

IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Jail Appeal No.319 of 2025

Present:

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

Appellant : Through Mr. Abdul Irfan Raja, Advocate
Respondent : Through Mr. Syed Mumtaz Ali Shah, D. P.G.
Date of hearing : 23.02.2026
Date of Decision : 27.02.2026

J U D G M E N T

Syed Fiaz ul Hassan Shah, J. Appellant Zil-e-Hasnain @ Kashmiri S/O Muhammad Naeem Yousuf has challenged judgments dated 22.02.2025 (“**impugned judgment**”) passed by the learned IInd Additional Sessions Judge / Special Court (Gender Based Violence), Karachi South (“**Trial Court**”) in Sessions Case Nos. 656 & 622 of 2024 arising out of FIR No. 33/2024 registered under Section 377/511/34 Pakistan Penal Code, 1860 (**PPC**) at P.S Kharadar, Karachi, whereby appellant was convicted and sentenced to rigorous imprisonment for 3 years each and fine of Rs.30,000/- each and in case of default in payment of fine, they will further undergo one month simple imprisonment while being extended benefit of Section 382-B Cr.P.C.

2. The facts of the case are that the complainant Ameer Hamza S/O Hussain Muhammad lodged FIR with the Kharadar Police Station stating that on 21.01.2024 from 2200 to 2300 hours, the present appellants Usman

Qureshi and Shahid alongwith Appellant in Cr. Jail Appeal No.319/2025 Zil-e-Hasnain committed sodomy with his son Hasnain Raza inside Shop Perda Factory Outlet, near Naseem Garments, Millwala Market No.2, Bombay Bazaar, Karachi.

3. After completion of usual investigation, copies were supplied to appellant at Exh-01, charge was framed at Exh-02 for which appellant and other accused pleaded not guilty and claimed trial. The trial Court after recording the recording their plea separately at Exh-02/A & Exh-02/B, tried the charge and convicted the Appellant through consolidated Judgment which has impugned before us.

4. In order to prove the case, the prosecution has examined PW-1 / victim Hasnain Raza at Exh-03, PW-2 / Complainant Ameer Hamza at Exh-04, PW-3 / SIP Maqsood Khan at Exh-08, PW-4 / Judicial Magistrate Nisar Ahmed at Exh-09, PW-5 / MLO Dr. Muhammad Ali at Exh-10, PW-6 / PC Ali Raza at Exh-11, PW-7/MLO Dr. Faraz Shahid at Exh-12, PW-8 / I.O Sajjad Yousuf at Exh-14 who produced the relevant record. Thereafter the side was closed vide statement at Exh-13. The learned Trial Court recorded the statement of the appellant under Section 342, Cr.P.C. at Exh-14 and Exh-15, wherein the appellant categorically denied the allegations leveled against them. It is pertinent to note that the appellants neither opted to examine themselves on oath under Section 340(2), Cr.P.C., nor did they produce any defense witnesses in support of their plea.

5. Learned counsel for the appellant contends that there were serious contradictions in the evidence of PW-1 Hasnain Raza, victim of the case, and according to the learned counsel such material contradictions have not

taken into consideration by the trial Court and a case of mis-reading and non-reading of evidence has been surfaced out for the interference by this Court. He further contends that at the time of registration of FIR, no allegation for commission of offence of sodomy was levelled against the appellant Zil-e-Hasnain and only during evidence victim Hasnain Raza has implicated appellant alongwith other accused for the commission of sodomy and in the same breath even the said PW-1 has admitted this particular fact in evidence during cross-examination, however, the trial Court has not considered this aspect of the case. Learned counsel further contends that statement U/S 161 was recorded after considerable delay of 4 days from the date of incident and such material fact has admitted by PW-1/victim in evidence during cross-examination. No medical evidence corroborated. Moreover, the trial Court has also not considered that the victim has himself admitted that no blood was oozing after commission of offence and that condom allegedly used was not mentioned in the memo made at site inspection, therefore, impugned judgments are not maintainable and liable to be interfered by this Court.

6. On the other hand, learned Deputy Prosecutor General Sindh supported the impugned judgment and states that there is a clear evidence and victim / PW-1 Hasnain Raza has fully implicated appellant alongwith other accused, who were convicted by trial Court and upheld by this Court. He prayed that impugned judgment do not warrant any interference being passed in accordance with law.

7. Heard counsel for the appellant and Deputy Prosecutor General Sindh and with their able assistance perused the record.

8. We do not agree with the contention of learned Counsel for the Appellant. The record reflect that that there is direct evidence against the Appellant for the commission of offence of sodomy and such direct evidence have also been corroborated with the medical evidence. The PW-1 Hasnain Raza (victim) who was minor at the time of commission of offence categorically deposed: **“On 21.01.2024 from 1900 to 2000 hours, Hasnain Kashmiri took me from street of house on bike inside a godown situated at Bombay Bazaar where Usman and Shahid were already available. Hasnain and Shahid left for purchasing burger. Usman started queries from me. After about 25/30 minutes, Hasnain and Shahid went outside and closed shutter of godown. Hasnain and Usman forcibly put off my clothes. I started weeping and requested them on which they threatened me to shoot. Thereafter they both forcibly committed sodomy with me. Then after, Usman went out and Shahid came inside, who also committed sodomy with me. Thereafter, they threatened me to kidnap from school and coaching if I disclosed the incident to anyone. They also threatened to shoot me. I reached at home where I disclosed the incident to my mother and father. They alongwith my brother Hussain and cousin Uzair accompanied with me to the place of incident. We knocked at the door of godown but nobody was available. In the meantime, Shahid and Usman along with their friends arrived there hence we apprehended Shahid and Usman and called at 15 police helpline on which police reached there and took them to P.S with us where my father lodged the FIR”**. Although PW-1 was subjected to lengthy and searching cross-examination, nothing material could be elicited to dent the prosecution’s case. The testimony of the victim remained consistent, trustworthy, and confidence-inspiring.

9. We further observe that there exists complete consistency between the statement initially recorded by PW-1, the victim, under Section 164, Cr.P.C. at Exh-9(b), when he was a 16-year-old student of Class IX, and his subsequent deposition before the trial Court during evidence. No contradiction or material discrepancy has been found with regard to the commission of the offence that could create any reasonable doubt in the prosecution's case. The statement of the victim stands fully corroborated by PW-4, Judicial Magistrate Nisar Ahmed, at Exh-9, who categorically confirmed that he recorded the statement of the victim after adopting all legal formalities as required under law.

10. It is a settled principle under the Qanun-e-Shahadat Order, 1984, that the credibility of a witness is judged on consistency, coherence, and confidence-inspiring demeanor. Minor omissions or trivial discrepancies, if any, do not erode the evidentiary value of a witness so long as the core of the prosecution's case remains intact.

11. The direct evidence of PW-1, the victim, also finds corroboration from the medical evidence of PW-5 at Exh-10. The medical officer confirmed that the victim had passed stool and washed his private parts; however, the anal sphincter appeared intact with slight bruising visible. He further opined that all three appellants were physically capable of sexual performance. This medical testimony further explained that the non-oozing of blood could be attributed to the delay in reporting the case or to the manner in which the victim was handled by the healthcare professional. Such observations do not negate the occurrence of the offence; rather, they are consistent with the medical reality that physical signs may diminish with the passage of time or due to prior washing. In

sexual offence cases, even slight medical indications, when read in conjunction with consistent and confidence-inspiring testimony of the victim, are sufficient corroboration.

12. Nothing has been brought on record by the defence to demonstrate that the evidence of PW-1, the victim, was tainted by any ill motive, enmity, grudge, or hostility against the appellants so as to directly implicate them, or that any reasonable doubt could be created to cast a shadow over the prosecution's case in order to secure acquittal. As far as the admission made by PW-1 in his evidence, that appellant Shahid had only attempted to commit sodomy, is concerned, such admission merely reflects the factual attribution drawn from the FIR on inquisition of the defence counsel during cross-examination regarding the contents of FIR which was lodged by the complainant/father stating that appellant Shahid attempted to commit sodomy. However, the testimony of the victim, both under Section 164, Cr.P.C. and before the Court, is clear and categorical. The statement of the complainant in the FIR does not bind PW-1, who is the sole eyewitness and victim of the incident. His testimony remains believable being straight, confidence-inspiring, and trustworthy, without any indication of ill motive. The admission of facts in the FIR by the father of the victim cannot override or diminish the evidentiary value of the victim's own testimony, which stands free from doubt and firmly establishes the commission of the offence.

13. The ground taken by the learned counsel for appellant are similar to those, which have been taken by the co-accused in Cr. Appeal No.136/2025 and Cr. Jail Appeal No.161/2025 on the same set of charge and evidence, which has already been dismissed by us through our Judgment dated 02.02.2026. Therefore, the testimony of the victim, if

found confidence-inspiring and corroborated, is sufficient to sustain conviction notwithstanding delay in recording statements under Section 161, Cr.P.C. However, delay may reflect negligence on the part of the Investigating Officer, though it does not by itself create reasonable doubt in the prosecution's case.

14. Consequently, we do not find any illegality on its mis-reading and non-reading in the impugned judgment that may warrant interference with the same. On our reappraisal of the evidence, we find that impugned judgment is passed in accordance with law and after appreciation of record and these are the reasons of our short order dated 23.02.2026 for dismissal of instant Jail Appeal.

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