**Ex. No.19**

**IN THE COURT OF ADDL. SESSIONS JUDGE-XTH, KARACHI WEST**

**BEFORE:- (IRSHAD HUSSAIN)(J)**

S.C. No. 310 /2021

The State

Versus

Ashraf S/o Manazir Hussain………………………………………..…………………….Accused

                                                  Offence under section 376/511 PPC

Cr. No.360/2020 of P.S Iqbal Market, Karachi)

**Mr. ASGHAR HUSSAIN, COUNSEL FOR ACCUSED**

**Ms. SAFIA PARVEEN, LEARNED ADPP FOR THE STATE**

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

**22.10.2021**

1.       The above named accused was sent up by S.H.O of P.S.Iqbal Market, Karachi West to face his trial, for offence punishable under section 376, 511 PPC bearing crime No.360/2020registered at P.S Iqbal Market, Karachi West.

2.       Brief facts of prosecution case as narrated by complainant Mst. Majida Khatoon in the FIR are that she contracted marriage with one person namely Kalam but later on she obtained divorced from him and out of said wedlock she had one daughter namely Kashaf aged 07 years. In 2015, she contracted second marriage with one Ashraf S/o Manazar Hussain but no issue was born from said wedlock. Her daughter namely Kashaf and her husband Ashraf were sleeping in same room and on 18.11.2020, her daughter Kashaf awoke and disclosed that in the night, Ashraf removed her shalwar, molested her body and pressed her private parts and her daughter felt pain and upon complaint her husband she started to abuse and maltreat her and thereafter she disclosed entire facts to her housemate and brought her daughter to private clinic where lady doctor conducted her medical checkup and disclosed her that her daughter was subjected to rape. Meanwhile, she approached at P.S and lodged the instant FIR. During the course of investigation, accused named above was arrested and police recorded statement of alleged abductee U/s. 161 Cr.P.C and also produced her before concerned Judicial Magistrate, where statement U/s. 164 Cr.P.C was also recorded. Police after usual investigation submitted challan in the Court.

3.       The necessary documents were supplied to the accused vide receipt at Ex.1.

4.       Thereafter a formal charge was framed against the accused at Ex.2, to which he pleaded not guilty to the charge and claimed to be tried vide his plea at Ex.2/A.

5.       To just strengthened its case, the prosecution has examined his witnesses as P.W-1, Mst. Majida Khatoon at Ex.04, she produced FIR at Ex.4/A, memo of arrest of accused at Ex.4/B and memo of site inspection at Ex.4/C. PW-2, victim Kashaf at Ex.05, she produced her statement recorded U/s 164 Cr.P.C at Ex.5/A. PW-3 WMLO Dr. Samia Sahar at Ex.07, she produced police letter at Ex.7/A, MLC No.111/2020 at Ex.7/B, report of gyne department at Ex.7/C and referral letter at Ex.7/D. PW-4 MLO Dr. Ali Ekram at Ex.08, who produced police letter at Ex.8/A, MLC No.11170/2020 at Ex.8/B and referral letter/OPD Slip at Ex.8/C. PW-5 ASI Syed Asim Shah at Ex.09, who produced Entry No.55 at Ex.9/A, departure entry No.56 at Ex.9/B, sketch plan at Ex.9/C, four photographs at Ex.9/D 9/D-I to 9/D-iii, entry No.66 at Ex.9/E, entry NO.11 at Ex.9/F, entry NO.39 at Ex.9/G, entry No.38 at Ex.9/H, entry No.41 at Ex.9/I, CRO record of accused at Ex.9/J, application at Ex.9/K, statement U/s 164 Cr.P.C of accused at Ex.9/L, entry No.30 at Ex.9/M and entry No.28 at Ex.9/N. PW-6 ASI Ghazan Zada at Ex.10.Thereafter, learned ADPP for the state closed the side of the prosecution vide her statement at Ex.11.

6.       The statement of accused was recorded under section 342 Cr.P.C at Ex.12 wherein he denied the allegations levelled against him and contended that he is innocent and has falsely been implicated in this case by complainant party. Meanwhile accused was also examined on oathU/s 340(2) Cr.P.C at Ex.13 and he also led four defense witnesses i.e DW-1 Mst. Naseema Khatoon at Ex.14, DW-2 Mst. Sana at Ex.15, DW-3 Mst. Muneeba at Ex.16 and DW-4 Zahid Hussain at Ex.17 to disprove the allegations levelled against him by the prosecution.

7.       My points for determination are as under:-

**POINTS FOR DETERMINATION**

1.    Whether on 18.11.2020 in the night time and prior to that on different times at H.No.132, Muhalla Chasti Nagar Sector 11-½ Orangi Town Karachi the accused removed the shalwar of minor Kashaf aged about 07 years, the daughter of complainant Mst. Majida Khatoon and molested her body and pressed her private parts and also attempted to commit offence of rape with her?

2.    What offence, if any, has been committed by the accused?

8.       I have heard the learned counsel for accused and learned ADPP appearing on behalf of the State.

9.       The main contention of the learned counsel for the accused is that there is two days inordinate delay in lodging of FIR, which is unexplained. He further argued that articles, cloths or anything was sent for chemical examination and it is also pertinent to mention here that it is clearly mentioned in the medical of the victim that no scar/mark found on the bod of victim and no rape was committed with the alleged victim. He also contended that the complainant Mst. Majda in her statement U/s. 161 Cr.P.C stated that the victim disclosed about the offence in the morning of 18.11.2020 and she also stated on 18.11.2020, she disclosed to her family members while witness Shahid stated in his statement U/s. 161 Cr.P.C that her aunt disclosed about the incident on 20.11.2020 at about 08:00 P.M and he also went to the lady doctor for medical while Majid stated that they went to for medical checkup of victim on 18.11.2020 while there is no report of any lady doctor, which shows that whole story is false and accused is entitled for acquittal. He also contended that no DNA was conducted neither any blood sample was taken from accused and it is settled law that in rape cases the DNA matching is crucial and most important without DNA no case can be made out, the defense counsel relied upon case laws 2020 PCr.LJ 895. He also contended that the victim stated in her statements recorded U/s. 161 Cr.P.C and 164 Cr.P.C that accused had committed the said offence with her since last one years but in her cross examination she stated that no such offence was occurred prior to this. He also argued that the mother of victim was sleeping with the victim then how the rape can committed her. He also contended that Mst. Majida stated that private lady doctor disclosed her that the rape has been committed with the alleged victim but it is clear in the medical of victim no rape was committed with her. He further argued that there are material contradictions in the deposition of witnesses, which have hampered the case of prosecution and prosecution has failed to prove its case beyond shadow of doubt. He also argued that the medical is not supporting the prosecution story. He further argued that there are many loops and holes in prosecution case and prosecution has failed to prove its case against the accused, therefore, he may be acquitted from the present case by giving him benefit of doubt. In support of his contention the learned cousenl for the accused relied upon the case laws cited as (1) 2013 YLR 2563,(2) 2020 P.Cr.L.J. 895 and  (3) 2021 YLR 260.

10.     On the other hand, learned ADPP for the State argued that the prosecution has proved its case against the accused beyond shadow of doubt. She has also contended that all the defence witnesses are interested witnesses and accused failed to prove such fact that the complainant has ever demanded the ownership of the house in question and on refusal by the accused she booked the present accused in this case falsely.  She  also argued that the prosecution has produced ocular evidence, medical evidence and circumstantial evidence and there is chain of evidence and each part of evidence is interconnected with each other and the prosecution story has been proved true against the accused as such the accused may be awarded maximum penalty.

11.     I have given due consideration to the arguments advanced by the learned counsel for accused, learned ADPP for the State  and perused the entire evidence produced by the prosecution as well as relevant record.

12.     My findings coupled with reasons on the above points are as under:

**F I N D I N G S.**

Point No.1-------------------------- Proved.

Point No.2--------------------------Accused Ashraf S/o Manazir Hussain is

convicted U/s. 265-H(ii) Cr.P.C. and sentenced to rigorous imprisonment for three (03) years and he is also liable to pay fine of Rs. 100,000/- (One Hundred Thousand Rupees) for the offence punishable under section 376 PPC R/w 511 PPC and in case of default of payment of fine he will further suffer SI for the period of 6 months.

**R E A S O N S**

**POINT NO.1**

13.     In order to prove its case, the prosecution has examined as many as seven witnesses. The allegation against above named accused is that he had committed rape of baby Zehra aged about 07/08 years, daughter of complainant Janan Khan.

14.     The case of prosecution opens with the deposition of Complainant Mst. Majida Khatoon, who was examined as P.W-01 at Ex. 04. She deposed that her first husband was Abdul Kalam who had divorced her. From the said wedlock with her Ex.Husband Kalam she has one daughter namely Kashaf now aged about 7 years. Thereafter she had contracted marriage with accused Ashraf about five years ago. She has no issue out of wedlock with accused Ashraf. Her daughter Kashaf was also living with them with accused Ashraf in his house situated at Chishti Nagar Sector 11-½ Orangi Town, Karachi. On 18.11.2020 in the morning time her daughter Kashaf had informed her that the accused Ashraf had removed her Shalwar and had committed bad act with her upon which she complained with accused Ashraf then accused Ashraf started abusing her and started beating her. Thereafter she had informed such fact to her family, area people and relatives. Thereafter as per advise of area people and relatives she had come at police station Iqbal Market on 20.11.2020 and lodged FIR against her husband Ashraf U/s 377/511 PPC. She produced such FIR at Ex.4/A.The police had also arrested her husband Ashraf in her presence and in presence of Muhammad Shahid on 20.11.2020 at 12:00 midnight. She further deposed that she produced produce such memo of arrest of accused at Ex.4/B. Thereafter she had also shown the place of incident i.e her house to police. She produced such memo of site inspection at Ex.4/C.She had taken her daughter Kashaf to the hospital for medical examination where lady doctor had examined her daughter. The police had also recorded her statement U/s 161 Cr.P.C. The police also examined her daughter Kashaf and recorded her statement U/s 161 Cr.P.C and learned Magistrate had also recorded statement U/s 164 Cr.P.C in Court. Lastly, she deposed that accused Ashraf is present in the Court was same accused who had attempted to commit rape of her daughter.

15.     The above said witness was cross examined at length by the counsel of accused. During her cross examination, she does not remember the exact period during divorce from her first husband till marriage with accused person. Her Ex.husband Abdul kalam had himself divorced her. She herself had lodged FIR. She further stated that It is mentioned in the FIR that she got Khula from her first husband Abdul Kalam. She admitted that Abdul kalam had divorced her. At first the FIR was lodged and then her daughter was medically examined through police. She admitted that prior lodging of FIR she had brought her daughter to a private clinic where a lady doctor had confirmed that a rape had been committed with the victim. She further stated that her both the statements are correct that she got medically examined to victim prior lodging of FIR from private clinic and thereafter her daughter was medically examined by government lady doctor after lodging of FIR. It is fact that four real children of accused/her husband from his first wife who was expired were also residing in the same house in a separate room. She stated that younger brother of present accused namely Nizam is also residing in the same house with his wife and three children. She had informed such fact disclosed to her by her daughter/victim to the wife of Nizam. She admitted that she had not raised any hue and cry. The morning day was Friday when the alleged incident was taken place. Her daughter/victim had informed her such fact at 08:00 am in the morning. She admitted that her daughter had not disclosed to her any specific time of the night when accused committed alleged act with her, voluntarily said she had only disclosed the time of night. Normally they used to awake at 07:00 am or 08:00 am. She was sleeping in the same room with accused and victim daughter on the night of alleged incident. She stated that while sleeping in the same room in the night time she had not heard any voice or crying of her daughter/victim. Her daughter and she herself had awoken together in the said morning. Her daughter was wearing the Shalwar when she awoke and her Shalwar was dirty with urine like. She further stated that the daughter was claiming itching and pain in her private part. She also herself observed that there was redness on the private part of the victim. She took her daughter to the private lady doctor namely Raheela situated at 1K Stop at 07:00 pm. They were two sisters i.e herself and Sajida and two brothers namely Shahabuddin and Jamal. She admitted that Mashir Shahid is not her real brother. She had had informed to her real sisters and brothers. She had not found any incriminating thing on the bed where they were sleeping. She had visited the house of Shahid at 08:00 pm after medical check of victim from lady doctor Raheela. She had visited the house of Shahid prior lodging of FIR. She was present at the time of medical examination of her daughter. The medical examination of victim was taken place on 20.11.2020. She had lodged FIR at 10:00 or 11:00 pm. The lady doctor had checkup her daughter by wearing gloves. Her daughter/victim had also complained prior this incident to me against her stepfather. Her daughter was subjected of rape. Her daughter complained against her husband present accused two times prior this incident. She admitted that she had not reported earlier matter to the police. She is eight class pass. She admitted that as per Islamic Learning two real sisters cannot be married with one person at one time. She admitted that as per Islamic Learning real daughter and mother cannot be married with one person at one time. She does not know if a rape of daughter has been committed by father the Nikah with the mother of said victim will be no more. She admitted that she is still wife of accused. She admitted that after this incident she has not filed any suit for Khula. The medical of her daughter was taken place on the same day at night. Police asked her to bring the victim for medical then she brought the victim for medical. She does not remember the date of receiving notice. She admitted that accused is the owner of plot admeasuring 240 yards where the alleged incident was taken place. She denied that she had asked the accused to transfer the ownership of said plot on her name. She denied that accused denied to transfer the subject plot on her name and then she booked him in this false case. She denied that she is deposing falsely in order to blackmail the accused. She denied that accused has not committed any alleged offence. She denied that accused always treated the victim like his real daughter. She denied that accused is innocent.

16.     After that prosecution has examined alleged victim Mst. Kashaf as P.W-02 at Ex. 05, who deposed that her mother name is Majida. Her father name is Ashraf. Her father Ashraf is present in the Court. Her stepfather had removed her Shalwar while she was sleeping in the room with her mother and father. Thereafter her father had done bad act with me due to which her place/part where she passed urine became red. In the morning she informed her mother about such thing done by father then her mother fought with her father and then her mother took her to the lady doctor and to police. The police had also enquired from her about the incident. She further stated that a Judge Sahib had also enquired from her about the incident. She produced her statement recoded U/s 164 Cr.P.C at Ex.5/A. She identified the accused Muhammad Ashraf in open court being the same accused who was committing bad activities in night time with her.

17.     During her cross examination made by learned counsel for accused, she stated that she could identify advocate as Wakeel. She does not remember the date when alleged incident was taken place. The alleged incident was taken place at the midnight time at around 12:00 midnight. She admitted that she had not awoken her mother at the time when her stepfather was allegedly doing bad act with her. She deposed that her mother was in deep sleep and her father had given her chips. She admitted that prior the alleged incident her stepfather had not removed her Shalwar at any time or at any night. She did not come out from the room when alleged offence was taken place and her mother was sleeping in order to complaint against her stepfather to other family members. She had awoken at 07:00 am in the morning. Her mother was also awoken at the same time. Her mother took her to the doctor when she informed such fact to her mother. Her mother took her to the lady doctor in the evening time. Her mother took her to the lady doctor alone. The doctor who had examined her was the lady doctor. The doctor Raheela had examined her at 06:00 pm. She denied that her stepfather had not removed her shalwar. She denied that her father had not done any bad activity with her. Her mother changed her clothes when lady doctor had examined her. She denied that she was deposing falsely before this Court as per instigation of her mother.

18.     P.W-03, WMLO/DR. Samia Sher was examined at Ex. 07. She deposed that on 21. 11.2020, at 02:30 P.M, she was posted at Abbasi Shaheed Hospital, Karachi as WMLO. Meanwhile, victim namely Kashaf daughter of Abdul Karim aged about 07 years came with police letter of P.S Iqbal Market. She was brought by ASI Syed Asim Ali in FIR No. 360/2020 with the history of rape with identification marks as mole on right side of upper lip. She produced such police letter at Ex. 07/A.  Date of incident was 18.11.2020 and she was recovered on 20.11.2020 at 11:00 P.M. On per abdominal examination, no mark of injury seen on her body. On per vaginal examination, external genitalia was normal. Hymen was wide open with redness seen over hymen and fontenelle. Monspubics, labiya minora, labiya majora was normal. Vestibule was not congested. Referred her for gyne opinion.  She further deposed that meanwhile, she received report from gyne department and perused the same.

**OPINION:**

She gave her opinion as “on basis of gyne opinion and clinical examination, she was virgo intacta. However, redness seen over hymen and fontenelle. She issued the MLC No. 111/2020, which she produced at Ex. 7/B. She also produced report of gyne department issued by RMO or Gyne Unite-III, Abbasi Shaheed Hospital at Ex. 7/C. She also produced referral letter issued by her at Ex. 7/D.

19.     During her cross examination made by learned counsel for accused, she stated that the victim was brought for her medical examination before her on 21.11.2020. She was brought by ASI Syed Asim Ali. The mother of victim was also present along with victim. She examined victim after taking consent of her mother. She has not found any mark of injury on the body of victim.  She has not taken into possession the cloths of the victim. She deposed that since there was delay of about 02 days therefore, she has not advised for the same. The complainant and mother of the victim both have alleged about commission of rape. The victim was not subjected to sexual intercourse. She denied that there was no redness on vaginal part of the victim. Such redness can remain up to 2 or 3 days on sensitive part in case of rape or attempt to rape. Such fact has not been disclosed by the complainant that she took the victim to a private clinic prior her examination. During normal check up a doctor cannot find such redness on vaginal part. The victim was brought before her at 02:30 A.M. She denied that she has conducted medical examination of victim on 22.11.2020. She deposed that she has examined the victim on 21.11.2020. She has not secured any vaginal swab of the victim. She denied that alleged redness of vaginal part can be occurred due to any allergy or due to hot weather. She has consumed about 1 hour in medical examination of victim. She admitted that victim was called on the following morning at 09:00 A.M before Gyne Unit-III. She denied that she has issued a false certificate at the instigation of mother of complainant.

20.     P.W-04 MLO Dr. Ali Ekram was examined at Ex.08, who deposed that on 21.11.2020, he was posted at Abbasi Shaheed Hospital, Karachi as MLO. On the same day at about 01:15 A.M, ASI Syed Asim Ali of P.S Iqbal Market was brought accused namely Ashraf S/o Munzair Hussain, aged about 55 years with history of rape as active agent as alleged in police custody with hand cuff in FIR No. 360/2020 having identification mark as mole on left cheek. He produced police letter to him, which he produced at Ex. 8/A. On examination, following findings noted.

1.   Cloths changed, parts washed and urine passed.

2.   No mark of violence or injury seen all over the body at present.

3.   Facial, chest, axillary and pubic hair present.

4.   No hydrocele or any congenital abnormality seen.

5.   External genitals are well developed.

6.   On prostatic massage per rectum, erection of penis seen.

**OPINION:**

          As per clinical findings, he was suggested that the accused is capable of performing sexual intercourse in ordinary course of nature. However, blood sample collected and handed over to police for DNA analysis. He produced MLC No. 11170/2020 at Ex. 8/B. He also produced referral letter/OPD Slip issued by me at Ex. 8/C. He see accused Ashraf present in Court is the same accused as per his identification mark mole on left cheek.

21.     During his cross examination made by learned counsel for accused, he stated that Accused was brought before him for his medical checkup on 21.11.2020. He do not know the date of alleged offence of rape. He has not found any marks of injury on body of accused at the time of his examination. He has not secured the cloths of the accused. He has secured the blood sample of accused.

22.     P.W-05 ASI Syed Asim Shah was examined at Ex.09, who deposed that on 20.11. 2020, he was posted at P.S Iqbal Market as ASI in investigation branch. On the same date, he received investigation of FIR No. 360/2020, U/s. 377 read with 511 PPC against accused Ashraf. He received FIR and Roznamcha entry in respect of registration of FIR. He see such FIR at Ex. 4/A. He also produced entry No. 55 under which FIR was lodged by the Duty Officer at Ex. 9/A. After receiving investigation, at first on dated: 20.11.2020 at about 2310 hours, he left the police station vide departure entry No. 56 along with complainant, victim and witnesses and police party. He produced such departure No. 56 at Ex. 9/B. Meanwhile, on 21.11.2020, at about 0010 hours, he reached at the house of complainant and knocked the door upon which one person came out who disclosed his name as Ashraf S/o Manzar Hussain and complainant pointed him as accused nominated in the FIR. He accordingly arrested him on the pointation of complainant in her presence and in presence of Muhammad Shahid under a written mashirnama. He see Ex. 4/B. Nothing was recovered during his personal search. Meanwhile, he inspected the alleged place of offence on pointation of complainant in her presence and as well as in presence of one Muhammad Shahid under a written memo at about 0025 hours to 0035 hours. He see Ex. 4/C. He also prepared sketch plan of the alleged offence. He produced the same at Ex.9/C. He also took photographs of alleged place. He produced four photographs at Ex. 9/D, 9/D-i to 9D-iii. Thereafter, He along with victim and complainant and accused reached at the Abbasi Shaheed Hospital for the purpose of medical examination of victim and as well as accused. He issued a letter to WMLO for the purpose of medical examination of victim. He see Ex.7/A. Meanwhile, baby victim was examined by WMLO and during such process, the baby victim was referred to Gyne Unit-III and accordingly the baby was also produced before baby Gyne Unit-III for her medical examination and opinion. He see Ex. 7/C, it is the same of Gyne Unit. Thereafter, on the basis of opinion of Gyne Unit, WMLO issued MLC No. 111/2020 in which WMLO confirmed that victim was virgo intact. However, she noted some redness on her hymen and fontenele. He received ML Certificate. He see Ex. 7/B, it is same ML Certificate. Meanwhile, He also produced accused Ashraf before MLO for his medical examination along with police letter. He see Ex. 8/A. Meanwhile, MLO examined the accused and his given finding that accused was capable of performing sexual intercourse in ordinary course of nature. He see Ex. 8/B, it is same certificate. MLO has also secured blood sample of accused for the purpose of chemical examination/DNA. Thereafter, he came back to the P.S vide arrival entry No. 66. He produced such entry at Ex. 9/E. He recorded statements U/s. 161 Cr.P.C of the witnesses. On the following morning, he left the P.S along with complainant and victim at about 0920 vide entry No. 11 along with complainant and victim. He produced such entry at Ex. 9/F. After medical examination at Gyne Unit of victim, he came vide arrival entry No. 39. He produced the same at Ex. 9/G. He interrogated the accused and recorded his statement under Roznamcha entry No. 38, which entry he produced at Ex. 9/H. Thereafter, under the same entry he left the P.S for completing CRO proceeding. After completing CRO proceeding, he came back to the police station vide entry No. 41. He produced the same at Ex. 9/I. He also produced CRO record of accused at Ex. 9/J. The accused was not previously involved in any criminal case. Meanwhile, vide entry No. 30 on dated: 30.11.2020, the U/s. 377 PPC was deleted and section 376 PPC was added. Thereafter, he moved an application to the learned Judicial Magistrate for recording statement U/s. 164 Cr.P.C. He produced such application at Ex. 9/K. Meanwhile, such application was allowed and statement U/s. 164 Cr.P.C of victim was recorded. He also served a notice U/s. 160 Cr.P.C prior recording of statement U/s. 164 Cr.P.C of accused at Ex. 9/L. He also produced entry No. 30 under which section 376 PPC was added at Ex. 9/M. He also produce entry No. 28 dated: 30. 11.2020 at Ex. 9/N. After completing the investigation, he submitted charge sheet against the accused Muhammad Ashraf S/o Manzar Hussain, U/s. 376 PPC read with section 511 PPC. Accused Ashraf present in Court is same accused.

23.     During his cross examination made by learned counsel for accused, he stated that the FIR was registered on 20.11.2020. His duty timing was from 2000 hours to 0800 hours. He was present at the police station in the investigation branch when he received FIR at about 2310 hours on 20.11.2020. He left the P.S at about 2310 hours after receiving FIR for the purpose of inspecting the place of alleged offence along with complainant, mashir Shahid, who was relative of complainant and police party consisting upon police constables. He does not remember the names of members of police party due to lapse of time under entry No. 56 in government police mobile. He does not remember the number of police mobile. He admitted that name of lady police constable is not mentioned in charge sheet. At first he arrested the accused and then he inspected the alleged place of offence. He has not secured any bed sheet or anything else at time of inspecting the place of incident. He has not found any incriminating article i.e any cloth having semen material etc including bed sheet. He started memo of site inspection at 0025 and completed the same at 0035 hours. Family members of accused were available in the house. He has not recorded the statements of family members of the house of accused Ashraf during the course of investigation. He see FIR at Ex. 4/A. He admitted that that according to FIR the alleged incident was taken place on 18.11.2020 and prior 18.11.2020 on different timings. He admitted that house of accused where the alleged incident taken place is situated at thickly populated area. He admitted that he has not called any neighbourers and recorded their statements in order to verify the incident. After arrest of accused, he took him to the hospital for his medical examination. After completing medical of victim and accused, he came back to the police station. The victim was medically examined on 21.11.2020. At first medical of accused was taken place and then of victim. He does not remember the time of examination of accused. Voluntarily said it would be written on medical certificate. The WMLO took about 30 minutes while examining the accused. He do not remember the time when victim was examined. He deposed that  however, time is mentioned on the MLC. He admitted that MLC was not issued on the same night. He deposed that, WMLO referred the victim to Gyne Unit-iii, therefore, he produced the victim Gyne Unit-III, in the following morning and thereafter, he submitted report to the WMLO and thereafter, WMLO issued MLC No. 111/2020. He admitted that he served the notice upon complainant on the same date 21.11.2020 for producing the victim for her examination at Gyne Unit-III. He left the police station at 0920 hours and thereafter, he reached to the Abbasi Hospital along with complainant and victim. The victim was examined by the RMO of Gyne Unit in the same morning. He admitted that as per MLC issued by the WMLO the victim baby was not subject of any type of sexual intercourse. He admitted that no vaginal swab has been secured by the WMLO and handed over to me.  He deleted section 377 PPC and added section 376 PPC. He has deleted the section 377 PPC as per advised of ADPP concerned. He admitted that section 377 PPC was deleted after medical examination of victim and accused. He deposed that victim was female baby, therefore, section 377 PPC converted into section 376 PPC. The victim was normal when he recorded statement U/s. 161 Cr.P.C of victim and as well as she was normal at the time of her medical examination. He has not mentioned such fact in the contents of charge sheet that accused had been committing such bad activities with the same victim for last one year as alleged by victim in her statement recorded U/s. 164 Cr.P.C. He admitted that according to the contents of FIR complainant alleged that accused attempted to commit rape with her daughter on dated: 18.11.2020 and as well as prior that on different timings. He asked the complainant to produce the real father of victim but she did not produce the father of victim by saying that after divorced she is not in contact with him. The victim was medically examined after consent of her mother. He deposed that at time of medical examination, the victim was frightened, therefore, WMLO referred her to Gyne Unit. He admitted that no sexual intercourse was taken place with the victim. He further deposed  said according to MLC, it was the case of attempt to commit rape. He admitted that accused has two sons and two daughters from his first wife (late). He admitted that the children of accused were residing in the same house. He admitted that accused has not issue/ward from the complainant who is his second victim. He admitted that according to FIR, complainant was married with accused in the year 2015. He admitted that at the time of marriage of accused with the complainant, the victim baby would be aged about 02 years. He does not know if the house of accused is admeasuring about 240 Sq. Yards. He further deposed that it is a big house. He does not know if accused is himself is the owner of said house as per revenue record. He does not know if complainant asked the accused to transfer the title of the subject house in her name but accused refused to do the same, therefore, complainant has allegedly lodged a false FIR by using her own daughter. He further deposed that  he has challaned the accused on the basis of medical report. He denied that accused has not made any attempt to commit rape of victim. He denied that victim was residing with accused being her step daughter since 2013. He admitted that prior the alleged incident, there was not complaint received at the police station against the same accused in respect of any misbehaved with the alleged victim or in respect of any alleged attempt to commit rape with the same victim. He has not in knowledge if complainant is still wife of the accused. He denied that he has falsely challaned the accused at the instance of complainant party.

24.     P.W-06 ASI Ghazan Zada was examined at Ex.10, who deposed that on 20.11.2020, he was posted as duty officer/ASIP at P.S Iqbal Market. His duty timings were from 2000 hours to 0800 hours next morning. On the same day, at about 2300 hours, complainant Mst. Majida Khatoon W/o Ashraf R/o H.No.132, Chishti Nagar Sector 11-½ Orangi Town Karachi came at P.S and deposed the facts of case cognizable in nature punishable under section 377, 511 PPC against nominated accused namely Ashraf S/o Manazir Hussain. He accordingly lodged FIR No. 360/2020 as per verbatim of complainant against the accused. Thereafter he read over the contents of FIR before her to which she admitted the same as true and correct and then put her signature. He identified  such FIR at Ex. 04/A. He also kept such fact of lodging of FIR in Roznamacha Register in entry No.55, which he see at Ex.9/A. Thereafter he handed over the investigation of the case to SIO. Meanwhile I.O ASI Asim Hussain Shah recorded his statement under section 161 Cr.P.C..

25.     During his cross examination made by learned counsel for accused, he stated that as per contents of FIR the alleged incident had taken place on 18.11.2020. The complainant came at the police station at 11:00 pm on 20.11.2020. The victim Kashaf was accompanied with the complainant with one relative of complainant at the time of lodging of FIR. The victim came at the police station by feet with complainant. As per contents of FIR complainant prior lodging of FIR produced the minor victim before a private doctor in the same area. He had not referred the victim for medical examination to any hospital. The complainant directly came in the room of duty officer at the time of lodging of FIR. He himself lodged the FIR of the complainant. FIR was lodged after the delay of two days. He had lodged FIR U/s 377 R/w section 511 PPC instead of section 376 R/w section 511 PPC, voluntarily said due to oversight he mentioned section 377 instead of 376 and later on section was corrected on the FIR by the investigating officer. He denied that he has wrongly lodged FIR. The FIR was written with his own handwriting. He lodged FIR as per verbatim of complainant. He admitted that according to the contents of FIR the complainant stated in FIR that victim had stated to her that accused had prior the alleged incident also attempted to commit with the victim on different occasions. He admitted that prior this FIR complainant had not lodged any complainant against the said accused alleged to attempt commit Zina with the same victim baby at the same police station. He admitted that he has lodged FIR in respect of attempt to commit rape. He admitted that according to the contents of FIR private doctor suggested to the complainant that sexual intercourse occurred with the complainant. He denied that he is deposing falsely at the instigation of complainant who was allegedly in dispute with the accused over the plot of 240 square yards.

26.     It is pertinent to mention here that in order to prove himself as innocent the accused examined himself on oath under section 340(2) Cr.P.C. He deposed that Complainant Majida Khatoon is his wife. Victim Kashaf is the daughter of his wife Majida Khatoon. Complainant is his second wife. He has  no issues from complainant Majida Khatoon. He was  married with complainant since five years ago after the death of his first wife. From first wife, he has  four children including two daughters namely Afreen and Sana and sons namely Aamir and Arshad. He along with complainant and her daughter residing in the same house No. 123, Street No. 12, Sector 11 ½, Ittehad Colony, while his children from first wife are also residing in the same house. At the time of his  marriage with Majida Khatoon her daughter Kashaf was 18 months aged only. His wife/the complainant used to fight and quarrel with him on the issue to transfer the ownership of H.No. 123, admeasuring about 240 yards on her name but he used to refuse to transfer the ownership right in her name. The complainant was under wrong impression that her children will manage to usurp the house in question and will get transfer the same in their names. He used to go on his job and used to come in the evening and in his absence, one Shahid used to visit his house in order to meet his wife. On his enquiry, his wife informed him that Shahid was her relative. His wife used to threats him that if he will not transfer the house in her name they will got killed him. She also used to threats him that she will manage to book him in false cases. He has not committed alleged offence as alleged by the victim or by the complainant. He always treated alleged victim Kashaf like as his real daughter and he also gave him such due respect like his other daughters. He  even cannot think to commit any alleged offence with victim Kashaf as since her childhood she is living with him and there was no any previous complaint. He is innocent. No such alleged incident has been taken place.  He has never issued any threat to victim or complainant. The medical of the victim has been got managed by the complainant. He will also produce his children and area people as his defense witnesses.

27.     He was cross examined by the learned ADPP for the state. During the cross he admitted that baby Kashaf is the daughter of complainant Majida from her first husband namely Kalam. He admitted that  at the time of lodging of FIR, the age of victim was 07 years. He admitted that he has  two portions in his house. In one portion he was residing with complainant and victim and in another portion, children of his first wife were residing. He deposed that, both the portions are situated in the same house having one door of entrance. He admitted that he used to sleep with complainant and victim in a room. He admitted that he had not moved any application or complaint against his wife in respect of alleged threat of killing or other threats to any police station, court or area councillor. He deposed that however, he informed his relatives and area people about alleged threats of killing and other threats issued the complainant against him. One Shahid was visiting his house in his absence for last two months from the date of alleged incident. He admitted that he has loved and affection with baby Kashaf.  He deposed that, she was like his own daughter, therefore, he was upbringing her. He denied that he used to touch the victim with bed intention. He denied that he used to sit her in his lap with bed intention. He deposed that however, he used to take her in order to purchase eatable things from shop by holding her hands like his daughter.  He admitted that Kashaf used to go and come school with him, and sometime with her mother. He denied that on 18.11.2020, in the night time at H.No. 132, Mohallah Chasti Nagar, Sector 11 ½, Orangi town, Karachi he removed the shalwar of his step daughter/minor baby Kashaf aged about 07 years and attempted to commit rape of her. He admitted that victim Kashaf was examined in this Court. He deposed that whatever deposed by the Kashaf was taught by her mother who was with inimical terms with him due to dispute over property. He denied that complainant never demanded to transfer the plot in question in her name. He deposed that the complainant started such demand six month priors of alleged incident. He admitted that he has not made any complaint against complainant in respect of alleged fighting and quarrelling with him. He admitted that the D.Ws namely Afreen, Sana and Aamir are his children. He admitted that D.W Naseema is his real sister and D.W Muneeba is her niece. He denied that rest of D.Ws are his close friends. He denied that all the D.Ws came in Court as per his request. He deposed that the D.Ws came in Court in order to give evidence whatever they know about the facts of this case. He denied that he deposed falsely before this Court.

28.     In support of his claim the accused also produced four defence witnesses, which are reproduced herein under as;

29.     At first DW NO.1 Mst. Naseema Khatoon was examined at Ex.14. She deposed that that accused Muhammad Ashraf is her younger brother. Complainant Majida Khatoon is her sister in law. Victim Kashaf is the real daughter of complainant Majida who is second wife her brother. On the date of alleged incident, he was at her house situated far from the house of accused in Orangi Town. She used to visit the house of her brother after his marriage with complainant Majida Khatoon. Her brother Ashraf is innocent. Whenever she visited the house of her brother, the complainant Majida Khatoon used to demand from her brother Ashraf to transfer the subject house in which she was residing with her brother in her name, however, her brother has not transfer the subject house in the name of complainant despite of her repeated demand. Due to such fact, both the complainant and accused used to fight and quarrel with each other. The behavior of her brother with his step daughter Kashaf was very good and he used to keep her like his own daughter. Lastly, she deposed that her brother has falsely been implicated in this case by the complainant. She was cross examined by the learned ADPP for the state.

30.     During cross made by learned ADPP for the State that she stated that she herself came in Court for giving her evidence. She admitted the suggestion that she has not received any notice from this Court. She further stated that she is not residing with her brother in his house. Her house is situated in another area. She does not know if one Shahid is the relative of complainant. She further stated that she and her brother have not made any complaint against complainant Majida Khatoon in respect of alleged issuance of threats to her brother accused Ashraf if ownership right of subject house not transferred in her name. She denied that she deposed falsely.

31.     Thereafter DW No.2, Mst. Sana was examined. She deposed that accused Muhammad Ashraf is her father. Her mother has been expired. After the death of her mother, her father Muhammad Ashraf contracted second marriage with complainant Majida Khatoon. Baby Kashaf was the real daughter of Majida Khatoon from her first husband. She is unmarried residing in the same house where complainant and victim are residing. On the alleged date of incident, she was available in the house but neither the complainant nor the victim disclosed anything about alleged incident to her or to other family members. They are residing in the joint family system. Her father is a very responsible person and used to prayer five time daily. He used to keep them well maintained without any complaint. The attitude of her father with her step daughter Kashaf was very good and he always treated Kashaf like her real daughter as he used to treat them. She further deposed that her step mother/complainant of this case always used to demand from her father to transfer the ownership right of the subject house where they were residing in her name. Since, they were residing together, therefore, she was witness that since her father did not  accept the demand of complainant Majida Khatoon, therefore, she used to fight/quarrel with her father and used to issue threats of involving her father in false cases. Her father always asked her step mother to live happily with her other children but her step mother always asked that after the death of her father his other children will expel her from the house. Her father has not committed alleged offence with baby Kashaf. Her step mother has falsely implicated her father in this case and her father is innocent.

32.     She was also cross examined by the learned ADPP for the state. During cross made by learned  ADPP for the State that she stated that she came in Court to give evidence in favor of her father. She was called in Court by the Court. She is studying in second shift. Her school timing is 12 Noon to 05:00 P.M. She further stated that her father had not made any complaint against her step mother in respect of alleged issuance of threats issued by her step mother to her father if he would not transfer the subject house in her name, at any forum. She denied that her father has attempted to commit rape of victim baby Kashaf and further added that her father cannot think to do such offence as he always treated baby Kashaf like his own daughter. She further denied that she was falsely alleging against the complainant and  complainant never demanded transfer of house in her name from her father and further added that  complainant used to force her father to sign on blank paper.

33.     ThereafterDW NO.3. Muneeba was examined at Ex. 16. She stated that accused Muhammad Ashraf is her real paternal uncle. She is residing in the same house of accused. Victim Kashaf is her cousin. Complainant Majida Khatoon is the wife of her real paternal uncle/accused. Accused Muhammad Ashraf/her  paternal uncle is very nice person. Majida Khatoon her paternal aunty used to demand from paternal uncle/accused to transfer the property/house in her name. She was also cross examined by the learned ADPP for the state.

34.     During cross made by learned  ADPP for the State that she stated that she came in Court in order to give evidence. She denied that she came in Court as per instigation of accused and she has been taught by her father to depose such fact as she was deposing in Court. She further added that  whatever she know about the facts of the case she had have deposed before this Court and she denied that she was deposing falsely.

35.     At last DW NO.4 Zahir Hussain was examined at Ex. 17, who deposed that he knows the accused Muhammad Ashraf for last 30 to 35 years. Ashraf has four children from his first wife. After the death of first wife, Ashraf contract second marriage with complainant who had one daughter from her first husband. Accused Muhammad Ashraf is very noble and gentleman. He further deposed that he has so many time heard quarrel and fighting in between accused Ashraf and his wife as they used to blame each other. Accused Ashraf is the owner of the house. He further deposed that he could not expect from accused to commit alleged offence with his own step daughter.  He was also cross examined by the learned ADPP for the state.

36.     During cross made by learned ADPP for the State that he stated that today, he came in Court along with 4/5 other area people beside the relatives of accused. He is residing in the same area where accused is residing. There is road in between the house of accused and his residence. They used to interfere in between complainant and accused on the occasion of quarrel between them. He was aware about the allegation on accused in which he is confined in jail that accused has allegedly attempted to commit rape of her step daughter. He denied that accused is characterless person and further added that accused is a noble person and thorough gentleman and he has never heard any immoral complaint against accused for last 30 to 35 years. He denied that he was given false evidence in favor of accused at the instigation of accused. He further stated that he does not know if there was any litigation in between complainant and accused in respect of ownership of his house.

37.     From the minute sifting of evidence of prosecution witnesses and as well as  well as available material and record, it appears that the entire case of prosecution revolved around its star witness/alleged victim Kashaf, aged about 07 years. The victim was confident enough when she appeared into witness box and has categorically implicated the present accused and fully supported the case of prosecution. The above named victim was cross examined at length by the counsel of the accused but nothing fruitful came on record to provide any benefit to accused and to create any dent in prosecution story. The testimony of victim appears to be true, genuine and confidence inspiring. Nothing has come on record that her statement was tutored to her in any manner to falsely implicate the present accused. The victim baby has uttered truth and only truth from her mouth and there appears no mixture of falsity in her statement when she has fully implicated the present accused for commission of attempt of rape with her. Furthermore, the Court had asked number of questions from the victim to establish but she was competent to testify and the Court had recorded that she was quite mature and had answered the questions satisfactorily and was a competent witness. She was cross examined at length by the counsel of accused yet no material contradictions emerged nor did she resign from the accusation she had made against the present accused. The victim proved her reliable witness and was physically examined by WMLO and the said WMLO has supported the version of victim. Prior to this she also came in Court and recorded her statement disclosing the whole incident. She produced her statement U/s 164 Cr.P.C and the contents of her statement recorded U/s. 164, Cr.P.C and the present statement are almost identical and proved the guilt of the accused beyond any shadow of doubt for she has fully implicated him and her statement remained unshakey and unshattered.

38.     The requisite elements of an attempt to commit a crime are: intent to commit it; an overt act towards its commission; failure of consummation and the apparent possibility of commission. More so, attempt is an act done in part execution of a criminal design amounting to more than mere preparation, but falling short of actual consummation and possessing, except for failure to consummate, all the elements of the substantive crime. Another definition of attempt is that intentional act with a view to attain certain end but which fails to consummate its commission because circumstances beyond control of offender. Here in this case accused attempted to commit rape of the  minor victim but remained unsuccessful however due to her act the private part of the  minor victim became red and such redness was found by the WMLO who checked the victim on the following day of the alleged occurrence. It appears that said WMLO was cross examined on the point of redness visible on the private part of the victim and I reproduce the same here as under;

*“She admitted that she has not found any mark of injury on the body of victim.  She has not taken into possession the cloths of the victim. She deposed that since there was delay of about 02 days therefore, she has not advised for the same. The complainant and mother of the victim both have alleged about commission of rape. However she has admitted that the victim was not subjected to sexual intercourse. She denied that there was no redness on vaginal part of the victim. She deposed that such redness can remain up to 2 or 3 days on sensitive part in case of rape or attempt to rape”.*

Here in this case the victim was examined by the WMLO after two days of the alleged occurrence and such redness  on the vaginal part of the victim as found by the WMLO is supporting the claim of the victim, hence I am of the view that statement of the victim is proved from the statement of victim, which constitute an attempt since no other intention would be possible except that of desire of accused to commit rape of victim*.*

39.     I am not convinced with the contention of the learned counsel for the accused that accused is innocent as there is no DNA report. In present circumstances, the offence of an attempt of rape with victim baby Kashaf has been established against the present accused beyond any shadow of doubt. Furthermore, their lordships in its recent Judgment **Farooq Ahmed Versus The State (PLD 2020 Supreme Court 313)** have held “DNA testing is not a requirement of law”. In the same judgment, their lordships have placed reliance upon **case title Haji Ahmed Versus The State (1975 S.C.M.R 69)*“omission of scientific test of semen status and grouping of sperms is neglect on the part of prosecution which cannot materially affect the other evidence”*.** In the judgment of their lordships, it has been categorically settled that when the 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.

40.     I am also not convinced with the  contention of the learned counsel for the accused that complainant has falsely implicated the present accused in this case due to dispute upon the transfer of property.  It is matter of record that the complainant was cross examined at length but nothing material on the point of dispute over the transfer of property came on record to benefit the accused. The learned counsel for accused made emphasis on this point that the victim/ minor girl has deposed in court at the instance of the complainant who is intends to blackmail the accused to transfer the  property in her name.

41.     Furthermore, nothing came on record that there was any ill-will, malice and malafide on the part of victim or on part of her family or on part of police to falsely implicate the accused in the present offence. Though, learned counsel for the accused claimed that complainant who is the  wife of the accused and  was blackmailing the accused for transferring the ownership of the subject house in her name, therefore, the complainant and victim has falsely booked the accused in present false case. From the above testimonies of prosecution witnesses, it is crystal clear that the accused has committed the shameful act of attempt of rape with the victim. All the prosecution witnesses were cross examined at length and nothing material came on record to shake and dent their testimonies. There are certain natural and immaterial contradictions and discrepancies in investigation which have not hampered the case of prosecution in any manner and prosecution case stands fully proved. In respect of the defence witnesses and defence of the accused it appears that the accused and all the defence witnesses have claimed that since the complainant demanded the ownership of house and when complainant refused for the same he has been booked in his case by the complainant. It appears that defence witnesses are not the eye witnesses of the alleged occurrence and they have mainly deposed that they cannot expect such alleged offence from the accused who is an old age man. I am of the view that evidences of the defence witnesses have not weakened or shattered the evidence of the complainant and victim which is fully supported by the medical evidence that redness was found on the vaginal part of the victim.  I am satisfied that in the present case, the prosecution has established its case against the accused beyond reasonable doubt. The case law cited by the learned counsel for the accused is on different footing from the facts of the present case.  I am of the firmed view that the present accused has committed the shameful offence of an attempt of rape with the victim as such point under discussion is answered in affirmative.

**POINT NO. 2:**

42.     In view of forgoing facts, circumstances and discussions made in point No.1, this Court has reached to the conclusion that the accused has made an attempt to commit shameful act of rape of victim baby Kashaf. The offence of an attempt of rape U/s. 376 read with section 511 has been fully proved against the accused beyond shadow of any doubt. It appears that accused is an old aged person having aged of about 58 years. The accused Ashraf son of Manazir Hussain  is convicted U/s. 265-H(ii) Cr.P.C and sentenced to rigorous imprisonment for three (03) years and he is also liable to pay fine of Rs. 100,000/- (one Hundred Thousand Rupees). In case of default in payment of fine, the accused shall further undergo simple imprisonment for a period of six (6) months. The accused is also awarded benefit of section 382-B PPC. He is in custody since 21.11.2020. The accused is produced in custody by jail authority, he is remanded back to prison to serve out the sentence strictly in accordance with law. Let the copy of Judgment be supplied to the accused as required under the law.

**ANNOUNCED IN OPEN COURT**.

          Given under my hand and seal of the Court on this 22nd day of October, 2021.