

IN THE HIGH COURT OF SINDH AT KARACHI

PRESENT:-

Mr. Justice Omar Sial

Mr. Justice Shamsuddin Abbasi

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Criminal Appeal No.321 of 2022

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Appellant	Abrar Hussain son of Manzoor Hussain through M/s Ubedullah Ghoto and Qamar Abbas Abbasi, Advocates.
Complainant	Muhammad Miskeen son of Muhammad Sadiq through Mr. Basam Ali Dahri, Advocate.
Respondent	The State through Ms. Rubina Qadir, Deputy Prosecutor General [Sindh].
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Date of hearing	<u>27.08.2026</u>
Date of Judgment	<u>07.09.2026</u>

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JUDGMENT

Shamsuddin Abbasi, J.- Iqra daughter of Muhammad Miskeen, aged about 16 years, is stated to be enticed away by Abrar Hussain son of Manzoor Hussain with intention of subjecting her to rape. FIR No.263 of 2018 was registered at Police Station Mehmoodabad, District South, Karachi, on the complaint of her father, Muhammad Miskeen initially for an offence punishable under Section 365, PPC.

2. FIR in this case has been lodged on 16.10.2018 at 6:40 pm whereas the occurrence is stated to have taken place on 07.10.2018 at about 7:00 am. Complainant Muhammad Miskeen has stated that he is serving as a Naib Qasid in the Special Branch. On the fateful day he woke up at about 7:00 am and found that his daughter Iqra, was not present in the house. Upon inquiry, his wife expressed ignorance regarding her whereabouts. The complainant thereafter with the assistance of his relatives made efforts to trace Iqra. During the course of such search, he came to know that Iqra's maternal uncle, Abrar Hussain, has enticed her away and taken her with him.

Despite efforts to locate her, when the complainant remained unsuccessful, he ultimately approached the police and lodged the FIR on 16.10.2018.

3. Pursuant to registration of FIR, the investigation was followed and in due course the challan was submitted before the Court of competent jurisdiction, whereby the appellant was sent up to face the trial.

4. A charge in respect of offences under Sections 365, 376 and 344, PPC was framed against Abrar Husain to which he pleaded not guilty and claimed trial.

5. At trial, the prosecution has examined as many as eight witnesses namely, Iqra as PW.1 at Ex.4, complainant Muhammad Miskeen as PW.2 at Ex.5, Muhammad Rizwan (complainant's son) as PW.3 at Ex.7, SIP Zahid Jadoon as PW.4 at Ex.10, Dr. Noor-un-Nisa as PW.5 at Ex.12, Dr. Pardeep Kumar as PW.6 at Ex.13, SIP Arbab Ali as PW.7 at Ex.14 and Anees-ur-Rehman (Judicial Magistrate) as PW.8 at Ex.15. They have exhibited certain documents in their evidence and were subjected to cross-examination by the defence. Thereafter, the prosecution closed its side vide statement at Ex.16.

6. In his statement under Section 342, Cr.P.C. (Ex.17), Abrar Hussain has denied the allegations levelled against him, professed his innocence and stated his false implication at the hands of complainant on account of a dispute over landed property. The appellant, however, neither opted to appear on oath in terms of Section 340(2), Cr.P.C. nor produced any evidence in his defence.

7. Upon culmination of the trial and after hearing the parties, the learned Additional Sessions Judge-III, Karachi (South) vide judgment dated 19.04.2022 found the appellant guilty of the offence charged and, thus, convicted him under Section 376(1), PPC, and sentenced him to suffer rigorous imprisonment for twenty years along with a fine of Rs.100,000/- and to suffer simple imprisonment for a further period of three months in lieu of fine, however, benefit in terms of Section 382-B, Cr.P.C. was extended in favour of the appellant. Feeling aggrieved by and dissatisfied with the verdict of conviction and order of sentence, the appellant has

preferred the instant appeal calling in question the legality, propriety and correctness of the impugned judgment.

8. It is contended on behalf of the appellant that the learned trial Court has failed to properly appreciate the evidence and wrongly convicted the appellant despite material discrepancies and serious doubts in the prosecution case. It is next submitted that the FIR has been lodged after an unexplained delay of about nine days although the complainant had admittedly learnt about the alleged disappearance of his daughter on 07.10.2018. It is also submitted that the complainant had not witnessed the alleged abduction and the appellant was nominated subsequently on the basis of hearsay information. It is argued that the alleged recovery of the prosecutrix from the possession of the appellant after more than three months is highly doubtful particularly when no independent witness from the locality was associated with the arrest and recovery proceedings. The medical and forensic evidence did not support the allegation of rape as the Medical Officer found no signs of recent sexual intercourse while the DNA examination has failed to connect the appellant with the alleged offence and no male DNA or seminal material was detected on the clothes of the prosecutrix. It is contended that the prosecution has failed to produce any independent evidence regarding the alleged confinement of the prosecutrix in Punjab or the precise place where she was allegedly kept. The statement of the prosecutrix under Section 164, Cr.P.C. could not by itself cure the material deficiencies in the prosecution evidence. Lastly submitted that the prosecution has failed to establish its case against the appellant beyond reasonable doubt and prayed for acquittal of the appellant by extending him the benefit of doubt. Reliance has been placed on the cases of *Safdar Ali v The State* (2025 SCMR 1437), *Muhammad Azam v The State and others* (2025 SCMR 810), *Maqsood Ali v The State* (2026 SCMR 393) and *Farman Ullah v The State* (2025 MLD 875)

9. Conversely, the learned Additional Prosecutor General, assisted by learned counsel for the complainant, has supported the impugned judgment and contended that the prosecution has established the charge against the appellant through consistent and confidence inspiring evidence. It is next submitted that the prosecutrix has implicated the appellant in her statements recorded during investigation and under Section 164, Cr.P.C. maintaining

that the appellant took her to Punjab and subjected her to sexual intercourse. It is argued that the recovery of the prosecutrix from the possession of the appellant from District Sargodha (Punjab) pursuant to information obtained through CDRs constituted a strong incriminating circumstance. It is submitted that the absence of fresh signs of sexual intercourse, seminal material or a positive DNA match could not by itself negate the allegation particularly when the medical examination was conducted after a considerable lapse of three months, hence medical and forensic evidence is corroborative in nature and could not override otherwise reliable testimony of the prosecutrix. It is contended that minor discrepancies regarding the manner of recovery or place of confinement were incidental and did not affect the core of the prosecution case. The defence plea of false implication due to a land dispute was stated to be a bare assertion unsupported by any evidence. She has submitted that the prosecution has proved its case against the appellant beyond reasonable doubt and the appeal being devoid of merit is liable to be dismissed.

10. We have given our anxious consideration to the submissions of respective sides and have gone through the entire evidence available on record with their assistance.

11. The principal question requiring determination is whether the learned trial Court has correctly appreciated the evidence and whether the conviction of the appellant under Section 376(1), PPC suffers from any misreading or non-reading of material evidence warranting interference by this Court.

12. Upon an independent appraisal of the entire record, we are of the considered view that the prosecution has succeeded in establishing the charge against the appellant through reliable, confidence inspiring and mutually corroborative evidence. The evidence, when examined as a whole rather than in isolation, establishes a coherent chain of circumstances which clearly points towards the guilt of the appellant. The learned trial Court has assigned sound and cogent reasons for recording the conviction and we find no perversity, arbitrariness or material misappraisal in its conclusion.

13. The prosecution case primarily rests upon the testimony of the prosecutrix Iqra, who appeared before the learned trial Court as PW.1 (Ex.4)

and gave a consistent account regarding the circumstances in which the appellant, who is stated to be her maternal uncle, took her away from Karachi to Punjab on the pretext of introducing her to his family and thereafter subjected her to sexual intercourse. Her account is materially consistent with the version furnished by her during investigation and subsequently in her statement recorded before a Magistrate under Section 164, Cr.P.C. The defence subjected her to cross-examination but failed to extract any material contradiction, omission or admission of such nature as could render her testimony unreliable. It is by now well settled that the testimony of a prosecutrix in a case of sexual assault does not require mechanical corroboration from independent witnesses as a condition precedent to conviction. The Court is required to examine her evidence with care and caution and where the same is found to be natural, consistent and confidence inspiring, it can constitute the basis of conviction. The absence of an independent eye-witness is hardly surprising in a case of like nature particularly where the alleged occurrence took place away from the victim's home and during a period when she was under the influence and custody of the appellant.

14. An important feature of the present case is that the appellant was not a stranger to the prosecutrix. He is her real maternal uncle and therefore was in a position to enjoy her confidence and familiarity. The prosecution version that the appellant induced the prosecutrix to accompany him to Punjab on the representation that she would be introduced to his family cannot be characterized as improbable. Rather, the relationship between the prosecutrix and appellant provides a plausible explanation as to how the appellant was able to take the prosecutrix away from her home without raising any immediate suspicion. The subsequent events lend substantial assurance to the account of the prosecutrix. She was not merely alleged to have travelled with the appellant rather after remaining away from her family for more than three months, she was ultimately recovered from the appellant's custody from District Sargodha (Punjab). Such recovery, particularly when viewed in conjunction with the CDR-based investigation which led the police to their whereabouts, constitutes a significant incriminating circumstance corroborating the testimony of the prosecutrix regarding her having been taken away and retained in the appellant's possession.

15. The argument that the appellant was nominated subsequently on the basis of hearsay information is of no assistance to the defence. The complainant admittedly is not an eye-witness to the taking away of his daughter and therefore could naturally narrate only what he personally observed and what he subsequently learnt during the course of his search. The fact that the appellant's name surfaced when the family was making efforts to trace the missing girl does not render the subsequent investigation or the testimony of the prosecutrix unreliable. What is material is not merely who initially disclosed the appellant's name, but whether the subsequent evidence independently connects the appellant with the disappearance and recovery of the prosecutrix. On this aspect, the testimony of the prosecutrix, the circumstances of her recovery and the investigation based upon CDR information substantially corroborate one another.

16. Considerable emphasis has been placed upon the delay of nine days in registration of the FIR. The occurrence took place on 07.10.2018 whereas the FIR was registered on 16.10.2018. Delay in lodging an FIR undoubtedly requires examination particularly in a criminal case, however, delay is not invariably fatal to the prosecution. Its evidentiary effect depends upon the circumstances in which it occurred. In the case in hand, the complainant furnished an explanation that after discovering the absence of his daughter, he initially made efforts with the assistance of relatives to trace her and during the course of such efforts came to know that she had been taken away by the appellant. The complainant thereafter approached the police when his efforts proved unsuccessful. Such conduct, in the peculiar circumstances of a missing minor girl, cannot be described as so unnatural or implausible as to demolish the prosecution case. The delay, therefore, does not constitute a circumstance sufficient to discard otherwise reliable and corroborated evidence.

17. The defence has also challenged the recovery of the prosecutrix on the ground that no independent person from the locality was associated with the proceedings. The objection is misconceived. The absence of a private witness does not by itself nullify a recovery otherwise proved through official witnesses and supported by the surrounding circumstances. The evidentiary worth of a recovery is to be determined from the entire record and not merely from the fact that a particular category of witness was or was not

associated. Here, the recovery of the prosecutrix is not a chance recovery. The investigation proceeded upon information obtained through CDRs, the whereabouts of the appellant and prosecutrix were traced to District Sargodha (Punjab) and the prosecutrix was ultimately recovered from the appellant's custody. The circumstance of recovery thus furnishes independent assurance to the core version of the prosecution and materially connects the appellant with the prolonged absence of the prosecutrix from her home.

18. The defence has further relied upon the medical evidence particularly the fact that the Medical Officer found no signs of recent sexual intercourse. This contention, in our view, does not demolish the prosecution case. The medical examination of the prosecutrix was conducted after a considerable lapse of about three months from the alleged occurrence. In such circumstances, absence of fresh signs of intercourse cannot reasonably be treated as affirmative proof that sexual intercourse did not take place during the intervening period. Medical evidence in a case of sexual assault is ordinarily corroborative in nature. It may support the ocular account where positive signs are found, but the absence of fresh signs cannot in every case override otherwise credible testimony of the victim. The nature of the alleged offence, the passage of time and the circumstances in which the prosecutrix remained away from her family are all relevant considerations. The medical evidence in the present case, therefore, cannot be elevated to such a status as would conclusively negate the direct account furnished by the prosecutrix. Similar is the position regarding the negative DNA result. DNA evidence is undoubtedly a valuable forensic tool where biological material attributable to the accused is recovered nevertheless a negative DNA report does not in every factual circumstance conclusively establish that the alleged sexual act never occurred. The evidentiary value of DNA depends upon the availability, preservation and recovery of biological material capable of yielding a meaningful result. The prosecution case is that the alleged sexual acts occurred during the period in which the prosecutrix remained with the appellant and that her medical examination took place after a substantial lapse of time. The fact that no male DNA or seminal material was detected on the clothes of the prosecutrix, therefore, constitutes a circumstance requiring consideration but cannot in the peculiar facts of this case be treated as sufficient to discredit her otherwise consistent testimony. Forensic

evidence is corroborative in nature and it does not invariably displace reliable direct evidence. The medical opinion of Dr. Pardeep Kumar regarding the appellant's capability of performing sexual intercourse also deserves to be considered in its proper perspective. We agree that such opinion standing alone does not establish commission of rape. Nevertheless, it is a circumstance consistent with the prosecution case and when read with the testimony of the prosecutrix and the circumstances in which she was recovered from the appellant's possession lends further assurance to the prosecution version.

19. The statement of the prosecutrix under Section 164, Cr.P.C. assumes particular significance. After her recovery, she was produced before the learned Judicial Magistrate and her statement was recorded, wherein she reiterated the allegations against the appellant. Thus, her account was not confined to a single occasion before the police or the trial Court rather the material allegations remained consistent at different stages of the proceedings. No material has been brought on record to demonstrate that the learned Magistrate failed to observe the safeguards prescribed for recording such statement nor has the defence been able to establish that the prosecutrix was subjected to coercion, pressure or undue influence before making the statement. The consistency of her account over time materially strengthens its evidentiary value.

20. The argument that the prosecutrix remained in the custody of the appellant for more than three months and did not escape or raise an alarm also does not in the circumstances of the case furnish a ground for discarding her testimony. Human conduct cannot be reduced to a rigid or universally applicable formula. A young girl taken away from her house by a close relative, transported to another province and placed in circumstances controlled by the accused may react in a variety of ways. Absence of an immediate opportunity or attempt to escape cannot by itself be equated with voluntary participation in the alleged acts. More importantly, the appellant is her maternal uncle, thereby occupying a position of familiarity and influence. The prosecutrix was away from her family and in an unfamiliar environment. It is also worth to mention here that the prosecutrix was only about 16 years of age at the relevant time, her age makes it difficult to rule out the possibility that the appellant being in a position to influence her exercised

such influence over her. Mere fact that she remained with the appellant for a considerable period does not automatically convert an otherwise proved allegation of sexual exploitation into a consensual relationship particularly where the prosecutrix has consistently attributed the sexual acts to the appellant.

21. We have also considered the defence plea that the appellant has been falsely implicated because of a dispute over landed property. The plea, however, remains a bare assertion unsupported by any independent evidence. No documentary material has been produced to establish the alleged dispute or any circumstance demonstrating that the complainant or the prosecutrix had a compelling reason to falsely implicate the appellant in such a serious offence. It is significant to note that the allegation is not against an unknown outsider but against a close family member. The defence, therefore, required convincing material demonstrating a plausible reason for the prosecutrix herself to falsely accuse her maternal uncle of an offence carrying serious penal consequences. No such material has been brought on record. The failure of the appellant to appear on oath under Section 340(2), Cr.P.C. or to produce defence evidence is not by itself a circumstance from which guilt can be inferred, since the burden of proving the prosecution case always remains upon the prosecution. Nevertheless, once the prosecution has produced evidence which establishes a coherent and convincing chain of circumstances, the absence of any plausible alternative explanation may legitimately be considered while assessing the defence version. In the case in hand, the appellant has offered no satisfactory explanation for the presence of the prosecutrix with him in Punjab for such a prolonged period. His mere denial under Section 342, Cr.P.C. cannot displace the affirmative evidence produced by the prosecution.

22. We are also not persuaded by the argument that discrepancies regarding the precise place of confinement or the manner of recovery create a reasonable doubt. Criminal cases are to be decided on material evidence relating to the core occurrence and not on inconsequential discrepancies attributable to lapse of time, differences in perception or ordinary imperfections in human recollection. The discrepancies highlighted by learned counsel for the appellant do not go to the root of the prosecution

case. The essential features have remained intact. The prosecutrix disappeared from her home, the appellant was identified as the person who had taken her away, she remained away from her family for more than three months, the appellant and the prosecutrix were traced through investigation based upon CDR information, she was recovered from the appellant's possession from District Sargodha (Punjab) and after recovery she consistently implicated the appellant in her statements under Section 161, Cr.P.C. before the investigating agency and under Section 164, Cr.P.C. before the learned Magistrate. The cumulative effect of these circumstances is of considerable importance. Each piece of evidence need not independently prove the entire prosecution case. What is required is an assessment of the evidence in its entirety. When the testimony of the prosecutrix is considered together with the circumstances of her disappearance, the relationship between the parties, her transportation to Punjab, her prolonged stay away from her family, the CDR-based tracing of the appellant, her recovery from his possession and the consistency of her subsequent statements, the prosecution case emerges as a coherent and confidence inspiring whole. The defence seeks to examine each circumstance in isolation and thereby magnify individual deficiencies. Such an approach is legally unwarranted. The Court has to consider the evidence as a whole and determine whether the prosecution's version inspires confidence. In our view, the evidence supports the prosecution's case.

23. We are mindful of the fact that the prosecution bears the burden of proving the guilt of the accused beyond reasonable doubt and that the accused is entitled to benefit of every reasonable doubt arising from the evidence, however, the rule of benefit of doubt is not attracted by fanciful, imaginary or remote possibilities. The doubt must be reasonable, rational and founded upon material appearing on the record. In the case in hand, the circumstances relied upon by the defence do not create a reasonable doubt sufficient to dislodge the prosecution case. The delay in FIR has been reasonably explained, the subsequent nomination of the appellant is supported by the testimony of the prosecutrix and the recovery, the absence of an independent recovery witness is not fatal, the medical examination was conducted after a considerable lapse of time and the negative DNA result in the peculiar circumstances does not conclusively disprove the allegation. None of these circumstances, individually or cumulatively, outweighs the

consistent and confidence inspiring testimony of the prosecutrix. It is equally significant that the prosecutrix is a young girl and the appellant is her maternal uncle, a person whom she could naturally trust. The prosecution version that he used such relationship and familiarity to take her away from Karachi and thereafter subjected her to sexual intercourse is not inherently improbable. On the contrary, the subsequent recovery of the prosecutrix from the appellant's possession from Punjab after more than three months provides substantial corroboration to the material portion of her account. The fact that the appellant took the prosecutrix to another province and kept her away from her family for such a prolonged period cannot be viewed as an innocent or inconsequential circumstance. It is a powerful surrounding circumstance which lends assurance to her allegation that she was under the appellant's control during the relevant period.

24. The possibility of inducement or enticement in the present case cannot be brushed aside or treated as insignificant. The mother of the prosecutrix had already passed away whereas her father had contracted a second marriage. In such family circumstances, the prosecutrix being a young girl of about 16 years of age was admittedly in a vulnerable position. The appellant was her real maternal uncle and therefore occupied a position of closeness, trust and confidence within the family. He was not a stranger to her rather by virtue close relationship he was a person in whom she could naturally repose confidence and whose words and conduct could reasonably influence her. This relationship assumes particular significance while examining the circumstances in which the prosecutrix left her parental home and accompanied the appellant. Her accompanying him cannot be treated as conclusive proof of a free, voluntary and independent decision. The Court is required to examine the entire background including her age, family circumstances, relationship with the appellant and the manner in which she was taken away. These circumstances when considered cumulatively provide a plausible basis for concluding that the appellant was in a position to influence or induce the prosecutrix.

25. We have carefully reappraised the entire evidence available on record particularly the testimony of the prosecutrix, the circumstances surrounding the occurrence and the other material brought by the prosecution and have also considered the submissions advanced by learned counsel for the

appellant. Upon such reappraisal, we are unable to find any material infirmity in the prosecution case which could justify interference with the conviction. On the contrary, the evidence when considered as a whole and in its proper perspective establishes the guilt of the appellant beyond reasonable doubt. The statement of the prosecutrix on the material aspects of the occurrence has remained substantially consistent. Her testimony cannot be discarded merely because certain minor discrepancies or variations have appeared in the narration of the facts. Such discrepancies are natural and do not in the absence of material contradictions affecting the core of the prosecution case create a reasonable doubt.

26. Admittedly, the prosecutrix was a young girl of about 16 years of age and the appellant was her real maternal uncle. This close relationship cannot be ignored while assessing her conduct and the appellant's role. The fact that she accompanied the appellant does not establish that whatever subsequently occurred was the result of a free and conscious choice on her part. The Court must look beyond the bare fact of accompaniment and determine the circumstances in which the prosecutrix came under the appellant's influence and what followed thereafter. In the present case, the tender age of the prosecutrix, her vulnerable family circumstances and the close relationship of trust between her and the appellant support her statement and do not support the defence plea. It is equally important that the testimony of the prosecutrix has to be examined on its intrinsic worth and in the context of the entire evidence. There is no rule of law that the statement of a prosecutrix in a sexual offence must invariably be corroborated by independent evidence before a conviction can be sustained. Where her testimony is found to be trustworthy, confidence inspiring and consistent on material particulars, it can constitute sufficient basis for conviction. In the present case, after a careful examination of her evidence, we find that it carries sufficient confidence and has not been shaken in cross-examination. Nothing material has been extracted which could render her testimony unsafe for reliance. The defence has failed to point out any such contradiction or omission as may go to the root of the occurrence and render the prosecution version doubtful. The defence has also failed to furnish any convincing explanation for the material circumstances appearing against the appellant. The conduct of the appellant must be assessed in the light of the circumstances existing at the relevant time and not in isolation.

The law does not permit the Court to disregard the vulnerability of a young prosecutrix or the influence which a close and trusted relative may exercise over her.

27. We are conscious of the fact that a conviction in a criminal case cannot rest on suspicion, conjecture or surmise and that the prosecution must establish its case beyond reasonable doubt. At the same time, reasonable doubt must be real, rational and arising from the evidence on record, it cannot be founded upon imaginary possibilities or minor discrepancies having no bearing upon the substance of the occurrence. On a cumulative assessment of the evidence, no such reasonable doubt arises in the present case. The alleged deficiencies highlighted by learned counsel for the appellant, when examined in the context of the entire record, are inconsequential and do not demolish the prosecution case. They neither discredit the prosecutrix nor furnish any plausible alternative explanation consistent with the innocence of the appellant. The learned trial Court has examined the evidence in its proper perspective and has recorded a well-founded finding of guilt. We have independently reappraised the evidence as required in an appeal against conviction and have reached the same conclusion. There is no material misreading or non-reading of evidence nor has the learned trial Court relied upon any legally inadmissible material. The finding of guilt is based upon evidence which is confidence inspiring and sufficiently establishes the commission of the offence by the appellant. We, therefore, find no perversity, illegality or material irregularity in the impugned judgment warranting interference by this Court. It is also settled that an appellate Court while exercising jurisdiction in an appeal against conviction is required to examine the entire evidence independently, however, where after such reappraisal the conclusion reached by the trial Court is found to be supported by the evidence and no reasonable ground exists for taking a different view, the conviction is not liable to be disturbed merely because another view is sought to be suggested by the defence. In the present case, the evidence does not admit of such a doubt as would entitle the appellant to the benefit of acquittal. The prosecution has succeeded in establishing the charge under Section 376(1), PPC, beyond reasonable doubt.

28. For the foregoing reasons, we are satisfied that the conviction recorded by the learned trial Court is neither based on misreading or non-

reading of evidence nor suffers from any legal infirmity. The evidence of the prosecutrix read as a whole and considered along with the surrounding circumstances sufficiently establishes the appellant's guilt. The pleas taken by the appellants are without substance and do not create any reasonable doubt in the prosecution case. Consequently, the conviction of the appellant under Section 376(1), PPC, recorded through impugned judgment dated 19.04.2022 is maintained. The appeal is bereft of any merit stands dismissed.

JUDGE

JUDGE

Naeem/PA