Form No: HCJD/C-121

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
(JUDICIAL DEPARTMENT)

Criminal Appeal No. 48 of 2021

Asim Gulfraz

Versus

The State and another.

Jail Appeal No. 50 of 2021

Asim Gulfraz

Versus

The State.

Appellant by:	Mr. Muhammad Shehzad Qureshi, Advocate.
Respondents by:	Sardar Muhammad Tariq Fareed Gopang, Advocate. Syed Shahbaz Shah, State Counsel. Fiaz Akbar, S.I.
Dates of hearing:	18.03.2021, 14.4.2021, 22.06.2021 & 28.07.2021.

TARIQ MEHMOOD JAHANGIRI, J: By this single judgment, I intend to decide above captioned Criminal Appeal and Jail Appeal filed by Asim Gulfraz against the judgment dated 12.03.2021, passed by the learned Additional Sessions Judge / GBV Court / Juvenile Court, West-Islamabad, whereby appellant has

been convicted in case FIR No. 116/19 dated 11.06.2019, under Section 377-B, PPC, registered at police station Shahzad Town, Islamabad and sentenced to Fourteen Years R.I. with a fine of Rs. 10,00,000/- (One Million). In default of payment of fine he shall further undergo six months S.I, benefit of Section 382-B Cr.P.C was also given to the appellant.

02. Brief facts of the case are that Mst. Naveeda Shaheen (complainant) moved complaint Ex.P-A stating that she is resident of House No. 1216, Street No. 19, Farash Town, Islamabad. On 11.06.2019 at about 04:30 pm her son namely Muhammad Shahvaiz aged about 8 year left the house for playing purpose. He came back to home after half an hour by weeping, there was scratch marks on his neck. He informed that a boy wearing maroon colour clothes forcibly took him to under construction shops in Street No. 21 and committed unnatural offence with him; he also attempted to strangulate him. Upon said complaint FIR Ex.P-A/1 was lodged u/s 377-B, P.P.C by Mehdi Khan, ASI PW-1.

03. After completion of the investigation, challan / report under section 173 Cr.P.C against the appellant for offence under Section 377-B, PPC was submitted.

Charge was framed against the appellant / accused to which he pleaded not guilty and demanded trial.

04. Prosecution has produced 12 witnesses, whereas gave up PW Liaqat Hussain being unnecessary and closed the prosecution evidence.

05. Statement of the accused under Section 342 Cr.P.C was recorded, wherein he denied the prosecution allegations leveled against him and professed his innocence.

06. Learned Additional Sessions Judge, West-Islamabad / GBV Court / Juvenile Court, West-Islamabad after hearing the arguments of learned counsel for the parties and examining the evidence available on record convicted and sentenced the appellant / accused as stated above vide impugned judgment dated 12.03.2021, hence these appeals.

07. Learned trial Court in the impugned judgment has already discussed facts of the case as well as the evidence in detail and there is no need to repeat the same to avoid duplication and unnecessary repetition.

08. Learned counsel for appellant has *inter alia* contended the prosecution has miserably failed to prove its case against the appellant / accused beyond

any shadow of doubt. There are lots of contradictions in the prosecution evidence. It is not appealable to the mind that a mother could send her minor son outside the house for playing purpose in the hot weather of June. The accused was in jail in another criminal case and he was not properly interrogated. The I.O conducted conventional type of interrogation. He further contends that in the said other case compromise has been effected with the complainant of said criminal case FIR No. 224/19. The report of PFSA Ex.P-K dated 15.07.2019 reveals that the PFSA directed the police to recover the evidence material within fifteen days of issuance of the report, otherwise the material will be disposed of, therefore, after fifteen days positive report Ex.P-L is highly doubtful. Identification parade was not conducted according to High Court Rules and Orders and same cannot be relied upon. PW-7 did not state anything in her statement that piece of pants of the victim was taken into custody. The complainant PW-9 in her statement has categorically stated that she changed the clothes of her son before going to hospital. Therefore, it is highly doubtful that the police had sent the stained section of pants to the PFSA. The prosecution has failed to

establish its case and has prayed that appeals be allowed and the impugned judgment be set aside.

09. Learned State Counsel assisted by learned counsel for the complainant has fully supported the impugned judgment and in particular contended that the prosecution has succeeded to prove its case beyond any shadow of doubt by producing strong and tangible evidence. There is no material contradiction in the statements of PWs. All the witnesses are in-line with the prosecution's story. The appellant / accused committed unnatural offence with the minor victim. The appellant / accused is not entitled for any leniency and has prayed that the appeals be dismissed.

10. I have heard the arguments advanced by learned counsel for the appellant, learned State Counsel on behalf of State and learned counsel for the complainant and perused the record with their able assistance.

11. According to record, complainant set the police in motion by moving complaint stating that on 11.06.2019 at 04:30 p.m. her minor son namely Shahvaiz went outside the house for playing and a boy took her son forcibly to under construction shops in Street No. 21 of Farash Town and committed sodomy with him and also attempted to strangulate him. When her son came back

to home by weeping he was having scratch marks on his neck. During the course of investigation police interrogated the accused with permission of Magistrate in Central Jail when he was under custody in another criminal case of same nature FIR No. 224/19 u/s 377/506(ii) P.P.C. During interrogation when the accused made disclosure of the occurrence of this case then he was sent to judicial remand for the purpose of holding identification parade in this case. The identification parade was held by the learned Magistrate on 20.09.2019. The victim identified the appellant / accused namely Asim Gulfraz as culprit of this case while participating in the identification test.

12. As per prosecution evidence the occurrence took place on 11.06.2019 at about 04:30 pm when the victim PW-10 went outside his house for playing purpose. The victim PW-10 made his inline and consistent statement that the accused took him to an under construction house on the pretext to provide him kite, thread and marble balls (bantay). In the said house the accused committed unnatural offence with him. The complainant who is mother of the victim also made her consistent and un-shacked statement to establish the date, time and place of occurrence. Complainant / mother of victim (PW-9) and victim (PW-

10) were cross examined by learned defense counsel at length, but no material contradiction / dent has been created and brought on record to shake their credibility. Complainant PW-9 during her cross examination categorically stated that she changed the clothes of her son before going to hospital. She further clarified that the clothes worn by the victim at the time of occurrence were kept by the police. When the victim was examined by the doctor, his blood sample, internal and external anal swabs were taken. The said samples were made into parcel along with pants which were deposited in the PFSA on 14.06.2019 for DNA by PW-1. Later on, the accused was arrested and his sample was received by PW-2 and deposited in the PFSA Lahore on 07.10.2019. As per evidence, the prosecution has established the safe transmission / deposit of sample parcel of victim and sample parcel of accused to PFSA Lahore for forensic DNA and serology analysis. The report of PFSA dated 15.07.2019 Ex.P-K was received by the police, but the said report only pertained to the swabs of the victim. According to the report Ex.P-K seminal material was found on stain sections of the pants. The said examination was only to the extent of presence of seminal material. Thereafter, when the sample of the appellant / accused was deposited in

PFSA then the report Ex.P-L was prepared. According to the report Ex.P-L the DNA profile obtained from the sperm section of pants matched with the DNA profile of the appellant / accused Asim Gulzar (item No. 4) pertain to blood sample of the accused. The buccal swab standards of victim Muhammad Shahvaiz also matched with the blood sample of appellant / accused Asim Gulfraz. In this way the reports of PFSA Ex.P-K and Ex.P-L are positive and are in support of the prosecution version. The victim PW-10 and his mother (complainant) PW-9 made their trustworthy, confidence inspiring and consistent statements. The expert opinion is in corroboration and confirmatory nature. The oral evidence, coupled with medical evidence as well as reports of PFSA, reveals that the appellant / accused Asim Gulfraz committed sexual abuse of the minor victim Muhammad Shahvaiz.

13. It is trite that in cases of rape / sodomy / unnatural offence, the sole testimony of victim is sufficient to convict the accused, if it is truthful and confidence inspiring. Reliance is placed upon cases reported as "***PLD 1991 SC 412, 2002 SCMR 303, 2006 SCMR 1042, PLD 2011 SC 554 & 2007 SCMR 473"***.

14. The prosecution has produced reliable, consistent and un-shacked evidence to prove its case beyond any shadow of doubt against the appellant / accused Asim Gulfraz. Hence prosecution has succeeded to prove the guilt of the appellant / accused that he committed sexual abuse of the minor / victim Muhammad Shahvaiz.

15. The conviction awarded by the learned Trial Court vide impugned Judgment dated 12.03.2021 is maintained and the appeals being devoid of merits are **dismissed.**

(TARIQ MEHMOOD JAHANGIRI)
JUDGE

Announced in open Court on this _____day of August, 2021.

JUDGE

Bilal /-