IN THE COURT OF III ADDITIONAL SESSIONS JUDGE KARACHI SOUTH

Before Mr. Ashraf Hussain Khowaja

Sessions Case No.3096 of 2021

The State---------------------------------------Complainant

V E R S U S

Danish @ Guddu -------------------------------------Accused

FIR No.459/2021

U.S 376/377-B PPC

P.S. Chakiwara.

J U D G M E N T

22-12-2022

Accused Danish @ Guddu S/o Khursheed Ahmed was sent up to face trial for an offence punishable under section 376 (3) PPC arising out of FIR No.459/2021 of Police Station Chakiwara, Karachi.

Facts of the case are as such that on 19.09.2021 at 1630 hours, inside a house situated in street No.8, Hazara Colony, Lyari, Karachi, accused Danish @ Guddu committed zina with Zara D/o Muhammad Ashiq. Hence this FIR.

At the trial the prosecution examined P.W-1 victim Zara at Ex.03, who produced U/s 164 Cr.P.C. (in two leaves) at Exh.03/A. PW-02 Kashif was examined at Exh.04, who produced copy of FIR at Exh.04/A, who produced memo of site inspection/seizure at Exh.04/B and memo of arrest at Exh.04/C. PW-03 naghma BANO at Exh.05. PW-04 Muhammad Asif at Exh.06, who seen memo of arrest at Exh.04/C. PW-5 Najma at Exh.07. PW-06 MLO Syed Hassan Ahmed, who produced police letter at Exh.08/A and MLC at Exh.08/B. Prosecution given up PW Uzma vide statement at Exh.09. PW-07 Samreen was at Exh.10. PW-8 WMLO Tanseem Malik at Exh.11, who produced police letter at Exh.11/A and MLC at Exh.11/B. Prosecution given up PWs Amir and Ehsan vide statement at Exh.12. Learned ADPP for the State filed application U/s 540 Cr.P.C., order passed on it at Exh.13. PW-09 Judicial Magistrate Sadia Amjad at Exh.14, who produced application U/s 164 Cr.P.C. at Exh.14/A and statement U/s 164 Cr.P.C. at Exh.14/B. PW-10 SIP Muhammad Latif at Exh.15, who produced entry No.40 at Exh.15/A and also seen copy of FIR at Exh.04. PW-11 SIP Sobia at Exh.16, who produced entry No.44 at Exh.16/A, entry No.48 at Exh.16/B, sketch of place of incident at Exh.16/C, four photographs at Exh.16/D-1 to 16/D-4, entry No.54 at Exh.16/E, entry No.27 and 37 at Exh.16/F & 16/G, entry No.44 and 66 at Exh.16/H & 16/I, entry No.16/J entry No.54 and 57 at Exh.16/K & 16/L, entry Nos.30 and 34 at Exh.16/M & 16/N, DNA letter alongwith road certificate at Exh.16/O and DNA report (in four leaves) at Exh.16/P. PW-12 Faizan was examined at Exh.17. The prosecution closed its side vide statement at Ex.18.

The statement of accused under section 342 Cr.P.C was recorded at Ex.19 in which accused denied prosecution allegations. However, the accused neither examined himself on oath under section 340(2)Cr.P.C, nor led any defence evidence. He further stated that I was arrested from outside gate of city courts. He also stated that due to enmity with my brother over money. He pleaded innocence and prayed for justice.

I have heard learned SPP for the State duly assisted by learned counsel for complainant as well as learned defense counsel and perused the evidence available on record. I have also considered the case law relied upon by the prosecution reported in 2013 SCMR 203, 2017 P. Cr. L J 452, 2018 P. Cr. L J 1275, 2018 MLD 1164 and 2020 MLD 588. The learned defense counsel also relied upon case law reported in 2010 P. Cr. L J 1296 and 2017 P. Cr. L J 848.

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

Point No.1 Whether the accused has committed the offence as alleged by the prosecution?

Point No.2 What should the judgment be?

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

F I N D I N G S.

Point No.1……………………………………………… Not proved

Point No.2……………………………………………… Accused is acquitted

U/s 265-H(i) Cr.P.C.

R E A S O N S.

POINT NO. 1.

To prove this point victim Zara has deposed that her nephews Faizan aged five years and infant Yaseen were also available with her at the time of incident but this fact was not mentioned in FIR. Complainant Kashif has also admitted that the fact of availability of two children at the time of incident was not mentioned in FIR. Victim has deposed that accused broke lock and entered inside the house but in her statement before police she stated that lock could be opened from outside. PW Najma has deposed that her sister Asma and victim Zara told her that accused opened lock from outside by inserting hand. Victim has deposed that accused slapped Faizan but this fact was not mentioned in her statement before police. Complainant has deposed that accused slapped the victim, however he admitted that this fact was not mentioned in FIR. PW Naghma had deposed that accused slapped Faizan. PW Faizan has not deposed about slapping him or the victim. Victim has not deposed that accused asked Faizan to clean his bike. Complainant has also not deposed this fact in his evidence. PW Naghma has deposed that accused asked Faizan to stand outside at his bike and he would give him Rs.5/-. PW Samreen has deposed that accused asked Faizan to clean motorcycle of her husband which was available in an other room. PW Faizan has deposed that accused asked him to clean his bike which was parked outside the house and also gave Rs.10/- to him. Victim has not deposed whether accused asked for drinking water. PW Asif has deposed that his son Faizan disclosed to him that accused asked the victim to bring water. PW Faizan has deposed that accused asked him to fetch water, therefore, he brought water. Victim has deposed that accused committed rape with her but in FIR attempt of rape was mentioned though complainant and PW Asif have admitted that FIR was lodged after consultation with family. In her 164 Cr.P.C. statement victim mentioned that accused shown him knife but in her evidence she did not mention this fact. Complainant has deposed that aunt Naghma handed over clothes of victim and bed sheet to I.O. PW Naghma also deposed that I.O collected bed sheet and clothes of victim from her but in memo of site inspection only bed sheet is mentioned. WMLO has deposed that she collected clothes of victim at the time of medical examination, sealed the same and handed over to I.O. I.O. SIP Sobia has also deposed that she secured only bed sheet from the place of incident whereas WMLO handed over clothes of victim to her. Place of incident was residential area but admittedly nobody saw the accused while going to and coming from the place of incident. PW Naghma has deposed that she went to hospital alongwith the victim on 21.09.2021 but I.O. has deposed that she took the victim for medical examination on 20.09.2021. Medico legal certificate of victim also shows the date as 20.09.2021. Complainant has deposed that accused was arrested at 1430/1500 hours but memo of arrest shows the time at 1825 hours. Accused was arrested from a hotel where admittedly public was available but no local independent witness was associated. PW Muhammad Asif acted as mashir of arrest and he has deposed that memo of arrest was prepared at P.S. and he put his signatures on such memo at P.S. I.O. has deposed that 164 Cr.P.C. statement of victim was recorded after about 15/20 days of lodging FIR and no eye witness was available. She admitted that she did not record statement of PW Faizan as well as neighbors. As per medico legal certificate of victim, hymen was torn and healed whereas medico legal examination was conducted on the next day of incident. The complainant party admittedly remained silent regarding previous incident, therefore, medical evidence was destroyed. DNA report is also negative.

In view of the above evidence, it appears that the evidence of all PWs is contradictory and full of improvements, therefore, the same cannot be relied upon for the sake of conviction in case of capital sentence. Accordingly, the prosecution has failed to prove the charge against the accused beyond reasonable shadow of doubt, therefore this point is answered as not proved.

POINT NO.2

In view of the findings on point No. 1 above, the accused is acquitted under section 265-H(1) Cr.P.C. on benefit of doubt. Accused is produced in custody. He is remanded back with directions to release him forthwith, if not required in any other custody case.

Announced in open Court.

Given under my hand and seal of this Court this 22nd day of December, 2022.

( Ashraf Hussain Khowaja )

Additional Sessions Judge-III

South, Karachi