

**IN THE HIGH COURT OF SINDH, AT KARACHI**  
Criminal Jail Appeal No. 05 of 2023

Appellant: Syed Inayat through Ms. Roop Mala Singh, advocate

The State: Mr. Khadim Hussain Khuharo, Addl. PG for the State

Date of hearing: 21.08.2023

Date of judgment: 21.08.2023

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

**IRSHAD ALI SHAH, J-** It is alleged that the appellant has subjected PW Muhammad Ali to carnal intercourse, for that he was booked and reported upon by the police. On conclusion of trial, he was convicted under Section 377-B PPC and sentenced to undergo rigorous imprisonment for 14 years with fine of Rs.10,000/- and in default whereof to undergo simple imprisonment for 06 months with benefit of section 382(b) Cr.P.C by learned IInd-Additional Sessions Judge, Karachi Central vide judgment dated 16.11.2022, which he has impugned before this Court by preferring the instant Criminal Jail Appeal.

2. It is contended by learned counsel for the appellant that the appellant being innocent has been involved in this case falsely by the police at the instance of complainant party and evidence of the PWs being inconsistent and doubtful in its character has been believed by the learned trial Court without lawful justification, therefore, the appellant is entitled to be acquitted of the charge by extending him benefit of doubt, which is opposed by learned Addl. PG for the State by contending that the prosecution has been able to prove its case against the appellant beyond shadow of doubt.

3. Heard arguments and perused the record.

4. It was stated by PW victim Muhammad Ali that on the date of incident he was asked by the appellant to purchase meal and deliver the same at his house, when he was going to deliver the same, he was followed by the appellant and he locked the door of his house and committed sodomy with him; he then related the incident to his father Abid Ali who then lodged report of the incident with the police. It was lodged with delay of about 01 day to actual incident; such delay having not been explained plausibly could not be overlooked. On asking, it was stated by PW Muhammad Ali that the place of incident is *Karkhana* and he did not shout when its lock was closed by the appellant. None from the *Karkhana* has been examined by the prosecution. Evidence of the complainant is of little help to the case of prosecution for the reason that he is not an eye witness to the incident. As per Medical Officer Dr. Muhammad Yaseen, PW Muhammad Ali was examined by Dr. Saud, the in charge of Surgical Unit. He has not been examined by the prosecution; his non-examination could not be overlooked. No seminal material was identified on annual swab of PW victim Muhammad Ali which could have connected the appellant in commission of the incident. I.O/SIP Hamid Ali, on asking, was fair enough to say that he recorded statements of *mohalla* people. No *mohalla* people has been examined by the prosecution. Their non-examination could not be overlooked. In these circumstances, it would be safe to conclude that the prosecution has not been able to prove its case against the appellant beyond shadow of doubt and to such benefit he is found entitled.

5. In case of *Mehmood Ahmed & others vs. the State & another* (1995 SCMR127), it has been observed by the Apex Court that;

*“Delay of two hours in lodging the FIR in the particular circumstances of the case had assumed great significance as the same could be attributed to consultation, taking instructions and calculatedly preparing the report keeping the names of the accused open for roping in such persons whom ultimately the prosecution might wish to implicate”.*

6. In the case of *Muhammad Mansha vs. The State* (2018 SCMR 772), it has been observed by the Apex court that;

*“4....Needless to mention that while giving the benefit of doubt to an accused it is not necessary that there should be many circumstances creating doubt. If there is a circumstance which creates reasonable doubt in a prudent mind about the guilt of the accused, then the accused would be entitled to the benefit of such doubt, not as a matter of grace and concession, but as a matter of right. It is based on the maxim, "it is better that ten guilty persons be acquitted rather than one innocent person be convicted”.*

7. In view of the facts and reasons discussed above, the conviction and sentence awarded to the appellant under impugned judgment are set aside, consequently, he is acquitted of the offence for which he was charged; tried, convicted and sentenced by learned trial Court and shall be released forthwith, if not required to be detained in any other custody case.

8. The instant Criminal Jail Appeal is disposed of accordingly.

JUDGE