

**IN THE COURT OF MR. FARHAN SHAKOOR,
ADDL. SESSIONS JUDGE, DG KHAN**

Other than Session Case No.11 of 2017
Other than Sessions Trial No... of 2017
Date of Decision..... **22.10.2020**

FR No.140/2017
Offences U/S.376/511 PPC
██████████, DG Khan.

State Vs ██████████

JUDGMENT:-

INTRODUCTION OF THE PARTIES.

Complainant ██████████ w/o ██████████ (PW-1) is real maternal grandmother of victim ██████████. Victim ██████████ aged about 05/06 years is daughter of ██████████ and ██████████ (son in law and daughter of complainant respectively). Accused ██████████ on bail has been alleged to be the close relative of the complainant.

BRIEF HISTORY

2. Brief history of the case as per complaint **Exh.PA** is that on 16.05.2017, parents of the minor victim ██████████ had gone to Multan ,whereas repair work was in progress at the shop of ██████████ (complainant's son-in-law and father of the victim). The accused person present before the court on bail was working there as a labourer. On the same day i.e. 16.05.2017 at about 01:00 PM -1:30 PM, the complainant PW-1 found her grand daughter ██████████(victim) missing from her house, she started searching for her alongwith witnesses ██████████ s/o ██████████ ██████████ and ██████████ s/o ██████████; at about 02:00 PM when they reached near the house of accused ██████████, they heard alarms of ██████████ victim. When they went inside the house they witnessed that Shalwar of ██████████ had already been removed and accused ██████████ had also removed

his Shalwar who had made ██████████ sit in his lap. On seeing the complainant and witnesses the accused person fled away from the scene. Stating above facts, the complainant filed the complaint **Ex.P.A** upon which the FIR **Ex.P.A/1** was registered. Accused person was arrested in this case. Investigation resolved in the guilt of the accused person while recommending his prosecution.

3. After observing all the Codal formalities this court indicted the accused person to which he pleaded non culpabilis and claimed trial. Thereafter the prosecution was asked to lead its evidence in order to prove its case.

OCCULAR ACCOUNT

4. In order to establish the ocular account the complainant herself appeared as PW.1, produced the minor victim ██████████ as PW.2 and an eye witness ██████████ s/o ██████████ as PW.9. In her examination in chief the complainant as PW.1 stated that ██████████ is her son-in-law whose house was under construction, where accused ██████████ present before the court was working there as labourer. She reiterated the facts as narrated in the complaint Ex.P.A that on 16.05.2017 the parents of the minor victim had gone to Multan to buy some grocery and at about 01:30 PM she found her grand daughter missing and started her search, that during their search when they reached near the Haveli of accused ██████████ they heard cries and sound of weeping from the Haveli of accused ██████████ and when they went inside the Haveli they saw that accused ██████████ had removed his own as well as Shalwar of her grand daughter ██████████ who was sitting in the lap of the accused; that seeing the complainant and the witnesses the accused ran away from his house.

5. The victim ██████████ who is minor of 5/6 years appeared before the court as PW.2. In order to determine her competency certain questions were put to her by the court and after finding her competent witness, her statement was recorded. Minor victim ██████████ as PW.2 identified the accused by his name and stated that he is her chachoo she further stated that the accused ██████████ came into her house, took her to his Haveli. ██████████ pointed

the complainant party has to muster courage to come out in open and expose the victim in a conservative social milieu. PW.1 in her examination-in-chief she stated that it was the house of ██████████ father of victim which was under repair whereas in the complaint it has been stated to be the shop which was under repair and not the house. In this regard it is observed that the said shop or house is not the place of the occurrence as allegedly the accused took the minor to his house. Even otherwise she was not cross examined by the learned defense counsel on this aspect. It is further observed that the said discrepancy does not relate to the main controversy and even otherwise minor discrepancy in statement is a natural phenomenon and it is the whole statement which is to be taken into consideration and we cannot pick and chose a sentence from the whole statement of the witness.

7. Above all, the defense has not brought any motive of the complainant and the prosecution witnesses to falsely implicate the accused person knowingly that if they remained unsuccessful it would have serious repercussion for the minor as well as the complainant. Minor/victim is a sterling witness and her confidence inspiring evidence even if solitary is sufficient for success of prosecution. All three witnesses stood successful to the test of cross examination. Hence, I of the view that witnesses proved their ocular account through consistent and un-shattered evidence.

INVESTIGATION

8. I.O of this case appeared as **PW.4** and stated that on 23.05.2017 he was posted at P/S Kot Mubarak. On the same day he alongwith other police officials was present at Ada Kala, where complainant/PW.1 Mst. ██████████ submitted an application **Ex.P.A** for registration of FIR which was sent to the police station for registration of FIR; that he sent the victim for her medical examination with an application **Ex.P.C**, visited the place of occurrence where he prepared site plan **Ex.P.D** recorded statements of the witnesses; that he arrested the accused on 29.05.2017 got conducted his potency test through an application **Ex.P.E** and also DNA through an application **Ex.P.F/1**. Finally stated that during his investigation he sent the

accused person to the judicial lock up finding him involved in the occurrence. In cross examination the I.O/**PW.4** stated that many people of the Basti including the complainant, victim and PWs were present at the place of occurrence. He further clarified that none of them was ready to become the witness. In this way the I.O has reasonably explained as to why no other independent witness has been associated by the prosecution. This explanation is quite justified in our society as usually people do not want to get them involved in litigation or to appear before the court as witness. In this way, the investigation after facing the test of cross examination is also holding the accused liable for the commission of offence.

MEDICAL EVIDENCE

9. In medical evidence, Dr. Anam Wahid WMO appeared as **PW.8**. In her statement she deposed that no mark of violence was seen all over the body. Hymen was intact no laceration or bruise was seen on perineum area. It has been argued by the learned defense counsel that since there are no mark of violence on the body of the victim hence, medical evidence does not support the prosecution case. In this context, firstly it is noteworthy that in present case the charge against the accused is for attempt of commission of rape and in such cases medical evidence has no prime importance. Even otherwise, it is to be noted that victim is a minor of age about 5/6 years. She is so minor that absence of any stiff resistance may as well suggest helpless surrender to the inevitable due to sheer timidity. Moreover, medical evidence is merely a corroborative piece of evidence and cannot be solely based upon for the conviction or acquittal of accused person.

DEFENSE VERSION

10. Accused has mainly pleaded that the first cousin of victim's father was accused's first wife whom he has divorced and due to this grudge he has been falsely involved in this case. As per the police record after his arrest, accused took the first defense that the victim's father is his cousin and his house is in front of the house of victim's father; that he has constructed a new house and in this jealousy this case has been got registered by the parents of the victim. In this way accused brought on record two different

versions in his defense. This court is nor unmindful of the fact that accused can take as many defense as pleased yet it is to be noted that no evidence has been produced by the accused person in support of the defense pleaded by him. He has pleaded that due to family dispute he has been involved in this case but no such document has been tendered by him in his evidence and defense pleaded by him is merely an oral assertion. Moreover, he has not brought anything on record why the parents of the victim agreed to altar the honour of their daughter for the sake of their cousin.

CONCLUSION

11. Juxtaposition of prosecution version and defense of the accused, I am of the view that former is convincing in all respect regarding to attempt to commit rape by the accused with the minor victim. Thus prosecution has brought home the charge of attempt to commit rape u/s 376 (iii) read with 511 PPC.

QUANTUM OF SENTENCE

12. Accused [REDACTED] is hereby convicted u/s 376 (iii) read with 511 PPC and is accordingly sentenced to undergo **rigorous imprisonment of 07 years with fine of Rs.50,000/- failing which he will further undergo 03 months Simple imprisonment.** This fine after recovery will be delivered to the victim u/s 544-A Cr.P.C. Benefit of Section 382-B Cr.P.C will supervise above period of sentence. Copy of this judgment is delivered to accused free of costs. Case property if any be dealt with in accordance with law after the expiry of period of appeal if any. Accused [REDACTED] is in custody. He is sent to jail alongwith sentence warrant to serve out the sentence. The file is directed to be consigned to the record room after its due compilation.

Announced

22.10.2020

(FARHAN SHAKOOR)

Addl: Sessions Judge, DG Khan

Certified that this judgment consists of six **(06)** pages which have been dictated, read, corrected and signed by me.

22.10.2020

(FARHAN SHAKOOR)

Addl: Sessions Judge, DG Khan

The State Vs. [REDACTED]
FIR No.140/2017 U/S 376/511 PPC [REDACTED], DG Khan
(7)

State Vs. [REDACTED]

FIR No.140/2017
Offence U/S.376/511 PPC
[REDACTED], DG Khan.

22.10.2020

Present: Accused [REDACTED] on bail
Mr. Mushtaq Ahmad Ghurmani, advocate learned defense Counsel.
Mr. Zahid Mustafa Khan Khosa, advocate on behalf of complainant.
Mr. Aman Ullah Khan Sial learned DDPP for the state.

Arguments heard and record perused.

Vide my separate judgment of even date in English; accused [REDACTED] is hereby convicted u/s 376 (iii) read with 511 PPC and is accordingly sentenced to undergo **rigorous imprisonment of 07 years with fine of Rs.50,000/- failing which he will further undergo 03 months Simple imprisonment.** This fine after recovery will be delivered to the victim u/s 544-A Cr.P.C. Benefit of Section 382-B Cr.P.C will supervise above period of sentence. Copy of this judgment is delivered to accused free of costs. Case property if any be dealt with in accordance with law after the expiry of period of appeal if any. Accused [REDACTED] is in custody. He is sent to jail alongwith sentence warrant to serve out the sentence. The file is directed to be consigned to the record room after its due compilation.

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