

**Case Note: Shahzad Ahmad v. The State and Another [Criminal Appeal
No.294/2022 & Jail petition No. 302/2022 (IHC-Islamabad)]**

¹Dr. Usman Hameed, ²Dr. Saira Bashir Dar, ³Ali Shahid, ⁴Sadia Saeed

¹Professor of Criminology at the University of Lahore.

²Assistant Professor, Law School, Bahria University Islamabad.

³Lecturer in Law, Grand Asian University, Sialkot.

⁴Assistant Professor, Superior Law College, Lahore.

Usman.Hameed@crim.uol.pk, drsairabashir@gmail.com,
ali_shahid1996@hotmail.com, sadia.shahzad669@gmail.com

INTRODUCTION

This case note will analyze a recent judgment authored by Justice Babar Sattar of Islamabad High Court (IHC) on the topic of ‘Rape’.¹ The 31 page judgment in addition to delineating ingredients of the crime sets forth evidentiary requirements to prove the crime. At the outset, the judgment casts light on the meaning of the term ‘consent’ in connection with rape. Next, it draws a distinction between submission/ non- resistance and consent. Based on this, it concludes that consent in rape cases cannot be presumed merely by absence of marks of struggle. Finally, the judgment reiterates the well-established principle of law that DNA is a confirmatory evidence which may provide corroboration to substantive oral evidence. However, on its own it should not be made basis of conviction.

Key words: Rape, consensual sex, DNA evidence, Burden of proof, struggle marks.

Article Details:

Received on 29 March 2025

Accepted on 25 April 2025

Published on 28 April 2025

Corresponding Authors*:

¹ Shahzad Ahmad v. The State and another [Criminal Appeal No. 294/ 2022 (IHC-Islamabad)].

MAJOR CONTRIBUTION

An important contribution of the judgment is to unravel a glaring mistake by the defense because of which it lost ground to raise the plea of consensual sex. It so happened that the defense altogether denied the involvement of the accused in the commission of crime in statement under section 342 CrpC.² On the contrary, it contended that the rape was committed by some unknown person with the consent of the complainant. However, while putting forth this argument, neither the unknown person was identified nor any evidence was presented to prove the occurrence. As against altogether denying the occurrence, had the accused confessed to having consensual sex, the complainant would have been bound to show marks of struggle in the medical report to prove her version.³ Nevertheless, since no such argument was built, rather a baseless story was advanced, the burden of proof never shifted back to the prosecution which had successfully established a prima facie case against the accused on the basis of complainant's statement and DNA evidence.⁴

FACTS AS PER PROSECUTION VERSION

This case found its way to the Islamabad High Court when the accused/petitioner filed an appeal against his conviction by the lower court pursuant to which he was awarded rigorous imprisonment of 14 years for the offence of rape under section 376 PPC. Moreover, he was ordered to pay compensation amounting to Rs. 500,000 under section 544 CrPC.⁵ As per the prosecution story, the complainant was living in her parents' house when the accused, who was their neighbor, rang the doorbell at 9 PM, in the absence of her parents. When the door was opened, the accused forced himself in and raped the complainant on gunpoint. Thereafter, he left the scene upon giving life threats to the complainant that she would be done to death if she disclosed the occurrence to anyone else.⁶ It transpired that the complainant became pregnant as a result of the rape and when the pregnancy became visible she was left with no choice but to reveal the occurrence to her parents. Initially, the parents tried to resolve the matter amicably by asking the accused to take the complainant into marriage. Upon his refusal, FIR was got registered under section 376 PPC against the accused. During investigation, blood samples of the baby born out of rape and of the accused were collected and sent to Punjab Forensic Science Laboratory (PFSL) for DNA analysis. The DNA report expressed 99.9% probability of the accused being biological father of the baby.⁷

CONTENTION OF THE ACCUSED

The accused denied the occurrence in absolute terms and took exception to 07 Months delay in lodging the FIR.⁸ Moreover, he called into question the absence of any marks of violence on the body of the complainant in the medical report, making it a consensual occurrence. Additionally, he took the plea that no recovery of any firearm weapon was made to prove the allegation that the rape was committed on gun point. As against this, a counter-narrative was put forward by the defense according to which an unknown person had had sexual intercourse with the complainant and a false case was got registered against the accused to make him a scapegoat, even though who had nothing to do with the offence.⁹ However, neither any evidence was lead to establish animosity between the parties, inducing the complainant to lodge a false and frivolous FIR nor any identity of the unknown person was disclosed to bring home the fact that the rape was

² See Para 8 *ibid*.

³ See Para 50 *ibid*.

⁴ See Article 119 QSO 1984.

⁵ Judgment dated 24.06.21 in FIR No. 587/2021 dated 24.06.21.

⁶ See para 2 *ibid*.

⁷ PFSL reports are admissible evidence u/a 59 QSO 1984 read with Sec. 510 CrPC 1898.

⁸ See Para 4, *Shahzad Ahmad v. The State and another* [Criminal Appeal No. 294/ 2022 (IHC-Islamabad)]

⁹ See Para 3 and 4 *ibid*.

committed by someone else. Likewise, no rebuttal evidence was given under section 340(2) CrPC to deny the parentage of the baby born out of rape.¹⁰

DECISION OF THE COURT

The court turned down the submissions of the accused on the following grounds:

a. Surrender or submission to force/ violence by the victim is enough to constitute the crime of rape under section 375 PPC, there is no need to show struggle marks. This is evident from the fact that the act of having consensual intercourse with someone who is misled to believe that the rapist is her husband has been held to be rape by section 375 PPC, although there is no element of force or violence involved in such an act.¹¹

b. Delay in registration of FIR is well explained as the complainant disclosed the occurrence to her parents only after the pregnancy became visible, which is understandable in a society where about 90% rape cases go unreported due to fear of stigmatization.¹² Subsequent to that, along the lines of our societal norms her parents kept on asking the accused to consider marrying the complainant.

c. The story of the prosecution got confirmed by the report of Punjab Forensic Science Laboratory which documented the fact that there is 99.9% probability of the accused being biological father of the baby girl.¹³ The authenticity of the report was further established by the police having followed the procedure of receiving blood samples from the hospital and transmitting the same to FPSL for DNA analysis without delay.¹⁴

d. Because the accused altogether denied the allegation of having anything to do with complainant, he lost the ground to set up the counter narrative that the sex was consensual. As a result, his argument that there was no marks of violence on the person of the complainant became irrelevant.¹⁵

In the light of above, the conviction and sentence awarded by the trial court was upheld by the Hon'ble Islamabad High Court.

KEY TAKEAWAYS

1. The most instructive aspect of the judgment was its emphasis on sufficiency of complainant/ victim's statement alongside irrefutable DNA evidence to bring home the guilt of the accused in a charge under section 375 PPC.¹⁶

2. Furthermore, it painstakingly elaborates that fear of stigmatization and revenge remain the foremost causes of under-reporting of the crime of rape.¹⁷

3. More importantly, the judgment solidified the fact that giving into force without offering any resistance may still constitute rape because it will be deemed as submission to violence by the hapless victim.¹⁸

4. Likewise, the judgment sets fort the principle that if the accused altogether denies the charge of rape, he will subsequently be prevented from setting up a counter claim that the crime was committed with the consent of the prosecutrix.¹⁹ Similarly, he will not be allowed to claim

¹⁰ See para 8 *ibid*.

¹¹ See Section 375 PPC, '...Additionally, it covers cases where the man knows he is not married to the woman, but she consents under the belief he is her husband, or when the woman is under 16 years of age.'

¹² See para No. 48, *Shahzad Ahmad v. The State and another* [Criminal Appeal No. 294/ 2022 (IHC-Islamabad)].

¹³ See Para No. 5 *ibid*.

¹⁴ See Para No. 47 *ibid*.

¹⁵ See Para No. 50 *ibid*.

¹⁶ See Para No. 42 *ibid*.

¹⁷ See Para No. 40 *ibid*.

¹⁸ See Para No.33 *ibid*.

¹⁹ See Para No. 8 *ibid*.

that someone else committed the crime. As he was not the eye witness by his own account, how could he possibly have seen the so called unknown person?²⁰

INSIGHTS BY FACTORS INFLUENCING THE MIND OF A JUDGE

Before parting with the judgment, Justice Babar Sattar made a thoughtful observation enumerating the factors which may influence the mind of a judge in cases involving sexual crimes. He goes on to say, a judge being a product of his personal experiences, may get carried away by his gender identity. Since female gender is disproportionately represented in judiciary, it is of note that judges should not allow their innate prejudices to inform their decisions. In the opinion of Justice Babar Sattar ‘... while ruling in a case of sexual abuse, a judge must be aware of his own construct of social reality as a means to preventing his own lived experience from interfering with his adjudicatory functions...’²¹

The observation though reflective may be viewed with some skepticism on two grounds, mainly. First, even if the supposition is assumed to be correct, there is no guarantee that women judges will not be influenced by their own instinctive and intuitive biases. Secondly, in courts of law, cases are decided on the basis of available evidence and application of law on the facts at hand. So the required skill is appraisal of evidence and having relevant law up one’s sleeves. Whoever is accomplished in these skills can deliver dispassionate and persuasive judgments, regardless of gender. Therefore, while respectfully disagreeing with the minor observation above, it can be summarized that the judgment is a treasure chest for knowledge on section 375 PPC and its application in modern context.

²⁰ ibid

²¹ See Para No. 44 ibid.