

Muhammad Imran vs. The State and another

2024 SCP 226

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Keywords: Rape; DNA; Psychological Trauma; PPC; Concurrent Findings; Freeze Response; CEDAW; Stereotypes; Dishonour; Fornication; Medical Examination; Criminal Defamation

A three-member bench of the Supreme Court of Pakistan (“Court”) recently passed its judgment in a rape case. Through its majority judgement, the Court turned the charge of rape to a charge of fornication, holding that the complainant consented to the sexual activity.

The victim had filed a First Information Report (“FIR”) on July 11, 2016, claiming that her brother’s friend had raped her inside her home while no one was around. Medical examination revealed that the accused’s DNA matched the DNA found on the victim. There were also witnesses who heard the victim’s clamour. The judges in the majority held that the victim was a consenting party and therefore turned the charge to one of fornication. On the other hand, through her compelling and powerful dissent, Justice Ayesha A. Malik ruled against the accused, systematically taking apart the majority’s flawed reasoning.

A bare perusal of the majority judgement reveals that one can easily exploit the loopholes in our judicial system, and this invariably results in grave injustice. What is disheartening to see is that despite the trial Court and the Lahore High Court convicting the accused for rape, the Court — country’s apex court — declared it to be a case of fornication, notwithstanding the plethora of evidence indicating otherwise. The majority judgement *incorrectly* noted that there was a delay in the lodging of the FIR. In the absence of plausible reasons, the majority Court reasoned, this supposed delay was fatal to the victim’s case. However, as Justice Malik pointed out, the record placed before the Court actually showed that there was no delay in the filing of the FIR.¹

Even otherwise, it is trite law that delay in the filing of the FIR in cases of rape or any other form of sexual assault is not fatal to the victim’s case.² Under such circumstances, there are multiple reasons why a victim may hesitate or delay filing a complaint: the fear of shame and dishonour that would be brought to her or her family; psychological trauma that she may have to

¹ *Muhammad Imran vs. The State and another* 2024 SCP 226 [10] (Ayesha Malik J., dissenting).

² *Zahid vs. The State* 2020 SCMR 590; see also *Hamid Khan vs. The State* 1981 SCMR 448.

face; and duress by the perpetrator — Justice Malik notes in this regard that “to silence the victims of rape or sexual abuse...criminal defamation proceedings are [sometimes] initiated against them by the perpetrators.”³ Thus, such delays are by no means indicative of victims’ malicious intent to level false allegations against innocent persons. Moreover, in the absence of a misreading or a non-reading of the evidence by the lower courts (as was the case in the present matter), it was inappropriate for the majority Court to interfere with lower courts’ concurrent findings of accused’s guilt and reappraise the evidence itself.

The majority noted that the victim and the accused were previously named in an FIR and arrested together over a charge under Section 294 (dealing with “obscene acts and songs”) of the Pakistan Penal Code (“PPC”). This, the majority reasoned, showed that the two had a familiarity with each other and that there did exist a prior relationship between them. However, the majority Court did not discuss the nature of the said relationship (if any). The supposed prior relationship — the nature of which we do not know — does not establish the claim of consent on the part of the victim. The burden to prove consent — and to steer the matter away from charges of rape to a case of fornication — lies on the accused, and the victim should be questioned about lack of consent *only* after the accused has discharged his burden. The accused did not discharge the said burden in the present case. Therefore, since consent was not patently and unambiguously established, and given the lower courts’ concurrent findings, the Court should not have presumed consent. This was all the more important considering that our society refuses to accept the fact that sexual abuse is a reality for most women.

Moreover, regarding the victim’s claim that the accused had dragged her and had forcibly taken off her clothes before raping her, the majority observed that the medical examination showed no signs of bruising on the victim’s body. This, the majority concluded, meant that the victim had not put up a fight but had consented to the act. However, a freeze response in situations like these is neither surprising nor rare, and victims often choose not to resist or fight back because they feel extremely terrified. The majority’s observation that in cases of rape, “a female who is not a consenting party would offer very strong resistance”⁴ is reflective of the stereotypical chains with which the expectations of how a victim of sexual assault “must” act are cuffed. As Justice Malik

³ *Imran* (n 1) [8] (Ayesha Malik J., dissenting); see also Muhammad Anas Khan, ‘Criminal Defamation Laws in Pakistan and Their Use to Silence Victims of Sexual Harassment, Abuse, or Rape’ (2023) 9 LLJ 43.

⁴ *Imran* (n 1) [8].

noted in her dissent, the United Nations Committee on the Elimination of Discrimination Against Women (“CEDAW”) concluded that such false theoretical assumptions deny women fair trial by perpetuating myths that have no scientific or empirical basis.⁵ The modification of the charge of rape to one of fornication not only deters victims of sexual assault from reporting the crime but also makes them fearful of potential smear campaigns.

In Punjab alone, 2023 witnessed 6,624 rape cases being registered, a 12% increase from the previous year.⁶ Assuming the authenticity of these cases, this means that every eighty minutes, a woman was raped in Punjab. However, it is common knowledge that reported statistics reveal only the tip of the iceberg, with real figures being much greater. While incidents of rape have been on the rise, conviction rates in Punjab have remained an abysmal 16%.⁷ This can be attributed to the insufficient female representation in the judiciary, and it is no coincidence that the Court’s male judges chose to disbelieve the victim’s story while the Court’s first female judge opted to pen down a powerful dissent. It is much harder for victims of sexual abuse to get justice when the judicial system cannot truly fathom the pain and suffering of the assaulted.

⁵ *Imran* (n 1) [8] (Ayesha Malik J., dissenting).

⁶ Correspondent, ‘Alarming rise in cases of violence against women’ *The Express Tribune* (Karachi, 10 March 2024) <<https://tribune.com.pk/story/2458931/alarming-rise-in-cases-of-violence-against-women>> accessed 24 December 2024.

⁷ Editorial, ‘Rape and low conviction’ *The Express Tribune* (Karachi, 8 December 2024) <<https://tribune.com.pk/story/2514432/rape-and-low-conviction>> accessed 24 December 2024.