 15/16 years was present at house bearing No.2612, Street No.1, Block C near Mufti Mahmood Chowk, Ittehad Town, Karachi and at about 1600 hours his neighbor Khalil S/o Muhammad Rafiq came and committed her rape forcefully. On such information, the complainant called Khalil who in presence of Muhammad Khalid and Noman admitted his guilt. On such disclosure, accused was produced before police and subject FIR was lodged. After usual investigation the I/O submitted the challan.

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

4.       Thereafter a formal charge was framed against the accused at Ex.2, to which he did not plead guilty to the charge and claimed to be tried vide his plea at Ex.3.

5.       To just strengthened its case, the prosecution has examined its witness as P.W-1 Victim Aqsa was examined at Ex.4, who produced Memo of Site Inspection at Ex. 4/A. PW-2 Complainant Muhammad Zahid was examined at Ex.5 who produced FIR and Memo of arrest at Ex. 5/A and B, respectively. PW-3 Muhammad Noman was examined at Ex.6. PW-4 WMLO Afshan Nazlim was examined at Ex.7, who produced Requisition for medical examination and ML Certificate at Ex.7/A and B, respectively. PW-5 MLO Noor Ahmed was examined at Ex.8 who also produced Requisition for medical examination and ML Certificate at Ex.8/A and B, respectively. The prosecution given up the PW-Muhammad Khalid at Ex.9. PW-6 Syed Anwar Hussain Bukhari (I/O) was examined at Ex.10 who produced Roznamcha Entry at Ex.10/A. PW-7 ASI Abdul Jabbar was examined at Ex.11 who also produced one Roznamcha Entry at Ex.11/A. Thereafter learned DDPP for the state closed the side of the prosecution vide his statement at Ex.12.

6.       The statement of accused was recorded under section 342 Cr.P.C at Ex.13 wherein he denied the allegations leveled against him and contended that he is innocent and has falsely been implicated in this case by police. He claimed that complainant demanded Rishta of her sister but her father refused for Rishta but complainant again demanded Rishta of her sister but against his father refused, therefore dispute has been arisen in between both families. He claimed that he is already married man for last four years of alleged occurrence and he has two children. He further claimed that complainant demanded bribe from my family and also issued threats to vacate the area. However, accused did not opt to examine himself on oath nor want to lead any evidence in his defense to disprove the allegations leveled against him by the prosecution.

7.       The learned counsel for the accused mainly contended that there is delay of about four days in lodging of FIR and the FIR has been lodged after due consultation. It is further contended that in her statement under section 161 Cr.P.C. the victim has admitted that accused has visiting terms and used to come in the house of victim some time from door and some time from the way of roof of the house of the victim. It is further stated by the victim in her statement under section 161 Cr.P.C. that accused attempted to commit her rape but she resisted and did not allow the accused to commit her rape.  It is also stated by the victim in her statement under Section 161 Cr.P.C. that they also used to meet with each other in the house of one friend.  It is further stated by the victim that the accused intended to marry with her. It is contended that accused refused to accept the proposal of the victim therefore the victim and her father under revenge falsely booked the accused in this case.  It is further contended that victim was not ready to allege anything against the accused. It is further contended that father of the accused demanded bribe of Rs.10,00,000/- or one Rishta. It is further contended that according to the contents of statement under Section 161 Cr.P.C. and FIR no such offence of rape has been committed. It is further contended that there was love relation in between the accused and the victim and if there is some sexual intercourse it was by consent.  It is further contended that I/o has supported the statement under Section 161 Cr.P.C. of the victim in which alleged victim has stated that no such offence of rape was taken placed with her. It is further contended that there is no marks of violence and maltreatment on the body in person of the victim or on her private part which shows that there was any force used in the alleged offence. It is further contended that complainant party has not disclosed such fact of alleged rape to anyone which shows that allegation of rape are false. It is further contended that the accused is innocent and has falsely been implicated in this case. It is further contended that there are so many contradictions and inconsistencies in the prosecution case due to which the prosecution case become doubtful. It is further contended that complainant is not the eye witness and FIR lodged with an unexplained delay of 3 days. He further contended that there is material contradiction in the statements of PWs which creates serious doubt in the prosecution story. He further contended that there is no last seen witness who saw the accused while going to or returning from the victim’s house. He further contended that no DNA sample was obtained by the MLO and no DNA is available on record which proves that actually alleged incident was occurred with the victim. He further contended that there was dispute over proposal of matrimonial and the father of the victim demanded Rs.10,00,000/- from accused party and on his refusal he lodged the false FIR against him. He lastly prayed for acquittal of accused. In support of his contention he relied upon the case law cited as YLR 2001 Sindh 260 and PLD 2021 SC 550

8.       On the other hand the main contention of the learned counsel for the complainant is that all the witnesses are independent and have no malafide on their part to falsely involve or implicate the accused. It is further contended that the witnesses including the complainant and victim have no enmity with the accused. It is further contended that the victim rightly identified the accused in Court and fully implicated in the commission of crime of rape with her. It is further contended that according to the medical the victim is not virgo intacta which proved the claim of the victim. It is further contended that in this case the police was fully supporting the accused side. It is further contended that infact accused use to maltreat the complainant side.  It is further contended that accused has not produced any witness which shows that complainant demanded bribe of Rs.10,000,000/- from the accused.  It is further contended that accused is notorious person and used to harass and tease the victim.  She lastly prayed that prosecution has proved its case beyond any reasonable doubt and the accused be convicted. It is further contended that DNA is not necessary in every case. While the learned DDPP for the state has adopted the same arguments of the learned counsel for the complainant. In support of her contention the learned counsel for the complainant relied upon PLD 2020 Page 313.

9.       My points for determination are as under:-

**POINTS FOR DETERMINATION**

*1.    Whether on 31.05.2019 at about 1600 hours accused committed forcibly rape of victim Aqsa, aged 15/16 at her house bearing No.2612, Street No.1, Block C near Mufti Mahmood Chowk, Ittehad Town, Karachi or not?*

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

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

11.       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  **Khalil**

**Ahmed S/o Muhammad   Rafique** is hereby convicted U/s. 265-H(ii) Cr.P.C and sentenced to rigorous imprisonment for ten  (10) years and he is also liable to pay fine of Rs. 200,000/- (two Hundred Thousand Rupees).In case of default in payment of fine, the accused shall further undergo simple imprisonment for a period of six (6) months. The accused is also awarded benefit of section 382-B Cr.P.C.

**R E A S O N S**

**POINT NO.1**

12.      In order to prove its case, the prosecution has examined total seven witnesses. The prosecution case opened with its star witness i.e. PW-1 victim Baby Aqsa who was examined at Ex.4 who during her examination in chief deposed as  that on 31.05.2019, she  was present at her house at 1600 hours. She was present alone. Accused Kaleem came from his roof in her house as he resides adjacent to her house. The accused thereafter committed rape with her. Prior to committing rape, the accused had physically assaulted her. The accused soon after commission of rape had left. Soon after that her elder brother who works in Bahria arrived at house. She narrated the incident with her brother. Her brother thereafter informed to her father. Her father then talked with the father of accused. On 03.06.2019, her father had registered FIR against the accused. The police then brought her for medical at Civil Hospital. On the same day, after her medical, the police had come at her house at 1800 hours. The police visited the place of incident on her pointation and prepared the memo of site inspection, which memo she produced at Ex.4/A and she identified her signature on it. IO had recorded her statement U/s 161 Cr.P.C. She identified the accused named above being the accused who had committed offence with her and she prayed for justice. She was cross examined in length by the learned counsel for the accused.

13.     During her cross examination she admitted that accused used to come in presence of her family, further says he used to come two years prior to the incident and at that time her mother was also alive. She admitted that it is mentioned in her statement that she had talk with Khaleel when he used to come, further says he had no friendship or any closeness with the accused. She admitted that it is not mentioned in her statement recorded U/s 161 Cr.P.C that accused Khaleel had forcibly committed rape with her. However she deposed that she had informed the police at PS that Khaleel had forcibly committed rape with her.  She admitted that it is written in her statement recorded U/s 161 Cr.P.C that *“Khaleel ne buhat dafa mujh se zina karne ki koshish ki magar kamyab na hosaka ek dafa hum khaleel ke dost ke ghar par bhe gae wahan aur log aa gae kaam nhe hua tha*”. However she deposed that accused had blackmailed her and had forced her. She had not made complaint to anyone regarding such incident. However she deposed that she had been afraid. She admitted that it is mentioned in her statement recorded U/s 161 Cr.P.C that “*Arsa ek saal pahle se Khaleel aur me apas me hamare ghar me milte the. Hum ek hafte me ek, do dafa milte the*”. However she deposed that   she had not disclosed such fact to police and the police had themselves written so. She admitted that it is written in her statement recorded U/s 161 Cr.P.C that “*mere walid ne khaleel ki bahen ka rishta manga tha aur nhe to 10 lakh do aur baat khatam kar dete hen magar khaleel ka walid nhe mana to abhe mere walid ne khaleel ke khilaf mujh se zina karne ka muqadma darj karwa dia*”. However she deposed that she had not stated so to police. She deposed that she has no knowledge whether Khaleel wanted to marry with her. However she deposed that she never had such knowledge about the intention of Khaleel. She has no knowledge whether any proposal was sent by accused for her marriage to her father. Police had recorded her statement on 3rd of the month. She denied that she had refuse to give her DNA sample to police. She denied that she had refused to give blood samples for DNA. However she deposed that they had been with doctor for about four hours and whatever samples were taken she had given with her consent. She denied that at the time of alleged offence she was not of the age of 15/16 years. She further deposed that she was aged 15 years and such proof in shape of B-Form was submitted with police. She denied that she has deposed falsely and has levelled false allegation against accused.

14.      In order to prove its case, the prosecution has examined another witness PW-2 Muhammad Zahid (Complainant) at Ex.05, who deposed that the present incident took place on 31.05.2019 and the FIR of instant case was lodged after delay of 1 or 2 days due to intervention of parents of accused. Accused Khalil had visiting terms with them and when her wife had died he had asked accused not come at his house as his daughters were of young age and they used to be alone when he went for work.  On 31.05.2019, while he was at work, the accused entered into his house and had forcibly committed zina with his daughter and went away and when his son Noman came at home he saw that his daughter was frightened and scared and her   conditions was worse and narrated to her brother while she was weeping that accused had committed rape with her. There is vacant plot in front of his house, there is also empty plot on right side of his house while there is house at the left side of his house and the same plot was also vacant and the keys of same house were with accused and when his daughter made hue and cry, nobody had heard her cries for there were no people around our house. The accused had made his escape good after the incident and he went to his parents for it was our mohallah issue so his father said that he required two days’ time to think over the issue for they had been busy due to Eid and had to sell their sweets. He gave them two days’ time. His father had brought 4 to 5 person and had offered him  to take 20000/- and had also offered him that if he  lets go the issue, he would send his son out from the mohallah and on the other hand, they also issued him threats to face consequences. The 5 persons who had accompanied the father of accused wanted to seek and delay for 8 days for which he refused and informed them that her daughter would take her life till than so who will be responsible. He had taken his daughter at Police Station while his son had also accompanied them and they reached at police station at around 0000 hours. The Duty Officer received information from us and lodged the FIR and obtained his signature, which FIR he produced at Ex. 5/A and identified his signature on it. His daughter had also informed to police while they were at police station that accused was holding some weapon but this fact was excluded by police from the contents of FIR. They remained at Police Station upto around 0345 hours and prior to that police asked them to point out the place where accused was present. My son had gone on his bike while police mobile had already reached outside of his house and then his son took the police at the bakery of accused and police arrested the accused behind the bakery area where they manufactured the bakery items and it was the time around 0200 hours. The police had only arrested the accused from place of arrest and then had brought him at police station where police had prepared the memo of arrest of accused and obtained his  signature, which memo he produced at Ex. 5/B and identified his signature  on it.  After FIR, in the morning at 0900 hours, police had called them  back at P.S to carry out medical of his daughter as such they reached at P.S at 0800 hours and left the P.S at 1100 hours and reached at Civil Hospital and his  daughter was examined there and we remained at hospital for about two hours. Then they returned back at his house. The police had asked them  to appear before concerned Magistrate along with his daughter as such he along with his daughter had arrived at Court in police mobile as firstly they  had gone at P.S. I.O had recorded my 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.

15.     During his cross examination he deposed that he does not remember the date when his statement U/s. 161 Cr.P.C., was recorded. I.O had recorded his statement U/s. 161 Cr.P.C. I.O had not read over the contents of his statement and had not obtained his signature. He admitted that in his statement U/s. 161 Cr.P.C the reason for delay of lodging the FIR is not mentioned. He denied that he had demanded Rs. 10,00,000/- and the hand of sister of accused in return to not lodge the case against accused. He admitted that when his demands were not met then he lodged the FIR. He deposed that he cannot say that the father of accused is 70 years old and he is sick as well. He denied that the father of accused had not sent the Jirga people to him and had also not extended threats to them. He admitted that there is no other eye witness of the present incident. He denied that her daughter had refused to give her sample for DNA test. He admitted that it is not mentioned in his statement recorded U/s. 161 Cr.P.C and in the FIR that accused was holding weapon at the time of offence. He denied that  five mohllah boys namely motor mechanic Raja, Imran Lahori, Aftab, Papi and Aashiq had visiting terms at his house and Aftab had required Rishta (proposal for marriage) of his daughter. He admitted that he and his family knows Khalil very well prior to incident. He admitted that accused used to come at her house. He further deposed that accused used to come prior to death of his wife. He denied that the mother of Khalil had demanded Rishta (Proposal of marriage) from his wife for Khalil. He denied that it was in his knowledge that her daughter and Khalil used to meet with each other within his house and outside of his house. He denied that they had declined any marriage proposal of Khalil. He further deposed that they had never sent any proposal for marriage of accused with his daughter. He denied that her daughter had levelled false accusation of Zina upon accused.  He denied that he has deposed falsely in court.

16.      In order to prove its case, the prosecution has examined another witness PW-3 Muhammad Noman at Ex.06, who deposed that on 31.05.2019, he was busy at work at Bharia Town and he had come home on the same day for Eid Holidays. Her sister Aqsa was weeping inside the room and it was Asar time at around 1600 hours. He enquired from his sister as to what had happened to her. Her condition was worse. She disclosed to him that the accused Khalil who resided in the neighborhood had come and he was also holding pistol and had threatened her to follow his instructions. She further narrated that he had maltreated her and also committed rape with her and had also torn her clothes. When he saw her cheek at the signs of violence and her clothes were also torn. He informed such fact to his father. He narrated same facts to father of accused. Then he went at his work. His father had lodged the FIR on 03.06.2019 at around 0200 hours. He had been then asked the police official to point out the place of incident as such he went to point out the place of incident to police and prepared the memo of site inspection, which memo he identified at Ex. 4/A and also identified his signature on it. He had taken the police officials at the shop of accused and he had shown the father of accused and brother of accused to police and police made inquiry from them about accused Khalil about whereabouts of accused but they did not give them satisfactory reply as such police searched their godown and found accused present there inside the godown and arrested him and prepared memo of arrest which memo he identified at Ex. 5/B and also identified his signature on it.  I.O had recorded his statement U/s. 161, Cr.P.C. He identified the accused in open court. He was also cross examined in length by the learned counsel for the accused.

17.     During his cross examination he deposed that he had met with his sister on 31.05.2019 when she disclosed him about the incident. His sister aged 15/16 years. He denied that he had disclosed to police in his statement U/s. 161 Cr.P.C., as to his sister as elder sister (verified and found so written). He denied that  he had disclosed to police in his statement U/s. 161 Cr.P.C., that they  had apprehended the accused and had produced him before police at P.S (verified and found so written). Police had inspected the place of incident on 03.06.2019. Four police officials had come to visit the place of incident in police mobile. Police had spent only five minutes.  He further deposed that police had not entered inside his house but they were standing outside at the corner of the street. He had come from P.S on motor bike and not with police officials. He does not remember whether police had obtained his signature at memo of site inspection at P.S. He denied that he deposed falsely before this Court.

18.   The prosecution also examined WMLO Dr. Afshan Nazlin at Ex.7 who adduced her evidence in Court and deposed on 03.06.2019, she was posted at Civil Hospital, Karachi as Senior WMLO. On the same day, at about 1400 hours, IO Syed Anwar Hussain of P.S Ittehad Town brought one girl namely Aqsa D/o Muhammad Zayhid aged about 15 years with history of alleged rape and had submitted to her letter for her medical examination. She produced such letter at Ex.07/A to be same and genuine. She carried out medical examination of alleged victim and found following injuries:

**Marks of violence:** No mark of violence seen on examination.

**Per-Vaginal Examination:**

i.             External genitalia was normal.

ii.           Pubic Hairs: Thick black

iii.          Vestibule: Per vaginal examination not done (due to menstruating bleeding positive)

iv.          Vulva: Per vaginal examination not done (due to menstruating bleeding positive)

v.            Vagina: Bleeding P/V positive

vi.          Hymen: Not seen properly due to bleeding P/V positive.

vii.         Bleeding P/V: Positive.

**OPINION:**

After examining the victim she on the basis of clinical examination has given her opinion that victim is not a virgin intact of rape. The alleged rape took place with victim on 31.05.2019 and victim was brought to her on 03.06.2019 within the delay of three days. The vaginal swab was not taking due to heavy menstruating bleed positive. Meanwhile she issued ML Certificate No.47/19 which she produced at Ex.07/B and identified her signature and seal. She was also cross examined in length by the learned counsel for the accused.

19.     During her cross examination WMLO deposed that it is  fact that victim Iqra D/o Muhammad Zahid aged about 15 years was examined after three days of alleged offence of Zina. She admitted that she has not secured any vaginal swab for the purpose of DNA testing. She further deposed that she could not secure vaginal due to heavy menstrual bleeding. She admitted that she has also not secured the clothes of the victim. She further deposed that the clothes of the victim were changed at the time of her medical examination. She admitted that no marks of any violence were found on the body of the victim during her medical examination. She admitted that hymen was old torn and healed. She has not found any fresh tear on vulva and vagina. She denied that she has wrongly issued MLC. She denied that victim was not subject of sexual intercourse. She denied that she deposed falsely.

20.     The prosecution also examined MLO Dr. Noor Ahmed at Ex.8 who adduced his evidence in Court and deposed that on 03.06.2019, he was posted at Civil Hospital, Karachi as MLO. On the same day, at about 1335 hours, a person namely Khalil Ahmed S/o Muhammad Rafiq aged about 23 years was brought before him by ASI Asghar Ali of PS Ittehad Town alongwith police letter with the history of rape under police custody. He produced such letter at Ex.08/A and identified his signature on it. He was brought for male potency examination. He was in a conscious state. On examination, following findings were noted;

1. Baths taken, cloths were change, urine were passed.
2. Secondary sexual characters were well developed.
3. No herniation and hydrocele noted. Circumcised.
4. On self-stimulation, erection of penis noted.
5. On prostatic massage, penile erection was noted.

**OPINION:**

After examining the accused, on the basis of external clinical examination, he has given his opinion that accused is capable to perfume sexual intercourse during normal course of natural life. He issued M.L Certificate bearing No.2755/19, which he produced at Ex.08/B and identified his signature and seal on it. He was also cross examined in length by the learned counsel for the accused.

21.     During his cross examination he admitted that he has not found any marks of injury on the body of the accused.

22.     The entire case of the prosecution was investigated by the PI Syed Anwar Hussain Bukhari, who appeared in witness box and recorded his evidence as PW-6, at Ex.010. He deposed that on 03.06.2019, he was posted as SIO of P.S Ittehad Town. On the same day, he received the investigation of case No. 130/2019, U/s. 376 PPC lodged by the complainant Muhammad Zahid S/o Muhammad Sharif R/O Mufti Mehmood Chowk, Ittehad Town. He received FIR, custody of accused along with memo of arrest of accused Khalil S/o Muhammad Rafiq which was prepared by H.C Abdul Jabbar, the then Duty Officer in presence of mashirs namely Muhammad Khalid and Muhammad Zahid. He identified FIR at Ex. 5/A being the same FIR. He also identified memo of arrest of accused Khalil at Ex. 5/B being the same memo. He also referred victim baby Aqsa to WMLO Civil Hospital Karachi for her medical examination. He identified Ex. 7/A, being his reference letter addressed to WMLO Civil Hospital Karachi and identified his signature on it. Meanwhile, baby Aqsa was medically examined by WMLO and such MLC No. 47/2019 was issued. According to MLC the baby was not virgo intact. He identified Ex.7/B being the same MLC. He also referred accused Khalil S/o M. Rafique for his medical examination in respect of his capability of sexual intercourse to MLO Civil Hospital, Karachi with his letter. He identified Ex. 8/A being the same letter and identified his signature on it. Meanwhile, accused was examined by MLO and such MLC No. 2755/2019 was issued. Accordingly to MLC accused was capable to perform sexual intercourse. He identified MLC being the same MLC. After medical examination, victim and accused both came at police station and he verified the facts from victim, thereafter on the same date, he left the P.S vide entry No. 27 at about 1630 hours along with complainant and victim for the purpose of inspecting the alleged place of occurrence. He produced such departure entry No. 27 at Ex. 10/A, it is same and correct. Thereafter, on the same day at about 1800 hours, he inspected the alleged place of occurrence on the pointation of victim Aqsa i.e the house situated at Mufti Mehmood Chowk, Ittehad Town. He prepared such memo of site inspection in presence of M.Zahid and Noman. He identified Ex. 4/A. Thereafter, he recorded the statement U/s. 161 Cr.P.C of witnesses, who supported the prosecution case under entry No. 33. He produced the same at Ex.10/B. After completing the investigation, he submitted charge sheet against the accused persons after taking approval from high-ups. He also identified the accused in open court. He was also cross examining by the learned counsel for the accused.

23.     During the cross he admitted that according to the contents of FIR, accused is the neighbourer of the complainant party. He admitted that both the parties were familiar with each other being neighborhood. He admitted that no sample of vaginal swabs were secured by WMLO at the time of medical examination of victim. He admitted that he has not moved any application for recording U/s. 164 Cr.P.C of victim. He admitted that he has not secured any clothes having any alleged semen material. He further deposed that due to lapse of time, victim has changed the clothes and has not produced such wearing clothes to him. He admitted that he has recorded statement U/s. 161 Cr.P.C of victim. He admitted that victim stated before him that his father demanded hand/*rishta* of sister of accused Khalil but father of accused Khalil refused to accept such proposal. He admitted that victim also stated that her father also demanded Rs.10,00,000/-  if rishta of sister of accused Khalil was not accepted. He denied that complainant has lodged false FIR. He denied that father of accused himself voluntarily produced the accused at the police station and then he was arrested at the police station. He further deposed that in fact the accused was apprehended by the complainant party and then was produced before the Duty Office, H.C Abdul Jabbar. He admitted that in statement U/s. 161 Cr.P.C of victim recorded by him such fact is not mentioned that accused forcibly committed rape with the victim. He further deposed that it is mentioned in such statement that victim stated before him that accused attempted to commit rape with him but she resisted and did not allow him to commit her rape. He denied that no offence of rape was committed in this case. He further deposed that according to the report of MLC, victim was not virgo intacta. He admitted that there is no DNA report. He denied that he has falsely challaned the accused. He further deposed that he has challaned the accused on the basis of statement of complainant and medical report. He denied that since complainant demanded Rs. 10,00,000/- from accused party and on refusal complainant has falsely booked him in this case. He denied that he deposed falsely.

24.     The prosecution also examined PW-7, Abdul Jabbar, at Ex.11 who deposed that on 03.06.2019, he was posted at P.S Ittehad Town as Duty officer/Head Constable. His duty timings were from 2000 hours to 0800 hours next morning. On the same day, he was present at police station, meanwhile complainant Muhammad Zahid S/o Muhammad Sharif came at the police station along with victim Aqsa and apprehended accused Khalil S/o M. Sharif. He arrested the accused accordingly in presence of mashirs namely Khalid and Zahid. He identified Ex. 5/B being the same mashirnama and identified his signature on it. Meanwhile, at about 0140 hours, complainant disclosed the facts of the case which was cognizable in nature punishable U/s. 376 PPC. He accordingly lodged FIR No. 130/2019 as per verbatim of complainant and thereafter, he read over the contents of FIR before him to which he admitted the same as true and correct and put  his signature. Meanwhile, he handed over the investigation of the case to SIO/Inspector Anwaar Hussain Bukhari. He also kept the facts of lodging of FIR in Roznamcha registered vide entry No. 31 which he produced the same at Ex. 11/A.  I.O also recorded his statement U/s. 161 Cr.P.C. He also identified the accused in open court. He was also cross examined by the learned counsel for the accused.

25.     During the cross he identified the contents of FIR. He admitted that according to the FIR, the alleged date of offence is 31.05.2019 while FIR was lodged on 3.06.2019 after the delay of 04 days. He admitted that such reason for such delay in lodging of FIR is not mentioned or explained by the complainant in the contents of FIR.

26      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 Aqsa aged about 15 years who claimed that accused has committed her rape in her house and the question which is required to be determined is that whether accused committed the alleged offence of rape or not. It appears that victim has clearly stated that on 31.05.2019, she was present alone at her house at 1600 hours. Accused Khaleem came from his roof in her house as he resides adjacent to her house. The accused thereafter committed rape with her. Prior to committing rape, the accused had physically assaulted her. The accused soon after commission of rape had left.  It appears that meanwhile victim disclosed such fact to her brother  and then her father lodged the FIR against the accused and accused was arrested by the police and meanwhile police recorded the statement of the victim and also produced her before the WMLO who after examining her confirmed that victim has lost her virginity. It appears that accused was produced before the MLO who examined the accused and confirmed that the accused has can perform the act of sexual intercourse.

27.     It appears that alleged victim was cross examined in length by the learned counsel for the accused as discussed above and it also appears that other prosecution witnesses were also cross examined by the learned counsel for the accused as discussed above but nothing came on record that there was any ill-will, malice and malafide on the part of victim or on part of her family or on part of police to falsely implicate the accused in the present offence.

28.     The main defence of the learned counsel for the accused is that the victim has falsely implicated the accused at the instance of her father who demanded the *rishta* of the sister of the accused but father of the accused has refused for the same. However it appears that in support of such defence that neither the accused examined himself on oath nor he produced any defence witnesses.

29.     The another contention of the learned counsel for the accused is that the statement of the victim which was given to the police is quite different from the deposition which is given in court. It appears that while reply this contention the learned counsel for the complainant contended that the role of police was since starts in supportive of accused and the statement of the victim under section 161 Cr.P.C. was self made statement created by the I/o himself and it was the reason that I/o has not recorded the statement under Section 164 Cr.P.C. of the victim.

30.     Here I would like to discuss some contradiction pointed out by the learned counsel for the accused such as victim in her statement under Section 161 Cr.P.C. clearly stated before the police that accused has not committed her rape and that accused attempted to commit her rape but she did not allow the accused to commit her rape. It appears that when such question was put to the witness whether she deposed so before the police that accused has not raped her then she replied that she informed the police that accused has committed her rape and she denied that the she stated so before the police that accused has not committed her rape but attempted to commit her rape.

31.       It is also the claim of the learned counsel for the accused that victim stated before the I/o that her father demanded amount of Rs.10 lac from the accused party or in replace the *rishta* of the sister of accused and that victim stated that she does not want to proceed against the accused. It appears that during the cross victim denied such fact as mentioned in her statement under section 161 Cr.P.C. as claimed by the learned counsel for the accused that she has stated so before the police officer that her father demanded Rs.10,00,000/- from the father of the accused or *rishta*  of sister of accused. It is also admitted fact that accused has not examined himself on oath and took the defence plea that father of the victim demanded *rishta* of her sister and his father refused for the same and thereafter father of the accused demanded bribe from his father and his father again refused for the same. It appears that in support of his contention accused has not produced any defence witnesses before this court.  It appears that but nothing came on record that alleged victim has falsely booked the accused in this case.

32.     It appears that the victim was confident enough when she appeared into witness box and has categorically implicated the present accused and fully supported the case of prosecution as discussed above. It appears that in her cross victim has denied that she was having any friendship or closeness with the accused.

33.      I found force in the contention of the learned counsel for the complainant that I/o acted malafidely as he failed to record statement under Section 164 Cr.P.C. of the victim.

34.     It appears that during the cross victim denied alleged contents of her statement which are supporting the accused and allegedly recorded by the I/o.

35.     No doubt that there are some contradictions in the statement of the victim given to the police under section 161 Cr.P.C. and her deposition recorded by this court as discussed herein above  but it appears that during the cross victim has denied all such facts which are supporting the accused.

36.               I have not found any other major or material contradictions in her statement beside the contradictions which I have discussed herein above but I am satisfied that victim has not stated such fact before the I/o which are mentioned in the statement under section 161 Cr.P.C. of the victim as apparently I/o tried to save the accused by not produced the victim for her statement under Section 164 Cr.P.C. It appears that victim has  did not  resign from the accusation she had made against the present accused as she clearly stated that accused has committed her rape.

37.              The testimony of victim dully supported by the medical evidence, statement of other prosecution witnesses i.e. her father and her brother, therefore testimony of victim appears to be true, genuine and confidence inspiring and nothing has come on record that her statement was tutored to her, as claimed by the learned counsel for the accused, in any manner to falsely implicate the present accused.

38.     I do not find any force in the contention of the learned counsel for the accused that victim was also a consented party in the crime as she  stated before the police that she used to meet with the accused in her house and as well as outside her house in the house of one family friend. It appears that victim has deposed that she has not stated so before the police that she used to meet with the accused and more important fact is that the age of victim is just 15 years and admittedly she is minor girl

39.     It appears that victim was physically examined by WMLO and the said WMLO has supported the version of victim and clearly deposed that at the time of examination of victim she found that Hymen was torn and she confirmed that on the basis of chemical examination victim was subjected to sexual assault/intercourse. It appears that the victim has uttered truth and only truth from her mouth and there appears no mixture of falsity in her statement when she has fully implicated the present accused for commission of act of rape with her and her statement is fully supported by the WMLO. The victim proved her reliable witness and In the criminal cases, each accused has his own specific role in the crime, and yard stick to assess the evidence depends upon the role and thus, the same evidence though may be believable against the accused but nothing fruitful came on record to provide any benefit to accused and to create any dent in prosecution story. No doubt that there is delay of about three days in lodging of FIR but in rape case delay in lodging of FIR is not fatal.  No doubt that WMLO has not secured vaginal swab of the victim but I am of the view that reason for not taking vaginal swab was the heavy menstruating period.

40.     I am of the view that other contradictions suggested by the learned counsel for the accused is immaterial and can be ignored. It appears that victim has clearly explained everything in her deposition with well reasons.  The statement of victim proved the guilt of the accused beyond any shadow of doubt and statement of victim remained unshaken and un-shattered.  In view of above discussion as per testimonies of prosecution witnesses, it is crystal clear that the accused has committed the shameful act of *zina* with the victim. I do respect the case laws cited by the both the learned counsel for the accused and as well as for the complainant party. I am of the view that the case laws cited by the learned counsel for the accused is on different footings from the facts of the present case while the case laws cited by the learned counsel for the complainant are fully supporting the prosecution case.  Record shows that there is  direct  evidence available with the prosecution to connect the present accused with the commission of offence of  rape, therefore, I have reached to just conclusion that prosecution has proved its case beyond any reasonable shadow of doubts against the present accused as such point under discussion is answered as  proved.

**POINT NO. 2:**

41.     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 baby Aqsa   as such he requires no leniency under the law. The offence of rape U/s. 376 PPC has been fully proved against the accused beyond shadow of any doubt. The accused **Khalil Ahmed S/o Muhammad Rafique** is hereby convicted U/s. 265-H(ii) Cr.P.C and sentenced to rigorous imprisonment for **ten (10) years** and he is also liable to pay fine of **Rs.200,000/-** (two Hundred Thousand Rupees).In case of default in payment of fine, the accused shall further undergo simple imprisonment for a period of six (6) months. The accused is also awarded benefit of section 382-B Cr.P.C. He remained in custody w.e.f. 03.06.2019 till his release on bail.  The accused is present on bail. He is taken into custody and remanded 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 **29th** day of **January**, **2022**.