

**IN THE HIGH COURT OF SINDH, CIRCUIT COURT,
MIRPURKHAS.**

Criminal Acquittal Appeal No.S-28 of 2025

Appellant/Complainant: Changon Khan son of Budho,
Through Mr. Afzal Karim Virk,
Advocate.

The State: Through Mr. Neel Parkash, D.P.G.

Date of Hearing : 03.09.2025
Date of decision : 03.09.2025

J U D G M E N T

Amjad Ali Sahito, J.- By this judgment, I intend to dispose of Crl. Acquittal Appeal No.S-28 of 2025, against the impugned judgment dated 08.05.2025, passed by learned Additional Sessions Judge, Khipro, in Sessions Case No.540/2024 “Re. The State Vs. Mushtaque Ali) whereby the respondent namely Mushtaque Ali was acquitted u/s.245-(i), Cr.P.C., which the appellant/complainant has impugned the Judgment before this Court against the above named respondents by way of filing instant Criminal Acquittal Appeal.

2. The brief facts of the prosecution case are that the complainant Chango Khan lodged FIR alleged therein that his son Hassan Ali aged about 10/11 years is unsound mind. On 19-07-2024 the complainant was working on his land when, at around 01:30 PM, he heard cries coming from the lemon garden of Shah Nawaz Chanino. He rushed to the spot and saw the accused, Mushtaque, who fled upon seeing him. Complainant saw his son Hassan Ali whose trousers were removed and he was lying on the ground. On inquiry Hassan Ali informed to the complainant that accused Mushtaque Arisar had forcibly committed sodomy with him after removing his trousers. In the meantime, PW Khadim also came there to whom complainant narrated facts of incident,

Complainant finally lodged FIR. On completion of investigation, the police submitted report u/s 173 Cr.P.C before the competent Court of law

3. The necessary papers were supplied to the accused at Ex.1 and the formal charge was framed against accused at Ex.2 and plea of accused was recorded at Ex.3, in which accused pleaded not guilty and claimed for trial.

4. At trial, the prosecution examined Senior MO Dr. Pardeep PW-01 at Exh.04, who produced letter at Exh.04/A, PMC of victim Hassan Ali as Exh.04/B, covering letter with DNA report and Final MLC of victim as Exh.04/C. PC-Ladha Ram PW-02 at Exh.05, who produced memo of incident and memo of arrest at Exh 05/A and 05/B. Complainant Chango Khan PW-03 at Exh.06 who produced FIR at Exh 06/A, Khadim PW-04 at Exh.07. Victim Hassan Ali/ PW-05 at Exh.08. SIP Khamiso Khan/PW-06 at Exh.09, who produced attested copy of entry No.10, entry No.11 at same page as Annex:09/A, attested copy of entry No. 17 as Annex:09/B, entry No 04, entry No.10 at same page as Annex:09/C & 09/D, attested copy of entry No.17. 04 as Annex:09/E & 09/F, Photostat copy of order as Annex:09/G. attested copy of departure entry No.05 and arrival entry No. 16 as annexure 09/H & 09/1, carbon copy of receipt of samples by FSL as annex 09/J, MO Dr.Harim Ram/ PW-07 at Exh.10, who produced application as Exh.10/A, provisional MLC of accused at Exh.10/B. Letter at Exh.10/C and Final MLC of accused at Exh10/D. Then learned ADPP filed application U/S 540 Cr.P.C to call PWs PC-Muhammad Uris and ASI Ali Gul at Exh.11. Summon was issued and prosecution examined ASI Ali Gul PW-08 at Exh.12. After examination of material witnesses the prosecution closed its side.

5. The statements of respondent/accused under section 342 Cr.P.C was recorded at Ex.14, in which he denied the prosecution allegations leveled against him and he falsely been implicated in this case due to political rivalry. However, he did not examine himself on oath nor led any evidence in his defence. After observing all formalities including recording of statement and

hearing the learned counsel for parties, the learned trial Court acquitted the accused by extending him benefit of doubt.

6. Per learned counsel for the appellant/complainant sufficient record is available against the respondent, but the learned trial Court had acquitted the respondent on flimsy grounds. It is further argued that the learned trial Court has not considered the real facts as well as the evidence of PWs, which supported the case of the appellant/complainant and acquitted the accused/respondent by passing the impugned judgment, which is against the law. Learned counsel further argued that the respondent/accused had committed heinous offence and he is not entitled for acquittal and prayed that the notice may be issued and respondent/accused may be convicted.

7. On the other hand learned D.P.G present in the court and waived the notice and supported the impugned Judgment. He states that the appellant/complainant deliberately lodged the FIR with the delay of five days. He has further argued that there is material contradiction in ocular evidence of PWs and submit that the instant criminal acquittal appeal may be dismissed.

8. I have heard learned counsel for the appellant/complainant, and learned D.P.G for the State and have perused the record.

9. From the perusal of record, it appears that the appellant/complainant lodged the FIR with the delay of five days without any plausible explanation. Upon scanning the material brought on record, it indicates that the prosecution alleges that on 19-07-2024 at 1330 hours, accused Mushtaque Ali allegedly committed carnal intercourse against the order of nature with Hassan Ali, aged about 10/11 years, inside the lemon garden of Shahnawaz Chaniho. However, Chango Khan has not deposed a single word in his statement that the accused allegedly committed sodomy with his son, Hassan Ali. Moreover, Dr. Pardeep frankly admitted in his cross-examination that there is no medical evidence showing that sexual intercourse was committed. The complainant Chango Khan deposed in his examination-in-chief that on 19-07-

2024 he heard cries at about 01:30 PM in the lemon garden, approached the area, and saw the accused, Mushtaque Ali. Khadim (PW-04) deposed in his examination-in-chief that he also heard cries at about 01:30 PM and approached the garden. Interestingly, Khadim (PW-04) did not state that he saw the accused, Mushtaque Ali, running from the place of the incident, though the complainant and PW Khadim allegedly heard the cries simultaneously at the same time (01:30 PM) and rushed to the spot.

10. Admittedly, many laborers were present in the lemon garden, but none approached the place of the incident, nor were they cited as witnesses in this case by the Investigating Officer (IO). The complainant Chango Khan admitted that there are shops and houses situated at a distance from the place of the incident, but nobody came to the site after hearing his son's cries except for him, which is unbelievable. Khadim (PW-04) admitted in his cross-examination that he did not see the accused committing sodomy with Hassan Ali or touching his body. Hassan Ali (PW-05) deposed in his examination-in-chief that the accused committed sodomy with him and put his penis into his mouth. However, neither the complainant Chango Khan alleged in his statement that the accused put his penis into the victim's mouth, nor are such facts alleged in the FIR. Hassan Ali also admitted in his cross-examination that he recorded his statement before this court as per the instructions of his father and PW Khadim, who is his maternal uncle.

11. Dr. Pardeep admitted in his cross-examination that the DNA report issued by LUMHS is negative. Admittedly, no evidence was found by Dr. Pardeep on the person of the victim showing that he was subjected to sexual intercourse as alleged by the prosecution. Admittedly, the report of the forensic lab, as well as the DNA report, is negative. Dr. Hari Ram categorically admitted in his cross-examination that, according to the medical evidence, the accused had not committed the alleged offence.

12. For the foregoing reasons, the prosecution's case is riddled with insurmountable doubts and fatal inconsistencies that render the evidence wholly unreliable. The foundational allegations lack credible corroboration and are contradicted by the entirety of the medical and forensic evidence. The inordinate and unexplained delay of five days in lodging the FIR casts a serious shadow of doubt on the veracity of the entire story. The testimony of the star witness, PW-05, has been demonstrably proven to be tutored, and his version is a material improvement upon the initial allegations made in the FIR and by the complainant. The complete absence of medical, forensic, and DNA evidence, all of which is conclusively negative, directly contradicts the core allegation of sexual assault. Furthermore, the conduct of the investigation is suspect, as the IO failed to associate independent witnesses from the locality, despite their claimed availability.

13. The ocular account is belied by the unnatural conduct of the alleged eyewitnesses and other potential witnesses present at the scene. In light of the totality of the circumstances, the prosecution has failed to prove its case beyond a reasonable doubt. The evidence on record is untrustworthy, uncorroborated, and insufficient to sustain a conviction. Consequently, the accused is entitled to the benefit of the doubt.

14. I am fully satisfied with appraisal of evidence done by the learned trial Court and I am of the view that while evaluating the evidence, the difference is to be maintained in appeal from conviction and acquittal appeal and in the latter case interference is to be made only when there is gross misreading of evidence resulting in miscarriage of justice.

15. The over-all discussion involved a conclusion that the learned counsel for the complainant has miserably failed to establish the guilt against the respondents/accused beyond any shadow of doubt, in these circumstances, the learned trial Court has rightly evaluated the evidence while recording

acquittal of the respondents. It is well settled principle of law that in criminal cases every accused is innocent unless proved guilty and upon acquittal by a Court of competent jurisdiction such presumption doubles. Very strong and cogent reasons are required to dislodge such presumption. The reasons given by the learned trial Court in its judgment have not been found by us to be arbitrary, fanciful or capricious, requiring any interference by this Court. Consequently, the instant appeal filed by the appellant/complainant merits no consideration, which is dismissed accordingly.

J U D G E

Adnan Ashraf Nizamani