**Ex. No.13**

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

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

S.C. No. 2135/2020

The State

Versus

Adnan @ Danish S/o Muhammad Sharif…………………………………………….Accused

                              Offence under section 376 PPC

                              (Cr. No. 372/2020 of P.S Ittehad Town, Karachi)

**Mr. Imtiaz Hussain Gondal, Counsel For Accused**

**Ms. Asiya Munir, Counsel For Complainant**

**Mr. Muhammad Javed Iqbal, Learned ADPP for The State**

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

**01.10.2021.**

1.       The above named accused was sent up by S.H.O of P.S. Ittehad Town, Karachi West to face his trial, for offence punishable under section 376 PPC bearing crime No.372/2020 registered at P.S Ittehad Town, Karachi West.

2.       Brief facts of prosecution case as narrated in the FIR by complainant Ali Muhammad Feroz S/o Feroz Hussain are that he was residing in the building which consists four portion and on the ground floor, son of landlord namely Danish S/o Muhammad Sharif was residing while he was residing on second floor, where another family was also residing and on third floor his landlord Muhammad Sharif S/o Ghulam Chishti alongwith his wife and children were residing. He further narrated that his younger daughter namely Jiya Ali D/o Ali Muhammad aged 15 years was studying in eighth class and she was also residing with him and on 08.11.2020, he had gone at Baldia No.3 to meet with his mother and in between 0200 hours to 0230 hours, his wife phone called him and informed him that his younger daughter Jiya Ali was not present at the house. He further narrated that due such anxious, he immediately reached at his house, where he saw that due to anxious, his family members were also awaken and in morning time, he started searching his daughter Jiya Ali but he couldn’t know anything about her while his wife had doubt on Danish and in the evening time, he would take information from Danish S/o Muhammad Sharif and his family members but they also did not cooperate with him. He further narrated that at about 09:00 pm, his daughter was brought by his friends namely Aisha D/o Unknown, Sakina D/o Unknown in semi-unconsciousness condition and the condition of his daughter was also not well and he asked to his wife that she had need of sleep, therefore he would enquired from her in the morning time. He further narrated that in the morning time, his wife told him that Jiya Ali had disclosed her that on 08.11.2020, when she was going to wash room, in the meantime, door was knocking and when she opened the door, she saw that Danish was standing and after seeing her the said Danish smelled her some intoxication substance as such she became unconscious and fallen down and the said Danish had taken him at his room on ground floor, where he two/three times had committed forcible act with her and she was trying for redemption but he caught hold her and thereafter he leaved her at Pakora Chowk and had given her money and said her to go at the house. He further narrated his daughter got seated in Rikshaw she was in semi-unconsciousness condition and reached at her friend’s house and they brought her at her house. Meanwhile he approached to PS and lodged the present FIR. Police after usual investigation submitted challan in the Court. During the course of investigation the alleged victim was got examined  in which she was declared as not virgo intact and meanwhile sample of vaginal swabs of victim were also secured and were handed over to the police. Meanwhile clothes of the victim were also handed over to police.  The accused was also arrested and he was also examined by the MLO. Later on the DNA report was received which shows that no seminal were identified on sample of vaginal swabs and as well on the clothes of the victim. Meanwhile after usual investigation  the above named accused 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 his witnesses as P.W-1, Zahid Hussain at Ex.03, who produced FIR at Ex.03/A and entry No.43 at Ex.03/B, P.W-02, victim Jiya Ali at Ex.04, she produced memo of place of incident at Ex.04/A, her statement recorded U/s 164 Cr.P.C at Ex.04/B, P.W-03, MLO Dr. Abdul Jabar at Ex.05, who produced police letter at Ex.5/A and MLC No.5735 at Ex.5/B, P.W-04, Complainant Ali Muhammad at Ex.06, who produced memo of arrest of accused at Ex.6/A, P.W-05, WMLO Dr. Aiman Khursheed at Ex.07, she produced police letter at Ex.7/A, MLC No.245/2020 at Ex.7/B and DNA report at Ex.7/C, P.W-06, CJ and JM Saima Kato at Ex.08, she produced application for recording statement U/s 164  Cr.P.C at Ex.8/A, application at Ex.8/B, notices duly served upon witnesses at Ex.8/C and Ex.8/D, P.W-07, SIP Manzoor Hussain Shah at Ex.09, who produced Roznamcha entry No.44 at Ex.9/A, sketch at Ex.9/B, photographs at Ex.9/C, Ex.9/C(1) to Ex.9/C(3), entry No.61 at Ex.9/D, entry No.34 at Ex.9/E, letter No.736 at Ex.8/F and notice at Ex.8/G, P.W-08, Sakina Bano at Ex.10. 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 party. However, accused did not opt to examine himself on oath nor want to lead any evidence in his defense to disprove the allegations levelled against him by the prosecution.

7.       My points for determination are as under:-

**POINTS FOR DETERMINATION**

1.    Whether on 08.11.2020, at about 0200 hours the accused Adnan alias  Danish had kidnapped the victim Mst. Jiya Ali aged about 15 years, daughter of complainant Ali Muhammad  from her house  situated at first floor bearing house No.754, situated at Sector 9-D, Saeedabad, Karachi,and then kept her in the same house in the ground floor till the next evening and during such period had committed Zina with her for two or three times?

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

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

9.       The learned counsel for the accused  mainly contended that  the alleged incident took place on 08.11.2020 at about 1:30 hours and the report was made by the complainant on 09.11.2020 at 6:30 p.m.  and no explanation  for delay of about 20 hours. It is further argued that the accused while came to know about the institution of this case against him straightaway along with his father surrendered himself to police which indicates his innocents. It is further argued that the alleged incident as alleged in the FIR is seen to be unnatural  at 1:30 a.,. the victim went to wash room and how the accused knew and knocked the door is a question. It is also argued that the accused is known to the victim admittedly to her but she did not nominate  him in her statement recorded under section 164 Cr.P.C.  and stated that one Chehra who threw some smoke whereupon the victim became unconscious and later on she found in one Almira which is 5 feet height and having five racks and a lady could confine therein is a question. It is also argued that when the victim left the house and immediately the mother of the victim rushed to  the house of parent of the accused who have s been residing at second floor in order to search the victim and then her mother came to the room at ground floor of the accused where the victim was also not found. It is also  argued that no any intoxicant substance was recovered from the possession of accused. It is also argued that  victim did not  say about the rape neither in her statement under section  164 Cr.P.C.  nor in court statement.  It is further argued that  no marks of violence exist at any part of the body of the accused. It is also argued that the no stains exist at the pajama/trouser of the victim per the report of the Chemical examiner. It is further argued that there is no evidence about the attempt on  the part of the victim. It is further argued that as per the statement of WMLO  victim was previously used and no fresh act  of rape was found. It is further argued that the hymen of the victim was also torn and healed. It is also argued that the place of alleged incident is situated in thickly populated area but none came forward to stand as witness.  It is also argued that  no corroborative evidence  is available on record.  He has also contended that chemical report and DNA report is in negative which creates the doubts in the prosecution case.  He has also contended that no marks of violence were found on the body  of the victim therefore doubts has been created.  He has also contended that as per report of WMLO the alleged victim is of loose character as her hymen was torn and healed and accused could not be held the old guilt of the victim.  It is also argued that no evidence of struggle take placed on record nor any marks of injuries on the person of accused  and in such circumstances  the accused  is proved to be innocent. It is further argued that no radish marks existed on the private part of the body of the victim even there is not attempt on the part of the accused.  It is further argued that the divergent statements of the victim brought  on record creates doubts and the accused under the law is entitled for the benefit. It is further argued that the solitary evidence  of the victim is not  trust worthy  and confidence inspiring.  It is further argued that  there is motive for implicating and blackmailing the accused on the part of the complainant  as he was in physical occupation of first floor of house NO.754 situated at 9-D, Saeedabad since last four years and the monthly rent of the premises is  Rs.8000/- and a sum of Rs.40000/-  are outstanding towards the complainant  and the complainant  intended to shift the tenement about a few days before lodging the  FIR and the father of the accused made resisting to leave the luggage whereupon the complainant with malafide intention and ulterior motive created a false story to implicated the son of the landlord in this case and after institution of the FIR intimated   on phone call that  if the father of the accused got the entire building transferred in his name and the complainant  shall withdraw the case against his son which call was recorded and produced in shape of CD by the accused along with  his statement  under section  342 Cr.P.C.  Lastly he prayed that all the facts as argued above are created serious doubt in prosecution case. In support of his contention  learned counsel  for the accused relied upon the case laws cited as 1985 SCMR 1170, PLD 1983 FSC 251, 1985 P.Cr.L.J. 2700, 1984 P.Cr.L.J. 3198, PLD 1982 FSC 177, PLD 1983 FSC 251,  PLD 1985 FSC 562 and  NLR 1982 AC 227.

10.     On the other hand the learned counsel for the complainant mainly contended that    accused is very much nominated in the FIR. It is further argued that accused is also fully implicated by the  victim in her statement recorded by police under section  161Cr.P.C. as well as in her statement under section 164 Cr.P.C. recorded by the learned judicial Magistrate. It is further argued that  the  alleged victim just after the incident has informed such fact to her parents including complainant who is father of the victim and they  both have also implicated the present accused. It is further argued that  according to the ML the accused is very much capable to perform sexual intercourse. It is further argued that  according to the WML the  victim  is not virgo intact and such medical certificate is fully supported  the version of the victim that she was rapped by the accused. It is further argued that  accused had failed to bring on record any animosity with the complainant  and victim for his false implication.  Lastly it is argued that prosecution  has succeeded to prove the case against the accused beyond any reasonable shadow of doubt therefore he is entitled for conviction  as prescribed under section  376 PPC. In support of her contention  learned counsel for the  complainant relied upon the case laws cited as 2021 SC 550, 2021 P.Cr.L.J. 205, 2007  SCMR 473, 2011 SCMR 1665, 2006 SCMR 1042 and 2006 SCMR 338.

11.     My findings coupled with reasons on the above points are as under:

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

Point No.1-------------------------- Not proved.

Point No.2-------------------------- Accused has been acquitted U/s. 265-

  H(i) Cr.P.C from the charges.

**R E A S O N S**

**POINT NO.1**

12.     In order to prove its case, the prosecution has examined as many as eight witnesses. The allegation against above named accused is that he had committed rape of victim Mst. Jiya Ali aged about 15 years.

13.     The case of prosecution opens with the deposition of Duty officer/SIP Zahid Hussain, was examined as P.W-01 at Ex. 03. He deposed that “on 09.11.2020, he was posted as duty officer and his duty timing were from 0800 hours to 2000 hours. On the date, at evening at 1830 hours Ali Muhammad alongwith his daughter Jia Ali and reported against Danish for the accused Danish had committed rape with Jia Ali. He lodged the FIR No.372/2020 U/s 376 PPC and kept the Qaimi entry which FIR he produced at Ex.3/A he identified signature on it. He also produced Qaimi entry No.43 at Ex.3/B. He had handed over the copies of FIR to SIO. On 10.11.2020 IO recorded his statement U/s 161 Cr.P.C.”. He was cross examined  by the learned counsel for the accused.

14.     During the cross he deposed that he had lodged the FIR as per the verbatim of complainant and its contents were read over to him and then he had signed”.

15.     After that, prosecution has examined victim Jiya Ali as P.W-02 at Ex. 04. The entire case of prosecution revolved around its star witness/alleged victim Jiya Ali. 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. She deposed that his father is in habit to come late from work and sometimes he used to come earlier. On 08.11.2020, when she got up to go to washroom in the night there was knock at the door as such she had opened the door. She saw one face and that was of Danish in front her and she inquired from him whether he had any work, and during such time, there was smoke in front of her and when she woke up, she had found herself locked in one almirah. Then accused Danish removed her from almirah and served her water and she again became unconscious. When again gained senses, she found her clothes were not on her body and she was naked. The accused Danish was above her body, she made hue and cry and nailed the accused with her nails and she had also bitten the accused. The songs were being played in the room. The next day, the accused boarded her on bike dropped her at the house of one aunty and said he was to come. The said aunty gave her Rs.100 and then asked her to go her home. Then she walked on foot as there was darkness and there was something like jungle came on the road and asked from one uncle as to from where she can find the bus. The said uncle replied that she must stay there and wait for the bus at the same place. She then boarded in the bus and the bus dropped her at the road. Then she walked from the road and reached at the house of Aisha aapi who brought her at her home. When she came home, all were sitting and her father said to others to allow her to sleep till a lady police comes and inquire about as to where she was. When she woke up in the morning, she narrated the entire incident to her mother and appi(sister). Her mother was very annoyed and stated that she would take revenge from Danish and when her mother went to fight with the accused, his family allowed the accused to make his escape good and they also forbade the entry of her mother in their home. Then the FIR was lodged. The police mobile had come in ground stairs and had checked the room and had inspected the site and had obtained her signature, which memo she produced at Ex.4/A and she identified signature on it. She was medically examined. The accused Danish had also extended her threats that if she had disclosed the incident to anyone, he would then abduct/kidnap her sister (aapi). She had also appeared before the Judicial Magistrate where her statement u/s. 164, Cr.P.C. was recorded. She produced  statement under section  164 Cr.P.C. at exhibit 4/B and identified her signature, thumb impression and picture on it. She identified the accused Adnan alias Danish. She was also cross examined in length by the learned counsel  for the accused.

16.     During the cross she deposed that the door of their house was knocked at around 0130 to 0230 hours. The washroom is outside the room. She denied that in her statement recorded u/s. 161, Cr.P.C., the washroom is disclosed to be inside the room (verified and found that it is not mentioned specifically as to where the washroom was.) The washroom was at the distance of about 18 feet from my room. Her mother, her brother and her elder sister (aapi) and she were present at the night of the offence. She admitted that her father was not present at the time of alleged offence. She was at the main gate standing inside when she had sensed the smoke. It is mentioned in her statement recorded u/s. 164, Cr.P.C. that she had seen one face of person when she had opened the door. When she had opened the door, the smoke came from infront of her. The knock at door could not be heard by her other family members. Vol. says she was in the washroom so she could hear the knock and her family was sleeping at the distance of about 15 feet from the door. Only she had been affected with the smoke and one from her family and even accused were not affected. It is not in her knowledge that accused Danish had been residing in the same building for last 7 years. She admitted that they had been residing in the same building for about 3 years. Prior to present incident, in past three years, she and her family had no complaint against accused Danish. She admitted that in her statement recorded u/s. 161, Cr.P.C. it is mentioned that the accused had repeatedly committed rape with her but the same is not disclosed in her statement recorded U/s.164, Cr.P.C. She admitted that the police official had inspected the room of accused Danish in her presence. She denied that the almirah kept in the room of the accused was five feet in length. She denied that almirah had three drawers. She deposed that it had four drawers. If a person is on the courtyard of the ground floor and makes hue and cry only then the same could be heard at the first floor but when the person makes hue and cry inside the room, then people at first floor cannot listen such cries. She admitted that their house is located in thickly populated area. The accused had taken her on his bike at house of aunty at maghrib time. She had not made complaint while she was at bike to any mohalla person. She has no idea as to where is the house of aunty and as to how much distance it has from their house. She had gone at Saeedabad at her aunty’s house for she had only remembered the said house and she could not recall as to where was her house due to being not in proper senses. Her mind was bit frozen while she could visualize properly so she had gone at the house of her friend after aunty’s house. She denied that she had her mobile phone with her during 22 hours when she was away from her house. She could have phone called from cell phone of any other person but she had not remembered the cell number of her family. She admitted that there is no eye witness of the present incident with her. She denied that five days prior to present incident, there had been commotion of hot words between her father and the father of accused over amount of rent. Her father has two wives and her step mother resides at Baldia Town No.3, Karachi. She denied that mohalla people were annoyed with them. She denied that she and her family had bad character.

17.     P.W-03 Dr. Abdul Jabar at Ex. 05. He deposed that on 11.11.2020, he was posted as MLO at Civil Hospital, Karachi and on the same day, one accused namely Muhammad Adnan alias Dansih S/o Muhammad Sharif Khan aged about 30 years brought in police custody by S.I  Manzoor Ahmed Shah of P.S Ittehad Town for medical examination in case FIR No. 372 /2020, U/s 376 PPC lodged by complainant Ali Muhammad in respect of victim i.e his daughter Baby Jiya Ali, for the purpose of male potency test/examination. He produced such police letter at Ex. 05/A. According to the police, the incident took place on 08.11.2020 and he examined the accused Muhammad Adnan alias Danish S/o Muhammad Sharif Khan, aged about 30 years having marks  of identification i.e (1) scare on right eyebrow and (2) Mole on right elbow. Thereafter, on 11.11.2020 at about 03:05 P.M. He examined him and observed the following things on his body.

1.   His cloths were changed.

2.   His body parts were washed.

3.   Bath was taken by him.

4.   His secondary Sex characters were well developed.

5.   No Hernia, no Hydrocele and no any congenital deformity noted.

6.   On self-stimulation, erection of penis noted.

7.   On prostatic massage, erection of penis noted.

**OPINION**:

18.     On the basis of above clinical examination, he has given his opinion that the accused Muhammad Adnan S/o Muhammad Sharif is capable to perform the sexual intercourse and he secured his blood sample and handed over the same to the I.O/SIP Manzoor Ahmed Shah for DNA analysis and thereafter, he issued such provisional medico-legal certificate bearing No. 5735.  He produced the same at Ex. 05/B and he identified signature on it. He identified the accused Muhammad Adnan S/o Muhammad Sharif in open court.

19.     During the cross he deposed that he has not seen any marks of injury on body of accused on his face, legs, hands, elbows and knees. He admitted that as per DNA report from DNA laboratory, the blood sample of accused was not analyzed.

20.     In addition to above, the prosecution has examined Complainant Ali as P.W-04 at Ex. 06. He deposed that he was doing business of construction and Estate agency. He was residing in the house situated in sector 9/D, new Saeeabad, Baldia Town, Karachi. He was residing on the first floor. There were ground plus two floor building. The owner of building/her landlord was residing on second floor while accused Adnan who is the son of owner Muhammad  Sharif was residing on the ground floor. On 08.11.2020 he was available in the house his mother situated in the Baldia Town, where at about 0200/0230 hours, he received a telephone call of his wife Mst. Shakeela who informed him that his daughter Jiya Ali aged about 15 years was not in the house. Thereafter, he immediately came back to his house. On his enquiry, his wife informed him that previous night she along with all the children including his daughter Jiya Ali slept as per routine and when his wife has awoken at about 0200/02:30 A.M in the night she found that his daughter Jiya Ali was missing from the house. They thought might she went to the house of any of her friend and they waited whole night but till morning she did not come back. On the morning, they started searched of his daughter in the houses of their relatives but she was not traced out. During such period, his landlord, her wife and her children used to visit his house and helping him and hoping that his daughter will come back and they also showed that they will help him in the process of recovery of his daughter. On the same day, he was available in his house, suddenly at about 07:00/08:00 P.M after the Magrhib, he heard the voice of his daughter Jiya who called his younger son and such voice was coming from down side and meanwhile his daughter came into his house. She was semi unconscious. Thereafter, he kept his daughter in rest condition and also directed other family members not to disturb till her fully recovery. Meanwhile, his landlord and his family members also came in his house in order to see his daughter but he refused to allow them to meet his daughter. Thereafter, he allowed his daughter to sleep and he and his wife not disturbed her. Thereafter, they all slept. On the following morning, his daughter informed his wife that accused Adnan who is the son of his landlord who knocked the door at about 02:00 A.M in the night when she was going towards bathroom and when she opened the door, accused was present there who sprayed something on her face due to which she became unconscious and thereafter accused took her to his room situated on the ground floor where his family was not available. Thereafter, accused has given some intoxicated thing in water and thereafter committed her rape 3 or 4 times and she further disclosed to her mother accused has also threatened my daughter that not to disclose such fact anyone else, otherwise, he will commit the rape of her another sister. After knowing such fact from my daughter, my wife Mst. Shakeela became annoyed and went to the house of landlord situated on second floor for the purpose of complaining against Adnan but the family of landlord managed to flee the accused from their house and accused escaped good after jumping the roof. Meanwhile, he also came to know all such facts through his wife and thereafter, the family of accused approached him with request to settle down the matter and they offered that they will arrange marriage of his daughter with accused Adnan but he refused them to settle the matter and thereafter, he lodged the FIR No. 372/2020 U/S 376 PPC against accused Adnan on 09.11.2020 at about 1830 hours at P.S Ittehad Town. He identified  Exh. 03/A as FIR and he identified his signature on it. Thereafter, on his pointation, I.O/SIP Manzoor Hussain Shah inspected the place of occurrence under a written mashirnama in his presence. Police also took some photographs and he also met with the victim and thereafter on demand he handed over cloths of his daughter Jiya Ali, which were wearing by her at the time of alleged offence to the police and police sealed the same in his presence. He acted as first mashir of the memo of site inspection and sealing of cloths. He identified  Exh. 04/A as memo of site inspection and he identified signature on it. Thereafter, police took his daughter to Jinnah Hospital for her medical examination. He and his wife were also accompanied with his daughter. The medical examination of his daughter was taken place at the Jinnah Hospital and thereafter they came back. Thereafter, police called him at the P.S and informed him that accused Muhammad Adnan alias Danish S/o Muhammad Sharif himself voluntarily appeared at P.S. Thereafter, he came to P.S and identified the accused and thereafter accused Muhammad Adnan was arrested on his pointation under a written mashirnama at the police station Ittehad Town. He produced such mashirnama of arrest at Exh.06/A and he identified his signature on it. Thereafter, accused was produced before Court by the police and his police custody remand was given by the concerned learned Magistrate. Police also recorded statement of his daughter. Statement U/s. 164 Cr.P.C of his daughter Jiya Ali was also recorded by concerned learned Civil Judge and Judicial Magistrate. Police also recorded his statement U/s. 161 Cr.P.C. He identified the accused  Muhammad Adnan alias Danish in open court. He was cross examined in length by the learned counsel for the accused.

21.     During the cross he admitted that on the date of incident, he along with his family was residing on the first floor of house No. 754, Sector 9/D, New Saeedabad, Baldia Town, Karachi. He denied that he was paying monthly at rate of Rs. 8000/-. He deposed that  infact he was paying rent at the rate of Rs. 10000/- per month facility of electricity and gas for last three years. He do not know if accused Danish was residing on the ground floor of the same house being the son of landlord for last 7 years. He deposed that  since he started tenancy, he saw accused was residing on the ground with his family. At the time of alleged incident, he was not available in the house while his wife and three children including two daughters and one son was available in the house. The washroom used for his family is situated in his same portion outside the main room. He came back to his house within next 10 to 15 minutes after receiving telephone call of his wife at about 02:00/02:30 A.M. He admitted that he lodged the FIR after 26 hours of alleged incident. He deposed that  the reason for such delay was that they were searching their daughter and thereafter, on the following day in evening time when his daughter came back she was semi unconscious therefore, they gave her time for recovery and when she came into sense then she informed such fact to his wife and thereafter, he lodged the FIR after knowing the whole facts of the case. He searched his daughter so many places including his relatives, his previous house where he was residing as tenant and other places. He admitted that it is mentioned in FIR that his wife has doubt upon Danish and therefore, he also made inquiry from the family members of accused Danish but they did not cooperate with him. He has no knowledge whether during last three years any area people have made any complaint against the present accused Danish. He admitted that his house is situated in thickly populated area. He admitted that the distance from the alleged place/room from where alleged offence has committed to the first floor is about 12 feet. Vol. says such distance is about 22 feet. He has not seen the houses of Ayesha and Sikeena, who are friends of his daughter Jiya. He deposed that both are school colleagues of his daughter. He denied that his daughter herself left the house and went to the houses of her friend Ayesha and Sakeena and stayed there for about 19 hours. He denied that his daughter Jiya Ali was using the mobile phone. He admitted that his daughter came from the houses of her friends Ayesha and Sakeena. He deposed that  in fact accused after committing the alleged offence took her on motorbike to the Pakorra Chowk by tiding on his motorcycle and then released her after giving some amount for fare and then his daughter went to the house of her friends Ayesha and Sakeena, who then brought his daughter to his house. He admitted that no one from the area has seen the accused while he was shifting his daughter on his motorcycle as his daughter was unconscious and there was darkness due to load shedding. He admitted that his daughter has not received any injury from said intoxicating spray allegedly thrown by accused on her face. He deposed that  however, she became unconscious. He admitted that he or his wife or any area people are the eye witness of alleged offence of rape. He deposed that  accused has committed the alleged offence of rape inside the room. He also took his daughter to a private doctor when she came back to his house very first as she was unconscious.  He denied that he has not mentioned in his FIR or in his statement U/s. 161 Cr.P.C that he also got examined his daughter with private doctor when she came back in unconscious condition to his house. He denied that he has implicating the accused with this alleged crime mere on assumption and presumption. Vol. says he has implicating the accused on the basis of statement of victim who is his daughter with whom the accused present in the Court has committed offence of rape 3 or 4 times. He denied that no such alleged act of rape has been committed by accused present in Court with his daughter Jiya Ali. He denied that the alleged commission of rape has not been verified by any competent medical authority. He denied that at the time of alleged offence, he was defaulter of monthly rent for last 05 months. He denied that he intended to leave the house of rent two days prior of alleged incident without clearing dues for last 05 months but landlord did not allow him to take away his articles from said house. He denied that he has talked on telephone with son in law of father of accused in which he demanded that if father of accused transferred the same house in his name then he will take back his house. He denied that no such alleged offence of rape has been taken place with his daughter Jiya Ali. He denied that he has lodged a false FIR against the present accused in order to blackmail the father of present accused and his family. He denied that the area people were not happy with him and his family prior the alleged incident. He admitted that at the time of inspection of place of alleged offence no any intoxicate article or medicine were recovered from the same house by police in his presence. He denied that he has deposing falsely.

22.     The prosecution has examined P.W-05, WMLO Aiman Khursheed at Ex. 07. During her examination in chief she deposed that on 09.11.2020 when she was posted as WMLO at J.P.M.C , Karachi. On the same day, at 10:00 P.M S.I Manzoor Hussain of P.S Ittehad Town brought 15 years old girl namely Jiya Ali D/o Ali Muhammad for Medico Legal Examination regarding rape as alleged on 08.11.2020 at 0200 hours to 0230 hours. She further deposed that the I.O submitted police letter for examination bearing FIR No. 372/2020, U/s. 376 PPC addressed to WMLO J.P.M.C Hospital which she produced at Ex. 07/A. She further deposed that she found her marks of identification were established as Mole between eyebrows and upon Clinical Examination, no marks of violence over any part of body was present.

**PER-VAGINAL EXAMINATION**

 External Genitalia:  Normal, No Erythema, No Laceration, No Tear seen.

 Pubic Hairs: Normal, No Erythema, No Laceration, No Tear seen.

 Vestibule: Normal, No Erythema, No Laceration, No Tear seen.

 Vulva: Normal, No Erythema, No Laceration, No Tear seen.

 Vagina: Normal, one finger introduced easily. Two fingers introduced but with paid and tenderness although fingers were introduced easily.

 Hymen: Old torn and healed.

 Bleeding P/V: Nil.

 Discharge P/V: Nil.

She further deposed that she obtained two vaginal swabs, one each and blood sample of the victim and sealed the same for chemical analysis and DNA.

**OPINION**

23.     On the basis of clinical examination, she was not a virgo intacta, she has had sexual intercourse. However, HVS have been taken for DNA and Chemical analysis to ascertain fresh act, if any. Meanwhile, she handed over the samples of vaginal swabs and blood to the SIP Manzoor Hussain Shah. She further deposed that she prepared M.L.C No. 245/2020, which she produced at Ex. 07/B. She further deposed that she has also perused DNA report No. SFDL-2020-1231 dated: 09.11.2020, which shows that no seminal material was identified on both vaginal swabs. She further deposed that DNA report further reveals that no seminal material was found over the trouser, shirt of Jiya Ali D/o Ali Muhammad hence, no further DNA analysis was performed over above mentioned articles i.e trouser, shirt and HVS.  She produced DNA report at Ex. 07/C.  She was cross examined by the learned counsel for the accused.

24.     During her cross examination she stated that virgo intacta means hymen of the lady is intact. Vol. said in this case, the victim was not virgo intacta which means that her hymen was not intact.  She further stated that it is fact that she has mentioned that hymen is old torn and healed which means that hymen has been torn more than prior 4 to 7 days back.  She also admitted that no fresh signs of sexual assault were found during her examination.  Vol. Said hymen can be torn due to several reasons such as playing, foul play, running etc.

25. Thereafter, learned  Civil Judge and Judicial Magistrate Saima Katto was examined as P.W-06 at Ex. 08. She deposed that on 18.11.2020, she was posted as Civil Judge & Judicial Magistrate-IV, Karachi West. On the same day, IO moved an application for recording Statement U/s 164 Cr.P.C of victim/witness namely Jiya Ali in case/FIR No.372/2020 U/s 376 PPC of PS Ittehad Town and he further informed her that accused Adnan was admitted in hospital due to Covid-19. Meanwhile he was granted eight day time for recording statement U/s 164 Cr.P.C. She produced such application at **Ex.8/A.** She further deposed that thereafter, another application was moved on 30.11.2020 for recording statement U/s 164 Cr.P.C of same victim. Meanwhile fixed the date as 01.12.2020 for recording statement U/s 164 Cr.P.C and time was allowed at 01:30 pm. Meanwhile she  issued notice to accused and victim/witness. She produced such application at **Ex.8/B.**  Thereafter on 01.12.2020, She recorded statement U/s 164 Cr.P.C of victim Jiya Ali D/o Ali Muhammad as per her verbatim in presence of accused produced by the jail authority. Meanwhile witness/victim was cross examined, meanwhile the witness/victim was cross examined by the learned counsel for the accused. She also produced copies of notices duly served upon witness and as well as upon accused at **Ex.8/C and Ex.8/D.** The learned Judicial Magistrate has also identified the accused in open court in whose presence the statement under section  164 Cr.P.C. was recorded.

26.     After that, prosecution has examined Investigation Officer/SIP Manzoor Hussain Shah. During his examination in chief, he deposed that on 09.11.2020, he was posted as SIP at PS Ittehad Town in Investigation Branch. On the same day, he received the investigation of case/FIR No.372/2020 U/s 376 PPC lodged by the complainant Ali Muhammad S/o Feroz Hussain against accused Adnan @ Danish. He further deposed that he received FIR along with Roznamcha entry No.43 under which FIR was registered. He further deposed that the complainant Ali Muhammad and victim/her daughter Jiya Ali both were present at the police station. He left the police station vide entry No.44 at about 2000 hours for the purpose of medical of victim Jiya Ali and proceeded to the JPMC Karachi. He produced such entry at **Ex.9/A**. Thereafter he wrote a letter to WMLO for medical examination of victim Jiya Ali. He further deposed that thereafter victim Jiya Ali was medically examined as per MLC No.245/2020. During the examination WMLO collected samples of vaginal swab and blood of victim for the purpose of chemical and DNA test and handed over the same to me. Thereafter from hospital, he reached at the place of alleged offence i.e H.No.754, Sector-9/D, Saeedabad and inspected the place of alleged offence on the pointation of complainant and victim in their presence under a written memo of site inspection. He further deposed that the complainant and victim also produced one blue/black color trouser and one shirt of victim having black and white strips to him at the same time which he sealed the same in presence of complainant and victim at the spot. He also deposed that he also prepared sketch of palace of alleged offence. He produced such sketch at **Ex.9/B.** He further deposed that he also obtained four photographs of alleged place of occurrence, which he produced at **Ex.9/C, 9/C(1) to 9/C(3)**. He further deposed that he also recorded statements U/s 161 Cr.P.C of the witnesses including complainant and victim. Thereafter he came back at the police station vide entry No.61, which he produced at **Ex.9/D.** Thereafter on 10.11.2020 he was present at the police station Ittehad Town, meanwhile father of nominated accused namely Sharif produced the nominated accused Adnan @ Danish at the police station and meanwhile he called the complainant at the police station who identified the accused being the same accused who nominated in the FIR. Thereafter he arrested the accused at the police station and prepared the memo of arrest at about 1910 hours at the police station. He further deposed that he kept such fact of arrest of accused in Roznamcha entry No.34, which he produced at **Ex.9/E.** He further deposed that on 11.11.2020, he produced the accused before the Court and obtained his police custody remand. Meanwhile he brought to the accused at Civil Hospital Karachi for the purpose of his medical examination. Meanwhile he issued a letter to MLO Civil Hospital Karachi for medical examination of accused Adnan @ Danish. Thereafter accused was medically examined vide MLC No.5735/2020 by the MLO. Meanwhile blood sample of accused was secured and sealed by the MLO and handed over to him for the purpose of chemical and DNA test. He further deposed that according to MLO the accused was capable to perform sexual intercourse. On 12.11.2020, he deposited samples of vaginal swab of victim alongwith her clothes as well as blood sample of accused Muhammad Adnan @ Danish for the purpose of DNA and chemical test under covering letter, He produced letter No.736 at **Ex.9/F.** He further deposed that thereafter he moved an application for recording statement U/s 164 Cr.P.C of victim before the concerned Magistrate. Meanwhile Covid-19 test of accused was positive, therefore he was admitted to Civil Hospital Karachi. Thereafter 30.11.2020 he again moved application for recording statement U/s 164 Cr.P.C of victim. He further deposed that meanwhile on 01.12.2020 statement U/s 164 Cr.P.C of victim was recorded and prior recording statement U/s 164 Cr.P.C. He also served notices upon victim/witness and upon accused. He further deposed that perusal of contents of FIR shows that two girls/friends of victim namely Aisha and Sakeena brought the victim to her house, therefore he gave notice to the complainant to produce both the girls Aisha and Sakeena but he did not produce them. He produced such notice at **Ex.9/G.** Meanwhile DNA report was receiving. After completing investigation he submitted charge sheet against the accused for the offence punishable U/s 376 PPC. He also interrogated the accused and recorded his statement. He further deposed that he see accused Adnan @ Danish present in the Court was same. He further deposed that he see on un-sealed parcel lying in Court which has already de-sealed, which contains one lady T-shirt and lady trouser as article ‘A and B’. He said that these are the same trouser and T-shirt of victim Jiya Ali which he secured and thereafter submitted for DNA test. He also identified the accused in open court. He was cross examined in length by the learned counsel for the accused.

27.  During his cross examination, he identified  the case property lying in Court i.e one trouser and one T-shirt. These are the clothes which were wearing by the victim at the time of alleged offence as per claim of victim. He also admitted that according to DNA report no seminal material was identified on trouser (Pajama) and on T-shirt of victim. He also admitted that blood sample of victim and accused were secured by the MLOs and the same were sent for DNA test. He further admitted that according to DNA report no analysis was conducted on the blood of victim and accused. He further stated that It is fact that according to MLC report victim Jiya Ali is not virgo intacta as she has had sexual intercourse. He admitted that house of accused where the alleged offence allegedly taken place is situated in a thickly populated area. He also admitted that he had not recorded of any area people of the same vicinity where the victim and accused were residing in order to establish such fact that accused knocked the door of victim and when victim had come out then accused allegedly thrown some intoxicative material upon the victim due to which she became unconscious. He deposed that  alleged incident was taken place inside the house of accused and victim in the night time, therefore, there is no private witness from outside who can confirmed such fact. He further deposed that at the time of alleged incident mother, another elder sister and one younger brother was available in the same house from where victim was allegedly taken by the accused in unconscious condition, voluntarily said as the inmate of the house came to know such fact then they made hue and cry and started searching of victim. He further stated that the mental and physical state of the victim at the time when we were taking her to hospital was not good as she fell down while waiting for WMLO at the hospital due to swing of mind (headache) and they served her water.  He admitted that such fact is not mentioned in MLC that victim fell down due to headache etc. He deposed that such fact was prior arrival of WMLO. He had inspected the place of incident. He also admitted that he has not found any intoxicate material from the alleged room of accused where alleged incident of rape was taken place. He also admitted that accused was residing on the ground floor alongwith his wife. He further stated that he does not not know whether the accused was married with his wife seven years ago of alleged date of incident, voluntarily said wife of accused was not present at the time of alleged offence in the house of accused as she was in her mother’s house. He also admitted that complainant is the tenant of the father of accused in the same building on the first floor. He also admitted that there is distance of 12 ft height from ground floor to first floor and it can be possible that if someone shouted on the ground floor same can be heard on the first floor. He further stated that he does not know the whereabouts of residences/houses of Sakeena and Aisha the friends of victim. He deposed that said both the girls did not come forward for recording their statement U/s 161 Cr.P.C. He denied that no such alleged incident of alleged kidnapping or abduction of victim by accused has not been taken place. He denied that victim herself left the house and went to the house of her friends. He denied that no such alleged offence of rape has been taken place. He denied that accused has not committed any alleged offence of rape, voluntarily said according to the statements of victim and medical report alleged offence of rape was taken place. He admitted that there is no eye witness of the alleged incident except victim. He denied that he has wrongly challaned the accused despite the fact that DNA report was negative and there is no eye witness of the alleged incident, voluntarily said he has challaned the accused on the basis of statement of victim including her Statement recorded U/s 164 Cr.P.C and medical certificate of victim issued by WMLO and medical certificate of accused issued by MLO. He denied that such fact has come on record that complainant was defaulter of payment of monthly rent for the five months of an amount of Rs.40,000/-.  He denied that area people were not happy with the family of complainant and victim. He denied complainant party having bad character and were not enjoying good reputation. He further stated that it is not in his knowledge whether complainant had ever offered to the father of accused to transfer the property rights of the building in his name then he will withdraw the case against his son/present accused. He denied that accused is innocent. He denied that he is responsible for alleged confinement of accused behind the bar. He denied that he has falsely challaned the accused.

28.     In addition of above witnesses, prosecution has examined its last witness namely Sakina Bano as P.W-08 at Ex. 10. During her examination in chief, she deposed that the complainant Ali Muhammad is her husband. The victim Jiya Ali is her daughter. 08.11.2020, her husband was not present at the house, meanwhile she alongwith her children namely Mst. Jiya Ali, Mst. Muskan and Saqib Ali were sleeping in the house. Meanwhile at about 02:00 am or 02:30 am on dated 08.11.2020, she had awakened and she saw that her daughter Jiya Ali was not present inside the house. She searched her daughter here and there at the same time but she was not present. Thereafter she phone called to her husband who was present at the house of his mother situated at Baldia Town No.3 as such soon after he arrived at home. Thereafter they were searching their daughter and they were busy in talks with each other till morning. Thereafter in the morning time they again started searching to their daughter at different houses including old area and house of her friends but they didn’t find her. Thereafter they remained busy in her search during the whole day up to 07:30 pm. Meanwhile at about 07:30 pm on 08.11.2020, her daughter Jiyal Ali came back at their house alongwith her two friends namely Ayesha and Sakina. Since her daughter Jiya was not feeling good, therefore, her husband asked her not make any enquiry from her and allowed her to sleep. Meanwhile her friends went back. Meanwhile Jiya Ali slept and awoke on the following morning, thereafter on 09.11.2020 at about 11:00 am he made enquiry from her. On my enquiry, she disclosed that during said night someone knocked the door and she was under the impression that any child of owner was knocking the door as the daughter of owner namely Mantasha used to visit our house. She further disclosed to her that as she opened the door she heard noises of some spray and then she found some smoke around her and thereafter she became unconscious. She further disclosed to her that when she came into senses she found herself in a cupboard lying inside the room where accused Adnan was present. Adnan is the son of their landlord who was residing at the ground floor in the same building where they were residing as tenant on the first floor. She further disclosed that Adnan took out her from cupboard and thereafter Adnan had given a bottle of water to her. She further disclosed that thereafter Adnan had committed her rape three times in the same night. She further disclosed that the wife of Adnan was not present at the house as due to dispute she was living away from the accused. She further disclosed that accused Adnan had served water to her and meanwhile used to increase the volume of music and thereafter she became unconscious. She further disclosed that meanwhile accused Adnan took her after covering her with Chadar on his motorcycle and left her at Pakora Chowk, Baldia Town. She further disclosed to her that one aunty had given her Rs.100 and then she went at the house of her friends in a Rikshaw from where her friends brought her to the house. She also disclosed such facts to her husband who then lodged the FIR at the police station Ittehad Town. The police had also inspected the place of incident and also took some pictures. She also produced victim Jiya Ali to the hospital for her medical examination. The police also secured clothes of her daughter Jiya Ali. The police had recorded her statement U/s 161 Cr.P.C. He identified the accused Adnana alias Danish in open court. She was cross examined in length by the learned counsel for the accused.

29.                         During her cross examination, she identified the clothes lying in the Court and deposed that these are the same clothes which were wearing by my daughter when she slept with them. She further stated that she cannot say whether the clothes lying in Court are stained or not but smell is still coming from clothes. She admitted that T-shirt is not in torn condition from anywhere while trouser has some holes. They were residing in the said house as a tenant four about last one year and ten months. She admitted that accused Adnan was residing alongwith her wife on the ground floor in the same building, voluntarily said she cannot say whether accused was residing in the building for last seven years, however since they came there he was already residing there. She admitted that prior this alleged incident there was no complaint against the accused Adnan. She deposed that however accused had bad eyes upon her daughter. The bathroom situated on the first floor is at the distance of 20 feet from their gate in a common portion. She further stated that It might be correct to suggest that the distance from ground to first floor is about 12 feet. She denied that all the inmate of house situated at first floor can hear the noise of knocking at the door. She deposed that due to moving of ceiling fan noises occurred there. She denied that they can hear the voice from ground floor to first floor. They had checked the second floor the house of owner as well as ground floor but they didn’t find their daughter, voluntarily said how they can check their daughter if she was confined in the Almirah by accused Adnan. She admitted that such fact is not mentioned in her statement recorded by police that after kidnapping of her daughter the accused bolted the door of her house from outside. She deposed that  she had informed such fact to but police has not mentioned such fact. She further deposed that she herself had not seen any smoke or any person who had thrown the smoke, voluntarily said they were sleeping at the relevant time. She admitted that no other inmate was affected from the said smoke, voluntarily said that there were two ceiling fans were running, therefore there was no effect of smoke to other person. She admitted that no one had seen from her inmate while taking her daughter by accused Adnan from her house, voluntarily said they were sleeping. She admitted that their house is situated in a thickly populated area. She denied that there were rent dues amounting to Rs.40,000/- upon her husband. She deposed that the owner/landlord i.e the mother of present accused used to visit their house monthly even prior the due date for collecting monthly rent, therefore there was no dues. She denied that four days prior of alleged incident they were vacating their house without clearing their house upon which landlord father of accused resisted, voluntarily said they had already paid Rs.20,000/- as advance. She denied that no such alleged incident has been taken place. She denied that her daughter/victim Jiya Ali has falsely deposed before her. She denied that accused Adnan present in Court has not kidnapped her daughter. She denied that accused Adnan present in Court has not committed alleged rape of her daughter. She denied that someone else has committed rape of her daughter. She denied that she was deposing falsely before the Court today.

30.     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.  On this point, entire case of the prosecution rests upon sole testimony of victim Jiya Ali, but evidence of said victim is appearing not trustworthy and not confident inspiring. Her statement appears to be diversion statement and admittedly there are material contradictions and inconsistencies in her deposition which create serious doubt in the prosecution story such as in her statement under section 164 Cr.P.C. she deposed that as she opened the gate and  she saw face of a person from whom she asked what is the reason but surprisingly she has not deposed  that the  face was of Adnan alias Danish and it is admitted fact that she was well aware with the  accused Adnan alias Dani prior the alleged occurrence being the son of her landlord.  More so, the said victim deposed in her examination in chief, she woke up for need of washroom in the night, meanwhile the door was knocked as such she opened the door and saw that accused Danish was standing outside and she inquired the reason for his coming, meantime smoke was appeared in front of her and when she woke up found herself locked in the almirah and accused Danish removed her from Almirah and served water and she became unconscious and when she gained senses found no clothes were available on her body and accused was lying upon her body as such she made hue and cry and nailed the accused with her nails and also bitten the accused. It is admitted fact that the place, where the alleged incident took place was a building having ground plus two floors. It is also admitted fact that the father of alleged victim/complainant was a tenant of father of accused. It is also admitted fact that the alleged victim and complainant were residing in the first floor while accused was residing in ground floor. It was very surprising that at the late night when victim woke up for washroom, at that time accused knocked the door and only victim heard the voice of knocking while other family members including mother of victim, brother and sister of victim remained slept. It does not appeal the scene of prudent mind that how the accused known that the alleged victim would open the door at that time. Furthermore, the alleged victim in her statements recorded U/s. 161 Cr.P.C and 164 Cr.P.C stated that smoke spread in front of her as such she could not seen the face of a person while in her deposition recorded before this Court, she deposed that the accused Danish was standing outside. During the cross examination of alleged victim, she admitted that if a person is on the courtyard of the ground floor and makes hue and cry inside the room then the same could be heard at the first floor and this fact is also admitted by I.O of the case that and stated that “it can be possible that if someone shouted on the ground floor same can be heard on the first floor. It appears that according to the victim the accused kept her in the ground floor where she remained till evening but the mother of the victim PW NO.8 admitted such fact that in the morning she has checked the ground floor portion i.e. the same portion where alleged victim claimed that accused kept her in said portion in a Al-mirah but the PW NO.8 did not find the victim in said room of accused.   Prima facie, the manner in which the alleged offence has been reported to take place reflects that under circumstances such offence could not take place except the consent of victim. In facts and circumstances, where the alleged offence took place, it was highly improbable that accused would dare to commit rape with the victim in the same building and on the ground floor. However, such offence could only take place where consent of victim was given else not possible in prevailing circumstances of the present case. More so, the accused was medically examined by MLO Abdul Jabbar, who was examined as P.W-03 at Ex. 05. In his deposition, he categorically deposed that he has not seen any marks of injury on body of accused on his face, legs, hands elbows and knees, while the alleged victim stated that when she gain senses and saw that accused was lying upon her body, she nailed him with her nails and also bitten the accused but surprisingly no marks of resistance shown on the body of accused despite of the fact that the alleged incident took place on 08.11.2020 and reported the matter on 09.11.2020 and accused Danish was arrested on 10.11.2020 and subsequently on 11.11.2020, he was medically examined by above said MLO. It is not possible that the alleged injuries made by alleged victim on the body of accused would be healed within 24 or 48 hours even totally disappear the marks of resistance from the body of accused. It is also admitted fact that the alleged victim Jiya Ali during her deposition admitted that the accused took her on his motorcycle at the house of one aunty at Maghrib time and she had not made complaint while she was at the bike to any mohallah person. It is also admitted fact that the alleged place of incident was situated at thickly populated area. It is surprising when she was allegedly being abducted by accused and travelled through motorcycle she had not made any hue and cry nor made any resistance or complaint to any by-passer about alleged abduction. Nothing has come on record that at that time she was in unconscious condition or accused served her any intoxicated substances. It means that she was in full senses and she had well known about where they were going.

31.     Admittedly, the victim was medically examined but there is no any sufficient medical record available with the prosecution to connect the accused with commission of offence. The WMLO Dr. Aiman Khurseed recorded as P.W-5 at Ex. 07 stated in her deposition that no mark of violence were seen on body of victim. She further deposed that “External Genital Area was normal. Vestibule was normal. Vulva was normal. Vagina admits index finger easily, however, two fingers introduced but with pain and tenderness although fingers were introduced easily. She further stated that hymen was old torn and healed. She gave her opinion that the alleged victim was not virgo intact and she has had sexual intercourse. However, HVS taken been for DNA and chemical analysis to ascertain fresh act, if any. The said WMLO also produced DNA report No. SFDL-2020-1231 dated: 09.11.2020, which shows that no seminal material was identified on both vaginal swab. DNA report further reveals that no seminal material was found over the trouser, shirt of Jiya Ali D/o Ali Muhammad, hence no further DNA analysis was performed over above mentioned articles i.e trouser, shirt and HVs. She also produced such DNA report at Ex. 07/C and owned the contents of same report.  It is admitted fact that only those finding are relevant  to the episode of sexual assault, i.e. findings such as fresh tears, bleedings, oedema. Admittedly here in this case there is not such finding mentioned by the WMLO and instead it is mentioned that  External Genitalia was no normal; no Erythema,; no laceration; no tear seen; vestibule is normal; Vulva is normal;  vagina is normal while Hymen is old torn and healed. The findings of the WMLO clearly shows that no such fresh act or sexual assault was made.  It is pertinent to mention here that the I.O namely SIP Manzoor Hussain Shah deposed in his examination that he inspected the place of incident on the pointation of victim and the complainant and victim also produced one blue/black color trouser and one shirt of victim to him at the same time, which he sealed in presence of complainant and victim at the spot and prepared the memo of seizing of clothes of victim  which were wearing by her at the time of alleged offence and the same memo was produced by alleged victim at Ex. 4/A and she owned the contents of same memo and also identified her clothes , which was produced in the Court as case property and she also admitted that she was same clothes which she worn at the time of offence but during DNA analysis no material semen found over the clothes of alleged victim which she worn at the time of alleged incident.

32.    Furthermore, the medical officer had stated in her cross examination that “she stated that virgo intacta means hymen of the lady is intact and further said in this case, the victim was not virgo intacta which means that her hymen was not intact.  She further stated that it is fact that she has mentioned that hymen is old torn and healed which means that hymen has been torn more than prior 4 to 7 days back.  She also admitted that no fresh signs of sexual assault were found during her examination.  She also deposed that  hymen can be torn due to several reasons such as playing, foul play, running etc. It is noteworthy to mention here that the alleged incident took place on 08.11.2020 in between 0200 hours till next evening while the alleged victim was produced for her medical examination before above said WMLO on 09.11.2020 at about 10:00 P.M, hardly 24 to 30 hours have passed after the incident, she was produced before WMLO but WMLO opined that the hymen of alleged victim has been torn more than prior 4 to 7 days back.   I have also carefully scanned the medical record, which reflects that no any act of sexual violence was committed though the hymen of victim was torn but it has been now medically proof that the some times due to playing and lifting weights cause the hymen broke and also some diseases may cause the hymen damage but same does not mean that each time hymen was torn due to sexual attempt. Under such circumstances, there appears no case of rape and allegations levelled against accused for commission of rape are not proved with confidence inspiring and supportive evidence and the story coming from the mouth of victim does not appeal the mind of a prudent person.

33.     From scanning of available record it appears that apart from the victim there was no eye witness of incident even complainant himself is a hearsay and he deposed almost similar line as deposed by alleged victim and nothing favourable came to the prosecution to establish their case against the accused named above. No doubt, conviction can be awarded on the basis of sole testimony of victim if it is trustworthy and confidence inspiring and corroborated by other pieces of evidences which is not forthcoming in this case. The other witness of prosecution are formal in nature which made effort to setup the case against the accused but their testimonies are not of that nature to make up the case for conviction against the accused. It has been held in several reported judgment of Honorable Apex Courts that single doubt arising in case of prosecution was to contribute in the favour of accused for accused being favourite child of law. The testimony of victim appears to be divided and shaky and there appears mixture of falsity in her statements with ill-motive to book the above named accused with commission of alleged offence at any cost. I do respect the case laws produced by the learned counsel for the complainant but I am of the view that the case laws cited by the learned counsel for the complainant are on different footings from the facts of the present case while the case laws cited by the learned counsel for the accused are fully supporting the  contentions of the learned counsel for the accused.  I have carefully scanned the prosecution witnesses and has reached to the conclusion that prosecution has miserably failed to prove its case against accused named above  beyond any shadow of doubt as such point under discussion is answered as not proved.

**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 prosecution has miserably failed to establish its case against the present accused namely Adnan @ Danish S/o Muhammad Sharif beyond any shadow of doubt. Therefore, I do hereby acquit the accused namely Adnan @ Danish S/o Muhammad Sharif U/s. 265-H(i) Cr.P.C from the charges. The accused named above is produced in jail custody. Let the release writ be issued to concerned Jail with direction to release him forthwith if he is not required in any other custody/crime case.

**ANNOUNCED IN OPEN COURT**.

          Given under my hand and seal of the Court on this 1st  pday of October,  2021.