

THE HIGH COURT OF SINDH, BENCH AT SUKKUR

Criminal Jail Appeal No.S-02 of 2024

Appellant: Muhammad Siddique through Mr, Rukhsar Ahmed Junejo, Advocate.

Complainant: Mr. Khalid Hussain through Mr. Muhammad Imran Khan, Advocate.

Respondent: The State through Mr. Khalil Ahmed Maitlo, D.P.G. Sindh.

Date of hearing: 10.02.2025.

Date of Judgment: 13.03.2025.

J U D G M E N T

Riazat Ali Sahar, J. Muhammad Siddique Channa, appellant has assailed the legality and propriety of the judgment dated 29.05.2023, passed by the learned Additional Sessions Judge-II/Gender Based Violence Court, Sukkur in Sessions Case No.465 of 2022, arising out of Crime No.04 of 2022, registered at Police Station Railway Sukkur, for the offence under section 377, 34 P.P.C, whereby, the learned trial Court after full-fledged trial, convicted the appellant under section 377-B P.P.C and sentenced him to R.I for fourteen (14) years and also ordered to pay fine of Rs.10,00,000/-; and in case of default, he was directed to suffer S.I for two years more. The appellant was also convicted Article 11 of PEHO, 1979 to suffer R.I for two years. Both the sentences were ordered to run concurrently. However, benefit of Section 382-B Cr.P.C was also extended to appellant.

2. The case of prosecution is that on 04.02.2022, at approximately 01:30 a.m., the complainant, Khalid Hussain, son of Rasool Bux, lodged an FIR at Police Station Railway, Sukkur, wherein he stated that he sells flowers beside Police Station A-Section, Sukkur, wherein stating that on the said date after completing his work at around 2300 hours, he returned home and found that his son, Irfan Hyder, aged approximately 13 to 14 years, and his nephew, Sher Ali, had gone to a hotel near the Excise Office to procure food. At about 12:30 a.m., his neighbour, Babar Ali Shaikh, came to his residence and informed him that he had received a phone call from Sher Ali, who stated that the son of the complainant was missing. Upon receiving this distressing information, the complainant, accompanied by Babar Ali, immediately proceeded towards the Railway Yard near Namak Godown, where they heard a commotion. Acting swiftly, they reached the location and saw that the son of the complainant was present alongside another person, later identified as Muhammad Siddique, and also observed that the Station House Officer, Railway Police Station had already apprehended the accused. It is further alleged that upon inquiry, the son of the complainant disclosed that while he was present at Excise Chowk, the accused forcibly took him to an abandoned room with the intent of committing an unnatural offence, where the accused unlawfully subjected him to such an act against his will. The victim further stated that he was unable to resist due to the force exerted by the

accused. Upon knowing about this grave incident, the complainant reported the matter to the authorities, as such, his statement was recorded under Section 154 Cr.P.C, leading to the formal registration of the FIR against the accused. Subsequently, the police undertook an investigation into the matter, recorded the statements of relevant witnesses, and proceeded in accordance with the law.

3. After completing the usual investigation report under section 173 Cr.P.C(challan) was submitted against the appellant and trial Court framed charge against him to which he pleaded not guilty and claimed trial.

4. The prosecution, in order to prove its case, has examined 10 witnesses, out of which PW-1 mashir/HC Abdul Nabi, PW-2 mashir PC Abdul Khalique, PW-3 mashir PC Jamshed Ali, PW-4 Complainant Khalid Hussain, P.W-5 author of FIR/Retired Police Officer Muhammad Yaseen, P.W-6 victim Irfan Hyder, P.W-7 Eyewitness Sher Ali, PW-8 DSP Amjad Manzoor, P.W-9 SHO Altaf Hussain and P.W-10 Dr. Muhammad Iqbal Medical Officer. They produced all the requisite documents. Thereafter Prosecutor Railway closed the side of prosecution.

5. Trial court recorded statement of accused under section 342, Cr.P.C. wherein he pleaded his innocence and claimed his false implication in this case. Learned trial Judge after hearing the learned counsel for the parties and examining the evidence available on record convicted and sentenced the appellant as

stated above through impugned judgment. Hence, the appellant has preferred Criminal Jail Appeal against the said judgment.

6. Mr. Rukhsar Ahmed Junejo, learned counsel for the accused-appellant, advanced his arguments with great emphasis, contending that the appellant has been falsely implicated in the present case by the complainant. It was asserted that certain witnesses are close relatives of the complainant and, being interested witnesses, have deliberately given false testimony against the appellant. Furthermore, it was argued that the medical evidence is inconsistent with the ocular account, and there are no independent eyewitnesses to substantiate the allegations. It was further contended that the circumstances surrounding the alleged incident have not been sufficiently established to form an unbroken chain of incriminating evidence against the accused-appellant. The learned counsel further referred to the deposition of the alleged victim, who stated that the accused had dragged him by his hand and attempted to commit Zina with him. However, during cross-examination, the victim admitted that Zina had not actually been committed and that the accused had merely made an attempt. Further, PW Sher Ali deposed that he was called to his cousin's residence and, while returning home, reached Mall Godown Railway, where he heard cries and weeping. Upon approaching the scene, he allegedly witnessed the accused, Muhammad Siddique, committing Zina with his cousin, Irfan, in the state of intoxication. The learned counsel also highlighted the deposition of PW Altaf Hussain, who,

during cross-examination, conceded that according to the DNA report, neither the anal swab sample nor the victim's clothing contained any semen stain or sperm fraction, which corroborated the findings of the DNA analysis. Moreover, it was pointed out that at the time of the initial medical examination, the doctor did not observe any signs of sodomy. The learned counsel maintained that a conviction cannot be sustained solely on the basis of circumstantial evidence and no individual should be convicted or penalized in the absence of clear, cogent, and reliable evidence. In conclusion, it was strenuously argued that since the prosecution has failed to produce consistent, credible, and legally sufficient evidence, the learned trial court has committed a grave error in law by convicting the accused-appellant. Learned counsel, therefore, prayed that the conviction and sentence awarded to the accused-appellant may be set aside. In support of his arguments, the learned counsel placed reliance on the reported cases of *KHALID JAVED and another v. THE STATE (2003 SCMR 1419)*, *AZEEM KHAN and another v. MUJAHID KHAN and others (2016 SCMR 274)*, *MUHAMMAD AZHAR HUSSAIN and another v. THE STATE and another (PLD 2019 Supreme Court 595)*, and *ALI GUL v. THE STATE (2020 MLD 952)*.

7. Mr. Khalil Ahmed Maitlo, Deputy Prosecutor General, Sindh for the State, assisted by Mr. Muhammad Imran Khan, learned counsel for the complainant, argued that the evidence presented by P.W-7 Sher Ali unequivocally establishes that upon his arrival at Mall Godown Railway, he heard cries and

weeping of his cousin. Consequently, he proceeded towards the source of the distressing sounds and witnessed the accused, Muhammad Siddique, committing Zina with his cousin, Irfan, while in an intoxicated state. It was further contended that this account remains uncontroverted, notwithstanding the fact that the victim, Irfan, in his deposition, stated that the accused had dragged him by the hand and attempted to commit Zina. However, during cross-examination, the victim acknowledged that the accused had only attempted the act rather than completing it. The learned Deputy Prosecutor General further submitted that the medical evidence, particularly the evidence of the examining doctor, clearly establishes that an act of sodomy was perpetrated upon the victim. He asserted that the chain of circumstances, as established by the prosecution, remains unbroken and leads to the irresistible conclusion that the accused is guilty of the offence. He further argued that the statements PWs ought to be given due weight. In view of the foregoing, the learned Deputy Prosecutor General contended that the impugned judgment does not require any interference by this Court and prayed for the dismissal of the appeal.

8. I have considered the arguments advanced before me by the learned counsel for the parties and perused the material available record including the cases cited at par.

9. A meticulous reappraisal of the evidence adduced by the prosecution before trial Court describes that this incident not only reported by the complainant party by their own accord after

knowing the fact but it was also testified by the police officials, who were on routine checking, the presence of victim party and accused, as such, it is imperative to scrutinize the entire evidence carefully from all corners. In this regard, PW Head Constable Abdul Nabi testified that on 04.02.2022, while conducting routine checks at Railway Station Sukkur along with Police Constables Abdul Khaliq and Abdul Haque, they heard a commotion near Old Namak Godown at approximately 12:40 a.m. Upon reaching the scene, they observed that a man and a boy were restraining the accused, Muhammad Siddique. The victim, Irfan Hyder, disclosing his identity stated that the accused had held him from Excise Chowk with the intent of committing an unnatural offence and had subsequently perpetrated the act. The accused was immediately taken into custody, and it was noted that his breath smelled of alcohol. A currency note of Rs.100 was recovered from his possession, and a *mashirnama* was prepared in the presence of Police Constables Abdul Khaliq and Abdul Haque. Subsequently, the accused was transported to the police station, where the Station House Officer registered the FIR and arranged for the medical examination of both the victim and the accused.

10. PW PC Abdul Khaliq corroborated the testimony of HC Abdul Nabi, stating that during checking at Railway Yard Sukkur, they heard a commotion at 12:30 a.m. and upon reaching the location saw two boys restraining the accused. The boys identified themselves as Irfan Hyder and Sher Ali, and the accused disclosed his name as Muhammad Siddique. The victim stated that the

accused had attempted to commit an unnatural offence with him. A currency note of Rs.100 was recovered from the accused, and his breath smelled of alcohol. A *mashirnama* of arrest and recovery was prepared, and the accused, victim, and witnesses were taken to the police station. The victim's clothes were seized at the police station in the presence of HC Ashfaque Anjum. Later, at 2:15 a.m., the victim and accused were taken to GMMMC Hospital Sukkur for medical examination, where the accused was admitted while the victim was taken back to the police station.

11. PW PC Jamshed Ali deposed that on 04.02.2022, he accompanied with SHO Muhammad Yaseen to the place of the incident at 8:15 a.m. There, PC Abdul Haque pointed out the crime scene, which was in a room at the western side of the Railway Yard. The SHO prepared a site inspection memo in his presence, which was completed by 9:00 a.m. After returning to the police station, he recorded entry No.7 at 9:15 a.m.

12. PW complainant Khalid Hussain deposed in his deposition that he is a flower vendor and that on 04.02.2022, his 13/14-year-old son, Irfan Hyder, and nephew, Sher Ali, went to a hotel to buy food but did not return. Around 11:30 p.m., he and Babar Shaikh started searching for them when they were informed that the Railway Police had taken his son to the police station. Upon reaching the police station, the police informed him that accused Muhammad Siddique had fought with his son. The police took his thumb impression on a written statement but did not read the contents to him. He was not aware

of the FIR's contents and stated that he had not shown the place of incident to the police. He further stated that the accused did not commit any unnatural offence with his son. Due to retraction of his earlier statement, complainant was declared hostile by Prosecutor and with the permission of trial Court cross-examined him.

13. Muhammad Yaseen stated that on 04.02.2022, the complainant (Khalid Hussain) approached him and narrated the incident, after which he recorded his statement U/S 154 Cr.P.C. and registered an FIR. He conducted the investigation, visited the crime scene, and prepared a site inspection memo in the presence of PC Jamshed Ali and PC Abdul Haque. He seized the victim's clothes and sent them for medical examination and DNA testing. Due to his transfer, he handed over the investigation to SIP Altaf Hussain.

14. Star witness victim Irfan Hyder deposed that on 04.02.2022, he and his cousin Sher Ali went to buy food, after which he returned alone. While passing by Excise Office Chowk, he was forcibly taken by the accused, Muhammad Siddique, to Mall Godown Railway, where the accused attempted to commit Zina with him. His cousin Sher Ali arrived and witnessed the act, and they raised cries for help. The Railway Police arrived and arrested the accused. He confirmed that he was taken to the hospital and that his clothes were seized by the police. He identified the accused in court.

15. PW Sher Ali stated in his evidence that after purchasing food, he returned home and later went back out. Near Mall Godown Railway, he heard cries and saw the accused committing Zina with his cousin, Irfan Hyder, in an intoxicated condition. The police arrived at the scene and took them all to the police station, where the complainant lodged an FIR. He also confirmed that his statement was recorded U/S 161 Cr.P.C.

16. PW DSP Amjad Manzoor during his evidence has stated that after the FIR was registered, a Special Joint Investigation Team (JIT) was constituted under his leadership, whereas Zulfiqar Ali Shah, SHO Muhammad Yaseen, and SI Altaf Hussain were members of the Team. He directed the SHO to send samples for DNA testing and supervised the recording of witness statements. After completing the investigation, he instructed the SHO to submit the challan before the concerned Magistrate.

17. PW SHO Altaf Hussain took over the investigation on 13.02.2022. He obtained sealed medical samples and clothes from the hospital and sent them for chemical analysis and DNA testing. On 18.02.2022, he inspected the crime scene, prepared a sketch and took photographs. Thereafter, he submitted the report under section 173 Cr.P.C (challan) before the concerned Magistrate.

18. Dr. Muhammad Iqbal examined both accused Muhammad Siddique and victim Irfan Hyder at 4:30 a.m. on 04.02.2022. He found that the accused was intoxicated, had blood-stained clothes, and had multiple injuries on his head and

face. Samples were taken for DNA analysis, and reserved his opinion.

19. PW PC Muhammad Azam stated that on 16.02.2022, he transported the samples to LUMHS Jamshoro for DNA testing, as per SHO's instructions. His statement was recorded U/S 161 Cr.P.C.

20. In the instant case, in order to establish the commission of an unnatural offence, four prosecution witnesses i.e. complainant (father of the victim), the victim, PW Irfan Hyder (minor), eyewitness PW Sher Ali the cousin of the victim and PW Dr. Muhammad Iqbal are important in this case. It is pertinent to mention here that Muhammad Yaseen (P.W/4), the complainant and father of the victim, was declared hostile by the prosecution as he deposed in a manner contradictory to the prosecution's case. As such, it is imperative to examine his evidentiary value since he has been declared hostile. A *hostile witness* refers to a witness who, despite being presented by the prosecution, provides testimony that contradicts the prosecution's case or otherwise fails to support it, thereby requiring the prosecution to treat the witness as adverse. A hostile witness is one whose demeanor and evidence are inconsistent with the version put forth by the party calling them, thereby compelling the prosecution to impeach their credibility through cross-examination. The evidentiary value of a hostile witness's testimony remains a matter of judicial discretion. While the testimony of a hostile witness does not automatically become inadmissible, the Court must scrutinize it with caution and

determine whether any portion of his evidence remains reliable and can be corroborated by other independent evidence. He stated in his evidence that the accused, Muhammad Siddique, did not commit any unnatural offence with his son. This version cannot be disregarded, as he is a natural witness and the father of the victim. His testimony carries evidentiary significance and must be assessed in light of the medical evidence, which does not provide corroboration for the prosecution's case. The absence of supporting medical findings further undermines the prosecution's version and casts serious doubt on the veracity of the allegations.

21. The evidentiary value of a hostile witness's testimony is not completely negated; rather, it is subjected to scrutiny under judicial discretion. The court retains the authority to assess such testimony for corroborative purposes, provided it aligns with other independent and reliable pieces of evidence. This principle has been established in the case of **Muhammad Arshad v. The State (PLD 2011 SC 350)**, where the Supreme Court of Pakistan held that while the testimony of a hostile witness cannot be taken at face value, portions of it that are corroborated by other unimpeachable evidence may still be relied upon. Similarly, in the case of **Shamshad v. The State (1998 SCMR 854)**, it was reaffirmed that a hostile witness's testimony is not to be entirely discarded but must be weighed against the totality of evidence available on record. The court in this case underscored the maxim "*Falsus in uno, falsus in omnibus*" (false in one thing, false in everything), asserting that while a witness who deliberately distorts facts may generally be discredited, selective

reliance on truthful aspects of their testimony remains permissible if substantiated by other reliable evidence.

22. Moreover, the principle that when a witness turns hostile the prosecution is entitled to cross-examine them to expose their inconsistencies but the mere declaration of hostility does not render the entire testimony inadmissible. Rather, the Court should evaluate its probative value in light of the corroborative evidence available. In conclusion, the testimony of a hostile witness in our legal framework is not outrightly discarded but is subjected to judicial scrutiny. The Court exercises discretion in determining whether any portion of the testimony can be relied upon as corroborative evidence, ensuring that justice is served based on the holistic appreciation of all available evidence.

23. The statement of the victim Irfan Hyder before the trial court is of paramount significance in determining the evidentiary value of his testimony. In his evidence, he deposed that, “... *then the accused met with me at Mall Gdown Railway who dragged me from my hand and tried to commit Zina with me*”. This needs an analysis from two perspectives: (1) **The competency of the minor victim (13/14 years of age) as a Witness under Qanun-e-Shahadat Order, 1984**, and (2) **The legal distinction between Attempt and Commission of an offence.**

24. To discuss as to the **Competency of the Minor Victim as a Witness under Qanun-e-Shahadat Order, 1984**, it is worthwhile to state that under Article 3 of the *Qanun-e-Shahadat Order, 1984*, every person is competent to testify unless the Court

deems otherwise based on incapacity to understand or provide rational testimony. Furthermore, Article 17 stipulates that a witness must be of sound understanding and capable of comprehending and responding to questions logically. In the instant matter, the trial Court, before recording the minor victim's testimony, undertook a preliminary assessment of his competency by asking relevant questions, such as: (a) *Where he was* (b) *Before whom he was standing* and (3) *Why he was standing before the trial Court*. Since the victim satisfactorily answered these questions, it establishes that he possessed sufficient understanding to provide a legally competent statement. This aligns with the ruling in *State v. Farman Hussain (PLD 1995 SC*¹ where the Supreme Court of Pakistan held that a minor witness's testimony is admissible if the court is satisfied with his comprehension and ability to give rational evidence. Furthermore, in the case of *Muhamad Zubair v. The State* (2010 SCMR SC 182)², the Court observed that where a child's testimony is corroborated by other evidence, it carries significant probative value. In this case, the **victim's testimony** is not substantiated by the presence of an eyewitness, namely his cousin. The eyewitness stated that the accused, Muhammad Siddique, had committed an unnatural offence with the victim, Irfan Hyder. However, the victim himself, Irfan Hyder, stated that there was merely an attempt to commit unnatural intercourse by the accused. This glaring contradiction between the statements of the victim and the

¹ See also *Abdullah Shah v. State* (1986 SCMR 852; *Nazir Hussain v. The State* (PLD 1984 Lah 509) *Sami Ullah v. The State*" (2025 PCrLJ 73 Quetta)

² "in case where two views relating to the age of an accused are possible, the view in favour of the accused is normally to be accepted."

eyewitness severely undermines the prosecution's case. Such inconsistencies in material particulars raise serious doubts regarding the reliability of the evidence and weaken the prosecution's claim beyond reasonable doubt.

25. As to the **Legal Distinction Between Attempt and Commission of an Offence**, the victim's testimony explicitly states that the accused "*tried to commit Zina with me*", indicating an *attempt* rather than the *completion* of the offence and such distinction is very crucial. Under section 377 PPC, an unnatural offence is punishable with severe penalty. However, Section 511 PPC prescribes punishment for an *attempt* to commit an offence when the act falls short of completion. The jurisprudence on *attempt* is well-established. In the case of *Abdul Majid v. The State (2003 SCMR 721)*, the Supreme Court held that for an offence to qualify as an *attempt*, the prosecution must establish: (i) **Mens rea (criminal intent)** to commit the offence, (ii) **An overt act** leading towards the commission of the crime and (iii) **Failure to complete the crime** due to reasons beyond the accused's control. The victim's testimony in the present case affirms that the accused made an attempt but did not succeed in committing the offence. In the instant case, even the **attempt** to commit an unnatural offence has not been legally established. An attempt, in legal terms, requires an overt act demonstrating the intent to commit the offence, which goes beyond mere preparation. The act of pulling down the victim's shalwar or placing the accused's organ near the victim's anal region with the intention to penetrate, without actual physical

penetration or any further overt act, indicates preparation and attempt to commit unnatural offence. Moreover, the mere verbal assertion of an attempt to commit an unnatural offence, without corroborative evidence, does not fulfill the essential ingredients required to establish an attempt to commit unnatural intercourse. The prosecution must demonstrate that the accused took definite steps towards the commission of the act, thereby leaving no reasonable doubt as to the actual execution of the attempt. In the absence of such proof, the allegation remains legally unsubstantiated.

26. The above-mentioned stance also aligns with evidence rendered by the Medical Officer and the medical reports. The prosecution examined Dr. Muhammad Iqbal as P.W/10 at Ex.14. At the relevant time, he was serving as the Chief Medical Officer (CMO) at Ghulam Muhammad Mahar Medical College (GMMMC) Hospital, Sukkur. He testified that on 04.02.2022, while performing his official duties at GMMMC Hospital, Sukkur, the accused, Muhammad Siddique, and the victim, Irfan Hyder, were brought before him at about 04:30 a.m. for medical examination and certification. Upon conducting a medical examination of the accused, Muhammad Siddique, the Medical Officer found that he was conscious, oriented, cooperative, and physically stable, though under the influence of alcohol. His breath emitted a strong, unpleasant odour, indicative of intoxication. He was attired in a light green *shalwar kameez* and a green jacket, both of which bore visible bloodstains. During the

course of the examination, the Medical Officer observed and documented the following injuries on the person of the accused:

- (i). *Lacerated wound at occipital region measuring 3 cm x 1 cm x 1 cm.*
- (ii). *Lacerated wound at left side of occipital region measuring 1 cm x 3 mm x 2 mm.*
- (iii). *Lacerated wound at left mastoid measuring 1½ cm x 3 mm x 2 mm.*
- (iv). *Swelling at right maxillary region measuring 3½ x 2½ cm.*

27. This indicates that there was a quarrel between the parties, which resulted in injuries to the appellant rather than the alleged victim. Given these circumstances, the possibility of false implication in such a severe offence cannot be ruled out, particularly when the evidence does not conclusively support the prosecution's version and raises serious doubts regarding the veracity of the allegations. However, DNA analysis has conclusively excluded Muhammad Siddique exonerating the appellant from the act of sodomy. The Supreme Court of Pakistan, in the case of **Salman Akram Raja and another v. Government of Punjab (2013 SCMR 203)**, emphasized the critical role of DNA evidence in sexual offence cases, stating that DNA tests and the preservation of DNA evidence are “*essential for the administration of justice*” in such matters. Given that the DNA evidence does not link Muhammad Siddique to the commission of the offence under Section 377 PPC, his conviction under this section is not tenable.

28. With regard to the DNA report, which negates the element of penetration, it is sufficient to state that the negative

report casts serious doubt upon the veracity of the prosecution's case. The absence of forensic evidence supporting the allegation of unnatural intercourse further weakens the prosecution's stance and raises reasonable doubt regarding the occurrence of the alleged offence. Furthermore, the assertion that Muhammad Siddique was under the influence of alcohol at the time of the incident introduces another legal dimension. Under Article 11 of the Prohibition (Enforcement of Hudood) Order, [PEHO] 1979, the consumption of alcohol is a punishable offence. However, for intoxication to be legally established under Article 11 of the PEHO, 1979, the essential ingredients of the said provision must be satisfied, including credible evidence of consumption, proper forensic examination, and procedural compliance. In the absence of such proof, the mere allegation of intoxication remains legally unsubstantiated and does not contribute to the prosecution's case.

29. After having look upon a piece of evidence of the victim Irfan Hyder whereby he deposed that the accused attempted to commit an unnatural offence with him and from exhaustive analysis of the evidence on record, it is obvious that the prosecution has not succeeded in proving the charge of unnatural offence under Section 377 PPC coupled with DNA findings the evidence on record, including the testimony of victim's father and major contradiction on the evidence of PW Irfan Hyder (victim) and his cousin, PW Sher Ali as discussed above does establish that an attempt to commit an unnatural offence was made. As per *Abdul Majid v. The State* (2003 SCMR 721), an offence qualifies as an attempt when the accused

shows criminal intent (mens rea), performs an overt act, and fails to complete the offence due to circumstances beyond his control. These factors render the prosecution's case doubtful, as it is not free from contradictions and infirmities. The inconsistencies in the evidence and the absence of corroborative forensic proof significantly weaken the prosecution's version, thereby creating reasonable doubt regarding the veracity of the allegations.

30. In summary, the instant case presents three conflicting stances: the complainant, who is the father of the victim, states that no such offence took place; the victim claims that there was an attempt to commit an unnatural offence; while the victim's cousin, an eyewitness, asserts that the unnatural offence was actually committed. These contradictions create serious doubt regarding the prosecution's version. It is a settled principle of criminal jurisprudence that the accused is the favourite child of the law, and where reasonable doubt exists, it must be resolved in favour of the accused³

31. In light of the foregoing discussion, I am of the considered view that the prosecution has miserably failed to establish the case against the appellant for the offence under Section

³ **Muhammad Hassan and Another v. The State [2024 SCMR 1427]**; "According to these principles, once a single loophole/ lacuna is observed in a case presented by the prosecution, the benefit of such loophole/lacuna in the prosecution case automatically goes in favour of an accused."

See also; Daniel Boyd (Muslim Name Saifullah) and another v. The State (1992 SCMR 196); Gul Dast Khan v. The State (2009 SCMR 431); Muhammad Ashraf alias Acchu v. The State (2019 SCMR 652); Abdul Jabbar and another v. The State (2019 SCMR 129); Mst. Asia Bibi v. The State and others (PLD 2019 SC 64) and Muhammad Imran v. The State (2020 SCMR 857).

377 PPC relating to commit an unnatural offence, as well as under Article 11 of the Prohibition (Enforcement of Hudood) Order, 1979 regarding intoxication. Consequently, the appeal is ***allowed***, and the appellant is acquitted of the charge. The jail authorities are directed to release the appellant forthwith, unless he is required in any other criminal case by any competent court.

J U D G E

Ahmed Memon/PS