

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

**CRIMINAL APPEAL No.S-180 of 2024**

**Appellant:** Gul Hassan alias Gul s/o Karam Ali Shar  
Through Mr. Afzal Kareem Virk, Advocate.

**Respondent:** The State.  
Through Mr. Neel Parkash, Deputy P.G.

**Date of hearing:** 14.10.2025

**Date of judgment:** 14.10.2025

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

**Shamsuddin Abbasi, J.-** Appellant Gul Hassan alias Gul s/o Karam Ali Shar was involved in case F.I.R No.15 of 2022, dated 27-04-2022, offence under sections 377, 367-A P.P.C., registered at Police Station Sindhri and was tried by learned Additional Sessions Judge-II, Mirpurkhas, who vide judgment dated 19-04-2024, convicted the appellant under section 367-A, P.P.C. and sentenced him to suffer R.I for 07 years. The appellant was also burdened to pay Rs.50,000/= as fine and in default whereof to further undergo imprisonment for two months S.I. Appellant was, also convicted under section 377, P.P.C and sentenced to suffer R.I for 07 years with fine of Rs.50,000/= and in default of payment of fine, to further undergo S.I. for two months. The sentence inflicted upon appellant was ordered to run concurrently. However, benefit of section 382-B Cr.P.C was extended to the appellant. The conviction and sentence has been assailed by the appellant by means of instant appeal.

2. According to the prosecution, complainant *Pehlwan Meghwar* lodged FIR on 27-04-2022 at PS Sindhri stating therein that his elder son, *Kelash*, was student of Class-VI at Hawks Oriental Public School. On 22-04-2022, his son did not attend school and on inquiry, tearfully disclosed that yesterday i.e. 21-04-2022, while on his way to tuition, accused *Gul Shar* met him on motorcycle, offered to drop him at tuition center, but instead

took him towards *Devi bushes* near the Northern side of the High school's ground, where he committed sodomy with him, and then accused dropped him at his tuition center and threatened him with defamation if he disclosed the incident. The complainant, after consulting his relatives, lodged the FIR.

3. After completion of usual investigation, the I.O submitted a police report under section 173 Cr.P.C before the trial court. After supplying copies of necessary documents to the appellant, charge was framed against him, to which he pleaded not guilty and claimed trial

4. At trial, the prosecution to prove its' case, examined in all seven (07) witnesses, who produced numerous documents and then learned Prosecutor closed the prosecution side by filing statement. Thereafter, statement of the appellant/ accused under section 342 Cr.P.C was recorded wherein he denied the allegations being false and claimed his innocence. However, neither he examined himself on oath nor led evidence in his defence. After hearing learned counsel for both parties, learned trial Court convicted the appellant through impugned judgment, hence this Criminal Appeal.

5. Learned counsel for the appellant, at the very outset, states that the victim as well as legal heirs of the complainant have filed their affidavits whereby recorded no objection for the acquittal of the appellant. He further submits that apart from the filing of no objection affidavits, there are material contradictions in the prosecution case and prosecution has failed to prove its case against the appellant beyond shadow of reasonable doubt. Lastly he prayed for setting aside impugned judgment and acquittal of the appellant.

6. Learned D.P.G., on the other hand, has opposed this contention with the averments that the offence against the appellant is not compoundable. He further argued that prosecution has proved it's case against the appellant beyond shadow of reasonable doubt. He supported the impugned judgment and prayed for dismissal of instant Appeal.

7. Heard, record perused.

8. Per record on 11-07-2024 counsel for the L.Rs of complainant filed no objection affidavit of victim Kelash, Babu and Shr. Sangeeta (son and widow of deceased complainant). On the said date, victim Kelash and his mother Shr. Sangeeta, appeared before court and stated that they have pardoned present appellant.

9. Before discussing that whether the appellant can be acquitted of the charge on the basis of no objection affidavits filed by the victim and the legal heirs of the complainant or not because the alleged offence is non-compoundable, I am inclined to discuss some facts of the case floating on file. The whole case of prosecution is revolves upon the testimony of sole eye witness/victim minor Kelash. Perusal of his evidence shows that though in his examination incheif he fully supported the case of prosecution but in cross examination he made improvement by deposing that "I made noise on the way but nobody was available in the street. I tried to escape from the accused but he grabbed me from my shoulder". Such version of the victim boy is neither mentioned in the F.I.R nor in his 164 Cr.P.C statement.

10. Admittedly, Medico-legal Certificate of victim Kelash does not support the prosecution version because there is no finding of Medical Officer that sodomy was committed with the victim. Dr. Wahaj Ali (P.W.4) deposed in his evidence before the learned trial court that there was no mark of violence, abrasion or laceration found on the anal region.

11. As per M.L.C of victim, the rectal pineal swabs were not taken as case was six days old; meaning thereby there is no material on record in support of the statement of victim about the alleged incident. The victim Kelash though supported the prosecution case but except bare words of the victim, prosecution has failed to produce any supportive evidence. The M.O did not depose that victim was subject to sexual assault

and he only deposed that the appellant is contributor of semen stains/sperm fractions identified on the cloths of victim Kelash Kumar.

12. The alleged offence took place on 21-04-2022 at 1430 hours while complainant lodged FIR on 27-04-2022 i.e. after six days of alleged incident and for such delay complainant has not stated a single word in the FIR. The complainant in his evidence deposed that he informed the alleged incident to his brother Babu and cousin Dilip, who advised him to lodge FIR, but prosecution has neither examined said Babu or Dilip to support complainant's version. Such delay in lodging the FIR in absence of any definite proof of commission of sodomy with victim Kelash is fatal to the prosecution case.

13. The stance taken by the appellant at trial stage is that actually the quarrel took place between him and the son of complainant, therefore, complainant had managed this case. When defence plea is kept in juxta position with the prosecution it rings true for the reasons that FIR is considerably delayed without any plausible explanation and the medical evidence does not support the prosecution case. Moreover, the reasons advanced by learned trial court while convicting the appellant, I must say, are also not weighty.

14. Now I advert to the factum whether compromise can be affected in non-compoundable offence. I am of the view that the compromise is meant to promote harmonious living and maintain cordial relations between the parties. This view was affirmed by august Supreme Court of Pakistan in the case of Ghulam Shabbir and 2 others v. The State (2003 SCMR 663).

15. For the foregoing reasons it is quite clear that prosecution has miserably failed to prove its case for offence under sections 377, 367-A PPC against the appellant beyond shadow of reasonable doubt and it is well settled position of law that any single circumstance created doubt in a prudent mind, it's benefit goes in favour of accused as held by honourable Supreme Court in a case of *Tarique Pervez vs The State* reported in 1995 SCMR

1345. Therefore, I am persuaded to allow this appeal. Consequently, conviction and sentence inflicted upon appellant Gul Hassan alias Gul s/o Karam Ali Shar in terms of impugned judgment dated 19-04-2024 is set aside and appellant is acquitted from the charge. He is ordered to be released forthwith if not required in any other case. These are the reasons of my short order dated 14-10-2025.

**JUDGE**

\*Faisal\*

