

Stereo HCJDA-38
Judgment Sheet

**IN THE LAHORE HIGH COURT
BAHAWALPUR BENCH BAHAWALPUR
JUDICIAL DEPARTMENT**

1. **Criminal Appeal No.434-J of 2017**
(Sabir Hussain Vs. The State)
2. **Criminal Appeal No.488 of 2017**
(Sabir Hussain Vs. The State & another)
- &
3. **Criminal Revision No.81of 2018**
(Muhammad Shahid Vs. The State & another)

Date of hearing: 05.11.2018
Appellant by: Syed Zishan Haider, Advocate.
Complainant by: M/s Ghazanfar Ali Khan and Farood Haider
Malik, Advocates.
State by: Malik Muhammad Latif, Deputy Prosecutor
General.

QAZI MUHAMMAD AMIN AHMED, J:-Sabir Hussain, appellant herein, was tried by a learned Addl. Sessions Judge at Khan Pur; he stands convicted under section 376 of the Pakistan Penal Code 1860 and sentenced to 10-years rigorous imprisonment with benefit of section 382-B of the Code of Criminal Procedure 1898 for violating Shaneela Bibi (PW-2), henceforth referred to as the prosecutrix, vide judgment dated 5-7-2017, vires whereof, are being challenged through the titled appeal. Crl. Revision No.81 of 2018 by the complainant seeks enhancement of sentence; bound by a common thread, these are being decided through this single judgment.

2. Prosecution case is structured upon complaint (Ex.PA) presented by Muhammad Shahid (PW-1) at Police Station Zahirpeer District Rahim Yar Khan, 3:00 p.m. on 18-6-2016; it is alleged that during the fateful night i.e. 13/14-6-2016, he was attracted to the house of his *Khaloo* Khalil Ahmad, settled at

Karachi for good, leaving his family in the village; it is further alleged that the appellant, a co-villager had designs upon the prosecutrix and for that he was admonished by the family and it was on the said date that he with the assistance of two unknown assailants, after committing lurking house trespass, carnally assaulted the prosecutrix, however, took to the heels after surprised by the witnesses. The prosecutrix was shifted, unconscious, to Sheikh Zaid Hospital Rahim Yar Khan; the incident was finally reported after *Panchayat's* failure to manage a settlement.

The prosecutrix was admitted in the Department of Psychiatry Sheikh Zaid Hospital Rahim Yar Khan on 15-6-2016; she was attended by Dr. Mehvish Adnan (PW-3) for examination of her psychological condition; she suggested her referral to Department of Gynecology. During examination, prosecutrix shared with her details of sexual assault. Dr. Ansa Nisar (PW-5) conducted medical examination on 18-6-2016; she noted marks of violence on nose, left eye and neck inflicted within preceding five days, however, has been reticent on commission of sexual assault, as she found no seminal material for D.N.A. profile generation to support the hypothesis; the Medical Officer denied suggestion that the prosecutrix "*tried to commit suicide due to depression*". The appellant was opined by Dr. Khan Wazeer (PW-4) as potent to commit sexual assault. Forensic report for detection of seminal material as well as D.N.A. profile generation are in the negative. Indicted on 24-12-2016 for lurking house trespass as well as carnal assault, the petitioner claimed trial; prosecution produced as many as six witnesses to bring home the charge. Muhammad Shahid (PW-1) reiterated details, set out in the crime report. Fate of the case is primarily hinged upon statement of the prosecutrix. In the witness-box, she furnished graphic details of the assault; cross-examined at some length, she denied to have been tutored to advance a fake case on complainant's behest for appellants' refusal

to cast vote in his favour in the Local Bodies Election. Confronted with prosecution evidence, the appellant cited the same reason lurking behind his prosecution. The learned trial Judge, however, proceeded to convict and sentence the appellant as referred to above.

2. Learned counsel for the appellant contends that there is inordinate delay between the alleged occurrence and recourse to law without any plausible explanation; that in absence of any source of light, it is argued that the witnesses had no occasion to identify the assailants if there was any. Observation by the Medical Officer regarding hymen margins with old rupture has been pressed into service to impeach prosecutrix virtues as being a reliable witness. Prosecution's failure on forensic side to establish presence of seminal stains as well as D.N.A. profile generation has been argued at great length to conclude that prosecution miserably failed to bring home charge beyond reasonable doubt and as such there was no justification for the learned trial Judge to return a guilty verdict. Contrarily, the learned Law Officer assisted by learned counsel for the complainant has defended the impugned judgment on the ground that prosecutrix's lone statement is sufficient to sustain the charge as there was no rhyme or reason for the family to come up with a fake charge at the expense of its honour; it is argued that delay in recourse to law is not unusual in circumstances and would not by itself destroy prosecution case, otherwise firmly structured upon account, furnished by the prosecutrix.

3. Heard. Record perused.

4. Though belatedly reported, marks of violence, endured by the prosecutrix, squarely coincide with the time of occurrence, unanimously alleged by the witnesses. Prosecutrix's admission in the Department of Psychiatry on 15-6-2016, apparently to assess aftermaths of trauma in the wake of assault, goes a long way to

conclusively establish ordeal suffered by her; defence plea that she attempted to commit suicide is preposterous to say the least; by its own choice, defence, through cross-examination on the Medical Officer, brought on record, prosecutrix's subjection to sexual assault; a disastrous query with inescapable consequences.

Haunted by the trauma of assault and consequent loss of self-esteem, notwithstanding, the prosecutrix furnished horrific details of the occurrence; having no axe to grind, she unwaveringly pointed her accusing finger upon the appellant; whom she blamed, once again on defence own motion, to have made indecent overtures even before the occurrence. For the convenience of reference, relevant portion of her cross-examination is reproduced below:-

“Ten/fifteen days as well as 4/5 days prior to the occurrence, accused present in court had teased me for sexual purpose and when the accused teased me, I made hue and cry and people gathered there.”

Certainly an accused cannot be convicted on a criminal charge for inaptitude of his counsel or on the basis of recklessly indiscreet cross-examination, nonetheless, in the factual context of events inexorably linked with one another, details of such disclosures cannot be brushed aside, particularly when the prosecution is found to have discharged the onus.

Prosecution's estimated failure on forensic side has been blown out of proportion; negative forensic report, in retrospect, hugely corroborates truthfulness of its case; since the appellant was surprised by the complainant before he could bring his carnal assault to its biological end, absence of seminal traces is but most natural; it also falsifies, most uncharitably premised impeachment of prosecutrix's antecedents as being non-virtuous; on the contrary, it vindicates her position in no small measure. A straightforward

and confidence inspiring ocular account furnished by the prosecutrix, particularly in the absence of remotest possible taint can sustain the charge of sexual assault without forensic crutches. Even otherwise, in the present case, the Medical Officer has not ruled out the assault; she merely banked upon, that too disproportionately, on the absence of secretional traces without attending clinical symptoms. A manifestly flawed or slipshod expert opinion cannot override direct and positive proof, unambiguously spelling out culpability. On the whole and even on most stringent scrutiny, totality of circumstances do not leave any space to entertain any hypothesis of appellant's innocence; he has rightly been convicted and sentenced by the learned trial Court. Crl. Appeal No. 434-J of 2017 fails; **dismissed**. Quantum of sentence awarded to the appellant being legal and conscionable in circumstances, does not warrant interference. Crl. Revision No.18 of 2018 fails; **dismissed**.

Crl. Appeal No.488 of 2017, in view of disposal of appellant's appeal filed through Superintendent Jail, being superfluous is **dismissed**.

(Qazi Muhammad Amin Ahmed)
Judge

Approved for Reporting