

**IN THE NAME OF ALLAH, THE ALMIGHTY, THE MOST MERCIFUL,  
THE MOST BENEFICENT**

**IN THE COURT OF MUHAMMAD AKHTAR BHANGOO,  
ADDL; SESSIONS JUDGE/CHILD COURT, LAHORE**

FIR No.140/17 Dated:29.06.2017  
Registered u/s. 376 PPC  
With Police Station Lohari Gate, Lahore  
Date of decision..19-03-2019

The State

**Versus**

1. [REDACTED] of [REDACTED], Caste: [REDACTED],  
[REDACTED]  
[REDACTED].
2. [REDACTED] of [REDACTED], Caste:  
[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]  
[REDACTED].

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

This occurrence was reported by a father [REDACTED] on 28.06.2017, told to him by his daughter [REDACTED] [REDACTED] af that she was feeling pain for last many days in her stomach and he, despite having got her examined from hospitals, could not get her pain relieved. However, she, thereafter, told him that infact, two accused namely [REDACTED] and [REDACTED], committed her rape and this occurrence was witnessed by [REDACTED]. Police registered this FIR at 12.40 A.M on 29.06.2017.

2. Police submitted report u/s 173 of Cr.P.C against accused persons [REDACTED] and [REDACTED] on 29.06.2017, by treating them juvenile and placing their names in column No.3. After delivery of copies u/s 265-C of Cr.P.C, to the accused persons, they were charge sheeted on 07.12.2017, u/s 376 PPC, which they denied to.

3. Thereafter, the prosecution produced following witnesses:

1. Sajjad Khan SI, being scribe of FIR as PW.1
2. [REDACTED] being complainant/informer as PW.2
3. [REDACTED] aged 16 years being victim as PW.3
4. [REDACTED] as eye witness of the occurrence as PW.4
5. Dr. Tooba Rani who medically examined victim, As PW.5
6. Shahid Mehmood ASI, being I.O of the case as PW.6
7. Noureen Kashif Zafar, who medically examined both the accused persons as PW.7
8. Mushtaq Ahmad SI, being scribe of police proceedings as PW.8
9. Mr. Umer Nawaz Warraich Learned Area Judicial Magistrate who recorded statement of victim as witnesses u/s 164 of Cr.P.C as PW.9.

4. In documentary evidence, prosecution has produced followings:

1. Certified copy of FIR No.140/147 as Ex.PA
2. Application filed by PW.2 with his thumb impression and signatures respectively, for registration of FIR as Ex.PB  
Ex.PB/1,  
Ex.PB/2
3. Upon application filed by PW.2, police proceedings as Ex.PB/3
4. MLC of victim prepared by PW.5 as Ex.PC  
Ex.PC/1
5. Report and opinion of Pw.5 upon back of PFSA report as Ex.PD  
& Ex.PD/1
6. Site plan of the place of occurrence without scale prepared by PW.6 as Ex.PE

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|-----|---|-----------------------------|
| 7.  | MLC No. 1999/17 of accused [REDACTED]<br>as to his potency, prepared and signed<br>by PW.7 as                           | Ex.PF<br>Ex.PF/1<br>Ex.PF/2 |
| 8.  | MLC No. 2000/17 of accused [REDACTED]<br>as to his potency, prepared and signed<br>by Pw.7 as                           | Ex.PG<br>Ex.PG/1<br>Ex.PG/2 |
| 9.  | Application for statement of victim<br>u/s 164 of Cr.P.C. before PW.9 as  | Ex.PH                       |
| 10. | Complete record of statement of victim<br>u/s 164 of Cr.P.C. including cross<br>examination by the accused as           | Ex.PJ                       |
| 11. | Application by I.O for obtaining copy of<br>statement u/s 164 of Cr.P.C. and<br>permission of the Court respectively as | Ex.PK<br>Ex.PK/1            |

5. Thereafter, on 04.02.2019, learned DDPP for the State closed evidence on behalf of prosecution.

6. Statements of both the accused u/s 342 of Cr.P.C were recorded wherein they neither opted to be examined as defence witnesses on oath as provided u/s 340 (2) of Cr.P.C in disproof of the charge/allegations made against them nor they wanted to produce any evidence in their defence.

7. Following was the reply of accused [REDACTED] to question, "Why was this case registered against him; and why have the PWs deposed against him":-

"The complainant deposed against me due to the malafide intention to grab the inherited property situated adjacent to house of the complainant. Pws are related inter se, therefore, deposed falsely".

8. And following was the reply of accused [REDACTED] to question why this case registered against him; and why have the PWs deposed against him":-

“The Pws deposed agasint me due to quarrel took place between me and [REDACTED] (real son of complainant), therefore, deposed falsely”.

9. After conclusion of trial, Hafiz Muhammad Shabir Ahmad learned DDPP duly assisted by learned counsel for the complainant Mr. Sheikh Faisal Zaheer Advocate, advanced arguments by contending that prosecution has been able to bring the guilt home to the accused persons beyond any reasonable show of doubt, hence, accused persons be convicted and sentenced in accordance with law.

10. Mr. Yasir Nawaz, Advocate, learned counsel for the defence appointed at the State expense, advanced arguments that complainant of the case is not the eye witness; that eye witness [REDACTED] is not probable in the ordinary course of nature; that simple statement of victim is not inspiring confidence of the court and prosecution story is not free from doubts, therefore, both the accused persons be acquitted.

11. With the able assistance of both the sides, I have perused the available record. My findings are as under;

12. Both the accused persons were medically examined by Dr. Noureen Kashif Zafar who vide MLC's Ex.PF and Ex.PG of both the accused persons founded an opinion that there was nothing to suggest that both the accused persons were not able to perform the sexual acts. There are certain discrepancies about obtaining consent of the minor accused persons for medical examination but neither these MLC's have been challenged anywhere by the accused persons nor they have taken the defence that they are impotent. In such situation, findings of this medical officer are sufficient to establish that both the accused persons are capable of performing sexual activities, specially in absence of any special plea of psychological impotence.

13. Pw.5, Dr. Tooba Rani, examined victim of the case namely [REDACTED] on 28.06.2017, then aged 16 years. History of change of

clothes and bath was described by her. Hymen was found absent but orifice admits one finger. Neither any cervical tear or fresh bleeding was present nor any mark of violence, torture, bruise and abrasion was found. But despite all these observations, she as Pw.5, says that recent sexual activity could not be ruled out. She further opined at that medico legal case findings were consistent with habitual use of sexual activity per vagina. She categorically ruled out possibility of self-satisfaction in sexual activity by using some instruments.

14. Neither any mark of violence was found nor any sign of rape or Zina Bil Jabar in the form of any bruise, abrasion was available. If orifice still admits only one finger as to how it can be relied upon that victim was involved in habitual sexual activity per vagina.? No seminal material was detected. Opinion of Pw.5, in such circumstances, is self-contradictory. Mere history of rape should not lead a professional like her to reach a conclusion of rape. All the observations recorded by her are belying her opinion of habitual sexual activity. It is astonishing that in absence of any sign of use of force in Zina Bil Jabar or mark of violence specially in view of statement of victim that she made a hue and cry, how an opinion of sexual activity per vagina could be found out by the Pw.5.? Pw.3, the victim girl herself has limited her allegations to oral sex and fingering, therefore, opinion of the medical officer as to habitual sexual activity, does neither lend any disadvantage to prosecution nor any advantage to defence.

15. Complainant is father of the victim but from Ex.PB and from his statement as Pw.2, he does not appear to be a witness to the occurrence. It was described by her victim daughter to him. Therefore, his evidence is just to put the law into motion and would not extend any help to prosecution to prove this case to have seen the occurrence. One of the witnesses to this occurrence, has been shown a 12/13 years aged boy namely [REDACTED] who has been examined as Pw.4. It is the

prosecution case that ██████ was witnessing everything from his adjacent roof. Statement of Pw.4, reveals that firstly, he wrongly described date of occurrence as 29<sup>th</sup> but, thereafter, filled in his lacuna through prosecution by rectifying it as 25<sup>th</sup>. He says that house of ██████ had four storeys whereas his house had three. The occurrence was alleged to have committed at the top roof of house of victim girl, therefore, in view of number of storeys qua statement of Pw.4, he would be incapable to witness this occurrence from roof of his third floor to the adjacent roof of the 4<sup>th</sup> floor of the victim girl.

16. Although, it was not prosecution's case but it has been established in his cross-examination as Pw.4 that he was detained in police station along with present two accused persons for one night. Mushtaq Ahmad, SI, while appearing as Pw.8 before whom, the complaint was firstly filed and who prepared details of injures of ██████ vide rapt no.7 dated 28.06.2017 before registration of this case, deposed that initially, there were three accused persons namely ██████, ██████ and Pw.4 who were mentioned in above said rapt. Pw.2 in his statement mentioned this witness in the last line of his examination-in-chief. It looked like he forgot or atleast, he needed to recall it whether there was any witness. Similar is the case of victim girl who did not voluntarily described name of the witness in her examination-in-chief but seemed to have been led by the prosecutor, therefore, did not inspire confidence in the court as to presence of Pw.4 on the place of occurrence at the time of occurrence. Since, Pw.4 is established to have remained in the police custody for one night along with the accused persons and now, is standing in the row of witnesses, therefore, the possibility that he is paying his debt of release from this case as accused, while standing himself as witness, cannot be ruled out. It also does not appeal to reason that he might have seen the commission of occurrence of Zina Bil Jabar, with his own eyes and

remained silent for many days. His evidence is very dangerous to be relied upon in his status as the eye witness of the occurrence.

17. Medical evidence is always corroborative in nature and it only comes to support the ocular account. Therefore, absence or negative form of DNA report or lack of competency of WMO while making observations regarding victim, does not destroy the case of prosecution. There is no denying to the fact that solitary confidence inspiring statement of a victim girl is sufficient to hold conviction of the accused. There cannot be a possibility in the ordinary course of nature of an eye witness of an occurrence of Zina who alleged to have seen the complete episode of forcible commission of Zina and if at all, any such witness is alleged, even then a serious question mark is on his credibility as a human of good nature that he remained silently observing this highest alleged form of atrocity against women. So without perusing the statement of victim girl, no advantage of Pw.4 can be extended to defence.

18. Ex.PB reveals the allegations of rape. But these allegations were described by a father of victim girl who is neither eye witness of the occurrence nor deposing direct evidence. Pw.9 is Learned Area Magistrate who recorded the statement of victim girl on oath u/s 164 of Cr.P.C. as Ex.PJ. Ex.PJ reveals that [REDACTED] leveled allegation of Zina Bil Jabar and threats to kill in case of disclosure. She was cross-examined by accused [REDACTED] and [REDACTED] but cross examination did not seem to have challenged the sexual activity. Although, there is no clear evidence as to provision of any lawyer to the accused persons for any cross-examination on statement u/s 164 of Cr.P.C. but apart from it, this statement at the maximum is her version recorded before Magistrate.

19. She while appearing as Pw.3 in her examination-in-chief shook the moral foundations of our social fabric when she said that

after removing her clothes, both the accused persons also removed their and started performing dirty acts. The word, "dirty acts", being vulnerable to variant connotations, created confusion as to performance of sexual activity per vagina. But the 16 years old minor witness/victim girl offered an exemplary daring clarification when she said that both the accused persons, firstly fingered her and then they put their genital organs in her mouth. She did not level allegations of penetration sufficient enough to constitute offence of sexual intercourse against her will and without her consent. She modified allegations of Zina with explicit sexual activity against her will but verily, she did not altogether uprooted the prosecution version of use of her body in sexual activity. This is her first statement before trial court.

20. She at the time of this occurrence was 16 years of age. There is no reliable evidence as to her habitual involvement in sexual activities. No reliable evidence as to her bad character is available in the file. In view of attending circumstances, she appears to be a girl of normal prudence with the family background of ordinary stature. She does not appear to be suffering from any mental infirmity. Allegations of fingering or oral sex are very rare phenomenon qua rampant frequent omni present allegations of rape in observation of daily routine while putting the criminal law into motion. There seems no reason as to why she would depose such words if this had not happened. Whatever earlier told by father, by a witness or by her before any forum, cannot be termed a hindrance in her way to speak truth before trial court.

21. She might have told under a shield of shyness, a more convenient and less shameful word of rape to her father, to the Magistrate but such allegations as leveled by her in her examination before court, are speaking volumes of pain, grief, ridicule and psychological trauma, she under went as a result of this occurrence. This traumatic psychological impulse, ultimately led her to cross all

barriers of women decency, normally prevalent in our society. Access to justice by a women in pseudo-pride fed society entangled in male chauvinism is highly restrictive from the very outset when they even cannot disclose what happened to them without inviting public scrutiny and shame on to themselves and their families as well. Matter would not end here in courts, the stigma or the imputability attached to the victim girl's character, would firstly deprive her of chances of routine marital ties, secondly would create unsurmountable hurdles to cross, for her other sisters and family as well, and might eventually, would result into forced migration from their locality to a far off place to avoid ridiculous staring eyes of their fellow human beings lowering down them in estimation of respect. It is very painful to go on imaginary journey with the victim girl as to what traumatically distressful reality of doubts as to her character or credibility, passes by her when she levels allegations of forced sexual activity in society like ours. Such statements reflect the highest magnitude of agony, the victim girl was suffering from. Her words of sexual activity as alleged by her, are speaking louder than any question of improvement.

22. Neither any credible evidence as to quarrel of accused [REDACTED] with brother of victim, namely, [REDACTED] nor any document as to inherited property or any evidence showing proof of intention or effort of father of the victim to snatch property of accused [REDACTED], has been produced. In view of absolute failure of defence to justifiably indicate any mala fide behind these allegations, this court safely holds in view of psychological barriers of womanhood in terms of morality and shyness that the nature of allegations by Pw.3 in her examination, eliminates all motives to falsehood. Although, technically speaking charge of rape in absence of any evidence of penetration sufficient enough to constitute culpable sexual intercourse is not made out, therefore, charge u/s 376 PPC is dropped but at the same time, Section 237 of Cr.P.C empowers any criminal court if it appears in

evidence that an accused committed a different offence for which he might have been charged under the provision of that section, he may be convicted of the offence which he shown to have committed, although he was not charged with it. In view of above discussion, prosecution is held successful on solitary statement of victim girl as Pw.3 to prove that she had been engaged by both the accused persons in obscene and sexually explicit conduct. Since she is less than 18 years of age, therefore, it is held that prosecution has established offence u/s 377-A of PPC punishable u/s 377-B of PPC beyond any reasonable shadow of doubt. Thus, this court convicts the accused persons, [REDACTED] and [REDACTED] u/s 377-B of the PPC.

23. Now let us discuss the quantum of punishment. Victim girl was minor at the time of occurrence. But both the accused persons in absence of any evidence to the contrary are also less than 18 years of age even now. Both the accused are juvenile by all means. They are entitled to all the benefits being juveniles. There is no evidence that they are record holders rather being first offenders would, of course, be given an opportunity to mend their ways in future, therefore, in view of all the circumstance of this case, this court sentences both accused namely, (i) [REDACTED] son of [REDACTED], Caste: [REDACTED] [REDACTED] and (ii) [REDACTED] son of [REDACTED] [REDACTED], u/s 377-B of PPC, inserted by Criminal Law (Second Amendment) Act, X of 2016, with simple imprisonment upto two years each only and a fine of five hundred thousand rupees (Rs.5,00,000/-) each. In default of payment of fine, both the accused persons have to undergo a simple imprisonment of four months each. The convicts shall be entitled to all the benefits u/s 382-B of Cr.P.C.

24. By justice, it may be understood to mean the restoration of a victim's dignity and her reintegration into society, while the offender is held accountable for his actions but it is not very difficult to imagine as to what would happen with a future of the victim girl in our society. By taking into consideration, the mental anguish, the psychological and the terrible subjective physical and emotional transformation the victim girl might have undergone and the probable everlasting stigmatization of her character, this court is under a legal and moral obligation to stand by her bravery and courage in facing agony of trial, thus, atleast in monetary terms, dares to wipe out her tears by awarding her compensation u/s 544-A Cr.P.C., of Rs. 1,00,000/- (total 2 Lac) to be paid by each of the convicts. This compensation is to be paid by the both convicts in the form of saving certificates in the name of victim girl. Since both the convicts are minors, therefore, in absence of their capacity to pay independently, their fathers/guardians if any, are held under a legal obligation to pay on their behalf respectively as they have failed to perform their parental duties in bringing up their children. Duly appointed guardian of victim in accordance with law will be entitled to make use of this amount for the welfare of victim in accordance with law after permission from Guardian Court appointing him/her as guardian, if there be any need prior to it being matured or victim when she attains majority in accordance with law. The compensation payable shall be recoverable as arrears of land revenue. In case of default to pay compensation, the convicts, [REDACTED] and [REDACTED], shall suffer from simple imprisonment for a period of four months. Imprisonments imposed in default of fine or compensation will run concurrently. Warrants of execution of sentences awarded to both the juvenile convicts in the name of Incharge of Borstal Institution established under the Punjab Juvenile Justice System Rules, 2002 be issued accordingly immediately through the concerned Superintendent Jail .

25. One of the main purposes of Juvenile Justice System of the country is the rehabilitation of juvenile at conflict with law, therefore, intention of legislature is to be given respect in its letter and spirit. Under section 11 of Juvenile Justice System Ordinance 2000, Incharge of concerned Borstal Institution will produce both the convicts before Juvenile Court on first working day after three months from today for an appropriate order by this court as to whether further imprisonment will be unnecessary or not or as to whether the convicts be sent on probation for the remaining period of imprisonment etc. The Incharge Borstal Institution will be duty bound to submit a detailed reports as to physical, mental, psychological, intellectual moral, religious, educational and social development of juvenile convicts, during this period of detention. He will be duty bound to take care of health, hygiene and all legal requirements of the convicts in accordance with law. He is also directed to submit his report as to what measures, he has taken to improve the mental caliber of the juveniles and to develop and promote natural instincts and skills. His report shall also indicate as to whether further detention of the convicts or their release on probation is necessary or not. Concerned Probation Officer will also help him in preparing these reports by making use of all available sources so that appropriate order as to further detention or release on probation of delinquent juveniles be made. Copy of this judgment be sent to the Chief Secretary and Secretary Home to the Government, Province of Punjab to ensure compliance of detention of convicts in borstal institution in accordance with Juvenile Justice System Ordinance 2000 and rules made there under in 2002. Copy of this judgment has been supplied to the convicts free of cost and to prosecutor as per rule. Probation Officer did not take any interest in submitting social investigation report in this case, therefore, a copy be also sent to the concerned for future guidance. Unless specifically authorized by this court, no proceedings conducted by this court for

juvenile accused person [REDACTED] and [REDACTED] shall be published in any newspaper, magazine or journal in any form which may disclose the name, address, school or any identification or particulars calculated to lead directly or indirectly to the identification of such child nor shall any picture of the child be published. Ahlmad, Abu Bakar is directed to consign the file to the record room.

Announced:  
19.03.2019

**Muhammad Akhtar Bhangoo**  
Addl: Sessions Judge/Child Court/  
Juvenile Court, Lahore.

**Certificate:**

Certified that this judgment consists of 13 pages. Each page has been dictated, corrected and signed by me.

Announced:  
19.03.2019

**Muhammad Akhtar Bhangoo**  
Addl: Sessions Judge/Child Court/  
Juvenile Court, Lahore.