

THE STATE

Vs:

Muhammad Shabbir

son of Mohammad Sanwariya -----Accused.

F.I.R No. 54/2019

Police Station Ibrahim Hyderi,

Under Section 376 PPC.

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Mr. Shaukat Khan, Advocate for accused.

Miss Saira Bano, ADPP for the State.

JUDGMENT.

22-11-2021

Mr. Shaukat Khan, Advocate for accused.

Mr. Shahid Hussain Larik, DDPP & Ms. Saira Bano, ADPP for the State

The above named accused has been sent-up to face his trial for committing offence punishable under section 376 P.P.C, registered vide crime No.54/2019 at Police Station Ibrahim Hyderi, Karachi.

2. The brief facts of the prosecution case are that on 14-02-2019 complainant Mst. Munawar Begum lodged FIR at Police Station Ibrahim Hyderi, alleging therein that she is doing work in the houses situated at Korangi No.6, whereas her husband used to run Pan Shop. On 13-02-2019, her husband went at his shop, whereas her elder daughter gone for their jobs at Factory, however at 1200 hours she had also gone for her work, whereas her younger daughter namely Suman aged about 11 years was present at the house. At about 07:00 p.m, when she returned back at home, she saw that her younger daughter Suman was weeping. On inquiry she disclosed that at about 05:30 p.m, Shabbir Bhai Fiancé of her elder daughter Sania came at house, sent her friends outside, who were playing with her, thereafter Shabbir took her in a room, where he forcibly committed Zina upon her, due to which she is suffering severe pain and blood is

oozing, she checked her daughter and found that her Shalwar was with bloodstained, thereafter, she informed to her husband and her daughters and took her (victim) to hospital, where Doctor asked her that this is police a case, then she along with her daughter went to Police Station Ibrahim Hyderi, where she lodged instant F.I.R.

3. After registration of F.I.R, the investigation of this crime was entrusted to Inspector Akhtar Abbas, who inspected the place of incident, prepared such memo, recorded statements of witnesses under section 161 Cr.P.C. On 14.2.2019, he arrested accused Shabbir and prepared such memo. He deposited clothes/stuff to the Services Hospital for examination, took the victim and accused to Jinnah Hospital, where victim was examined by the WMLO and accused was examined by the MLO, thereafter the investigation was transferred to SIP Ali Murad, who obtained blood samples of accused Mohammad Shabbir within the jail premises and sent the same to DNA and thereafter he submitted charge sheet before the Court of law under sections 376 PPC, showing accused Muhammad Shabbir in custody. Since the offence is exclusively triable by the court of Session, therefore, the R & P was sent by the learned Magistrate to the Court of Honorable Sessions Judge, Malir, Karachi, from where same was transferred to this court for disposal according to law.

4. Necessary documents were supplied to accused Muhammad Shabbir at Ex.1 and formal charge was framed against him at Exh.02, to which he pleaded not guilty and claimed to be tried vide his plea at Ex.2/A.

5. During the course of trial prosecution examined following witnesses.

i) PW-01 (complainant) Mst. Munawar Begum at Ex.3, she produced FIR, memo of place of occurrence and memo of arrest of accused & personal search at Ex.3-A to 3-C respectively.

ii) P.W-2 (victim) Suman at Ex.4.

iii) P.W-3 (mashir/father of victim) Khalil Ahmed at Ex.5.

vi) P.W-4 (author of FIR) ASI Asif Ali at Ex.6.

v) P-W-05 (2nd Investigation Officer) SIP Ali Murad Shar at Ex.07, he produced roznamcha entry No.18, letters dated 14-05-2020 addressed to learned Judicial Magistrate, road certificate, covering letter along with DNA report at Ex.7-A to 7-E respectively.

vi) P.W-6 (WMLO) Dr. Aaiman Khursheed at Ex.7, she produced Medical Certificate of victim Soman at Ex.7-A.

vii) P.W-7 (1st investigation officer) DSP Akhtar Abbas at Ex.8, he produced memo of place of occurrence, memo of arrest of accused Shabbir, roznamcha entries No.19, 21, letter dated 16-02-2019 addressed to chemical examiner and chemical report at Ex.8/A to 8/F respectively.

viii) P-W-8 (MLO) Dr. Abdul Ghaffar at Ex.9, he produced medical certificate bearing No.1426 at Ex.9-A.

6. Learned ADPP filed application u/s 540 Cr.P.C for recalling the prosecution witness Akhtar Abbas at Ex.10, whereas. learned counsel for accused also filed application u/s 540 Cr.P.C for re-calling lady Doctor at Ex.11.

7. Thereafter the learned ADPP for the State closed the prosecution side vide statement at Ex.12.

8. The statement of accused under section 342 Cr.P.C was recorded at Ex.13, in which he denied the allegations leveled against him by the prosecution. Accused neither examined himself on oath nor produced any witness in his defence.

9. I have heard learned counsel for the parties and examined the entire material available on the record with sole object to reach at just and proper conclusion. Accordingly the following points for determination are formulated.

Point No.1. Whether on 13-02-2019 at 1730 hours, inside the house of complainant bearing No.2129 situated at Juma Goth, Ibrahim Hyderi, Malir, Karachi, accused Mohammad Shabbir committed rape with Soman D/O Khalil Ahmed aged about 11 years, as alleged by the prosecution-----?

POINT NO.2. What offence if any has been committed by the accused?

FINDINGS

Point No. 1	In affirmative
Point No. 2	Accused convicted under section 265-H(2) Cr.P.C

REASONS

POINT NO.1.

10. In order to substantiate the charge, prosecution examined as many as 08 witnesses. PW-1 Munawar Begum is the complainant of this case. In her evidence, she deposed that she has five daughters, out of them three used to be remained at house including victim Soman aged about 11 years. She used to work as servant in different house whereas her two elder daughters used to work in private company. On 13-02-2019, after doing her work, when she returned back to her house before five ten minutes of Maghrib Prayers, she found that outer door of the house was closed. She knocked the door and called her daughter Suman, she came and opened the door and hugged her. She was crying and under

scared. She took her inside the room and had shown lower part of the body after removing the Pajma and disclosed that "Shabbir Bhai" has committed Zina with her. Her clothes were bloodstained therefore, the same was changed by her. Her dupatta was lying on the "takhat". She made the same as pad and kept it under the private part of her body. She found that bed sheet/chadar was also having bloodstained. She called her husband through mobile phone and thereafter her both elder daughters were also reached the home. She along with her elder daughters namely Sanwar, Sonia took her daughter Suman to hospital situated at Korangi No.05, where lady doctors took victim and her inside the room and examined victim Soman thereafter Doctor advised her to go to Jinnah Hospital as this is a police case. At that time, Suman was in critical condition due to severe pain in legs and other feelings and it was also night hours, therefore, she immediately rushed to another clinic situated at Machi Mour for getting first aid, when she reached there, Doctor was not ready to provide treatment due to police case, but due to her request she provided drip to her daughter in order to stable her, thereafter they returned back to house. She went to the house of accused Shabbir, where sister in laws of accused informed her that the accused has not turned up since morning. On 14-02-2019, she with her daughter/victim went to police station and lodged report where her FIR was lodged by the police. On the same date police inspected the place of occurrence in her presence and prepared such memo and obtained her thumb impression on it. Thereafter, I.O tried to search the accused, she with her victim daughter were accompanied with I.O and during search accused was arrested on the pointation of her daughter where such memo was prepared by the I.O at the spot. Thereafter accused was taken to police station by the police in private car. After arrest of the accused in the same night, she with her daughter went to Jinnah Hospital with police officials in private car, accused was also in the same car, due to non availability of WMLO the victim could not be examined. On 15-02-2019, she with her daughter again went to hospital where she was examined by the WMLO. She also handed over the clothes of victim to the investigation officer. I.O recorded her statement under section 161 Cr.P.C. Accused present in the court is same.

11. P-W-2 (victim) Soman, in her evidence has deposed that it was 13th of 2019, but she does not remember the month. She along with her friends namely Zakia and Hafza were playing in the house, while the door of the house was closed by "kundi". It was the time before prayers of the Maghrib, Shabbir Bhai came, he sent her friends outside the house. He locked outer door with kundi, he closed the door of the room with kundi, he removed her pajma as well as removed his own pajma. She inquired what are you doing, but he replied that nothing. She made noise, whereupon he slapped on her face and tied her mouth with the cloth. He committed rape when she went to washroom, her blood was oozing and her pajma was in capsize "Ulta tha" He extended her threats not to disclose to any one otherwise, he will commit such act again as well as will kill her. Thereafter, he went away, after Maghrib prayers her mother came and she narrated such facts to her mother. Her elder sisters also reached at home after doing their job/work. Her mother took her to hospital, situated at Korangi No.05, but doctors did not provide medical treatment by saying that it is a police case. Thereafter, her mother took her to another hospital situated at some distance of cabin of her father where her mother raised cries, due to her critical condition, therefore, the clinical lady staff provided him drip then her condition became better, but nothing was charged by the lady staff. Thereafter they went to home, on the next day, she with her mother and elder sisters went to police station, where her mother lodged FIR. Thereafter, police officials came with them and on her pointation arrested the accused and prepared such memo. Police officials took her to Jinnah Hospital for treatment and medical examination. Police officer recorded her statement. Accused Shabbir present in the court is same.

12. PW-3 (mashir) Khalid Ahmed in his evidence has deposed that complainant Munawar Begum is his wife and victim is his daughter. On 13th February, 2019, he was at his shop, his wife called him on his cell phone and disclosed that Soman is not well so come at home immediately. He rushed to home when he reached there his wife disclosed that Shabbir has committed rape with Soman. After hearing the incident, his condition became worst and he became unconscious as he is heart patient. Thereafter his wife took her daughter to doctor, but he remained at house. When his wife with her daughter returned back to home, she disclosed that the doctor asked her that this is a police case. On the next day, his wife went to police station. At about 4/5 p.m police came at his house and inspected the place of

occurrence prepared such memo and obtained his signature on it. I.O had recorded his statement under section 161 Cr.P.C. Accused Shabbir present in the court is same.

13. PW-4 ASIP Asif Ali is the author of FIR, who deposed that on 14.02.2019, he was Duty Officer. Complainant came along with her daughter namely Suman aged about 11 years and reported the incident. As per her verbatim she lodged FIR.

14. PW-05 SIP Ali Murad Shar is the second Investigation Officer, who deposed that on 16.02.2019, he was entrusted the investigation of crime No.54/2019 under section 376 PPC. Initially the investigation was conducted by SIO/Inspector Akhtar Abbas. On 18.05.2020, he with the approval of Judicial Magistrate, obtained the blood sample of accused Mohammad Shabbir from Jail and sent for DNA. Thereafter, he submitted charger sheet in the Court of law.

15. P-W6 (WMLO) Dr. Aiman Khursheed in her evidence has deposed that on 15-02-2019, she was posted as WMLO at JPMC, Karachi, on the same date, ASI Akhtar of police station Ibrahim Hyderi brought a girl namely Suman d/o Khalil Ahmed aged about 12 years for medical examination with the history of sexual assault. Upon history she disclosed that she had been sexually assaulted on 12-02-2019. Upon examination no mark of violence were found on any part of body.

Per vaginal examination. External genitalia, public hairs and vestibule were normal, no laceration or tear. Vulva was very tender.

Vagina & Humen Introitus extremely tender and red. Referred to Gyne for opinion of tear and examination. Note P/V had not been done since victim was an immense pain and non complaint, separation of thighs very painful.

Bleeding P/V. Blood and clots seen

Green shalwar and green cloth sealed and handed over to I.O.

At the time of examination she reserved her opinion till gynecological opinion. Furthermore, gyne was requested to take the HVS for chemical and DNA and provide opinion regarding any vaginal tear found and laxity of vagina. She prepared such medical certificate bearing No.32

16. In cross examination she admitted that he had not taken the HVS of victim; however it was taken by the gynae department, sealed under her supervision and handed over to I.O. She admitted that as per medical certificate she reserved her opinion in respect of committing rape till receiving the report of gynecologist. She further admitted that she has not opined in her medico-legal certificate that victim was subjected to rape, but she stated that it was reserved for want of gynaecological opinion. She denied that no rape was committed with the victim and she prepared fake medical certificate

17. I have carefully examined the evidence of prosecution witnesses as well as entire material available on record it appears that the complainant lodged FIR on 14.02.2019 regarding the incident of Zina committed by the present accused with her daughter on 13.02.2019 at about 05.30 p.m, at her house when the complainant was at her job. Admittedly the F.I.R was lodged by the complainant with the delay of about one day, but such delay has been properly explained by the complainant in the F.I.R, wherein she contended that her daughter was in pain and the shalwar of the victim was fully stained with blood, therefore, she informed to her husband and daughters and then took the victim to private hospital, where Doctor asked her that this is a police case, therefore, she reported the matter to Police Station on the next day, even otherwise such delay is immaterial as well as cannot be benefited to the accused, as in such type of cases people naturally avoid rushing to the police because of family honour. In this regard I am benefited with the case law reported in 2019 YLR 628 [Sindh], wherein it has been observed by the Honourable Court that:-

---Ss. 376, 511 & 506(2)--Rape, attempt to commit offence punishable with imprisonment for life or a shorter term, criminal intimidation--Appreciation of evidence--Delay of about more than two days in lodging of FIR--Effect--Record showed FIR, was lodged on third day of the incident--Complainant had given the explanation that due to mental shock and trauma, she was not in a position to lodge the FIR--Said feelings of a unmarried woman in the society was very natural and could be termed as genuine explanation for the delay.

18. During the course of evidence the victim deposed that she along with her friends was playing in her house, outer door was bolted from outside, accused who is the fiancée of her elder sister came there and sent her friends outside and committed rape forcibly, extended her threats and went away, after Maghrib prayer when her mother came she disclosed such fact to her mother, who checked her and took her to Hospital, situated at Korangi No.5, but Doctor did not provide medical treatment while saying that this is police case, therefore, she took the victim to other hospital, where necessary treatment was provided, thereafter they returned back to home and on the next day her mother lodged F.I.R. Police officials took her to Hospital, where she was examined by the WMLO and issued medico-legal certificate vide MLC No.32, produced at Exh. No.7/A with remarks to take the HVS for Chemical and DNA. Admittedly, as per medico-legal certificate WMLO referred the victim to Gynecologist and reserved her opinion till receiving the opinion of Gyne, but the WMLO at the time of vaginal examination observed that:-

External genitalia}.....Normal/ no laceration or tear

Pubic hairs}..... Normal.....do.....

Vestibule}..... Normaldo.....

Vulva}.....tenderness ++

Vagina and hymen}----- Introitus extremely tender and red. Referred to Gyne for opinion of tear examination.

She also noted that "**Note PV has not been done since victim is in immense pain and non complaint, separation of thighs very painful.**

19. Record shows that after examination four samples and two samples of seals with medico-legal certificate received by the 1st Investigation Officer namely Akhtar Abbas from the WMLO whereas the clothes of the victim i.e. green shalwar and green clothes were also handed over to him, out of which one bundle of cloth, one tube (both in sealed condition) with photocopy of medico-legal certificate were deposited to the Chemical Examiner, vide letter (Exh.8/E), whereupon the Chemical Examiner issued report (Exh.8/F). The relevant portion of the said report is as under: -

DESCRIPTION OF ARTICLES CONTAINED IN THE PARCEL

1. Green (Mendhi) coloured pajama.....) Victim Suman D/O Khalil Ahmed
2. Green and white coloured dupatta.....) Parcel)
3. High vaginal swab) Tube.)

RESULT OF EXAMINATION

Human sperm detected into the above mentioned article nos. (1)&(3)

Human sperm not detected into the above mentioned article no. (2)

Article Nos. (1)(2)& (3) are stained with human blood.

whereas the blood samples of accused was obtained by the second investigation officer namely SIP Ali Murad Shar on 18.05.2020, within the jail premises with the approval of learned Judicial Magistrate and deposited the same to the Sindh Forensic DNA and Serology Laboratory and collected report produced at Exh.7/E., which is as under:-

Result and Conclusion :

No seminal material was identified on vaginal swab of Suman (item #1). Therefore, no further DNA analysis (STR analysis) was performed on item # 1.

No analysis was performed on blood sample of Suman (item # VI) and blood sample of Mohammad Shabbir (item # S1)

20. The learned counsel for accused has contended that there is no final opinion given by the WMLO regarding commission of rape by the accused nor the DNA report produced by the PW-5 (SIP Ali Murad) shows that the accused is involved in the commission of crime. Further there was no mark of violence found at the body of the victim; therefore, prosecution has failed to prove its case against the accused.

21. I have carefully examined the medico-legal certificate (Exh.No.7/A), Chemical examination report (Exh.No.8/F) and DNA report (Exh.No.7/E) it reveals that the offence was committed by the accused with the victim on 13.02.2019, the victim was medically examined by the WMLO on 15.02.2019 and under her supervision HVS of victim taken by the Gyne department and sealed, which were handed over to the 1st Investigation Officer who deposited the same to the chemical examiner on 20.02.2019, whereas vaginal swab of victim, blood samples of victim and blood samples of accused Mohammad Shabbir deposited by the 2nd Investigation Officer on 18.05.2020, after more than three months, therefore, the human sperm could not be detected from the samples of victim nor matched with the accused as the human sperm could be alive only for few days. Nothing is available on record that during the period of more than 03 months where the samples were kept by the I.O.

22. The learned counsel for the accused has contended that the incident occurred on 13.02.2019, F.I.R lodged by the complainant on 14.02.2019, whereas the victim was examined by the WMLO on 15.02.2019 and no reason has been furnished for such delay, which creates doubt, but such contention of the learned counsel is having no force, as the complainant has explained delay in her evidence and in this regard she deposed that after arrest of the accused, the Investigation Officer took the victim and accused to Hospital where accused was examined by MLO on same day, whereas the victim could not be examined due to non-availability of Women Medico-Legal Officer, thereafter she was examined on 15.02.2019. Such fact is evident from the MLC of victim dated 15.02.2019 and MLC of accused dated 14.02.2019. The learned counsel for the accused point out in last suggestion during the cross examination of complainant that complainant has admitted that "It is correct to suggest that accused is innocent, accused was fiancée of my elder daughter, there was some hot words exchanged between us and in order to break such relationship I have falsely implicated by him in this case", but from the careful examination of entire evidence it is crystal cleared that the complainant, victim, her husband (PW-3/father of victim) have fully implicated the accused in their respective evidence and narrated the entire details of the incident, which are reliable and confidence inspiring. In the light of above I am of the considered view that it is only typographical error and same cannot be benefited to the accused, even otherwise in order to prove the charge of rape only solitary statement of victim is sufficient to establish case of the prosecution.

23. The evidence of victim who is only 12 years old is well corroborated with the medico legal certificate brought on record by the lady Doctor, who examined the victim and prepared report, her statement is also supported with the chemical examination report which shows that the sexual assault had taken place with the victim and human sperm detected from the sample deposited by the I.O. Statement of the victim is straightforward, who narrated the entire incident in a very innocent and natural manner and accused has failed to establish any exaggeration therein. In this regard I am benefited with the case law reported in 2011 P.Cr.L.J 1443 wherein it has been observed by the Honourable Court that:-

“---S. 376---Rape---Appreciation of evidence---Ocular testimony of the prosecution witness was natural, reliable, satisfactory and confidence inspiring---Prosecution had fully proved the case against accused beyond any shadow of doubt---Defence had not proved any enmity, ill-will or malice against prosecution witness---Sole testimony of the victim was enough for conviction, if it was truthful and inspiring confidence---Trial Court with sound and cogent reasons had repelled the contention regarding delay in the lodging of the F.I.R. as well as delay in medical examination---Despite the fact that DNA report about the swabs did not match with the profile of accused, the observations of lady doctors, were enough evidence of the fact that victim had been subjected to sexual intercourse---Opinion of the Lady Doctor lent corroboration to the statement of the victim that accused had subjected her to zina---Non-receipt of matching report of DNA test, did not negate the ocular account of prosecution witness---”.

24. So for as mark of violence is concerned, same are not necessary to prove the commission of rape. In this regard I am benefited with the case law reported in 2012 YLR 652, wherein it has been observed by the Honourable Court that:-

“---Claim that no sign of violence on the body of the victim was reported, had no material weight---To violate a minor girl's chastity to bleed, in itself was an appalling sign of violence on her innocent person, so much so that she suffered hospitalization for stitching under general anesthesia---Investigating Officer having died after presenting the challan, his report, writings, signatures etc. all were verified by the Police Officer working, closely with him in the same Police Station, without any ambiguity, contradiction, or even any suggestion or question from the defence---DNA test was not needed in the case, as only one accused was involved and his offence had been established from the prosecution evidence, duly corroborated on record---Accused himself had also not demanded DNA test, grouping or matching---Prosecution had fully proved its case beyond any shadow of doubt---Solitary statement of the victim in such cases, was sufficient to prove prosecution case, especially when she had given unimpeachable evidence against accused detailing specific act of zina-bil-jabr---”

25. In view of above discussion and material available on record, I am of the opinion that the prosecution has successfully proved its case against the accused beyond any shadow of doubt; hence this point is decided in affirmative.

POINT NO.2

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26. In view of my findings on aforesaid point, I am of the considered view that the prosecution has proved its case against accused Mohammad Shabbir son of Mohammad Sanwariya beyond any shadow of doubt, as such I hereby convict him under section 265-H(2) Cr.P.C, for the offence punishable under section 376(3) PPC for committing rape of a minor girl namely Suman daughter of Khalil Ahmed aged 12 years and sentenced him to undergo rigorous imprisonment for life and to pay fine of Rs.100,000/- (Rupees one hundred Thousand) in case of non-payment of fine the accused shall suffer R.I for 03 months more. The accused is also extended benefit of section 382-B Cr.P.C. He is produced in custody and remanded back to Jail to serve out the sentence awarded to him accordingly.

Announced in open court.

Given under my hand and seal of this court, this 22nd day of November 2021.

(Mrs. Shazia Asif)

5th Additional Sessions Judge, Malir

PROPERTY ORDER

- 27.** The case property viz. clothes of victim be disposed of in accordance with law after expiry of an appeal period
Announced in open Court.

(Mrs. Shazia Asif)

5th Additional Sessions Judge, Malir