

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

**Criminal Appeal No.S-156 of 2024**

**Present:**  
**Mr. Justice Amjad Ali Sahito.**

**Appellant:** Bhagwan Das S/o Mool Chand,  
Through Mr. Aijaz Shaikh, Advocate.

**Respondent:** The State.  
Through Mr. Ghulam Abbas Dalwani, DPG.

**Complainant:** Preetam son of Chandu,  
Through Mr. Bhagwan Das Bheel, Advocate  
called absent.

**Date of hearing:** 18.09.2025

**Date of Order:** 18.09.2025

**J U D G M E N T**

**Amjad Ali Sahito, J:** Through the above captioned appeal, the appellant has impugned judgment dated 02.01.023, passed by the learned Additional Sessions Judge-I, Umerkot in S.C No.265/2021 [Re-The State v. Bhagwan Das], in Crime No.135/2021 for the offence under section 377-B P.P.C registered at PS Umerkot City, whereby the appellant was convicted and sentenced to suffer R.I for 14 years with fine of Rs.10,00,000/-.

2. Brief facts of the case are that complainant Preetam's minor son Dheeraj and daughter Pooja study at Main Primary Taluka School, Khaskheli Paro, where Bhagwan Das Malhi serves as teacher. On 17-10-2021 complainant Preetam along with his cousin Arjan Kumar and Lajpat Malhi were sitting at his home and in the meanwhile his minor son Dheeraj while running entered into the home and disclosed that that he had gone to

Mandir where his teacher Bhagwan Das Malhi met, who asked him to come with him and he will take him for a walk. On saying so, his teacher Bhagwan Das took him inside the street of Main Primary Taluka School at about 1900 hours and enticed him for sexual act by offering pocket money. Thereafter accused Bhagwan Das removed his trouser, so also removed his chaddi and stripped off his own shalwar, but due to fear, the victim Dheeraj fled away from there. On disclosure of such facts by his minor son Dheeraj Kumar, complainant Preetam lodged instant FIR to the above effect.

3. After completion of the usual investigation, the investigation officer submitted a report under section 173 Cr.P.C before the competent Court of law and thereafter the case papers were supplied to the appellant/accused under receipt.

4. The charge against present appellant/accused was framed at Exh.2, to which he pleaded not guilty and claimed trial vide his plea recorded at Exh.2/A.

5. In order to establish the accusation against the present appellant, the prosecution examined PW-01 complainant Preetam at Ex.03, he produced FIR at Ex.03-A. PW-02 minor victim Dheeraj was examined at Ex.04, PW-03 Lajpat was examined at Ex.05. PW-04/mashir Arjan Das was examined at Ex.06, he produced two memos of site inspection as Ex.06-A and 06-B. PW-05 Dr. Jaidev was examined at Ex.07, he produced police letter, provisional and final medical certificates of minor victim Dheeraj as Ex.07-A to 07-D respectively. PW-06 I.O/SIP Arbab Ali was examined at Ex.08, he produced Order of Magistrate, letter of

SSP for reinvestigation and his movement entries as Ex.08-A to Ex.08-D respectively. PW-07 I.O/SIP Ahmed Bux was examined at Ex.09, he produced letter addressed to SHO P.S Umerkot City, letter addressed to Head Master main Primary School Khaskheli Paro, Daily diary entry, sketch of site, photographs of site and letter addressed to Medical Officer as Ex.09-A to 09-F respectively. Thereafter, learned State Counsel closed the side of prosecution vide statement at Exh.10.

6. The statement of the appellant U/S 342 Cr.P.C was recorded at Ex.11 and he had denied all the allegations leveled against him by the prosecution and claimed his innocence. However, he did not examine himself on oath nor led any evidence in his defence.

7. The learned trial court on evaluation of the evidence and after hearing the counsel for the parties, convicted and sentenced the appellant/accused vide Judgment dated 02.01.023, which he has impugned before this Court by preferring instant Criminal Appeal.

8. Learned counsel for the appellant submits that there are material contradictions in the evidence of prosecution witnesses and he has been falsely implicated in this case. He further submits that the FIR was registered after a delay of more than 05 hours, which shows that it was registered after deliberation and consultation to falsely frame the accused in the picture due to political rivalry between complainant and accused; that there is no eye witness of the incident except the minor complainant whose evidence is not trustworthy as there is likelihood of

tutoring him. He further submits that place of incident is a public street and no person from forward to depose against the appellant. Learned counsel lastly prayed for the acquittal of the accused.

9. On the other hand, learned D.P.G has supported the impugned judgment and request for dismissal of instant Criminal Appeal. However, the complainant namely Preetam stated that he has patched up his dispute outside the Court and raised his no objection if the appellant may be acquitted.

10. Heard and perused the material available on record.

11. Perusal of record shows that this is case of attempt to commit unnatural offence. The alleged incident took place on 17.10.2021 at 1900 hours while complainant lodged FIR on 18.10.2021 at 0010 hours though the police station is situated at the distance of about 01 kilometer from place of incident. The complainant has not furnished any explanation for such delay of more than five hours, which creates serious doubt and as per settled law even a single circumstance creating reasonable doubt entitle the accused to such benefit. In the present case the medical certificate of victim produced shows that there was no sign of attempt of unnatural offence which does not support the ocular version of the complainant side. The medical officer Dr. Jaidev (PW-05), who examined the minor victim and issued both provisional and final medical certificates categorically stated that no tear, no redness, no tenderness and no other mark of physical violence were present on the body, and that the final opinion remained reserved as no DNA report was received from the forensic laboratory. This clear and

unchallenged medical evidence further destroys the prosecution case. Moreover, all the witnesses are private witnesses and relatives of the complainant and though the place of incident was surrounded by houses and shops no independent witness is cited as mashir in this case. Furthermore, during pendency of appeal the complainant has filed his affidavit and raised no objection if the appellant is acquitted. Though the alleged offence is non-compoundable, yet filing of such affidavit coupled with the above reasons further weakens the prosecution case. In view of the unexplained delay in FIR, the negative medical findings including non-production of DNA report, absence of independent witness and the complainant's no objection, the prosecution case has become highly doubtful.

12. In view of above, the impugned judgment dated 02.01.2023, passed by the learned Additional Sessions Judge-I, Umerkot, is hereby set aside and the appellant Bhagwan Das S/o Mool Chand is hereby acquitted in Crime No.135/2021 for offence under Sections 377-B P.P.C of PS Umerkot City. The appellant is present on bail, his bail bond stands cancelled and surety discharged. The office is directed to return the surety papers to the surety after due verification.

**JUDGE**

***\*Faisal\****