

Exh.19

IN THE COURT OF ADDITIONAL SESSIONS JUDGE-III
KARACHI SOUTH

Sessions Case No.2811 of 2022

The State-----Vs-----Muhammad Imran & other-----Accused

FIR No.89/2022
U/s 364-A, 34 PPC
P.S. Boat Basin, Karachi South

Ms. Irfana Qadri, SPP for the State.
Mr. Sanaullah, advocate for the complainant.
Mr. Muhammad Akbar Awan, advocate for all accused.

JUDGMENT

19.03.2025

Accused Muhammad Imran s/o Talib Hussain, Mst. Kausar Mai w/o Muneer Ahmed and Aijaz Hussain s/o Talib Hussain were sent up to face trial for the offences punishable under section 364-A, 376(3), 354 PPC arising out of FIR No.89/2022 of Police Station Boat Basin, Karachi South.

2. Brief facts of the prosecution case are that on 07.02.2022 from 0730 to 1300 hours, above named accused persons in furtherance of their common intention abducted the daughter of complainant namely Sajida aged about 11 years from House No.08, Street No.03, Gulshan-e-Sikandarabad, Kemari, Karachi. It was also alleged that after abduction of said victim girl, accused Aijaz Hussain s/o Talib Hussain committed rape with her.

3. After completion of investigation, the charge sheet was submitted against the accused persons. After supplying of requisite copies of the statements in compliance to section 265-C Cr.P.C, vide a receipt at Exh.01 to them, formal charge was framed against them at Exh.02, to which they pleaded not guilty and claimed trial vide their pleas recorded separately at Exh.02/A to 02/C.

4. In order to substantiate charge against the accused persons, the prosecution has examined the following witnesses:

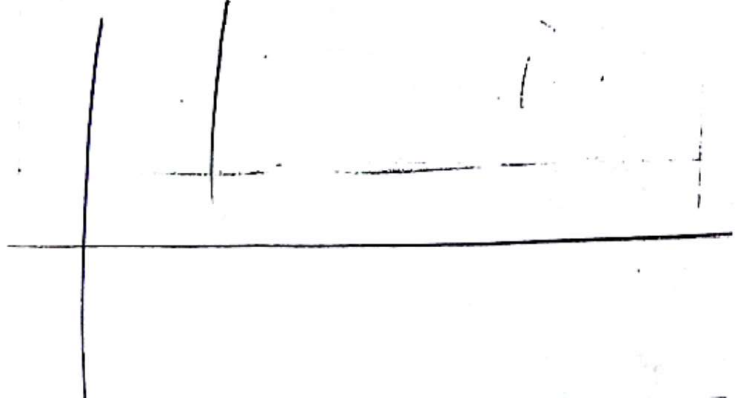
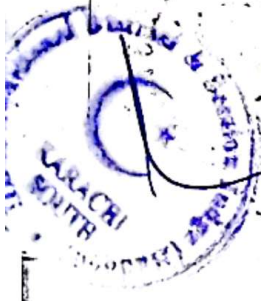
1. PW-01/victim girl Sajida at Exh.3, who produced her statement recorded in court at Punjab at Exh.3/A and true copy of her 164 Cr.P.C statement at Exh.3/B.



2. PW-02/Complainant Azhar Nawaz at Exh.4, who being father of said victim girl produced his application moved to SHO at Exh.4/A, FIR at Exh.4/B, memo of site inspection with its sketch at Exh.4/C & 4/D, memos of arrest of accused Kausar and Aijaz at Exh.4/E & 4/F and memo for securing clothes of the victim girl at Exh.4/G.
3. PW-03 Sarfaraz at Exh.5, who being mashir for arrest of accused Aijaz testified such memo already produced at Exh.4/F to be same.
4. PW-04 Muhammad Irfan at Exh.6.
5. PW-05/MLO Dr. Noor Ahmed at Exh.8, who produced police letter at Exh.8/A, emergency slip and MLC of accused Aijaz at Exh.8/B and 8/C.
6. PW-06/HC Ameerullah at Exh.9, who produced memo of arrest of accused Imran at Exh.9/A.
7. PW-07/ASI Muhammad Shakir at Exh.10, who being arresting officer of accused Imran testified such memo already produced at Exh.9/A to be same.
8. PW-8/learned Judicial Magistrate Ms Mahrukh Nizamani at Exh.11, who produced application moved by the IO at Exh.11/A and original 164 Cr.P.C statement of said victim girl at Exh.11/B.
9. PW-9/WMLO Dr. Noorun Nisa at Exh.12, who produced police letter at Exh.12/A, medico legal certificate, DNA report and final MLC of the victim girl at Exh.12/B, 12/C and 12/D respectively.
10. PW-10/SI Zaheer Iqbal at Exh.13, who being author of FIR produced entry No.42 at Exh.13/A.
11. PW-11/IO inspector Abid Tanoli at Exh.14, who produced copy of entry No.49 at Exh.14/A, six photographs of the place of incident at Exh.14/B, 14/B/1 and 14/B/2 and copies of four entries at Exh.14/C to 14/F./

5. Thereafter, learned SPP for the State closed the prosecution side vide statement at Exh.15. Accordingly, statements of accused persons u/s 342 Cr.P.C (statement of accused Aijaz and Kausar through video link) were recorded at Ex.16, 17 and 18 in which they denied prosecution allegations and claimed themselves to be innocent while praying for justice. Neither they examined themselves on oath under section 340(2) Cr.P.C nor examined any defence witness.

6. Heard learned SPP for the stated duly assisted by learned counsel for the complainant as well as learned counsel for the accused persons. Learned counsel also relied upon the case laws reported in 2006 MLD 1288 and 2015 P Cr L J 69.



7. I have heard learned SPP for the state, learned counsel for complainant as well as learned counsel for accused so also put a discreet glance over the evidence recorded during the trial as well as material produced therein. The points which need prime attention for disposal of the case on merits are formulated as under:

POINT NO.1

Whether the accused Aijaz has abducted and subsequently raped the victim as alleged in the charge sheet?

POINT NO.2

Whether accused Imran and Kausar having common intention were also involved in the abduction of victim as alleged in the charge sheet?

POINT NO.3

What should the judgment be?

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

FINDINGS

Point No.1.....Proved

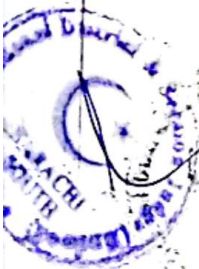
Point No.2.....Not proved.

Point No.3.....Accused Aijaz is convicted while accused Imran and Kausar are acquitted.

REASONS

POINT NO.1.

9. To prove this point, the prosecution has examined as many as 11 witnesses including the victim girl and complainant. PW-01/victim girl Sajida has deposed that on 07.02.2022 she went to school in the morning but was not feeling well so she sought leave and returned home. She was alone as her parents were at work. Aijaz, her tenant came downstairs and inquired about her condition. He told her, her father was calling for her and offered to get medicine. She accompanied him but after some distance, she asked where her father was, but Aijaz claimed his phone was out of order, though her father was nearby. They continued and a rickshaw appeared with Aijaz's brother Imran, his sister Kausar, and a heavyset man wearing a cap. Kausar asked her to sit in the rickshaw saying she was like a brother to her. Aijaz also boarded and the rickshaw moved. They murmured among themselves and she sensed danger, crying out, but her voice was drowned out by the music playing. Aijaz held her by the waist. The rickshaw stopped at a place with buses. When she tried to step



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out and cried loudly, Kausar and Aijaz pulled her back in. She wept and Aijaz gave her a handkerchief to wipe her tears. She put it on her face and lost consciousness. She woke up in a large house where Aijaz and another man were present. She asked Aijaz about her parents and he slapped her. When Aijaz went into another room, she told the other man that Aijaz had kidnapped her and touched her inappropriately. The man threatened to kill her and dump her body in water if she spoke out. Aijaz then raped her multiple times. Days later, Aijaz took her to another location. On the way, she saw police and cried out for help. Aijaz released her and fled. She informed the police, who took her to the police station where her father and uncle arrived. Her statement was recorded in court in Punjab. Later, she was brought to Karachi, where her medical examination was conducted and her statement was also recorded again in Court. She identified all accused present in Court to be same.

10. PW/complainant Azhar Nawaz has deposed that on 07.02.2022, about 1300 hours while on duty at Abdullah Shah Ghazi Shrine, Clifton, Karachi, he received call from his sister-in-law, Mst. Kishwar informing him that his daughter Sajida had not returned from school and their tenant Muhammad Aijaz s/o Talib Hussain is also missing and his house is locked. Upon receiving this information, he immediately went home to search and discovered that his daughter had been abducted by Muhammad Aijaz and Rs. 50,000 in cash and one Tola of gold were missing from his house. On the same day at about 1700 hours, he moved application at PS Boat Basin on which the FIR was lodged. Prior to lodging the FIR, he had called the 15 Police Help Line and officers arrived at his house. On 08.02.2022, the police visited his house, prepared memo and sketch. On 23.02.2022, during search of his daughter, they saw sister of the accused namely Kausar hiding in Street No. 05, Gulshan-e-Sikandrabad, therefore, she was arrested. On 12.03.2022, he received call from SHO Abid Farrukh of PS Sarzabs, Sialkot, informing him that his daughter had been recovered, therefore, he informed to IO Abid Tanoli and provided the SHO's contact number. Subsequently, he traveled to Sialkot with the IO where his daughter was found at the police station. On 14.03.2022 his daughter was produced in court in Sialkot where her statement was recorded and custody was handed over to him. He sent her back to Karachi with his brother. On 17.03.2022, Muhammad Aijaz was arrested from Ashraf Marriage Hall in Sialkot on the spy information. They returned to Karachi with the accused. Later, he handed over his daughter's clothes to the police. He identified accused Aijaz, Kausar and Imran present in Court to be same.

11. PW Sarfaraz has deposed that on 07.02.2022 at about 1200 hours, he was near the Qayoomabad Bus Stop with his maternal uncle, Rab Nawaz. They observed Imran, Kausar, Mureed, and Aijaz taking Sajida in a rickshaw towards Korangi Road. They attempted to call out to them but they did not respond. Later that evening, Azhar Nawaz informed him that his daughter, Sajida, had gone missing. He told him that he had seen her with Imran, Kausar, Mureed, and Aijaz in the rickshaw. He asked him to accompany him to the PS where his statement was recorded. On 12.03.2022, Azhar Nawaz called and informed him that Sajida had been recovered in Sialkot requesting his presence. He traveled to Sialkot with Azhar Nawaz and the police. On 17.03.2022, the police conducted a raid

at Ashraf Marriage Hall in Sialkot where Aijaz was arrested. Sajida had already been brought to PS Sirsabz, Sialkot on 13.03.2022. He identified accused Kausar, Aijaz, and Imran present in Court to be same.

12. PW Muhammad Irfan testified that on 07.02.2022, he was working as a coordinator teacher at Anas Kids Academy. At about 1100 hours, Sajida d/o Azhar Nawaz student of Class-V approached him complaining of a stomach ache. Consequently, he sent her home, which was located opposite the school. At about 1300 hours, Sajida's brother, Ibad informed him that she had not reached home and then left thereafter, he continued with his routine work. On 08.02.2022 at about 1600/1615 hours, two police officers arrived at the school, inquired about the previous day's incident, and recorded his statement.

13. PW/MLO Dr. Noor Ahmed furnished evidence for potency test of accused Aijaz Ahmed and produced such MLC during his evidence.

14. PW HC Ameerullah has deposed that on 07.02.2022, he along with ASIP Muhammad Shakir and PC Akhtar Nawaz was on patrolling duty in government police mobile during which at about 0600 hours, ASIP received spy information that a suspect involved in the case was available at Café Jadoon Hotel in Shireen Jinnah Colony Block-1, therefore, they proceeded to the location and arrested an individual on the spy information, who was identified himself as Muhammad Imran. During personal search, touch mobile phone was recovered from the accused. They then brought him to the PS. He identified accused Imran present in Court to be same.

15. PW ASI Muhammad Shakir has deposed that on 08.02.2022 he along with HC Ameerullah and PC Akhtar Nawaz was on patrol in police mobile. At about 0600 hours, he received spy information that a suspect involved in a crime was present at Jadoon Hotel, therefore, he reached there and arrested one person, who disclosed his name as Imran, therefore, he was arrested vide a memo. During his personal search, a touch mobile was recovered. He identified accused Imran present in Court to be same.

16. PW/learned Judicial Magistrate Ms. Mahrugh Nizamani has deposed that on 30.03.2022 IO SI Abid Tanoli moved application for recording 164 Cr.P.C statement of victim girl Sajida, which was allowed. Accordingly, her statement was recorded by her on her verbatim.

17. PW/WMLO Dr. Noorun Nisa has deposed that on 21.03.2022 at about 1127 hours, SI Abid Tanoli of PS Boat Basin, Karachi brought Sajida d/o Azhar Nawaz for medical examination with history of kidnapping on 07.02.2022 along with police letter. She examined the patient and noted the following:

"no marks of violence, clothes from the incident changed, bath taken, urine and stool passed, hygiene satisfactory, private parts washed, and the patient was unmarried."

18. Said WMLO also deposed that during the per vaginal examination, she observed that the external genitalia, labia majora and minora,

vestibule, and vagina were all normal. Bleeding was noted on the second day, pubic hairs were black and scanty, the post commissure was congested, the forchette was ruptured, the vulva was normal, and the hymen was old torn. The perianal examination and digital examination were both normal. She opined that the girl was not virgo intacta and no evidence of recent sexual intercourse was observed. Vaginal swabs were collected to exclude the presence of hymenal sperm, and the final medical report was reserved pending chemical and DNA analysis. I also produced the DNA report along with a covering letter, consisting of two pages along with final MLC.

19. PW SI Zaheer Iqbal being author of the FIR furnished evidence for registration of the FIR lodged on the basis of an application received from the Head Muhrir.

20. PW IO SI Abid Tanoli has deposed that on 08.02.2022, while on duty at the Investigation Branch of PS AVCC/CIA, he received the investigation, then contacted the complainant and visited the place of incident on his pointation and took photographs. The complainant informed him that accused Imran had been arrested by ASI Shakir and was held at PS Boat Basin, therefore, he took custody of Imran and brought him to PS AVCC/CIA. On 23.02.2022, the complainant informed him that Kausar Mai, another accused, was at a specific location, therefore, he arrested her. On 13.03.2022, the complainant informed him that his daughter Sajida had been recovered in Sialkot, Punjab. He contacted SHO PS Sabz Pir, who confirmed Sajida was found in a "Lawaris" condition. After obtaining permission from the Home Department, he traveled to Sialkot with police party and the complainant on 14.03.2022. On 16.03.2022, he received the Home Department's permission and coordinated with local authorities. A spy informer led them to arrest Muhammad Aijaz, who was identified by the complainant as involved in the crime and obtained 5 days remand on 18.03.2022 for bringing him to Karachi. On 21.03.2022, Sajida and Aijaz were examined in the hospital and samples were collected for DNA analysis. On 24.03.2022 Sajida's father produced her clothes. He recorded Sajida's statement under Section 161 Cr.P.C and later arranged for her statement under Section 164 Cr.P.C, which was recorded on 30.03.2022. After completing the investigation, I submitted the charge sheet. He identified all three accused to be same.

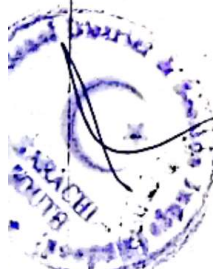
21. On perusal of evidence brought at trial by the prosecution shows that victim girl Sajida, during her evidence, has given a detailed and consistent account of the events stating that Aijaz abducted her, subjected her to inappropriate touching and subsequently raped her multiple times. Her testimony was corroborated by medical evidence including the DNA report, which confirmed the presence of Aijaz's DNA on the victim. The medical examination also revealed that the victim was not virgo intacta which also gets support from the statement of accused Aijaz recorded u/s 342 CrPC during which he specifically stated that he contracted marriage with Sajida. Besides, though no evidence of recent sexual intercourse was found but old torn hymen and other findings were consistent with her account of being sexually assaulted. Complainant Azhar Nawaz and other witnesses including Sarfaraz and Muhammad Irfan provided consistent testimonies that supported the victim's account. The recovery of the victim from Sialkot

and the subsequent arrest of Aijaz further strengthened the case against him. The evidence presented in the case provides a compelling and consistent narrative. The victim, Sajida, recounted her ordeal of abduction and sexual assault, identifying the accused Ajaz in court. Her testimony is supported by the complainant, Azhar Nawaz, who reported her disappearance and actively participated in the investigation that led to her recovery. An eyewitness, Sarfaraz, confirmed seeing Sajida being taken away in a rickshaw by the accused, further corroborating the timeline of events. The school coordinator, Muhammad Irfan, verified that Sajida left school early due to illness, which aligns with her account. Medical evidence provided by Dr. Noorun Nisa revealed no signs of recent sexual intercourse but noted an old hymenal tear, with the final DNA positive. Judicial Magistrate Mahrukh Nizamani recorded Sajida's statement under Section 164 Cr.P.C, reinforcing the authenticity of her claims. The investigating officer, SI Abid Tanoli, detailed the thorough investigation, from FIR registration to evidence collection and coordination with authorities for forensic analysis. The coherence between the victim's testimony, supporting witnesses, and police efforts collectively strengthens the prosecution's case.

22: Accused Aijaz has claimed that he arranged a marriage with the victim girl, asserting that their relationship was legitimate. However, this claim lacks substantial evidentiary support, as in like nature cases, the production of credible evidence to substantiate claims of marriage is always required because mere claim of marriage by the accused is insufficient without corroborating evidence, such as witness testimonies or documentary proof of the marriage. In cases where the accused claims a lawful marriage as a defense against charges of abduction or rape, the production of witnesses to validate the marriage is important factor and as above mentioned, in support of his version, accused Aijaz did not produce any evidence as burden of proof lies with the accused to establish the legitimacy of his claim, especially when the prosecution has presented a prima facie case against him. The failure to do so surely lead to the conclusion that the claim of accused was fabricated and unsubstantiated. Even otherwise, in cases involving charges under sections 376(3) PPC, the statement of the victim can be sufficient for conviction, provided it is credible and corroborated by other evidence. It is settled law that testimony of a victim, especially in cases of sexual offenses, holds significant weight. In view of the above discussion, the point No.1 is hereby answered as proved.

POINT NO.2.

23. It is case of prosecution that during process of abduction of victim girl by the accused Aijaz, his brother Imran and sister Kausar have also played vital role in facilitating the accused but evidence against them was insufficient to establish their guilt beyond a reasonable doubt. The prosecution was required to demonstrate that both accused persons have shared a common intention with co-accused Aijaz to commit the act of abduction. In the absence of evidence proving that the accused persons resided with the co-accused and had a shared motive or intention to abduct the victim, the case against them becomes tenuous. The principle of common intention, as articulated in section 34 of the P.P.C. necessitates



that all parties involved in a crime must have a shared objective, which is not evident in this scenario. The victim's testimony primarily implicated Aijaz and while she mentioned Imran and Kausar being present during the abduction, there was no direct evidence linking them to the sexual assault or any active participation in the crime. Besides, no purpose for their involvement was evident. Upon closer examination, it becomes evident that there is a lack of substantial evidence against them. The only testimonies presented against these individuals come from the victim girl and a witness who is not a resident of the area, raising questions about the reliability and credibility of their accounts. The witness's presence at the scene of the alleged abduction is questionable, particularly given that he reported seeing the accused at a bus stop around 1200 hours but failed to inform the complainant immediately. Instead, he only disclosed this information later in the evening when questioned by the complainant. This delay in reporting is significant and casts doubt on the witness's reliability. If the witness had indeed seen the accused persons involved in the abduction, one would expect a prompt report to the complainant, especially considering the gravity of the situation. The investigation officer's failure to collect substantial evidence linking the accused persons to the act of abduction further undermines the prosecution's case. The lack of proof that the accused persons have any role beyond merely accompanying the co-accused to the bus stop suggests that the allegations may not meet the legal threshold for abduction as defined by the law, hence, allegations against the accused persons lacking the necessary elements of force, deceit, and intent required to establish a charge of abduction. The principle of guilt by association is not sufficient to establish culpability in criminal cases. Each accused must be proven guilty beyond a reasonable doubt based on credible evidence directly implicating them in the commission of the crime. In light of these considerations, I am of the view that allegations against Imran and Kausar lack the necessary evidentiary support to sustain a conviction; hence point No.2 is answered as not proved.

POINT NO:3

24. As discussed on point No:1, accused Aijaz Hussain s/o Talib Hussain is found guilty of offences punishable u/s 364-A and 376(3) PPC, therefore, he is convicted under section 265-H(2) Cr.P.C as under:

1. The accused is punished u/s 364-A PPC and sentenced to undergo R.I for 10 (ten) years.
2. The accused is also punished u/s 376(3) PPC and sentenced to undergo R.I for Life Imprisonment and fine of Rs.1,00,000/-. In payment of default of fine, he shall further suffer Simple Imprisonment for 06 (Six) months.

25. All punishments awarded above to the accused will run concurrently. The benefit of section 382-B Cr.P.C is extended to the accused. The accused is produced through video link from Central Prison, Karachi and judgment is announced through video link. Copy of the judgment is forwarded to the Superintendent of said Jail for delivering it to the accused free of cost under receipt while accused Muhammad Imran s/o Talib Hussain and Mst. Kausar Bibi w/o Muneer Ahmed are hereby acquitted under section 265-H(1) Cr.P.C of the charge. Though both accused are




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present on bail but today, accused Imran is present while accused Kausar is not present and her absence is condoned due to her sickness. Their bail bonds cancelled and sureties discharged.

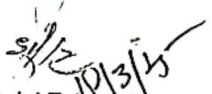
Announced in open Court.

Given under my hand and seal of this Court on this 19th day of March, 2025.


(Abdul Zahoor)
Additional Sessions Judge-III,
Karachi South

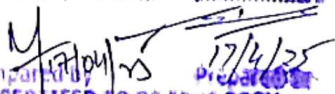
Case property order:

The case property shown in the challan be disposed of after expiry of appeal period.


(Abdul Zahoor)
Additional Sessions Judge-III
South, Karachi



Date of Application... 17.4.25
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Dist. Additional District & Sessions Judge
(Hindoo) Karachi (South)