Ex. No.16

IN THE COURT OF ADDITIONAL DISTRICT JUDGE-X, KARACHI WEST

BEFORE:-                              (Irshad Hussain)

Sessions Case No.732/2021

The State

Versus

Ahmed Raza Son of Abdul Malik                                         ……………………Accused

                                                                                    Offence under section 376 PPC

                                                                                    (Cr.No.03/2021 of PS Iqbal Market)

*Mr. Pervez Gujjar, advocate for the accused*

*Mr. Ashar Emnunal, DDPP for the state*

J U D G M E N T

22.04.2022

 The above named accused was sent up by SHO of Police Station Iqbal Market to face his trial, for offence punishable under sections 376 PPC being crime No.03/2021 registered at PS. Iqbal Market, Karachi.

02.       The brief facts of prosecution case as narrated in the FIR by the complainant Mst. Ishrat Jahan W/o Zameer resident of House situated in Katchi Abadi near Noor ul Huda Masjid, Sector 11-1/2, Orangi Town, Karachi that she used to work in factory and she has four children who live alone at home when she used to leave for work. Her daughter Afshan, aged 16/17 years informed her on 31.12.2020 that when she used to leave for work, in her absence, her brother in law (*Nandoi*) Ahmed Raza used to come at home, commit forceful zina with her. She further disclosed that he is doing so for last five years. After consultation she approached the police station and lodged the subject FIR.

03.       After registration of FIR, Investigation Officer conducted the investigation of the present crime and recorded the statements of the prosecution witnesses and also inspected the place of incident under a written memo. Meanwhile medical examination of Mst. Afshan and accused was also conducted. After usual investigation the above named accused was challaned for the offence punishable under section 376 PPC.

04.       Copies under section 265-C Cr.P.C. were supplied to the present accused vide receipt at Exh. No.01.

05.       During trial, the charge containing prosecution allegation against the present accused was framed on 16.04.2021 at Exh. No.02, to which he pleaded “*not guilty*” and claimed to be tried vide his plea at Exh. No.02/A.

06.       Just to strengthen its case, the prosecution has examined its witnesses.  At first SIP Riaz Hussain was examined as PW-1 at Ex. 03, who produced FIR and Roznamcha Entry at Ex.3/A & B. He was cross examined by the learned counsel for the accused.  PW-02 PC Aftab Shah was examined at exhibit 4. He was the mushir of arrest. He produced memo of arrest at Ex.4/A and identified his signatures on the memo of arrest and also identified the accused. He was also cross examined by the learned counsel for the accused. Thereafter, P.W-03 victim Afshan was examined at exhibit 5. He produced her statement u/s 164 Cr.P.C. at Ex.5/A. She identified the accused. She was cross examined by the counsel for accused. PW-4 complainant Mst. Ishrat Jahan was examined at Ex.6, she produced the memo of site inspection at Ex.6/A and identified the accused. She was cross examined by the defence counsel. PW-5 Saima Kattu, learned Judicial Magistrate was examined at exhibit 7. He recorded the statement of victim u/s 164 Cr.P.C. She produced the Order dated 04.01.2021, Letter of Judicial Magistrate-XXII, Karachi West and application of I/O at exhibit 7/A to 7/C. She also identified the accused. She was also cross examined by the learned counsel for the accused. PW-6 Dr. Muhammad Yasin was examined at exhibit 8. He examined the accused. He produced police letter at exhibit 8/A, MLC NO.28/2021 at exhibit 8/B, DNA Report at Ex.8/C, Supplementary ML Report at exhibit 8/D. He also identified the accused. He was also cross examined by the learned counsel for the accused. I/O SIP Ashiq Ali was examined at Ex.9 as PW-7 who produced Roznamcha Entry, Pictures of site inspection, Letter to MLO, CRO of accused, Road Certificate, Chemical and DNA Letters at Ex.9/A to 9/H. MLO Dr. Samia Sehar was examined at Ex.10 as PW-8 who produced MLC No.01/21, Chemical Report and OPD Slip at Ex.10/A to 10/C. She was cross examined by the defence counsel. Thereafter the learned ADPP for state closed the side of the prosecution vide statement at Exh.11.

07.       The Statement U/s. 342 Cr.P.C of accused was recorded at Exh: No.12, wherein he denied the prosecution allegations and claimed to be innocent and he further claimed that he will further deposed in his statement on oath under section 340(2) Cr.P.C. and later on his statement recorded under section 340(2) Cr.P.C was recorded at exhibit 13 and he was cross examined by the learned counsel for the State. Accused has also produced one defense witness namely Mst. Raseesa whose statement was recorded at exhibit 13. She was also cross examined by the learned state counsel. Thereafter the learned counsel for the accused closed the side of the accused.

08.       The main contention of the learned counsel for the accused is that complainant and alleged abductee are close relative of the accused and due to domestic issues and family enmity the above named accused has falsely been implicated in this case by the complainant and victim. He has contended that according to the complainant and victim has admitted before this court they were not residing at the address given in the FIR which is as house situated near Masjid Noor ul Huda, Baiwa Quarters but in their statement under section 161 Cr.P.C. such address is given. It is further contended that  there are so many contradictions and inconsistences in the statement of the prosecution  witnesses such as the complainant  deposed that accused was committing rape of her daughter for last 5/6 years while the victim has alleged that accused was molesting her body for last 5/6 years and victim has not alleged that accused committed her rape   for last  5/6 years or committed or rape 5/6 years ago. It is further contended that  wife of accused has seen such act of accused when he   slept the victim with the victim and wife of accused fought with the accused but  said wife of the accused examined herself as defence witness in which she denied such fact as alleged by the victim against the accused. It is further contended that according to the statement under section 161 Cr.P.C. the victim alleged that accused used to give her gifts and used to take her out side for visits while the victim denied such fact that she has not deposed such fact to police and admitted that she has not deposed such fact  during the trial before the court. It is also contended that  victim alleged that accused at first used to discharge on her body and thereafter he started discharging inside her therefore she was feeling pain and used to weep and thereafter she herself  attempted to commit suicide. It is further alleged by the victim that she informed her mother and thereafter she left the house. It is further contended that victim has alleged about a function which was taken placed 5 years ago but in her examining in chief she has not alleged about such function. It is further contended that in her statement victim alleged that it was Monday five year ago and then accused again came on Tuesday. It is also contended that DNA report is negative as no semen material was found from the vaginal swab of the victim. It is further contended that hymen of the victim was torn and healed and victim herself admitted that in the last days she was residing with one Ali who is the boy residing in the same area. It is further contended that infact the complainant party went to the police station for lodging FIR against said Ali but FIR was lodged against the present accused. It is further contended that present accused admitted his guilt  before Zahir shah but said Zahir Shah was not produced before this court which shows that Zahir Shah does not want to give evidence which create adverse fact. It is further contended that victim admitted that it is not mentioned in her statement that accused committed her rape five years ago. It is further contended that the house is of one room house but no area person was taken as witness. The clothes of the victim were not secured by the police. There is no other eye witness who can support the version of the complainant or victim. He has also contended that arrest of accused is also doubtful as according to the police record the accused was arrested on 01.01.2021 after registration of FIR at about 2135 hours but according to the complainant accused was already arrested prior lading of FIR. According to the complainant at the time of alleged incident there were residing near the Bilal Masjid and said house was inspected by the police while the address given in the FIR is the address of elder sister. It is further contended that it has come on record that victim has left the house after two days after meeting with Ali.  It is also contended that according to the complainant there was no penetration as accused used to discharge outside of vagina. It is contended that how the victim came to know that accused used to discharge outside. It is further contended that no injuries were found on the body of the victim in person and as well as on her private parts. It is further contended that as per WMLO the victim was normal at the time of her examining and WMLO has not found any marks of violence or maltreatment or any type injury on the body of the victim. It is further contended that victim has not disclosed the year of the alleged offence, month of the alleged offence, date of the alleged offence and even time of the alleged offence.  It is further contended that infact the victim herself left the house and went with Ali and later on booked the present accused with the alleged crime.  It is further contended that solitary statement of the victim is not trustworthy. It is further contended that prosecution failed to prove the case against the present accused beyond any reasonable shadow of doubt. Lastly it is prayed that since there is dishonest improvement in her statement under section 161 Cr.P.C. and her statement under section 164 Cr.P.C. therefore doubt has been created and accused is entitled for such benefit of doubt. In support of his contention the learned counsel for the accused relied upon the case laws 2020 P.Cr.L.J. 895 and 2016 MLD 1352 Lahore.

09.       On the other hand the learned DDPP for the state mainly contended that accused is very much nominated in the FIR. It is further contended that accused is fully implicated by the victim in her evidence before this Court that accused  committed her rape five  years ago  in his own house and thereafter accused again committed her rape five months prior of lodging of FIR in the house of complainant. It is also contended that sole statement of the victim is fully supported by the WMLO who has given her opinion that victim was not virgo intact. It is further argued that there is not necessary that in every case the report of DNA would be positive as here in this case the victim was examined after five months of alleged incident of rape therefore DNA report is negative. Lastly  he prayed that since prosecution  has established the case against the present accused beyond any reasonable shadow of doubt, therefore accused  is entitled for conviction according to law.

10.       I have heard the learned counsel for accused, learned DDPP for the State and perused the record and evidence with great care. Now the points for determination would be as under:-

**P O I N T S**

i)                    *Whether about five/six  years prior of lodging  of FIR i.e. 01.01.2021  at inside his own house of accused Ahmed Raza  situated at Ghaziabad, Sector 11-1/2, Orangi Town, in the night time the above named accused committed  rape of victim Mst. Afsha when she was aged about 10/11 years and thereafter again five months prior of lodging of FIR in the evening time at house of complainant situated at Kachi Abadi near Noor ul Huda Majid, Bewa Quarter,  Sector 11 1/2, Orangi Town, Karachi, the above accused named has again committed forcibly rape of Mst. Afsha aged about 16/17 years, daughter of complainant  Mst. Ishrat wife of Zameer?*

ii)                  *What offence, if any, has been committed by the accused?*

11.       For reasons stated herein below my findings on the above points are as under:-

F I N D I N G S

Point No. 1.                             Proved to the extent of offence of rape committed five months prior of lodging of FIR while not proved to the extent of rape committed five/six years prior.

Point No. 2.                             The accused Ahmed Raza son of Abdul Malik is 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.100,000/- (one Hundred Thousand Rupees). In case of default in payment of fine, the accused shall further undergo simple imprisonment for a period of six (6) months. The accused is also awarded benefit of section 382-B PPC. He is in custody since 01.01.2021.

R E A S O N S

**POINT NO.01**

12.       The allegation against the above named accused is that about five/six years prior of lodging of FIR i.e. 01.01.2021 at inside his own house of accused Ahmed Raza situated at Ghaziabad, Sector 11-1/2, Orangi Town, in the night time the above named accused committed  rape of victim Mst. Afsha when she was aged about 10/11 years and thereafter again five months prior of lodging of FIR in the evening time at house of complainant situated at Kachi Abadi near Noor ul Huda Majid, Bewa Quarter,  Sector 11 1/2 , Orangi Town, Karachi, the above accused named has again committed forcibly rape of Mst. Afsha aged about 16/17 years, daughter of complainant  Mst. Ishrat wife of Zameer. Appraisal of the evidence shows that the prosecution has examined as many as 8 witnesses in this case in order to establish the guilt of the accused while the accused examined himself on oath under section 340(2) Cr.P.C.  and also produced one defence witness i.e. his wife Mst. Raeesa.

13.       In order to prove its case, at first the prosecution examined PW NO.1 SIP Riaz Hussain Bhutto at exhibit 3 who deposed that on 01.01.2021, he was posted as duty officer/SIP at P.S Iqbal Market. His duty timings were from 0800 hours to 2000 hours. On the same day, at about 1500 hours, complainant Mst. Ishrat Jahan R/o Katchi Abadi Near Noorul Huda Masjid, Sector 11 ½ Orangi Town Karachi came at P.S and deposed the facts of case cognizable in nature punishable under section 376 PPC against nominated accused Ahmed Raza with the allegation that he used to commit rape with her daughter Afshan. He accordingly lodged FIR No. 03/2021 as per verbatim of complainant against the nominated accused Ahmed Raza. Thereafter he read over the contents of FIR before her to which she admitted the same as true and correct and then put her thumb impression. He produced such FIR at Ex. 03/A and identified his signature on it. He also kept such fact of lodging of FIR in Roznamacha Register in entry No.36. He produced the same as Ex.3/B. Thereafter he handed over the investigation of the case to SIO. Thereafter, I.O recorded his statement under section 161 Cr.P.C. he was cross examined in length by the learned counsel for the accused.

14.       During the cross he deposed that the complainant came at the police station alongwith her daughter i.e victim Afshan. He was acting as duty officer while his other staff was available at police station. The entry No.36 was written by Roznamcha Muharer PC Tarique. The FIR was written by him. He denied that the handwriting of station diary and FIR are the same. He admitted that he has not produced original Roznamcha register No.2. He deposed that he has produced carbon copy duly attested with original stamp of police stamp. He denied that FIR is not written in his handwriting. He admitted that complainant has not disclosed specific dates of alleged commission of rape of her daughter. He deposed that complainant disclosed that accused was committing alleged rape with her daughter. He admitted that complainant has not produced any written proof in respect of her residence. He deposed that however complainant produced her CNIC. He admitted that FIR is based on the alleged disclosure of victim Afshan to her mother Mst. Ishrat Jahan.

15.       PW NO.2 PC Aftab Shah was examined at the exhibit 4 who deposed that on 01.01.2021, he was posted as PC at P.S Iqbal Market in investigation branch. His duty timings were from 2000 hours to 0800 hours. On the same day, complainant Mst. Ishrat Jahan lodged FIR No. 03/2021 U/s 376 PPC against accused Ahmed Raza. The said FIR was entrusted to SIP Ashique Ali for the purpose of investigation. On the same day, he alongwith SIP Ashique Ali and complainant Mst. Ishrat Jahan W/o Zameer Ahmed left the police station and thereafter they  reached near Siddique Akbar Masjid Sector 11 ½ Orangi Town at about 2115 hours and on the pointation of complainant arrested the accused who disclosed his name as Ahmed Raza @ Shoukat S/o Abdul Malik. During his personal search his CNIC and cash of Rs.120 were recovered. The accused was accordingly arrested under a written mashirnama and he acted as first mashir while other mashir was complainant Ishrat Jahan. He produced such mashirnama at Ex.04/A and identified his signature on it. He identified the accused Ahmed Raza in open court. He was cross examined in length by the learned counsel for the accused.

16.       During the cross he deposed that IO SIP Ashique Ali Panhwar had not arrested any other accused on said date prior arrest of accused in any other case. The distance from police station to alleged place of arrest is about four kilometer.He admitted that he has not produced departure entry under which they left the police station. He admitted that according to the contents of Mashirnama accused was arrested on the spy information. He admitted that no spy informer came in person in his presence. He deposed that IO received spy information on his cell phone. They reached within next 15 minutes to the place of arrest on police mobile. He admitted that Noorul Huda Masjid is situated near the alleged place of arrest. He admitted that the area of alleged arrest is called Bewa quarter which are situated adjacent to each other. He denied that IO did not ask any private person to act as mashir at the time of alleged arrest of accused. He deposed that IO asked some private persons but no one was ready. IO had not served any notice who had refused to act as mashir. He admitted that alleged place of arrest is busy area. He admitted that except complainant there is no private mashir. He denied that he has acted as mashir at the instance of IO. He admitted that personal search articles of accused are not lying in Court. He admitted that description of currency notes are not mentioned.

17.       Thereafter PW NO.3 victim Mst. Afshan was examined at exhibit 5 who deposed that the complainant Mst. Ishrat Jahan is her real mother. The accused Ahmed Raza present in the Court is her real paternal uncle (Pupha). They are three sisters and one brother. She is elder one. The accused Ahmed Raza is the husband of sister of her father. He has two children. He is also residing in the Orangi Town. Her mother used to work in a factory. Her mother used to go at 06:45 am in the morning and then used to come at 09:00 pm. Her Father is not doing any job and in absence of her mother she alongwith her other sisters and brother remained in her house. Her father mostly used to remain in jail. Five to six years ago, there was a marriage function in the house of her paternal grandmother situated in the Orangi Town. After attending such marriage she came with her paternal aunty (Pupho) the wife of present accused and stayed in her house in the night time. When she was sleeping in the house of her paternal aunty, the accused Ahmed Raza (Phupha) came there in the midnight and took her another room situated in the same house where he had committed her rape. Her paternal aunty (Phupho) had also seen the accused while he was committing such bad act with her. Thereafter her Pupho started quarreling with her Phupha/present accused on such alleged occurrence of committing her rape. Her Phupho asked her not to disclose such fact to anyone and in the following morning she took her to the house of her maternal grandmother which was also situated in Orangi Town. Thereafter she went to the house of paternal grandmother and then she came to her own house. She did not disclose such fact to anyone at her house. The accused Ahmed Raza used to come twice in a week in her house on Saturday and Sunday. Whenever she used to make tea in the kitchen accused used to touch her on her private parts. Five months prior of lodging of FIR her grand paternal mother came from Lahore and brought valuable articles for them. So many guests were there in their rented house situated near the house of her elder Phophu at Baiwa Colony, meanwhile her mother and Phupho went in order to attend one function and he was alone in the house and were cleaning the house. Meanwhile accused Ahmed Raza came alongwith articles of her grandmother. The accused entered into her house by opening the hook/Kara of the gate for keeping the bag of paternal grandmother. When he saw that she was alone in the house he bolted the door from inside. She was in kitchen. He took her from kitchen to the room. It was evening time, meanwhile accused removed her clothes and committed her rape. He issued threats to her not to disclose such fact to anyone otherwise he will do something. She said that she will disclose such facts to everyone. After issuing such threats he left the house. Thereafter he brought her paternal grandmother from the house of her sister. He came again like an innocent person in her house posing himself that he had not done anything with her. However she had not disclosed such fact to anyone. Thereafter accused tried to come inside her home in absence of her mother but she used to lock her door from inside. One day the door was opened her younger sister was in school while her younger brother was playing outside. Meanwhile accused came and enter into her house but after seeing the accused she left from her house and she went at the house of her friend situated in front of her house. Thereafter accused started coming regularly after two alternate days. Thereafter area people made complained to her mother that in her absence some persons used to visit her house and they doubted on her character before her mother. Thereafter under disappointment she cut her left hand but fortunately she remained saved. Her mother maltreated her upon her act of committing suicide and enquired about the reason for such act. Then she informed all such fact to her mother about alleged commission of rape by accused on multiple time on different occasions. Thereafter her mother called her another paternal uncle Phupha Zahir Shah and informed him such fact and thereafter Zahir Shah her Phupha called the accused Ahmed Raza and made enquiry from him who confessed before Zahir Shah but said that he had done only 50% rape upon which Zahir Shah had beaten the present accused. Thereafter her mother decided to lodge FIR and then her mother lodged FIR against accused Ahmed Raza. Her statement was also recorded by police. She was also referred before WMLO at Abbasi Shaheed Hospital by police. She appeared before WMLO at Abbasi Shaheed Hospital where her medical was carried out with her consent and consent of her mother. Her Phupha Zahir Shah was also with them. Thereafter she was shifted to Women police station. She was also produced before learned Judicial Magistrate where her statement U/s 164 Cr.P.C was recorded. She produced one sealed envelope which was de-sealed in presence of learned counsel for accused. Envelope was containing one statement recorded U/s 164 Cr.P.C which she produced at Ex.5/A and identified signature and thumb impression and picture. She identified accused Ahmed Raza being her real paternal uncle/phupha in open court being the accused who committed her rape on different occasions and different time during last five years. She was cross examined in length by the learned counsel for the accused

18.       During the cross she admitted that she is 16 years old which means that five or six years ago she was aged about 10/11 years. She has been living in Orangi Town since her birth. The police recorded her statement under section 161 Cr.P.C. She admitted that  she is not residing at the address given in her statement recorded under section 161 Cr.p.C. which shows address as house situated  near Noor Ul Huda Baiwa Quarter, Siddiq Akber Quarter, Sector 11 ½, Orangi Town. She deposed that it is address of her elder Phupho namely Rani which her nick name. She denied that when FIR was lodged she was residing at Raees Amrohi Colony where she is residing now. She deposed that they left their rented house where alleged occurrence taken placed after 2/3 days of lodging of FIR. She admitted that alleged house situated in the Baiwa quarter where alleged offence taken places are very small house. The roof of said houses are of precast (slips). She admitted that if someone calls or talks loudly then his voice will be heard in the house situated in the neighborhood. Shed deposed that one side house situated on the left side was lying vacant while a family was residing on the house situated on the right side. She was not having any visiting terms with neighborhood families. She deposed that she was just in visiting terms with the house situated in front side of her one fried. She deposed that she was used to go some time in the house of her friend. She admitted that her father was confined in jail in drug cases. She admitted that her father was convicted in a drug case and after completing his punishment he was released one month ago. She deposed that at the time of alleged occurrence at her house her father was in jail. Her younger sister is aged about 8/9 years and another younger sister is aged about 2 years and one brother now aged about 4 years. She was present at the time when FIR was lodged.  Five / six years ago she was not having menstruation when alleged offence was taken placed very first time and she was minor. She admitted that   she has not disclosed the name of person whose marriage was solemnized five/six years ago at the house her paternal grandmother. She deposed that it was the Barrat or function of Mayo. She admitted that she has not disclosed the number of persons who participated in the marriage function. She admitted that she has not stated in her statement that accused family was also invited in said marriage ceremony. She admitted that she has not disclosed the day and date of said marriage function which was allegedly taken placed five/six years ago. She admitted that she has not disclosed the dates when accused started touching her body. She deposed that accused used to touch her body whenever he gets chances in his house or in their house after alleged first occurrence. She admitted that in her statement recorded under section 161 Cr.P.C. in respect of first alleged occurrence it is not mentioned that she stated before police that accused committed her rape. She admitted that only it is mentioned that accused got slept her with him when she was aged about 11 years and Phuphe had seen such incident and she fought with accused. She deposed that she deposed before police that accused committed her rape at that time but police has not mentioned such fact. She deposed that she also deposed that Phupo had seen such act when accused was allegedly committing her rape but police has not mentioned such fact in her statement. She admitted that she has not raised any hue and cry when accused allegedly committed rape with five / six year ago. She admitted that in case of rape with a minor baby the condition of minor baby would be very worst. She deposed that accused committed her rape very first time but he discharged outside her body. She admitted that she has  deposed in Court that about five years ago in the house of accused, the accused had committed her rape in another room while in her statement recorded U/s 161 Cr.P.C it is mentioned that accused got sleep her with him. Her mother used to wash her clothes when she was ten/eleven years old. She admitted that she had not disclosed to anyone about alleged act of committing her Zina by accused five/six years ago after coming from the house of accused. She admitted that she was not under any pressure at the time of recording of her statement U/s 164 Cr.P.C. She admitted that  contents of statement recorded U/s 164 Cr.P.C were not read over before her after completing her statement, She deposed that learned Magistrate were reading her statement during writing the same. She admitted that in her statement recorded U/s 164 Cr.P.C it is not mentioned that the accused had committed her rape. She deposed word Ziadati is mentioned in her statement recorded U/s 164 Cr.P.C. She admitted that such fact is not mentioned in her statement recorded U/s 164 Cr.P.C about penetration. She admitted that it is mentioned in her statement recorded U/s 164 Cr.P.C that on Monday accused came but she fled away from her house. She admitted that on that day accused had not committed any act of Zina with her. She does not remember the date when she cut her left hand. She admitted that she has not produced any medico legal certificate regarding cutting of her hand. She admitted that Zahir Shah is not witness in this case. She also admitted that it is mentioned in her statement that accused used to give her gift. She deposed that she has not stated so before police that accused used to give her such gifts and police themselves had written the same. She admitted that two days prior of lodging of FIR she left the house of her mother/complainant and went with one boy named Ali who proposed her  for marriage with him but his father refused to accept such proposal and thereafter on the following day she came back to the house of her parents. She denied that they both were in love with each other. She deposed that said boy had given her his number two days prior lodging of FIR. She admitted that said boy belongs to the same area. She deposed she came to know about said boy as he came for selling SIM and she met with him on the door of her house and since she was worried from the acts of present accused/Phupha; therefore, she intended to leave her house forever in order to save herself from accused. She denied that landlord of her rented house turned out them from said house. She deposed that they themselves left said house where they residing at the time of lodging of FIR. She denied that since her father was in jail; therefore, her mother demanded an amount for releasing of her father from jail and on his refusal, her mother had lodged the present FIR. She denied that at present FIR was lodged at the instance of Zahir Shah. She denied that she has levelled false allegation against the present accused. She denied that accused always treated her like his daughter. She denied that Phupho had never brought her at her house five/six years ago. She denied that accused has not committed her alleged rape five/six years ago or five/six month prior lodging of FIR. She denied that accused even did not make any attempt to touch her body. She denied that accused never ever intended to commit her rape as he has already his wife. She denied that she has deposed falsely.

19.       Thereafter PW NO.4 Ishrat Jehan was examined at exhibit 6. She was complainant. She deposed that she has four children including three daughters and one son. Her elder daughter is Afshan now aged about 16 years. At the time of lodging of FIR she was doing job. She used to leave her house at 06:45 am in the morning and used to come at 09:00 pm. Her husband was in jail in some cases. One day prior of lodging of FIR her daughter Afshan disclosed her that her paternal uncle Ahmed Raza (phupha) was committing her rape since her childhood. She came to know all such fact when one day she came back to her house and found that her daughter Afshan was missing as she left the house with one boy. On her enquiry she came to know name of said boy with whom she left the house she reached to the house of said boy situated in her area. On her enquiry, the sister of said boy informed her that her brother brought her daughter in her house and then went away somewhere. The father of said boy was also not present in the house. Thereafter the sister of said boy called the father of said boy. She asked the father of said boy to return her daughter. Thereafter father of said boy assured her that her daughter will be returned. Meanwhile they were searching their daughter and on the following day in the night time her daughter had come. So many relatives gathered in her home including her sisters and sisters of her husband. On enquiry her daughter informed that she had not contracted Nikah with said boy whose name was Ali and informed that she herself left the house and went in the house of Ali and told his parents that she does not want to go back in the house of her mother as her mother used to beat her. Her daughter was very innocent and simple and was not able to take such decision to leave the house by herself alone. Her all the relatives were present inside her house including the present accused. Her daughter informed her that said boy Ali used to sell SIM and two days prior he had sold out SIM to her and to her cousin and thereafter within two days she left the house with him. Meanwhile she intended to lodge FIR against said boy Ali and went to the police station but present accused came after her and in order to stop her for lodging FIR against said boy Ali. On the way when she was coming with police mobile in order to arrest said boy Ali the present accused stopped her and requested not to lodge FIR or any further action against Ali. Thereafter she came down from police mobile and went to the house of present accused with him. When she reached at home she saw that her daughter Afshan was weeping and then she informed her that why did she leave the house. Thereafter her daughter in presence of all the relatives and in presence of accused disclosed to her that the present accused Ahmed Raza used to commit rape with her since her childhood. Since the present accused used to frequently visit her house; therefore, she was worried after hearing disclosure against him by her daughter. She further disclosed to her that in order to save herself from the evil eyes and the hands of present accused she had left the house and went with Ali in order to marry with him. Meanwhile she asked her daughter why she did not disclose such fact to her that since childhood present accused had been committed Zina with her and she replied that her aunty (phupho) wife of present was aware with all such facts. Thereafter the wife of present accused annoyed upon her daughter and blamed her daughter that someone else committed rape with her but falsely implicated her husband and her daughter also replied to aunty that she was well aware about alleged act of commission of rape by her husband with her. Thereafter her daughter disclosed all such facts and events in detail to her in respect of alleged act of commission of rape by accused with her. She also called Zahir Shah who is husband of elder sister of her husband. The said Zahir Shah made enquiry from accused who admitted his guilt and stated that he had only done 50% rape out of 100%. The present accused had very much disturbed her daughter in her absence as he used to visit her house in her absence alone and sometime with his wife as whenever I left her house for job he used to come in the house in her absence. Thereafter on 01.01.2021 went to the police station Iqbal Market where she lodged FIR No.03/2021 U/s 376 PPC against the present accused. She identified FIR at Ex.3/A and identified her thumb impression. Meanwhile police inspected her house on her pointation in her presence and in presence of her brother in law Ibrar. Police had prepared such memo of site inspection in her presence. She acted as first mashir of said memo, which she produced at Ex.6/A and identified herthumb impression. The police also arrested the accused on her pointation on the same day under a written mashirnama. She also identified such mashirnama at Ex.4/A and identified her signature and thumb impression. The police also referred her daughter for her medical check up to Abbasi Shaheed Hospital. She had taken her daughter before WMLO and gave her consent for conducting medical of her daughter. Meanwhile WMLO had examined her daughter. Her daughter was also produced before learned Judicial Magistrate where her statement U/s 164 Cr.P.C was recorded.  She identified accused Ahmed Raza in open court being the same accused who had committed rape of her daughter since her childhood. He is real paternal uncle (phupha) of her daughter. She was cross examined in length by the learned counsel for the accused.

20.       During the cross she identified the FIR which shows her  residential address as House situated Katchi Abadi Near Noorul Huda Masjid Sector 11 ½ Orangi Town Karachi. She admitted that she was not residing at the given address at the time of lodging FIR. She deposed that it was the house of elder sister of her husband and at that time they  were residing at rented house near Paradise School and Masjid Hazrat Bilal Sector 11 ½ Orangi Town. She denied that she showed the police alleged place which is mentioned in the FIR being her residence. She deposed that she showed the police her house situated at Near Bilal Masjid where they were lastly residing on rent at the time of lodging of FIR. She does not remember the house number and street number where they were residing at the time of lodging of FIR. The distance from the house of elder sister of her husband which is mentioned in the FIR to the rented house where they were residing was about 10 minutes’ walk. She admitted that her husband was in jail when she lodged FIR. She admitted that her husband is a convicted person. She admitted that in her absence her other children including victim remained in the house, She deposed that her younger children were going to school. Her daughter Afshan was not going to school. She deposed that she looks after the house affairs. She denied that her daughter was in love with Ali. She deposed that her daughter left the house just after two days meeting with Ali. She came to know about missing of her daughter two/three days prior of lodging of FIR when she came back from her job and niece Sheeza informed her such fact that her daughter left the house with Ali. She was aware with the house of Ali. She deposed that he was living in the same area. She was aware with the mother of Ali. Ali is a small boy just like the age of Afshan. She came to know at 04:30 pm about missing of her daughter as on that day she came early from her job. Her daughter remained missing from her house one night and during such period she remained with Ali. She brought her daughter from the house of Ali two days prior of lodging of FIR. She went to the police station and lodged a Katchi report against Ali and thereafter police mobile came with her in order to apprehend Ali but present accused stopped her to take any further action against said Ali and then police mobile went away. There were three police officials were in police mobile when they were coming to apprehend Ali. She herself lodged Katchi report against Ali. Ibrar was with her. Present accused stopped her at the main road in the police mobile. She made verbally Katchi report against Ali at the police station. She admitted that no action was taken by her against Ali. She admitted that all such facts related to the matter of Ali are not mentioned in present FIR. She had not maltreated her daughter when she brought her from the house of Ali. She denied that if they had not brought her daughter Afshan from the house of Ali may they contract marriage with each other. She deposed that father of Ali was not agreed for such marriage as he knew her. She was well aware with the father of Ali as she attended marriage of father of Ali when she was a young child. She denied that father of Ali is her caste fellow. She deposed that father of Ali is Pathan by caste. The accused, she herself, her daughter Afshan and Zahir Shah were present at the police station at the time of lodging of FIR. The accused was apprehended from the house of elder sister of her husband as he was called by Zahir Shah with the help of police. She admitted that at first accused was apprehended and then FIR was lodged. She deposed that they also followed the accused to the police station on motorcycle and then she lodged FIR. She admitted that her daughter never ever disclosed to her about alleged offence of committing her rape by present accused during last five/six years. She deposed that her daughter firstly informed her about all such facts against present accused prior two days of lodging of FIR. She admitted that  she  lodged FIR after two days of knowing alleged facts as disclosed by her daughter Afshan against present accused, She deposed that her husband was in jail; therefore, at first she called paternal grandmother of her daughter and Zahir Shah and others and then she lodged FIR. She admitted that she had not moved any application prior lodging of FIR during such two days. She admitted that her mother in law as well as Zahir Shah the husband of elder sister of her husband are not witness in the present case. She deposed that they refused to act as Mashir. She denied that her mother in law and Zahir Shah declared the present accused as innocent. She deposed that her mother in law and Zahir Shah themselves got apprehended the present accused. She admitted that such fact is not mentioned in the FIR that present accused admitted his guilt in presence of all relatives. She admitted that in FIR she had mentioned that accused was allegedly committing such offence for last five years, She deposed that at the time of alleged offence her daughter was aged about 11 years and thereafter accused committed rape of her daughter and thereafter during last one year he has committed rape of her daughter so many times prior lodging of FIR. She admitted that it is not mentioned in her FIR that accused was committing rape during last one year. She deposed that such offence was going on during last five years. At present her daughter is aged about 16 years. She admitted that five years ago from lodging of FIR her daughter was aged about 10 years. She admitted that a minor girl aged about 10 years would be called a minor girl. She admitted that at the age of ten years victim Afshan was minor and was not having menstruation period. She admitted that in case of rape with 10 years old minor girl the condition of said minor girl will be critical and might she be admitted to hospital. She admitted that five/six years ago no penetration had taken place. She deposed that says her daughter informed her that accused was discharged outside. She admitted that a ten year minor girl would not be able to know such technicalities of discharge of a man outside or inside. She used to wash clothes of her daughter when she was aged about 10 years. She does not know who had washed such clothes five/six years ago. She deposed that such act five/six years ago had taken place at the house of accused and the wife of accused was aware. She admitted that if such type of semen drops found on the cloth mother will understand nature of such drops. She identified Ex.4/A as memo of arrest of accused. She signed the same at police station. Police recorded her statement U/s 161 Cr.P.C. She does not know whether her statement recorded U/s 161 Cr.P.C is available with police or not. She was not present with victim Afshan at the time of recording her statement U/s 164 Cr.P.C before learned Judicial Magistrate. She knows that her daughter deposed before learned Judicial Magistrate. The contents of FIR were not read over before her by the police. Statement of her daughter U/s 161 Cr.P.C was recorded at the police station. She denied that she demanded a huge amount from present accused for releasing of her husband from jail. She denied that since when accused refused to give her huge amount for release of her husband from jail she falsely booked him in the present case. She admitted that her daughter had cut her hand and she had beaten her by thinking that she had cut her hand for the sake of any boy. She deposed that  later on she came to know that she had cut her hand due to the present accused as she became disappointed as she asked the present accused not to repeat such act but he kept continue such act with her daughter. She admitted that they had left the said rented house after lodging of FIR at the request of landlord. She admitted that her said rented house was situated in a thickly populated area. There was precast roof on said house. She admitted that if someone makes some noise the same can be heard by the neighbors. She admitted that no one from the neighbor or from her own children did not disclose such alleged offence whether allegedly committed by the accused in the same house to her. She admitted that she had not provided any medical treatment to her daughter when she had cut her hand. She deposed that she had maltreated her daughter when she attempted to commit suicide and her neighbored saved her from her and provided medical treatment to her. She admitted that there is no witness in the present case of the said locality. She admitted that her daughter had informed father of Ali and his family that since her mother used to beat her; therefore, she does not want to live in the house and left the house for contracting marriage with Ali. She denied that present accused is innocent. She denied that the present has not committed alleged rape of her daughter five/six years ago or during last one year in her absence in her said rented house. She denied that since accused has not paid her any amount for releasing of her husband from jail; therefore, she has falsely booked the present accused in this case. She denied that  she has  lodged FIR at the instance of Zahir Shah.She admitted that  she is not eye witness of the alleged incidents. She admitted that she lodged FIR on the basis of disclosure of her daughter Afshan. She denied that she has deposed falsely before the Court.

21.       Thereafter PW NO.5 Ms. Saima the learned Judicial Magistrate was examined at exhibit 7 who deposed that on 4.1.2021, she was posted as Judicial Magistrate-IV, Karachi West and received a reference/order passed by the Hon’ble District & Sessions Judge, Karachi West for recording statement u/s 164 Cr.P.C. of the victim namely Afshan in case FIR No.3/2021, U/s 376 PPC of PS. Iqbal Market. She produced copy of reference/order dated 4.1.2021 at Ex.07/A. She also produced letter of learned Judicial Magistrate-XXII, Karachi West on his written request said reference was passed, at Ex.7/B. On the same day I/O ASI Ashique Ali Panhwar moved an application for recording the statement of said victim U/s 164 Cr.P.C in the subject case. Meanwhile she allowed subject application and fixed the date as 5.1.2021 at 12:00 noon with directions to issue notices to the victim and accused and meanwhile she also issued PO for accused who was already confined in jail. She produced such application of I/O as Ex.07/C, and identified her order and signature. Thereafter on 5.1.2021 I/O produced the victim Afshan D/o Zameer while accused was produced by Jail Authorities. Meanwhile she recorded the statement of victim in presence of accused as per verbatim of victim. The right of cross examination was given to the accused but cross was reserved at the request of accused for the Trial Court. After recording the statement, the contents thereof were read over to the victim and who admitted the same as true and correct and put her thumb impression and signature and then she subscribed her certificate and signature. Thereafter, she sealed the statement in envelop and dispatched the same to the Nazir for safe custody. She identified Statement recorded U/s 164 Cr.P.C at Ex.5/A and identified her signature on it and on envelope. She identified the accused Ahmed Raza in the open Court being the same accused in whose presence she recorded the statement of victim Afshan. Learned Judicial magistrate was also cross examined by the learned counsel for the accused.

22.       During the cross she denied that IO of the case was present at the time of recording statement U/s 164 Cr.P.C of the victim. She deposed that however IO was present on the said date outside the Court. She identified  Statement recorded U/s 164 Cr.P.C and admitted that victim after recording her statement stated that she was in women police station for last four days and she sought permission to reside with her parents’. She admitted that she made enquiry from the victim prior recording statement and she replied that she was recording her statement without any pressure or fear. `She admitted that  no specific date of alleged offence or offences has been given by the victim in her Statement recorded U/s 164 Cr.P.C.She deposed that  however victim has stated the period and specific names and days in her Statement recorded U/s 164 Cr.P.C. She denied that victim has not stated that accused had ever committed her rape (Ziadati). She denied that he had not read over the contents of Statement recorded U/s 164 Cr.P.C before the victim. She denied that she has not recorded the statement U/s 164 Cr.P.C under prescribed rules.

23.       Thereafter PW No.6 MLO Dr. Muhammad Yasin was examined at exhibit 8 who deposed that on 01.01.2021, he was posted as MLO at Abbasi Shaheed Hospital, Karachi and on the same day, one accused namely Ahmed Raza S/o Abdul Malik aged about 34 years brought in police custody by SIP Ashiq Ali Panhwar of P.S Iqbal Market for medical examination in case FIR No.3/2021, U/s 376 PPC, for purpose of male potency test/examination. He produced such police letter at Ex.08/A and identified his receiving endorsement and official stamp with reference to MLC No.28/2021. According to the police, the incident took place five months ago and he examined the accused having marks of identification i.e (1) mole on the right ear and (2) Mole on left cheek 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 prostatic massage, erection of penis noted.

OPINION:

On the basis of above clinical examination, he has given his opinion that the accused is capable to perform the sexual intercourse and he secured his blood sample and handed over the same to the I.O/SIP Ashiq Ali for DNA analysis and thereafter, he issued such provisional medico-legal certificate bearing No.28/21 which he produced at Ex.08/B and hissignature. Meanwhile he  perused the FSL Report No.SFDL-2021-024, dated 16.01.2021 which shows that no seminal material was identified on vaginal swab of Mst. Afshan D/o Zameer (item #1), therefore, no further DNA Analysis (SRT Analysis) was conducted on item no.1. No analysis was conducted on blood sample of Afshan (item # V1) No analysis conducted on blood sample of Ahmed Raza (Accused) (item # S1). He produced such DNA Report at Ex.08/C, which is self-explanatory. On the basis of DNA Report he issued supplementary medical report at Ex.08/D and identified hissignature and official stamp. He also identified the accused Ahmed Raza in open court according to his mark of identification being the same accused who was examined by him. He was cross examined in length by the learned counsel for the accused.

24.       During the cross he deposed that he does not remember when accused was brought before him the victim was present or not before WMLO. He admitted that DNA report is negative. He denied that there was no erectile dysfunction of accused at the time of his examination. Thereafter PW No.7 SI Ashiq Ali was examined at exhibit 9 who deposed that on 1.1.2021 he was posted as SI at police station Iqbal Market in investigation branch. On the same day, he received investigation of case/FIR No.3/21, u/s 376 PPC lodged by the complainant Mst. Ishrat R/o House situated at Noor ul Huda Masjid, Orangi Town, Karachi against her brother in law Ahmed Raza in respect of commission of zina by him with her daughter. He perused the FIR and called the complainant who verified the contents of FIR. Thereafter, on the same day he left the PS vide entry no.41 with complainant. He produced such entry at Ex.9/A and he reached at the place of occurrence i.e. a 40 yards house situated in Katchi Abadi near Noor Ul Huda Masjid, Bewah Quarter, Sector 11-1/2, Orangi Town, Karachi and inspected the same on the pointation of complainant in presence of PW Abrar, prepared such memo at about 1850 hours. He identified Ex.6/A being the same memo and identified his signature on it. He also captured some photographs which he produced at Ex.09/B and B-1. Thereafter, he took the victim and complainant to Abbasi Shaheed Hospital, Karachi for medical examination and wrote a letter to WMLO Dr. Samiya Sehar. He produced such letter at Ex.9/C and identified hissignature and receiving endorsement of WMLO in respect of MLC No.1/2021. Meanwhile WMLO secured the vaginal swabs of victim and handed over to him. WMLO also issued MLC with opinion that victim was not virgo intact. He also arrested the accused on the same day at 2115 hours from Noor ul Huda Masjid on the pointation of complainant in her presence and in presence of PC Aftab and prepared such which he identified at Ex.4/A and he identified his signature on it. Meanwhile, he also produced the accused before MLO for his medical examination in respect of male potency. He issued a letter to MLO which he identified at Ex.8/A. Meanwhile accused was examined by MLO and he gave opinion that accused was capable of doing intercourse and MLO also secured blood samples of accused and handed over to him. Meanwhile he came back to PS. Vide entry no.25 at about 0100 hours on 02.1.2021 which he produced at Ex.9/D.  Meanwhile he interrogated the accused and got his CRO record which he produced at Ex.9/D-1. He also produced the accused before the Court from where he was sent to judicial custody. On 04.01.2021 he sent the samples vaginal swabs and blood samples for chemical examination. He also produced such letter at Ex.9/E. On the same day he moved application for recording evidence of victim u/s 164 before learned Judicial Magistrate-IV, Karachi West. The application was allowed and date was fixed for 05.1.2021. He produced such letter at Ex.9/F and identified his signature on it and order of Judicial Magistrate. On 05.1.2021 he produced the victim before Judicial Magistrate and accused was produced by J/A and statement of victim was recorded u/s 164. On 06.01.2021 he submitted swab samples of victim and blood sample of accused in DNA laboratory which he produced at Ex.9/Gand bears his signature as well as official endorsement of DNA Lab. Thereafter, he returned to PS. Vide entry no.44 which he produce at Ex.9/H. Meanwhile, he received DNA report which he see at Ex.8/C. He also recorded the statement of PWs. After completing the proper formalities he submitted charge sheet u/s 376 PPC against accused. He also identified chemical report already lying on record at  Ex.10/B. Perusal of Chemical Report shows that human sperm not detected. He also recorded the statement of PWs u/s 161. After completing investigation he submitted charge sheet against the accused for the offence punishable u/s 376 PPC. He also identified the accused in open court. He was cross examined in length by the learned counsel for the accused.

25.       During the cross he deposed that he was available at PS when he received investigation of this case. He denied that at the time of registration of FIR he was present in the same room. He received the investigation of the case at 1830 hours. He left the PS. for the purpose of inspection of place of occurrence alongwith complainant and victim. He denied that at first accused was arrested then FIR was lodged. He identified FIR which shows the address of place of occurrence i.e. inside Katchi abadi near Noor ul Huda Masjid, Sector 11/1-2, Orangi town, Karachi. He inspected the same place which is mentioned in the FIR. He identified Ex.9/B and B-1, the photographs of the place of occurrence and denied that complainant and victim never resided there where the alleged offence was taken place. He denied that the paternal aunt of victim Rani is residing at the address mentioned in the FIR near Noor ul Huda Masjid. He admitted that he has  inspected the alleged place of incident situated near Noor ul Huda Masjid only. The spy informer was already available at the place of arrest of accused and he arrested on the information provided by spy informer. He admitted that at the time of site inspection he had not secured any cloth, bed sheet etc. He admitted that complainant or victim has also not provided him the clothes or bed sheet. He identified memo of site inspection which shows that the place of incident having one room in a quarter of 40 sq. yards. He admitted that alleged place of occurrence is situated in a populated and residential area where houses are situated adjacent to the place of incident. He cannot say whether the voice of any conversation can be heard in another house. The roof of the room or house of alleged place of occurrence was made of cement sheets. He denied that  he had not tried to take the private witnesses. He deposed that due to non-cooperation of people. He admitted that  he had not issued any notice u/s 160. He admitted that he has  not cited any eye witness in the case except victim and complainant. He admitted that there is no other private witnesses who confirmed the incident. He received the DNA report first. The DNA report is self explanatory which is available on record. He admitted that DNA report is negative. He admitted he has not recorded the statement u/s 161 of paternal aunt of victim namely Raeesa who is also the wife of present accused. He admitted that  he has not recorded the statement of Zahir Shah and Abrar. He denied that he has not recorded the statement of complainant. He identified police file and deposed that such statement of complainant is not available. He deposed that according to Entry (Zimni Report) No.1 he has recorded the statement of complainant and victim u/s 161 Cr.P.C. and kept in police file. He denied that the writings available on FIR, memos and statement are same. He denied that during investigation victim informed that she was in friendship relation with one Ali and with whom she left her house for marriage. She denied that he has  not fairly investigated the matter.

26.       Thereafter WMLO PW NO.8 Dr. Saima Sehar was examined at exhibit 10 who deposed that on 01.01.2021, when she was posted as WMLO at Abbasi Shaheed Hospital, at about 11:30 pm, SIP Ashiq Ali Panhwar of P.S Iqbal Market brought victim Afshan D/o Zameer aged about 16 years with history of attempt of rape as alleged for her medical checkup and report in case/FIR No.03/2021 U/s 376 PPC. She identified police letter dated: 01.01.2021 at Ex.9/C and identifiedseal of her office and her receiving endorsement. She has examined the victim after taking permission from her and victim after obtaining her thumb impression. She gave her history of sexual assault since five months ago then there is a month  difference between examination and sexual assault and she found as under:-

MARKS OF IDENTIFICATION:

1.      Mole on right eye brow

2.      Mole on lower lip

On examination, her teeth were 8/8, 8/8, breast were developed. Axillary and pubic hair were present.

MARKS OF VIOLENCE:

No mark of injury or violence seen all over the body of victim

She was in conscious state.

PER-VAGINAL EXAMINATION:

External genitalia was normal, hymen was torn and healed, vestibule congested, vaginal losses two finger. No vaginal discharge seen, no PV bleeding seen. She took vaginal swab and slide, sealed and handed over to I/O for Chemical analysis and DNA.

OPINION:

On the basis of clinical examination, she was not virgo intacta however she kept reserve the opinion for final chemical report and DNA. Meanwhile she issued MLC No.01/21, which she produced at Ex.10/A and identified her signature and official seal on it. Meanwhile she also perused the Chemical Report No.1997/98, dated 20.01.2021 which shows that human sperm not detected from the vaginal swab of the victim. She produced such report at Ex.10/B,. She also identified at Ex.08/C, the DNA Report No.SFDL/2021-024, dated 16.01.2021 which shows that no seminal material was identified from the vaginal swab of victim therefore no DNA/STR analysis was conducted. No analysis was also conducted on blood sample of victim and accused. She also produce OPD Slip of victim Afshan at Ex.10/C. She was cross examined in length by the learned counsel for the accused.

27.       During the cross she deposed that the victim was brought by police (SIP Ashiq Ali Panhwar) before her for examination. She does not remember whether mother of victim was accompanied with her. At the time of examination no other female staff was available with her. She herself examined the victim. She consumed 30 to 40 minutes in whole proceedings of examination and MLC. According to MLC the age of victim is 16 years. She admitted that victim has not produced any birth/age certificate. She admitted that she had not found any mark of injury on the body in person of victim as well as on her private parts. She admitted that according to Chemical Report no human sperm was detected from the sample of vaginal swabs of victim secured, sealed and sent by her. According to the history provided by victim the alleged incident taken place with her prior to 5 months. She denied that in case of act of sexual intercourse the internal wall of vagina will be destructed. She deposed that in some cases wall of vagina is destructed depend on circumstance of act of intercourse. She cannot explain the sizes of vagina of minor and a major girl. She cannot say that whether the size of vagina of major girl would be 4x4cm. She admitted she has not secured any wearing cloth of the victim. A fresh act of sexual intercourse can be determined upto next 21 days. She admitted that there is no medical instrument which can exactly determine the period of any fresh sexual intercourse. She admitted that a married woman would have passed the two fingers. She cannot say who has committed the alleged act of sexual intercourse. She admitted that victim has not disclosed the name of accused before her. She admitted that DNA Report is negative.

28.       On the other hand the accused in his statement recorded under section 342 Cr.P.C. claimed his innocence and further claimed that victim has falsely implicated him in this case. He also examined himself on oath at exhibit 13 and deposed that complainant Ishrat Jahan W/o Zameer is the wife of brother of his wife. The alleged victim Afshan is daughter of Ishrat Jahan and is niece of his wife. On 28.12.2020, when he came back from his job. He was doing work of embroidery. On the same day, at about 09:30 pm, his wife informed him that victim Afshan D/o Zameeruddin left the house and went away with one boy Ali. Thereafter he and his wife reached at the house of victim Afshan. They met with the mother of Afshan who informed them about Ali and his house and thereafter he alongwith his wife and complainant went to the house of said Ali situated in the same area another street. They came to know that neither Ali nor Afshan were present in the house. Thereafter he alongwith complainant went to the police station Iqbal Market in order to lodge FIR against said Ali for alleged kidnapping of Mst. Afshan. However police has not lodged FIR of alleged kidnapping of Afshan. Thereafter complainant informed him that SHO was demanding bribe for lodging of FIR. Complainant demanded some amount from him for giving the same to SHO for lodging of FIR but he refused. Thereafter he came back to his house. On 31.12.2020, he was present at his job, meanwhile he received phone call from his wife who informed him that complainant called them for lodging of FIR. After getting early leave from my job he came back at his house and then he alongwith his wife reached at the house of complainant. He found Afshan was present in the house of complainant. He came to know complainant alongwith elder sister of his wife visited the house of said Ali where Afshan was present but Afshan refused to accompany with them. However elder sister of his wife forcibly brought Afshan from the house of Ali to house of complainant. He also came to know that said Ali came on motorbike on the way and again Afshan went away with Ali on his motorcycle despite of resistance of elder sister of his wife and thereafter Afshan herself came back at the house of complainant. Thereafter the whole family decided to lodge FIR against said Ali. Thereafter they all alongwith Afshan went at the police station Iqbal Market. He was also available at the police station but surprisingly the police apprehended him and after some time confined him in the lockup in the same police station. When he was confined in the lockup he came to know about registration of present FIR against him lodged by the complainant and her daughter Afshan in which they alleged against him that he has committed rape of Afshan. Police interrogated him and pressurized him also beaten him but he has not admitted his guilt before police. Police produced him for his medical checkup. He was produced before learned Judicial Magistrate and from where he was remanded to judicial custody. He has not committed rape of victim Afshan five/six years ago as alleged by her. He never touched and molested the body of victim as alleged by her. He has never committed rape of alleged victim five months prior of lodging of FIR after removing of clothes of victim in the house of complainant. He never issued any threats to the victim as alleged by her. He never admitted his guilt before any person or before Zahir Shah in which he admitted commission of 50% rape of victim. He said that victim has falsely implicated him in this case due to reason that they demanded some amount from him as her father was confined in jail for the purpose of releasing him from jail. He is innocent. He prayed for justice. He was cross examined by the learned DDPP for the state.

29.       During the cross conducted by the learned DDPP for the state he denied that  he has committed rape of victim Afshan five/six years ago as alleged by her. He denied that he touched and molested the body of victim as alleged by her. He denied that he has committed rape of alleged victim five months prior of lodging of FIR after removing of clothes of victim in the house of complainant. He denied that he issued any threats to the victim as alleged by her. She denied that he admitted his guilt before Zahir Shah in which he admitted commission of 50% rape of victim. He denied that he has deposed falsely here in this Court in order to save himself from due conviction. He admitted that DW Raeesa is his wife. He does not know whether according to WMLO the victim Afshan was subjected to sexual intercourse. He deposed that victim herself left the house of complainant and resided with Ali. The victim has falsely implicated him in her Statement recorded U/s 164 Cr.P.C before learned Judicial Magistrate.

30.       It is pertinent to mentioned there that accused in his defence also produced his wife Mst. Raeesa who was examined as DW NO.1 at exhibit 14 who deposed that Complainant Ishrat Jahan W/o Zameer is the wife of her brother. The alleged victim Afshan is daughter of Ishrat Jahan and is his niece. On 28.12.2020, when her husband came back from his job. On the same day, at about 09:30 pm, she was informed by the complainant that victim Afshan D/o Zameeruddin left the house and went away with one boy Ali. Thereafter she and her husband reached at the house of victim Afshan. They met with the mother of Afshan who informed them about Ali and his house and thereafter she alongwith her husband and complainant went to the house of said Ali situated in the same area another street. They came to know that neither Ali nor Afshan were present in the house. Thereafter she alongwith complainant went to the police station Iqbal Market in order to lodge FIR against said Ali for alleged kidnapping of Mst. Afshan. However police has not lodged FIR of alleged kidnapping of Afshan. Thereafter complainant informed her that SHO was demanding bribe for lodging of FIR. Complainant demanded some amount from her husband for giving the same to SHO for lodging of FIR but her husband refused. Thereafter they came back to their house. On 31.12.2020, she was present in her house, meanwhile she received phone call of complainant who called her for lodging of FIR. Thereafter her husband came and she alongwith her husband reached at the house of complainant. She found Afshan was present in the house of complainant. She came to know that complainant alongwith her elder sister visited the house of said Ali where Afshan was present but Afshan refused to accompany with them. However her elder sister forcibly brought Afshan from the house of Ali to house of complainant. She also came to know that said Ali came on motorbike on the way and again Afshan went away with Ali on his motorcycle despite of resistance of her elder sister and thereafter Afshan herself came back at the house of complainant. Thereafter the whole family decided to lodge FIR against said Ali. Thereafter they all alongwith Afshan went at the police station Iqbal Market. Her husband was also available at the police station but surprisingly the police apprehended her husband and after some time confined him in the lockup in the same police station. She came to know about registration of present FIR against her husband lodged by the complainant and her daughter Afshan in which they alleged against her husband that her husband has committed rape of Afshan. Her husband has not committed rape of victim Afshan five/six years ago as alleged by her. Her husband has never touched and molested the body of victim as alleged by her. Her husband has never committed rape of alleged victim five months prior of lodging of FIR after removing of clothes of victim in the house of complainant. Her husband never issued any threats to the victim as alleged by her. Her husband never admitted any guilt before any person or before Zahir Shah in which her husband admitted commission of 50% rape of victim. She deposed that victim has falsely implicated her husband in this case due to reason that they demanded some amount from her husband as her father was confined in jail for the purpose of releasing him from jail but her husband refused to give such amount to them. She deposed that her husband is innocent. She was cross examined by the learned DDPP for the state.

31.       During the cross conducted by the learned DPP for the state she denied that her husband has committed rape of victim Afshan five/six years ago as alleged by her. She denied that her husband touched and molested the body of victim as alleged by her. She denied that her husband committed rape of alleged victim five months prior of lodging of FIR after removing of clothes of victim in the house of complainant. She denied that her husband issued any threats to the victim as alleged by her. She denied that her husband admitted his guilt before Zahir Shah in which he admitted commission of 50% rape of victim. She denied that he has deposed falsely here in this Court in order to save her husband from due conviction. She admitted that she remained at her house on the alleged period. Her husband used to remain in her house and he used to remain at his job except Sunday. On 19.5.2020, at about 2:00 pm, her husband was present at job. She has not   checked that whether on 19.5.2020 her husband was present at job or not. She deposed that on the same day her husband came back from his job at 9:30 pm. He came in the dress which was wearing in the morning. He did not take bath after coming to home. Her husband used to bring burger for her children. On 31.12.2020, she called her husband from his job. She does not know whether on 31.12.2020 the victim Afshan informed to her mother that her husband molested her. She denied that her husband was committing rape of victim Afshan and she had seen the same and fought with her husband on subject matter. She denied that victim informed complainant as well as to her about alleged act of rape. She denied that accused issued threats to victim that if she would disclose such fact to anyone he would divorce her. She denied that she deposed falsely in order to save her house.

32.       I have given my due consideration to the arguments advanced by learned counsel for the accused and learned DDPP for the State and have carefully gone through the material placed so far. From the minute sifting of evidence of prosecution witnesses as well as available material and record, it appears that the entire case of prosecution revolved around its star witness/alleged victim Mst. Afshan.  It appears that victim  Mst. Afshan   during her examination in chief, as discussed above,  has clearly implicated the above named accused with the alleged offence punishable under section 376 PPC  and she was also cross examined in length as discussed above in which she clearly denied that accused has not committed her rape.

33.       It appears that victim has alleged two different incident of rape  with her against the same accused as first incident of rape was taken placed five/six years ago  in the house of accused while second incident was taken placed in the house of complainant five months prior of lodging  of FIR.

34.         I would like deal and discuss both the incident separately for just decision of the case. I would like  to re-produce the relevant accusation of victim against the accused in respect of alleged  offence of rape allegedly taken placed about 5/6 years ago in the house of accused. It appears that victim has deposed that five to six years ago after attending the marriage ceremony  she came with her paternal aunty (Phupho) the wife of accused to her house and stayed there and in the night time  in the mid night time accused Ahmed Raza came in the place where she was sleeping  and took her in another room  where he committed  her rape and such incident was also seen by her paternal aunty (Phupho) who later on quarreled with accused and requested the victim not to disclose such fact to anyone.

35.       It appears that victim was cross examined in length and  perusal of relevant record of cross of alleged victim shows that she admitted that five/six year ago she was aged about 10/11 years old, She admitted that when first alleged offence was taken place she was minor and was not having menstruation. She admitted that she has not disclosed the date and day of alleged function after that she went in the house of accused five / six years ago. She alleged that after the first incident the accused used to touch her body whenever he got chance in his house or in her house. She admitted that such fact is not mentioned in her statement under section 161 Cr.P.C. that accused committed her rape five/six years ago. She deposed that she stated before police but police has not mentioned such fact and only mentioned that she slept with the accused. She admitted that she has not raised any hue and cry at the time of first incident. She deposed that accused committed her rape but discharge outside. She admitted that she has not disclosed such fact to anyone about such first incident. She admitted that such fact is not mentioned in her statement recorded under section 164 Cr.P.C. that accused committed her rape however she deposed that it is mentioned that accused committed Ziadti. She denied that accused has not committed her rape about 5/6 years ago.

36.       It appears that in order to disprove the allegation of rape of first incident accused in support of his claim that he has not committed rape of the victim in his house in presence of his wife five / six years ago he produced his wife Mst. Raeesa as DW-1 who clearly deposed that victim has deposed false and no such alleged incident of rape of victim by accused was taken placed in her presence. I am of the view that since victim alleged that at the time of alleged rape five years ago from lodging of FIR the wife of the accused who is also the sister of father of alleged victim has seen the alleged offence of rape committed by the accused with her and thereafter wife of accused fought with the accused whole night and on the following morning she took her from her house and left her to the house of her mother. It is admitted fact that the DW is the wife of the accused and is an interested witness and is a party in this case therefore she cannot be treated as impartial witness in the circumstances. However, it appears that five / six years ago the alleged victim was a minor girl aged about 11/11 years and was not having any menstruation period   and more so she has not informed to anyone about such incident and remained silent upto five to six years and more so more so the wife of the accused has denied such fact of alleged rape in her presence five/six years ago in her house. It is admitted fact that matter in respect of alleged offence taken placed about 5/6 years ago was reported after 6 years and explanation of such delay is not well explained and more so the victim alleged that accused discharged outside her body when he committed her rape in first incident, I am of the view that how such fact is still remember to the victim that accused was discharged outside her body when she was hardly aged about 10 years and was not having any menstruation, it is therefore, in respect of alleged offence taken placed 5/6 years ago it is difficult to prove at this stage, therefore, the accused is entitled for benefit of doubt, therefore, the allegation of the alleged victim in respect of alleged first  incident allegedly took place 5/6 years ago in the house of accused is not established.

37.       Now I would like to re-produce the relevant deposition of the alleged victim in respect of second incident of rape. The victim has also deposed about second incident that  five months prior of the lodging of FIR she was also  in her rented house situated at Bewa Colony as her mother went for attending one function, and she was busy in cleaning the house meanwhile accused  Ahmed Raza entered in the house by opening the Kara/hook with the pretext for keeping the bag of paternal grandmother and when he found that she was alone he bolted the door from inside, it was evening time, she was in kitchen meanwhile accused took her in one room  where he removed her clothes and  committed her rape and issued threat not to disclose such fact to anyone otherwise he will do something. It is also alleged by the victim that after that incident accused used to visit after every two days with different pretext and area people doubted upon her character therefore she cut van of her hand under great disappointment and meanwhile she informed all such fact to her mother who then lodged FIR. She was also cross examined in length in respect of second incident. It appears that during cross she deposed that she does not remember when she cut her left hand. She admitted that two days prior of lodging of FIR she left the house of her mother with one boy Ali. She denied that she was in love with said Ali. She deposed that she intended to leave the house forever in order to save herself from accused.  She denied that her mother demanded money from the present accused in order to get release my father who was in jail but accused refused to give such amount to her mother therefore she falsely booked the accused in this case.  She denied that she has levelled false allegations against the accused. She denied that accused has not committed her rape. She also denied that accused has not molested her body.

38.       It appears that  in respect of second incident of rape as alleged by the victim  I have  not found any force in the contention of the learned counsel  for the accused that the might be the alleged act of rape with the victim was committed by said Ali with whom she left the house of her mother and resided with said Ali for next two/three days  due to the reason that as per WMLO the alleged act of rape was not a fresh act as the hymen was old torn and healed and according to the complainant and victim, the victim  was introduced with said Ali just two days prior of the alleged incident and victim in order to save herself from the evil hands of accused she left the house forever however father of Ali returned back her to her mother.

39.           From the above testimonies of prosecution witnesses, it is crystal clear that five months prior of lodging of FIR the accused has entered in the house of the complainant situated at Bewa Quarter and found the victim alone in her house and then he removed the clothes of the victim and committed her rape and issued threats not to disclose such fact otherwise he will do something and thereafter he was frequently visiting the house of complainant due to which area people doubted upon the character of the victim who being disappointed cut her hand in order to commit suicide. All the prosecution witnesses were cross examined at length and nothing material came on record to shake and dent their testimonies. No doubt that the learned counsel for the accused pointed some discrepancies and contradictions  as mentioned above but same were in respect of the first incident and the learned counsel  failed to point out any contradiction in respect of second offence of rape committed by the same accused expect the contention that victim has not raised any hue and cry and that there was no mark of violence on the body of the victim noted by the WMLO therefore not such offence of forcible rape was committed by the accused. No doubt that no marks of injuries or violence were found on the body of the victim but perusal of report of WMLO clearly shows that victim is not virgo intact meaning thereby the medical report is fully supporting the claim of the victim that she was raped. I am of the view that all such suggested discrepancies  and contradictions  such as no private witness or any eye witness  of the alleged incident are  immaterial contradictions and discrepancies  and same are natural as discussed here in above as admittedly the alleged offence was taken placed inside the house as accused has bolted the door from inside  and then kept the victim under threat and then removed her clothes and committed her rape inside the room of the house of complainant,  therefore, such   inconsistencies  have not hampered the case of prosecution in any manner. I am also not convinced with  another contention of the learned counsel  for the accused that arrest of accused has become doubtful due to the reason that the point for determination is not the arrest of accused but the point  for determination is whether the accused committed the rape of the victim or  not.

40.       It appears that despite of lengthy cross to the complainant and her mother and other witnesses nothing fruitful came on record to provide any benefit to accused and to create any dent or doubt in prosecution case. The testimony of victim who is real niece of wife of accused, in respect of second incident of her rape committed by the above named accused appears to be true, genuine and confidence inspiring. Nothing has come on record that statement of victim was tutored to victim by her mother or by anyone else in any manner to falsely implicate the present accused. I am of the view that there appears no mixture of falsity in the statement of the victim as alleged by the learned counsel for the accused. It appears that victim has fully implicated the present accused for commission of act of rape with her. It appears that victim did not resign from the accusation she had made against the present accused despite of lengthy cross. The victim proved her reliable witness and was physically examined by WMLO and the said WMLO has supported the version of victim and confirmed that victim was subjected of sexual intercourse. More so the accused was also examined by the MLO who has confirmed that the accused has capability to perform sexual intercourse.

41.       More so, nothing came on record that there was any ill-will, malice and malafide on the part of victim or on part of her family or on part of police to falsely implicate the accused in the present offence. Though, learned counsel for the accused claimed that the victim has falsely implicated the accused as the victim and complainant demanded some amount  for releasing the father of  victim from jail and another contention of learned counsel for the accused is that the  when the alleged victim allegedly left the house  with one Ali then complainant intended to lodge FIR against said Ali but police demanded bribe for lodging FIR against said boy Ali who allegedly abducted Mst. Afsha from her house, and for paying such bribe the complainant demanded amount from accused  on both the occasion but the accused refused to pay such amount to the complainant therefore the complainant was  annoyed therefore the complainant lodged FIR against  the present accused and falsely involved him in this case through her daughter.  I do not convinced with the contention of the learned counsel   for the accused as nothing has come on record that that complainant demanded any amount from accused for released of her husband who was admittedly confined in the jail at the time of occurrence of second incident of alleged rape of the victim.  More so the accused has failed to produce any witness in support of his claim that complainant has demanded alleged amount from him for release of her husband and even he has not disclosed the name of any witness in whose presence the complainant allegedly demanded such amount from the accused. No doubt that accused has produced his wife being defence witness who supported the claim of accused that complainant demanded amount from her husband / accused but admittedly his wife is not independent witness while accused did not produce any other witness in support of his claim and to prove the alleged malafide on the part of the complainant and her daughter / alleged victim.      .

42.       I am also not convinced with another contention of the learned counsel for the accused that since DNA is negative therefore case has not been proved against the accused. No doubt that   DNA report is negative in this case.  In present circumstances, the offence of rape with victim has been established against the present accused beyond any shadow of doubt. The purpose of DNA test is to determine that the semen retrieved from the victim’s body and the accused were immaterial and such DNA testing was not required under the circumstances. Furthermore, their lordships in its recent Judgment Farooq Ahmed Versus The State (PLD 2020 Supreme Court 313) have held “DNA testing is not a requirement of law”. In the same judgment, their lordships have placed reliance upon case title Haji Ahmed Versus The State (1975 S.C.M.R 69) “omission of scientific test of semen status and grouping of sperms is neglect on the part of prosecution which cannot materially affect the other evidence”. In the judgment of their lordships, it has been categorically settled that when the testimony of victim girl was confirmed by chemical Examiner’s report and the report of Medico Legal Officer showing her to have been sexually assaulted, the report of DNA was immaterial. Here in this case the claim of the victim is that she was raped by the above named accused and the version of the victim is fully supported by the WMLO who after examining the victim Mst. Afsahn found that her hymen was old torn and healed and finally  has given her opinion that the victim was not virgo intact however initial she kept reserve her opinion  in respect of any fresh act for want of DNA report and after perusing the DNA report she deposed before the court that there was no sign of any fresh act of Zina. It appears that during the cross WMLO deposed that any fresh act can be determined upto coming 21 days after alleged rape or sexual intercourse.

43.       I am satisfied that in the present case, the prosecution has established its case against the accused beyond reasonable doubt. I do respect the case laws cited by the learned counsel   for the accused but I am of the view that facts of the present case are different from the facts of the cases cited by the learned counsel for the accused. I am of the firmed view that the present accused has  committed the shameful offence of rape with the victim who is his real niece of his wife  as such prosecution case stands fully proved in respect of second incident of rape taken placed five months prior to the date of lodging of FIR. Hence point under discussion is answered in affirmative to the extent of alleged offence of rape committed by accused five months prior to lodging of FIR.

POINT NO. 2:

44.       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 the shameful act of rape of  real niece of her wife  / victim Mst. Afshan  as such he requires no leniency under the law. The offence of abduction punishable under section 376 PPC has been fully proved against the accused beyond shadow of any doubt. The accused Ahmed Raza son of Abdul Malikis hereby convicted U/s. 265-H(ii) Cr.P.C for the offence punishable under section 376 PPC  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 PPC. He is in custody since 01.01.2021.The accused is produced in custody by jail authority, he is remanded back to prison to serve out the sentence strictly in accordance with law. Let the copy of Judgment be supplied to the accused as required under the law.

ANNOUNCED IN OPEN COURT

Given under my hand and seal of the Court on this **22nd** day of **April**, **2022**.