

**JUDGMENT SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT,
HYDERABAD**

Criminal Appeal No.S-254 of 2019

Appellant: Hakim Ali through Mr. Razzaque Rahim Shaikh, Advocate.

Respondent: The State through Mr. Siraj Ahmed Bijarani, Assistant Prosecutor General Sindh.

Complainant: Baboo through Mr. Javed Ali Buriro, Advocate.

Date of hearing: 24.03.2025.

Date of Decision: 14.04.2025.

J U D G M E N T

Riazat Ali Sahar, J. Through instant criminal appeal, the appellant has challenged judgment dated 29.08.2019 passed by learned Additional Sessions Judge, Sehwan in Sessions Case No.141 of 2019 emanating from crime No.74/2019 registered at PS Sehwan for the offences punishable under sections 504, 354-A PPC, whereby the appellant was convicted for offence punishable u/s 354-A PPC and sentenced to Imprisonment for Life and to pay fine of Rs.50,000/- (Fifty thousand); in case of failure, he shall have further undergo S.I for three months more. The appellant was also convicted for the offence punishable u/s 504 PPC and sentenced to suffer S.I for six months with fine of Rs.2000/- (Two thousand), which in case of failure, he was ordered to further undergo S.I for one month more. Both sentences were ordered to run concurrently. However, the appellant was extended benefit of section 382-B Cr.P.C.

2. The brief facts of the case are that the complainant namely Baboo on 12.05.2019 reported the case with the Police Station Sehwan stating that the appellant had demanded the hand of his daughter Sona aged about 13/14 years from him but he refused due to tender age of his daughter, as such appellant/accused was annoyed with complainant. The complainant has further alleged that about 20 days prior to lodging of FIR complainant alongwith his daughters Sumera and Sona left for Shahi Bazaar, Sehwan for some work and when at about 11:00 am, reached at common street near Sabz Haveli, Makrani Mohalla, Sehwan, appellant/accused Hakim Ali intercepted them and demanded the hand of Sona, but the complainant refused. The appellant/accused abused the complainant party and assaulted to Mst. Sona and strips her clothes and in that condition exposed to the public view. The complainant raised cries which attracted nearby people, who came running and on seeing them accused ran away. The complainant made such complaint before nekmard who kept the complainant on hopes and ultimately refused, as such, the complainant lodged instant case.

3. After completion of the usual investigative process, a final report was submitted before the learned Judicial Magistrate. The Judicial Magistrate took cognizance of the matter and committed the case to the Court of Sessions. The Sessions Court subsequently entrusted the case to the learned trial Court for adjudication. A formal charge was framed against the appellant, to which he pleaded not guilty and claimed trial. The trial commenced,

and the prosecution examined a total of five (05) witnesses in support of its case:

- **PW-1:** Complainant Baboo, who produced a copy of the First Information Report (FIR).
- **PW-2:** Mst. Sumera.
- **PW-3:** Alleged victim, Sona.
- **PW-4:** Mashir Shoukat, who produced memos relating to:
 - Recovery of the torn shirt;
 - Inspection of the scene of occurrence (vardat);
 - Arrest of the appellant.
- **PW-5:** Investigating Officer ASI Muhammad Ishaque, who produced copies of roznamcha (daily diary) entries Nos. 19, 25, 06, 15, and 18.

4. An opportunity was given to the appellant to give his explanation regarding the prosecution case by recording his statement under Section 342 Cr.P.C. wherein he denied the prosecution allegations and claimed his innocence. The appellant also stated that he has been falsely implicated due to demand of five lac from complainant given to him as loan. After completion of the trial, the learned trial Court pronounced the conviction and sentences as mentioned above.

5. Learned counsel for the appellant has contended that there are material contradictions and discrepancies in the evidence of the prosecution witnesses, particularly those of the complainant PW-1 Baboo, PW-2 Mst. Sumera and PW-3 Mst. Sona and such contradictions weaken the credibility of the prosecution's case and suggest that the incident may not have occurred in the manner as alleged. He further contended that despite the complainant claiming that nearby people came running to the scene upon hearing the cries; however, there are no independent eyewitnesses to corroborate the incident and the absence of any neutral or independent witness

seriously casts doubt on the truthfulness of the prosecution's case. He has further contended that there was an unexplained delay in lodging the FIR, which raises questions about the genuineness of the complaint. He has contended that such delays are indicative of the possibility of concoction of facts after the alleged incident. The learned counsel for the appellant has invited attention of the Court on the point that there is no medical evidence to substantiate the allegations of assault and exposure, especially since the complainant failed to get the victim Mst. Sona immediately examined medically after the incident and such absence of medical examination casts serious doubt on the credibility of the allegations. In addition to the claim of a personal dispute over the loan, the learned counsel has contended that the appellant has been falsely implicated in the case due to malicious intentions on the part of the complainant; otherwise, the appellant has no criminal background, and his involvement in the case is merely a result of a fabricated accusation. He has further contended that there is insufficient evidence to prove that the appellant intentionally stripped the victim Mst. Sona or exposed her in public and the prosecution has not provided convincing evidence to substantiate these critical elements of the offence under Section 354-A, PPC. Learned counsel has further contended that the prosecution has failed to establish the appellant's guilt beyond a reasonable doubt despite the evidence presented by the prosecution, including the testimonies of the victim and the complainant, and it is not reliable and does not meet the legal standard required for conviction for the offence under Sections 504

and 354-A, PPC. Lastly the learned counsel for the appellant prayed that the conviction and sentence passed by the trial court be set aside which is based on shaky and unreliable evidence and as such, the principles of justice and fairness demand that the appeal be allowed and by extending the benefit of the doubt, the appellant be acquitted of all charges.

6. On the other hand, learned A.P.G. for the State, assisted by the learned counsel for the complainant, contended that the prosecution has proved the appellant's guilt beyond reasonable doubt through consistent and reliable evidence of complainant, Mst. Sona, and other witnesses, supported by corroborative physical evidence, including the torn shirt of the victim and arrest memos. He has further contended the claim of appellant regarding his false implication due to a loan dispute, is false but it is only his defence plea otherwise it is imaginary. The learned counsel for the complainant emphasized the severity of the actions of the applicant, particularly the public humiliation of the victim, and the psychological trauma suffered by the minor victim. Both the A.P.G. and the counsel for the complainant stress that the appellant's assault and public exposure of the victim under Sections 504 and 354-A PPC are grave offences that demand appropriate punishment. They urged the court to uphold the conviction and dismiss the appeal.

7. I have heard the arguments of learned counsel for the appellant, learned A.P.G. for the State, learned counsel for the complainant, perused the record minutely. In the instant case, the

prosecution has alleged that the appellant stripped the victim and exposed her to public view, due refusal of her marriage with the appellant by her father, as such, the appellant has been booked in the instant case; however, the defence pleas of the appellant is that when he demanded the loan of Rs.500,000/- given to the complainant by him, he concocted this story in order to involve the appellant falsely. In this regard, all three witnesses namely, the complainant, his daughter Sumera, and the victim Sona have deposed in support of the incident; however, their testimonies reflect certain inconsistencies and delays, which cast doubt on the prosecution's case. The complainant, who is the father of Sona, stated that the incident took place about twenty days prior to the lodging of the FIR. He deposed that on the day of the occurrence, he was accompanied by his daughters Sona and Sumera to Shahi Bazar, Sehwan, and upon reaching Sabz Haveli Makrani Mohalla around 11:00 a.m., they encountered the accused Hakim Makrani, who demanded hand of Sona in marriage. Upon his refusal, the accused allegedly became enraged, abused and grappled with him, and when Sona intervened, tore her shirt at the breast, thereby exposing her. He further stated that people gathered upon their cries, the accused fled, and a complaint was made to the nekmard before the FIR was lodged on 12.05.2019. Sumera, the daughter of the complainant, corroborated this version but vaguely mentioned that the incident took place about five months ago, which is inconsistent with the time stated by the complainant. Her narration of the incident was otherwise similar, including the demand for marriage, abuse, grappling, and

tearing of Sona's shirt. She too confirmed that the matter was taken to the nekward without result and that the FIR was later registered. Sona, the victim, also supported the same chain of events but estimated the time of occurrence as about four to five months ago, thus adding to the uncertainty regarding the actual date of occurrence. She similarly described the accused demanding her hand, reacting aggressively on refusal, grappling with her father, and tearing her shirt when she intervened. The delay in lodging the FIR, the discrepancy in the timeline as stated by each witness, and the absence of any independent witness despite the alleged crowd gathering at the spot collectively create reasonable doubt in the prosecution's story.

8. On careful consideration of the cross-examination of all three prosecution witnesses, the complainant, his daughter Sumera, and the alleged victim Sona, there appears material inconsistencies, omissions, and contradictions, which materially shake the credibility of the prosecution's version and entitle the accused to the benefit of doubt. The complainant admitted during cross-examination that although he alleged the accused had demanded his daughter's hand in marriage several days before the incident, this crucial fact was never disclosed to the police or mentioned in the FIR. He also acknowledged that there is no specific location described in the FIR for where the incident took place, despite the alleged scene being in a populated area. He further conceded that all the witnesses are his own family members, and no independent or impartial witness was produced, even though he claimed that 10–12 people had gathered at

the scene. Moreover, he did not report the incident promptly and only lodged the FIR after an unexplained delay, during which time the alleged torn shirt was produced without any verification of ownership or condition. Importantly, he denied the defense suggestion regarding a financial dispute but did not refute the accused's proximity to their residence, nor did he provide clear justification for the delay in reporting such a serious offence. PW Sumera, in her cross-examination, also admitted that the names of any independent witnesses who allegedly gathered at the scene were not given to the police. She too confirmed the close proximity of the accused's residence to their own, further raising questions about the sudden hostility without prior indication. Despite the claim of a public incident, no neutral eyewitnesses were cited. She accepted that she and her family were of poor background and denied suggestions about financial dealings, yet the defense's line of questioning regarding monetary exchanges and motivations for false implication remained un-rebutted beyond bare denials. PW victim Sona, introduced further contradictions by stating the incident persisted over a period of two months, contrary to the accounts of a single event provided by her father and sister. She also admitted that the accused is a relative and their families are on visiting terms, which the other witnesses had denied, thereby creating further inconsistency. Her testimony regarding the shirt, including the lack of any purchase record, her denial of wearing a brazier, and the omission of the shirt's color in her statement, leaves uncertainty regarding the very object that allegedly corroborates the incident.

She, too, could not explain why no outsiders were named as witnesses despite asserting a public uproar. Collectively, these discrepancies, contradictions, and omissions in the cross-examinations, especially regarding the timeline, the nature and ownership of the torn shirt, the absence of independent witnesses, and the relationship dynamics between the parties, render the prosecution's case doubtful. The defense's suggestion of false implication due to financial motives, though denied, cannot be wholly discarded in light of the otherwise weak corroborative evidence. Thus, the prosecution has failed to prove its case beyond reasonable doubt, and the benefit of doubt must therefore go to the accused, warranting his acquittal.

9. In the present case, the complainant alleged that the accused, Hakim Makrani, had demanded the hand of his daughter Sona in marriage, which he declined. He claimed that the accused became angry, grappled with him, abused him, and upon the intervention of his daughter, tore her shirt from the front, exposing her. However, upon scrutiny, the prosecution's evidence suffers from material contradictions, omissions, and improbabilities, undermining the reliability of the entire version. The incident allegedly occurred about 20 days prior to the lodging of the FIR on 12.05.2019. No plausible explanation has been provided for such a long and unexplained delay, especially in a case involving alleged outrage of modesty of a minor girl, which is inherently sensitive. The claim that the complainant approached nekmards for a resolution appears to be an afterthought and is unsupported by any independent witness. The

complainant, PWs Ms. Sumera and Sona (victim) all give differing accounts about how long ago the marriage demand was made, when it was made, and how the accused was related to them. Complainant says demand was made 5–6 days before the incident whereas, Sumera says the demand was made 4–5 months earlier while Sona says there were visiting terms with the accused, contradicting her father's claim of no relationship. The complainant claims the accused was not on visiting terms, while the victim Sona states that they had visiting terms and that the house of accused was just 4–5 meters away. The exact location of the incident is not specified in the FIR, nor clearly described by any witness. No independent witnesses from the scene were examined, despite all prosecution witnesses claimed 10–12 people gathered at the spot. The torn shirt, which is said to be a vital piece of circumstantial evidence, suffers from serious infirmities as its color is not mentioned in the FIR or any 161 Cr.P.C. statements; the accused suggested and witnesses could not convincingly rebut that the shirt was self-inflicted to falsely implicate the accused. The victim herself admitted during cross-examination that police did not record her statement, which is a serious lapse and casts doubt on the investigation's fairness and reliability. Furthermore, despite claims that the minor victim's shirt was torn and her body exposed, no medical examination, report, or psychological evaluation was conducted or presented. There is no injury report, which would normally be expected even in minor scuffles, particularly involving a minor girl. The defense suggested that there was a financial dispute, wherein the complainant

allegedly received Rs. 500,000.00 (rupees five lac) from the accused for arranging the marriage of his daughter elsewhere and when the money was wanted back, a false case was lodged. While the witnesses denied this, their inability to explain the long delay, absence of independent evidence, and inconsistencies raise doubt about the motive behind lodging the case. In other words, it could be said that the prosecution's case hinges solely on the testimony of interested witnesses i.e. the complainant and his two daughters, with no corroboration from independent or medical evidence. The delay in lodging the FIR, coupled with material contradictions and omissions in their statements, weakens the prosecution's case significantly. The inconsistencies regarding the relationship with the accused, the nature of the incident, and the treatment of vital evidence like the torn shirt, all raise serious doubts, which under the criminal justice principle of benefit of doubt, must go to the accused.

10. I have noted that in the instant case, the allegation levelled against the appellant is under the thick clouds of doubt especially when the prosecution has not been able to prove the motive and bring on record circumstantial evidence, as the appellants has disclosed his age to be 65 years in his statement recorded under section 342 Cr.P.C. (Ex:09) by the learned trial Court on 23.08.2019, as such, now the age of appellant becomes more than 70 years. The incident is alleged to have taken place in the year 2019 when the age of appellant was 65 years, as such, it would not appeal to the prudent mind to believe that an aged person of 65 years would demand a hand of young girl, who is stated to be of 13/14 years, for

his marriage. This aspect, coupled with the foregoing discussion, was not considered by the learned trial Court. While convicting the appellant, the trial Court failed to adopt the safest course, which embodies the true spirit of the safe administration of criminal justice. This is despite the fact that there were notable discrepancies and flaws in the testimonies of the prosecution witnesses. It is a well-settled principle of criminal jurisprudence that no conviction can be sustained unless the prosecution adduces evidence that is reliable, trustworthy, and unimpeachable free from material discrepancies that cast doubt on the veracity of the prosecution's case. For the sake of argument, even if it is believed that a scuffle took place between the complainant and the appellant, and that the victim Sona intervened, it would imply that there was no deliberate intention on the part of the appellant to tear her shirt at the breast with the purpose of exposing her. Thus, the essential element of *mens rea* on the part of the appellant is missing, which was not properly considered by the learned trial Court.

11. The material contradictions highlighted in the testimonies of the prosecution witnesses undermine the credibility of their statements and cast serious doubt on their presence at the scene of the incident. These inconsistencies are sufficient to render the prosecution's case highly doubtful. In this regard, reliance is placed on the case of *Zaffar v. The State* [2018 SCMR 326], wherein the Hon'ble Supreme Court of Pakistan held that:

'Having discussed all the aforesaid aspect of the case, it has been observed by us that, medical evidence, motive, recovery and for that matter absconding of appellant are merely supportive/corroborative piece of evidence and presence of eyewitnesses at the place of occurrence at the relevant time

has been found by us to be doubtful, no reliance can be placed on the supportive/corroborative piece of evidence to convict the appellant on capital charge.'

In another case, **Mst. Shazia Parveen v. The State [2014 SCMR 1197]**, the Hon'ble Supreme Court of Pakistan held that:

"4. Such related witnesses had failed to receive any independent corroboration inasmuch as there was no independent evidence produced regarding the alleged motive, alleged recovery of rope was legally inconsequential and the medical evidence had gone long away in contradicting the eyewitnesses in many ways. The duration of the injuries and death recorded by the doctor in the postmortem examination report had rendered the time of death allegedly by the eye witness quite doubtful, the stomach contains belied the eyewitnesses regarding the time of occurrence".

It is a well-settled principle of law that, to extend the benefit of doubt to an accused, it is not necessary that there be numerous circumstances creating doubt. Even a single circumstance raising a reasonable doubt in the mind of a prudent person regarding the guilt of the accused is sufficient for granting such benefit. This benefit is not to be extended as a matter of grace or concession, but as a matter of right. It is also a well-recognized legal maxim that "it is better that ten guilty persons be acquitted than one innocent person be convicted." In this respect, reliance is placed on the case of **Muhammad Hassan and Another v. The State (2024 SCMR 1427)**, wherein the Honourable Apex Court held :

"According to these principles, once a single loophole/lacuna is observed in a case presented by the prosecution, the benefit of such loophole/lacuna in the prosecution case automatically goes in favour of an accused."

Similarly, in **Mohammad Mansha v. The State [2018 SCMR 772]**, the Honourable Supreme Court of Pakistan held as under:

"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". Reliance in this behalf can be made upon the cases of Tariq Parvez v. The State (1995 SCMR 1345), Ghulam Qadir and 2 others v. The State (2008 SCMR 1221), Mohammad Akram v, The State (2009 SCMR 230) and Mohammad Zaman v. The State (2014 SCMR 749)."

12. In view of the above facts and circumstances of the case, I am of the considered view that prosecution has failed to establish the guilt of appellant at home without reasonable doubt and any doubt arising in the case of prosecution is to be resolved in favour of the accused as burden of proof is always on prosecution to prove its case beyond reasonable shadow of doubt. The inconsistencies in the testimonies of the prosecution witnesses, the unexplained delay in lodging the FIR, the lack of medical evidence, and the absence of corroborating eyewitnesses all contribute to creating reasonable doubt about the appellant's involvement in the alleged offenses. As such, in the light of what has been discussed above, I hold that the appellant is entitled to the benefit of the doubt. Therefore, the appeal is **allowed**, and the conviction and sentence passed by the trial court are set aside. The appellant is acquitted of all charges. He shall be released forthwith, if not required in any other custody case.

JUDGE

Abdullah Channa/PS
Dated: 14.04.2025