

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

Criminal Jail Appeal No.S-231 of 2016

Appellant: Hashim Son of Ghulam Nabi Machhi through
Ms.Urooj Aqeel, Advocate.

Complainant: NEMO.

Respondent: The State through Ms. Rameshan Oad, Deputy
Prosecutor General, Sindh.

Date of hearing: **14.09.2026**

Date of decision: **28.09.2026**

JUDGEMENT

ZULFIQAR ALI SANGI J:- Through the instant Criminal Jail Appeal, the appellant/accused Hashim son of Ghulam Nabi Machhi has called in question the judgment dated 24.11.2016, passed by the learned Additional Sessions Judge, Matiari, in Sessions Case No.153 of 2014, arising out of Crime No.07 of 2014, registered at Police Station Bhanoth, whereby he was convicted for an offence punishable under Section 376(1), P.P.C., and sentenced to suffer Rigorous Imprisonment for 25 years and to pay a fine of Rs.20,000/-, and in default thereof to suffer Simple Imprisonment for six months, with benefit of Section 382-B, Cr.P.C.

2. Briefly stated, the prosecution case, as set out in the FIR, is that on 26.09.2014 at about 11:30 a.m., the complainant Javed Ahmed was present near his agricultural land, where his family members were engaged in picking cotton. His minor daughter, namely Majida, aged about seven years, had proceeded towards the agricultural fields. Shortly thereafter, the complainant heard her cries and, accompanied by Sain Bux and Lakhadino, proceeded towards the place from where the cries were emanating. According to the prosecution, they saw the appellant, without clothes, committing zina with the minor victim in the cotton crop. Upon being noticed, the appellant attempted to escape but was apprehended by the complainant and the accompanying persons. During the ensuing resistance, the appellant sustained injuries. The victim was found

without her shalwar, with blood coming from her mouth and private parts, while semen stains were allegedly noticed upon her clothing. The occurrence was thereafter reported to the police and the victim was medically examined.

3. After completion of investigation, the police submitted the final report/challan before the competent Court. The appellant was formally charged under Section 376(1), P.P.C. He pleaded not guilty and claimed trial. In support of its case, the prosecution examined the complainant, ocular witness, mashirs, medical officers and the investigating officer, besides producing the relevant documentary and scientific evidence. The minor victim was also produced before the learned trial Court; however, upon conducting the requisite preliminary examination to determine her competency, the learned trial Court found that she was unable to comprehend the questions and furnish rational answers. Consequently, with the consent of the parties, her substantive statement was not recorded.

4. Learned counsel for the appellant has assailed the impugned judgment principally on the grounds that the prosecution failed to establish the charge beyond reasonable doubt; that the ocular account is suffering from material contradictions and inconsistencies; that there is no independent corroboration of the alleged occurrence; that the medical evidence, particularly with regard to the condition of the hymen, is contradictory; that there was unexplained delay in registration of the FIR; that the defence plea was not properly appreciated; and that the appellant is, therefore, entitled to the benefit of doubt. According to learned counsel, the learned trial Court misread and misappreciated the evidence while recording the conviction.

5. Conversely, learned Deputy Prosecutor General has supported the impugned judgment and contended that the prosecution witnesses have given a consistent and confidence-inspiring account, which stands materially corroborated by the medical evidence as well as the chemical examiner's report. It is submitted that the discrepancies highlighted by the defence are minor, inconsequential and do not affect the core of the prosecution case. She has accordingly prayed for dismissal of the appeal.

6. I have heard the learned counsel for the parties and have gone through the entire evidence available on record with their assistance.

I have also examined the impugned judgment and the reasons recorded by the learned trial Court.

7. The principal question requiring determination is whether, on an independent appraisal of the evidence, the prosecution has succeeded in establishing the charge against the appellant beyond reasonable doubt and whether the findings recorded by the learned trial Court suffer from any misreading or non-reading of material evidence warranting interference by this Court. It is a fundamental principle of criminal jurisprudence that the prosecution is required to prove its case beyond reasonable doubt and that the accused is entitled to benefit of every reasonable doubt arising from the evidence. At the same time, the doubt must be reasonable, rational and founded upon the evidence on record; a mere fanciful or imaginary possibility cannot be equated with reasonable doubt. An appellate Court, therefore, has to examine the evidence independently and determine whether the conviction is sustainable on the material available on record.

8. In the present case, PW-1, the complainant, furnished a direct account of the occurrence. He stated that, upon hearing the cries of his minor daughter, he proceeded towards the place of occurrence along with PW-2 Sain Bux and Lakhadino, where they saw the appellant committing rape upon the minor victim. He further stated that, on seeing them, the appellant attempted to escape but was apprehended. The account furnished by PW-1 substantially conforms to the version narrated in the FIR. His presence at or near the place of occurrence is also natural, as the victim was his minor daughter and the occurrence allegedly took place in proximity to the agricultural land where the complainant and his family members were present. During cross-examination, certain details concerning distances, the layout of the agricultural land and surrounding circumstances were elicited from PW-1. However, no material contradiction or omission has been brought on record which could reasonably cast doubt upon his presence, the identity of the appellant or his assertion that he had seen the appellant in the act complained of. The mere existence of minor discrepancies in peripheral details is not sufficient to discard otherwise consistent testimony, particularly where such discrepancies do not touch the substratum of the occurrence.

9. PW-2 Sain Bux has substantially corroborated the testimony of PW-1. According to him, after hearing the cries of a child, he proceeded towards the relevant place and saw the appellant without clothes committing zina with the minor victim. He further stated that the appellant attempted to flee but was apprehended by them and other persons present there. His evidence also indicates his association with the complainant immediately after the occurrence and his participation in taking the victim for medical treatment. The defence has attempted to discredit PW-2 on the ground that he was known to, or related with, the complainant. Such relationship or acquaintance, by itself, is not a sufficient ground for discarding testimony. The proper test is whether the witness has given a natural, consistent and confidence-inspiring account and whether his testimony withstands the test of cross-examination. In the present case, no material circumstance has been elicited from PW-2 which would render his entire testimony unreliable. His account, in material particulars, is in harmony with that of PW-1 and receives support from the attending circumstances and medical/scientific evidence. It is also significant that the occurrence took place during daytime and in an agricultural area, and the witnesses claimed to have reached the spot immediately upon hearing the cries of the child. Their presence, therefore, cannot be termed unnatural or improbable. The immediate apprehension of the appellant further lends assurance to the prosecution version. The ocular account must, however, be considered in conjunction with the remaining evidence rather than in isolation.

10. The medical evidence provides substantial corroboration to the ocular account. PW-4 Dr. Rasheeda medically examined the minor shortly after the occurrence and noticed, inter alia, bleeding from her mouth, abrasions around the neck, swelling and tenderness of the vulva, painful and reddish vagina and vaginal bleeding. According to her provisional examination, the hymen was ruptured. Vaginal and cervical swabs were obtained and sent for chemical examination. The chemical examiner subsequently detected human sperm in the victim's shalwar and vaginal swab, whereafter the medical witness issued her final medical certificate opining that the victim had been subjected to rape. The defence has placed considerable reliance upon a subsequent observation appearing in the OPD slip to the effect that the hymen was intact. This aspect was noticed and considered by the learned trial Court. The medical witness explained that the complete

gynecological record from the hospital at Hyderabad had not been received by her. In any event, the question regarding the precise condition of the hymen cannot be examined in isolation from the entirety of the medical and scientific evidence. Even if the alleged discrepancy regarding the hymen is kept out of consideration, the other physical findings, including vaginal bleeding, swelling, tenderness and other injuries, coupled with the detection of human sperm in the vaginal swab and the victim's clothing, constitute significant corroborative material. Medical evidence is ordinarily corroborative in nature; it is not necessary that every medical finding must correspond with every detail of the ocular account before the latter can be relied upon.

11. PW-5 Dr. Abdul Haque medically examined the appellant on the same day and found multiple injuries upon his person, including injuries to the head, arms, shoulder and other parts of the body. These injuries assume significance in the context of the prosecution allegation that, after being discovered at the place of occurrence, the appellant attempted to escape and resisted his apprehension. The medical officer also opined that the appellant was potent. Furthermore, the chemical examiner's report recorded the presence of human semen in the sample obtained from the appellant. Thus, the medical and scientific evidence does not stand independently detached from the ocular account; rather, it furnishes material corroboration to the circumstances in which the appellant was allegedly apprehended.

12. The defence has also questioned the prosecution case on account of delay in registration of the FIR. It is settled that delay in lodging an FIR is not, by itself, invariably fatal to the prosecution. The effect of delay depends upon the facts and circumstances of each case, particularly whether such delay has afforded an opportunity for consultation, deliberation or fabrication. In the present case, the record indicates that immediately after the occurrence the minor victim was taken for medical treatment to Taluka Hospital, Hala, and was thereafter referred to Hyderabad. The police were also informed and the investigating officer proceeded to the locality. The victim's medical examination and subsequent referral necessarily consumed time. In these circumstances, the delay in formal registration of the FIR, when examined in the context of the entire prosecution case, does not constitute such an unexplained or suspicious circumstance as would justify rejection of otherwise confidence-inspiring evidence.

13. The fact that the minor victim herself did not give substantive evidence before the learned trial Court has also been considered. The law does not require that the prosecution case in every case of this nature must necessarily fail merely because a child victim is ultimately found incompetent to testify. The competency of a child witness is to be determined on the basis of her ability to understand questions and give rational answers. In the present case, the learned trial Court conducted the requisite preliminary examination and, having found the child incapable of furnishing rational evidence, did not record her substantive statement. This circumstance does not, however, erase the remaining evidence from the record. The prosecution case has to be evaluated on the basis of the evidence legally brought on record, namely, the ocular testimony of PW-1 and PW-2, the medical evidence, the scientific evidence and the surrounding circumstances. The absence of substantive testimony from the minor victim is, therefore, not by itself sufficient to demolish the prosecution case.

14. The defence plea taken by the appellant in his statement under Section 342, Cr.P.C., was that the complainant owed him approximately Rs.40,000/- to Rs.45,000/- and that, owing to a dispute regarding repayment of the said amount, the complainant party had falsely implicated him after subjecting him to torture. This plea, however, does not find meaningful support from the evidence on record. No specific suggestion sufficient to establish such a financial dispute and its alleged connection with the prosecution case was put to the material prosecution witnesses in a manner capable of furnishing a foundation for the defence version. No documentary or independent evidence was produced to substantiate the alleged monetary transaction. The appellant also did not enter the witness box on oath and did not produce any defence witness. It is settled that a plea of false implication, when raised by an accused, must be considered in the light of the entire prosecution evidence. A mere assertion contained in a statement under Section 342, Cr.P.C., without supporting material, cannot automatically displace otherwise reliable prosecution evidence.

15. The contention regarding absence of motive is equally of no assistance to the appellant. Motive is not an indispensable component of every criminal prosecution where the occurrence is otherwise established through reliable direct evidence. The absence of proof of motive does not necessarily create a reasonable doubt where

the prosecution has succeeded in proving the occurrence and the participation of the accused through trustworthy evidence. In the present case, the prosecution case rests primarily upon direct ocular evidence, which is materially supported by medical and scientific evidence; therefore, the question of motive does not assume decisive significance.

16. I have also carefully considered the contradictions and discrepancies pointed out by learned counsel for the appellant. On examination, these discrepancies predominantly concern peripheral matters, including distances, details relating to the agricultural fields and other collateral circumstances. Such variations are not unusual in human testimony and cannot, without more, be treated as proof of falsity. The settled principle is that the Court is required to distinguish between material contradictions, which affect the core of the prosecution case, and minor discrepancies, which arise from normal differences in perception, recollection and narration. In the present case, the witnesses have remained consistent on the material aspects, namely, the presence and identity of the appellant, the cries of the minor victim, the discovery of the appellant with the victim, his attempt to escape and his subsequent apprehension. No contradiction of such magnitude has been identified which destroys the substratum of the prosecution case.

17. The evidence of the investigating officer, PW-7 ASI Zulfiqar Ali, further supports the prosecution case with regard to the subsequent proceedings. He testified regarding receipt of information, his arrival at the locality, shifting of the injured appellant to the hospital, medical examination of the victim, registration of the FIR, inspection of the place of occurrence, arrest of the appellant, collection of the relevant clothing and biological samples and their dispatch to the chemical examiner. The relevant investigation proceedings were also supported by the documentary exhibits produced through the prosecution witnesses. No material circumstance has been demonstrated which would establish that the investigation was so defective, tainted or manipulated as to render the entire prosecution case unreliable. It is also well settled that defective investigation, even if established, does not by itself necessarily entitle an accused to acquittal where the substantive evidence independently establishes his guilt.

18. The prosecution evidence, when examined cumulatively, forms a coherent and mutually supporting chain. The ocular account of PW-1 and PW-2 directly connects the appellant with the occurrence. His immediate apprehension at or near the place of occurrence, the injuries found upon his person, the physical condition of the minor victim, and the results of the chemical examination furnish substantial corroboration. These circumstances cannot reasonably be viewed as isolated pieces of evidence; rather, they reinforce the central prosecution version. The principle of benefit of doubt is undoubtedly a cardinal principle of criminal jurisprudence. However, such benefit is available where the evidence gives rise to a reasonable doubt regarding the guilt of the accused. It is not available merely because another hypothetical possibility can be imagined. The Court is required to assess the evidence as a whole and determine whether the prosecution version is reasonably established on the standard prescribed by law. In the present case, the evidence, viewed cumulatively, does not leave behind a reasonable doubt sufficient to dislodge the conviction. It is also a settled principle that an appellate Court, particularly while dealing with an appeal against conviction, is required to independently scrutinize the entire evidence and cannot merely affirm the trial Court's findings mechanically. At the same time, where the trial Court has properly appreciated the evidence, has considered the material objections raised by the defence, and has reached a conclusion supported by the record, interference is not warranted merely because another view is theoretically possible. Upon independent appraisal of the evidence in the present case, I find that the learned trial Court has considered the material aspects of the case in their proper perspective and has assigned cogent and plausible reasons for accepting the prosecution evidence. No material misreading or non-reading of evidence has been pointed out which could justify interference with the findings of conviction.

19. The learned trial Court specifically considered the objections relating to the medical evidence, the alleged discrepancy concerning the hymen, delay in registration of the FIR, relationship of the ocular witnesses with the complainant, the defence plea and the alleged contradictions in their statements. After examining these matters, the learned trial Court found the ocular account to be confidence-inspiring and materially corroborated by medical and chemical evidence. Upon independent examination, I find no compelling reason to take a different view. It is, therefore, established from the

prosecution evidence that the appellant was apprehended in circumstances directly connecting him with the commission of the offence against the minor victim and that the ocular account receives material corroboration from the medical and scientific evidence. The cumulative effect of the evidence satisfies the requisite standard of proof beyond reasonable doubt. The appellant has failed to demonstrate any material circumstance which would render the prosecution version inherently improbable or create a reasonable doubt regarding his involvement.

20. As regards the sentence, the learned trial Court, after considering the nature and gravity of the offence, the age of the victim and the attending circumstances, sentenced the appellant to R.I. for 25 years, along with a fine of Rs.20,000/-, and in default thereof to suffer S.I. for six months, while extending the benefit of Section 382-B, Cr.P.C. No legally sufficient ground has been brought to notice which would justify interference with the sentence imposed by the learned trial Court. The sentence, therefore, also calls for no interference. For what has been discussed above, I am of the considered view that the prosecution has succeeded in proving the charge against the appellant beyond reasonable doubt. The learned trial Court has neither misread nor failed to take into consideration any material piece of evidence so as to render its judgment unsustainable. The conviction and sentence are, therefore, well-founded and do not call for interference.

21. Consequently, the instant Criminal Jail Appeal is dismissed. The judgment dated 24.11.2016, passed by the learned Additional Sessions Judge, Matiari, in Sessions Case No.153 of 2014, arising out of Crime No.07 of 2014, registered at Police Station Bhanoth, under Section 376(1), P.P.C., is maintained in toto. The appellant shall continue to serve the sentence awarded by the learned trial Court. The benefit already extended to him under Section 382-B, Cr.P.C. shall remain intact.

JUDGE