

in the present case. Nowadays, the above type of crime is on peak in the society which creates harassment for teenagers girls so the same should be dealt with iron hands.

In the light of above discussion, I hereby decide Point No.1 as affirmative.

POINT NO.3.

In view of the findings on point No. 1, I am of the opinion that the prosecution has proved its case against the accused beyond shadow of reasonable doubt, therefore the accused Muhammad Akmal Khan s/o Babu Gull Afzal Khan is hereby convicted u/s.265-H(ii)Cr.P.C for commission of offence under section 376/511 PPC and sentenced him to suffer R.I 5 years and fine of Rs.50,000/-. In default, he shall undergo S.I. for 6 months. Benefit of section 382-B Cr.P.C is also extended to the accused. Accused is produced in custody, he is remanded back to custody alongwith his conviction warrant to serve out the sentenced period.

Announced in open Court.

Given under my hand and the seal of the Court on this 01st day of January,

2022.

recording her 164 Cr.P.C statement. After completing investigation, he submitted challan before the Court. He also identified the accused before the Court and produced the case property i.e. one blue colour shirt and one mustered colour trouser in sealed condition which were de-sealed before the Court and fully identified by I.O. In this regard, he produced entry No.9 as Exh.10/A, entry No.20 and 26 as Exh.10/B, application of CDR as Eh.10/C, CDR as Exh.10/D, CRO of accused as Exh.10/E, application for DNA and chemical examination as Exh.10/F and notice u/s 160 Cr.P.C as Eh.10/G.

In cross examination he deposed that **"It is correct to suggest that I did not ask the surrounding person about the incident. Vol. says the incident took place inside the shop."** However, he denied before the Court that **"It is incorrect to suggest that according to my investigation, the present offence is not made out against accused."**

After perusal of above evidence and record it appears that all the PWs have fully supported the version of prosecution, even the victim whose age is about 9 years has fully identified the accused and fully described the role of accused although learned defence counsel cross examined the minor baby but no any contradiction came on record in evidence of victim and other PWs. On the other hand, the learned defence counsel emphasis on the ground that there is no any eye witness of the incident although the Bakery (place of incident) is situated in residential area and other shops are also situated near the said Bakery, but record reveals that accused committed attempt to commit rape of victim inside the counter of Bakery as victim deposed that accused caught hold her from her shoulder and entered her inside the counter of the Bakery, and memo of inspection reveals that the height of the counter is about 3 or 4 feet so may be nobody could not see the act of the accused. Record also reveals that victim also deposed against the accused before the learned Judicial Magistrate in her 164 Cr.P.C statement as well as in evidence before the Court. The owner of the Bakery PW Muhammad Faisal Nadeem also deposed against the accused that on the day of incident at evening time his another salesman Usman told him that accused tried to commit zina with the victim.

So far the DNA report of accused is concerned, the WMLO Dr.Sidra already deposed in her evidence that "No vaginal swab or clothes were taken for analysis, as the patient had changed the clothes and findings were within normal limits." However, the act of the accused has spoiled the whole life of the victim whose age is about 9 years and she can not forget the act of accused in her whole life." On the other hand, the accused has failed to bring any enmity with the complainant and private witness (Muhammad Faisal Nadeem owner of shop/place of incident) to falsely involve him in this case. Record reveals that no any contradiction came in evidence of prosecution witnesses although the victim is 9 years old, but she recorded her evidence against the accused and described his role. It is held by our Superior Courts that evidence of victim is sufficient for conviction of accused, but in present case the other PWs also supported the version of victim. In a recent judgment reported as Atif Zareef Vs. State (PLD 2021 SC 550) the Court has categorically held that *"Rape is a crime that is usually committed in private, and there is hardly any witness to provide direct evidence of having seen the commission of crime by the accused person. The Courts, therefore, do not insist upon producing direct evidence to corroborate the testimony of the victim if the same is found to be confidence inspiring in the overall particular facts and circumstances of a case, and considers such a testimony of the victim sufficient for conviction of the accused person. A rape of the victim is sufficient for conviction of the accused person. A rape victim stands on a higher pedestal than an injured witness, for an injured witness gets the injury on the physical form while the rape victim suffers psychologically and emotionally."*

In present case, the victim had specifically named the accused in her testimony before the Court and has fully identified him. There is no previous enmity between the parties, which could lead to false implication of the accused

incident to him. My daughter further disclosed that she also washed her body prior to my reaching at house. On the next day, my husband brought Ayesha to bakery for identification of accused, but he was not present there. The other salesman of the shops showed the photo of accused in their mobile to Ayesha and she identified the accused to be same. Thereafter FIR was lodged. Police also recorded my 161 Cr.P.C statement."

In cross examination she denied that "It is incorrect to suggest that I falsely deposed before the Court. It is incorrect to suggest that I have some dispute with the accused so I falsely implicated in this case."

Learned Judicial Magistrate Mrs.Surkhabunnisa also recorded her statement before the Court as PW-4 at Exh.6. She stated that on 13.12.2021 she recorded statement of victim under section 164 Cr.P.C in which victim deposed against the accused. In this regard, the learned Judicial Magistrate produced letter of sealing of 164 Cr.P.C statement as Exh. 6/A, 164 Cr.P.C statement of victim as Exh.6/B, application moved by I.O as Exh.6/C and envelope as Exh.6/D.

In cross examination she denied that "It is incorrect to suggest that I did not ask any question from the victim before recoding her statement for determination her I.Q level. Vol. says but I did not mention the same in 164 Cr.P.C statement."

Prosecution also examined private independent witness namely Muhammad Faisal Nadeem as PW-5 at Exh.7. He is also one of the mashir of memo of inspection. He also identified the accused with the contention that "On 27.01.2021, I was at my factory. On the same date in evening time, our salesman Umer told through phone that our salesman Akmal tried to commit zina with Ayesha. We then tried to contact Akmal whereupon he said that he would come, but he did not come and then switched off his mobile phone. On 29.01.2021 police came at our shop alongwith Ayesha who pointed out the place of incident. Police prepared memo of inspection and obtained our signature. I.O also recorded my 161 Cr.P.C statement."

In cross examination he denied that "It is incorrect to suggest that usually rush are there in bakery. Vol. says persons used to come and go at bakery. It is correct to suggest that camera is affixed in my bakery but the same is not CCTV as the same can not record anything. It is incorrect to suggest that memory card was available in camera and I intentionally concealed the said fact to support the complainant. It is incorrect to suggest that on pressure of complainant, I recorded my evidence before the court."

Prosecution also examined WMLO Dr.Sidra Tariq as PW-6 at Exh.8. She deposed that on 29.01.2021 at Abbasi Shaheed Hospital, she medically examined the victim. However, she deposed that no vaginal swab or cloths were taken for analysis, as the patient had changed the cloths and findings were within normal limits. However, She deposed that "She may be subjected to attempt, but penetration has not been achieved." In this regard, she produced medical certificate as Exh.8/A.

Prosecution also examined MLO Dr.Usman Hashmi as PW-7 at Exh.9. He deposed that on 10.02.2021 at Abbasi Shaheed Hospital he medically examined the accused. He further deposed that "As per clinical findings, I am of the opinion that the above person is capable to perform sexual intercourse in ordinary course of nature." In this regard, he produced medical certificate as Exh.9/A, medical letter as Exh.9/B, DNA report as Exh.9/C and envelope as Exh.9/D.

Prosecution also examined Investigating Officer S.I Muhammad Imran as PW-8 at Exh.10, he deposed that on 29.01.2021, he received the investigation of present crime. During investigation he inspected the place of incident, took photographs of place of incident and recorded statement u/s 161 Cr.P.C of PWs. During investigation on 31.01.2021 he sealed the wearing cloths of victim and prepared memo of seizure of cloths. During investigation accused and victim were medically examined and also produced the victim before the learned Judicial Magistrate for

want, I can took the same. The accused person removed my shalwar, so I made noise, but accused covered my mouth by keeping his hand. He also removed his shalwar and entered something in my back side. I deposed to leave me, otherwise my mother will come so he said that I disclosed the same to any person, then he shall kill me. Thereafter he left me and I proceeded at my house and I washed my body, thereafter in night I disclosed the same to my mother. Thereafter my mother disclosed the same fact to my father. At morning my parents brought me at the shop of accused, but he was not available there, but his another shopkeeper was present there and on my parents request, he showed the picture of the accused which I identified before my parents. On second day we also went at PS. The another shop keeper also disclosed the address of accused person to my father. Police also arrested the accused. Doctor also checked me at hospital. One another court also recorded my statement. Police also recorded my statement."

In cross examination she denied that "It is incorrect to suggest that bakery in question is a big. It is incorrect to suggest that guards were also present outside the bakery. It is incorrect to suggest that other children were also accompanied with me when I proceeded at the shop of accused." She deposed that "On the day of incident no other shopkeeper was present with the accused. Vol. says he was alone in his shop." She further denied that "It is incorrect to suggest that first time I saw the accused in the court. Vol. says I saw him at the shop." She further deposed that "Accused committed act with me from my back side of my body and I also disclosed the same fact to police." She further denied that "It is incorrect to suggest that no any incident was took place with me."

Prosecution also examined mother of victim namely Irum Jahangir as PW-3 at Exh.5. She also identified the accused before the Court with the contention that "On 27.01.2021, I had gone to stay at the house of my mother due to my un-well condition. On the same date, at 01:40 p.m I came back at my house alongwith my daughter Ayesha and son Shahwaiz, which is situated at Abdullah Arcade, Block-H, North Nazimabad. When I reached at main gate, I sent Ayesha for purchasing milk and bread from the shop which is situated near my house. When Ayesha did not come back within 5 minutes, I felt some cervical pain, so I requested chowkidar of my building to send Ayesha at house and I went at my house which is situated on third floor. I felt some unusual, so I worried and tried to search Ayesha. I came down from the building and asked from watchman about my daughter Ayesha. I then went at milk shop where shopkeeper informed me that she came and demanded some cake-rusks, but same was not available at my shop so she went at another shop. I also tried to search my daughter in surrounding shops, but did not find. I stared weeping and also tried to search my daughter, meanwhile I received call of my husband who told me that Ayesha reached at house so I went at my house and when I saw my daughter, I started weeping loudly. I also noted that my daughter Ayesha was weeping and was in fear condition and continuously stating that she will never ever go again, as she used to get teaching of Sipara (religious education) from one lady who is residing at first floor, but on the same day my daughter refused to go alone and requested me to get accompany her brother with her, so she went for reading Sipara and at night when I sat with my children my daughter Ayesha told me that in the coming event of her birthday, please do not purchase the cake from the bakery. I surprised and asked the reason and in reply she stated that the uncle who is running "Test Treat" bakery is not good. She further disclosed that when she went at the bakery, there were 3 to 4 persons were present and when she tried to purchase something, the shopkeeper did not give attention to her and at last when nobody was present in the bakery, the shopkeeper pulled her from her shoulder and took her inside counter where he removed her shalwar and also touched private parts of her body and also entered something in her back side. She further disclosed that she felt some water in her private part of body. She again and again requested the shopkeeper to leave her and at last he left her and ordered to come again tomorrow and do not told the said incident to her parents. I felt I kept her comfortable, but when my husband came at house, I disclosed the said

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

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

POINTS

POINT NO.1: Whether on 27.01.2021 at 1400 hours, inside shop namely "TastTreat" at service road, Block-H, North Nazimabad, Karachi, accused Muhammad Akmal Khan attempted to commit rape of Ayesha d/o Jahanzaib?

POINT NO.2. What should the judgment be?

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

FINDINGS

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

POINT NO.2. -----Accused is convicted under section 265-H(ii) Cr.P.C for the offence punishable under section 376/511 PPC.

REASONS

POINT NO.1.

In order to prove this point, the prosecution examined complainant Jahanzaib as PW-1 at Exh.3, he is one of the mashir of memo of inspection and memo of seizure of wearing cloths. He identified the accused with contention that "On 27.01.2021, when I returned back at my house at 0200 hours or 0300 hours on 28.01.2021, my wife was weeping and told that one Akmal has committed rape of my daughter at his bakery. At morning, I went at the bakery of accused. I also called my brother in law namely Kamran, but I found that bakery was closed, as accused used to open his bakery at about 10:00 to 11:00 p.m, but on the same date, accused did not open the bakery, so another person opened the bakery, so I went at the bakery of accused alongiwty my daughter namely Ayesha. I enquired from my daughter that who committed rape with her, but my daughter deposed that the person who committed rape with her is not present at the present at this moment. After some time my brother in law also came there and with the consent of my brother in law, I proceeded at PS Hyderi Market, where I gave detail of incident to police official, but police official also advised to come again alongwith my daughter, so I brought my daughter from the house at PS where one LPC was present. At PS lady police official confirmed the incident from my daughter. I want to lodge FIR, but police official kept me in fear with contention that matter may be reported in media so I came back at my house alongwith my daughter, but myself was not satisfied so with the consent of my wife at morning I again went at PS and lodged FIR. May be on same day of FIR, police inspected the place of incident where police took picture of the place of incident and also asked my daughter about the incident and prepared some documents and obtained my signatures. Thereafter after receiving medical letter, I also went at Abbasi Shaheed Hospital alongwith my daughter for medical examination. After two days, police also seized the wearing cloth of my daughter and prepared some documents." In this regard, he produced medical letter as Exh.3/A, FIR as Exh.3/B, memo of inspection and four photographs as Exh.3/C and 3/D and memo of seizure as Exh.3/E.

In cross examination he denied that "It is incorrect to suggest that no any incident took place and I just lodged FIR on the instigation of my wife."

Victim/Ayesha also recorded her evidence before the Court as Exh.4, she fully identified the accused with the contention that "On 27.01.2021, I went at TastTreat Bakery for purchasing Bun(bread). At afternoon about 01:00 to 02:00 p.m, when I reached no any other person was present there, however, after some moment about 3 customers came at bakery, so accused Akmal who was shop keeper stopped me and gave articles to other persons whatever they purchased. Accused person by force gave me some biscuit for eating. I slowly moved the back, but accused caught hold me from my shoulder and entered me inside the counter of bakery and asked me whatever I



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IN THE COURT OF II ADDITIONAL SESSIONS JUDGE KARACHI CENTRAL

Before Mrs. Zabiha Khattak

Sessions Case No. 479 of 2021

The State-----Complainant

VERSUS

Muhammad Akmal Khan s/o Babu Gull Afzal Khan,

R/o House No.B-101, Qasba Colony,

Manghopir Road, Karachi.-----Accused

FIR No.45/2021

U/S.376/511 PPC

Police Station, Hyderi Market

Mr. Iqbal Shah, learned counsel for accused.

Mrs. Kubra Syed, learned ADPP for the State

J U D G M E N T

01.01.2022

Accused Muhammad Akmal Khan s/o Babu Gull Afzal Khan was sent up to face trial for offences punishable under sections 376/511 PPC, FIR No.45/2021 of Police Station Hyderi Market, Karachi.

Brief facts of the case are that on 29.01.2021, complainant Jahanzaib s/o Zareen Badshah lodged FIR at PS Hyderi Market, stating therein that 27.01.2021 at about 02:00 p.m his daughter namely Ayesha, aged 12 years went outside house for purchasing bread from shop with the name & style "TastTreat", Block-H, North Naziabad, where one person whose name later on came into knowledge to be Akmal, brought Ayesha behind the shop and tried to commit her rape. Hence the FIR.

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

At the trial the prosecution examined complainant Jahanzaib as PW-1 at Exh.3. Victim Ayesha was examined as PW-2 at Exh.4. The mother of victim namely Irum Jahanzaib was examined as PW-3 at Exh.5. Learned Judicial Magistrate namely Surkhab was examined as PW-4 at Exh.6. Muhammad Faisal Nadeem was examined as PW-5 at Exh.7. WMLO Dr.Sidra Tariq was examined as PW-6 at Exh.8. MLO Dr.Usman Hashmi was examined as PW-7 at Exh.9. Lastly prosecution examined I.O S.I Muhammad Imran as PW-8 at Exh.10. After completing evidence of prosecution witnesses, prosecution closed the side vide statement at Ex. 11.

The statement of accused under section 340 Cr.P.C was recorded at Ex. 12, wherein he denied the prosecution allegations and stated that all the PWs deposed falsely against him as they are interested witnesses. He further stated that he was working in the said bakery, but he did not go to KPK on second day. He further stated that he did not commit any offence. He first time saw the victim in Court. The complainant's wife wants to keep illegal relation with him and when he refused, he has been implicated in said case. However, he neither examined himself on Oath u/s 340(2) Cr.P.C, nor examined any defence witness.