

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

Other than Session Case No.29 of 2017
Other than Sessions Trial No... of 2017

FIR No.211/2017

Offences U/S.376 PPC

██████████, DG Khan.

State Vs ██████████ s/o ██████████

(Accused)

Present: *Accused in police custody*
 Mr. Khadim Hussain Khosa, advocate learned defense Counsel.
 Mr. Malik Ali Muhammad Dhol, advocate on behalf of complainant.
 Mr. Aman Ullah Khan Sial learned ADPP for the state.

JUDGMENT:-

Instant challan has been sent up by the SHO P.S Jhoke Uttra in case FIR No.211/2017 got registered against accused ██████████ s/o ██████████ ██████████ present in the court for his trial u/s 376 PPC.

2. Prosecution story as per contents of FIR is that on **29.08.2017** at 08:15 PM complainant sent her daughter Mst. ██████████ victim aged about 12/13 years to her maternal grandmother's house to bring back her other children; that when she did not return after considerable time, complainant herself went to the house of her mother where she was informed that her daughter/victim namely Mst. ██████████ has left earlier. The complainant alongwith her brother and witness ██████████ started searching her daughter and when they reached near the cattle shed situated in the house of ██████████ they heard screaming of her daughter. The complainant along with witnesses rushed towards the cattle shed where they saw the present accused person committing rape with the daughter of complainant.

On these facts, stated by the complainant FIR was registered against the accused person who was arrested in this case.

3. After observing the legal formalities the challan was sent up for trial of the accused [REDACTED] in police custody. After entrustment of challan for its trial, and procuring the attendance of accused person, copies of statements u/s 161 Cr.P.C alongwith other necessary documents were handed over to the accused. Formal charge was framed on **22.12.2017** to which the accused person pleaded not guilty hence, prosecution evidence was summoned.

4. In order to prove its case, prosecution produced following witnesses:-

1. **PW-1** [REDACTED], she is complainant and real mother of the victim.
2. **PW-2** Mst. [REDACTED], she is minor victim of this case.
3. **PW-3** [REDACTED]. He is eye witness of this case.
4. **PW-4** Nadir Ali ASI who chalked the FIR.
5. **PW-5** Shazia Bibi SI/I.O she is investigating officer of this case.
6. **PW-6** Ejaz Hussain ASI. He recorded statement of complainant Ex.P-A
7. **PW-7** Dr. Muhammad Waseem Ashraf M.O he conducted potency test of accused.
8. **PW-8** Dr. Misbah Sajjad WMO. She conducted medical examination of victim.

[REDACTED] was given up by the prosecution.

In documentary evidence prosecution produced complaint as **Exh.PA**, **FIR Exh.PB**, application for recording statements u/s 164 Cr.P.C before learned Area Magistrate **Exh.PBB**, recovery memo of swabs as **Exh.PC**, site plan **Exh.PD**, statement of victim u/s 161 Cr.P.C as **Exh.PE**, application for potency test of the accused as **Exh.PF** and application for medical examination of victim as **Exh.PG/1**.

5. After completion of prosecution evidence statement of accused person was recorded u/s 342 Cr.P.C. Accused opted not to appear as his own witness nor produced any defense evidence. Thereafter case was fixed for final arguments.

6. Since no defense evidence was produced, hence, case was opened by the prosecution. Learned DDPP duly assisted by learned counsel for complainant argued that victim, complainant who is real mother of victim and eye witnesses remained consistent in their depositions; that the

victim/child specifically identified the accused while recording her statement who was present in the court; that there is no previous enmity between the parties; that prosecution case not only depends upon trustworthy evidence but the victim herself deposed against the accused and her deposition before this court has become eye witness account; that statement of victim/child is sufficient to prove the case which has been corroborated from the statement of mother/complainant. He further argued that DNA report is not substantial piece of evidence rather it is merely corroborative piece of evidence.

7. On the other hand, learned defense counsel argued that there is delay of two days in lodging of FIR; that DNA report has not supported the prosecution case; that there was no mark of violence and WMO has not determined the age of ruptured hymen; that the statements of witnesses are in contradiction of each other. Lastly, he prayed that while giving benefit of doubt and discrepancies the accused may kindly be acquitted.

8. Arguments heard. Record perused.

9. In order to prove ocular account, the prosecution produced the complainant Mst. [REDACTED] who is real mother of the victim as **(PW.1)**. She is also eye witness of the occurrence. **(PW.1)** in her statement deposed that on the night of **29.08.2017** she sent her daughter [REDACTED]/victim aged about 12/13 years to her mother's house (victim's maternal grandmother) to call her children. She further stated that after lapse of considerable time, when her daughter/victim [REDACTED] did not return she herself went in her search to her mother's house where complainant's real brother [REDACTED] (eye witness) told her that [REDACTED]/victim has already left the house. She further stated that her brother took battery (torch) from his house and accompanied her in search of her daughter and when they reached near the cattle shed of [REDACTED] (real father of accused) she heard screaming of her daughter. That when complainant's brother threw light of his battery she witnessed that accused [REDACTED] was committing rape forcibly with her minor daughter who fled away from the scene after seeing the complainant and witnesses.

10. (PW-2) [REDACTED] who is star witness being victim of this case appeared before the court and deposed the same fact that on 29.08.2017 after 'Isha prayer' she was coming back from her maternal grandmother's home and went to the house of [REDACTED] for calling her younger brother, that when she was returning back to her home accused [REDACTED] [REDACTED] forcibly caught hold her, took her to the cattle shed by putting pistol on her forehead and committed 'Zina-bil-Jabar' with her.

11. (PW-3) in his examination in chief specifically stated that he alongwith [REDACTED] and [REDACTED] proceeded in search of [REDACTED] and when they reached at the western side of cattle shed of [REDACTED] they heard alarms of [REDACTED]; that he alongwith Mst. [REDACTED] and [REDACTED] [REDACTED] entered into the cattle shed and when he put light of his torch they saw that the accused [REDACTED] present in the court was committing rape with [REDACTED] forcibly.

12. All the three witnesses i.e. Complainant, victim and eye witness were thoroughly cross examined by the learned counsel for the accused. In her cross examination complainant/(PW-1) admitted the suggestion that she did not come to the police station for two days. However, she explained that her relatives requested her not to initiate proceeding against the accused person. She denied the suggestion that since accused [REDACTED] refused to marry her another daughter namely [REDACTED] hence, she got registered this false case against the present accused [REDACTED].

13. (PW-2) in her cross examination specifically denied the suggestion that [REDACTED] was not muffled face at the time of occurrence and he forcibly dragged her into the cattle shed of [REDACTED]. Replying to a question regarding delay in medical checkup the victim (PW-2) stated in her volunteer portion that it started raining at night hence, they did not go to the hospital.

14. (PW-3) remained consistent and held his version about the details of the occurrence according to the statement made by him in examination in chief.

15. From the statement of witnesses as discussed above it is quite apparent that complainant, victim and eye witness all three witnesses remained consistent in their statements though the said witnesses were subjected to incisive cross examination yet learned defense counsel remained unsuccessful to bring anything in favour of the accused person. The victim has specifically identified the accused present in the court and she specifically denied the suggestion that accused [REDACTED] was muffled faced. She further explained the delay in medical as it was raining at night and she further explained that since she slipped into mud hence, her mother gave her shower. 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.

16. As far as investigation of case is concerned, complainant/(PW-1) has stated that on 31.08.2017 she alongwith victim [REDACTED], [REDACTED] and [REDACTED] proceeded to P.S Jhoke Utra and when they reached at Jhoke Chowk they met 'Thanedar' who recorded her statement **Ex.P-1**. She further stated that 'Thanedar' sent [REDACTED] to THQ hospital Kot Chutta alongwith constable where she was medically examined. (PW-2) victim also stated in her examination in chief that she alongwith her mother and witnesses went to P.S on 31.08.2017 and she was medically examined by the WMO. [REDACTED] SI/I.O appeared as (PW-5) and deposed that she was posted as SI at P.S Jhoke Utra on 31.08.2017 and she was entrusted the investigation of case FIR No.211/2017 u/s 376 PPC; that on the same day [REDACTED] 1566/C handed over to her MLC of the victim and two sealed parcel which were taken in possession by her vide recovery memo **Ex.P.C** and same were taken into custody by the 'Moharrir' for their onward transmission to PFSA Lahore. She further stated that on the same day she recorded statements of victim [REDACTED], [REDACTED] and [REDACTED] witnesses u/s 161 Cr.P.C, prepared site plan **Ex.P.E**; that she produced the victim before learned Special Judicial Magistrate for recording of statement of victim u/s 164 Cr.P.C. On 07.10.2017 she arrested the

accused person who was found involved in this case and was sent to judicial lockup after his DNA test on 13.10.2017.

17. As far as medical evidence is concerned, Dr. Muhammad Waseem Asharf MO/(PW-7) who conducted potency test of the accused person and opined that accused was fit for sexual act.

18. (PW-8) Dr. Misbah Sajjad conducted medical examination of victim and deposed as under:-

She (victim) was not wearing the same clothes that she had at the time of incident. She taken bath after the incident. Her menstruation did not get starts yet.

No congenital acquired physical and mental abnormality. No effect of intoxication. Puberty signs not yet developed.

Local Examination of whole body:

No mark of injury/violence seen on whole body.

Gynecological examination:

Hymen is ruptured. No tear seen, whitish yellow secretion seen. Blood not seen. Specimen of evident value.

1. External vaginal swabs
2. High vaginal swabs for chemical examination
3. High vaginal swabs for DNA test

19. Regarding medical evidence it has been argued by learned defense counsel that no mark of violence or injury has been found on the body of victim. The WMO has not determined about the age of tear of hymen and no finding has been given by the doctor. That DNA report has been given as nil. In this regard it is to be observed that the victim is a child of age about 12/13 years who can be easily overpowered by an adult person and in such case there is minimum probability of any marks of violence on the body of victim due to minimal resistance. As far as the argument that no clothes were handed over to the wmo is concerned this has been satisfactorily explained by the victim that on said night it was raining and she slipped into mud thus she was given bath and her clothes were changed. This is a statement made by the victim child that too in her cross examination

hence there is no chance that this reply was tuted to her. Moreover no suggestion was put to the victim that it was not raining or she did not fell in mud. Moreover medical evidence is merely a corroborative piece of evidence and not a conclusive proof of innocence or of guilt of the accused and the same is to be read with the ocular account of the case. As far as report of DNA is concerned, in this regard it has been observed by the August Supreme Court Of Pakistan as follows:-

Utility and evidentiary value of the DNA Test was acceptable but not in a case falling under the penal provisions of Zina punishable under Hudood Laws having its own standard of proof, Principles.

[PLD 2005 Lah. 589(a)]

Ocular testimony of the prosecution witness was natural, reliable, satisfactory and confidence inspiring---Prosecution had fully proved the case against accused beyond any shadow of doubt---Defence had not proved any enmity, ill-will or malice against prosecution witness---Sole testimony of the victim was enough for conviction, if it was truthful and inspiring confidence --- ***Despite the fact that DNA report about the swabs did not match with the profile of accused, the observations of lady doctors, were enough evidence of the fact that victim had been subjected to sexual intercourse---Opinion of the Lady Doctor lent corroboration to the statement of the victim that accused had subjected her to zina***---Non-receipt of matching report of DNA test, did not negate the ocular account of prosecution witness---Prosecution having proved its case beyond any shadow against accused, accused had rightly been held guilty, convicted and sentenced by the Trial Court---Conviction and sentence awarded to accused by the Trial Court, were maintained. **(KHADIM HUSSAIN V. STATE 2011 PCr.LJ 1443 FEDERAL SHARIAT COURT).**

20. In defense the accused neither appeared as his own witnesses nor produced any evidence. The only defense plea taken by him is that he has been involved in this case as he refused to marry other daughter of

complainant, does not appeal to a prudent mind as merely on refusal to marry her daughter no mother can stigmatize her daughter .

21. As far as delay is concerned it is quiet understandable that parents of such victims for variety of reasons are reluctant to report such matter and in present case the accused is relative of complainant party hence delay cannot be considered as fatal and accordingly shuns the impressions of any deliberations or after thoughts. Similarly the victim is a child of age about 12/13 years hence element of her consent is also out of question.

22. For what has been discussed above, it is observed that Prosecution has proved it case against the accused beyond any shadow of doubt. Accused has committed rape of a minor girl aged about 12/13 years, therefore, accused [REDACTED] is found guilty of offence punishable under section 376(3) PPC and he is convicted as such. He is sentenced with imprisonment for life and fine of Rs.2,00,000/-. In terms of **section 545(b) Cr.P.C** the whole fine recovered from the accused shall be paid to the victim as compensation for mental anguish and psychological damage caused by the offence of rape committed by the convict.. In case of default of payment of fine, he shall further undergo S.I for six month. The convict/accused has also been given benefit of Section 382-B of Cr.P.C. 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. He 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

10.09.2020

(FARHAN SHAKOOR)

Addl: Sessions Judge, DG Khan

Certified that this judgment consists of eight **(08)** pages which have been dictated, read, corrected and signed by me.

10.09.2020

(FARHAN SHAKOOR)

Addl: Sessions Judge, DG Khan

The State Vs. [REDACTED]

[REDACTED]

[REDACTED]

State Vs. [REDACTED] s/o [REDACTED]

FIR No.211/2017

Offence U/S.376 PPC

P.S. Jhoke Utra, DG Khan.

10.09.2020

Present: *Accused in police custody*
Mr. Khadim Hussain Khosa, advocate learned defense Counsel.
Mr. Malik Ali Muhammad Dhol, advocate on behalf of complainant.
Mr. Aman Ullah Khan Sial learned ADPP for the state.

Arguments heard and record perused.

Vide my separate judgment of even date in English; accused [REDACTED] is found guilty of offence punishable under section 376(3) PPC and he is convicted as such. He is sentenced with imprisonment for life and fine of Rs.2,00,000/-. In terms of **section 545(b) Cr.P.C** the whole fine recovered from the accused shall be paid to the victim as compensation for mental anguish and psychological damage caused by the offence of rape committed by the convict.. In case of default of payment of fine, he shall further undergo S.I for six month. The convict/accused has also been given benefit of Section 382-B of Cr.P.C. 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. He 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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(FARHAN SHAKOOR)

Addl: Sessions Judge, DG Khan

The State

Vs.



U/S 376 PPC, P.S Jhoke Utra, DG Khan

(10)