

IN THE HIGH COURT OF SINDH, AT KARACHI

PRESENT:-
Mr. Justice Omar Sial
Mr. Justice Shamsuddin Abbasi

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Criminal Appeal No.261 OF 2025
*[Muhammad Arsalan son of Muhammad Ramzan,
Ali Raza son of Muhammad Chand and
Muhammad Waseem son of Muhammad Islam v The State]*

Criminal Appeal No.244 of 2025
[Arshad Ahmed son of Irshad Ahmed v The State]

Criminal Jail Appeal No.287 of 2025
[Faizan Ahmed son of Aijaz Ahmed v The State]

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Mr. Qaim Ali, Advocate for Appellants in Crl. Appeal No.261/2025.
Mr. Abrar Hussain, Advocate for Appellant in Crl. Appeal No.244/2025.
Syed M. Latif Kamran, Advocate for Appellant in Cr. Jail Appeal No.287/2025.
Mr. Ali Haider Saleem Additional Prosecutor General [Sindh].

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Date of hearing **04.08.2026**

Date of Judgment **10.08.2026**

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JUDGMENT

Shamsuddin Abbasi, J.- Through the captioned appeals, appellants, Muhammad Arsalan, Ali Raza, Muhammad Waseem, Arshad Ahmed and Faizan Ahmed, have challenged the validity of the judgment dated 07.03.2025, penned down by the learned Additional Sessions Judge-III/Special Judge (Gender-Based Violence Court), Karachi South, in Sessions Case No.472 of 2024 (FIR No.07 of 2024) registered at Police Station Mehmoodabad, Karachi, for offences under Sections 365-B, 375-A, 109 and 34, Pakistan Penal Code (PPC), through which they were convicted and sentenced as follows:-

36(1). Accused Faizan s/o Aijaz Ahmed is punished for committing offence u/s 365 PPC and sentenced to undergo R.I. for 5 (Five) years and fine of Rs.50,000/-. In payment of default of fine, he shall further suffer Simple Imprisonment for 6 months. He is also punished for committing offence u/s 375-A PPC and sentenced to undergo R.I. Imprisonment for Life and fine of Rs.50,000/-. In payment of default of fine, he shall further suffer Simple Imprisonment for 6 months. Both punishments awarded above to the accused will run concurrently.

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(2). Accused Arshad Ahmed s/o Irshad Ahmed, Muhammad Arsalan s/o Muhammad Ramzan, Ali Raza s/o Muhammad Chand and Muhammad Waseem s/o Muhammad Islam are punished for committing offence u/s 375-A PPC and sentenced to undergo R.I. Imprisonment for Life and fine of Rs.50,000/- each. In payment of default of fine, they would further suffer Simple Imprisonment for 6 months each.

37. The benefit of section 382-B Cr.P.C. is extended to them.

2. Briefly stated, the prosecution case, as set out in the FIR is that complainant Muhammad Rasheed son of Muhammad Hussain lodged a report on 05.01.2024 at about 2:00 pm regarding an occurrence alleged to have taken place on 16.12.2023. According to the complainant, his daughter Warisha was married to Faizan Ejaz. Owing to matrimonial disagreement and strained relations with her in-laws, she had returned to her parental home, where she had been residing and during her stay there her husband used to visit her at the complainant's house. On 16.12.2023 at about 8:30 pm the complainant accompanied by his wife and daughter Rimsha left for the market leaving Warisha at the house. Upon their return at approximately 9:30 pm they found Warisha missing. After making inquiries, they came to know that appellant Faizan Ahmed had abducted Warisha with intention of committing zina with her. Consequently, the complainant lodged the instant FIR.

3. Upon registration of the crime report, the investigation was followed and in due course it was discovered that appellant Faizan Ahmed in furtherance of common intention and with the active participation of co-accused Arshad Ahmed, Muhammad Arsalan, Ali Raza and Muhammad Waseem had subjected the victim to gang rape while the offence was abetted by co-accused Muhammad Ramzan. The Investigating Officer recorded the statements of witnesses under Section 161, Cr.P.C., collected both oral and documentary evidence, procured the relevant medico legal and DNA reports, got recorded the statement of victim under Section 164, Cr.P.C. before Magistrate, completed all codal formalities and finding sufficient incriminating material against the accused persons submitted a report under Section 173, Cr.P.C. before the competent Court under the above referred Sections, whereby the appellants and co-accused were sent up to face the trial.

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4. A charge in respect of offences under Sections 365-B read with Sections 375-A, 109 and 34, PPC was framed against appellants and co-accused Ramzan son of Ayaz. They pleaded not guilty to the charged offences and claimed to be tried.

5. At trial, the prosecution has examined as many as eight witnesses. The gist of the evidence, adduced by the prosecution in support of its case, is as under:-

6. Victim Warisha appeared as witness No.1 (Ex.3), complainant Muhammad Rasheed as witness No.2 (Ex.4), MLO Dr. Rajindar Kumar as witness No.3 (Ex.6), who examined the appellants and issued M.L. Certificates, ASI Amjad Javed Bhatti as witness No.4 (Ex.7), MLO Dr. Tasneem Malik as witness No.5 (Ex.8), who examined the victim and issued final Medico Legal Report, Ms. Kulsoom Mustafa, Judicial Magistrate as witness No.6 (Ex.8), who recorded the statement of victim Warisha under Section 164, Cr.P.C. ASI Siraj Ahmed as witness No.7 (Ex.10), who conducted initial investigation, and LSI Erum Ahmed as witness No.8 (Ex.11), who completed all investigation and submitted challan in Court and thereafter closed its side vide statement Ex.12. All of them have exhibited certain documents and in their evidence and were subjected to cross-examination by the defence.

7. The appellants were examined under Section 342, Cr.P.C. They have denied each and every allegation levelled against them, professed their innocence and stated that they have been falsely implicated by the complainant owing to ulterior motives and previous animosity. They neither opted to make statements on oath under Section 340(2), Cr.P.C., nor did they choose to produce any witness in their defence.

8. Upon conclusion of the trial and after hearing the learned counsel for the parties, the learned trial Court, through the impugned judgment dated 07.03.2025, found the prosecution to have successfully established its case against the appellants beyond reasonable doubt. Consequently, the appellants were convicted and sentenced in the manner detailed in para-1 (supra), which necessitated the filing of the listed appeals, which are being

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decided together through this common judgment as they arise out of the same judgment and involve identical questions of fact and law.

9. It is jointly contended on behalf of the appellants that the impugned judgment is patently contrary to law, the evidence available on record and the well-settled principles governing appreciation of evidence in criminal cases. The learned trial Court has failed to evaluate the evidence in its true legal perspective has misread as well as non-read material pieces of evidence and has recorded conviction on conjectures and surmises rather than on legally admissible, reliable and confidence inspiring evidence. The findings recorded by the learned trial Court, therefore, suffer from serious legal infirmities and are not sustainable in the eyes of law. It is next submitted that the prosecution has miserably failed to discharge the heavy burden cast upon it to prove the guilt of the appellants beyond reasonable doubt. It is a cardinal principle of criminal jurisprudence that the prosecution must stand on the strength of its own evidence and cannot derive any benefit from the weakness, if any, of the defence. Every reasonable doubt arising from the prosecution evidence must necessarily be extended to the accused. It is also submitted that statements of the complainant and the prosecutrix suffer from material contradictions, inconsistencies, significant omissions and subsequent improvements on material particulars of the prosecution story. These discrepancies do not relate to insignificant or trivial details but go to the very genesis, manner and circumstances of the alleged occurrence. Such material infirmities seriously impair the credibility and evidentiary value of their testimony rendering it wholly unsafe to base a conviction thereon without independent corroboration. It is argued that the FIR has been lodged after an unexplained and inordinate delay of approximately 20 days without furnishing any plausible satisfactory explanation, which caused a serious dent to the prosecution case as it provides sufficient opportunity for deliberation, consultation, fabrication and false implication of the appellant. The learned counsels have argued that the conduct of the complainant also creates serious doubt regarding the genuineness of the present case. Prior to the registration of the instant FIR, the complainant had lodged FIR No.1486 of 2019 at Police Station KIA, Karachi, under Section 376, PPC against his own son-in-law/nephew Umair alleging abduction of his daughter Sania with intent to commit rape. Likewise, FIR No.1506 of 2023 was also registered at Police Station KIA,

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Karachi regarding the alleged abduction of his daughter Warisha, who is the prosecutrix in the present case, against unknown persons. The said case admittedly culminated without success as the alleged victim herself did not support the prosecution version. These admitted circumstances assume considerable significance while evaluating the credibility of the complainant and unmistakably demonstrate a pattern of criminal litigation arising from similar allegations, thereby rendering the prosecution version highly doubtful. It is also submitted that despite the availability of the material witnesses, namely Sher Bano and Rimsha, being the wife and daughter of the complainant respectively, the prosecution deliberately withheld them from the witness box without assigning any lawful or plausible explanation. Both were admittedly material witnesses and their testimony would have materially assisted the Court in arriving at the truth. The deliberate withholding of such material witnesses warrants the drawing of an adverse inference against the prosecution that had they been produced they would not have supported the prosecution case. Such non-production strikes at the very root of the prosecution story and materially weakens its evidentiary worth. It is further contended that although the alleged occurrence is stated to have taken place in a manner where independent witnesses were available, the prosecution failed to associate or examine any independent and disinterested witness. No satisfactory explanation has been offered for such omission. The failure to produce independent corroborative evidence particularly where it was naturally available creates an additional dent in the prosecution case. Referring to the medical and forensic evidence, learned counsel submits that the medical examination merely declared the appellants physically capable of performing sexual intercourse, which by itself has no incriminating value and is incapable of establishing participation in the alleged offence. Likewise, although reliance has been placed upon the DNA analysis, it is respectfully submitted that forensic evidence is merely corroborative in nature and cannot substitute substantive evidence. Such evidence can only lend assurance to an otherwise reliable prosecution case and cannot independently sustain a conviction where the ocular account itself suffers from inherent contradictions, material improvements and serious doubts regarding its credibility. In the absence of trustworthy and confidence inspiring substantive evidence, the forensic material loses much of its probative force and cannot form the sole basis for maintaining conviction. It is further argued that the prosecution has failed to establish a

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complete, coherent and unbroken chain of circumstances connecting the appellants with the commission of the alleged offence. The evidence led by the prosecution suffers from material gaps and missing links which remain unexplained. Based upon these submissions, the learned counsels submit that the prosecution has failed to prove its case against appellants beyond reasonable doubt and prayed for setting aside the conviction and sentence and acquitting the appellants extending them the benefit of doubt. Reliance is placed on the cases of *Safdar Ali v The State* (2025 SCMR 1437), *Mudassir Manzoor and another v The State and another* (2020 YLR Note 42 and *Yasir v The State* (PLD 2022 Lahore 263) and *Syed Nadeem Shah and others v The State and another* (PLD 2005 Supreme Court 181).

10. None appeared on behalf of the complainant. The record reflects that on 24.11.2025 the complainant appeared in Court and sought time to engage counsel. However, despite the opportunity granted neither the complainant nor any counsel on his behalf appeared thereafter. This conduct indicates that the complainant has lost interest in pursuing or contesting the present matter.

11. Conversely, learned Additional Prosecutor General has opposed the appeals and supported the impugned judgment. It is submitted that the learned trial Court has rightly appreciated the evidence available on record in its true perspective and has recorded conviction after a careful and exhaustive evaluation of the oral, medical and scientific evidence. The impugned judgment is well-reasoned, based upon correct appreciation of law and facts and does not suffer from any illegality, perversity or misreading or non-reading of evidence warranting interference by this Court. It is next submitted that the prosecution has successfully established the guilt of the appellants beyond reasonable doubt through trustworthy, confidence inspiring and consistent evidence. The testimony of the prosecutrix is natural, straightforward and inspires confidence. Her evidence remained unshaken despite lengthy cross-examination and there is nothing on record to suggest any ulterior motive for falsely implicating the appellants while allowing the real culprits to escape. It is also submitted that the contradictions and omissions highlighted by the defence are minor, natural and inconsequential arising from normal errors of observation and lapse of memory. Such discrepancies are not material in nature and do not affect the

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core of the prosecution case. Regarding the delay in registration of the FIR, it is argued that the delay stands sufficiently explained by the peculiar facts and circumstances of the case. In offences involving sexual violence, some delay in approaching the police is neither unnatural nor fatal particularly where the victim and her family remain under fear or pressure. Mere delay in lodging the FIR in absence of proof of prejudice or fabrication is not by itself sufficient to discard an otherwise trustworthy prosecution case. Responding to the argument regarding the previous FIRs lodged by the complainant, learned counsel submits that each criminal case is to be decided on its own facts and evidence. The mere registration of earlier criminal cases does not establish that the complainant is in the habit of lodging false cases nor does it create any legal presumption that the present prosecution is fabricated. It is submitted that non-examination of every cited witness is not fatal to the prosecution case. The prosecution is under no legal obligation to produce a particular number of witnesses once the essential facts have been proved through reliable and trustworthy evidence, therefore, no adverse inference can legally be drawn against the prosecution on account of their non-examination. It is further argued that the medical and forensic evidence fully corroborates the prosecution version. The DNA analysis constitutes highly reliable scientific evidence connecting the appellants with the commission of the offence and substantially reinforces the ocular account furnished by the prosecutrix. The medical examination and other scientific evidence lend independent assurance to the prosecution case, leaving no room for doubt regarding the involvement of the appellants. Lastly submits that the defence has failed to point out any material illegality, contradiction or infirmity sufficient to discredit the prosecution case. The learned trial Court has assigned cogent and convincing reasons while recording conviction and the findings are fully supported by the evidence available on record. Since the prosecution has proved its case beyond reasonable doubt, no question of extending the benefit of doubt to the appellants arises. He, therefore, prayed that the appeals, being devoid of merit, may be dismissed and the conviction and sentences awarded to the appellants may be maintained.

12. We have anxiously considered the submissions advanced by both the sides, carefully examined the entire evidence available on record and gone through the impugned judgment with their able assistance.

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13. It is an established principle of criminal jurisprudence that the prosecution is bound to prove its case against an accused beyond reasonable doubt through evidence which must be credible, confidence inspiring and free from material contradictions. The burden placed upon the prosecution is not discharged by creating suspicion or by relying upon isolated pieces of evidence rather it must establish a complete chain of circumstances leading towards the guilt of the accused while excluding every reasonable hypothesis consistent with innocence. In the present case, the prosecution story is confronted with a number of serious infirmities which when considered cumulatively create reasonable doubt regarding the correctness and reliability of the accusation.

14. The first and foremost circumstance adversely affecting the prosecution case is the unexplained delay of 20 days in lodging the FIR. The occurrence allegedly took place much earlier, yet the criminal law machinery was set into motion after an inordinate delay. The prosecution has failed to furnish any plausible explanation for such prolonged silence. Although delay in reporting cases of sexual offences cannot be treated as fatal in every circumstance, the same cannot be ignored altogether particularly when the prosecution fails to establish any compelling reason preventing immediate reporting. It is by now a settled proposition of criminal jurisprudence that the FIR constitutes the foundation of the prosecution case being the earliest version of the occurrence. Its prompt registration lends assurance to the truthfulness of the prosecution narrative by excluding the possibility of fabrication or false implication. Conversely, where the prosecution fails to satisfactorily explain the delay in lodging the FIR, such delay becomes a serious infirmity which undermines the genuine worth of the prosecution case. An unexplained delay in setting the criminal law into motion inevitably gives rise to a presumption that the prosecution had sufficient time to deliberate, consult and improve its version before reducing it into writing. Such a circumstance strikes at the authenticity of the prosecution story and renders it unsafe to be accepted without independent and unimpeachable corroboration. The august Supreme Court has consistently held that unexplained delay in the registration of the FIR is not a mere procedural irregularity but a substantive circumstance which casts serious doubt upon the truthfulness of the prosecution case. Such doubt, being reasonable and arising directly from the prosecution's own conduct must necessarily accrue

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to the benefit of the accused in consonance with the settled principle that it is preferable that a guilty person escape rather than an innocent person be convicted. Reliance, in this regard, may profitably be placed upon *Zeeshan alias Shani v. The State* (2012 SCMR 428), wherein the Hon'ble Supreme Court categorically held that unexplained delay in lodging the FIR materially detracts from the credibility of the prosecution version and constitutes a circumstance sufficient to extend the benefit of doubt to the accused.

15. A bare perusal of the record reveals that the complainant is the father of the alleged victim, Warisha, and was residing at House No.950, Flat No. A-1, Street No. 12, Azam Basti, Mehmoodabad, Karachi, along with his wife and seven daughters. According to the prosecution case, the complainant lodged FIR on 05.01.2024 alleging that on 16.12.2023 at about 8:30 pm he along with his wife Mst. Sher Bano and daughter Rimsha had gone to the market for purchasing groceries leaving the alleged victim at home. Upon their return after about one hour, they found Warisha missing. It is further alleged that despite making extensive personal efforts to trace her, they subsequently came to know that accused Faizan Ahmed had enticed away and abducted Warisha with the intention of committing rape. A close scrutiny of the evidence, however, reveals that the complainant has failed to disclose the source of such information. During his cross-examination, he admitted that he had come to know that accused Faizan Ahmed had enticed away his daughter, yet he neither disclosed the name of the person who furnished such information nor explained the circumstances in which he acquired knowledge. The prosecution has, therefore, withheld the very source of information upon which the accusation against the accused is founded. Such omission is not a mere irregularity but strikes at the credibility of the prosecution story rendering the allegation devoid of independent corroboration.

16. Record further reflects that accused Faizan Ahmed is the husband of Rimsha, the complainant's daughter and the real sister of the alleged victim Warisha. The complainant has admitted during cross-examination that accused Faizan Ahmed had allegedly extended threats to him. In the backdrop of the admitted strained relationship between the parties, the possibility of previous enmity or ulterior motives resulting in the false implication of the accused cannot be excluded with certainty particularly

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when the prosecution has failed to produce cogent and confidence inspiring evidence in support of its case. The prosecution case is further rendered doubtful by a glaring contradiction regarding the place of recovery of the alleged victim and the arrest of the accused persons. The complainant and victim in their depositions have stated that Warisha contacted her sister Rimsha through a cell phone and shared her location, whereafter the police accompanied by complainant, his wife Mst. Sher Bano and daughter Rimsha proceeded to the said location, which is stated to be a house, from where the alleged victim was recovered and accused Faizan Ahmed, Ramzan and Arshad were arrested. This version is, however, squarely contradicted by the documentary evidence. The memo of arrest and recovery itself records that the alleged victim was recovered and three accused were arrested from a bus stop situated at Gulshan-e-Kaniz Society, Abdul Rahim Goth, Surjani Town, Karachi, and not from any residential house. This fact has also been supported by I.O. ASI Siraj Ahmed, who while appearing before the learned trial Court has deposed that during search of the accused he saw five accused alongwith victim Warisha, who was identified by complainant, and on pointation of complainant he recovered the victim and arrested three accused Faizan, Arshad and Ramzan, while two made their escape good. These contradictions pertain to a material aspect of the prosecution case and cannot be brushed aside as a minor discrepancy. The place from where the alleged victim is said to be recovered and the accused are stated to be apprehended constitutes a vital circumstance directly affecting the veracity of the prosecution version. The inconsistency between the ocular account and the documentary record creates a serious dent in the prosecution case and substantially undermines the reliability of the evidence. It is well settled that where the prosecution evidence suffers from material contradictions on material particulars creating reasonable doubt regarding the truthfulness of the prosecution story such doubt must invariably be resolved in favour of the accused.

17. The prosecution case is rendered highly doubtful on account of grave, material and wholly unexplained deficiencies in the collection, preservation, custody and transmission of the forensic material allegedly relied upon by it. The record reveals significant inconsistencies regarding the number of biological samples purportedly collected during the medical examination and the number of samples ultimately forwarded to the forensic laboratory for

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DNA analysis. These contradictions strike at the very foundation of the prosecution case and substantially impair the credibility and evidentiary value of the forensic evidence. PW.5 Dr. Tasleem Malik (Ex.8) has deposed that upon medical examination of the prosecutrix, she found that the victim had already changed her clothes, taken a bath and had passed urine and stool prior to examination. She further observed that the private parts were normal, the hymen was old torn and healed and categorically opined that on clinical examination nothing could be said regarding any fresh act of sexual assault. The medical evidence, thus, did not support the prosecution allegation of a recent sexual assault. The only circumstance relied upon by the prosecution to overcome this adverse medical opinion is the DNA report, which records that seminal material was detected on the high vaginal swab and that the DNA profile obtained from the sperm fraction of the shalwar allegedly matched the blood sample of accused Arshad, however, the reliability of this report is itself rendered highly suspect due to serious procedural irregularities and the prosecution's failure to establish an unbroken chain of custody. PW.8 LSI Drum Amjad, the Investigating Officer who conducted the final investigation and submitted challan, made several material admissions during her cross-examination. She candidly admitted that she did not prepare any recovery memo or receipt memo evidencing the handing over or receipt of the sealed parcels from the hospital. She further admitted that the blood sample of accused Arshad remained in her custody where it was allegedly maintained at 4°C, yet she deposited the DNA samples in the forensic laboratory after a delay of four days from their receipt. She further admitted that the DNA report (Ex.8/C) itself reflects receipt of ten samples. No explanation has been furnished regarding the inconsistency between the samples allegedly collected and those ultimately examined. More importantly, she admitted that no road certificate either has been prepared or produced at trial. The unexplained delay of four days in depositing the biological samples assumes critical significance. Biological samples intended for DNA profiling are highly susceptible to contamination, substitution or tampering if not handled and transmitted strictly in accordance with prescribed forensic protocols. The prosecution has neither explained the reason for this delay nor placed any evidence on record demonstrating the conditions in which the samples remained during this period. A mere assertion that the samples were kept at 4°C, unsupported by any official record, logbook or independent evidence, is wholly insufficient to

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dispel the possibility of contamination or tampering. Such an unexplained delay, coupled with the absence of documentary safeguards, substantially erodes the evidentiary sanctity and reliability of the DNA analysis. It is well settled that the evidentiary value of a DNA report is not derived merely from the scientific opinion contained therein but from the prosecution first establishing through reliable and cogent evidence the complete identity, integrity and continuity of the samples from the moment of their collection until their examination by the forensic expert. In other words, the prosecution must affirmatively prove an unbroken chain of custody so as to exclude every reasonable possibility of substitution, contamination or tampering. Unless such foundational facts are established, the forensic opinion loses its probative force and cannot safely be made the basis of conviction. In the present case, the prosecution has conspicuously failed to discharge this burden. The witness who allegedly received the sealed parcels from the hospital and delivered them to the forensic laboratory has deliberately been withheld. Consequently, there is no direct evidence regarding the handling, transportation or delivery of the biological samples. Equally significant is the prosecution's failure to produce the dispatch register, receipt register, road certificate, forwarding register, malkhana record or any other official document capable of demonstrating the safe movement and secure custody of the samples. The complete absence of both ocular and documentary evidence regarding the transmission of the exhibits leaves a vital gap in the prosecution case. These are not mere technical or procedural irregularities capable of being overlooked rather they go to the very root of the authenticity and admissibility of the forensic evidence. Where the prosecution fails to establish the sanctity of the chain of custody and leaves material gaps regarding the preservation and transmission of biological exhibits, the DNA report ceases to inspire confidence and loses its evidentiary value. Any forensic opinion founded upon such compromised samples becomes inherently unsafe for reliance in a criminal trial particularly where the medical evidence itself does not corroborate a recent act of sexual assault. In these circumstances, the DNA report cannot be treated as conclusive or reliable evidence and no conviction can safely be sustained solely on the basis of such a tainted forensic opinion.

18. The prosecution has also failed to explain the non-production of material witnesses who were admittedly available and whose testimony was

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essential for arriving at a just and fair decision. The record establishes that Sher Bano, mother of the prosecutrix, and Rimsha, sister of the prosecutrix, were natural witnesses having knowledge of the relevant facts and circumstances surrounding the alleged occurrence. Their evidence could have either strengthened or contradicted the prosecution narrative. However, despite their obvious significance, the prosecution withheld them without furnishing any justification for their non-examination. Such omission assumes considerable importance because withholding of material witnesses deprives the Court of the opportunity to ascertain the complete truth and entitles the Court to draw an adverse inference against the prosecution under Article 129(g) of the Qanun-e-Shahadat Order, 1984. It is well settled that when a party fails to produce a witness who is expected to provide the best available evidence, an inference may legitimately be drawn that such evidence, if produced, would not have supported that party's case.

19. Another significant aspect of the case, which has an important bearing upon the appreciation of the prosecution evidence is the conduct of the complainant as emerging from the record. The evidence reveals that the complainant is the father of seven daughters and prior to the registration of the present FIR had repeatedly invoked the criminal machinery by alleging the abduction of his daughters coupled with accusations of rape or intention to commit rape. The record shows that FIR No.1486 of 2019 was lodged by the complainant under Section 376, PPC, alleging that his daughter Sania had been abducted with the intention of committing rape and the accusation was levelled even against his own nephew/ son-in-law Umair. Thereafter, FIR No.1506 of 2023 was again lodged by the complainant regarding the alleged abduction of his daughter Warisha, who is the prosecutrix in the present case. Significantly, Warisha did not support the prosecution's case and the proceedings were consequently disposed of. However, during cross-examination, the complainant has admitted that the present appellant Faizan is involved in an earlier case concerning abduction of Warisha in FIR No. 1506 of 2023. It is true that the mere registration of previous criminal cases cannot by itself be treated as conclusive proof of malafides nor can it alone justify rejection of the present prosecution case, however, where the complainant has repeatedly levelled substantially similar allegations concerning the alleged abduction and sexual exploitation of his daughters and such allegations have failed to withstand judicial scrutiny, the said

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conduct assumes undeniable relevance while assessing the credibility and reliability of the present prosecution story. Such a recurring pattern is a relevant surrounding circumstance which the Court is entitled to take into consideration while evaluating whether the prosecution has discharged its burden of proving the charge beyond reasonable doubt. The repeated institution of criminal proceedings on similar allegations reflects a pattern of conduct which cannot be viewed in isolation. It casts a serious shadow upon the credibility of the complainant and requires that his testimony be examined with greater circumspection particularly where the prosecution case otherwise suffers from substantial infirmities. In the present case, the prosecution evidence is already burdened with an unexplained delay in the registration of the FIR, material contradictions and improvements in the ocular account, deficiencies in the collection, preservation and transmission of the forensic samples, a broken chain of custody affecting the sanctity of the DNA evidence and withholding of material witnesses. In such circumstances, the complainant's previous conduct in repeatedly initiating similar criminal prosecutions of abducting his daughters assumes considerable significance and further weakens the confidence that can safely be reposed in the prosecution version. Criminal jurisprudence requires that where the testimony of the complainant is surrounded by circumstances creating reasonable doubt regarding its truthfulness, the Court must examine such evidence with heightened caution. The complainant's demonstrated pattern of repeatedly setting the criminal law in motion on substantially similar allegations, which have not resulted in successful prosecution, furnishes an additional circumstance compelling the Court to seek independent and unimpeachable corroboration before acting upon his assertions. In the absence of such trustworthy corroborative evidence, and viewed in conjunction with the numerous deficiencies otherwise appearing in the prosecution case, the complainant's conduct materially detracts from the overall credibility of the prosecution and reinforces the reasonable doubt already arising from the record.

20. The cumulative assessment of the prosecution evidence reveals that the case is not suffering from mere technical shortcomings but from fundamental defects affecting its very foundation. The unexplained delay in registration of the FIR, the failure to establish the safe and unbroken chain of custody of forensic samples, inconsistencies regarding the collection and

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transmission of biological material, unexplained delay in dispatching the samples to the forensic laboratory, failure to examine material witnesses Sher Bano and Rimsha, and the surrounding circumstances relating to previous criminal proceedings collectively create serious doubt regarding the prosecution version. It is a settled proposition of law that forensic evidence is corroborative in nature and cannot independently sustain a conviction where the primary evidence itself is doubtful. The prosecution cannot seek conviction merely on the basis of scientific evidence while failing to establish the foundational facts necessary for placing reliance upon such evidence. Where the chain of evidence contains missing links and material doubts remain unresolved, the benefit must necessarily go to the accused. The principle repeatedly affirmed by the Hon'ble apex Court is that suspicion, however strong, cannot replace legal proof. An accused is entitled to acquittal if the prosecution fails to prove its case beyond reasonable doubt. The benefit of doubt is not a concession extended to an accused but a legal right flowing from the failure of the prosecution to discharge the burden imposed upon it. Even a single circumstance creating reasonable doubt is sufficient to entitle an accused to acquittal. The rule of benefit of doubt is essentially a rule of prudence, which cannot be ignored while dispensing justice in accordance with law. Conviction must be based on unimpeachable evidence and certainty of guilt and any doubt arising in the prosecution case, must be resolved in favour of the accused. The said rule is based on the maxim "it is better that ten guilty persons be acquitted rather than one innocent person be convicted" which occupied a pivotal place in the Islamic Law and is enforced strictly in view of the saying of the Holy Prophet (PBUH) that the "mistake of Qazi (Judge) in releasing a criminal is better than his mistake in punishing an innocent". Reliance in this behalf may well be made to the case of *Najaf Ali Shah v The State* {2021 SCMR 736} wherein in paragraph No.13 of page 236 the Hon'ble Supreme Court has observed as follows:-

"Mere heinousness of the offence if not proved to the hilt is not a ground to avail the majesty of the court to do complete justice. This is an established principle of law and equity that it is better that 100 guilty persons should let off but one innocent person should not suffer. As the preeminent English jurist William Blackstone wrote, "Better that ten guilty persons escape, than that one innocent suffer." Benjamin Franklin, who was one of the leading figures of early American history, went further arguing "it is better a hundred guilty persons should escape than one innocent

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person should suffer." All the contradictions noted by the learned High Court are sufficient to Murder Reference No. 58 of 2016 34 cast a shadow of doubt on the prosecution's case, which entitles the petitioner to the right of benefit of the doubt. It is a well settled principle of law that for the accused to be afforded this right of the benefit of the doubt it is not necessary that there should be many circumstances creating uncertainty and if there is only one doubt, the benefit of the same must go to the petitioner. This Court in the case of Mst. Asia Bibi v. The State (PLD 2019 SC 64) while relying on the earlier judgments of this Court has categorically held that "if a single circumstance creates reasonable doubt in a prudent mind about the apprehension of guilt of an accused, then he/she shall be entitled to such benefit not as a matter of grace and concession, but as of right. Reference in this regard may be made to the cases of Tariq Pervaiz v. The State (1998 SCMR 1345) and Ayub Masih v. The State (PLD 2002 SC 1048)." The same view was reiterated in Abdul Jabbar v. State (2010 SCMR 129) when this court observed that once a single loophole is observed in a case presented by the prosecution, such as conflict in the ocular account and medical evidence or presence of eye-witnesses being doubtful, the benefit of such loophole/lacuna in the prosecution's case automatically goes in favour of an accused."

21. The epitome of whole discussion gives rise to a situation that the appellants have been convicted without appreciating the evidence in its true perspective rather the prosecution case is packed with various discrepancies, irregularities, improvements and lacunas, which resulted into a benefit of doubt to be extended in favour of the appellants. Accordingly, these appeals are allowed. The conviction and sentences recorded against the appellants through impugned judgment dated 07.03.2025, passed by the learned trial Court are set aside and the appellants are acquitted of the charge extending them the benefit of doubt. They shall be released forthwith if not required to be detained in connection with any other custody case.

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