**Ex. No. 19**

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

BEFORE:-                              (**Irshad Hussain**)

**Sessions Case No.1667/2015**

The State

Versus

**Muhammad Saleem S/o Abdul Rasheed**

                                                                                    Offence under section 364-A /376 PPC

                                                                                    (Cr. No. 106/2015 of PS Sher Shah)

*Mr. Farrukh Sharif, advocate for the accused*

*Mrs. Jameela Saeed Otho, ADPP for the state*

*Mst. Asia Munir, the learned counsel for the complainant.*

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

**14.02.2022**

 The above named accused was sent up by SHO of PS Sher Shah to face his trial, for offence punishable under sections 364-A/376 PPC being crime No. 106/2015 registered at PS. Sher Shah, Karachi.

2.         The brief facts of prosecution case as narrated by complainant Muhammad Idrees S/o Abdul Hafeez are that on 13.06.2015, at about 0730 hours, her daughter Tayyaba aged 10 years went to know about availability of water at Baloch Para, Sher Shah but she did not return back. She was studying in the Pak Ansari Public School, Urdu Bazar, Sher Shah. He came to know after due diligence that one Saleem kidnapped her daughter with intention to commit zina with her. Hence, he lodged the subject FIR under section 365-B PPC.

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 wardat under a written mushirnama. However since the accused was not arrested and alleged abductee was not recovered therefore the subject FIR was disposed of under “A” Class however the learned judicial Magistrate directed to submit charge sheet showing the accused absconder. Meanwhile section 364-A PPC was added as the alleged abductee was minor and charge sheet was submitted showing the above named accused under section 512 Cr.P.C.  Meanwhile vide order dated 09.07.2015 the investigation of the case was transferred to the police station SITE –B as per orders of SSP concerned. Meanwhile on 14.04.2015  the above named accused was arrested and  alleged abductee was recovered from the possession of accused;medical examination of alleged victim was  conducted which shows that she was subjected to sexual intercourse and  medical examination of accused was also conducted which shows that accused was capable to perform sexual intercourse. After usual investigation the above named accused was challaned for the offence punishable under section 364-A/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 26th day of January, 2017  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 and SIP Naseer Muhammad Magsi as PW-1 at Ex. 04, who produced FIR at Ex.3/A, P.W-02 ASI Shabeer Ahmed victim at Ex.05, P.W-03 SIP Raja Ghazanfer Ali at Ex.07 Memo of site inspection and Roznamcha Entry at Ex.07/A and B, PW-04 SI Jahangeer Muhammad Tanoli at Ex.08, who produced Investigation transfer letter, memo of arrest of accused and recovery of abductee/victim, Roznamcha Entry, Medical Letters, Memo of handing over custody of victim and Chemical Letter at Ex.8/A, to 8/I.  Complainant Muhammad was examined at Ex.9 as PW-5 who produced memo of arrest of accused and recovery of abductee/victim and Memo of handing over custody of victim at Ex.9/A and B. MLO Dr. Noor Ahmed was examined as PW-06 at Ex.10, who produced MLC and OPD slip at Ex.10/A and B. WMLO Dr. Saumaiyya Syed was examined as PW-08 at Ex.16, who produced MLC and Age certificate of victim at Ex.16/A and B. The prosecution also produced the victim Tayyabah as PW-9 at Ex.17. Thereafter the learned ADPP for state closed the side of the prosecution vide statement at Exh.17.

07.       The Statement U/s. 342 Cr.P.C of accused was recorded at Exh: No.18, wherein he denied the prosecution allegations and claimed to be innocent and falsely implicated by the complainant and prayed for his acquittal and justice.

08.    The learned counsel for the accused mainly contended that accused is innocent and has falsely been implicated in this case. It is further contended that accused is innocent and has falsely been implicated in this case by the complainant and alleged victim due to the reason that one week prior of the alleged occurrence there was a quarrel in between the complainant and accused as the motor bike of complainant was hit with the cart of the accused. It is further contended that there is no eye witness of the alleged abduction or kidnapping. It is further contended that alleged victim has not raised any resistance at the time of alleged abduction or at the time of alleged wrongful conferment at Rohri or at Multan. It is further contended that accused has not abducted the victim and that victim herself left her house and went to the house of her maternal grandmother situated at Multan and later on her relative themselves brought  the victim from Multan and as well as accused who was also in Multan. It is further contended that there is no DNA test of accused. It is further contended that accused is innocent and has falsely been implicated in this case. It is further contended that there are so many contradiction and inconsistences which shows that prosecution failed to prove its case against the present accused. It is further contended that no statement under section 164 Cr.P.C. of the victim was recorded which created doubt in the case.  Lastly he prayed that accused is entitled for his acquittal.

09.       On the other hand the learned ADPP 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 who is only 9/10 years old girl, in her statement before the police and as well as before this court. It is further contended that version of the victim has also been supported by the medical evidence. It is further contended that as per medical evidence alleged abductee was subjected to sexual intercourse. It is further contended that alleged abductee was recovered from the possession of accused. It is further contended that accused has not produced any defense witnesses in his support of alleged contention that there was any quarrel between him and the father of the alleged abductee. It is further argued that prosecution succeeded to prove the case against the above named accused beyond any reasonable shadow of doubt and accused is entitled for conviction.

10.       I have heard the learned counsel for accused, learned ADPP 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 on 13.06.2015, at about 0730 hours at street No.55, Block-C, Baloch Para, Sher Shah, Karachi, accused named above had kidnapped the victim/daughter of complainant namely Tayyaba aged about 10 years and committed her rape?*

*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

Point No. 2.                 The accused Muhammad Saleem son of Abdul Rasheed is hereby convicted U/s. 265-H(ii) Cr.P.C for the offence punishable under section 364-A PPC  and sentenced to rigorous imprisonment for seven (7) 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 also is 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 14.07.2015. Both the sentences will run concurrently.

**R E A S O N S**

 **POINT NO.01**

12.       The allegation against the above named accused is that he had kidnapped the victim Baby Tayyaba, aged about 10 years and kept her in wrong full confinement at Rohri, Multan and Karachi and at Rohri he committed her rape. Appraisal of the evidence shows that the prosecution has examined as many as 5 witnesses in this case in order to establish the guilt of the accused.

13.       In order to prove its case, the prosecution examined SIP Naseer Muhammad Magsi as P.W-1 at Ex.04, who deposed  that on 16.06.2015 he was posted as SIP at PS Shershah and performing  his duty as duty officer. On the same day complainant Muhammad Idress son of Abdul Hameed came at PS and registered FIR that on 13.06.2015 at 0730 hours his daughter namely Tayyaba went to Baloch Para Shershah for taking water and she did not return back and he has suspect on one person namely Saleem that the kidnapped his daughter. He registered such FIR which he produced at Ex. 4/A and identified his signature on it. After lodging the FIR he handed over the same to SIO of PS Sher Shah for investigation. I/o also recorded his statement under section 161 Cr.P.C. He does not know accused.  He was cross examined in length by the learned counsel for the accused.

14.       During the cross he deposed that complainant came at PS at 1130 hours. Complainant lonely came at PS. He consumed about 10 minutes to hear the complainant and after that he registered the FIR. The FIR was returned by WHC of PS Shersha. He denied that he himself registered false FIR and complainant was not appeared before him. He denied that he deposed falsely.

15.       The prosecution examined ASI Shabbir Ahmed as P.W-2 at Ex.05, who deposed that on 14.06.2015 he was posted as ASI at Ps Shershah and his duty timing were from 0800 hours to 2000. He was called by SI Siddiq at PS Shersha then he along with him went for patrolling in their jurisdiction  during patrolling he met with a person namely Idress who is complainant of this case who informed the SIP Siddiq  regarding kidnaping o of his daughter. Then complainant Muhammad Idress accompanied with them and he tried to search out the accused and to recovered the daughter of complainant but not succeeded to search out the  same. After that they returned back at PS. He left the SIP Muhammad Siddiq at OS and again went for patrolling in their jurisdiction. He does not know the accused. He was also cross examined by the learned counsel for the accused.

16.       During the cross he admitted that he had not produced the copy of roznamcha entry which shows that on the day of patrolling he was on duty at PS Shersha. He denied that he deposed falsely.

17.       The prosecution has also examined P.W-3 SIP Raja Ghazanfer Ali at Ex.07, who deposed that on 16.06.2015 he was posted as SIP at PS Shershah on the same day he  received  police papers of crime NO.106/2015 of offence under section 365-B PPC for investigation. On the same day he visited the place of incident on pointation of complainant  in  presence of mashirs Idress and Akhter Ali and prepared such memo which memo he produced at Ex.7/A and identified his signature. He also produced the copy of Roznmacha entry at exhibit 7/B. After visiting the place of incident he recorded statement of PWs under section 161 Cr.P.C. After that he tried to search out the abductee and arrest the accused but he failed. On 01.07.2016 he submitted report under “A” Class before the Judicial Magistrate under the verbal direction of court he submitted report under section 173 Cr.P.C while showing the accused as absconder. He does not know accused. He was also cross examined by the learned counsel for the accused.

18.       During the cross he deposed that he left police station for visiting the place of incident at 1605 hours on private motor cycle. He along with one police constable on motor cycle and complainant of the case was called through phone. He reached at place of incident at 1645 hours. The mashirs of place of incident were already present at their home. He consumed 15 minutes to visit the place of incident. He himself prepared the memo visit of place of incident in own hand writing with the help of clip board. He recorded statement of PWs under section 161 Cr.P.C.  On the same day at PS after visiting the place of incident in his own hand writing. He identified entry which he produced at exhibit 7/B and admitted that same does not show any stamp of police station and signature of any police officials. He admitted that during the investigation he has not arrested accused neither he got recovered the abductee. He admitted that during investigation he has not collected any evidence that accused has abducted the abductee. He denied that he deposed falsely.

19.       The prosecution has also examined PW No. 4 SIP Jehangeer Muhammad Tanoli who deposed that on 11.07.2015 he was posted as SIP at Ps SITE B investigation branch. On the same day he received police papers of crime NO.106/2005, offence under section 365-B PPC of PS Shershah through order of SSP investigation West-1, Karachi. He produced such copy of order at exhibit 8/A. On the same day he met with the complainant of the case who narrated him that accused was not arrested and went to Punjab. On 14.07.2015 he was present in the area and he received information through spy informer that abductee Mst. Tayyaba along with accused Muhammad Saleem were coming to Karachi  from Punjab on Karachi Express train. On such information he called the complainant at Railway Station Cant Karachi. He along with complainant reached there and complainant identified that abductee Tayyaba is her daughter   who was with accused Saleem. He apprehended them and rescued the abductee Tayyaba. On inquiry accused disclosed his name as Saleem son of Abdul Rasheed and recovered abductee disclosed her name as Tayyaba. Then he prepared such memo of  recovery at the spot in presence of witnesses which memo he produced  at exhibit 8/B and identified his signature on it. After arrest accused and recovered abductee were brought at PS  where he kept entry in Roznamacha which entry he prepared at exhibit  8/C. After that he again recorded the statement of PWs under section 161 Cr.P.C. and also interrogated the accused. On 15.07.2015 he wrote a letter to the police surgeon for medical checkup and age determination of abductee which letter he produced at exhibit 8/D and identified his signature on it.  He also produced copy of letter which addressed to police surgeon for examination of abductee at exhibit 8/E and identified his signature on it. He produced carbon copy of letter addressed to the police surgeon for medical checkup of abductee at exhibit 8/F and identified his signature on it. Thereafter he produced recovered abductee and accused before Illaqa magistrate where from accused was remanded to jail and abductee was handed over to her parental aunt and obtained such receipt which receipt he produced at exhibit 8/G. He also recorded statement of abductee under section 161 Cr.P.C.   On 16.07.2015 he deposited the samples of abduttee before chemical examiner for opinion and report through his letter which he produced at exhibit 8/H. On 29.07.2015 he received chemical report which report he produced at exhibit 8/I. After that he completed the investigation and submitted final charge sheet after adding the section 376/364-A/375 PPC before the court. He also identified the accused. He was cross examined by the accused in person.

20.       During the cross he denied that alleged abductee was not recovered from the possession of accused. He also denied that the alleged abductee was handed over to him by the complainant himself. He denied that custody of accused was also handed over to him by the complainant himself.  He denied that he deposed falsely.

21.       The prosecution has also examined P.W-5 Muhammad Idrees, complainant of the case at Ex.9 who deposed that on 13.06.2015 he was sleeping at his home. His daughter Tayyaba aged about 10 years went out of house for fetching water at Baloch Para Shershah. She did not return to home then he reported the matter at police station Shershah after that he tried to search out of his daughter but no fruitful result made out. On 16.06.2016 he registered the FIR and he came to know that one Saleem who is also residing in his mohallah was missing, which FIR he identified at exhibit 4/A and identified his signature on it. After one moth ASI Jahangeer made phone call to him and called him at police station who disclosed that his daughter Tayyaba along with Saleem was coming in Karachi Express train. Then he along with ASI Jahangeer went at Cant Railway station Karachi and ASI Headed to him on arrival of Tayyaba and Saleem. He pointed on which ASI Jahangeer arrested Saleem at 1300/1330 hours on 15.06.2015. He further deposed that in the month of July. ASI arrested him and prepared such memo which memo he produced at exhibit 9/A and identified his signature on it. Thereafter arrested accused  and his daughter  was brought at the police station  where ASI recorded his statement and obtained his signature after that handed over his daughter to him and obtained such receipt which receipt he produced at exhibit 9/B and identified  his signature. He also identified the accused in open court. He was not cross examined by the accused though the opportunity was given to him, however later on his counsel moved an application for recalling the complainant for the purpose of cross examination and such application was allowed and complainant was re-called. Meanwhile the complainant PW No.5 Idress was cross examined in length by the learned counsel for the accused.

22.       During the cross he admitted that he has lodged FIR after three days of alleged incident. He admitted that his in laws are residing in Multan. He does not know whether accused is also belong to Multan. He admitted that accused was selling Aloo Chhole outside the school. He denied that one week prior of alleged occurrence the cart of Aloo Chhola of accused was hit to his motorcycle upon which he abused the accused and also hot words were exchanged with some altercation. He denied that he has falsely implicated the accused in the present case due to such dispute.He denied that accused had not abducted or kidnapped his daughter. He denied that his daughter Tayaba herself left his house or his any other relative took his daughter to Multan. He denied that his daughter had stayed in Multan in the house of his in laws. He admitted that his in laws apprehended the present accused from the house of relative of accused from Multan and thereafter accused was brought from Multan to Karachi by his relatives in a train. He denied that his daughter was not recovered from the possession of accused from Multan by his relatives/in laws from the house of relatives of accused. He denied that accused had not abducted or kidnapped his daughter and committed her rape. He admitted that he is not the eye witness of the alleged occurrence. He admitted that he has only doubted upon accused in FIR. He deposed that accused induced his minor daughter and she was under his influence as he used to give so many eatable things to his daughter. He deposed that he  had raised objection to the accused why he used to give so many eatable articles to his daughter and he was about to beat him about to 15 to 20 days prior of alleged occurrence. He admitted that after the alleged incident he left the Karachi and settled at Punjab. He deposed that he became ill; therefore, he was shifted to Punjab. He denied that his daughter has stated before police under his pressure. He admitted that his daughter was brought by his relatives from Multan in the same train alongwith accused. He denied that he deposed falsely.

23.       The prosecution has also examined P.W-6 Dr. Noor Ahmed at Ex.10 who deposed that on 15.07.2015 he was posted as MLO at Civil Hospital Karachi. On the same day at about 10:40 am a person named Muhammad Saleem son of Abdul Rasheed aged about 37 years was brought before him alongwith police letter by ASI Jahangeer of PS SITE-B with the history of rape as alleged. He was brought   under police custody for male potency examination. General condition of accused was in conscious state. On examination he found following observation

Bath was taken, clothes were changed, many times urine were passed.
Secondary sexual character developed, on self stimulation penile erection was seen.  On prostatic massage (DRE) penile erection seen. No herniation and hydrocele present. He was having following injuries:-

Injury NO.1 Multiple contusion of various sized over both cheeks, below both eyes, black brown in colour, injury was declared as Shaja-e-Khafiah.

            Opinion:-

            On external physical examination he was on opinion that the accused was capable to perform sexual intercourse during normal course of natural life. After examination of accused he issued medical certificate bearing NO. 33333/2015, which he produced as attested photo copy at exhibit 10/A and identified his signature on it. He also produced copy of ERC at exhibit 10/B. He also identified the accused. He was also cross examined by the accused.

24.       During the cross he denied that he has not examined the accused. He also denied that he has issued a false medical certificate of accused.

25.       The prosecution has also examined P.W-7 Muneer Ahmed at Ex.11 who deposed that Muhammad Idrees is his maternal cousin. On 13.06.2015, his daughter Tayaba had been abducted. They had firstly searched her in their area and when her whereabouts were not traced, the FIR was lodged at P.S Shershah. They were not satisfied with the investigation and then investigation was transferred to P.S SITE-B, where SIP Jahangir Tanoli was entrusted the investigation. On 14.07.2015, Idrees was called at P.S as such he along with Idrees went at P.S and they  were informed by police that they had received spy information that accused was coming to Karachi through train. They then arrived at Cant. Station and kept themselves concealed at the exit and entry points of Cantt. Railway Station, Karachi. When he saw the accused and his maternal cousin’s daughter Tayaba coming he pointed police towards them as such police arrested accused Saleem and recovered his maternal niece. The police prepared the memo of arrest and recovery and obtained his signature which memo he identified at Ex. 8/B and identified his signature on it. The I.O had recorded his statement U/s. 161, Cr.P.C. He identified the accused named above in open court. He was cross examined by the learned counsel for the accused.

26.       During cross examination he admitted that FIR was lodged after the delay of three days of alleged incident. He admitted that in laws of complainant are residing in Multan. He does not know if accused is also belonged to Multan.  He denied that accused has not abductee his niece. He denied that his niece herself left the house or any other relative took his niece to Multan. He denied that his niece stayed in Multan at the house of any of his relative. .He denied that his relative residing in Multan apprehended the present accused from the house of relative of accused from Multan and thereafter accused was brought from Multan to Karachi by his relative in a train. He denied that his niece was not recovered from the possession of accused. He denied that his niece was brought from Multan to Karachi by his relative. He denied that accused was not arrested from Cant Station in his presence. He denied that his relative brought the accused and alleged abductee in the same train and thereafter handed over the custody of accused to police. He denied that he deposed falsely.

27.       The prosecution has also examined P.W-8 Dr. Summaiya Syed at Ex.19 who deposed that on 15.07.2015, when he was posted as WMLO at Civil Hospital, Karachi, at about 10:00 A.M, ASI Jahangir Muhammad Tanoli of Police Station SITE-B brought 10 year old Tayyaba D/o Muhammad Idrees with police letter bearing FIR No. 106/15. She identified police letter at Ex.8/E and identified her receiving endorsement with official stamp in MLC No. 86/15. The history provided was that of abduction with intent of rape as alleged with date of kidnap as 13.06.2015, date of report as 16.06.2015 and date of recovery 14.07.2015. She obtained informed consent of both the girl and her mother by getting their RTIs on original MLC as well as Tayyaba signature in Urdu. Thereafter she examined the victim and found as under:-

Her marks of identification were 1) Mole on left side of neck and 2) Mole on right ear above tragus.

Her height was 4 feet and 5 inches, weight 30 kg, teeth 6/6, 6/6. Breast were not developed and she had no axillary and pubic hairs. She had not attained menarche. No marks of violence were seen on any part of her body.

She had taken a bath, passed urine and stool, washed her private parts and her hygiene was satisfactory. She had changed clothes of incident.

Note: The girl had a very non-cooperative attitude but said that the accused used to touch her private parts.

PER-VAGINAL EXAMINATION:

External genitalia normal.

Vestibule congested.

Vulva congested.

Vagina admitted little finger completely. Tender.

Hymen was old torn and healed.

Bleeding P/V negative.

Discharge P/V slight.

One Vaginal swab was taken for chemical analysis but second swab could not be taken for DNA because of girl’s non-cooperation. Swab was handed over to I.O.

OPINION:

            On the basis of clinical examination, she was not a virgo intacta. For confirmation of fresh act, vaginal swab has been made for chemical analysis. However, it is further noted that there are findings of fresh act in this case. She  prepared MLC No. 86/15, which she produced at Ex. 16/A and identified her signature on it  as well as receiving endorsement of ASI Jahangir Muhammad Tanoli. Meanwhile, he perused chemical report No. 13031/32 dated: 29.07.2015 at Ex. 8/I, which says human sperms as well as human blood detected in the vaginal swab of victim Tayyaba D/o Muhammad Idrees. She perused police letter for age assessment of victim Tayyaba at Ex. 8/F, which bears the age certificate No. 105/17, dated: 15.07.2015 and stamp of my office. She produced Age Certificate from the Police Surgeon Office Karachi which states that as per ossification of bones the age of the female is 9 to 10 years as reported by Radiologist Civil Hospital, Karachi. The certificate bears her signature as well as signature and stamp of the then Police Surgeon Karachi Dr. Jalil Qadir, which she produced at EX. 16/B. She was cross examined by the accused in person as his counsel was called absent without any application or intimation.

28.       During cross examination she admitted that there is no DNA in this case. She admitted that no marks of violence were seen on any part of the victim. She deposed that the victim was very non-cooperative despite repeated counseling and she has made note twice on the MLC. She identified Ex. 8/I, it is chemical report which shows that human sperm was detected. She admitted that she cannot comment to whom the human sperms allegedly detected from vaginal swab of victim, belonged. She admitted that according to the contents of MLC she has not mentioned that victim alleged that accused has committed her rape. She deposed that however, victim told her that accused used to touch her private parts and such fact she also mentioned in MLC. She admitted that she has examined the victim after a gap of almost one month of her kidnaping. She admitted that she has not found any swelling or any injury on hymen. She deposed that she cannot ruled out infection on the basis of discharge per vaginally and tenderness of the vagina.

29.       The prosecution has also examined its star witness as P.W-9 Victim Mst. Tayyaba at Ex.10 who deposed that the complainant Muhammad Idrees is her father. On 13.06.2015, her father sent her for taking water to the Baloch Para. It was 07:30 am in the morning. At that time she was aged about 10 years. Meanwhile accused Saleem came there in the Baloch Para and offered her some eatable articles. She already knew Saleem as he was running a stall of eatable articles outside her school situated at Pak Ansar Public School Urdu Bazar Sher Shah. The accused had given her eatable articles from his own pocket and some eatable articles he purchased from shop and then he had given her. Thereafter accused took her to the bus stop at Sher Shah. After eating said eatable articles which she became drowsy. Thereafter accused took her to a railway station and then he boarded alongwith her in a train at 10:00 am in the morning. Thereafter accused took her to Rohri railway station. Thereafter accused took to the house of friend of his maternal uncle situated nearby the Rohri railway station. The friend of his maternal uncle made enquiry about her from accused. Meanwhile accused replied him that she was his daughter. She slept two to three days in the house of his friend situated near Rohri railway station during such period she used to sleep with the wife of house owner. Thereafter accused issued threats to her and then accused kept her in another room in the same house where she used to sleep with accused for next 10 to 12 days. During such period accused used to commit her rape on daily basis. Accused also used to enter his finger on her vagina and when she made complaint to him that she was feeling pain then accused issued threats that he will kill her. Thereafter accused took her to Multan where accused used to force her to beg from the public in said Qila situated in Multan. They used to reside in the said Qila in the night time. During the night time accused used to touch her private parts in said Qila. They remained there in qila situated in Multan for about 6/7 days. Thereafter accused brought her Karachi in a train. Thereafter accused took her to Mazar of Abdullah Shah Ghazi where accused used to force her to beg from public. They remained 10 to 12 days at the Mazar of Abdullah Shah Ghazi during such period. Thereafter accused again took her to Multan via train and again took her to the same Qila where they remained up to next 10 to 12 days. During such period, accused used to force her for begging from the public. He also used to maltreat her and kept her under threat. Thereafter he again brought her Karachi via train. It was 14.07.2015. As they came out from the railway station he saw her father and police party there near the bus stop. She called her father and thereafter apprehended the present accused. Thereafter on the same day she was brought at the police station Sher Shah where police recorded her statement. Thereafter she was allowed to go with her father by police. She was also produced at Civil Hospital Karachi for her medical examination.  She identified the Saleem in open court being the same accused who abducted her thereafter kept her in wrongful confinement at Rohri, Multan and Karachi and also committed her rape during such period so many times. She was cross examined in length by the learned counsel for the accused.

30.       During cross examination she replied deposed that police recorded her statement. The contents of statement were read over before her. Police also obtained her signature on it. She was student of class three at the time of alleged occurrence. The accused Saleem used to sell Aloo Chhola on his cart outside her school. She admitted that she stated before police that prior the alleged occurrence accused used to tease her and touched her private body parts at outside the school. She admitted that she had not made any complaint to school management or to her father in respect of alleged acts of accused prior the alleged occurrence. She deposed that accused used to keep her under threat. They are five sisters and two brothers. She is at third number in sisters. She went alone to Baloch Para in order to see whether water was coming or not. The accused used to do such bad acts with other minor girls also. She does not know the names of other minor girls with whom accused used to do bad act with them. She admitted that no such minor girl informed her about such bad act of accused. She does not remember the type of eatable articles which were given to her by the accused on the alleged day of occurrence and after eating the same she became drowsy. The distance from Baloch Para to Sher Shah bus stop is about 10 minutes’ walk. The accused took her to bus stop by foot. She became unconscious prior boarding in the bus. She came into senses at railway station. She does not remember the time when they reached at Rohri. She does not remember whether it was day time or night time when they reached Rohri. The accused took her to the house of maternal uncle of his friend. She came to know such fact about the house when they reached there. She does not know the names of friend of accused name of maternal uncle of friend of accused. She admitted that she used to sleep with the wife of maternal uncle of friend of accused up to first two/three nights. She admitted that she stated before police that she used to sleep in the courtyard on a cart in the house of maternal uncle of accused at Rohri,. She deposed that the wife and maternal uncle were also used to sleep in the same courtyard. The accused and she used to sleep inside the room of said house on the ground on a chadar while maternal uncle and his wife used to sleep in courtyard of the house. The friend of accused Saleem did not come during such period in the house of his maternal uncle. She admitted that she deposed before police that the accused used to touch her private parts and used to enter finger in her private parts. She deposed that the accused had also committed her rape. They remained Rohri for ten to twelve days then they left to Multan. They used to reside in a Qila at Multan. She admitted that accused did not keep her in any house, or room or in any hut in the Qila. She deposed that they used to reside in open sky in the night time. She admitted that so many other persons also used to reside at Qila park in open sky at the same time. The accused also used to beg with her from public in Qila park. She admitted that it is not mentioned in her statement that accused was also used to beg with her. She deposed that she deposed before police that accused used to keep with him while begging. They came back in train. She admitted that so many persons used to come in park. She admitted that she has not made any hue and cry. She admitted that she has not made any complaint to any person or public that accused abducted or kidnapped her and has kept her under threat and forcing her to beg. She admitted that so many persons were parent in the train while accused was taking her to Rohri or to Multan including police person. She admitted that she has not made any complaint or hue and cry against accused to said police other persons in the train. She admitted that accused did not commit her rape at Qila situated at Multan. She deposed that however accused used to touch her private parts during their stay at Multan. She admitted that accused did not commit her rape during their stay at Multan. She denied that accused had not committed her rape at Rohri. She deposed that accused had committed her rape at Rohri. She admitted that accused has not committed her rape while they were standing at Mazar of Abdulllah Shah Ghazi. She deposed that accused used to touch her private parts. She admitted that there are so many police persons were available at the Mazar of Abdullah Shah Ghazi. She admitted that she has not made any complaint against accused to police or any other person of accused at Abdullah Shah Ghazi. She denied that  there was a quarrel had happened in between accused and her father as the cart of accused was hit to the motorcycle of her father about one week prior of alleged occurrence. She denied that neither accused abducted or kidnapped her nor took her to Multan twice. She denied that due to such dispute between accused and her father, her father had falsely implicated the present accused in FIR. She denied that she has herself left the house of her father and went to her relatives situated there at Multan. She denied that the accused was apprehended by her relatives at Multan and thereafter accused was brought from Multan to Karachi by her relatives while she was also brought from the house of her other relatives. She denied that accused present is innocent. She denied that she has falsely implicating the accused due to dispute with her father and accused. She deposed that she does not know whether her father and police were aware about her arrival at the railway station. She denied that that she was not recovered from the possession of accused at railway station. She admitted that after seeing her father she called her father at railway station. She was not aware why her father was available there. She denied that she deposed falsely in court.

31.       I have given due consideration to the arguments advanced by learned counsel for the accused and learned ADPP 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 baby Tayyaba. What she deposed during her examination in chief and as well as during her cross has already been discussed herein above. It appears that victim Tayyaba during her examination in chief has clearly implicated the above named accused and assigned him role that he has kidnapped her from Sher Shah and took her to Rohri where he committed her rape and thereafter he took to Multan where she was forced to beg for accused. The relevant facts as per verbatim of victim are that on 13.06.2015, her father sent her for taking water to the Baloch Para. It was 07:30 am in the morning. At that time she was aged about 10 years. Meanwhile accused Saleem came there in the Baloch Para and offered her some eatable articles. Thereafter accused took her to the bus stop at Sher Shah. After eating said eatable articles which she became drowsy. Thereafter accused took her to a railway station and then he boarded alongwith her in a train at 10:00 am in the morning. Thereafter accused took her to Rohri railway station. Thereafter accused took to  the house of friend of his maternal uncle situated nearby the Rohri railway station where she  used to sleep with accused for next 10 to 12 days and during such period accused used to commit her  rape on daily basis. She also deposed that accused also used to enter his finger on her vagina and when she made complaint to him that she was feeling pain then accused issued threats that he will kill her. She also deposed that thereafter accused took her to Multan where accused forced her to beg from the public. She also deposed that accused also brought her back Karachi and forced her to beg her at Mazar of Abdullah Shah Ghazi and then again took her to Multan and then again brought her to Karachi and then police got recovered her from the possession of accused.  It appears that during the cross victim denied that  there was one quarrel had happened in between accused and her father as the cart of accused was hit to the motorcycle of her father about one week prior of alleged occurrence. She denied that neither accused abducted or kidnapped her nor took her to Rohri and then Multan twice. She also denied that accused has not committed her rape. She denied that due to such dispute between accused and her father, her father had falsely implicated the present accused in FIR. She denied that she has herself left the house of her father and went to her relatives situated there at Multan. She denied that the accused was apprehended by her relatives at Multan and thereafter accused was brought from Multan to Karachi by her relatives while she was also brought from the house of her other relatives. She denied that accused present is innocent. She denied that she has falsely implicating the accused due to dispute with her father and accused. She deposed that she does not know whether her father and police were aware about her arrival at the railway station. She denied that that she was not recovered from the possession of accused at railway station. She admitted that after seeing her father she called her father at railway station. She was not aware why her father was available there.

33.       The main contention of the learned counsel for the accused is that there is not DNA Report.  No doubt that there is no DNA report in this case but I am not convinced with the contention of the learned counsel for the accused that accused is innocent on the same ground that there is no DNA report. In present circumstances, WNLO has confirmed that victim was subjected to sexual intercourse, therefore, the offence of rape with victim has been established against the present accused beyond any shadow of doubt. More so under circumstances of the case 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 and non-availability of DNA report cannot affect the other evidence available on record. I relied upon the case law **PLD 2020 Supreme Court 313.**

34.       The another contention of the learned counsel for the accused is that there is no 164 Cr.P.C. statement. No doubt that there is no statement recorded under section 164 Cr.P.C. but I am of the view that it is not so fatal,   due to the reason that the  victim  has clearly implicated the accused in her statement under section 161 Cr.P.C. before police and as well as before this court.

35.       Furthermore, nothing came on record that there was any ill-will, malice and malafide on the part of victim or on part of her family or on part of police to falsely implicate the accused in the present offence. Though, learned counsel for the accused claimed that  there was a quarrel one week prior of the alleged occurrence in between the complainant and accused  therefore the complainant and alleged victim has falsely implicated the accused in this crime but admittedly the complainant and victim both have denied such claim of the accused. More so, the accused neither examined himself on oath nor produced any defense witness in support of his contention.

36.         I have also not found any force in the contention of the learned counsel for the accused that the alleged victim herself left the house due to the reasons that according to the age certificate the alleged victim was only aged about 9 to 10 years at the time of alleged occurrence and a minor girl of 9/10 years old cannot take such decision until and unless she was induced and more so the victim has denied that she herself left the house of complainant.  I have also not found any force in the contention of the learned counsel for the accused that any of relative of complainant took the victim to the house of in laws of the complainant and later on they themselves brought back the victim to the house as no such proof has been produced by the accused in support of his such contention. All the prosecution witnesses were cross examined at length and nothing material came on record to shake and dent their testimonies. There are certain natural and immaterial contradictions and discrepancies in investigation such as the victim admitted that she has not raised any hue and cry or made any complaint to the police or to general public when accused forced her to beg for him due to the reason that the age of victim at the time of alleged occurrence was 9 to 10 years as proved by age certificate issued by the police surgeon  and it appears that victim claimed that she was under the threat of accused that he will kill  her, it is therefore, such   inconsistencies  have not hampered the case of prosecution in any manner and prosecution case stands fully proved.

32.       I am of the view that despite of lengthy cross examination to the victim, complainant and other prosecution witnesses, nothing fruitful came on record to provide any benefit to accused and to create any dent in prosecution case. The testimony of victim appears to be true, genuine and confidence inspiring. Nothing has come on record that her statement was tutored to her by her father in any manner to falsely implicate the present accused. I have also not found any mixture of falsity appears in deposition of victim and admittedly she has fully implicated the present accused that he has kidnapped her and then committed her rap and forced her to beg for him under threats of her killing.  No material contradictions emerged nor victim resigned from the accusation she had made against the present accused. The victim proved her reliable witness and was physically examined by WMLO and the said WMLO has supported the version of victim and confirmed that victim was subjected of sexual intercourse. More so the accused was also examined by the MLO who has confirmed that the accused has capability to perform sexual intercourse. It is established that accused has abducted the victim Tayyaba aged about 9/10 years from the lawful custody of the complainant and thereafter took her to Rohri where he committed the shameful act of rape with the victim and also took her to Multan and forced her to beg for him. I am satisfied that in the present case, the prosecution has established its case against the accused beyond reasonable doubt and prosecution case stands proved as such point under discussion is answered in affirmative.

**POINT NO. 2:**

37.       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 offence of abduction and as well as shameful act of rape of victim Mst. Tayyaba  as such he requires no leniency under the law. The offence of abduction punishable under section 364-A PPC and of commission of rape U/s. 376 PPC have been fully proved against the accused beyond shadow of any doubt. The accused Muhammad Saleem son of Abdul Rasheed is hereby convicted U/s. 265-H(ii) Cr.P.C for the offence punishable under section 364-A PPC and sentenced to rigorous imprisonment for **seven (7) 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 also is 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 14.07.2015. Both the sentences will run concurrently. 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 **14th** day of **February**, **2022**.