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IN THE COURT OF II ADDITIONAL SESSIONS JUDGE KARACHI CENTRAL

Before Mrs. Zabiha Khattak

Sessions Case No. 1881 of 2021

The State-----Complainant

VERSUS

Ali Shah Khan s/o Nafasat Ali Khan,

R/o R-1031 Azizabad, Karachi-----Accused

FIR No.479/2021

U/S.376 PPC

PS. Joharabad

Ms.Hina Naz, learned ADPP for the State.

Mr.Sardar Ali Sher Khan, Advocate for accused.

J U D G M E N T

27.07.2022

Accused Ali Shah Khan s/o Nafasat Ali Khan was sent up to face trial for offences punishable under sections 376 PPC, FIR No.479/2021 registered at Police Station Joharabad, Karachi.

Brief facts of the prosecution case are that on 31.05.2021, complainant Khalid Ali s/o Yousuf lodged FIR, stated therein that he has five children. Out of them three are sons while two are daughters. His younger daughter Faiza aged 12 years who is doing maid work at ground floor of House No.R-1031, Block-14, F.B. Area, Karachi, since 17.08.2021 and remains there for 24 hours. The nephew of owner of that house namely Ali Shah is also residing in the same house. On 23.08.2021 at 0220 hours, the husband of owner of house namely Raja made telephonic call that Faiza is not feeling well and he should come and bring her back, whereupon the complainant and his wife Mst. Komal reached at above house and found their daughter Faiza sitting in a room in fever condition and she was telling for body pain. Faiza disclosed her mother that since 2/3 days, Ali Shah is giving her some tablets and also committing zina with her since 2/3 days. The

complainant and his wife brought back their daughter at their house. Hence the FIR.

At the trial, copies of the case papers were supplied to the accused vide receipt at Exh-1 and charge framed at Exh-2, to which accused pleaded not guilty and claimed to be tried vide plea recorded at Exh-2/A.

At the trial the prosecution examined complainant Khalid Ai as PW-1 at Exh.3. Prosecution gave up PW Mst. Komal w/o Khalid vide statement as Exh.4. Victim Faiza was examined as PW-2 at Exh.5. Learned J.M Mr.Khaliq Zaman was examined as PW-3 at Exh.6. S.I Raees Ahmed was examined as PW-4 at Exh.7. MLO Dr.Syed Muhammad Hussain was examined as PW-5 at Exh.8. WMLLO Dr.Mehak Irfan was examined as PW-6 at Exh.9. After completing evidence of prosecution witnesses, prosecution closed the side vide statement at Ex. 10.

The statement of accused under section 342 Cr.P.C was recorded at Ex.11, wherein he denied the prosecution allegations to be false. However, the accused neither examined himself on oath, nor examined any defence witness.

I have heard the learned counsel for accused, learned ADPP for the State and perused the evidence available on record.

The points for determination in this case are as under:-

POINTS

POINT NO.1: Whether from 17.08.2021 to 23.08.2021 at different times, inside House No. R-1031, Block-14, ground floor, F.B. Area, Karachi, accused committed rape of Faiza d/o Khalid Ali, aged, 12 years?

POINT NO.2. What should the judgment be?

My findings on the above points along with reasons are as under:-

FINDINGS

POINT NO.1. -----Affirmative.

POINT NO.2. -----Accused is convicted under section 265-H(ii) Cr.P.C for commission of offence under section 376 PPC.

REASONS

POINT NO.1.

In order to prove this point the prosecution examined PW-1 complainant Khalid Ali as Exh.3, he is also one of the mashir of memo of seizure, mashir of inspection and memo of arrest of accused. He fully identified the accused with the contention that "On 17.08.2021 I left my daughter namely Faiza at the house of second wife of Raja namely Shazia, as house maid for 24 hours at House No. 1031, Block-14, F.B. area, Karachi. On 23.08.2021, at 11:00 p.m Raja Sahab called me on my phone that my daughter is not feeling well therefore, I should come and take

her to home. Thereafter I alongwith my wife Komal went at the house of Raja Sahab and found our daughter in a room in weeping condition who told that she was feeling pain in her abdomen and body. She further told that Ali Shah had given her some intoxicating tablet for drinking due to which her condition became worse and then Ali Shah committed rape with her. We brought back our daughter to our house. We kept mum due to our honour, but my daughter was continuously weeping and demand for justice. On 31.08.2021 at 1300 hours, we went at PS where we lodged FIR. On 01.09.2021 police brought my daughter at Abbasi Shaheed Hospital for medical examination. I and my wife were also accompanied with them, where at 1400 hours I handed over the cloths of my daughter to police who prepared memo of seizure and obtained my signature as well as of my wife. Thereafter on the same date, at 10:00 p.m police visited the place of incident and prepared memo and obtained my signature and signature of my wife thereon. On 02.09.2021 we pointed out the accused to police who was present at his house No. R/1031, F.B. area, Karachi, police arrested him and prepared memo of arrest at 1700 hours and obtained my signature as well as of my wife. On the same date, I.O recorded my 161 Cr.P.C statement. In this regard, he produced FIR as Exh.3/A, memo of seizure as Eh.3/B, memo of inspection as Exh.3/C and memo of arrest as Exh.3/D.

In cross examination he denied that "It is incorrect to suggest that I am deposing falsely."

Victim of the case PW Faiza also recorded her evidence before the Court as Exh.5. She also fully identified the accused person with the contention that "I used to reside at the house of accused situated at Water Pump as maid. On 17.08.2021 I was suffering from flue, accused gave me a sleeping pill, I feel that accused committing ziadti with me. When I wake up in morning, I feel pain in my abdomen so I disclosed the whole fact to the mother of accused, but she started beating me. My condition was not well so I requested father of accused to call my father as my condition was not well, resultantly, my parents reached there so they brought at my house, my condition was very bad and I was feel severe pain in my body. At home I disclosed all the facts to them, thereafter my parents reached at PS and FIR was lodged. Thereafter I was medically examination at Abbasi Shaheed Hospital. I also handed over my wearing cloths to police. My statement was also recorded before the court.

In cross examination she denied that "It is incorrect to suggest that my father demanded amount from father of accused."

Prosecution also examined learned Judicial Magistrate Mr.Khaliq Zaman before the Court as Exh.6. He deposed that on 06.09.2021, he recorded statement u/s. 164 Cr.PC of victim on the request of I.O. In this regard, he produced 164 Cr.P.C statement of victim as Exh.6/A alongwith envelope, covering letter and application for 164 Cr.P.C at Exh.6/B to 6/D.

I.O S.I Raees Ahmed also examined before the Court as Exh.7. He deposed that on 31.08.2021, he received investigation of present crime and during the investigation, he visited the place of incident on the pointation of complainant and his wife, conducted medical examination of victim and also obtained DNA sample and thereafter sent to concerned department. During investigation he also took photographs of place of incident, arrested the accused person and also produced the victim for recording her 164 Cr.P.C statement before Judicial Magistrate. He also conduced medical examination of accused and after completing legal requirements and formalities, he submitted challan before the Court. He also identified the accused person. He produced entry No.11 as Exh.7/A, entry No.12 as Exh.7/B, entry No.22 as Exh.7/C, entry No.22 as Exh.7/D, ML Letter as Exh.7/E, ML No.109/21 as Exh.7/F, entry No.26 as Exh.7/G, 10 photographs as Exh.7/H, entry No.38 as Exh.7/I, entry No.19 as Exh.7/J, entry No.24 as Exh.7/K, CRO as Exh.7/L, letter to SSP as Exh.7/M, medical letter of accused as Exh.7/N, medical receipt as Exh.7/O, ML report as Exh.7/P, notices u/s.160 Cr.P.C as Exh.7/Q and 7/R, application for 164 Cr.PC as Exh.7/S, DNA permission letter as Exh.7/T, road certificate for DNA as Exh. 7/U and supplementary report as Eh.7/V. He verified police letter as Exh.7/N.

In cross examination he admitted before the Court that **"It is correct to suggest that after 3 days of lodging FIR medical examination of victim was conducted. Vol. says the WMLO was not available in this regard I submitted roznamcha entry. However, the delay is only of one day."**

Prosecution also examined Dr.Syed Muhammad Hussain as Exh.8. He deposed that on 03.09.2021, he conducted medical examination of accused at Abbasi Shaheed Hospital and he has opinion that **"the accused was capable of performing sexual intercourse in ordinary circumstances of life."**

Dr.Mehak also examined before the Court as Exh.9. She deposed that on 03.08.2021, she conducted medical examination of victim at Abbasi Shaheed Hospital and during medical examination, she secured sample of vagina for DNA and serology and blood sample for DNA matching. She has an opinion that **"On clinical examination as already mentioned in the original MLC, she was found to be sexual active (nor virgo intacta)."**

I have carefully gone through the record and perused the evidence. After perusal of record it appears that all the PWs including the complainant and victim fully identified the accused person. The victim whose age is 12 years also deposed against the accused person and describe the role of accused. So far the delay of 8 days in lodging FIR is concerned, in this regard, the complainant PW Khalid deposed that **"Due to honour, I lodged FIR late."** Even otherwise in present crime the superior Court gave clear observation that **"Delay in lodging of FIR is not the ground of acquittal as in our society usually FIRs of same crime are lodged late due to honour."**

It also appears from the record that admittedly since 17.08.2021 till 23.08.2021, the victim did not disclose the incident to her parents and on 23.08.2021, when her parents came at the house of accused for taking her, where she was working as maid, then she informed her parents. In this regard, the victim also gave explanation that on 19.08.2021, she did not disclose the incident to her parents as her condition was not well, even she could not speak. The victim also fully implicated the accused and deposed against him in her statement u/s 164 Cr.P.C which was recorded by learned Judicial Magistrate, and I did not find any material contradiction in evidence of all prosecution witnesses specially victim whose age is just 12 years. Even otherwise the accused failed to bring any sufficient evidence in his defence or failed to bring any enmity with complainant and victim who is 12 years old. In this regard, I will take guidance from case law reported as **Atif Zareef Vs. State (PLD 2021 SC 550)** wherein the Court has categorically held that *“Rape is a crime that is usually committed in private, and there is hardly any witness to provide direct evidence of having seen the commission of crime by the accused person. The Courts, therefore, do not insist upon producing direct evidence to corroborate the testimony of the victim if the same is found to be confidence inspiring in the overall particular facts and circumstances of a case, and considers such a testimony of the victim sufficient for conviction of the accused person. A rape of the victim is sufficient for conviction of the accused person. A rape victim stands on a higher pedestal than an injured witness, for an injured witness gets the injury on the physical form while the rape victim suffers psychologically and emotionally.”*

It is not out of record to mention here that no doubt the DNA reveals that;

“No seminal material was identified on vaginal swab (for DNA (item # 1) and vaginal swab (for serology) (item # 2) of Faiza d/o Khalid Ali. Thereafter, no further DNA analysis (STR analysis was conducted on item # 1 and 2.

No seminal material was detected on stain sections taken from trouser (item # 3.1-3.17) and stain sections taken from gameez (item # 4.1-4.14) of Faiza d/o Khalid Ali. Therefore, no further DNA analysis (STR analysis) was conducted on item # 3.1-3.17 and 4.1-4.14.

No analysis was conducted on blood sample of Faiza d/o Khalid Ali (item # VI).

No analysis was conducted on blood sample of Ali Shah s/o Nafasat Ali Khan (item # S1).

But evidence of WMLO Dr.Mehak Irfan who conducted medical examination of victim reveals that *“On clinical examination as already mentioned in the original MLC, she was found to be sexually active (not virgo intacta)”* Even in 173 Cr.P.C report the I.O mentioned that *“Due to lapse of time and receiving blood sample belated, no result come out in DNA.”*

However, it is held in 2022 S.C.M.R 544 in which my lordship Mazhar Alam Khan Miankhel, Qazi Muhammad Amin Ahmed and Jamal Khan Mandokhel, JJ have held as follows:

“Negative reports do not reflect upon the veracity of prosecution case for reasons more than one---D.N.A. profile generation though a most meticulous method with unfailing accuracy, nonetheless, requires an elaborate arrangement about storage and transportation of samples, a facility seldom available---Even a slightest interference with the integrity of samples may alter the results of an analysis and, thus, the fate of prosecution case cannot be pinned down to the forensic findings alone, otherwise merely presenting a corroborative support, hardly needed in the face of overwhelming evidence, presented by the prosecution through sources most unimpeachable---“

Nowadays, the above type of crime is on peak in the society which should be dealt with iron hands, as due to said act, no girl or woman is safe from the hands of such types of criminals.

In the light of above circumstances, the prosecution has succeeded to prove this point beyond reasonable shadow of doubt, therefore, the Point No.1 is answered as affirmative.

POINT NO. 2.

In view of the findings on point No. 1, I am of the opinion that the prosecution has proved its case against the accused beyond shadow of reasonable doubt, therefore the accused Ali Shah Khan s/o Nafasat Ali Khan is hereby convicted u/s.265-H(ii)Cr.P.C for commission of offence under section 376 PPC and sentenced him to suffer R.I 10 years and fine of Rs.10,000/-. In default, he shall undergo S.I. for 3 months. Benefit of section 382-B Cr.P.C is also extended to the accused. Accused Ali Shah Khan s/o Nafasat Ali Khan is produced in custody, he is remanded back to custody alongwith his conviction warrant to serve out the sentenced period.

Announced in open Court.

Given under my hand and the seal of the Court on this 27th day of July, 2022.

(Mrs.ZabihaKhattak)

IIInd Additional Sessions Judge,

Karachi, Central