

MANZOOR CHACHAR and another**versus****The STATE****2015 P Cr. L J 690****JUDGMENT**

AFTAB AHMED GORAR, J.---This criminal appeal has been preferred by the appellants Manzoor Chachar and Haq Nawaz Kalwar against the conviction and sentence awarded to them vide impugned judgment dated 15-11-2012 passed by the learned Additional Sessions Judge, Kashmore, in Sessions Case No.119 of 2010 re: State v. Manzoor Chachar and others arising out of Crime No.145 of 2010 of P.S Kashmore for an offence punishable under section 376, P.P.C., whereby the appellants have been convicted and sentenced to suffer life imprisonment and pay fine of Rs.20,000 each and in case of default in payment of fine they were directed to suffer S.I for two months more however, they were extended benefit of section 382-B. While co-accused Asghar Ali was acquitted by the trial Court.

Briefly the facts of the prosecution case are that complainant Mst. Sumera was residing with her brothers namely Hafeezullah and Sadam Hussain at Line Purani and Manzoor Chachar had visiting terms with the complainant party. It is further alleged in the FIR that on the day of incident complainant along with her brothers namely Hafeezullah and Sadam was present in the house, where accused Manzoor Chachar, Haq Nawaz Kalwar and one unidentified person came on a motorcycle, the P.Ws. met with the said persons and offered them tea, thereafter the P.Ws. Hafeezullah and Sadam went to the city for purchasing house commodities while saying that they will return back. It was 2-00 p.m, all the accused persons taken out T.T pistols from their trousers and took the complainant Mst. Sumera into the room where accused Manzoor Ahmed committed zina with her, accused Haq Nawaz and one unidentified person aimed their pistols at the doors. The complainant raised cries, which attracted neighbourers, who also raised cries. Thereafter all the accused persons ran away on the motorcycle. Later on her brothers (P.Ws.) came there, the facts were narrated to them, hence the complainant lodged the FIR to the above extent.

After completion of usual investigation, police submitted challan of the case showing the accused Manzoor and Haq Nawaz as absconders, Asghar Ali in column No.2 before the concerned Magistrate, however Asghar Ali was also joined by the learned Magistrate. On 4-11-2010, absconding accused/appellants surrendered before the learned 1st Civil Judge and JM, Kashmore after obtaining pre arrest bail, and later on the

accused/appellants were sent up to stand trial which was assigned to learned Additional Sessions Judge, Kashmir for disposal according to law.

Formal charge was framed against the accused at Exh.2 to which they pleaded not guilty and claimed to be tried vide their pleas at Exh.2A to 2C respectively.

During trial, the prosecution examined P.W.1 ASI Muhammad Anwar Bhutto at Exh.3 who produced FIR at Exh.3A, P.W.2 WMO Dr. Shushila Mahendar at Exh.4 who produced police letter at Exh.4A, provisional medical certificate at Exh.4B, chemical examiner's report at Exh.4C, final medical certificate at Exh.5, P.W.4 eye-witness Sadam Hussain at Exh.6, P.W.5 eye-witness Hafeezullah at Exh.7, P.W.6 SIO Ehsan Ahmed at Exh.8, who produced mashirnama of place of incident and clothes at Exh.8A, mashirnama of arrest of accused Asghar Ali at Exh.8B, and P.W.7 mashir Ghulam Yaseen at Exh.9. Thereafter, learned DDA appearing on behalf of the State closed the prosecution side at Exh.10.

The appellants/accused in their statements under section 342, Cr.P.C. claimed their false implication by the complainant and her witnesses as they refused to marry complainant Mst. Sumera while co-accused Asghar Ali deposed that he has falsely been implicated by the police. All three accused neither examined themselves on oath nor produced any defence witness to disprove the prosecution case. On conclusion of the trial and hearing learned counsel for the parties the trial Court passed the impugned judgment whereby the learned trial Court while acquitting the co-accused Asghar Ali, convicted and sentenced the appellants as above, giving rise to filing of the instant criminal appeal.

I have heard learned counsel for parties and perused the prosecution evidence and other material brought on record.

Learned counsel for the appellants has mainly contended that there are material contradictions in the evidence of complainant and P.Ws. He also pointed out that the report of chemical examiner is in negative and that the act of rape has not been proved as the sperms were not detected. He also contended that the final medical certificate issued by WMO was challenged before Special Medical Board in which it was held that the healed scar at 7'O clock position of the hymen could be due to an attempt at penetration during sexual assault which also shows that yet it cannot be said the act of rape was done therefore, prosecution has failed to bring home the guilt of the appellants beyond shadow of reasonable doubt. He also contended that on the face of it the prosecution story appears to be false and concocted story as it is highly improbable to understand that brothers of the complainant would leave their sister alone with the appellants simply for the purpose of purchasing some household articles and besides it is admitted position that at least the actual part of commission of rape is unwitnessed as the brothers of complainant reached back after four minutes of the departure of accused as stated by complainant in her evidence and cross-examination wherein she also admitted that no body from neighbours reached there at the time of incident. He also

pointed out that there are major contradictions in the prosecution case viz. complainant claimed in FIR that accused Manzoor was committing rape when accused Haq Nawaz and unidentified person (Asghar Ali) aimed their pistols at the door, while she stated in her evidence recorded before the trial Court that accused Haq Nawaz was standing inside the room aiming his pistol and accused Asghar Ali was standing outside the door; on the contrary P.W. Saddam stated that her stated told accused Manzoor Chachar committed rape while accused Haq Nawaz and Asghar aimed their pistols at her; while P.W. Hafeezullah stated that her sister told that accused Manzoor committed rape when accused Haq Nawaz aimed his pistol standing inside the room while accused Asghar Ali was standing outside the room. Learned counsel for the appellants on all these scores urged that the prosecution case is highly doubtful. Learned counsel also pointed out that co-accused Asghar Ali having similar role as alleged against the appellant Haq Nawaz Kalwar has already been acquitted by the trial Court under the same impugned judgment. He also contended that the appellants are of young age and they being first offenders also earn lenient view by this honourable Court. He also contended that parties have patched up outside the Court and the complainant Mst. Sumera has also got married and started her new life and she do not want to further press her case against the appellants to live future life with peace and harmony therefore, by filing her affidavit she has extended no objection if the present applicants are acquitted. In view of the above submissions, it is contended that the prosecution has failed to prove its case beyond shadow of doubt therefore, appellants/accused may be acquitted of the charge by giving benefit of doubt as well as affidavit sworn by the complainant as supporting element.

Learned counsel for the complainant contended that the complainant has got married and started her new life therefore, as a result of patch up reached between the parties who have buried their hatchets in order to live future life with peace and harmony, the complainant has also filed her affidavit while extending no objection if the appellants are acquitted and the fact that the appellants are first offenders and are in their young age therefore, such affidavit of complainant may be considered as supporting element while deciding the instant appeal.

Learned A.P.-G. in view of the above position submits that since appellant Haq Nawaz has not been assigned allegation of rape but allegedly he only facilitated the commission of crime therefore, in view of the above discrepancies in prosecution evidence as well as fact that complainant has patched up with the appellants outside the court and extended no objection as above, he has no objection if the said appellant Haq Nawaz Kalwar is acquitted however, he asserted that conviction and sentence of life awarded to the main accused Manzoor Chachar may be reduced to 10 years.

I have given my anxious thought to the arguments advanced by the learned counsel for the appellant as well as learned A.P.-G. and perused the material available on record.

In the instant case the star witness is Mst. Sumera who in her deposition stated that on 9-6-2010 she was present at her house along with brothers P.Ws Sadam and

Hafeezullah when at 2-00 p.m. accused Manzoor Chachar, Haq Nawaz and another unknown person, for whose name she came to know as Asghar Ali, came there. Her brothers offered them tea as they were on their visiting terms whom her brothers offered tea which they accepted and her brothers left the house for purchasing tea and other articles. After departure of her brothers, accused Haq Nawaz and Asghar Ali took out their pistols from shalwar folds and aimed at her while accused Manzoor Chachar dragged her into a room and forcibly committed rape. She raised cries and accused ran away and after four minutes of the departure of accused, the P.Ws. returned back whom she narrated the above incident. In her cross-examination she admitted that none from neighbours reach there during the incident. However, she stated that the medical certificate issued by WMO was challenged before Special Medical Board after about one month of issuance of medical certificate.

P.W.4 Saddam deposed that he along with his brother Hafeezullah and sister Mst. Sumera were available in their house when at 2-00 p.m. Manzoor Chachar, Haq Nawaz and an unidentified person came there who were already on visiting terms with them. They were offered tea which they accepted on which he and his brother requested their sister to prepare tea and they both left the house for purchasing some articles and when they were returning back they saw accused Haq Nawaz an unidentified person armed with pistols were leaving on a motorcycle which was being driven by accused Manzoor, on seeing them accused aimed their weapons upon them and then ran away. Thereafter they went into the room where their sister Mst. Sumera disclosed that accused Manzoor had forcibly committed rape upon her when accused Haq Nawaz and unidentified person aimed their weapons upon her.

P.W.5 Hafeezullah in his deposition repeated same story with some contradiction that after purchasing articles when they were returning back, at about 2-20 p.m. they heard cries from the house on which they rushed towards the house and saw accused Haq Nawaz and unidentified person armed with pistols were standing at the door of the house and accused Manzoor was starting motorcycle, when they aimed weapons upon them and then ran away. Then they went into the room where their sister Mst. Sumera disclosed that accused Manzoor had forcibly committed rape upon her when accused Haq Nawaz was standing inside the room while aiming his weapon upon her and the unidentified person stood guarding outside the room.

P.W.2 WMO Dr. Shushila, conducted medical examination of the victim lady, she deposed in her deposition that after examining the victim she came to know that no act of rape was committed and she issued such final medical Certificate which was challenged before Special Medical Board in which the Medical Board held that healed scar at 7'O clock position of the hymen could be due to an attempt of penetration during sexual assault.

The evidence of the victim lady namely Mst. Sumera is of much importance. In her evidence she has fully implicated the appellant Manzoor Chachar in the commission of

the rape while the other accused/appellant Haq Nawaz for facilitating the above commission of crime.

Appellants have claimed that they have been falsely implicated in the case after the appellant Manzoor Chachar refused to marry Mst. Sumera and such plea does not seem to be confidence inspiring. Firstly it is beyond imagination that the victim lady would involve the accused/appellants due to only refusal from marrying her at the cost of her honour or her brothers would extend her undue support by acting as P.Ws. in such a case at the cost of honour of their sister. The most precious thing for a person is honour of family lady and it does not appeal to a prudent mind that one would scarify such a sacred thing just to achieve a goal of causing harm to the rival by implicating them in a false case. Secondly, the appellants have miserably failed to produce any material in order to prove his plea of dispute over refusal of Manzoor Chachar from marrying Mst. Sumera.

So far as the contention of the learned counsel for the appellants that besides the statement of the victim lady, there is no eye-witness of the actual part commission of rape and the prosecution has not produced any other material evidence to prove the charge against the appellant is concerned, it may be observed that the superior courts in a large number of cases arising out of convictions under section 10 of the Offence of Zina (Enforcement of Hudood) Ordinance, 1979 have considered the sole testimony of victim as enough for conviction in case it inspires confidence. In this context reference can be made to the decisions reported in PLD 1991 SC 412, 2005 SCMR 1936, PLD 1989 SC 74, 1999 PCr.LJ 699 and PLD 1966 Karachi 101.

It may be observed here that it is not the number of witnesses but quality and credibility of the evidence which is to be considered. In cases of Zina there are general hardly any witnesses other than the victim herself as it is very rare that such offence takes place in view of other or at public place. That is why the Superior Courts in this country have attached great sanctity to the statement of the victim and it has been repeatedly laid down that sole testimony of the victim would be sufficient to base conviction thereon if it inspires confidence.

However, besides the position, learned counsel for the complainant present in Court along with complainant Mst. Sumera submitted that complainant has got married and started new life who also confirms the position taken in her affidavit filed before this Court that in the wake of private settlement outside the Court, she has no objection if the appellants are acquitted of the charge.

No doubt this is a non-compoundable offence but yet looking to the fact that the victim lady present in Court has started her new life by getting married and as a result of private settlement outside the court she do not want to press her case any more and extended no objection if the appellants are acquitted from the charge, as both the parties reside within same locality and want to live their future lives with peace and harmony which can be considered as supporting element while deciding this appeal.

In view of the above discussion, the appellant Haq Nawaz Kalwar, who only facilitated the main accused Manzoor Chachar in the commission of zina with the complainant, is acquitted. He is directed to be released forth with if not required in any other case. As regards the main accused Manzoor Chachar is concerned, while considering affidavit sworn by the complainant coupled with the no objection extended by the learned A.P.G., the sentence of R.I for life awarded to the appellant Manzoor Chachar under impugned judgment is reduced upto R.I. 10 years with fine of Rs. 20,000 and in case of default in payment of fine he shall suffer S.I. for two months more. The benefit of section 382-B, Cr.P.C. is already extended to the appellant Manzoor by the trial Court.

With the above modification in the impugned judgment passed by the learned trial Court, the Criminal Appeal No.S-92 of 2012 stands partly allowed and partly dismissed.

HBT/M-52/Sindh

Sentence reduced.