

**IN THE HIGH COURT OF SINDH AT KARACHI**  
Criminal Acquittal Appeal No.206 of 2023

**Before:**

**Acting Chief Justice Zafar Ahmed Rajput**  
**Justice Miran Muhammad Shah**

|                               |   |   |
|-------------------------------|---|---|
| <b>Appellant</b>              | : | Aslam Masih s/o Nazeer Masih,<br>Through Ms. Sara Malkani, Advocate.  |
| <b>Respondents No.2</b>       | : | Muhammad Amir s/o Muhammad Anwar,<br>through M/s. Muhammad Jameel & Sarosh<br>Jameel, Advocates.  |
| <b>Respondents No.1&amp;3</b> | : | Court of Addl. District & Sessions Judge-VII,<br>Karachi-East and The State, through<br>Mr. Mumtaz Ali Shah, Assistant Prosecutor<br>General, Sindh. (APG)<br>----- |
| <b>Date of hearing</b>        | : | <b>27.08.2025.</b>  |
| <b>Date of judgment</b>       | : | <b><u>29.09.2025.</u></b>   |

**J U D G M E N T**

**MIRAN MUHAMMAD SHAH, J.-** Through instant Criminal Acquittal Appeal, Appellant/complainant, Aslam Masih, has assailed the judgment, dated 14.03.2023, passed by the VII-Additional Sessions Judge, Karachi-East (“**Trial Court**”) in Sessions Case No.3003 of 2021, arising out of Crime/FIR No.301 of 2021, registered at Police Station PIB Colony, Karahi-East under sections 376/511, P.P.C. read with section 377-A, PPC, whereby the Respondent No.2/accused, Muhammad Amir, was acquitted of the charge by extending him benefit of doubt.

2. Briefly stated facts of the case are that, on 04.05.2021, the Appellant lodged the aforesaid FIR, alleging therein that on the said day, at about 1430 hours, the Respondent No.2 attempted to commit *Zina* with his daughter, Jamaima aged about 8 years, inside his (*Respondent’s*) house bearing No. 354, Lane No. 6, Essa Nagri, District East, Karachi.

3. After usual investigation, police submitted the charge-sheet under Section 173, Cr.P.C. against the Respondent/accused. Having been supplied requisite documents as provided under section 265-C, Cr. P.C., the Trial Court framed the formal charge against him, to which he pleaded not guilty and claimed to be tried.

4. At the trial prosecution, in order to substantiate the charge, examined nine witnesses. **PW-1**, victim Jumaima, examined at Ex.4; **PW-2**, ASI Ghulam Yaseen, examined at Ex.4/1, who produced statement under section 154 Cr.P.C. and FIR at Ex.4/A & 4/B; **PW-3**, complainant Aslam Masih, examined at Ex.5, who produced memo of place of incident at Ex.5/A; **PW-4**, Razia, mother of victim, examined at Ex. 6; **PW-5**, Irshad, examined at Ex. 7, who produced memo of arrest of accused at Ex. 7/A; **PW-6**, Dr. Mehak Irfan, examined at Ex.8, who produced letter, dated 4.5.2021, MLC and ER Slip at Ex. 8/A to 8/C, respectively; **PW-7**, Sub Inspector Anjum Saeed Durani, examined at Ex. 9; **PW-8**, Ayaz Johar, examined at Ex. 10 and **PW-9**, DSP Zahoor-ur-Rehman examined at Ex. 12, who produced orders at Ex. 12/A and 12/B.

5. The statement of Respondent/accused, under section 342, Cr. P.C. was recorded at Ex. 14, wherein he denied the allegations against him and claimed to be innocent. He deposed that he had been victimized due to sectarian issue at the hands of complainant party, as the Christian community wanted to oust the Muslim's from vicinity and the Christian did such act of blackmailing with Muslims. He, however, did not examine himself on oath in his defence as contemplated by section 340(2), Cr.P.C, but produced one witness in his defence, namely, Niaz Khan, who was examined at Ex.15. He deposed that, on 04.05.2021, the Respondent/accused was available at his home from 02:30 pm to 3:30 pm. After hearing the learned counsel for the parties, the Trial

Court acquitted the Respondent/accused of the charge, vide impugned judgment. Against that, the Appellant has preferred this Appeal.

6. We have heard the learned counsel for the parties as well as A.P.G. and with their assistance have scanned the evidence on record.

7. The learned counsel for the Appellant has mainly contended that the learned trial Court has failed to appreciate the evidence of the prosecution witnesses while recording acquittal of the Respondent No.2; that the evidence adduced by the prosecution witnesses is sufficient to warrant conviction of the respondents No.2; that there is no major contradiction in between the statements of the witnesses came on record and the minor contradiction, if any, is no reason for acquittal of the Respondent/accused. She further contended that the impugned judgment may be set aside and the Respondent/accused may be convicted. In support of her arguments, she relied upon the case laws reported in 2021 SCMR 550, 2022 SCMR 50, 2007 SCMR 473, 2011 SCMR 1665, PLD 2010 SC 47 and 2020 SCMR 853.

8. Conversely, learned counsel for the Respondent/accused, while controverting the learned counsel for the Appellant, has fully supported the impugned judgment. He contended that the learned Trial Court while acquitting the Respondent/accused has properly assessed and discussed the evidence on record, hence, the impugned judgment being well-reasoned and speaking one, requires no interference by this Court in its appellate jurisdiction. He has placed reliance on the cases reported as 2024 SCMR 1116, 2016 SCMR 274, 2024 YLR 1565, 2025 P Cr. LJ 280 and 2021 MLD 169.

9. On the other hand, learned APG has not supported the impugned judgment. He has maintained that the Trial Court assessed the evidence on record keeping in mind the charge of attempting *Zina* under section 376/511,

P.P.C., while it was/is case of sexual harassment under section 377-A (*ibid*), which the prosecution has been able to prove beyond any reasonable doubt.

10. No doubt, an acquittal appeal carries a double presumption of innocence as per dicta laid down by the Hon'ble Supreme in the case of Muhammad Shafi v. Muhammad Raza and another (2008 SCMR 329). However, there are other certain parameters, which pave the way to streamline the acquittal judgment. In this regard, case of Sardaran Bibi v. The State & others (2024 SCMR 1116) may be referred to wherein the Apex Court has held, as under: -

*"It is well settled exposition of law that the scope of interference in appeal against acquittal is most narrow and limited, because in an acquittal the presumption of innocence is significantly added to the cardinal rule of criminal jurisprudence, that an accused shall be presumed to be innocent until proved guilty; in other words, the presumption of innocence is doubled. The Courts are very slow in interfering with such an acquittal judgment, unless it is shown to be perverse, passed in gross violation of law, or suffering from the errors of grave misreading or non-reading of the evidence."*

11. Hence, being perverse, consisting a gross violation of the law and grave misreading and non-reading of the evidence are further parameters of the acquittal judgment for interference. Besides, 'arbitrary' and 'capricious' acquittal judgments can also be scrutinized.

12. In the case in hand, it appears from the perusal of record that there are many infirmities and illegalities in the reasoning of acquittal, which show its arbitrariness. The evidence of PWs available on record does not lead towards acquittal of the Respondent/accused. Solitary statement of the victim (PW-1 at Ex. 4) alleging that she gone to tuition centre and brother of teacher (Respondent/accused) took her in room where he removed her shalwar (trouser) and committed bad activities with her; she rushed to her mother Razia and Amir came in the street; people of locality apprehended him and

maltreated him, sufficiently establishes the incident did take place with her. However, such piece of evidence was completely over looked by the Trial Court despite the evidence being un-shattered and fully corroborated, which is sufficient piece of evidence for conviction as per dicta laid down by the Hon'ble Supreme Court in the case of *Zahid v. The State (2022 SCMR 50)* as quoted below: -

*“Law is very clear about this that the statement of the victim in isolation itself is sufficient for conviction if the same reflects that it is independent, unbiased and straight forward to establish the accusation against the accused. In a recent judgment reported as Atif Zareef v. State (PLD 2021 SC 550) this Court has categorically held that "rape is a crime that is usually committed in private, and there is hardly any witness to provide direct evidence of having seen the commission of crime by the accused person. The courts, therefore, do not insist upon producing direct evidence to corroborate the testimony of the victim if the same is found to be confidence inspiring in the overall particular facts and circumstances of a case, and considers such a testimony of the victim sufficient for conviction of the accused person. A rape victim stands on a higher pedestal than an injured witness.”*

13. The aforementioned solitary evidence of the victim minor girl is to some extent supported with the medical evidence. PW-6, MLO Mehak Irfan, has narrated *res gestae* statement of the victim baby girl that she stated before her that she had gone to tuition where a guy namely Amir asked her to go in a room which was unlocked and started touching her private parts and asked her to keep silent; push her mouth shut and fingered her private (*virginal*) area. Said PW/MLO has also noted nail scratch marks on her (victim's) both forearms. The victim's *res gestae* statement has also been narrated by her mother (PW-4) that she (*victim*) informed her that accused Amir took her into the room and after removing her trouser, he touched with his finger her vagina. The Trial Court, however, by giving undue weight to the statement of Respondent/accused, claiming his innocence and false

implication on the basis of discrimination being a Muslim living in a Christian neighborhood, has ignored aforementioned piece of evidence.

14. The Trial Court discarded the evidence of said PWs, which firmly indicate that the case pertains to an offence of 'sexual abuse' as defined under Section 377-A, P.P.C, which carries under Section 377-B (*ibid*) the punishment with imprisonment for a term not less than fourteen years and may extend up to twenty years with fine which shall be less than one million rupees. In fact, the Trial Court confused the offences, treating this case as one of rape, whereas in reality; the entire case based on evidence was of sexual abuse. This led to a judgment that was focused on an offence of rape, requiring DNA report, which was neither committed, nor ever alleged by the complainant side. As a result, the impugned judgment is found perverse, arbitrary, stemming from complete misreading of the prosecution's evidence, and leading the case in an entirely wrong direction.

15. The alibi plea taken by Respondent/accused through a Defence Witness is a weak piece of evidence, especially under the circumstances where he himself has not made any statement on oath. His allegation against the Christian community, which is numerically larger in number in the locality of Essa Nagri, is not supported by any proof. The inhabitants of this locality belong to the lowest income group in Karachi. The Christian Community of the said area is neither financially strong, nor socially influential, or politically powerful. In fact, in this particular case, the victim is a daughter of a poor sweeper, who, in terms of social status is among the weakest and the lowest. A person in such a position would not have the ability to influence the population of the area to target anyone, particularly someone from their own locality. Specially, when the alleged animosity is against a person of Muslim faith, the cultural / social dynamics in our Country

would always place the Muslim community in a position of stronger strength over any minority group in any given locality. Despite the accused alleging discrimination upon him by the Christian community of Essa Nagri, Karachi, no evidence of any prior religious clashes involving the community has been submitted to substantiate this claim. The learned Trial Court, without considering social stigmas of our society, acted in an arbitrary and mechanical manner, and placed undue reliance on the accused's plea in his statement, which amounted to a misreading or even non-reading of the evidence before it. Therefore, the acquittal order lacks merit, and does not stand under the law.

16. The child abuse cases are not to be dealt in a haphazard manner. Taking a lenient view in deciding such cases should be strictly avoided at all costs. The way such offences/cases are increasing in the country, exemplary punishments are need of the hour to deter future incidents of such nature. In the present case, the Trial Court was unable to appreciate the wisdom of the law adjudicated upon which ought to have been properly applied. The language of the law must be adhered to in letter and spirit. The confusion among sections applied and offence committed must not be created. They both be in juxtaposition with each other. The framing of charge under wrong section is misreading of the law. The trial court to see at the commencement of the trial the contents of the FIR closely and watchfully and same must be applied *ipso facto* at the time of framing of the charge or as in this present case at the time of framing of the additional charge. Such lacuna should not take place while trying the offender of sexual abuses. As mentioned above, due to rise in such offences this sensitive nature of the offence which causes severe trauma for the victim as well as its close family members, the trial must be held with caution. In this particular case, the statement of the victim

has categorically described the incident while identifying the present accused and such deposition is duly supported by the corroboratory piece of evidence as well as medical evidence which should have not been ignored on the flimsy ground taken by the Respondent/accused in his statement under section 342 Cr. P.C.

17. We, therefore, allow the instant Criminal Acquittal Appeal by setting aside the impugned judgment. Consequently, the Respondent No.2/accused, Muhammad Amir s/o of Muhammad Anwar, is convicted under Section 265-H(ii), Cr.P.C. for an offence punishable under Section 377-B, PPC and sentenced to suffer R.I. for fourteen (14) years with a fine of Rs. One Million only; in case of default thereof, he shall undergo S.I. for six months more. He is however, extended benefit of Section 382-B, Cr.P.C. from the date of his arrest.

18. The Respondent No.2/accused is called absent without any intimation. Office is directed to issue perpetual NBW against the Respondent No.2/accused through the SSP Karachi-East, with direction to depute an officer not below the rank of Inspector, for taking him into custody to serve the awarded sentence in Central Prison, Karachi. Such compliance report be submitted by the SSP Karachi- East to this Court through M.I.T.

**JUDGE**

**ACTING CHIEF JUSTICE**