

HIGH COURT OF SINDH AT KARACHI

Criminal Appeal No.899 OF 2025

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Appellants Muhammad Ismail son of Abdul Manan
through Mr. Sanaullah Soomro, Advocate.

Respondent The State
through Mr. Abrar Ali Khichi, APG (Sindh).

Date of hearing **23.04.2026**

Date of Judgment **14.05.2026**

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JUDGMENT

Shamsuddin Abbasi, J.- Muhammad Ismail son of Abdul Manan, appellant, has questioned the validity of the judgment dated 15.10.2025, penned down by the learned Additional Sessions Judge-X, Karachi (West)/ GBW Anti-Rape Court, Karachi, in Sessions Case No.2098 of 2021, arising out of FIR No.144 of 2021 registered at Police Station Docks, District West, Karachi, for offences under Sections 377 and 511, PPC, through which he was convicted and sentenced as under:-

- (a) *The accused Muhammad Ismail s/o Abdul Manan by caste Mashori is hereby convicted under section 265-H(2) Cr.P.C. for the offence under Section 367-A PPC and sentenced to suffer imprisonment for life 25 years R.I. and fine of Rs.50000/-. In case of default to pay fine, he shall undergo 06 months SI more.*
- (b) *The accused Muhammad Ismail s/o Abdul Manan by caste Mashori is hereby convicted under section 265-H(2) Cr.P.C. for the offence under Section 376 and sentenced to suffer imprisonment for life 25 years R.I. and fine of Rs.50,000/-. In case of default to pay fine, he shall undergo 06 months SI more.*
- (c) *The accused Muhammad Ismail s/o Abdul Manan by caste Mashori is hereby convicted under section 265-H(2) Cr.P.C. for the offence under Section 377-B PPC and sentenced to suffer imprisonment for 20 years R.I. and fine of one million rupees. In case of default to pay fine, he shall undergo 06 months SI more.*
- (d) *All three sentences shall run concurrently. The benefit of Section 382-B Cr.P.C. is extended to the accused.*

(e) The certified true copy of the judgment is supplied to the accused free of cost.

2. The prosecution case, as narrated in the FIR, is that Muhammad Ismail was accused of committing sodomy upon a minor boy namely Farhan, aged about 05 years. The complainant, Allahdino Siyal, alleged that on 21.02.2021 he was present at his workplace. It was about 6:00 pm his daughter Nadia came at his work place and informed him that Farhan had returned home weeping and his clothes were stained with blood. On inquiry, the victim disclosed that an uncle, who used to stay at a nearby video game shop and visit the neighbouring houses had taken him to his house, offered him something to eat, laid him on a foam mattress and committed sodomy with him. The victim further stated that upon his cries, the accused released him and fled away. The complainant thereafter visited the house pointed out by the victim, where the foam mattress was identified as the place of occurrence, and subsequently lodged FIR No.144 of 2021 at Police Station Docks.

3. Pursuant to the registration of FIR, the investigation was followed and in due course the challan was submitted before the Court of competent jurisdiction under Sections 377 and 511, PPC, whereby the appellant was sent up to face the trial.

4. A charge in respect of offence under Section 376 read with Section 511, PPC was framed against the appellant. He pleaded not guilty to the charged offence and claimed a trial tried.

5. At the trial, the prosecution has examined as many as seven witnesses in shape of ocular account, supported by the medical as well as circumstantial evidence. The appellant in his Section 342, Cr.P.C. statement has denied the commission of offence, professed his innocence and stated his false implication. He, however, opted not to make a statement on oath under Section 340(2) Cr.P.C. and did not produce any witness in his defence. The learned trial Court found the appellant guilty of the offences charged with and, thus, convicted and sentenced him as detailed in para-1 (supra) which necessitated the filing of the listed appeal.

6. We have heard the learned counsel for the appellant as well as the learned APG and have minutely reappraised the entire evidence available on record with their able assistance.

7. The prosecution case primarily rests upon the ocular account furnished by the minor victim, Farhan, whose testimony remained consistent, confidence inspiring and wholly trustworthy throughout the proceedings. Before recording his deposition, the learned trial Court satisfied itself regarding his competency to testify and upon finding that he possessed sufficient understanding to answer questions rationally, his statement was recorded strictly in accordance with law. The victim categorically implicated Muhammad Ismail and narrated in detail the manner in which the offence was committed. Despite lengthy and searching cross-examination, nothing material could be elicited to discredit his testimony or to suggest any motive whatsoever for false implication of the appellant.

8. It is a settled principle of law that in offences of like nature particularly those involving sexual abuse of minors, the testimony of the victim carries significant evidentiary value and conviction can safely be based upon the sole testimony of the victim if the same inspires confidence and receives corroboration from the surrounding circumstances, medical evidence and scientific material. The victim appeared before the learned trial Court as PW.5 at Ex.19. In his deposition, the victim has stated that on the day of incident he was playing in the street with his friends when Muhammad Ismail, who resided in the same locality, approached him and induced him to accompany him on the pretext of providing eatable items and upon his refusal, the appellant forcibly caught hold of his hand, took him into a room, removed his shalwar and his own, laid him upon a mattress and committed sodomy with him. The victim further deposed that blood started oozing from his anal region and he felt severe pain, upon his cries and weeping, the appellant released him and fled from the place of occurrence. He further stated that on the following day his father took him to the police station, from where he was referred to Civil Hospital Karachi for medical examination. The victim has also deposed that subsequently the police produced him before the learned Magistrate where his statement under Section 164, Cr.P.C. was recorded and where he identified the appellant. During recording his evidence, the minor victim consistently reiterated the

role played by the appellant as well as the mode and manner in which he was subjected to the unnatural offence. His statement recorded under Section 164, Cr.P.C. was brought on record and exhibited at Ex.11/A. Despite exhaustive cross-examination, the defence failed to extract any material contradiction, discrepancy or omission capable of shaking his credibility or casting doubt upon the correctness of his identification of the appellant.

9. It is well-settled that a statement recorded under Section 164, Cr.P.C. constitutes substantive evidence and carries considerable evidentiary value particularly in cases where no independent eyewitness is available. In the present case, the victim consistently identified the appellant both before the learned Magistrate and during trial. Such unwavering identification by a child victim assumes great significance and cannot lightly be discarded. The identification of the appellant by the minor victim, therefore, lends strong assurance to the truthfulness and reliability of his testimony. No favourable circumstance for the defence nor any adverse inference against the prosecution could be extracted from the victim during cross-examination.

10. It is noteworthy that the statement of the victim under Section 164, Cr.P.C. was recorded by Zohaib Ahmed, Civil Judge & Judicial Magistrate, Karachi West, who appeared before the trial Court as PW.6 at Ex.18 and categorically deposed that after observing all legal formalities, he recorded the statement of the victim. The record further reveals that on the very next day of the occurrence, i.e., 22.02.2021, the victim was medically examined by Dr. Abdul Jabbar, who appeared as PW.2 at Ex.24. The Medical Officer deposed that upon examination he detected seminal material and reserved his final opinion pending receipt of the DNA report. He further stated that the DNA profile obtained from the sperm fraction of the stains secured from the victim's shalwar matched with the DNA profile obtained from the blood sample of Muhammad Ismail. The DNA report produced at Ex.8/D conclusively established that the DNA profile obtained from the sperm fraction secured from the victim's shalwar was a single-source profile matching the DNA profile obtained from the blood sample of the appellant and that, in the absence of an identical twin, the appellant was the source of the DNA to a reasonable degree of scientific certainty. Such unimpeachable scientific evidence forms a highly incriminating circumstance against the

appellant and provides complete corroboration to the ocular account furnished by the victim.

11. The record further reflects that after the arrest of the appellant on 10.05.2021, he was produced before Dr. Abdul Jabbar for potency examination and collection of blood samples for DNA analysis. The doctor opined that the appellant was capable of performing sexual intercourse. Mehdi Khan, Inspector of Police, appeared as PW.7 at Ex.14 and deposed that he had produced the victim before the Medical Officer for examination, secured the victim's clothes and anal swabs for DNA analysis, got recorded the statement of the victim under Section 164, Cr.P.C., seized the memory card containing the video footage, arrested the appellant and produced him before the Medical Officer for collection of blood samples and potency examination. He further deposed that after depositing all samples with the forensic laboratory, the DNA report was received positive, which fully corroborated the account furnished by the victim and conclusively connected the appellant with the commission of the offence. The evidence of the Investigating Officer remained unshaken and satisfactorily established the safe custody and transmission of the samples to the forensic laboratory without any possibility of tampering.

12. The prosecution case also derives substantial support from the doctrine of *res gestae*. The law is well-settled that a spontaneous and contemporaneous declaration made by a victim immediately after the occurrence, without opportunity for deliberation, tutoring or fabrication carries a high degree of intrinsic reliability and is admissible as an exception to the rule against hearsay evidence. In the present case, the victim, a child of about five years of age, returned home shortly after the occurrence and immediately narrated the incident to his mother. A child of such tender years cannot reasonably be expected to fabricate or concoct a false story within such a short span of time. His immediate disclosure, therefore, bears the hallmark of spontaneity, truthfulness and natural conduct. The superior Courts have consistently held that statements falling within the doctrine of *res gestae* are admissible where they are made contemporaneously with the occurrence and form an integral part of the same transaction, leaving no room for reflection or invention. Such spontaneous utterances, made under the stress and excitement of the occurrence, possess inherent reliability and

provide valuable insight into the true nature and circumstances of the incident.

13. It is further significant to note that the prosecution also placed on record CCTV footage showing the appellant and the victim entering the house together and subsequently emerging therefrom after the occurrence. This piece of evidence constitutes an additional incriminating circumstance lending further assurance to the prosecution version. The defence failed to bring on record any plausible motive for false implication of the appellant in a case of such heinous nature. The plea of false implication advanced by the defence appears to be bald, vague and wholly devoid of substance. We are, thus, of the view that the prosecution has successfully established its case against the appellant beyond any shadow of doubt through a reliable and confidence inspiring ocular account, duly corroborated by strong medical evidence and unimpeachable scientific and circumstantial evidence in the shape of a positive DNA report further reinforced by the CCTV footages placed on record.

14. For what has been discussed hereinabove, we are satisfied that the findings recorded by the learned trial Court rest upon a proper and meticulous appreciation of the evidence as well as the applicable law. The learned trial Court has correctly evaluated the material brought on the record and on the basis thereof has rightly concluded that the appellant is guilty of the offences charged with. We find no illegality, perversity or jurisdictional defect in the impugned judgment. Likewise, no instance of misreading, non-reading or improper appraisal of evidence has been pointed out that may justify interference by this Court. The conclusions drawn by the learned trial Court are well reasoned, supported by the evidence and call for no indulgence. Consequently, the appeal in hand is bereft of any merit stands dismissed.

JUDGE

JUDGE