JUDGMENT SHEET

ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

Criminal Appeal No.08 of 2024

Mohsin Ali
Vs.
The State and another

Jail Appeal No.22 of 2024

Mohsin Ali
Vs.
The State

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Appellant by:	Qazi Rehan Shabbir, Advocate.
Respondent No.1/State by:	Barrister Abdullah Sarwar, SPP and Rana Hassan Abbas, ADPP along with Zafar S.I.
Respondent No.2 by:	Ms. Smiya Shakeel Raja, Advocate.
Date of Hearing:	**07.05.2025.**

INAAM AMEEN MINHAS, J.- The appellant has filed the captioned appeals against the judgment dated 20.12.2023 **("Impugned Judgment"),** passed by the learned Additional Sessions Judge/Judge Special Anit-Rape Court (East), Islamabad **("Trial Court")**, whereby the appellant was convicted and sentenced u/s 365-B, PPC to life imprisonment with fine of Rs.100,000/- and in case of non-payment of fine he shall further undergo 03 months Simple Imprisonment **("SI")** in case FIR No.676/21, dated 30.12.2021, u/s 365-B PPC, registered at police station Shehzad Town, Islamabad.

2. Brief facts of the case are that FIR Exh.PA was registered on the complaint Exh.PE of complainant Ghulam Murtaza Minhas (PW-2), wherein he stated that on 30.12.2021, at about 08:15 a.m., he left his daughter Mst. Zainab Murtaza aged 19 years at her F.G. Girls School in Tarlai, where she was studying in 10th class. On the same day, when he

went to school at off time, his daughter was not present there and he could not get information from the school staff. On 05.01.2022, the complainant (PW-2) moved another application Exh.PF (supplementary statement) stating therein that on 30.12.2021 the appellant seduced her daughter Mst. Zainab Murtaza and abducted her for the purpose of Zina. On 15.01.2022, the complainant went to his village Sihala for the search of the appellant and his daughter as the appellant was also resident of his village, where he found the appellant and apprehended him and when the complainant asked from him about her daughter, the appellant led him to a house situated at Gaggri Sihala, where he had confined her daughter in a room.

3. The police arrested the appellant, investigated the matter and having found involved the appellant in the commission of the offence prepared report u/s 173, Cr.P.C and sent before the Trial Court. The learned Trial Court framed the charge, recorded evidence. The prosecution produced seven PWs including the complainant and the abductee. In statement u/s 342, Cr.P.C the appellant refuted the evidence produced against him and produced Nikah Khawan Muhammad Ali and video of Nikah through USB in his defence as required u/s 340(2), Cr.p.C. The learned Trial Court after hearing the arguments convicted and sentenced the appellant through the Impugned Judgment, hence, the appeals.

4. The learned counsel for the appellant contended that the appellant is innocent and has falsely been entangled in the case in hand; that the abductee contracted marriage with the appellant with her free will and consent, which is proved through cogent evidence of Muhammad Ali DW-1, who solemnized Nikah of the appellant with the abductee; that the abductee while appearing as PW-3 dishonestly improved her statements recorded u/s 161, Cr. P.C. and 164 Cr.P.C; that the abductee did not opt to conduct her medical examination, whereas the pregnancy test was found negative. At the end a prayer has been made for the acquittal of the appellant in the case in hand.

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5. Conversely, the learned counsel for the complainant as well as the learned State Counsel have vehemently argued that the appellant was blackmailing the abductee by keeping her pictures and was threatening to kill her father and brother; that the appellant forcefully contracted the marriage with the abductee and committed rape against her will and consent; that the prosecution has successfully proved its case against the appellant beyond any shadow of doubt; that the Impugned Judgment does not warrant interference by this Court and finally prayed for dismissal of the appeals.

6. We have heard the arguments of the learned counsel for the parties and perused the record with their able assistance.

7. The alleged incident of abduction of the complainant's daughter took place on 30.12.2021. During evidence the complainant was testified as PW-2. On the very same day the complainant PW-2 submitted written application Exh.PE to the police with simple assertion that today at about 8:15 a.m, he left his daughter Zainab Murtaza aged 19 years, who is student of 10th class, to government school Tarlai, Islamabad and when he went to take her daughter from the school at off time, his daughter was not present there and he could not get any information from school staff, whereupon FIR Exh.PA was lodged against unknown persons. Five days later, on 05.01.2022 the complainant PW-2 submitted another application Exh.PF (supplementary statement), in which, for the first time, he specifically nominted the present appellant, who allegedly abducted his daughter for committing Zina and illegal activities. The delay in nominating the appellant as an accused, without any stated discovery or new evidence, raises serious doubts about the truthfulness and spontaneity of the accusation. Under the principles of criminal justice, there is no clear legal framework that governs the submission of supplementary statement. When an accused is nominated belatedly without explaining the delay, it strongly suggests the possibility of afterthought, fabrication or external influence. Such a delay inherently affects the credibility of the witness and a careful and skeptical approach is required before

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relying on such a statement to establish the guilt of an accused and the same cannot be relied upon. Reliance is placed upon ***Akhtar Ali and others vs. The State***, **(2008 SCMR 6)**. Moreover, the Honourable Supreme Court in the case **Kashif Ali vs. The Judge, Anti-Terrorism, Court No II, Lahore and others**, **(PLD 2016 SC 951)** observed that the supplementary statement of the complainant has no legal value and is inadmissible in evidence.

8. The complainant while appearing as PW-2 in his examination-in-chief stated that on 15.01.2022, he went to his village Sihala for search of the appellant and his daughter as the appellant was also resident of his village. On the same day he found the appellant Mohsin Ali and they apprehended him. When he asked about his daughter, the appellant led them to a house situated at Gaggri Sihala, where he had confined his daughter in a room. There was a lock on the door of the room and the appellant opened the lock with a key, which was in his possession and they found his daughter Mst. Zainab Murtaza present there. He took his daughter Mst. Zainab Murtaza and appellant Mohsin Ali alias Billu with him and proceeded to P.S Shahzad Town, where the police arrested the appellant Mohsin Ali. This story of the complainant PW-2 is unnatural as in normal course, a complainant on knowing the incident or accused rush to the police station for further action but in this case the complainant PW-2 asked from the appellant about his daughter, whereupon he led them to a house, where he had confined his daughter and thereafter they all three complainant PW-2, the abductee PW-3 and the appellant amicably went to the police station, where police arrested the appellant. This aspect makes the prosecution case highly doubtful.

9. Most significantly, the complainant PW-2 failed to associate any independent or public witnesses at the time of recovery of the abductee PW-3, even though the location, Gaggree Sihala, is a densely populated area. In such surroundings, the neighbourer or any other independent witness was crucial in supporting the complainant's PW-2 version. The complainant PW-2 did not make any effort to secure the presence of such witness to corroborate the recovery process. The absence of any

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independent verification in a public setting severely weakens the credibility of the prosecution's version. In criminal law, particularly in cases involving recovery of the abductee, the presence of neutral, independent witnesses is crucial to ensure the reliability and transparency of the investigation. The failure to associate any independent witness for recovery of the abductee PW-3 by the complainant PW-2 that too without assistance or knowledge of the police renders the prosecution's story doubtful and undermines the alleged recovery. Additionally, the complainant PW-2 in his examination-in-chief did not took name of any other person while effecting recovery of the abductee, whereas the abductee while appearing as PW-3 stated that on 15.01.2022 his father and his brother came with appellant Mohsin Ali to the room and retrieved her from there. The abductee neither told name of his brother, who came with his father nor he was made witness of the case. This contradiction also makes the recovery of the victim doubtful.

10. Athar Hussain ASI PW-7, who is I.O of the case stated in his examination-in-chief that on 15.01.2022 he prepared the application Exh.PL for medical examination of the abductee but she did not opt to conduct her medical examination. The abductee PW-3 remained under abduction for 15 days and in order to substantiate the allegation of Zina/rape her medical examination was of paramount importance. In cases involving accusation of rape, medical examination is a critical piece of evidence that can objectively confirm whether physical or sexual assault occurred. Not allowing the medical examination by the victim raises a serious and legitimate question that if the allegation was genuine, what prevented the victim from cooperating in a process that could have provided vital medical proof? This omission makes the prosecution case doubtful.

11. The appellant in his defence evidence produced Muhammad Ali, who solemnized his Nikah with the victim and produced attested copy of the Nikhnama as Exh.DA. Although the abductee PW-3 claimed that the appellant forcibly entered into a Nikah (marriage) with her and

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consummated it without her consent but the important factor is her failure to take any legal step to challenge the alleged forced marriage. Under the law, a woman, who denies being validly married has the option to file a suit for jactitation of marriage, which serves to declare that no lawful marriage exists. Such omission also makes the prosecution case doubtful.

12. The above referred assessment of the evidence clearly shows that the prosecution has badly failed to prove the allegation of abduction against the appellant through strong, trustworthy, and convincing evidence. The evidence presented lacks the clarity and reliability required to support a serious criminal charge. Under well-established principles of criminal justice, the burden lies on the prosecution to prove the case beyond a reasonable doubt, whereas the prosecution case is full of doubts, benefit of which is extended in favour of the appellant. It is a settled legal rule that to extend the benefit of doubt to an accused person, it is not necessary to identify multiple flaws in the prosecution's case. Even a single circumstance that raises a reasonable doubt in the mind of an ordinary, prudent person regarding the accused's guilt is sufficient. In such situation, the accused is entitled to be given the benefit of that doubt not as a matter of kindness or leniency but as a matter of legal right grounded in the presumption of innocence. Reliance is placed upon ***Muhammad Mansha vs. The State***, **(2018 SCMR 772)**, wherein it was held that:-

> *"Needless to mention that while giving the benefit of doubt to an accused it is not necessary that there should many circumstances creating doubt. If there is a circumstance which creates reasonable doubt in a prudent mind about the guilt of the accused, then the accused would be entitled to the benefit of such doubt, not as a matter of grace and concession, but as a matter of right. It is based on the maxim, "it is better that ten guilty persons be acquitted rather than one innocent person be convicted". Reliance in this behalf can be made upon the cases of Tariq Pervez v. The State (1995 SCMR. 1345), Ghulam Qadir and 2 others v. The State (2008 SCMR 1221), Muhammad Akram v. The State (2009 SCMR 230)*

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and Muhammad Zairian. v. The State (2014 SCMR 749).”

13. In view of the above discussion, the captioned appeals are **allowed**. The Impugned Judgment of the learned Trial Court is **set aside** and the appellant is **acquitted** from case FIR No.676/21, dated 30.12.2021, u/s 365-B, PPC, registered at police station Shehzad Town, Islamabad. He be released forthwith, if not required in any other case.

(ARBAB MUHAMMAD TAHIR)
JUDGE

(INAAM AMEEN MINHAS)
JUDGE

Announced in open Court on 02.06.2025

JUDGE **JUDGE**

R.Anjam

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