IN THE HIGH COURT OF SINDH, CIRCUIT COURT LARKANA

Criminal Appeal No.S-39 of 2025
Ali Raza vs.The State

Appellant	:	Ali Raza *through* Mr.Habibullah G. Ghouri, Advocate.
Respondents	:	State *through* Mr.Nazir Ahmed Bhangwar, Deputy Prosecutor General
Complainant	:	Abdul Rehman *through* Mr. Tarique Naeem Awan, Advocate,
Date of hearing	:	02.02.2026
Date of Decision	:	02.02.2026
Date of reasoning	:	11.02.2026

JUDGMENT

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Ali Haider 'Ada' J.; Through this criminal appeal, the appellant has assailed the judgment dated 22.10.2025, passed by the learned Additional Sessions Judge-IV / GBV Court, Larkana, (trial Court) whereby the appellant was convicted and sentenced to suffer rigorous imprisonment for fourteen (14) years and to pay a fine of Rs.1,000,000/-, and in default thereof to further suffer six (06) months' simple imprisonment. The benefit of Section 382-B, Cr.P.C. was extended to him. The said judgment was passed in Sessions Case No.923 of 2023, arising out of FIR No.88 of 2023, registered at Police Station Market for the offence punishable under Sections 377-B and 34, P.P.C.

2. Briefly stated, the facts of the prosecution case are that the complainant, Abdul Rehman, on 20.08.2023 was present at his shop along with his younger brother, namely Abdul Samad, aged about fourteen years. The brother left the shop to proceed home for lunch but

did not return. The complainant, along with witnesses, started searching for him. On 21.08.2023, they allegedly saw the victim sitting with accused Ali Raza and one unknown person. Upon inquiry, the victim disclosed that accused Ali Raza had committed sodomy with him and thereafter extended threats. Consequently, the FIR was lodged on 23.08.2023. After registration of the FIR, the matter was investigated in the ordinary course, and upon completion of investigation, challan was submitted before the competent Court. The learned trial Court took cognizance and supplied copies of relevant documents to the accused in compliance with Section 265-C, Cr.P.C.

3. On 08.01.2024, charge was framed against the appellant, to which he pleaded not guilty and claimed trial. In order to prove its case, the prosecution examined its witnesses. PW-01 Abdul Rehman (complainant) was examined, who produced and exhibited the copy of the FIR. PW-02 Abdul Samad, the alleged victim, was examined thereafter. The prosecution further examined Nazeer Ahmed, mashir of the place of incident, who exhibited the memo of place of incident as well as the memo of arrest of the appellant, showing his arrest on 24.08.2023. The medical officer was examined and produced relevant medical documents including the DNA test report. Another medical officer was also examined, who produced the police letter and the medical certificate of the alleged victim. The Investigating Officer was examined as PW-06, who produced relevant roznamcha entries and other documents pertaining to investigation. Thereafter, the prosecution closed its side.

4. After closure of the prosecution evidence, the statement of the accused under Section 342, Cr.P.C. was recorded, wherein he denied the allegations, professed his innocence, and prayed for acquittal. He neither examined himself on oath under Section 340(2), Cr.P.C. nor produced any witness in his defence. However, the learned trial Court, passed the impugned judgment, which is now under challenge through the instant appeal.

5. Learned counsel for the appellant contended that there are material contradictions in the prosecution evidence. He argued that the FIR was lodged with a delay of two days without any plausible explanation, which creates doubt in the prosecution case. He further submitted that the medical evidence is contradictory to the ocular account and is negative in nature, and that the DNA report does not support the prosecution case. According to him, the learned trial Court failed to properly appreciate these aspects and passed the impugned judgment without due consideration of the material discrepancies; therefore, the appellant is entitled to acquittal.

6. On the other hand, learned counsel for the complainant submitted that the complainant has settled the matter with the appellant and is no longer interested in pursuing the appeal.

7. Conversely, learned Deputy Prosecutor General supported the impugned judgment, contending that a heinous offence has been committed and that the sole testimony of the victim is sufficient to sustain conviction. He submitted that the learned trial Court has rightly convicted and sentenced the appellant in accordance with law.

8. Heard the learned counsel for the parties and perused the material available on record.

9. Firstly, it is a well-settled principle of law that where a statute prescribes that a particular act is to be done in a particular manner, it must be done in that manner alone and not otherwise. Any deviation from the prescribed procedure renders the act vulnerable to legal scrutiny and, in appropriate cases, vitiates the proceedings. This principle is not merely procedural but goes to the root of legality, transparency, and fairness in the administration of criminal justice. Keeping in view the gravity and sensitivity of sexual offences, the Legislature, in its wisdom, enacted the **Anti-Rape (Investigation and Trial) Act, 2021**, with the object of ensuring expeditious investigation and trial, protection of victims' rights, preservation of forensic evidence, and adoption of a structured investigative mechanism. The

Act provides a special procedure and safeguards, which are mandatory in nature, and are designed to ensure that investigation in such offences is conducted with utmost care, and transparency.

10. It is pertinent to observe that the offence under Section 377-B, P.P.C., with which the appellant has been charged, falls within the ambit of scheduled offences under the said Act. Consequently, the investigation and trial of the present case were required to be conducted strictly in accordance with the parameters, safeguards, and procedural framework laid down under the Anti-Rape (Investigation and Trial) Act, 2021.

11. The scheme of the Act clearly demonstrates that the scope of investigation and the powers conferred upon the investigating agency under the special enactment are materially distinct from those exercised in ordinary criminal investigations. However, in the present case, the record reflects that the investigation was conducted in an ordinary manner, without demonstrable adherence to the mandatory requirements of the Anti-Rape (Investigation and Trial) Act, 2021. There is nothing on record to show that the investigation was undertaken strictly within the statutory framework envisaged under the special law, nor that the procedural safeguards prescribed therein were fully complied with. Such omission, particularly in a case involving serious allegations of sexual assault, casts serious doubt upon the veracity, fairness, and transparency of the investigation and the manner in which evidence was collected, preserved, and presented before the Court.

12. It is trite law that when a special statute prescribes a specific mode of investigation for particular offences, the investigating agency is bound to follow the same in letter and spirit. Non-compliance with mandatory provisions of a special enactment, especially those enacted to ensure fair trial and protection of fundamental rights, cannot be treated as a mere irregularity; rather, it strikes at the root of the prosecution case and entitles the accused to claim benefit of doubt if

prejudice is demonstrated or appears from the record. For ready reference, the relevant provision Section 09 of the Anti-Rape (Investigation and Trial) Act, 2021, are reproduced as under:—

> *9. Investigation in respect of scheduled offences.— (1) For the purposes of investigation under this Act, special sexual offences investigation units (SSOIUs) shall be established in every district by the provincial governments and for the purposes of the Islamabad Capital Territory by the Federal Government.*
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> *(2) The SSOIU shall comprise police officers who have received training on investigation in relation to sexual offences and preferably one member of the unit shall be a female police officer. '*
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> *(3) The investigation in respect of offences mentioned under this Act shall be carried out as follows:-*
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> *(i) for offences mentioned in Schedule-I, by the SSOIU; and*
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> *(ii) for offences mentioned in Schedule-II, by SSOIU under the supervision of a police officer not below the rank of BPS-17.*
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> *(4) In case the complainant in relation to an offence under Schedule-II expresses dissatisfaction which is based on reasonable grounds, the investigation shall be transferred to the district head of investigation of the police.*
>
> *(5) The officers of the SSOIUs shall ordinarily be from the area in which the occurrence of the offence has taken place:*
>
> *Provided that in exceptional circumstances, and where the dictates of fair, accurate and technical investigation warrant otherwise, officers from areas other than the area of occurrence, may be deputed in the SSOIUs.*
>
> *(6) Upon completion of investigation, the SSOIU shall, through the prosecutor general or special prosecutors, submit the final report under section 173 of the Code before the Special Court.*

13. In view of the above legal position, the effect of non-adherence to the statutory mechanism provided under the Anti-Rape (Investigation and Trial) Act, 2021, is required to be examined with utmost care while assessing the sustainability of the impugned conviction. Once the statutory criteria, which are mandatory in nature, have not been fulfilled, the prosecution cannot be permitted to contend that such lapses may be overlooked on the pretext of minor irregularities. There is a clear and settled distinction between a curable irregularity and a defect which strikes at the root of the prosecution case. A defective investigation, particularly in cases governed by a

special statute prescribing a specific procedure, cannot be brushed aside as inconsequential. Rather, when such defect relates to the mode of collection, preservation, or production of evidence, it assumes serious proportions and becomes a circumstance creating doubt in the prosecution story. It is no doubt true that every defect in investigation does not ipso facto entitle the accused to acquittal; however, where the defect pertains to non-compliance with mandatory statutory requirements, and such non-compliance affects the fairness, transparency, and credibility of the prosecution case, the same cannot be treated as a mere technical lapse. In criminal jurisprudence, the burden lies upon the prosecution to establish its case beyond reasonable doubt through lawful and reliable evidence. If the very process by which such evidence is collected is tainted by disregard of mandatory provisions, the evidentiary value of such material becomes seriously impaired. The legal position in this regard is fortified by the well-recognized Latin maxim: **"Communi observantia non est recedendum."** The connotation of the maxim is that when the law requires a thing to be done in a particular manner, it must be done in that manner alone; and if the prescribed procedure is not followed, it shall be presumed that the act has not been done in accordance with law. This principle is deeply embedded in our criminal justice system and is consistently applied to ensure procedural sanctity and rule of law. Reliance in this respect can be placed upon the case of ***Jeehand v. The State*** **(2025 SCMR 923)**.

14. Furthermore, it is presumed that the victim had been subjected to carnal intercourse, such circumstance, in isolation, would not advance the case of the prosecution unless the accused is specifically and convincingly connected with the commission of the alleged act. In criminal jurisprudence, the pivotal question is not merely whether an offence has occurred, but whether the prosecution has proved, beyond reasonable doubt, that the accused is the perpetrator of such offence. In the present case, the ocular account and the surrounding circumstantial evidence do not convincingly connect the appellant with

the alleged culpability. The prosecution has failed to establish an unbroken chain of evidence linking the appellant to the commission of the offence. It is by now settled that in cases of sexual assault, especially where the prosecution relies upon scientific and medical corroboration, the DNA report assumes significant evidentiary value. Where such scientific evidence is available, it either fortifies or dismantles the prosecution version. In the instant matter, the DNA report is admittedly negative in nature and does not establish the presence of semen or any biological material linking the appellant to the alleged act. This negative forensic result materially weakens the prosecution case, particularly when the ocular account is not of unimpeachable character. In this regard, reliance may be placed upon ***Muhammad Ismail and another v. The State*** **(2023 PCr.LJ 1346)**.

15. In addition, the medical officer in the present case has categorically opined that no signs or symptoms indicative of sodomy were observed at the time of medical examination of the victim. The medical evidence is clear and entirely negative in nature. There were no injuries, marks of violence, or other medico-legal indicators suggestive of carnal intercourse. When the medical examination does not support the allegation, and the scientific evidence in the shape of DNA analysis is also negative regarding the presence of semen or biological linkage, the prosecution story becomes highly doubtful. Support in this respect is also drawn from ***Safdar Ali v. The State*** **(2025 SCMR 1437)**.

16. In the cumulative assessment of the evidence, when (i) the ocular account is not free from doubt, (ii) the medical evidence is wholly negative, and (iii) the scientific evidence in the form of DNA analysis does not connect the appellant with the alleged offence, the prosecution case appears to present an untrue and uncorroborated picture. In such circumstances, it would be unsafe to maintain the conviction, as the prosecution has failed to discharge its burden of proving the charge beyond reasonable doubt.

17. The unexplained and inordinate delay in lodging the FIR in the present case further casts serious doubt upon the veracity of the prosecution story. It is an established principle of criminal jurisprudence that prompt reporting of an occurrence lends assurance to the truthfulness of the prosecution version, whereas delay, if not plausibly explained, gives rise to suspicion and opens the door to the possibility of consultation, deliberation, and embellishment. In the case at hand, the alleged occurrence took place on 20.08.2023, whereas the FIR was lodged on 23.08.2023. The prosecution has failed to furnish any convincing explanation for such delay. It was imperative that the matter be reported to the police at the earliest opportunity so as to avoid disapproval regarding afterthought, manipulation, or fabrication. In this context, reliance is placed upon ***Safdar Ali v. The State*** (supra).

18. It is a well-settled principle of law that if a single reasonable doubt arises in the prosecution case, the benefit thereof must go to the accused as a matter of right and not as a concession. Reference in this regard may be made to ***Qurban Ali v. The State*** **(2025 SCMR 1344).**

19. Keeping in view the above facts and foregoing reasons, I am of the considered view that the prosecution has failed to establish its case against the appellant beyond reasonable doubt. Consequently, the appeal was allowed vide short order announced earlier, the impugned judgment passed by the learned trial Court was set aside, and the appellant was acquitted of the charge. The jail authorities were directed to release the appellant forthwith, if not required in any other custody case. These are the detailed reasons in support of our short order.

JUDGE