

Judgment Sheet  
**IN THE LAHORE HIGH COURT, LAHORE**  
JUDICIAL DEPARTMENT

**CrI. Appeal No. 61-J of 2017**

**Muhammad Arshad.**

**The State, etc.**

**JUDGMENT**

**Date of hearing:** 15.03.2024.

**Appellant by:** Komal Arshad, wife of the appellant, in person.

**State by:** Mr. Muhammad Akhlaq, Deputy Prosecutor General.

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**Aalia Neelum, J.-** Muhammad Arshad, son of Muhammad Hussain, caste Dindar, resident of village Kot Muhammadee, Tehsil Pasrur, District Sialkot, the appellant was involved in case F.I.R. No.372-2015, dated 10.12.2015, under Section 376 PPC, registered at Police Station, Badiana, District Sialkot and was tried by the learned Addl. Sessions Judge Pasrur, District Sialkot. The learned trial court seized with the matter in terms of the judgment dated 12.01.2017, convicted the appellant under sections 376 PPC and sentenced him to undergo ten years rigorous imprisonment and a fine of Rs.25,000/- and in case of default in payment thereof, would further undergo two months S.I. Benefit of section 382-B Cr.P.C. was also extended in favour of the appellant.

2. Feeling aggrieved by the judgment of the learned trial court, the appellant has assailed his conviction by filing an instant appeal bearing Criminal Appeal No.61-J of 2017.

3. The prosecution story as alleged in the F.I.R (Ex. PF) lodged on the complaint (Ex. PA) of Irshad Bibi (PW-1)-the complainant is that about 2 ½ months before, the complainant (PW-1) went to Sargodha to attend demise ceremony and her daughter Mst. Shamshad Bibi, aged about 14/15 years, was at home; the accused, Muhammad Arshad, came to her house and awakened Mst.

Shamshad Bibi, daughter of the complainant (PW-1), took her in the Baithak, put off her Shalwar, and when she resisted, the accused threatened her and committed Zina with her; after that, the accused also committed Zina with her daughter time and again and when she became pregnant, she told the complainant (PW-1). Hence, this case.

4. After registration of the case, the investigation of this case was conducted by Muhammad Ashraf S.I (PW-9). The appellant was found guilty, and report under Section 173, Cr.P.C., was sent to the court of competent jurisdiction. On 23.05.2016, the learned trial court formally charge-sheeted the appellant, to which he pleaded not guilty and claimed trial. In support of its version, the prosecution produced as many as nine (09) witnesses.

5. Ocular account of the first part of the occurrence, in this case, came from the statement of Mst. Irshad Bibi (PW-1)/complainant and Mst. Shamshad Bibi, the victim (PW-2). Dr. Rashida Musarrat WMO (PW-3) examined the victim, Dr. Syed Naveed Tahir M.O (PW-5) conducted a potency test of the accused/appellant Muhammad Arshad and Dr. Muhammad Shafique Radiologist (PW-6) conducted the ultrasound of the victim-Mst. Shamshad Bibi.

6. The learned Assistant District Public Prosecutor gave up Muhammad Boota, Inayat, and Saima Ghani 835/LC-PWs, which were unnecessary, and after tendering the report of P.F.S.A (Ex. PE) closed the prosecution evidence.

7. The appellant was also examined under Section 342, Cr.P.C., wherein he neither opted to produce defence evidence nor appeared as his witness under Section 340(2) of Cr.P.C. in disproof the allegations against him in the prosecution version. While replying to the question of why this case was against him and why the PWs deposed against him, the appellant made the following deposition: -

*“One Riasat Ali alias Riasoo who had land dispute with my family he had visiting terms with the complainant party was*

*the basic reason of this false case against me because, I (Muhammad Arshad) used to forbid to complainant to stop Riasat Ali (P.O) from visiting the complainant's house, due to that grudge, Mst. Irshad Bibi complainant moved a false application against me and she got registered this false case against me to teach me a lesson for forbidding Riasat Ali to visiting the complainant's house. All the PWs are close relative of complainant and due to close relation, they deposed falsely against me."*

8. After recording evidence and evaluating the evidence available on record in light of arguments advanced from both sides, the learned trial court found the prosecution version proved beyond any shadow of reasonable doubt, which resulted in the appellant's conviction in the afore-stated terms.

9. I have heard the arguments and have minutely perused the record on the file.

10. The case of the prosecution, as reflected from the FIR (Ex. PF) and written complaint (Ex. PA) dated 10.12.2015, that Mst. Irshad Bibi (PW-1)-the complainant, mother of the victim Shamshad Bibi (PW-2), aged about 14/15 years, reported the incident of rape committed by the appellant upon her daughter 2 ½ months ago. The incident reported by Mst. Irshad Bibi (PW-1)-the complainant, is set out in preceding paragraph No. 3 of this judgment. Mst. Irshad Bibi (PW-1)-the complainant is not the eyewitness to the incident of rape. Rather, she (PW-1) reported the incident of rape informed to her by her daughter, who became pregnant as the result of rape committed upon her by the appellant. FIR (Ex. PF) got lodged by Mst. Irshad Bibi (PW-1)-the complainant, which had set the criminal law in motion. It is a settled principle of law that the conviction can be based on the sole testimony of the victim of sexual assault without corroboration from any other evidence; if the same is confidence-inspiring, the same can be relied upon for the conviction of the accused. It is relevant to mention here that corroboration of the creditworthy and reliable testimony of the victim is not a requirement of law and is legally sufficient to convict the guilty. In this

view, I shall now examine whether the evidence adduced by the prosecution, particularly the testimony of the victim Shamshad Bibi (PW-2), aged about 14/15 years, is trustworthy, credible, and can be relied upon. In this regard, extracting and appreciating the victim's testimony would be necessary. The undisputed examination-in-chief of the victim, Shamshad Bibi (PW-2), aged about 14/15 years, is as under: -

**“Stated that ten/eleven months before, my mother was at Sargodha on the death of some relative. My father is seriously ill and was sleeping in the other room. The accused Muhammad Arshad present before the court came at our home at midnight. I was sleeping with my sisters in the room and my cot was near the room. The accused awoke me up and took me forcibly in a room situated in the Northern side of our house. Where he forcefully committed rape with me and when I alarm, he threatened me that he would murdered me as well as my parents. Then I was unconscious and he went away from there. I did not inform any one due to fear and hesitation. I became pregnant due to zina committed by the accused and after 2 ½ months, I informed my mother. I told my mother about the occurrence who got registered this case about the occurrence. I was also medically examined by the doctor. My DNA test was also conducted. After 7/8 months of this occurrence, I gave birth to a female baby who is presently with me as a result of zina by the accused.”**

11. The appellant has not chosen to cross-examine Shamshad Bibi (PW-2) regarding her aforementioned portion of testimony, so it may well be assumed that to the extent of the statement mentioned above, given by Shamshad Bibi (PW-2) was admitted to the appellant. Her (PW-2) cross-examination reaffirmed the fact of sexual assault and the specific act committed by the Appellant. The undisputed facts emerge from the mode and manner in which the defence had conducted the cross-examination on Shamshad Bibi (PW-2). In the

cross-examination, she (PW-2) narrated the same incident as she deposed in the examination-in-chief.

“We all the six sisters were sleeping in the same room from where the accused took me to another room. Volunteered that I was sleeping on a separate cot with my younger sister. My father was sleeping in a room situated on the Southern side of the room where I was slept. Both the rooms are adjoining to each other. It was winter season when the occurrence took place. We had not bolted the room from inside where we were sleeping at that time---When the accused awoke me up in the room, I tried to raise alarm but he put his hand on my mouth and threatened me to murder me if I raise alarm. Our house consists of four rooms and one kitchen. It is correct that the room where I was sleeping is situated on the southern side of my house whereas the room where the accused committed zina-bil-jabr with me is situated on the Northern side of our house. There is a kitchen adjoining to the room where I was sleeping. The room of the kitchen was not knocked but it was bolted. There is a house situated on the Western side of our house but I cannot tell the name of the owner of the said house. Volunteered that the said house is deserted one. There is no residential house on the Southern side of our house. There are opened fields. The accused remained present in our house for about 10/15 minutes at the time of occurrence. After about five minutes of the occurrence, I regained my consciousness. Neither I raised alarm nor I informed any one about the occurrence due to fear and hesitation. My mother came back from Sargodha after two/three days. I also did not inform my mother for the same reason. I cannot tell the exact date and time when I informed my mother about the occurrence. However, I was present in my house when I informed my mother about this occurrence---Police came to our house two/three days afterwards when I informed my parents about the occurrence after 2 ½ months of the occurrence. When police came to our house at that time myself and my parents were present. My medical examination was conducted after two/three days of the occurrence. Volunteered two/days after 2 ½ months when I informed to my parents about the occurrence. I became conscious that I have become pregnant 1/1 ½ months of the occurrence but I did not tell anybody. I had visited the police station twice for recording of my statement. My statement

was got recorded at police station two/three days after registration of the case. I do not know whether Riasat Ali alias Riasoo of our village is a P.O. in some cases. I also do not know whether the said Riasat had any litigation with Arshad accused. Said Riasat had used to visit our house off and on. We had forbade said Riasat from visiting our house on the asking of Arshad accused.”

12. Nothing in the cross-examination of Shamshad Bibi (PW-2) puts a dent in the prosecution case. Shamshad Bibi (PW-2) again narrated that she was subjected to zina-bil-jabar and became pregnant after 1/1 ½ months of the occurrence. Nothing contradictory has come out in the cross-examination of Shamshad Bibi (PW-2). The Courts cannot overlook in the sexual offense case that delays in the lodging of the FIR can be due to a variety of reasons, particularly the reluctance of the victim’s family to go to the police and complain about the incident, which concerns the reputation of the victim girl and the honor of her family. It is only after giving it a cool thought that a complaint of a sexual offense is generally lodged. In the circumstance of such a threat, the delay in filing the complaint in this case cannot be said to have any adverse consequence for the prosecution. Shamshad Bibi (PW-2) was also examined by Dr. Rashida Musarrat (PW-3) on 12.12.2015. According to her (PW-3), the victim washed the clothes she wore during the incident. Dr. Rashida Musarrat (PW-3) deposed during examination-in-chief that: -

“According to the U.S.G report of A.I.M Teaching Hospital, Sialkot dated 15.12.2015 single viable fetus of nine weeks 6-days was present in the uterus of Shamshad Bibi. Ultra Sonography report is Exh.PC. According to the report of A.I.M. Teaching Hospital, Sialkot dated 14.12.2015 urine pregnancy test was +ve which is Exh.PD. According to report of PFSA Lahore No.0000277135 dated 19.10.2016, no seminal material was identified on vaginal swabs which is Exh.PE. As she was unmarried and according to the reports of U.S.G and urine pregnancy test, she was

**subjected intercourse about 2/2 ½ months prior to the medical examination conducted by me on 12.12.2015.”**

During cross examination she (PW-3) deposed that:-

**“On 12.12.2015, Mst. Shamshad Bibi victim was produced before me as 2:20 P.M. for medical examination. There was no mark of violence on her body. I cannot say that victim Shamshad Bibi was a habitual lady”**

13. The vaginal swabs were also sent for Deoxyribonucleic Acid (abbreviated DNA) analysis in a sealed bottle. Forensic Serology and DNA Analysis Report (Ex. PE) reveals that as per profile of the newly born child, the newly born child cannot be excluded as being the biological child of Shamshad Bibi (PW-2) and Muhammad Arshad, the appellant. In this case, at this stage, it is relevant to mention here that if the accused has not denied that the victim girl was subjected to rape, then the prosecution has not to prove that Shamshad Bibi (PW-2) was subjected to rape. What the prosecution has to prove is that the accused has committed rape on the victim girl, and the prosecution proved it through oral as well as medical evidence. It is noted that when the appellant/accused has taken a specific defence, one Riasat Ali alias Riasoo, who had a land dispute with his family and had visiting terms with the complainant party, was the basic reason for the false case against the appellant. Mst. Irshad Bibi (PW-1), in the cross-examination, deposed as under: -

**“I know one Riasat Ali alias Riasoo of our village Kot Muhammadee. It is correct that said Riasat Ali alias Riasoo is a P.O. and he does visitation our house off and on---There is no dispute of land or any house in between the accused party and aforementioned Riasat Ali.”**

Shamshad Bibi (PW-2) deposed during the cross-examination that: -

“I do not know whether Riasat Ali alias Riasoo of our village is a P.O. in some cases. I also do not know whether the said Riasat had any litigation with Arshad accused. Said Riasat had used to visit our house off and on. We had forbade said Riasat from visiting our house on the asking of Arshad accused.”

Muhammad Ashraf S.I. (PW-9) deposed during cross-examination that: -

“I had remained posted at Police Station Badiana for about two years at different times. I know one Riasat alias Riasoo of village Kot Muhammadee who was involved in different criminal cases. It did not come to my knowledge during investigation that said Riasat alias Riasoo used to visit the house of complainant party in the days of occurrence.”

14. The accused/appellant must bring on the record proof of the land dispute. Therefore, the appellant/accused has not proved the defence plea in the manner known to law. The prosecution has proved its case beyond all reasonable doubt.

15. In view of the preceding facts and circumstances of the case hereinabove, I find no compelling or substantial reasons to differ from the cogent findings arrived at by the learned trial court based upon just appreciation of the material evidence available on record in this case. The trial court correctly arrived at the conclusion of the appellant's guilt after carefully considering and analyzing the evidence on record, including the testimony of the prosecutrix.

16. The appeal is resultantly devoid of merit and is **dismissed**.

(AALIA NEELUM)  
JUDGE

This judgment has been dictated,  
pronounced on 15.03.2024 and  
signed after its completion on  
20.03.2024.

*Nasar Mehmood*