

**IN THE HIGH COURT OF SINDH, CIRCUIT COURT,
LARKANA**

Criminal Appeal No.S-32 of 2025

Before;

Mr. Justice Ali Haider 'Ada'.

Appellant : Arshad @ Arshad Ali son of
Ahmed Ali Kalhoro, through Mr.
Ali Hassan Narejo, Advocate.

The State : Through Mr. Nazir Ahmed
Bhangwar, Deputy Prosecutor
General.

Date of Hearing : 04.06.2026.
Date of Decision : 04.06.2026.
Date of Reasons : 09.06.2026.

J U D G M E N T

ALI HAIDER 'ADA', J.- The appellant, Arshad alias Arshad Ali son of Ahmed Ali Kalhoro, has assailed the judgment dated 29.08.2025 passed by the learned Additional Sessions Judge-IV/GBV, Larkana, in Sessions Case No.921 of 2023 arising out of FIR No.62 of 2023 registered at Police Station Bakrani, District Larkana, for offences punishable under Sections 377-A, 377-B and 34, P.P.C. Through the impugned judgment, the appellant was convicted and sentenced to suffer rigorous imprisonment for fourteen years and to pay a fine of Rs.1,000,000/-, and in default thereof, to undergo further imprisonment for six months. The benefit of Section 382-B, Cr.P.C. was extended to him.

2. Briefly stated, the prosecution case is that about one month before the registration of the FIR, the appellant, along with co-accused persons, allegedly committed sodomy with the victim, namely Ahsan Ali, nephew of the complainant. It was further alleged that they recorded a video of the victim and subsequently threatened him with its disclosure. On the basis of these allegations, the FIR was registered and, after

completion of the usual investigation, challan was submitted before the competent Court of law.

3. The learned trial Court framed charge against the appellant and other accused persons on 03.01.2024, to which they pleaded not guilty and claimed trial. In order to substantiate its case, the prosecution examined the complainant as PW-1, who produced the FIR. The prosecution further examined Zahid Hussain, Badal and Ahsan Ali, the alleged victim, who produced the relevant medical letter. Abdul Razak was examined as mashir of the memo of place of incident and memo of arrest. The Investigating Officer was also examined, who produced the relevant roznamcha entries, letters addressed to the Medical Officer and the In-charge, DNA Testing Laboratory, road certificate, memo of recovery of USB allegedly produced by the complainant, letter addressed to the forensic laboratory and the forensic report. The prosecution further examined ASI Gul Hassan, who produced the relevant entry from Register No.19, and Dr. Zulfiqar Ali, Chief Medical Officer, who produced the medical documents and DNA report. Thereafter, the prosecution closed its side.

4. The statements of the appellant and other accused persons were recorded under Section 342, Cr.P.C, wherein they professed their innocence and prayed for acquittal. They neither examined themselves on oath under Section 340(2), Cr.P.C. nor produced any witness in their defence. After hearing the parties, the learned trial Court acquitted two co-accused persons but convicted and sentenced the present appellant through the impugned judgment, which is now under challenge before this Court.

5. Learned counsel for the appellant contended that the prosecution case is one of no evidence, as the prosecution witnesses failed to support the allegations contained in the FIR and their statements recorded under Section 161, Cr.P.C.

He further argued that the medical evidence as well as the DNA report are negative in nature and do not connect the appellant with the commission of the alleged offence. According to the learned counsel, these circumstances create serious doubt in the prosecution case, entitling the appellant to acquittal.

6. Conversely, learned Deputy Prosecutor General submitted that the offences alleged are grave in nature and that the prosecution witnesses turned hostile during trial. He argued that notwithstanding the hostile stance of the witnesses, the circumstantial evidence available on record, particularly the testimony of the Investigating Officer and the documentary evidence produced during trial, sufficiently supports the prosecution case. He, therefore, maintained that the learned trial Court rightly convicted the appellant. It was further pointed out that despite service of notice, the complainant failed to appear before this Court, which prima facie indicates that he has lost interest in pursuing the matter.

7. Heard and has carefully perused the material available on record.

8. The accused has been charged with the commission of an offence involving sodomy. A careful examination of the record reveals that there was an unexplained delay of approximately one month in the registration of the FIR. No plausible explanation or satisfactory justification has been furnished by the prosecution for such an inordinate delay, which adversely affects the credibility of the prosecution case.

9. The medical evidence also does not lend support to the prosecution version. The Medical Officer categorically observed that no semen, or lubricant was found around the anus of the alleged victim. Likewise, no abrasion or laceration was detected on the mucous membrane inside the anus, nor

was the anus found to be prolapsed. These observations render the medical evidence inconclusive and create serious doubt regarding the prosecution's allegations.

10. Moreover, the Forensic Science Laboratory reports, including the DNA analysis report, have yielded negative results, which further weaken the prosecution case and fail to provide the necessary corroboration to the ocular account. In such circumstances, the benefit arising from these infirmities must accrue to the accused. Support in this regard is drawn from the cases of **Manzoor Ahmed v. The State (2026 SCMR 621)**, **Maqsood Ali v. The State (2026 SCMR 393)**, and **Muhammad Ismail and another v. The State (2023 P.Cr.L.J. 1346 [Balochistan])**, wherein similar deficiencies in the prosecution evidence were held sufficient to create reasonable doubt in the prosecution case.

11. Secondly, the entire ocular account produced by the prosecution has failed to support its case. The prosecution witnesses materially deviated from their earlier versions and categorically denied the contents of the FIR as well as their statements recorded under section 161, Cr.P.C. Significantly, even the alleged victim did not acknowledge or support his statement recorded under section 161, Cr.P.C, thereby causing a serious dent in the prosecution case and substantially undermining its credibility.

12. It is true that the said witnesses were declared hostile at the request of the learned prosecutor; however, the mere fact that a witness has been declared hostile does not render his testimony altogether inadmissible or liable to be discarded in toto. The testimony of the prosecution witnesses, including that of the alleged victim, has completely failed to advance the prosecution case and has instead weakened its very foundation. In this regard, reliance is placed upon the case of **Abdul Wahid Bhurt and another v. Ashraf and 4 others**

(2019 YLR 487), wherein the Federal Shariat Court, held that:-

"11. In the light of the above principles it is settled that the testimony of a hostile witness cannot be altogether left out of consideration. The evidence of a hostile witness has to be considered like the evidence of any other witness, but with a caution for the simple reason that the witness has spoken in different tones. When a witness speaks in different voices, it would be for the Court to decide in what voice he speaks the truth. In such cases, the determining test is corroboration from independent source and conformity with the remaining evidence."

Further, reliance in this regard is placed upon the cases of **Zarid Khan v. Gulsher and another (1972 SCMR 597)**, **Muhammad Sadiq v. Muhammad Sarwar (1979 SCMR 214)**, **Islam v. The State (PLD 1962 Lahore 1053)**, **Kaloo and 2 others v. The State (1973 P.Cr.L.J. 334)**, and **Muhammad Luqman v. The State (1989 MLD 1708)**.

13. While the prosecution has heavily relied upon a USB device allegedly containing a video recording, the evidentiary worth of such material is highly questionable in the facts and circumstances of the present case. The record reveals that the said USB device was produced before the Investigating Officer during the course of investigation; however, there is nothing on record to establish that the USB device or the alleged video recording was recovered from the possession, custody, or at the instance of the accused persons. Rather, according to the Investigating Officer himself, the same was supplied by the complainant party. It is noteworthy that neither the complainant nor any other prosecution witness has deposed as to when, where, and under what circumstances the said USB device was handed over to the Investigating Officer. More importantly, the prosecution has failed to bring on record the nature, contents, of the alleged video recording. No evidence has been produced to demonstrate what was actually depicted in the purported video clip, whether it established

the involvement of the accused in the alleged offence. Mere production of a USB device, without proving its contents, source, and evidentiary linkage with the accused, cannot by itself constitute incriminating evidence, much less form the sole basis for conviction. Electronic evidence, like any other piece of evidence, must satisfy the requirements of admissibility, authenticity, and reliability before any reliance can safely be placed upon it. In the absence of such proof, the alleged video recording remains devoid of any probative value. It appears that the learned trial Court attached undue significance to the said piece of evidence despite the prosecution's failure to establish its evidentiary foundation in accordance with law. Reliance in this regard may be placed upon the case of **Mumtaz Ahmad and 2 others v. The State (2012 YLR 2529)**, wherein the Full Bench of the Federal Shariat Court held as under:

24. The learned trial court had given undue importance to the coloured photocopies of the pictures of Mst. Sughran Mai/P.W.2 along with accused/Mumtaz Ahmad and Nazir Ahmad while ignoring the fact that Negatives of the said photos were not available. So far as the proof of commission of 'zina-bil-jabr' or sodomy by production of photographs is concerned, the same is also not helpful to the prosecution as the original photographs were not produced and instead, only the photostat copies of the original were placed on record. The original photographs and their negatives were neither recovered from any of the accused nor brought on record by the prosecution. In the case of Mst. Marium Hajni and others v. Mst. Yasmin R. Minhas and others (PLD 2003 Karachi 148) it has been observed that technology has so immensely advanced, that the photographs or even video tapes can be manipulated and maneuvered. Advancement in the technology besides being advantageous, has also caused adverse effect on the society. Commission of cyber crime was not imaginable three decades before. In such circumstances, unless it is proved that the photographs are not manipulated, these could not be allowed to be produced in evidence. Reliance is also placed on the case of Kashif Saddique and 2 others v. The State (2008 PCr.LJ 1039). In such circumstances, photocopies of the original photos could not be relied upon to record conviction against the appellants. Even the accused

nominated in the first F.I.R. No.64 of 2002 namely Dr. Bilal and Allah Ditta, who were attributed the act of taking nude pictures of the victim with their respective cameras have been exonerated by the complainant. The accused Allah Ditta was substituted with Muhammad Iqbal, who has been acquitted by the learned trial Court, on the ground that recovery of camera could not be effected from this accused. The accused/appellant/Ishfaq has been convicted only on the ground that he had got recovered a camera from the place of occurrence i.e. 'chobara' of Hakim Noor Muhammad. Mere recovery of camera which is also highly doubtful and not proved in accordance with law does not disentitle the appellant/Ishfaq from the same treatment of acquittal as extended to Muhammad Iqbal by the learned trial Court. Furthermore, acquittal of Muhammad Iqbal and Shafi had also made the prosecution story highly doubtful.

14. It is also an admitted position on the record that the case in hand falls within the ambit of the Anti-Rape (Investigation and Trial) Act, 2021. Under the said enactment, a special mechanism has been provided for the investigation and trial of offences covered by the Act. However, a perusal of the record prima facie reveals that investigation was not conducted in the manner contemplated by the said Act.

15. The law is well settled that where a statute prescribes that a particular act is to be performed in a specified manner, the same must be performed in that manner alone and not otherwise. The maxim "**Communi observantia non est recedendum**" embodies the principle that established legal procedure cannot be departed from. Therefore, where the prescribed procedure is not followed, it may legitimately be presumed that the act has not been performed in accordance with law. Reliance in this regard is placed upon the case of **Jeehand v. The State (2025 SCMR 923)**.

16. Apart from the above-mentioned infirmities, the prosecution case suffers from several material contradictions, deficiencies, and legal defects. These circumstances, when

viewed collectively, create more than a reasonable doubt regarding the prosecution case.

17. It is by now a cardinal principle of criminal jurisprudence that the benefit of every reasonable doubt must accrue to the accused. It is not necessary that there should be numerous circumstances creating doubt; even a single circumstance which reasonably dents the prosecution case is sufficient to entitle an accused to the benefit thereof. Reliance may be placed upon the recent judgment rendered by the Honourable Supreme Court in **Muhammad Amjad v. The State (2026 SCMR 921)**, wherein it was reiterated that the benefit of doubt, however slight, must always be extended in favour of the accused. Accordingly, the prosecution having failed to establish its case beyond reasonable doubt, the appellant is entitled to the benefit of doubt as a matter of right.

18. For the foregoing reasons, this appeal was allowed vide short order dated 04.06.2026, whereby the conviction and sentence recorded against the appellant were set aside and he was acquitted of the charge. The Superintendent/Jail Authorities were directed to release the appellant forthwith, if not required to be detained in any other case. These are the detailed reasons in support of the aforesaid short order.

JUDGE