IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Crl. Jail Appeal No. S-74 of 2023

Date	Order with signature of Judge
	1. *For orders on M.A. No.4666/23.* 2. *For hearing of main case.*

Appellants:	Nadeem, through Mr. Sikandar Ali Junejo, Advocate.
Respondent:	The State through, Mr. Khalil Ahmed Maitlo, Deputy Prosecutor Gneral.
Date of hearing:	17.02.2025
Date of Judgment:	17.02.2025.

J U D G M E N T

Riazat Ali Sahar, J. Appellant Nadeem Waseer has assailed the judgment dated 15-06-2023, rendered by the learned Additional Sessions Judge-II/Gender-Based Violence Court, Sukkur, in Sessions Case No. 537 of 2022, arising from Crime No. 50/2022, registered at Police Station Abad, offence under Section 377-B of the Pakistan Penal Code and Section 3 of the Trafficking in Persons Act, 2018. Through the impugned judgment, the appellant was convicted under Section 377-B PPC and sentenced to rigorous imprisonment for *fourteen years*, along with a fine of Rs. 1,000,000/- [one million]. In the event of default in payment of the fine, he was further directed to undergo simple imprisonment

(S.I) for an additional two years. The benefit of Section 382-B Cr.P.C. was extended to the appellant.

2. Tersely, the prosecution's case, in essence, is that on 18-03-2022 at 2100 hours, the complainant, Shoukat Ali, son of Bagh Ali Mangi, lodged an FIR at Police Station Abad. He stated that he is the owner of a barber shop and has a son, Waris Ali, aged approximately 13 years. On the day of the incident, his son Waris Ali had gone to his maternal uncle's house to deliver a meal for *Shab-e-Barat*. In the meantime, the complainant heard his son's cries. Accompanied by his brother, Abid Ali, and his brother-in-law, Qurban Ali Bhatti, he rushed out of the house and witnessed accused Nadeem, son of Ghulam Sarwar Waseer, forcibly taking his son away on a 125 motorcycle. The complainant, along with his brother and brother-in-law, pursued the accused and, upon reaching Kheer-Thar Canal, Sukkur, at 6:30, saw the accused committing *Zina* with his son Waris Ali after having removed his *shalwar*, while the child was crying out for help. When they called out to the accused (*hakals*), he pointed a pistol at them, warning them to stay away, and then fled on his motorcycle. The complainant subsequently approached the police station and lodged the FIR.

3. Following the usual investigation, the police submitted a challan against the appellant before the competent court of law, presenting him as being on bail. The learned trial

court, upon completing all legal formalities, framed a charge against the appellant-accused at Ex.2. However, he pleaded not guilty and claimed trial, with his plea recorded at Ex.2/A.

4. To establish its case, the prosecution examined the following witnesses:

- **PW-1: Complainant Shoukat Ali**
- **PW-2: Eyewitness and *Mashir* Abid Ali**
- **PW-3: Eyewitness and second *Mashir* Qurban Ali**
- **PW-4: Victim Waris Ali**
- **PW-5: CMO Dr. Muhammad Iqbal Siddique**
- **PW-6: Investigating Officer (I.O.)/SIP Muhammad Akram**
- **PW-7: Medical Officer (M.O.) Dr. Kailash Kumar**
- **PW-8: Investigating Officer (I.O.) SIP Mst. Zeenat Gujar**
- **PW-9: Police Constable Muneer Ahmed**
- **PW-10: Author of the FIR, SIP Abdul Jabbar**

All the requisite documents were duly produced in evidence. Subsequently, the learned Assistant District Public Prosecutor (ADPP) closed the prosecution's side through a statement recorded at Ex.15.

5. Upon the completion of the prosecution's evidence, the learned trial court recorded the appellant's statements under Section 342 Cr.P.C., wherein he denied the prosecution's allegations and asserted his innocence. However, he neither examined himself on oath nor produced any evidence in his defence.

6. After hearing the arguments of the appellant's counsel and the learned Deputy District Public Prosecutor (DDPP) for the State, and upon due consideration of the evidence,

the learned trial court rendered the impugned judgment, which has been challenged through the present jail appeal.

7. Learned counsel for the appellant contended that the appellant is innocent and has been falsely implicated in this case with *mala fide* intent. He argued that the impugned judgment is contrary to the facts of the case and the settled principles of law. There is no credible evidence against the appellant, as the complainant, Shoukat Ali—who is an alleged eyewitness to the incident—along with prosecution witnesses Abid Ali and Qurban Ali, as well as the victim, Waris Ali, did not support the prosecution's case and were declared hostile. Furthermore, the allegation against the appellant regarding the commission of an unnatural offence has not been substantiated through ocular testimony. Therefore, the prosecution has failed to prove its case against the appellant beyond a shadow of doubt. In view of these circumstances, the learned counsel prayed for the acquittal of the appellant.

8. Conversely, the learned Deputy Prosecutor General (D.P.G.) opposed the contentions advanced by the learned counsel for the appellant, arguing that the appellant has been specifically nominated in the FIR with a clear role attributed to him. However, he did not refute the fact that all prosecution witnesses, including the victim, failed to support the prosecution’s case during ocular testimony and were consequently declared hostile.

9. I have had the opportunity to hear the learned

counsel for the appellant as well as the learned Deputy Prosecutor General (D.P.G) for the State, and have meticulously examined the record. The prosecution alleges that the appellant committed sodomy with the son of the complainant, Waris Ali. However, upon a careful perusal of the evidence adduced by the complainant, the prosecution witnesses (PWs), and the alleged victim himself, it is evident that none of them have implicated the appellant in the instant case. Notably, the prosecution witnesses, including the complainant, have been declared hostile.

10. The complainant, Shoukat Ali, in his deposition, stated that *"on the day of incident he along with his brother Abid Ali and brother-in-law Qurban Ali went for search of his son and found his son where he weeping and on inquiry his son informed that one person took him on motorcycle on gun point at the place of incident and committed unnatural offence with him but he did not identify the accused present in Court."*

11. Similarly, prosecution witness Abid Ali deposed that *"Police has not recorded his statement u/s 161 Cr.P.C, the accused present in Court is not same person who committed the unnatural offence with victim."* Another prosecution witness, who was also an eyewitness, echoed the exact sentiments as those expressed by PW Abid Ali.

12. Furthermore, the victim, Waris Ali, in his testimony, stated that *"On 18.03.2022 incident was taken place. On the same date he alongwith Faraz were going for giving meal to his maternal uncle and when reached in the corner of street one*

muffled faced person came on motorcycle who forcibly took him to kheerthar wah and committed unnatural offence with him. Faraz informed to his father and subsequently his father and uncle Abid Ali and brother-in-law of his father namely Qurban Ali reached at the place of incident but the said person on seeing them escaped away. The police had not recorded his statement u/s 161 Cr.P.C. He cannot say if the accused present in Court is same or not as he was muffled faced at the time of incident."

13. From the cumulative assessment of the testimonies, it is apparent that none of the prosecution witnesses, including the complainant and the alleged victim, have attributed any criminal act to the appellant. Not a single witness has deposed against him, nor has any of them alleged that he committed the unnatural offence. Consequently, the prosecution declared its own witnesses hostile. The conduct of the complainant and the prosecution witnesses casts serious doubt upon the veracity of the allegations, leading to the inescapable conclusion that no offence, as alleged by the prosecution, was in fact committed by the appellant. It is a fundamental principle of criminal jurisprudence that the burden of proof rests solely upon the prosecution, which is required to establish guilt beyond reasonable doubt. The doctrine of *in dubio pro reo*—which dictates that in the presence of doubt, the benefit must go to the accused—must be given due consideration, particularly when the prosecution's own witnesses have exonerated the appellant. Furthermore, the sole remaining piece of evidence is the medical report, which, standing in stark contradiction to the ocular account, lacks any probative value. It is a well-settled principle that medical evidence cannot override direct testimony, especially when the latter does not support the allegations.

A conviction cannot be based on mere medical findings in the absence of corroborative ocular evidence. The cardinal rule of evidence, *testis unus, testis nullus*[1], highlights the necessity of independent and reliable corroboration where a case hinges on singular or unreliable testimony. In light of the foregoing, it becomes manifest that the prosecution has failed to establish its case against the appellant, and any purported evidence against him requires independent, unimpeachable corroboration, which is conspicuously absent.

12. I have also examined the evidence of prosecution witnesses minutely, there are many contradictions, discrepancies regarding time of incident, manner of incident, identification, which cannot be ignored while deciding the case and, on the basis, whereof, no conviction could be recorded but the learned trial Court has not considered while passing the impugned judgment. In case of ***IMRAN ASHRAF***[2]**,** Honourable Supreme Court of Pakistan held that:

> *"It is also a known principle of criminal administration of justice that if the ocular testimony suffers from material discrepancies and for the reasons more than one it has lost it intrinsic value then the corroborative evidence namely recovery, medical evidence etc. cannot be used to corroborate the ocular testimony as held in the case of Dhunda v. The Crown (ILR 16 Lahore) as under:-*
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> *(We have examined the evidence and we come to the same conclusion as the learned Judge a regards the eye witnesses. The contradictions and discrepancies are so many and so material that it is almost impossible to believe that these witnesses anything of importance. Their evidence is so unreliable as to be worth precisely nothing. It appears to us, therefore, to be impossible in*

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[1] *One witness is no witness- the testimony of a single witness, without corroboration, is generally insufficient to establish a fact in legal proceedings.*

[2] Imran Ashraf & 7 others v. the State (2001 SCMR 424)

law to corroborate this evidence. Nothing cannot be multiplied or corroborated.).

11. For the reasons discussed above, we have reached the conclusion that the prosecution has utterly failed to establish its case against the appellant/accused beyond reasonable doubt. It is a well-settled proposition of law that in order to extend the benefit of doubt to an accused, it is not necessary for multiple circumstances to exist that create uncertainty. Rather, if a single circumstance gives rise to a reasonable doubt regarding the guilt of the accused, then such doubt must be resolved in favour of the accused, entitling him to the benefit thereof. In this respect, reliance can be placed upon case of Muhammad **Hassan and Another v. The State [2024 SCMR 1427,** wherein the Honourable Supreme Court has held that:

"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."[3]

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[3] See also; *MUHAMMAD MANSHA v. The STATE 2018 SCMR 772- "4. Needless to mention that while giving the benefit of doubt to an accused it is not necessary that there should be many circumstances creating doubt. If there is a circumstance which creates reasonable doubt in a prudent mind about the guilt of the accused, then the accused would be entitled to be benefit of such doubt, not as a matter of grace and concession, but as a matter of right. It is based on the maxim, "it is better that ten guilty persons be acquitted rather than one innocent person be convicted". Reliance in this behalf can be made upon the cases of Tarique Parvez v. The State (1995 SCMR 1345), Ghulam Qadir and 2 others v.The State (2008 SCMR 1221), Mohammad Akram v, The State 2009 SCMR 230) and Mohammad Zaman v.The State (2014 SCMR 749)."*

See alos; 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.

12. In view of the foregoing discussion and in reliance upon the established judicial precedents, the instant appeal was allowed through my short order dated 17-02-2025. Consequently, the impugned judgment dated 15-06-2023, passed by the learned Additional Sessions Judge-II/Gender-Based Violence Court, Sukkur, was set aside, and the appellant was acquitted of the charge. As the appellant was incarcerated at the time, he was ordered to be released forthwith, provided he was not required in any other case. ***The foregoing constitutes the detailed reasons for the short order dated 17-02-2025.***

J U D G E

*Ihsan/**

The State and others (PLD 2019 SC 64) and Muhammad Imran v. The State (2020 SCMR 857).