

IN THE COURT OF ADDITIONAL SESSIONS JUDGE-X KARACHI WEST

BEFORE: (IRSHAD HUSSAIN)
SESSIONS CASE NO.1578/2021

The State

Versus

1. Ubaid Hussain S/o Muhammad Hussain
2. Tariq Khan S/o Khan MuhammadAccused Persons

FIR NO.27/2021
 U/S:392/397/376/34 PPC
 P.S: Surjani Town

Mr. Muhammad Dawood Narejo, Advocate for accused Ubaid.

Mr. Abdul Khalique Nawal, Advocate for accused Tariq.

Mr. Ashir Emmaual, learned DDPP for the State.

JUDGMENT

22.07.2022

The accused above named stood charged with offence having punishable u/s 392/397/376/34 PPC registered at police station Surjani Town, Karachi (West).

2. Brief facts of prosecution case as narrated by complainant Mst. Rukhsana Jabar in the FIR are that she is running a beauty parlor and on 07.01.2021, she along with her children in room of her house and in her house, there are four rooms and in other rooms her in laws are residing. Her husband went on boat for earning livelihood one month ago. Her brother in law (Daiwer) namely Sana Ullah returned back to home after taking tea from the shop and door of house remained open. At about 2030 hours, out of sudden, two young unknown persons wearing *shalwar gameez*, looking like a Sindhi by their faces entered into her house and pretended themselves as police officials and snatched mobile phone Nokia touch and one china mobile phone from her brother in law (Daiwer) namely Sana Ullah, so also snatched one mobile phone from her nephew Sohail and thereafter, they came along with her brother in law (Daiwer) in her room and snatched her mobile phone and asked her for searching and threatened to take out cash amount and gold ornaments, meanwhile, they took out cash of Rs. 50,000/- and ½ tola gold and thereafter, tied the hands of her brother in law (Daiwer) and sit him down at the corner and forcibly caught hold and removed her dupatta from her head and molested her body as such she tried to crying but the said persons brought her in room and asked her for searching of another room and when she showed her resistance, they threatened her follow their instructions, else, they would commit rape of her 12 years old daughter and thereafter, removed her cloths and maltreated her with kicks and committed rape of her turn by turn. Meanwhile, their two other accomplices came and they have also committed rape of her turn by turn and threatened her not to disclose any one, else they would come again and made their escape good. Meanwhile, after consultation with her husband, she approached at P.S and lodged the instant FIR. During the course of investigation, police secured one cloth (safa) used by the accused persons during the rape. Meanwhile, above named accused were arrested and during interrogation they disclosed such facts of committing rape during the house robbery along with co-accused persons, therefore, the above named accused were arrested in this case and on the following day on 01.02.2021, identification parades were held before Judicial Magistrate, where the complainant has identified the above named accused persons with alleged roles of committing rape with her. Meanwhile, the victim was examined by the lady MLO and her vaginal swabs were secured for the purpose of chemical examination and DNA report and both the accused persons were also medically examined and their blood samples were also secured for the purpose of chemical and DNA test. Meanwhile one white piece of cloth (safa) recovered from the place of incident were also secured and sent for chemical and DNA test. Meanwhile chemical report was received in which human sperms were detected from vaginal swab of victim and meanwhile DNA reported was also received which shows that

mixture of at least two individuals were found from the white piece of cloth recovered from the place of incident and it was further reported that DNA profile of above named accused persons can be excluded as potential contributor to the DNA from the sperm fractions of white piece of cloth.

3. Police after registering the FIR conducted investigation and on completion of usual investigation submitted the challan sheet in the Court of concerned Judicial Magistrate against accused named above while showing the co-accused Bubloo and Wadera as absconders. The same was sent to Hon'ble District Judge, Karachi West from where the case has been transferred to this court for disposal according to law.

4. During the trial NBWs were issued against the absconding co-accused persons and they were declared as absconders vide order at Ex.1 and thereafter process U/s 87 & 88 Cr.P.C were issued against the absconding co-accused persons and meanwhile statement of process server was recorded and absconding co-accused persons were declared as proclaimed offenders vide order at Ex.2. Meanwhile Copies u/s 265-C Cr.P.C. were supplied to the accused at Ex.04. Charge at Ex.05 was framed against accused persons on 06.08.2021, to which they pleaded not guilty and claimed for trial, vide their pleas at Ex.5/A & B.

5. The detail of prosecution witnesses and the material/documents produced by the prosecution is as under:-

- (i) **PW-1 MLO** Dr. Muhammad Talha was examined at Ex.6, who examined accused persons Tariq Khan and Ubaid Hussain in respect of their male potency and declared them capable to perform sexual intercourse and also secured their blood samples and handed over the same to the police. He produced police letter moved by ASI Sajid Ali for medical examination of accused persons namely Tariq Khan S/o Khan Muhammad and Ubaid Hussain son of Muhammad Hussain as an active agent of sexual assault as exhibit 6/A, Medico Legal Certificate bearing No. 823/21 of accused Tariq Khan at Ex. 6/B, Medico Legal Certificate bearing No. 824/21 of accused Ubaid Hussain at Ex. 6/C. He identified both the accused persons in open court and was also cross examined in length by the learned counsel for the accused persons.
- (ii) **PW-2 WMLO** Dr. Samiya Sehar was examined at Ex.7, who examined the victim Rukhsana and secured samples of her vaginal swabs and handed over the same to the police. She produced police letter of ASI Sajid Ali under which he requested medical examination of victim Rukhsana at **Ex.07/A**, MLC No. 6/2021 of victim Rukhsana under which she examined her at **Ex.7/B**, chemical report bearing No. 2146/47, Karachi Dated: 22.01.2021 issued by Director Laboratories and chemical examiner to the Government of Sindh, Karachi, showing that human sperm detected from sample of vaginal swab at **Ex.07/C**, DNA report bearing No. SFDL-2021-102, dated: 17.02.2021, which shows that blood sample of accused Tarique Khan and Ubaid can be excluded as the potential contributor to the DNA from the sperm fraction of item No.2.1, at **Ex.07/D** (containing two leaves), final supplementary report at **Ex.07/E**. She was not cross examined by the learned counsel for the accused persons.
- (iii) **PW NO.3** victim and complainant Mst. Rukhsana Jabbar was examined at Ex.8, who deposed that on 07.01.2021 at about 8:30 p.m. two unknown accused persons duly armed with fire arm weapon entered into her house and over powered inmates and committed house robbery and looted valuable articles and then they brought her in another room where they after removing her clothes on gun point and issuing threats of committing rape of her minor daughter and then committed her rape one by one and thereafter two other unknown persons came who also committed her rape one by one. Meanwhile she recorded her statement under section 154 CR.P.C. before police which she produced at **Ex.8/A**. She also produced memo of site inspection prepared by I/o on her pointation under her signature at exhibit 8/B. She also handed over the one make up kit and one Safah of her brother in law to police under a written memo prepared by police in her presence and signature which she produced at exhibit **Ex.8/C**. She has also recorded her statement under section 164 Cr.P.C. before the learned Judicial Magistrate which she produced at exhibit **Ex.8/D**. During identification Test

parade she also identified two accused persons before the learned Judicial Magistrate from the row of other dummies one by one but she does not know the names of accused persons, being the same accused persons who committed her rape and house robbery alongwith other co-accused persons. She rightly identified accused persons Ubaid Hussain S/o Muhammad Hussain and Tarique Khan S/o Khan Muhammad in open court being the same accused persons who committed her rape and house robbery. She also produced one white cloth parcel and identified her signature on it, containing one make up kit and one cloth/Safa. She produced one white colour cloth/Safa as article A being the same clothes owned by her brother in law which was used by the accused persons while clearing their direct at the time of commission of her rape and make up kit as article B. She was cross examined in length by the learned counsel for the accused persons.

- (iv) **PW-4** Ms. Saima Kato learned IV-Judicial Magistrate was examined at exhibit 10. She recorded statement under section 164 Cr.P.C. of the victim. She was appointed for recording statement under section 164 Cr.P.C. of the victim Rukhsana Jabbar in subject case by the Honorable District and Sessions Judge, Karachi West vide reference letter/order dated 13.01.2021. She produced letter issued by learned JM-XV, Karachi West to the Hon'ble DJ West, Karachi at Ex.10/A, reference order/letter vide No.A/W/13/2021 Karachi dated 13.01.2021 passed by Hon'ble District & Sessions Judge, Karachi West in which she was directed to record such statement at Ex.10/B, application of I/O as Ex.10/C, application of IO dated 18.1.2021 at Ex.10/D, sealed envelop containing statement under section 164 Cr.P.C which was de-sealed in open court and then she produced such statement Ex.8/. She was also cross examined by the learned counsel for the accused persons.
- (v) **PW-5** ASI Sajid Ali was examined Ex.11. He was the investigating officer. He recorded statements under section 161 Cr.P.C. of the prosecution witnesses, inspected the alleged place of wardat, arrested the accused persons, got examined the accused persons from MLO, got recorded the statement under section 164 Cr.P.C. of the victim and got identified the accused persons from the victim before the court of learned judicial Magistrate. He identified statement u/s 154 Cr.PC of the complainant at Ex.08/A. He produced FIR at **Ex.11/A**, and entry NO. 38 under which the duty officer lodged the FIR at **Ex.11/B**, departure entry NO. 48 at about 2035 under which he left the police station for the purpose of inspecting the alleged place of wardat at **Ex.11/C**. He identified memo of site inspection at Ex.08/B. He captured some photographs at the time of inspection of place of occurrence and which he produced 04 photographs on 02 leaves at **Ex.11/D and Ex.11/D1**, identified Ex.07/A, being the same letter addressed to WMLO of Abbasi Shahed Hospital for examination of victim having official endorsement of WMLO with reference to MLC NO. 6/2021 and official seal. He also identified MLC No. 06/2021 at Ex.07/B under which WMLO examined the victim and also handed over vaginal swabs of the victim to him, arrival entry NO. 52 under which he came back to the police at Ex.11/E, application dated 09-01-2021 addressed to the learned judicial magistrate for recording statement under section 164 Cr.P.C. of the victim at **Ex.11/F**, complainant produced 01 piece of cloth known as Safa and 01 Makeup kit and handed over same to him which he secured and sealed the same under a written memo which he identified at Ex.08/C. He sealed the makeup kit and piece of cloth separately. He also produced CSI form-02 prepared by CSU Peerabad under which they inspected the place at **Ex.11/G**, arrival entry NO. 39 at about 2100 hours under which he came back to the police station at **Ex.11/H**, covering letter dated 11-01-2021 under which he deposited sample of swab of victim to the office of the chemical examiner at **Ex.11/I**, covering letter under which he deposited vaginal swabs of the victim, blood sample of the victim, makeup kit and white cloth in seal condition to the AIG forensic division at **Ex.11/J**, arrival entry NO. 32 at about 1815 hours under which he came back to the police station at **Ex.11/K**, such letter addressed to CPLC on 12-01-2021 under which he visited CPLC alongwith complainant and prepared one sketch through complainant of one accused at exhibit **Ex.11/L**, one sketch drawn by CPLC at **Ex.11/M**, an

application for statement of victim namely Mst. Rukhsana at Ex.10/D, application under which he alongwith complainant went to the office of CIA CRO for the purpose of identity of accused persons from the criminal record lying in the office at **Ex.11/N**, but complainant did not identify any of the accused from the record, arrival entry NO. 45 at about 1930 hours under which he came back to the police station at **Ex.11/O**, his covering letter dated 19-01-2021 under which he deposited sample of the swabs of the victim and white cloth to forensic laboratory for the purpose of DNA at **Ex.11/P**, arrival entry NO. 50 at about 1930 under which he came back to the police station at **Ex.11/Q**, such report No. FPB/INC/OR/22/2021/Karachi/Dated 15-01-2021 issued by forensic division with opinion that identifiable finger impression were not found from makeup kit at **Ex.11/R**, memo of re-arrest of both the accused persons dated 31-01-2021 prepared by him after arrest of above named accused who were already available at the PS as they were arrested in case FIR NO. 128/2021 and 129/2021 u/s 23-A of Sindh Arms Act of the same PS as during the course investigation both the accused persons have admitted their involvement in the present case, at **Ex.11/S**, Roznamcha vide entry NO. 53 at about 0020 hours dated 01-02-2021 at **Ex.11/T**, face forms of the both accused at **Ex.11/U**, letter addressed to Judicial Magistrate for identification parade of both the accused through complainant at **Ex.11/V**, departure entry under which he left the PS on 01-02-2021 vide entry NO. 05 which he kept at 0840 hours at **Ex.11/W**, letter for medical examination of both the accused persons in respect of their male potency which he identified Ex.06/A, arrival entry NO. 45 at about 2200 hours under which he came back to the police station at **Ex.11/X**, covering letter dated 03-02-2021 under which he deposited blood sample of the both the accused persons to Sindh forensic DNA laboratory at **Ex.11/Y**, CRO proceedings of the both the accused persons at **Ex.11/Z and Ex.11/Z1**, entry NO. 54 which kept at 2200 hours under which he came back to the police station at **Ex.11/AA**, identified chemical report No. 2146/47 Karachi dated 22-01-2021 Ex.07/C, identified DNA report at Ex. 07/D, identified supplementary medico legal report at Ex.07/E which was issued by the WMLO on the basis of chemical and DNA report, letter dated 09-01-2021 & 15-01-2021 for providing call data record at **Ex.11/BB and Ex.11/CC**, call data record of complainant in respect of her cell number 0324-2669754 from dated 06-01-2021 to 13-01-2021 containing 12 pages at **Ex.11/DD**, call date record of PW Sanaullah with cell number 0342-2606619 w.e.f. 06-01-2021 to 10-01-2021 at **Ex.11/EE**, call data record of Suhail relative of complainant with cell number 0314-3394577 w.e.f. 06-01-2021 to 12-01-2021 containing 03 pages at **Ex.11/FF**. **He also produced original DNA report** vide No.SFDL-2021-102, containing on four pages and covering letter at **exhibit 11/G**, covering letter dated -03.02.2021 under which he call Data record of seven SIM/Cell numbers (1) 03301038913, (2)03162540827, (3)03168926746, (4)03032725177, (5)03233132776, (6)03162448976 and (7) 03003749772 recovered from the possession Of accused persons were called at exhibit 11/HH, CDR of SIM No.0303-2725177 of accused Obaid for the period 01.12.2020 to 11.02.2021 at Ex.11/I and CDR of SIM No.0323-3132776 of accused Tariq Khan for the period 05.01.2021 to 14.01.2021 at Ex.11/JJ. **He identified** accused persons namely Ubaid Hussain and Tariq Khan in open court. He was cross examined by the learned counsel for the accused persons. He also identified his signature on the sealed parcel clothes and also identified cloth/Safa as article A and make up kit as article B. He was cross examined in length by the learned counsel for the accused persons.

- (vi) **PW-6** Judicial Magistrate, Shafqat Hussain was examined at Ex.12. He conducted the identification test parade of both the accused persons through the victim. He identified application moved by the I/o at exhibit 11/V and produced the identification test parade memo of accused Tariq Hussain at exhibit 12/A and Identification Test parade memo of accused Ubaid Husain at exhibit 12/B. He also identified both the accused persons in open court being the same accused persons who were identified by the victim in his presence. He was also cross examined in length by the learned counsel for the accused persons.
- (vii) **PW-7** ASI Nasir Hussain Shah was examined at Ex.13. He was the mashir of arrest of

accused persons and witness of the interrogation process under which both the accused persons admitted their involvement in this case. He identified his signature on memo of arrest of accused persons at exhibit Ex.11/S. He also identified both the accused persons in open court. He was cross examined in length by the learned counsel for the accused persons.

- (viii) **PW-8** ASI Abdul Sattar was examined at exhibit Ex.14. He was the duty officer who recorded the statement under section 154 Cr.P.C. of the victim. He identified such statement at exhibit 8/A. He also converted such statement under section 154 Cr.P.C. into FIR. He identified such FIR at exhibit 11/A and he also kept such fact of lodging of FIR in Roznamcha entry NO. 38 and he identified such entry at exhibit 11/B. He was also cross examined in length by the learned counsel for the accused persons.

6. Thereafter, learned DDPP for the state closed the side of the prosecution vide his statement at Exh.14.

7. Thereafter learned ADPP closed the side of prosecution at Ex.15. On conclusion of trial, the statement of the accused under section 342 Cr.P.C. recorded at Ex.16 and 17. In their statements, the accused denied the allegations leveled against them and claimed to be innocent. However, neither they examined themselves on oath nor led and defence. They also produced copies of judgments passed in case 929/21 and 887/21 in which they were acquitted in falls U/s 23(i)-A Cr.P.C by the trial Court at Ex.16/A and Ex.17/A.

8. I have heard the arguments of learned defence counsel so also DDPP for state. I have also gone through the material available on record.

9. Now the points for determination will be as under:

1. *Whether the accused persons Ubaid Hussain and Tariq Khan alongwith absconding accused Bubloo and Wadera committed robbery in the house of complainant on 07.01.2021 at 2030 hours to 2200 hours at House No.L-791, Ali Muhammad Mengal Goth, Taiser Town, Karachi?*
2. *Whether on alleged date, place and time during robbery the accused persons, turn by turn, committed rape of complainant Rukhsana Jabbar on gun point?*
3. *What offence, if any, has been committed by accused?*

10. Learned ADPP contended that the prosecution has successfully proved its case against the accused beyond reasonable doubt as eye witness who is rape victim and other witnesses, recovery mashir, medical officer, investigating officer and supported the case. She contended that all necessary documents collected during investigation were produced at the trial and placed on record to show that accused in furtherance of their common intention entered in the house of the complainant on gun point and after hostages the inmate of the house of complainant they snatched valuable articles from the family members of the complainant and thereafter they took the complainant inside the room and then committed her rape one by one. She submitted that the victim is natural witness to the occurrence who had no motive to depose falsely and to implicate the accused for ulterior motives. She submitted that the contradictions pointed out by learned counsel for the accused are minor and do not affect truth of the statements made by the complainant and the witnesses and further that due to lapse of time such contradictions are bound to surface. She submitted that learned defence counsel cross examined the complainant and the witnesses but could not shake them. She submitted that the Investigating Officers conducted investigation efficiently and fairly towards collection of evidence against the accused persons. She submitted that the defence could not controvert the position as reflected in the evidence and the documents produced therewith. She further contended that the accused did not examine themselves on oath and also not produced any defence witness in their defence. She submitted that the accused have not been able to establish as to why they were falsely implicated. She prayed for exemplary punishment to the accused persons.

11. The learned counsel for the complainant adopted the arguments of the learned ADPP for the state and further contended that since the accused persons were not known to the victim therefore she lodged FIR against unknown accused persons but victim identified the accused persons during identification parade before the learned Judicial Magistrate where

she also assigned the role of every accused such as accused Tariq committed her rape firstly and then accused Ubaid committed her rape. It is also contended that victim has also fully implicated both the accused persons with their specific role before this Court during the trial. It is also contended that the victim was examined by the WMLO who secured the vaginal swabs of the victim which were deposited to the DNA laboratory being Item No.1 and according to the DNA report seminal material was identified on vaginal swab of victim (Item NO.1) and according to the DNA report the DNA profile obtained from the sperm fraction of vaginal swab of victim is at least two individuals however DNA profile of victim and both the accused persons were not matches with the seminal material found from the vaginal swab of the victim. It is also contended that piece of cloth secured from the spot was also sent to library being item No.2 and on three stain section were found on said clothes which were kept as items NO.2.1,2.2 and 2.3 and according to the DNA report seminal material was identified on all the three stain sections and according to the DNA report seminal material found on stain section 2.1 is a mixture of at least two individuals while minor component in the epithelial fraction of item NO.2.1 is inconclusive and the DNA profile obtained from the sperm fraction of stain section taken from the white piece of cloth recovered from the place of incident by CDU (Item NO.2.1) is a mixture of at least three individuals including the victim but same was not matched with the DNA profile of the blood sample of both the accused persons. It is also contended that seminal material was identified on stain section item NO.2.2. and epithelial fraction of stain section (item NO.2) is a mixture of at least two individuals including the victim while minor component in the epithelial fraction of item NO.2.2 is a mixture of at least two individuals and such mixture was not matched with the DNA profile of blood sample of victim and both the accused persons. It is also contended that seminal material was identified on stain section item NO.2.3. and epithelial fraction of stain section (item NO.2.3) is a mixture of at least two individuals including the victim while minor component in the epithelial fraction of item NO.2.3 is a mixture of at least two individuals and such mixture was not matched with the DNA profile of blood sample of victim and both the accused persons. It is further contended that according to the DNA report seminal material was identified on the vaginal swab of the victim and as well as on piece of clothes which was used by the accused persons while cleaning their dirt and according to the DNA report same is a mixture of at least two individuals and three individuals respectively which shows that victim was subjected of fresh sexual intercourse by more than two persons. It is also contended that according to the DNA report human sperm were detected from the clothes/ sofa and internal vaginal swab of the victim; no such malafide or enmity of complainant with the accused persons are established; victim has become ill after the alleged incident and facing mental agony, torture and physical pain till date; the prosecution has succeeded to establish that the victim was subjected to gang rape; the accused persons neither examined themselves on oath nor produced any defenece witnesses in their defence. It is also contended that according to the CDR report the victim and the accused persons were available in the same area on the same date and time. Lastly she prayed for conviction of accused persons according to law.

12. On the other hand the learned counsel for accused persons mainly contended that the FIR is against the unknown accused persons. It is also contended that no doubt that seminal material were identified on the vaginal swabs of the victim and as well as from the clothes secured from the spot but according to the DNA report was not matched with the DNA profile of the above named accused persons which shows that DNA report is in negative to the extent of involvement of the above named accused persons with the alleged crime. It is also contended no marks of violence have been found on the body of the victim in persons or on her private parts. It is also contended that FIR has been lodged after the delay of one day and such delay is not explained by the complainant which shows that the FIR was lodged after due consultation. It is also contended that as per contents of the FIR the alleged offence of rape was committed by the accused persons who were speaking Sindhi while the present accused persons were speaking Balochi. It is also contended that victim deposed that one accused was having helmet and one accused was having cloth on his face but such fact is not mentioned in the FIR or in her statement under section 161 Cr.P.C. or in statement under section 164 Cr.P.C. It is also contended that complainant admitted that after arrest of accused persons she was called at the police station. It is also contended that as per CDR record there was a telephone call traced which was made from the cell number of the complainant to the cell number of 03036135375 upto 64 minutes which shows that at the alleged time the

complainant was busy in conversation upto 64 minutes and such facts is creating doubt. It is also contended that version of the complainant is not supported by any other eye witnesses as the prosecution has given up two alleged eye witnesses who have allegedly seen the accused persons while entering in the house. It is also contended that the colour of make kit is not mentioned in the memo. It is also contended that identification test parade memo is defective as lawful requirement was not completed by the learned judicial Magistrate. It is also contended that victim during the identification parade has not assigned the role any of accused. It is also contended that according to the complainant the accused persons were speaking Sindhi while the present accused persons are not Sindhi speaking as they are Balochi speaking. It is also contended that according to the complainant the accused persons were talking in Urdu while speaking with the complainant party and they were talking in Sindhi while speaking with each other. It is also contended that clothes of the victim were not secured. It is also contended that no rope was secured from the place of occurrence. It is also contended that no marks of rope were found on the hands or legs of the complainant. It is also contended that no finger prints were found from the makeup kit. It is also contended that since the DNA was negative therefore the I/o has challaned the accused persons for the offence of attempt to commit rape falls under section 376/511/34 PPC. It is also contended that the only piece of evidence against the above named accused persons is that they have admitted their guilt before police however such admission before the police is not admissible under the Qanoon e Shahdat. It is also contended that statement under section 164 Cr.P.C. was recorded in absence of accused persons. It is also contended that victim has only stated while identifying the accused persons that they are the real culprits without assigning any word about rape or robbery. It is also contended that there are so many improvement in the statement of the complainant all such improvement in the prosecution case shows that the case of prosecution has become doubtful. It is also contended that complainant is a married lady and alleged MLC has been managed one while the DNA report is also managed one. It is also contended that the evidence of the complainant is not trustworthy or reliable and confidence inspiring therefore cannot be based for conviction of accused persons. It is also contended that all such facts are creating serious doubt in the prosecution case, therefore doubt has been created in the prosecution case and prosecution has miserably failed to prove the case against the above named accused persons, therefore the accused persons are entitled for their acquittal. In support of their contention they relied upon the case laws cited as 2021 MLD 169 Sindh, 2021 YLR 260 Sindh, 2018 SCMR 577 and 2022 YLR Note-I.

13. I have given due consideration to the arguments advanced by learned counsel for the parties and have carefully gone through the material placed so far. My findings on the above points with reasons are as under:-

FINDINGS

Point No. 1.	Proved.
Point NO.2.	Proved.
Point No. 3.	The accused persons hereby convicted U/s. 265-H(ii) Cr.P.C for the offence punishable under section 392/34 PPC and sentenced RI seven (07) years and they are also liable to pay fine of Rs.50,000/- (Fifty Thousand Rupees) each. In case of default in payment of fine, the accused persons shall further undergo simple imprisonment for a period of six (6) months each. The accused persons are also hereby convicted U/s. 265-H(ii) Cr.P.C for the offence punishable under section 397/34 PPC and sentenced RI seven (7) years and they are also liable to pay fine of Rs. 50,000/- (Fifty Thousand Rupees) each. In case of default in payment of fine, the accused persons shall further undergo simple imprisonment for a period of six (6) months each. The offence of committing gang rape of victim punishable under section 376(ii)/34 PPC has been fully proved against the accused persons beyond shadow of any doubt. The accused persons are hereby convicted U/s. 265-H(ii) Cr.P.C for the offence punishable under section 376(ii)/34 PPC and sentenced to suffer R.I. for life imprisonment each. The accused persons are also awarded benefit of section 382-B PPC. The accused persons are in

custody since 31.01.2021. Both the sentences will run concurrently.

REASONS

POINTS NO.1 and 2

14. I have given due consideration to the arguments advanced by learned counsels for the accused persons, learned counsel for the complainant and learned ADPP for the state and have carefully gone through the material placed so far. In the criminal cases, each accused has his own specific role in the crime, and yard stick to assess the evidence, though may be believable for one accused may at the same time fail to incriminate the other set of the accused persons. A careful perusal of the FIR would show that at first two unknown accused persons entered in the house of the complainant on gun point and looted valuable articles i.e. mobile phones, cash and ornaments of gold from the complainant and other family members and thereafter they took the victim / complainant to another room where on gun point they removed her cloth after putting her under threat of raping her minor daughter and then committed her rape one by one. Thereafter two other persons were called by said accused persons who have already raped the victim and the two persons who came later on also committed rape of the victim one by one and thereafter they escaped good by issuing threats to the complainant party that they will be available outside the house nearby. Meanwhile the complainant lodged FIR against unknown accused persons. During the course of investigation, police inspected the alleged place of occurrence and secured one cloth (saafa) used by the accused persons during the rape and one make up kit. Meanwhile, above named accused were arrested and during interrogation they disclosed such facts of committing rape during the house robbery along with co-accused persons, therefore, the above named accused were arrested in this case and on the following day on 01.02.2021, identification parades were held before Judicial Magistrate, where the complainant has identified the above named accused persons with alleged roles of committing rape with her. Meanwhile, the victim was examined by the lady MLO and her vaginal swabs were secured for the purpose of chemical examination and DNA report and both the accused persons were also medically examined and their blood samples were also secured for the purpose of chemical and DNA test. Meanwhile one white piece of cloth (safa) recovered from the place of incident were also secured and sent for chemical and DNA test. Meanwhile chemical report was received in which human sperms were detected from vaginal swab of victim and meanwhile DNA reported was also received which shows that mixture of at least two/three individuals were found from the white piece of cloth recovered from the place of incident and as well as from the sample of vaginal swabs of the victim it was further reported that DNA profile of above named accused persons can be excluded as potential contributor to the DNA form the sperm fractions of white piece of cloth.

15. 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. Rukhsana who deposed that on 07.1.2021, she was present at her house situated at House No.L-791 Ali Muhammad Mengal Goth, Taisar Town Liyari 36 Karachi. Her husband was on his job of catching fish. She was present at her house alongwith her three children baby Alisha, Muhammad Hussain, baby Kausar. Her father in law Noor Muhammad was also sleeping in the house while her brother in law (devar) Sanaullah was also present in the house. It was 08:30 pm, in the night time. There was load shedding time and no light was there. She was also present in the room at said house alongwith her children. Meanwhile she heard the noise of her brother in law Sanaullah who informed her and directed to alert and take dupata on head as some police personnel came at her house who were looking one person. Thereafter she covered herself and her all children through the blanket. Meanwhile two persons entered in the house who were having pistols in their hand. The said persons took search of her room and checked under the bed. The said persons were in shalwar qameez and were wearing coats. Meanwhile one accused pulled the blanket from her and her children while one accused remained stood there. As accused pulled blanket from her she asked her brother in law Sanaullah who was also present in the room alongwith her mother in law that said persons were not looking like police personnel and their acts looking like dacoits. Thereafter accused persons asked to her brother in law Sanaullah to sit on his knees. Accused persons snatched one smart touch phone and one keypad nokia phone from her brother in law Sanaullah. Her nephew Sohail was also sleeping in the house. Meanwhile one

smart touch mobile phone was also lying in her hand and she was watching cartoon alongwith her children. The accused persons attempted to snatch her mobile but she resisted. The accused persons were loading the chamber of their pistol again and again. Meanwhile accused persons also snatched her mobile phone. She was making hue and cry and her children started weeping. The accused persons warned her not to make hue and cry. Thereafter accused persons upon her crying put her mobile phone over the Al-Mirah on the top. Thereafter accused persons demanded all the valuable things from her. There were some cash amount of Rs.50,000/- lying in her purse and one gold set of half tola was also lying in the purse which was belong to her mother in law. The accused persons also snatched such cash amount and ornaments of gold. Thereafter accused persons brought her out from the room outside. When she was standing in the courtyard accused persons started touching her body like they were searching her body. Meanwhile she raised hue and cry upon which accused persons again brought her inside the room where her mother in law, brother in law and her nephew were already confined. They again demanded further valuable articles and she replied that whatever they already snatched. Thereafter accused persons asked her to accompany to another room for the purpose of searching another room. She asked the accused persons to accompany her brother in law as it was not her room but accused persons forcibly took her to another room and kept her in the attach bathroom of said room. Meanwhile one accused kept his pistol on her neck and he asked to hand over all the things. She again replied she had already handed over all the things. Thereafter accused persons brought her in the room. Thereafter accused persons asked her since she was not giving anything; therefore, now she remove her clothes and they directed her to remove her clothes. She was holding Quran Pak and for the sake of Quran Pak not to do such things but thereafter accused persons asked her to keep aside the Holy Quran Pak otherwise they would bring her daughter baby Alisha in the room. Thereafter accused persons had thrown her on the ground in said room and started kicking her. Thereafter accused persons committed her rape one by one. At first one accused committed her rape and thereafter another committed her rape. Thereafter accused persons were cleaning their dirt from a Safah a piece of cloth of his brother in law lying there in said room. Thereafter two more accused persons also entered in our house and two more accused persons came in the same room and they have also committed her rape. There were total four accused persons who one by one committed her rape. She had seen the faces of two accused persons who firstly came and pointed their pistols on them and then firstly they committed her rape. She has not identified muffled faces of two accused persons who came later on; therefore, she had not seen their faces but she had seen the faces of accused persons who came first as one accused was having helmet and another accused used a cloth for hiding his face and she had seen their faces when she was resisting at the time of commission of her rape then the cloth was removed from the face of one accused and helmet of one accused was also removed due to her resistance at the time of commission of her rape. Thereafter they asked her to wear her clothes and further issued threats to her not to disclose such facts to anyone. Thereafter said accused persons brought her in the room where her mother in law and brother in law were already present. Thereafter accused persons issued threats not to make any hue and cry as their another men already available in another house situated adjacent her house. Thereafter accused persons escaped good by saying that they would remain available in the house situated adjacent to her house. She sat with her children and thereafter she called her husband at 11:00 pm and informed him all such facts. Thereafter her husband asked her to report the matter to police. Thereafter in the morning of following on day 8.1.2021 she alongwith her brother in law went to the police station Surjani Town but her statement was recorded on 8.1.2021 at 1820 hours. She produced her statement recorded U/s 154 Cr.P.C at **Ex.8/A and she identified her signature on it**. Thereafter police inspected our house on her pointation in her presence and in presence of her brother in law Sanaullah and prepared such mashirnama, which she produced at **Ex.8/B and identified her signature on it**. On the following day she handed over one make up kit and one Safah of her brother in law which was used by the accused persons to the police and one team was also with police who sealed her make up kit and Safah in her presence. Meanwhile police prepared such memo of seizure of makeup kit and white cloth, which she produced at **Ex.8/C**, and identified her signature on it. She was also produced before WMLO at Abbasi Shaheed Hospital where her medical examination had taken placed and WMLO completed formal proceedings. The police recorded her statement U/s 161 Cr.P.C. The police also produced her before learned Judicial Magistrate where her statement U/s 164 Cr.P.C was recorded. She produced her statement under section 164 Cr.P.C. at **Ex.8/D**, and identified her signature on it with thumb impression

and picture. Meanwhile she was called before the learned Judicial Magistrate in City Court where she identified two accused persons from the row of other dummies one by one but she does not know the names of accused persons, being the same accused persons who committed my rape and house robbery alongwith other co-accused persons. The police had not arrested remaining accused persons. She identified both the accused persons being the same accused who committed house robbery on the point of pistol and also committed her rape. She produced sealed parcel cloth and identified her signature on it which was de-sealed in presence of the learned counsel for the accused persons. The parcel was containing one white color cloth/safah which she produced as article 'A' and make up kit as Article B. She deposed that cloth was used by the accused persons while cleaing their dirt. She was cross examined in length by the learned counsel for the accused persons.

16. During the cross she admitted that her statement U/s 154 Cr.P.C was recorded on 8.1.2021 at 1820 hours after one day delay. She deposed that the reason was her husband was not available and after direction of her husband she approached to police station on the following day. The contents of statement recorded U/s 154 Cr.P.C were read over before her and then she put her signature and thumb impression. She admitted that police also recorded her statement U/s 161 Cr.P.C. She admitted that such reason for such delay is not mentioned in her statement recorded U/s 154 Cr.P.C. She deposed that however after the alleged incident she contacted with her husband and then after taking advise she came at the police station and recorded her statement on the following day. She admitted that cell number of her husband is not mentioned in her statement U/s 154 Cr.P.C. She deposed that police did not ask her about the cell number of her husband. She does not know the name of company or launch name where her husband used to work. She admitted that two accused persons who entered in her room were having helmet and one accused was having cloth on his face. She admitted that such fact is not mentioned in her statement U/s 154 Cr.P.C that one accused was having helmet and one accused was having cloth on his face. She deposed that however she informed such fact to police that she had also seen their faces. She admitted that she has not made any complaint against the officer who recorded her statement U/s 154 Cr.P.C for not mentioning such fact. She admitted that she has mentioned in her statement U/s 154 Cr.P.C that two accused who entered into the room were by ascent appears to be Sindhi as they were talking with each other in Sindhi Language but they were talking with her in Urdu. She admitted that the persons of different nations are different with each other in respect of their face, description and languages. She admitted that color of pistols are not mentioned in her statement U/s 154 Cr.P.C. as well as in her statement u/s 161 Cr.P.C. She admitted that such fact is not mentioned in her statement u/s 154 or in her statement u/s 164 that her mobile was purchased by her on installment basis and that there was marriage ceremony was about to arrange in the coming days in thier family. She admitted that details and face description of accused persons is not mentioned in her statement u/s 154 Cr.P.C. She deposed that she has mentioned that the accused were Sindhi speaking as per their assent. She does not know if the accused persons present in the Court are Balochi as per their language. She admitted that at the time of alleged offence there was load shedding in her area. She deposed that there was solar system in her house and she cannot forget the faces of accused persons till her death. She admitted that such fact of having solar light in her house is not mentioned in her statement u/s 154 and 161 Cr.P.C. under which she had seen the faces of accused persons. The witness pointed out accused Tariq being accused who has committed her rape firstly and thereafter she pointed out the accused Obaid being accused who committed her rape secondly. Both accused persons had pistols in their hands. She admitted that it is not mentioned in her statement u/s 154 Cr.P.c. or 164 Cr.P.C. that which accused has committed rape with her in first stance. She admitted that such fact is not mentioned in her statement u/s 164 Cr.P.C. or in her statement u/s 154 that she has seen the faces of both accused persons due to movement of her hands and the face clothe of one accused was removed and the helmet of one accused was upward and then she saw his face. She admitted that such fact is not mentioned in her statement u/s 154, 161 and FIR that accused persons have committed her rape on floor of the room. She denied that accused persons have kicked her and this fact is not mentioned in her statement u/s 154 Cr.P.C. One accused kicked her. She admitted that color of her clothes are not mentioned in statement u/s 154. She deposed that police did not ask me about color of her cloth. She admitted that she has have not handed over her clothes to police. She deposed that police did not ask her to produce her wearing clothes. She has taken bath on the same night on the same clothes. First police inspected her house and then lodged the FIR in evening. Her

statement u/s 154 was recorded at PS. and then police came. After the alleged incident she was not feeling secure in her house and then she went to the house of her neighbored on same night. She admitted that such fact is not mentioned in her statement u/s 154 Cr.P.C. She identified white cloth of seal parcel and deposed that that all writings mentioned on the seal parcel was written by police at her home when it was secured. She denied that the parcel was not sealed in her presence. She deposed that police officials were fixing the seal in her presence. She admitted that such fact is not mentioned in her statement u/s 154 that accused persons used Safa for cleaning their dirt/ semen. She admitted that her brother in law Sanaullah was present at the police station when her statement u/s 154 was recorded. She used to visit police station after lodging of FIR as and when police called her. She admitted that police called her at the police station after the arrest of accused persons. She is married woman. She admitted that she has not mentioned the name of her daughter in her statement u/s 154 to whom accused persons threatened for calling in the room. She admitted that her mobile phone number is mentioned in her statement u/s 154 Cr.P.C. 0324-2669754. Accused persons entered into her house at 08:30 p.m. and after committing wardat they left at 10 p.m. She admitted that 0303-6135375 is cell number of her one relative Pervaiz who is her maternal nephew. She admitted that she called at cell number 0303-6135375 before the incident and during commission of crime the call was also coming and mobile was lying on Almirah. She deposed that that accused persons snatched the mobile phone and might be that time call was not disconnected as the mobile was lying on Almirah. She admitted that it is not mentioned in her statement u/s 154 that accused persons after snatching her mobile put the same over Almirah. She admitted that such fact is not mentioned in her statement u/s 154 that she was receiving such calls from her maternal nephew. She admitted that accused persons had not taken away her mobile phone. She deposed that her mobile phone remained on the Almirah and as soon as they left she got her mobile phone from Almirah and she checked the mobile and saw many calls were there. She denied that after coming of accused she was using her mobile phone and made calls. Police inspected the place of incident in evening time and she has not checked the time on 08.1.2021. She cannot read Urdu. She denied that police obtained her signature on blank paper. She deposed that police obtained her signature after writing the memo. She does remember the place where police obtained her signature on memo of site inspection due to lapse of time. Her statement u/s 161 was recorded at her house. Police persons used to write her statements on their register. She denied that before identification parade she had already seen the accused persons at police station. She admitted that police informed them about the arrest of accused persons but police had not shown them the accused persons though they were at police station. She denied that present FIR was falsely lodged by her after consultation with her husband and brother in law. She denied that she has deposed falsely in the court. She denied that she has falsely identified the accused persons during identification parade at the instance of police without any specific role. She denied that she has managed the Safa cloth and make up kit against the accused persons. She admitted that color and description of makeup kit are not mentioned in memo of seizure. She denied that she has recorded her statement u/s 164 as per direction of her husband and brother in law. She admitted that she has not handed over the boxes of mobile phone allegedly snatched by the accused persons to the police. She denied that no such alleged incident was taken place. She denied that accused persons present in the court are innocent. She denied that accused persons have not entered in her house and committed house robbery. She denied that accused persons have not committed her rape.

17. It appears from the facts and evidence as discussed herein above that victim Mst. Rukhsana has clearly implicated accused persons Tariq and Ubaid Hussain with the role that they have committed house robbery and then committed her rape one by one despite of the fact that she resisted and referred the Holy Quran but they did not stop to commit her rape and also kicked her prior committing her rape. It appears during the lengthy cross the victim denied that the accused persons have not committed her rape. She also denied that she has falsely implicated the accused persons with malafide intention at the instance of police.

18. Nothing came on record that there was any ill-will, malice and malafide on the part of victim or on part of police to falsely implicate the accused persona in the present offence. Though, learned counsel for the accused claimed that the victim has falsely implicated the accused persons as per instigation of police but victim denied that such fact that she has falsely implicated the above named accused persons at the instance of police.

19. It appears that the vaginal swab of the victim were secured and sealed by the WMLO and handed over to the I/o for DNA and Chemical examination. It is also admitted fact that the blood samples of the accused persons were also secured and handed over to the I/o for DNA and chemical examination. It appears that the I/o has deposited the said samples of vaginal swabs of the victim and cloth which was secured from the spot to the DNA laboratory Karachi University and after analyzing the samples issued its DNA test report No. SFDL-2021-102 dated 17.02.2021 available on record in original at Ex 11/GG and its copy as well as 7/D and chemical report No2146/47, Dated 22.01.2021 was also produced on record at exhibit 7/C and MLC NO.06/2021 of the victim was also produced on record at exhibit 7/B and final medical corticated at exhibit 7/E. It is admitted fact that according to the chemical report human sperms detected from vaginal swab of Mst. Rukhsana. It is pertinent to mention here that according to DNA report seminal material was identified on vaginal swab of victim (Item NO.1) and according to the DNA report the DNA profile obtained from the sperm fraction of vaginal swab of victim is at least two individuals however DNA profile of victim and both the accused persons were not matches with the seminal material found from the vaginal swab of the victim. DNA report further shows that piece of cloth secured from the spot was also sent to library being item No.2 and on three stain sections were found on said clothes which were kept as items NO.2.1,2.2 and 2.3 and according to the DNA report seminal material was identified on all the three stain sections and according to the DNA report seminal material found on stain section 2.1 is a mixture of at least two individuals while minor component in the epithelial fraction of item NO.2.1 is inconclusive and the DNA profile obtained form the sperm fraction of stain section taken from the white piece of cloth recovered from the place of incident by CSU (Item NO.2.1) is a mixture of at least three individuals including the victim but same was not matched with the DNA profile of the blood sample of both the accused persons. DNA report further shows that the seminal material was identified on stain section item NO.2.2. and epithelial fraction of stain section (item NO.2) is a mixture of at least two individuals including the victim while minor component in the epithelial fraction of item NO.2.2 is a mixture of at least two individuals and such mixture was not matched with the DNA profile of blood sample of victim and both the accused persons. DNA report further shows that seminal material was identified on stain section item NO.2.3. and epithelial fraction of stain section (item NO.2.3) is a mixture of at least two individuals including the victim while minor component in the epithelial fraction of item NO.2.3 is a mixture of at least two individuals and such mixture was not matched with the DNA profile of blood sample of victim and both the accused persons. DNA report further shows that seminal material was identified on the vaginal swab of the victim and as well as on piece of clothes which was used by the accused persons while cleaning their dirt and according to the DNA report same is a mixture of at least two individuals and three individuals respectively which shows that victim was subjected of fresh sexual intercourse by more than two/three persons.

20. I am not convinced with the contention of the learned counsel for the accused persons that accused the above named accused persons are innocent as the DNA report is negative to their extent and at the best their case falls a case attempt to commit rape and such fact is admitted by the IO that he has challaned the above named accused persons for attempt to commit rape as DNA was negative to their extent. No doubt that the DNA report is in negative to the extent of above named accused persons but I am not convinced with the contention of the learned counsel for the accused persons on the same ground that victim has clearly implicated the accused persons being the same accused who one by one committed her rape during the course of house robbery in a spell of one and half hour along with co-accused persons which amounts to gang rape and I am of the view that if 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 as held in the recent judgment cited as **PLD 2020 Supreme Court 312**.

21. It appears that accused persons have not examined themselves on oath nor they produced any defence witness in their defense in support of their claim that they are innocent or that complainant has falsely implicated them in this case at the instance of police.

22. I have also not found any force in the contention of the learned counsel for the accused persons that there is delay of about one day in lodging of FIR and such fact admitted by the victim. It appears that victim has clearly deposed that after the such incident of gang

rape she became afraid and left her house and took shelter in the house of neighborhood and also informed her husband who advised her to report the matter to police therefore in the morning she reported the matter to police but her FIR was lodged in the evening time therefore such delay was caused. Under such circumstances I am of the view that such delay of one day in lodging of FIR in rape cases is not fatal when such delay is well explained and same was lodged against unknown accused persons. I have also not found any force in the contention of the learned counsel for the accused persons that complainant has implicated the accused persons at the instance of police. It appears that the FIR is against the unknown persons which shows that complainant was not aware with the accused persons prior the alleged incident it is therefore I have not found any force in the contention of the learned counsel for the accused persons. I have also not found any force in the contention of the learned counsel for the accused persons that there are some improvement and contradictions in respect of deposition of the complainant. No doubt that learned counsel for the accused persons have pointed out or suggested so many facts which have been deposed by the complainant before this court during her examination in chief or during her cross but such facts are missing in the contents of FIR, statements under section 161 Cr.P.C or statements under section 164 Cr.P.C. It appears that during the cross complainant has deposed all such reasons for not mentioned all such facts which are the natural and routine things or facts in the FIR that duty officer advised her to inform the important facts related to commission of crime. It appears that all the relevant facts stated by the complainant in her FIR, statement under section 161 Cr.P.C. or statement under section 164 Cr.P.C. have deposed by the complainant before the court and admittedly she has not deposed such facts which she deposed in court in FIR, her statement under section 161 Cr.P.C. or in her statement under section 164 Cr.P.C. such as the fact that which accused committed her rape first, which one second and that accused persons committed her rape on the ground or that name of her daughter is not mentioned in FIR for whom accused persons threatened for bringing in the room. It appears that before this court victim has clearly deposed all such facts and during cross she replied that when she was not aware with the names of accused persons then how she can deposed such facts in FIR that which accused committed her rape first and which accused committed her rape secondly. It appears that during identification parade the victim at the time of identifying accused persons before the learned judicial magistrate by pointing from her finger and by saying that they were the real offenders. It appears that the learned judicial Magistrate also verified such fact that victim has clearly identified both the accused persons during the identification test parade by pointing her finger on them by saying that they are the real offender. It also appears that learned judicial magistrate who recorded statement under section 164 Cr.P.C. also verified the contents of the statement under section 164 Cr.P.C. before this court. I am of the view that some facts which are pointed out by the learned counsel for the accused persons such as removing of clothes from the face of the accused during commission of rape and moving of helmet from the face while committing the rape are natural facts and missing such facts in FIR do not hamper the prosecution case and deposing of such natural facts does not come under the definition of improvement and I am of confirmed view that all such suggested improvements are not improvement and such facts are natural and related to the same offence while all such suggest contradictions in respect of non-association of mashir of the same area while preparation of memo of arrest of accused person but I am of the view that the point for determination in this case is that whether the accused persons committed the alleged offence of abduction and then committed rape of victim and admittedly the determination of memo of site inspection is not the point to be proved, therefore alleged contradictions suggested by the learned counsel for the accused persons are immaterial and is not hampering the prosecution case in any manner.

23. I am not convinced with the contention of the learned counsel for the accused persons that since the complainant has deposed that the accused persons who committed the alleged offence were speaking with each other in Sindhi and were appearing look like Sindhi speaking while the accused persons named above are Balochi Speaking and are not look like Sindhi speaking. It is pertinent to mention here that now we are living in a society where people used to speak in so many languages and complainant has clearly deposed that accused persons were speaking with her in Urdu language. I am also not convinced with the contention of learned counsel for accused persons that there is only piece of evidence against the accused persons is their alleged confession before police which is not admissible U/s 38 and 39 of Qanoon-e-Shahadat. No doubt that accused persons have admitted their guilt before the police

when they were already in custody in cases falls U/s 23(i)-A of SAA but beside their admission before police there are other ocular account against the accused persons i.e the deposition of complainant/victim who identified the accused persons during identification test parade and during the trial being the same accused persons who committed her rape during house robbery. I am not convinced with the contention of learned counsel for accused persons that according to CDR record at the time of alleged offence the victim/complainant was busy in conversation on her phone with someone and she talked up to 64 minutes, therefore, there is no question of committing her alleged rape. It appears that during cross victim/complainant deposed that phone calls were coming and going on her phone prior the alleged incident and meanwhile accused persons snatched her mobile phone on gun point and kept the same over Al-Mirah and accused persons remained in the house up to 8:30 pm to 10:00 pm. Under such circumstances, it appears that mobile phone could be remained opened while lying over the Al-Mirah when the accused persons snatched the same from the complainant. I am also not convinced with the contention of learned counsel for accused persons that prosecution failed to examine other witnesses including daughter, husband, brother in law, father in law and mother in law of complainant who were allegedly present inside the house at the time of alleged incident. Perusal of record shows that husband of victim was not present at the time of alleged incident. It also appears that brother in law of complainant acted as mashir of site inspection and possession of clothes and make up kit and since the complainant was already examined and through her mashirnamas already came on record, therefore, learned Prosecutor has given up brother in law of complainant being a co-mashir despite of the facts that he was one of eye witness in respect of alleged robbery, however he was not the eye witness of alleged rape of complainant which was taken placed in another room. Perusal of record also shows that minor daughter of complainant, the father in law and mother in law have not been cited as prosecution witnesses by the investigating officer. It is therefore I am of the considered view that under such circumstances such fact of non-examination of other witnesses do not hamper the prosecution case when the solitary statement of complainant/victim of alleged gang rape is appears to be trustworthy, reliable and confidence inspiring and more so, the medical evidence is also supporting the claim of gang rape of victim/complainant. I am also not convinced with the contention of learned counsel for the accused persons that complainant/victim has improvised her case. It appears that all such suggested improvements are natural which are not hampering the prosecution case at all when the version of the complainant is supported by other relevant supporting materials such as DNA report showing the availability of seminal material on the vaginal swab and cloths which were of two or three individuals and such facts is clearly supported the versions of complainant that she was subjected of sexual intercourse by four accused persons one by one including the above named accused persons. It appears that despite of lengthy cross to the complainant and her other witnesses nothing fruitful came on record to provide any benefit to accused persons and to create any dent or doubt in prosecution case. The testimony of victim, supported by the medical evidence and DNA report appears to be true, genuine and confidence inspiring. Nothing has come on record that statement of victim was tutored to victim by anyone in any manner to falsely implicate the present accused persons. 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 persons 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 persons despite of lengthy cross conducted by learned counsel for the accused persons. The victim proved herself as reliable witness and she was physically examined by WMLO and the said WMLO has supported the version of victim and DNA report clearly confirmed that victim was subjected of sexual intercourse. More so the accused persons were also examined by the MLO who has confirmed that the accused have capabilities to perform sexual intercourse. It is suffice to say that the prosecution witnesses appeared in witness box with full confidence and appears to be reliable and confidence inspiring. I do respect the case laws suggested by the learned counsel for the accused persons but I am of the view that the facts of the present case are different from the facts of the cases cited by the learned counsel for the accused persons.

24. From the above testimonies of prosecution witnesses, it appears that the prosecution has produced all the necessary documents prepared and collected during investigation. Evidence of the victim, mashirs, the medical officer and the investigating officer have also supported the prosecution case and corroborated the ocular evidence of victim. All the

prosecution witnesses including victim Mst. Rukhsana were cross examined at length and nothing material came on record to shake and dent their testimonies. There are no major contradictions or any discrepancies in the evidence of the complainant and the witnesses so as to negate the occurrence or commission of the offence by the accused. No doubt that there are some suggested natural improvements and immaterial contradictions in investigation which have not hampered the case of prosecution in any manner as such prosecution succeeded to prove that above named accused persons alongwith two other absconding co-accused persons duly armed with pistol entered into the house of complainant and committed robbery on the point of firearm weapons i.e pistol and snatched valuable articles i.e mobile phones, cash and ornaments of gold from complainant and other inmates of the complainant and thereafter all the four accused persons committed the rape of victim/complainant.

25. In view of the foregoing discussion, I am of the considered opinion that the prosecution has successfully proved its case beyond any reasonable doubt, as such points 1 and 2 under discussion are answered in affirmatives.

POINT NO. 3:

26. In view of forgoing facts, circumstances and discussions made in points No.1 and 2 this Court has reached to the conclusion that prosecution case of robbery with gang rape stands fully proved against the accused persons (i) Ubaid Hussain S/o Muhammad Hussain and (ii) Tarique Khan S/o Khan Muhammad as such above named accused persons requires no leniency under the law. The offence of house robbery by using deadly fire arms weapons punishable under section 392/397/34 PPC has been fully proved against above named accused persons beyond shadow of any doubt. The above named accused persons are hereby convicted U/s. 265-H(ii) Cr.P.C for the offence punishable under section 392/34 PPC and sentenced RI seven (07) years and they are also liable to pay fine of Rs. 50,000/- (Fifty Thousand Rupees) each. In case of default in payment of fine, the above named accused persons shall further undergo simple imprisonment for a period of six (6) months each. The above named accused persons are also hereby convicted U/s. 265-H(ii) Cr.P.C for the offence punishable under section 397/34 PPC and sentenced RI seven (7) years and they are also liable to pay fine of Rs. 50,000/- (Fifty Thousand Rupees) each. In case of default in payment of fine, the above named accused persons shall further undergo simple imprisonment for a period of six (6) months each. The offence of committing gang rape of victim punishable under section 376(ii)/34 PPC has been fully proved against the above named accused persons beyond shadow of any doubt. The above named accused persons are hereby convicted U/s. 265-H(ii) Cr.P.C for the offence punishable under section 376(ii)/34 PPC and sentenced to suffer R.I. for life imprisonment. The above named accused persons are also awarded benefit of section 382-B PPC. The accused persons are in custody since 31.01.2021. All sentences will run concurrently. The accused persons named above are produced in custody by jail authority. They are 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. The case against the absconding co-accused persons Babloo S/o Unknown and Wadera S/o Unknown be kept on dormant file till their arrest.

ANNOUNCED IN OPEN COURT.

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

**(IRSHAD HUSSAIN)
ADDL. SESSIONS JUDGE-XTH,
KARACHI WEST**

ORDER OF CASE PROPERTY

The case property i.e. the piece of cloth be disposed of after expiry of appeal period while the makeup kit be returned to the complainant after expiry of appeal period.

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

**(IRSHAD HUSSAIN)
ADDL. SESSIONS JUDGE-XTH,
KARACHI WEST**