HIGH COURT OF SINDH CIRCUIT COURT MIRPURKHAS

Criminal Appeal No.S-14 of 2024

Appellants/Accused:	1. Khano s/o Chetan 2. Anbo s/o Chetan. 3. Walim alias Balam s/o Magho. 4. Tillo s/o Chetan Through Haji Qalander Bux Laghari, Advocate.
Respondent:	The State, Through, Mr. Ghulam Abbas Dalwani, Deputy Prosecutor General Sindh.
Complainant:	Sht. Parbati w/o Kalo @ Kalo Mal Bheel Through learned D.P.G as she expressed her trust upon learned A.P.G vide order sheet dated 22-04-2025.
Date of hearing:	17.06.2025.
Date of Judgment:	02.09.2025.

J U D G M E N T

Jan Ali Junejo, J:-- This Criminal Appeal under Section 410 Cr.P.C. has been preferred by the appellants being aggrieved and dissatisfied with the impugned judgment dated 19-05-2018 (hereinafter referred to as the *"Impugned Judgment"*) passed by the Court of learned Sessions Judge, Tharparkar at Mithi (hereinafter referred to as the *"Trial Court"*) in Sessions Case No. 85 of 2013 arising out of Crime No.59 of 2013 of Police Station Chachro under Sections 376, 354, 341, 34 PPC, whereby appellant Khano was convicted under Section 376(i) PPC and sentenced to rigorous imprisonment for fourteen years with fine of Rs.200,000/- (Rupees Two Hundred Thousand) and in default six months simple imprisonment; appellant Anbo was convicted under Section 354 PPC and sentenced to rigorous imprisonment for two years with fine of Rs.10,000/- and in default two months simple imprisonment; while appellants Walam alias Balam and Tillo were convicted under Section 341 PPC and sentenced to rigorous imprisonment for one month with fine of Rs.1,000/- each and in default ten days simple imprisonment. However, benefit of section 382-B Cr.P.C was awarded to the appellants.

2. The prosecution case, as narrated in the FIR lodged by complainant Sht. Parbati wife of Kalo alias Kalo Mal Bheel on 15-09-2013 at Police Station Chachro, alleged that on 07-05-2013 at about 0800 hours, her 15-year-old unmarried daughter Lachhmi, along with other ladies namely Sht Tarki, Sht. Amiyan and Sht. Sughran, had gone to the jungle to collect "Pairu" fruit from *Jaar* trees. While collecting the fruit at 12:00 noon, the four appellants, all residents of village Baprario and by caste Bheel, arrived at the scene armed with hatchets and lathis. Accused Khano allegedly caught hold of victim Lachhmi, threatened the other ladies who moved away due to fear, and then forcibly committed rape with the victim by removing her clothes while pointing a hatchet at her. Co-accused Anbo allegedly recorded the incident on his mobile phone and later kissed and bit the victim's cheek, while co-accused Walam alias Balam and Tillo allegedly wrongfully restrained the victim by protecting the other accused persons. The FIR was lodged after a delay of more than four months, with the explanation that they initially approached local notables for a private settlement but were unsuccessful. Following the investigation, a challan was submitted, and the case was forwarded to the Court of Sessions, as it holds exclusive jurisdiction for offenses under Section 376, PPC. The case was then assigned to the trial Court. Before the trial commenced, the appellants were duly supplied with copies of the prosecution documents. A formal charge was subsequently framed; the appellants denied the charge by pleading not guilty and claimed the right to a trial.

3. During the trial, the prosecution examined eight witnesses in support of its case. The details of their testimonies, are provided below:

> PW-1 complainant Sharimati Parbati testified about being informed of the incident by her daughter and other ladies upon their return home. She admitted during cross-examination that she was not an eye-witness and that several of her relatives, including her husband Kalo, had been convicted by the Anti-Terrorism Court Mirpurkhas in a prior gang rape

case (Crime No. 56/2013) involving the wife of accused Tillo. She produced FIR at Ex.17-A.

PW-2 victim Sharimati Lachhmi corroborated the prosecution version, stating that accused Khano committed rape with her at hatchet point while Anbo recorded it and the other accused restrained her. However, during cross-examination, she admitted the existence of the prior enmity case and that several prosecution witnesses were relatives of those convicted in the counter-case. She further deposed that her cousin Panju s/o Bhoopo filed application under section 22-A and B Cr.P.C for registration of FIR of this incident before this court (Sessions Court Tharparkar at Mithi) which was dismissed as not pressed; she also admitted that in said application, her cousin has given name of seven accused persons being accused of rape with her. He showed her ignorance that Panju has given the date of incident as 07-08-2013 in his application.

PW-3 Sharimati Tarki, one of the alleged eye-witnesses, testified about witnessing the incident from a distance but not admitted during cross-examination that her husband Pirbhu had been convicted in the gang rape case against Tillo's wife.

PW-4 Gul Hassan, DSP, testified about recovering the victim's clothes and a video CD from her, and later recovering a hatchet on the pointation of accused Tillo. However, during cross-examination, he admitted not knowing wherefrom the victim obtained the video CD and acknowledged discrepancies in his investigation record. He produced memo of victim's clothes (Ex. 21/A), video CD (Ex. 21/B) and memo of recovery of hatchet (Ex.21/C).

PW-5 Balamchand, mashir/witness, supported the prosecution version but admitted during cross-examination that he was not an eye-witness and that he had watched a video of the incident which had gone viral on the internet. He produced memo of place of incident (Ex.22/A) and memo of arrest of accused Tillo (Ex.22/B).

PW-6 Ghulam Mustafa, the investigating officer, testified about registering the FIR and conducting initial investigation, including the arrest of accused Tillo. During cross-examination, he admitted the delay in FIR registration and acknowledged the counter-case registered against the victim's relatives.

PW-7 Dr. Munir Ahmed testified about the Special Medical Board examination, which concluded that due to the belated stage (four months and eleven days after the alleged incident), rape could not be confirmed and that the victim was not found to be virgin on examination. He produced medical letter and reports (Ex. 26/A - 26/C)

PW-8 Dr. Durpati, the Woman Medical Officer, testified that she could not provide a definitive opinion due to the old nature of the matter and had referred the case to the Special Medical Board. She produced medical letters and OPD slip (Ex. 27/A - 27/D)

4. In their statements under Section 342 Cr.P.C., all appellants denied the allegations and claimed innocence, stating they had been falsely implicated due to enmity arising from the counter-case. They opted not to examine themselves on oath nor led any defense evidence. The learned trial Court, after hearing

arguments from both sides, convicted the appellants as mentioned above, holding that the prosecution had proved its case beyond reasonable doubt despite the lack of medical evidence, relying primarily on the ocular testimony and the video evidence.

5. The learned counsel for the appellants has advanced arguments challenging the impugned judgment on multiple grounds. He contends that the judgment is opposed to facts, law and material on record, arguing that it fails to meet the requirements of Section 367 Cr.P.C. and is a result of non-reading and misreading of evidence. He emphasizes that the prosecution failed to establish the case beyond reasonable doubt, particularly highlighting the absence of independent witnesses, with all material witnesses being interested and related parties who had personal stakes due to the counter-case where their relatives were convicted. The counsel strongly argues that the medical evidence categorically negates the prosecution case, as both the Woman Medical Officer and the Special Medical Board concluded that rape could not be confirmed, with the victim not being found virgin upon examination. He contends that the four-month delay in lodging the FIR lacks plausible explanation and renders the case highly doubtful, especially given the established enmity between the parties arising from Crime No.56/2013. The defense counsel argues that the video evidence is neither clear nor authentic, with the investigating officer admitting ignorance about its source, and that the prosecution witnesses' testimony is contradictory and unreliable. He submits that the case is based on presumptions and conjectures rather than concrete evidence, with the prosecution failing to establish an unbroken chain of evidence essential for conviction. The counsel prays for setting aside the impugned judgment and acquitting the appellants.

6. The learned Deputy Prosecutor General, appearing for the State, has opposed the appeal arguing that the prosecution successfully proved its case through consistent testimony of eye-witnesses and circumstantial evidence. He contends that the delay in FIR registration was adequately explained by the

complainant's initial attempt to resolve the matter through local notables, which is consistent with local customs and practices. Regarding the medical evidence, he argues that the absence of medical proof in cases of sexual assault, particularly after such a long delay, does not automatically negate the occurrence of the offense, and that the video evidence corroborates the prosecution version. He submits that the defense's emphasis on enmity between parties is misplaced, as the mere existence of counter-litigation does not automatically render the prosecution case false. The learned DPG argues that the trial court correctly appreciated the evidence and that the conviction is based on sufficient legal grounds. He contends that the cross-examination of prosecution witnesses, while revealing certain inconsistencies, does not demolish the core prosecution case, and that minor contradictions are natural in criminal cases and do not affect the credibility of witnesses. He prays for dismissal of the appeal and confirmation of the conviction.

7. After a meticulous consideration of the arguments presented by the learned counsel for the Appellants and the learned Deputy Prosecutor General (D.P.G.) for the State, I have thoroughly examined the evidence on record. A careful scrutiny of the material reveals multiple critical flaws in the prosecution's case. Firstly, the medical evidence fails to substantiate the allegation of rape. Both Dr. Durpati, the Woman Medical Officer, and the Special Medical Board categorically opined that due to the delayed examination, it was not possible to confirm the occurrence of rape. Additionally, the medical report did not establish the victim's virginity, a factor of evidentiary relevance in such cases. Although medical evidence is not always indispensable, its conclusive negation of the alleged offense significantly weakens the prosecution's case, particularly when unsupported by other credible and independent evidence. Secondly, the medical report was silent regarding the alleged bite-marks on the victim's cheek, despite the FIR specifically alleging that appellant Anbo bit her. Notably, PW Sht. Lachhmi and PW Sht. Tarki failed to mention this alleged act in their

testimonies, thereby contradicting the FIR and casting further doubt on the credibility of their accounts. Thirdly, the prosecution case is marred by serious contradictions regarding the time and movement of key witnesses. The complainant and the victim stated that they left their house at 8:00 a.m., whereas PW Sht. Tarki claimed they departed at 8:00 p.m. This glaring inconsistency not only undermines the reliability of the witnesses but also raises fundamental doubts about the sequence and authenticity of the events described.

8. A significant flaw in the prosecution's case is the unexplained delay of over four months in lodging the First Information Report (FIR). This delay is particularly noteworthy given that the alleged culprits, who resided in the same locality, were well-known to the complainant and the prosecution witnesses (PWs). Although the explanation provided, that the parties attempted a private settlement through local notables, may seem culturally plausible, the prosecution failed to corroborate this claim by examining any such notable or community elder. The unexplained delay, combined with the established animosity between the parties stemming from Crime No. 56/2013 under Section 376 of the Pakistan Penal Code (P.P.C.) at P.S. Chachro, raises serious doubts about the prosecution's case. In this regard, it is pertinent to note that several relatives of the complainant and witnesses were convicted for gang-rape of the accused Tillo's wife in the aforementioned case. The prosecution witnesses themselves acknowledged that Kaloo (the father of the victim), uncle Peetho, Bhugro, and others, including the husband of PW-Sht. Turki, Pirbhu Mal, were tried and convicted by the Anti-Terrorism Court, Mirpurkhas, for committing gang-rape. Given the history of enmity between the parties, coupled with the considerable and unexplained delay in the registration of the FIR despite prior knowledge of the culprits' identities, the possibility of false implication of the appellants cannot be discounted. This circumstance raises legitimate concerns, particularly when considered in light of the legal principles articulated by the Honourable Supreme Court of Pakistan in ***Iftikhar Hussain and Others v. The State (2004 SCMR***

1185), wherein it was observed that: *"It is significant to note that delay in lodging F.I.R. under section 154, Cr.P.C. is condonable keeping in view the facts and circumstances of each case particularly in those cases where the accused persons have not been nominated in the F.I.R. and the names of the witnesses who have seen the incident have also not been mentioned but where the complainant is fully aware about the culprits and the names of the witnesses are also known to him then if delay in lodging F.I.R. is caused, it creates heavy duty upon the prosecution to explain the same satisfactorily otherwise the prosecution case would become doubtful".*

9. The nature of witnesses presented by the prosecution raises serious concerns about their credibility and impartiality. All material witnesses, including the complainant, victim, and alleged eye-witnesses, are closely related to each other and have direct personal interest in the outcome due to the counter-case. PW-3 Tarki's husband, the victim's father, and other relatives were all convicted in the gang rape case, creating a clear conflict of interest and motive for revenge. In this matter, given the previously admitted enmity between the parties, independent corroboration of the prosecution evidence was essential for the fair administration of justice. This is in line with the rule of abundant caution, particularly since the evidence available on record does not inspire confidence. The absence of any independent witness to such a grave incident, allegedly occurring in broad daylight within a jungle area commonly frequented by locals, appears highly improbable and raises serious doubts. Reliance is placed on the case of ***Mst. Shahnaz Bibi v. Muhammad Liaquat alias Khitta and others (2007 SCMR 1438)***, wherein it was observed that: *"The enmity between the parties is admitted and in these circumstances, it was not safe to rely upon the testimony of interested witnesses without independent corroboration which was not available in the present case. In a case of direct evidence, the rule of corroboration, being rule of abundant caution, may not be necessarily applied in each case but in a case in which the direct evidence is not confidence-inspiring or it is of doubtful character, the Court must follow the rule of corroboration for safe administration of criminal justice".*

10. The video evidence, which the trial court heavily relied upon, suffers from fundamental infirmities. The investigating officer candidly admitted his ignorance about the source of the video CD, stating he did not know wherefrom the victim obtained it. This admission by the investigation officer is damaging to the prosecution case as it suggests the possibility of fabrication. Furthermore, several witnesses admitted during cross-examination that the accused persons were not clearly visible in the video, and that the victim did not appear to be resisting or crying during the alleged assault. The complainant herself admitted that in the video, her daughter appeared satisfied and was inquiring about the presence of other ladies, which is entirely inconsistent with a rape victim's expected behavior. The contradictions in the prosecution evidence are too numerous and material to be dismissed as minor discrepancies. The investigating officer's failure to maintain proper records, his admission of not knowing crucial facts about the case, and the prosecution's inability to produce any corroborative evidence from internet sources despite claims that the video had gone viral, all contribute to rendering the case highly doubtful.

11. The so-called video evidence, heavily relied upon by the trial court, suffers from fundamental and incurable defects. The record is completely silent regarding the identity of the individual who recorded the video, and the mobile phone allegedly used to record it was neither seized nor produced as case property, nor subjected to any forensic examination. The CD containing the video was never sent for forensic analysis, and, crucially, was never played in open Court in the presence of the accused during the recording of their statements under Section 342 Cr.P.C., thereby depriving them of a fair opportunity to respond to the alleged incriminating material. Section 342 of the Criminal Procedure Code, 1898 is a statutory embodiment of the fundamental principle of natural justice, specifically the maxim *audi alteram partem*—no one should be condemned unheard. It is well-settled law that the accused must be explicitly confronted with all inculpatory evidence or circumstances brought on

record, in order to afford him a fair opportunity to offer an explanation, should he choose to do so. This provision imposes a significant duty upon the Court to exercise due diligence in ensuring that all incriminating circumstances are presented to the accused and that his response is duly recorded. The language of the section, particularly the phrase *"shall, for the purpose aforesaid, question him generally…"*, clearly reflects its mandatory nature. It places an imperative obligation on the Court and simultaneously confers a corresponding right upon the accused to respond to any incriminating material emerging from the evidence. Thus, the underlying purpose of examining the accused under Section 342, Cr.P.C, is to uphold procedural fairness by giving the accused a meaningful opportunity to explain or rebut the incriminating evidence that has come to light during the trial. The trial Court's failure to comply with this essential requirement constitutes a material irregularity and has resulted in a miscarriage of justice. In similar circumstances, the Honourable Supreme Court of Pakistan, in ***Muhammad Shah v. The State (2010 SCMR 1009)***, held that: *"It is not out of place to mention here that both the Courts below have relied upon the suggestion of the appellant made to the witnesses in the cross-examination for convicting him thereby using the evidence available on the record against him. It is important to note that all incriminating pieces of evidence, available on the record, are required to be put to the accused, as provided under section 342, Cr.P.C. in which the words used are "For the purpose of enabling the accused to explain any circumstances appearing in evidence against him" which clearly demonstrate that not only the circumstances appearing in the examination-in-chief are put to the accused but the circumstances appearing in cross-examination or re-examination are also required to be put to the accused, if they are against him, because the evidence means examination-in-chief, cross-examination and re-examination, as provided under Article 132 read with Articles 2(c) and 71 of Qanun-e-Shahadat Order, 1984. The perusal of statement of the appellant, under section 342, CrP.C., reveals that the portion of the evidence which appeared in the cross-examination was not put to the accused in his statement under section 342, Cr.P.C. enabling him to explain the circumstances particularly when the same was abandoned by*

him. It is well-settled that if any piece of evidence is not put to the accused in his statement under section 342, Cr.P.C. then the same cannot be used against him for his conviction. In this case both the Courts below without realizing the legal position not only used the above portion of the evidence against him, but also convicted him on such piece of evidence, which cannot be sustained". The principle established by the Honourable Supreme Court of Pakistan in ***Muhammad Saddique v. State (2018 SCMR 71)*** is also relevant, wherein the Apex Court held that: *"Law on the subject is very much clear and settled that any peace of incriminating evidence must be put to accused in his statement under section 342, Cr.P.C. otherwise the same cannot be used against him".*

12. Notably, PW Sht. Lachhmi herself admitted during cross-examination that she had not seen the video, and DSP Gul Hassan, the second Investigating Officer, conceded that he secured the video and C.D from Shr. Lachmi, further deepening the doubts surrounding its origin and authenticity. These are not minor procedural irregularities but material omissions that go to the heart of the prosecution's reliance on digital evidence. Furthermore, the first Investigating Officer, DSP Ghulam Mustafa, stated that the video was shown to him on a mobile phone, yet he neither collected that device nor initiated any inquiry to secure it, thereby irreparably compromising the chain of custody. No independent forensic verification was ever undertaken, and there is no record to show that the accused were provided a copy of the CD at any critical stage, including at the time of framing the charge. The mobile device alleged to have captured the incident was never recovered or sent to any forensic laboratory for authentication. These glaring investigative lapses and procedural violations raise serious and legitimate doubts about both the admissibility and the evidentiary value of the video, rendering it unworthy of reliance for the purpose of conviction.

13. The learned trial Court's judgment, while acknowledging some of these infirmities, failed to adequately address their cumulative effect on the prosecution case. The Court's reliance on the video evidence without properly examining its

authenticity and source, and its failure to give due weightage to the categorical medical evidence negating rape, represents a misappreciation of evidence. The judgment also does not adequately address the issue of interested witnesses and the strong motive for false implication arising from the counter-case.

14. In criminal jurisprudence, the prosecution must prove its case beyond reasonable doubt, and where the evidence creates doubt, the benefit must go to the accused. The medical evidence categorically negating rape, the unexplained delay in FIR registration, the interested nature of all prosecution witnesses, the questionable authenticity of video evidence, and the established motive for false implication collectively create more than reasonable doubt about the appellants' guilt. Consequently, this Court finds that the prosecution has failed to prove its case beyond reasonable doubt, and the appellants are entitled to the benefit of doubt. The legal principle is well-established that it is unnecessary for multiple circumstances to create doubt. A single, substantial circumstance that raises suspicion about the prosecution's evidence can be sufficient to acquit the accused. The Honourable Supreme Court of Pakistan, in Case of ***Muhammad Riaz and others v. The State and others (2024 SCMR 1839)***, underscored this principle. The Apex Court held that: *"It is an established principle of law that to extend the benefit of the doubt it is not necessary that there should be so many circumstances. If one circumstance is sufficient to discharge and bring suspicion in the mind of the Court that the prosecution has faded up the evidence to procure conviction then the Court can come forward for the rescue of the accused persons as held by this Court in 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)".*

15. For the foregoing reasons, the conviction and sentence awarded to the appellants by the learned trial Court vide Impugned Judgment dated 19.05.2018

are hereby set aside. Consequently, the appellants, Khano (son of Chetan), Anbo (son of Chetan), Walim alias Balam (son of Magho), and Tillo (son of Chetan), are hereby acquitted of all charges levelled against them. Appellant Khano has already undergone the sentence. The remaining appellants are on bail. Their bail bonds and sureties stand discharged. Any fine amounts deposited by them pursuant to the impugned judgment shall be refunded without delay. The present Criminal Appeal stands allowed accordingly.

JUDGE

"Saleem"