

JUDGMENT SHEET
THE HIGH COURT OF SINDH, CIRCUIT COURT, MIRPURKHAS

Criminal Jail Appeal No. S-29 of 2024
[Pirbhu v The State]

Counsel of Applicant : Mr. Pervaiz Akhtar Talpur, assisted by Mr. Taimoor Ali Qureshi and Mr. Mir Hafeezullah Talpur, Advocates.

Counsel of Respondents : Mr. Neel Parkash, D.P.G, Sindh.

Date of Hearing : 15.09.2026

Date of Judgment : 22.09.2026

JUDGMENT

Muhammad Humayon Khan, J.: Through the instant Criminal Appeal, the appellant Pirbhu son of Kirshan Bheel has called in question the judgment dated 04-03-2021 passed by the learned Additional Sessions Judge-II, Mirpurkhas, in Sessions Case No. 148 of 2019, arising out of FIR No. 02 of 2019 of Police Station Khan, District Mirpurkhas, registered under sections 365-B, 376, 337-J and 34, P.P.C. He was convicted under sections 365-B and 376, P.P.C. and sentenced, on each count, to rigorous imprisonment for twenty years and a fine of Rs. 300,000/-, with six months' simple imprisonment in default of payment of each fine. The substantive sentences were ordered to run concurrently and benefit under section 382-B, Cr.P.C. was extended. The trial Court found the allegation under section 337-J, P.P.C. unproved and acquitted co-accused Jairam and the absconding co-accused Shrimati Chando. The appellant seeks the setting aside of his convictions and sentences and his acquittal.

2. The accusation originates in the night of 01-06-2018. Shrimati Ganga, the complainant, alleged that she and her husband Rano, their daughter Jamna and other children were living at village Choudhry Ashraf, Deh 122, Taluka Hussain Bux Mari, where her brothers Pirbhu and Jairam and sister Chando were also staying for labour work. At about 2300 hours Pirbhu allegedly brought a bottle of Dew cold drink containing an intoxicating substance; the family drank it and

went to sleep or lost consciousness. When Ganga awoke in the morning, Jamna, Pirbhu, Jairam and Chando were missing. The prosecution alleged that Jamna had been taken away and thereafter subjected by Pirbhu to sexual intercourse against her will at different places. Neither Ganga nor another household member claimed to have seen Jamna being physically taken from the house.

3. On 25-06-2018 police of Police Station Mangli, District Sanghar, produced Jamna before the Judicial Magistrate-III, Sanghar. A memorandum of recovery accompanied the police request; the Magistrate recorded Jamna's statement on oath, and handed her into the custody of her parents against a bond. The record does not supply a coherent account of the intervening movements: Ganga later spoke of tracing her daughter after twenty to twenty-five days, whereas Jamna's depositions described confinement for about five or six months. These intervals have to be tested against the documents rather than reconciled by assumption.

4. The complaint was not formally registered in June 2018. Ganga moved an application under sections 22-A and 22-B, Cr.P.C.; the order of the learned First Additional Sessions Judge, Mirpurkhas, is dated 18-01-2019. On 19-01-2019 at about 1630 hours FIR No. 02 of 2019 was registered at Police Station Khan under sections 365-B, 376, 337-J and 34, P.P.C. ASI Ghulam Hussain took up the investigation, had Jamna sent for medical examination on 25-01-2019, made inquiries at Police Station Mangli and recorded statements. The Woman Medical Officer examined Jamna on 25-01-2019. No bottle, intoxicant, toxicology result, recovered article or laboratory comparison identifying a perpetrator forms part of the evidence produced at trial.

5. On 20-04-2019, after the investigation had passed to SIP Noor Muhammad, he recorded the statements of Naeem and Rano and recommended disposal of the FIR in the C class. The competent Magistrate declined that recommendation, took cognisance, and process against Pirbhu, Jairam and Chando followed. After proceedings concerning their absence, Ganga and Jamna testified

on 14-09-2019 as Exs. 04 and 05 in proceedings concerning the proclaimed offenders; on that date the case was placed on the dormant file. A supplementary challan was subsequently presented showing Pirbhu and Jairam in custody and Chando as required. Copies of police papers were supplied against receipt Ex. 08. The record and proceedings reached the learned Additional Sessions Judge-II on 20-08-2020. Charge Ex. 09 was framed against Pirbhu and Jairam under sections 337-J, 365-B and 376, P.P.C., with the alleged common intention described in the charge; both pleaded not guilty by Exs. 09-A and 09-B. The prosecution then examined its witnesses afresh in their presence.

6. Seven prosecution witnesses were examined at the trial.

PW-1 Shrimati Ganga, the complainant and mother of Jamna, testified at Ex. 11. She described the family's presence at home, Pirbhu bringing the Dew bottle at about 2300 hours, the family's loss of consciousness and Jamna's absence the next morning. She said she informed neighbours Rajmal and Chatro, learned of Jamna's recovery by Mangli police, obtained her custody, secured the court order for registration of the FIR and accompanied the later inquiry. She identified FIR Ex. 04-A and produced the order on her application as Ex. 11-A. In cross-examination she admitted that the FIR was lodged several months after the occurrence; that she did not see Pirbhu put any substance into the drink (her explanation was that he brought it already mixed); that she herself was not medically examined; that the quantity of the drink did not appear in the FIR; and, importantly, that she did not witness the actual taking of Jamna because the family was, according to her, unconscious. She maintained that she had approached village notables and denied the defence suggestion concerning a proposed marriage of Jamna to Gul or any false implication arising from annoyance.

PW-2 Shrimati Jamna, the person said to have been abducted, testified at Ex. 12. She identified Pirbhu and Jairam, described their and Chando's presence in the house, and said Pirbhu brought the drink; when she regained her senses she found herself at Jhirk, District Thatta. She accused Pirbhu of taking her to various places and of repeatedly committing sexual intercourse against her will before Mangli police recovered her. She produced a certified copy of her earlier statement before the Magistrate as Ex. 12-A. In cross-examination she conceded that she had not seen Pirbhu insert an intoxicant into the bottle, added that he had handed the bottle to Chando for distribution, described movement between places on foot, and said she was recovered at Mud Jamrao. She put the registration of the FIR and her statement to Mirpurkhas police at five or six months after the occurrence, and accepted that her police account described the event as seven or eight months old. She rejected the suggestions that she was recovered from relatives and that the allegation of abduction was untrue. Her earlier Ex. 05 deposition, recorded on 14-09-2019, also attributed the acts to Pirbhu but described a period of confinement of about six months; the length and dates of that claimed confinement require separate examination.

PW-3 Rajmal son of Kajoo, a relative of the complainant, testified at Ex. 14. In examination-in-chief he placed himself in the complainant's house at about 2300 hours on 01-06-2018, claimed that Pirbhu brought and distributed the drink, and described the discovery of Jamna's disappearance on the following morning. He said he learned later of her recovery. His cross-examination, however, was unequivocal that he was not present when the incident occurred, did not see Pirbhu bring the drink, learned of the matter the following morning from Jamna's father Rano while living near the house, and never saw Jamna being removed. He thus had no personal knowledge of the alleged

administration of the drink or the abduction; his initial claim to have seen the former cannot serve as independent support for it.

PW-4 SIP Ghulam Hussain, the initial Investigating Officer, testified at Ex. 15 and on recall. He said he recorded the FIR on 19-01-2019 after receiving the court order, undertook the investigation, referred Jamna for medical examination on 25-01-2019, and sought authority to inquire at Police Station Mangli. He produced the court order Ex. 15-A, the SSP's order Ex. 15-B, station diary entries Exs. 15-C to 15-E, the communication and accompanying copies from Mangli Exs. 15-F and 15-G, and an entry from Police Station Perumal Ex. 15-H. In cross-examination he admitted that he neither seized nor produced the Dew bottle, obtained call-detail records, inspected the places where Jamna said she had been confined, nor produced medical evidence of intoxication. He accepted that the complainant had not lodged a complaint in the intervening period and that he recorded no reason in his investigation for the delay in registration. His view that the complainant did not cooperate does not establish either guilt or innocence. He also accepted that he had not collected independent evidence witnessing Jamna being taken from the house.

PW-5 Dr. Umm-e-Rubab, Woman Medical Officer, Civil Hospital, Mirpurkhas, testified at Ex. 16. She examined Jamna on 25-01-2019, estimated her age at about fifteen or sixteen years, observed a ruptured hymen, and gave an opinion that she had had sexual intercourse. She found no bruise, abrasion or mark of violence about the genital area, and collected no vaginal swabs or clothing for testing because the event under investigation was not recent. She proved the police letter Ex. 16-A and an attested copy of her medico-legal certificate Ex. 16-B. In cross-examination she acknowledged that the time of examination and age were not entered in the certificate, that no externally visible injury was identified, and that no date of last intercourse was noted. Her

evidence may bear upon a history of intercourse; it does not date any act to June 2018, prove compulsion, or identify the person concerned.

PW-6 SIP Noor Muhammad testified at Ex. 19. He took over the case on 17-04-2019, recorded statements of Naeem and Rano on 20-04-2019, recommended disposal in the C class and placed the summary before the Magistrate, who instead took cognisance. The defence did not cross-examine him despite opportunity. Neither the police recommendation nor its rejection decides the truth of the charge: that is the Court's task on the admissible trial evidence.

PW-7 Akash son of Damromal, who was Judicial Magistrate-III, Sanghar at the material time, testified at Ex. 22. He said that on 25-06-2018 SIP Liaqat Zardari of Police Station Mangli produced Jamna and an application for her statement. He produced the application Ex. 22-A, memorandum of recovery Ex. 22-B, Jamna's statement recorded by him on oath Ex. 22-C, and parental bond Ex. 22-D. He said he recorded her words in his own hand and handed her to her parents because she was a minor and wished to accompany them; a bond for Rs. 10,00,000/- was obtained from her parents. In cross-examination he said Pirbhu was present with the victim at his chamber and the parents were outside; he did not allow Pirbhu to cross-examine her. Crucially, he clarified that this was a statement on oath, not a statement recorded under section 164, Cr.P.C., and that no inquiry was pending before him. He could not recall the precise time of recording and the bond itself bore no date. The allegation contained in Ex. 22-C must be considered with its true procedural status; the Magistrate did not witness the events alleged by Jamna.

7. After PW-7, the learned ADPP closed the prosecution side through Ex. 23. In their statements under section 342, Cr.P.C., Exs. 24 and 25, Pirbhu and Jairam denied the prosecution allegations and asserted that they had been

implicated falsely. Neither elected to testify on oath under section 340(2), Cr.P.C. and no defence witness or document was produced. These circumstances do not reduce the prosecution's burden of proving each charge.

8. The learned trial Court held that the charge of administering an intoxicant under section 337-J, P.P.C. was not proved, noting the absence of a medical examination of the household members on that issue. It nevertheless regarded Jamna's account as confidence-inspiring on her removal and the alleged repeated rape, took her Magistrate-recorded account as corroboration, considered the medical finding of past intercourse supportive, and relied on her and Ganga's relationship with Pirbhu as making false accusation improbable. It regarded the delay in FIR registration as explicable by an assumed preference in their community for private or village resolution. It found no proved role of Jairam or Chando in abduction or rape and acquitted them. Pirbhu alone was convicted under sections 365-B and 376, P.P.C. and sentenced in the terms set out in paragraph 1.

9. Learned counsel for the appellant contended that the FIR was registered more than six months after Jamna had been produced before the Sanghar Magistrate and that the proposed explanation of village settlement rested on no evidence. Counsel emphasised that the incident dated 01-06-2018 and the Magistrate's proceedings dated 25-06-2018 cannot be reconciled with the victim's assertion of five or six months' captivity; that Ganga admittedly witnessed no removal and Rajmal withdrew his professed eyewitness account in cross-examination; and that the very mechanism of incapacitating the household had been found unproved. The drink, alleged drug, medical evidence of intoxication, confinement sites and the investigating officer who effected recovery at Mangli were absent as supporting proof. It was further urged that PW-7 expressly disclaimed recording a section 164 statement; the January 2019 medical examination could neither fix the time nor identify the author of any sexual intercourse; no reliable age record was presented; and the trial Court shifted the burden to the accused while relying on an unproved social explanation for the delay.

On the combined effect of those defects the appellant was said to be entitled to the benefit of doubt.

10. Conversely, learned D.P.G. for the State supported the conviction. He submitted that Jamna knew her maternal uncle, named him in her earliest account before a Magistrate on 25-06-2018 and maintained the attribution under oath and cross-examination at trial. The Mangli recovery memorandum and the Magistrate's own evidence afforded contemporaneous support; Ganga found her daughter and the appellant absent together on the relevant morning; and delay in the eventual FIR ought not to erase Jamna's earlier allegation. He argued that sexual offences ordinarily occur away from independent witnesses and a credible victim does not require corroboration as a legal condition. The absence of injury, semen testing and DNA after seven months was unsurprising; the acquittal of Jairam and Chando concerned the absence of a direct role attributed to them and did not automatically exonerate Pirbhu. He therefore sought dismissal of the appeal.

11. I have heard the learned counsel for the appellant as well as the learned D.P.G. for the State and have carefully perused the impugned judgment, evidence available on record and the entire record and proceedings with their able assistance. The questions are whether the prosecution reliably proved the appellant's removal of Jamna with the requisite intent under section 365-B, P.P.C.; whether the evidence safely establishes rape by him under section 376, P.P.C.; and whether the errors and omissions in the trial Court's appraisal leave a reasonable doubt on either charge.

12. The burden of proof remains on the prosecution throughout the appeal. *Tariq Pervez v The State* 1995 SCMR 1345, *Muhammad Akram v The State* 2009 SCMR 230 and *Muhammad Mansha v The State* 2018 SCMR 772 recognise that one real circumstance raising a reasonable doubt in a prudent mind suffices, the benefit being a right and not a concession. *Shamoon alias Shamma v The State* 1995 SCMR 1377 makes clear that the prosecution cannot rely on the weakness of an accused's explanation to supply missing proof. The rule must be applied to the

evidence as a whole and not to speculation favouring either side. Equally, an allegation of sexual violence must receive serious and sensitive attention: neither its gravity nor the relationship of the parties changes the legal standard. *Azeem Khan and another v Mujahid Khan and others* 2016 SCMR 274 and *Naveed Asghar and two others v The State* PLD 2021 SC 600 require the Court to assess the probative worth of the evidence without allowing the nature of the accusation to determine guilt.

13. The two surviving charges must be kept distinct. The prosecution case under section 365-B, P.P.C. was that the appellant abducted Jamna from her home with intent that she be forced or seduced to illicit intercourse. Her later absence and eventual appearance in Sanghar establish neither the agency of a particular person in causing her departure nor the particular intent without a dependable account of the intervening events. The allegation under section 376, P.P.C. requires reliable proof of the sexual act, its non-consensual character as alleged, and the appellant's identity as its author. Proof of intercourse at some unidentified time does not prove the latter two matters. The same testimony could establish both charges if found reliable; neither charge demands an eyewitness to a private act as an inflexible rule. The task on appeal is to decide whether the available testimony carries the burden in the face of the recorded contradictions.

14. Criminal appellate jurisdiction requires an independent examination of the evidence upon which a serious conviction rests. This does not mean discarding the trial Judge's advantage in hearing the witnesses. It requires testing the inferences in the impugned judgment against the dates, documents and admissions in the record. A contradiction is material when it concerns the method of the charged act, the time available for it, the actor's identity or the reliability of a witness said to furnish independent support. An investigative lapse is material to the extent that it leaves such a question unanswered; it does not by itself show that Jamna was untruthful. Minor differences in expression or memory should be assessed in their context. This distinction governs the appraisal which follows.

15. Jamna is the only witness who could speak directly of events after she left the house. Her evidence is therefore central. The law permits conviction upon the testimony of a victim of sexual assault without a fixed requirement for an additional eyewitness, if the testimony, after careful scrutiny, is reliable; *Muhammad Ehsan v The State 2006 SCMR 1857* explains that independent corroboration is a matter of caution rather than an invariable legal condition where direct testimony stands the test of reliability. This does not convert a prior consistent statement, a relationship with the accused, or a medical finding of intercourse into proof of the particular offender where significant difficulties in the primary account remain. The reliability of Jamna's evidence must be tested on the dates, method of removal, later confinement, recovery and acts alleged, with due allowance for the effect of passage of time and the private nature of such offences.

16. The relationship of the parties supplies a reason why Jamna could readily recognise the appellant, but it does not answer whether he committed the acts charged. There is no realistic issue of stranger identification or of a parade: she consistently named a maternal uncle known to her. Conversely, kinship and the gravity of an accusation against a relative are not independent confirmation of its truth. The defence's suggestion concerning a proposed marriage with Gul was not proved, so no positive finding of fabrication can be based upon it. The oral accounts and contemporary documents, rather than competing assumptions about how family members ought to behave, must decide the appeal. The learned trial Court's observation that there was no apparent reason to accuse a brother is entitled to consideration, but it cannot replace an appraisal of the objective timeline.

17. The depositions at Exs. 04 and 05 were recorded on 14-09-2019 while the accused were absent. They form part of the procedural history and permit comparison of the accounts; they cannot replace the trial depositions subsequently given in the presence of Pirbhu and Jairam and tested by cross-examination. Jamna's exhibited copy Ex. 12-A and the Magistrate's original Ex. 22-C likewise have to be read for their proper evidentiary purpose. The question remains whether the account at Ex. 12, examined against those earlier accounts and the objective

dates, proves the allegation. Repetition of an accusation by the same witness on several occasions does not amount to several independent eyewitnesses, even though the promptness of one such accusation may be important.

18. The timing difficulty is substantial. The alleged occurrence is fixed at 2300 hours on 01-06-2018. Exs. 22-A to 22-D and PW-7 locate Jamna before the Sanghar Magistrate on 25-06-2018, approximately twenty-four days later. Ganga's trial account that she traced Jamna after twenty to twenty-five days is compatible with those dates. Jamna, however, described captivity and repeated acts over about six months in her earlier Ex. 05 testimony, and testified at Ex. 12 that she had been taken between places over a prolonged period, describing the FIR and police statement as five or six months after the occurrence. Her recollection of the date of the later FIR might itself be an imprecise estimate, but a claimed five or six months of captivity ending with a documented recovery on 25-06-2018 is impossible on the prosecution's own dates. This goes to the length and circumstances of the alleged confinement, not a peripheral estimate of the hour of the occurrence. The learned trial Court neither identified nor reconciled it.

19. PW-1's earlier evidence at Ex. 04 gave the date of arrest and recovery as 26-06-2018, while PW-7 and the judicial proceedings put Jamna before him on 25-06-2018. A one-day difference in recollection at a later stage need not be sinister and is given no independent adverse weight. Her testimony at Ex. 11 that she found her daughter after twenty to twenty-five days substantially agrees with the contemporary production date. It is thus possible to accept Ganga's broad account of when Jamna was found and still recognise that Jamna's much longer asserted captivity remained unexplained by the learned trial Court. A minor variance cannot cancel the material difference, nor does the material difference require rejection of every fact these witnesses related.

20. Two intervals which the depositions tend to run together must be separated. One runs from the alleged removal to the appearance before the Sanghar Magistrate, namely 01-06-2018 to 25-06-2018. The other runs from that appearance

to the FIR registered on 19-01-2019. PW-2's statement that the FIR and her statement to Mirpurkhas police followed about five or six months later approximates the second interval; by itself it does not impeach her description of the June occurrence. Her statement at Ex. 05 that she was confined in different places for about six months before the recovery concerns the first interval, which could not extend beyond the dated judicial production. Allowing for estimates and the passage of time before trial still leaves a difference of months rather than hours or days on an essential part of the narrative.

21. The descriptions of the journey are not identical. At Ex. 05 Jamna said that after awakening in a Kolhi house at Jhirk she was moved to the village of Ghulam Qadir Mari near Sanghar, and was later in a car with Pirbhu at Mund Jamrao when police intervened. At Ex. 12 she described Jhirk and different places, and said in cross-examination that they moved between places on foot and she was recovered at Mud Jamrao. Walking on some occasions and travelling by car on another are not logically incompatible; variations in the spelling of a place are inconsequential. What matters is that the length of stay at an identified location, the intervening route and the manner of the final police encounter were not established by an officer who witnessed them. The difference in means of travel is therefore given limited weight; the fixed recovery date remains a substantial difficulty.

22. There is a distinct lapse between recovery and formal accusation at Police Station Khan. Jamna's statement before PW-7 on 25-06-2018 means that the allegation against Pirbhu was not first devised in January 2019, a circumstance which must be fairly acknowledged. But the FIR itself was registered only on 19-01-2019, almost seven months after the Magistrate's proceedings and over seven months after the alleged removal. Ganga said she told neighbours and tried to obtain help. The record contains no earlier complaint to Police Station Khan and PW-4 accepted that he recorded no reason for the interval. The court application immediately preceded the FIR. Delay in a sexual offence cannot be judged by a mechanical timetable, and shame, family pressure or difficulty obtaining police action can explain delay when shown by evidence. The trial Court's assertion that

the parties' community customarily used a panchayat is not a fact proved by these witnesses. The loss of a timely investigation into the drink, departure from the home and alleged places of captivity must be taken into account; *Mst. Asia Bibi v The State PLD 2019 SC 64* illustrates the need to examine material delay alongside the rest of the record, without treating delay as an automatic rule of acquittal.

23. The order dated 18-01-2019 under sections 22-A and 22-B, Cr.P.C. explains why the police registered the FIR the following day; it is not a judicial adjudication that the allegations in it were true. Ex. 04-A fixes the formal report and the time when investigation at Police Station Khan began. Ganga said she spoke to neighbours and local notables, but admitted at trial that she made no complaint to the police in the intervening period. PW-4 said he recorded no reason for that interval. Compliance with the order is therefore established; a concrete explanation for the preceding months is not. The law does not demand an immediate police report from every genuine victim of sexual violence, but this Court cannot supply a particular explanation by conjecture where the elapsed time affects the possibility of testing the accusation.

24. The State is right to distinguish a late FIR from a late first accusation. The allegation made at the June judicial proceedings answers any suggestion that Pirbhu was named for the first time only after seven months. It does not show that a complaint was then lodged at Police Station Khan, or restore evidence that could have been sought promptly. Delay is weighed here according to its demonstrated consequence: the loss of a timely opportunity to investigate the drink, the family's condition, the alleged route and the possible places of confinement. It is not treated as a statutory bar to prosecution, a presumption that Jamna consented to anything or an automatic inference that she lied.

25. The suggested administration of a drug is another significant feature because it is the prosecution's explanation for why nobody in the home saw a girl being removed. Ganga and Jamna both said Pirbhu brought the drink but each admitted that she did not see him add an intoxicant. Jamna attributed its distribution

to Chando during cross-examination. Rajmal's examination-in-chief initially appeared to provide independent support, but he expressly accepted that he had not been present or seen Pirbhu bring it. No bottle or tested substance was produced and nobody in the household was medically examined for intoxication. Indeed the trial Court held the separate section 337-J charge unproved. Acquittal on that charge does not, as a rule of law, preclude conviction for abduction or rape upon other dependable evidence. It does require the Court to avoid treating loss of consciousness through a drug administered by Pirbhu as an established bridge over the absence of any eyewitness to removal. Ganga's discovery of the simultaneous absence of Jamna, Pirbhu, Jairam and Chando is a circumstance calling for investigation; it cannot establish, by itself, which of them removed her or how.

27. PW-3 illustrates the need to read examination-in-chief with cross-examination. His initial claim that he was in the house, drank from the bottle and awoke the next morning would, if sustained, supply another participant with direct knowledge of the alleged method. In cross-examination he placed himself in an adjacent residence, said Rano informed him in the morning, disclaimed seeing Pirbhu bring the beverage and admitted seeing neither Jamna's disappearance nor her removal. He also agreed that he had deposed at the complainant's instance while denying that his deposition was false. These answers do not erase everything he knew; they identify the source of his knowledge as the complainant's household. His repetition of information received afterwards cannot independently corroborate what happened the night before. The trial Court's general assertion that cross-examination had not shaken the prosecution witnesses leaves this direct reversal unexplained.

28. Exs. 04 and 05 contain a further serious assertion: Ganga and Jamna said that a daughter or sister of about one and a half years had died as a consequence of the alleged intoxication. The later trial evidence does not develop this assertion. The supplied evidence contains no medical certificate, death record, post-mortem material or testimony establishing the cause of such a death; no charge concerning that matter was proved at trial. No finding is called for on whether a child died or

what caused any death. The point is narrower: an unsupported collateral assertion, however grave, cannot be invoked as objective proof that a drug was contained in the bottle. The Court must confine its findings to the charged acts and the evidence actually adduced to prove them.

29. PW-1 and PW-2's conclusion that the drink contained an intoxicant followed, understandably, from their account of subsequent sleep. Yet both admitted that they did not see tablets being added. PW-2 said Pirbhu handed the bottle to Chando for distribution; PW-3 initially described Pirbhu distributing it but ultimately conceded that he had not seen him bring it. These differences concern the suggested method; they do not prove that no beverage was consumed. Without the bottle, testing, timely examination of any household member or dependable testimony from another participant, the trial Court found the separate charge under section 337-J unproved. That acquittal is not dispositive of the other charges, but it prevents a finding of proven chemical incapacitation from bridging the absence of an eyewitness to Jamna's removal.

30. PW-7's evidence and Ex. 22-C are particularly important, but the learned trial Court characterised the latter too broadly. The Magistrate confirmed that he wrote down Jamna's account on oath on 25-06-2018; thus the prior accusation has genuine temporal value. He also expressly answered that it was not recorded under section 164, Cr.P.C., and no inquiry was then pending before him. His presence lends assurance that a statement was made, not personal knowledge that its events occurred. Even a proper prior witness statement under section 164 is not independent substantive proof of its facts merely because a Magistrate recorded it; it may be considered to test and, within its proper limits, support later sworn testimony. Ex. 22-C cannot overcome the physical chronology or transform PW-7 into an eyewitness of the abduction or sexual acts. Nor can the fact that Pirbhu was present in the Magistrate's chamber alone establish the precise circumstances in which the police found Jamna.

31. The Magistrate's denial that he recorded a statement under section 164, Cr.P.C. requires care but should not be overstated. His sworn testimony establishes that Jamna was before him on 25-06-2018 and that he wrote down her words on oath; the making of the accusation is a contemporary fact. The victim herself identified the copy, and the defence was able to question her at trial about the underlying events. The error is to describe that document as a formal section 164 statement and to count the Magistrate as another witness to the truth of her allegations. His inability to recall the precise hour and the absence of a date on the parental bond do not displace the clear date of the application and proceedings. Conversely, Pirbhu's presence in the chamber without the opportunity then to question her makes it inappropriate to elevate that occasion into a trial of the disputed facts.

32. PW-7 placed a police constable, the court reader, a peon and Pirbhu with Jamna in the chamber, and her parents outside. This lends the allegation proximity to the appellant on the day of production. It does not answer where or in what circumstances the police encountered them. The Magistrate was able to testify that Jamna wished to go with her parents and that a bond was furnished for her custody; neither fact proves the earlier acts. The best argument for the State is the prompt naming of a known person in the setting of a judicial proceeding. The appellant's answer is that promptness and identification cannot make an impossible six-month period fit into the twenty-four days preceding that proceeding. Both features must be considered together without dismissing the June statement or giving it a status its maker disclaimed.

33. The actual recovery required closer examination than it received. Ex. 22-B is identified as a memorandum from Police Station Mangli. PW-7 did not effect the recovery: he saw the victim, Pirbhu and police at the court. The officer identified by him as producing Jamna, SIP Liaqat Zardari, was not examined at the trial. Accordingly no recovering officer explained under cross-examination where they encountered Jamna and Pirbhu, their movements, custody or the material circumstances recorded in the memorandum. This is not a demand for a fixed

number of witnesses or a general suspicion of police evidence. Where the recovery is the principal contemporaneous independent circumstance said to connect the appellant to a period of confinement, the witness with direct knowledge of it is material. *Lal Khan v The State 2006 SCMR 1846* addresses the effect of withholding a natural and material witness; that concern has force here in combination with the unexplained timeline, although the memorandum is not to be ignored.

34. The differing descriptions of recovery explain why the missing officer mattered. Jamna's Ex. 05 account places her in a car with Pirbhu at Mund Jamrao; her trial account describes the police recovery at Mud Jamrao after movements between places on foot; Ganga's earlier account put arrest and recovery a day after the dated Magistrate proceedings. PW-7 confirms only what reached his chamber on 25-06-2018. Ex. 22-B was produced, so the existence of a police memorandum must be acknowledged. SIP Liaqat Zardari, who brought Jamna to the Magistrate, was not subjected to cross-examination concerning the time and place of the encounter, whether the appellant was apprehended at the same spot and the circumstances recorded by the police. The non-examination of a police officer is not a formal nullity. In this case it leaves the particular link invoked as independent confirmation of their alleged joint journey without direct explanation.

35. The other investigation did little to test the narrated route. PW-4 accepted that he did not inspect the houses or places to which Jamna said she was taken, did not secure the drink, obtain communications data or produce evidence of administration of an intoxicant. Police witnesses Naeem, Jan Muhammad and Bhutto were given up by Ex. 13; Rano was given up by Ex. 10, notwithstanding his presence in the house and Rajmal's evidence that Rano first told him of the event. It does not follow that every person in a large household must testify, and no adverse inference is drawn merely because the prosecution chose not to multiply witnesses. The omission matters insofar as it left Rajmal's reversal, the morning discovery and the early search without an available independent check. The later

C-class recommendation is an investigative opinion only: the Magistrate was entitled to decline it and the trial Court was bound to decide the charge for itself.

36. PW-4's own sequence shows that the January 2019 inquiries were largely retrospective. He registered the FIR on 19-01-2019; Jamna was brought to Police Station Khan and referred for examination on 25-01-2019; he gathered entries and documents concerning Mangli and went to Police Station Perumal. Diary entries Exs. 15-C to 15-E and 15-H support his movements, not what happened in the house in June or in any place of alleged confinement. Exs. 15-F and 15-G are materials collected from the Mangli proceedings and take their weight from the facts their makers could prove. PW-4 admitted not visiting the places identified by Jamna. An inquiry at Jhirk or in the Sanghar area could at least have sought confirmation of occupation and movement, although a search months later could not guarantee physical traces. No adverse inference arises simply because he did not obtain phone data when the record does not establish who possessed a phone; it remains an unverified aspect of the asserted route.

37. The decision to give up witnesses calls for similar discrimination. According to the prosecution Rano was in the household, and PW-3 said Rano told him of the disappearance the following morning. He was given up by Ex. 10 as repetitive, and Chatro, named by Ganga as someone informed, did not give trial evidence in the supplied record. Their absence is no presumption that their evidence would have favoured the defence; it means their testimony cannot be assumed to confirm what was disputed. PW-6's account that he recommended a C-class disposal was not tested in cross-examination, but his recommendation is an investigative opinion. The Magistrate was entitled to decline it and proceed with the case. Neither the recommendation nor its rejection decides what the seven trial witnesses proved after the charge was framed.

38. The medical evidence has to be given exactly the weight it can bear. Dr. Umm-e-Rubab examined Jamna on 25-01-2019, more than seven months after the alleged events. Her observation of a ruptured hymen and opinion of previous

intercourse do not identify when intercourse occurred, with whom, or whether it was against Jamna's will. Her failure to see recent injuries, to collect swabs and to obtain DNA is not decisive against a historical complaint and does not mean that the alleged assault could not have happened. Conversely, it does not identify Pirbhu or independently corroborate the alleged repeated assaults. The distinction between a medical finding and proof of an assailant is reflected in *Hashim Qasim v The State* (2017 SCMR 986). *Abdul Ghani v The State* (2022 SCMR 544) confirms that absence of scientific testing by itself need not defeat otherwise credible victim evidence. The trial Court erred in treating the January examination as objective proof of the appellant's particular acts.

39. There is a difference between the medical history in the earlier account and the medical material tendered. At Ex. 05 Jamna said police had her examined at Civil Hospital, Sanghar, after the Mangli proceedings. No Sanghar certificate or Sanghar medical witness appears among the supplied exhibits and trial witnesses. PW-5's Mirpurkhas examination on 25-01-2019, proved through Exs. 16-A and 16-B, is the positive medical evidence at trial. The Court cannot conclude that no earlier examination occurred merely because a certificate was not tendered; equally it cannot treat an unproduced certificate as corroborating an event or resolving its date. The gap is pertinent when an early medical observation is suggested as a contemporary objective link with the alleged acts. The evidence which the trial Court could assess was the January examination and its limited findings.

40. PW-5's recording omissions should not be inflated into affirmative contradictions. She testified that she examined Jamna at 2.15 p.m., while accepting that the medico-legal certificate did not record the hour or the estimated age. She observed no genital bruise or abrasion and gave the historical interval as her reason for not taking swabs or clothing. These omissions limit the precision of Ex. 16-B; they do not prove that PW-5 did not examine Jamna, that intercourse never occurred, or that force must always leave visible injuries. Months had passed, and the absence of recent biological material is unsurprising. The narrower conclusion

is that no scientific or temporal link was provided between her observation and an act by Pirbhu. Since no biological exhibit was collected for testing, there is no chain of custody of such an exhibit to criticise; the evidentiary problem is the absence of material capable of connecting him to a particular sexual act.

41. The asserted age deserves similar precision. The charge describes Jamna as aged fifteen at the alleged occurrence; PW-5's assessment was approximately fifteen or sixteen at an examination almost eight months later. PW-7 regarded her as a minor for the purpose of handing her to her parents, but the supplied trial material contains no birth or school record or formal age assessment establishing her exact age on 01-06-2018. Her description in the later deposition as wife of Nehal is also not proof of consent to any act charged or proof of her age at the occurrence. None of these observations diminishes the force a reliable account of rape by her would have; they prevent an uncertain age or subsequent marital description from being used to bypass proof of the acts and identity in issue.

42. The trial Court emphasised Jamna's asserted minority when describing the gravity of the case. Ganga's estimate, the age in the charge and the doctor's approximate observation are evidence to consider, but the record contains no proved date-of-birth document. The outcome does not depend on choosing between fifteen and sixteen, or on making an unsupported finding about a precise statutory age threshold. Jamna alleged force and want of consent; such an allegation can be established by reliable testimony without a birth certificate. The question is whether the evidence proves that the appellant committed the acts. The Magistrate's decision to give her into parental custody against Ex. 22-D as a safety measure also cannot be converted into a conclusive age determination or a finding that the sexual accusation was true.

43. The acquittal of Jairam and Chando does not mechanically govern Pirbhu's appeal. Jamna assigned Pirbhu a direct role in the later alleged assaults; the trial Court found no such role established against the other two. What does require scrutiny is that the alleged collective presence at home and disappearance,

and the asserted common method of intoxication, did not establish their criminal participation. If those surrounding circumstances are discounted as to the others, the Court must explain with particular care what independently and reliably connects Pirbhu with Jamna's removal and the sexual acts. His kinship to Jamna may make the accusation grave, but it is neither corroboration nor a substitute for proof. The defence suggestion concerning Gul and annoyance was not proved; the appellant did not need to prove it in order to raise a doubt from the prosecution's own evidence.

44. On the section 365-B charge, PW-1 and PW-2 place Pirbhu at home before the disappearance and PW-7 places him with Jamna at the Magistrate's chamber. Her accusation supplies the direct identification of a person said to have taken her away. The suggested drug mechanism, however, was not proved; no household witness saw the removal; the police encounter was not described by its maker; and the asserted duration of custody cannot be reconciled with the production date. Presence at the beginning and end may strengthen an otherwise coherent account, but cannot itself supply the act of removal and its particular purpose beyond reasonable doubt where the account of the interval is materially unsettled. The charge does not demand an eyewitness to the exact moment of departure; it demands dependable direct or circumstantial proof that this appellant caused the removal with the alleged intent. The trial Court passed from the fact of disappearance to that conclusion without adequately confronting the gaps in between.

45. The section 376 charge stands or falls upon its own proof. Jamna made a serious, express allegation of repeated non-consensual acts by an uncle she knew, and named him before the Magistrate soon after the documented disappearance. There is no rule that a witness to a private act, recent injury or semen test is required before credible victim testimony can sustain conviction. In this record, however, her description includes months of confinement and repeated acts before a recovery that occurred within approximately twenty-four days of the alleged removal. The places and final movements received no independent

examination capable of resolving that problem. PW-5 can speak to past intercourse but cannot identify the appellant, its date or the circumstances of force. To conclude that Pirbhu committed rape because he was present in the Magistrate's chamber with Jamna assumes the disputed circumstances of their association which the recovering officer was not examined to explain. The prior accusation receives real weight, but the objective dates and missing links prevent it from removing reasonable doubt about guilt.

46. *Muhammad Mansha v The State 2018 SCMR 772* requires the Court to consider whether a material change or improvement has a real bearing on credibility, rather than counting every variation as fatal. The six-month account cannot be dismissed as a minor mistake because the recovery within twenty-four days is objectively fixed. Rajmal's reversal from claimed personal presence to absence directly affects the suggested independent confirmation of the drug mechanism. The discrepancy between Jamna's accounts of a prolonged movement and the short-fixed interval, the absence of proof of the drug upon which the explanation for an unseen departure rests, and the lack of direct recovery testimony all bear on the same essential sequence. Conversely, variations in the exact time Jamna gave her later police statement, the precise mode of travel between places, or the absence of recent injuries months later would carry limited weight in isolation. I have evaluated them for their actual relationship to the charges.

47. The trial Court relied additionally upon the absence of a defence witness or document and upon an assumed practice of private settlement to make the prosecution narrative complete. Neither is permissible. *Wazir Mohammad v The State 1992 SCMR 1134* and *Shamoon alias Shamma v The State 1995 SCMR 1377* place the burden on the prosecution regardless of the plea in a section 342 statement. *Muhammad Luqman v The State PLD 1970 SC 10* cautions against replacing proof with a high probability or conjectural explanation. The willingness of a family member to make a serious accusation and the absence of a proved reason for false implication are matters to consider, but they do not answer objective conflicts in the sequence or establish the identity of the person who committed an

act. Equally, neither the finding of intercourse nor the victim's presence before PW-7 warrants dismissing her allegation as necessarily false. The conclusion here rests upon failure of proof of the appellant's guilt on the available record.

48. Upon an independent and cumulative assessment, the prosecution has shown that Jamna was absent from home after the alleged night, that she made an accusation against Pirbhu before a Magistrate on 25-06-2018, and that she maintained an accusation in court. Those are serious facts. Yet the claimed period of captivity is irreconcilable with the dated recovery; the proposed method of incapacitating the household was unproved even at trial; no household witness saw the removal and the witness who purported to see the drink admitted that he did not; the recovering officer was not examined; and the subsequent medical examination cannot connect Pirbhu with a particular act. The long interval before FIR registration impaired examination of those links and was answered at trial by an assumption unsupported by evidence. The combined effect leaves a reasonable doubt both whether the requisite abduction by this appellant under section 365-B and whether rape by this appellant under section 376 were established beyond reasonable doubt. The conviction cannot safely be maintained.

49. For the foregoing reasons, the appeal is allowed. The judgment dated 04-03-2021 passed by the learned Additional Sessions Judge-II, Mirpurkhas, in Sessions Case No. 148 of 2019 is set aside so far as it convicts and sentences appellant Pirbhu son of Kirshan Bheel under sections 365-B and 376, P.P.C. He is acquitted of those charges by extending to him the benefit of doubt. Both substantive sentences, both fines and the respective default sentences are set aside. He shall be released forthwith if in custody and if not required in any other custody case. The trial Court's disposition concerning Jairam and Shrimati Chando is not the subject of this appeal. Pending applications, if any, stand disposed of.

JUDGE

APPROVED FOR REPORTING
FAISAL