

**JUDGMENT SHEET
IN THE HIGH COURT OF SINDH, KARACHI**

Present:
Mr. Justice Muhammad Iqbal Kalhoro.
Mr. Justice Syed Fiaz ul Hassan Shah.

Cr. Appeal No.323 of 2025

Appellant: Abdullah s/o Haji Nadir Shah through Mr. Tayyab
Rehman Durrani, Advocate.

Respondent: The State through Mr. Rubina Qadir DPG.

Date of hearing: 17th and 18th February 2026.

Date of decision: 2nd March, 2026

JUDGMENT

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Muhammad Iqbal Kalhoro, J. Appellant having been convicted and sentenced u/s 376,377 PPC to suffer RI for 10 years and fine of Rs.50,000/-, in default to suffer SI for three months and to suffer RI for 03 years and fine of Rs.50,000/-, in default to suffer SI for three months respectively, ordered to run concurrently with benefit u/s 382-B Cr.P.C. in S.C. No.93/2024 arising out of FIR No.130/2023 at P.S. Chakiwara, Karachi South, vide impugned judgment dated 08.04.2025 passed by learned III-Additional Sessions Judge, Karachi South, has filed this appeal seeking his acquittal on the ground that he is innocent.

2. In FIR registered on 02.08.2023, complainant Mst. Aneesa has alleged that she is originally resident of Taluka and District Dera Ghazi Khan, village Chah Hameedwala, Punjab. When she was visiting her aunt at Ahmedpur, she went to Lunda Bazar where she met with appellant, a shopkeeper, with whom she exchanged phone numbers. In due course, she became his friend, and he offered her

marriage. She communicated his proposal to her relatives but her mother did not accept it. Meanwhile, appellant shifted to Karachi for business purpose, yet she remained in contact with him. About 11/12 days before FIR, appellant called her on phone and asked her to come to Karachi for marriage with him and sent Rs.6000/- through jazcash for this purpose. On arrival at Karachi, appellant took her to a house in Gulistan colony near Sabri Masjid, Chakiwara Karachi where he kept her for 11/12 days and continuously raped her. Whenever, she asked him to marry her, he avoided to give any specific reply. Ultimately, he stopped coming and his phone was found off when she tried to reach him. Then, his brother in law, namely Ameer Shah came and informed her that appellant did not want to marry her and she should return to Punjab. She raised cries whereupon neighbors gathered who called police with whom she appeared at P.S and registered FIR as above.

3. During investigation, she was referred to Women Medico Legal Officer for medical examination, the report of which confirmed her accusation. Her statement u/s 161 and 164 CrPC was also recorded in which she reiterated the same story. Appellant was arrested on 17.08.2023. After investigation, Challan was submitted and Charge against him was framed but he pleaded innocence, hence prosecution examined in all 09 witnesses. They have produced relevant papers to support the charge. Statement of appellant u/s 342 CrPC was recorded whereby entire incriminating evidence was put to him for explanation, he denied it and took plea that when he refused to marry sister of complainant, in order to extort money from him, the FIR was registered. He examined in defense one Ghulam Rasool, an Estate Agent, who has basically stated that the house (place of incident) was rented out to complainant by him.

4. The trial court, found the allegations duly proved against the appellant and convicted and sentenced him in the terms as stated above, hence this appeal.

5. Learned counsel for appellant has argued that the appellant is innocent, has been falsely implicated in this case; there are material contradictions in the evidence; this is a case of fornication at the most and the conviction u/s 377, 376 PPC is not maintainable; complainant has given different story in FIR than the one disclosed by her in her 164 CrPC statement; that medical evidence proved that there was no mark of violence on the person of complainant and since the case, at the best is of consent, sentence of the appellant be reduced accordingly. He has relied upon 2006 SCMR 1170, 2010 SCMR 141, 1992 SCMR 2063 and a recent judgment of Supreme Court in Cr. Petition No.90-L/2919 dated 02.12.2025 wherein by a majority view, sentence against the accused u/s 376 PPC was set aside and he was sentenced instead u/s 496-B PPC to only five years with fine of Rs.10,000/-.

6. On the other hand, learned DPG has supported the impugned judgment citing direct evidence of the victim supported by medical evidence and DNA report.

7. In this case, the material evidence is the evidence of victim herself. The incident happened inside the house where apart from appellant, it was only her who was present. In her evidence, she has confirmed that she came into contact with appellant when she met him at his shop at Ahmedpur, Punjab and gave him her phone number. Then, on 17.07.2023, he called her on phone and asked her to come to Karachi for marriage with him and sent her in this regard Rs.6000/- through jazcash. On the same day, she left for Karachi. On arrival there, appellant took her to a house situated at the given address. In the house, no articles were available and when she demanded an explanation, he assured her that after Nikah he would arrange the house hold articles. She insisted for marriage but he avoided. Then he committed rape as well as carnal intercourse with her for about 12 days. On 31.07.2023, he locked her in the house and went away.

8. Next day, his brother in law Ameer Shah came in the house who gave her Rs.4000/- and asked her to leave, saying appellant would not marry her. She refused to leave and made complaint against appellant, upon which he also committed rape with her. She raised cries which attracted neighbors, who came and called police. The police came and arrested him, she came at P.S. with them and ultimately registered the FIR. She has also confirmed that she was medically examined at Civil Hospital, Karachi on the same night. That police also visited place of incident, secured her clothes and the pieces of clothes used by appellant after committing rape with her from the place of incident, under the relevant memos. She was then sent to Darul Aman. But on her parent's intervention, she finally landed in their house in Punjab. After some time, appellant again contacted her on phone, pleaded forgiveness and asked her to come back at Karachi. She with her mother and two brothers came at Karachi Cantt. Station Platform No.8, there, no sooner she spotted the appellant, she alarmed the police, who arrested him under the relevant papers.

9. She has been subjected to a lengthy cross-examination but it seems that nothing favorable to appellant has come on record. She has stuck to the story narrated by her in FIR and examination-in-chief. Some suggestions, she has not disputed but those pertain to facts, neither revealed in FIR nor in her 164 CrPC, statement, and have been expressed by her only in reply to suggestions made to her in cross-examination. These are basically minor details of the relevant facts. Those revelations, otherwise are not related by her in FIR or 164 CrPC statement or examination-in-chief. The fact that she has responded in a particular manner to those suggestions by revealing details of incident would not make them contradiction or discrepancy. The contradiction or discrepancy is a statement contrary to one revealed by the witness in his/her examination-in-chief, FIR or 161 CrPC statement etc.

10. In her cross examination, the complainant has not divulged any fact which is in conflict with the facts set out by her in FIR or her 164 CrPC statement. In cross examination, she has recounted certain details only when asked about them. For instance, she has revealed that she had gone to a market three times to buy new shirts. The appellant told her that stock of new shirts was not available for the time being, and as soon as he had it, he would inform her, and obtained her phone number for this purpose. Then, after some time, when she was in DG Khan, he phoned her to inform about arrival of new stock of shirts, and sent its pictures. He then kept on calling her and insisting to buy the shirts. This shows that how he gradually by calling her again and again seduced her to be his friend.

11. In cross-examination, she has admitted to have not divulged these facts in FIR or 161 CrPC statement. But, be that as it may, the question is whether the non-disclosure of these details would be construed a material discrepancy or a contradiction. The reply would be in negative. These details have been spoken by her only in reply to certain questions to explain them in cross-examination, the scope of which is wider than the examination in chief and at times integrate the facts not part of FIR or 161 CrPC statements of the witnesses. However, these details revealed when asked from the witness would not mean a statement contrary to the one informed at the first instance.

12. Otherwise, as is discussed above, she has put up over all the same story in her evidence viz. how she came in contact with appellant, was enticed by him to come to Karachi for marriage and in order to facilitate it, he sent her an amount of Rs.6000/- through jazzcash. Further, when she landed at Karachi Cantt. Station, he took her to an empty house without necessary house hold articles and kept her in confinement there for 11/12 days, where he constantly raped her. Subsequently, he stopped coming and instead of him, his brother in law came and tried to cajole her to return to her native village but

she refused and raised cries attracting neighbors who helped her, called the police and she ultimately landed in Darul Aman after recording FIR.

13. The evidence of other witnesses has supported the different parts of her story relayed by her in her deposition. For instance, her mother PW2 has supported arrest of appellant on pointation of her daughter at Karachi Cantt. Station on the relevant day. PW3, the owner of the house, the place of incident, has confirmed that his house was rented out to appellant against a rent of Rs.9000/- per month. Per him, when he insisted on execution of rent agreement, it was avoided by Estate Agent on the plea that CNIC of appellant was not available for the time being. Ultimately, he came to know of the incident and assisted police in preparation of necessary documents viz. memo of place of incident, etc.

14. PW4 is MLO. As per his evidence, appellant on examination was found potent, capable to perform sexual intercourse during normal course of life. Next evidence is of Dr. Zainab Irshad WMLO, she had examined complainant/victim on 02.08.2023. As per her opinion, hymen of victim was found old torn and heeled. She has suggested, therefore, that no direct evidence of violent vaginal sexual intercourse was found. However, her findings in regard to carnal intercourse are suggestive of violent sodomy. She has stated that swabs of her body parts were taken for DNA purpose but nothing was confirmed. However, traces of seminal material on clothes taken from place of incident and used by appellant were identified to belong to DNA profile of appellant.

15. The DNA report shows that on a number of items including Kameez et al, the seminal material was identified to belong to two individuals, complainant and appellant Abdullah. The DNA profile (item No.6.15) obtained from sperm fraction was found mixture of two individuals with major and minor contribution. The cotton bud collected from the spot completely matched with DNA profile of

blood sample of appellant. The DNA report and medical evidence both are suggestive of the fact that the appellant was the contributor of the semen material found on the spot and collected by the police.

16. The incident was repeated from 22.07.2023 to 31.07.2023, whereas the victim was examined by the doctor on 02.08.2023 after at least two days of the last episode. This justifies observation of the WMLO that she did not find evidence of violent vaginal sexual intercourse.

17. Learned defence counsel referring to observation of WMLO in regard to vaginal rape has submitted that this is a case of fornication maximum that is punishable u/s 496-B PPC. But, we are not persuaded by his argument for various reasons. Firstly, as per evidence, the victim was sexually used by the appellant for 10/12 days from 22.07.2023 to 31.07.2023. By this calculation, she was subjected to intercourse first time on 22.07.2023. She was examined after 11 days of that day on 02.08.2023. The findings of WMLO that her hymen was found old torn and heeled is in sync with first time occurrence and does not mean that she indulged in consensual sex with the appellant. She has urged in her evidence repeatedly that it was without her consent and by force and it was done to her under the promise by the appellant that he would marry her.

18. The rape is defined u/s 375 PPC. A man is said to commit rape who has sexual intercourse with a woman against her will, without her consent, with her consent, when the consent has been obtained by putting her in fear of death or of hurt, with her consent, when the man knows that he is not married to her and that the consent is given because she believes that the man is another person to whom she is or believes herself to be married; or with or without her consent when she is under sixteen years of age.

19. One of such illustrations posits that rape also occurs when a man has sexual intercourse with woman's consent when the man knows

that he is not her husband and that she has given consent because she believes that he is another man to whom she is or believes herself to be lawfully married. In simple words, it means that a man has sexual intercourse with a woman when he knows that he is not married to her and consent is given by her under the belief that such person is her husband.

20. Here the situation is only a little bit different, apart from alleged force, the rape with the victim was committed under a promise of marriage to her by the offender. When a person promises a woman that he is about to marry her and have sex with her under that impression. And, later on, he backs out and does not marry her, it will not be termed consensual sex. A man by maneuvering – promise of marriage – succeeds to create such a strong prospect of imminent marriage in the mind of woman physiologically that she starts taking him as her husband and thereby loosen herself before him. This kind of sex is far from the one done with free consent of the girl. The consensual sex is generally defined as the one where there is unbridled agreement between the parties to have sex, it is without any coercion, pressure and more particularly manipulation.

21. If a woman has been manipulated by the offender to yield or agree to his vile impulses, it will be far from an act done with her consent. The consent here in this case appears to be an outcome of manipulation. Manipulation removes a person's ability to make a choice freely, the resulting consent will not be free, or valid as it is not freely given by the person but under the trance created through maneuvering affecting free choice. Consent to sex obtained under manipulation is mainly defined as sexual coercion, because in such a situation, the woman is vulnerable mentally and left with no option but to yield/agree. Even, a subtle manipulation is said to generate in the mind of a woman a false consciousness that deprives her of her ability to make a free and independent choice.

22. We therefore rule that all such cases in which the consent to sex from a woman is obtained through manipulation such as promising her marriage will be defined as rape with her. Nonetheless, we may remind here that this fact that consent in sexual matters is a result of manipulation will have to be proved by the prosecution. Mere a bald statement of the alleged victim will not suffice, unless it is borne out by supporting evidence, circumstantial or otherwise.

23. In the present case, the victim from the very inception, in the FIR, has been insisting on appellant's proposal for marriage with her which, according to her, she had conveyed to her relatives but her mother did not agree. But he still kept contract with her. She then on his assurance of marriage travelled to Karachi and started residing with him in a house. There again, she asked the appellant to marry her, and arrange house-hold articles. He promised her to do that in due course, and under that impression, not only he raped her but used her anally for 12 days continuously. She was alone in the house, and as per evidence, the appellant would keep her there under a lock. This fact alone which is not rebutted constitutes enough circumstance establishing a forced act. Otherwise, why the appellant would keep the complainant locked, if she herself was a willing party to his nefarious designs. And why a girl for 12 days would stay under that condition quietly, if it was not for a looming marriage with the said person. This scenario indicates that the act was done by either force or through manipulation, both are different forms of rape, as defined above.

24. The last link of this chain-- brother-in-law of the appellant finally informing her of latter's refusal to marry her and she losing control and raising hue and cry as a result -- strengthens this view. It is clear that as soon as, the curtain fell and she was apprised of true intention of the appellant qua marriage, she broke down. Her condition-- evident from chain of events : gathering of neighbors on her cries, them calling the police, arrival of the police at the spot, taking

her to PS and immediate registration of FIR by her -- defy the claim that she had done sex with the appellant with free consent without a consideration (his promise of marriage). Her getting shocked and collapsing emotionally does not align or get along with alleged consent stressed by the appellant he had at the time of action. In such case, the girl would not get shaken if she is refused marriage by the man whom she had sex willingly without a consideration.

25. Consent in sexual matters would imply that there is no element of consideration between the parties, the act is done out of free choice and is not lumbered by any condition. So, if a girl willingly enters into sexual relations with a man, it means she has no consideration in mind. But if she does so with a consideration such as promise of marriage, etc., she would react fiercely and freak out when the man refuses to fulfil his obligation. The reaction of the complainant at the time when she was informed of refusal of marriage by the appellant – the only consideration in this case -- is self-explanatory, and leans heavily in favour of her claim that appellant had used her sexually under the promise of marriage.

26. The defense put up by the appellant in his 342 CrPC statement is that he has been implicated in this case because of his refusal to marry with a younger sister of the complainant namely Alishah. This claim is against the one raised by his counsel in arguments that this is case of fornication maximum. His counsel does not deny sexual union between appellant and the victim, but insists that it was consensual. While appellant on the contrary says he has nothing to do with the victim and it is actually her sister who she refused to marry led to registration of the FIR.

27. Apart from above, it may be said that this case is not confined to allegations of rape with the victim but using her anally by force that is not only established from oral evidence of the girl but by the findings of WMLO suggesting violent sodomy act upon her. We may clarify here that unnatural offence, that is, carnal intercourse is a

different species of offence than rape and is defined in section 377 PPC. As per this provision, whoever voluntarily has carnal intercourse against the order of nature with any man, woman, or animal, shall be punished with imprisonment for life, with imprisonment of either description for a term which shall not be less than two years nor more than ten years and shall also be liable to fine.

28. In the cases of rape, the plea of consent may be available to an accused to take in certain circumstances, but in the cases of carnal intercourse, he cannot stress on such a plea and say that he did it with consent of the victim. Intercourse against the order of nature either with man, woman or animal is an independent offense, and is free of any contingency exposing consent of the victim or otherwise. Even if it is proved to have been done with consensus of the victim, it will still be held an offence and accordingly punished. This can be understood from a simple fact that carnal intercourse even with an animal is such an offence. Only a fool can reason that in such a case, the accused could be permitted to take a plea that he did so with the accord or consent of victim animal.

29. The appellant is not only accused of rape but of committing carnal intercourse with the complainant forcibly. Both the counts, the above discussion conclusively suggests, have been proved by the prosecution against him beyond a reasonable doubt. We therefore see no reason to upset the findings of the trial court, recorded after a thorough appraisal of evidence, and acquit the appellant. Resultantly, we dismiss the appeal in hand and maintain the conviction and sentence of the appellant.

This appeal is accordingly disposed of.

Judge

Judge