IN THE HIGH COURT OF SINDH, CIRCUIT COURT LARKANA

Cr. Appeal No. S-08 of 2025

Applicant	:	Molvi Asim @ Muhammad Asim, Through Mr. Rashid Mustafa Solangi, advocate.
Respondent	:	The State Through Mr. Nazeer Ahmed Bhangwar, DPG
Date of hearing	:	21.07.2025
Date of order	:	30.07.2025

J U D G M E N T

KHALID HUSSAIN SHAHANI, J -. *Appellant Molvi Asim* calls into question the legality and propriety of the judgment dated February 7, 2025, passed by the learned 1st Additional Sessions Judge, MCTC/GBV Court, Kamber, in Sessions Case No.300/2024, whereby, he was convicted for an offence punishable under Section 377-B PPC and sentenced to suffer rigorous imprisonment for 14 years, along with a fine of Rs. 1,000,000/- (one million rupees), in default whereof he was to undergo simple imprisonment for one year more. The benefit of Section 382-B Cr.P.C. was, however, extended to him.

2. The prosecution's case stems from FIR No. 126/2024, registered on June 11, 2024, at P.S. A-Section Shahdadkot, on the complaint of Muhammad Ismail Dayo. The complainant alleged that on June 9, 2024, at about 01:00 p.m, his 7/8-year-old daughter, Baby Bisma, a student of the appellant (a teacher at Yousuf Masjid), went to purchase sweets but did not return. Upon searching, the complainant, accompanied by his sister (PW-2 Mst. Amna Dayo) and brother (Muhammad Farooque, though not examined), reached an abandoned house near the appellant's residence. Therein, they allegedly heard cries from Baby Bisma and, upon entering, found her in a naked position on the first floor, with the appellant (Molvi Asim)

also present in his shalwar, who then fled the scene. Baby Bisma, upon inquiry at home, disclosed that the appellant had seduced her near the Masjid, taken her to the house, and attempted to commit rape after removing her clothes. The complainant stated that he waited two days for his "nek-mard" (later clarified as his father) to arrive before lodging the FIR.

3. The prosecution, in support of its allegations, examined five witnesses: PW-1 Muhammad Ismail Dayo (Complainant), PW-2 Mst. Amna Dayo (Eyewitness), PW-3 Muhammad Ishaque Dayo (Mashir of Site Inspection and Arrest), PW-4 HC Ahmed Ali Soomro (Author of FIR), and PW-5 ASI Wazeer Ali Soomro (Investigating Officer). Crucially, the alleged victim, Baby Bisma, was not produced as a witness, with the learned ADPP for the State submitting an application (Exh. 08) stating she was "under age/minor unable to record her statement." The appellant, in his statement under Section 342 Cr.P.C. (Exh. 09), denied all allegations, claimed innocence, and opted not to lead defense evidence.

4. The learned trial court, after considering the evidence found "no case against the accused of attempt to commit rape with baby Bisma has been proved" under Section 376/511 PPC, primarily because the victim herself was not examined to corroborate the alleged disclosure of attempted rape. However, it convicted the appellant for offence under Section 377-B PPC for "sexual abuse and assault," holding that the prosecution proved the appellant took Baby Bisma into an abandoned house, removed her clothes, and made her naked, thus subjecting her to sexual abuse. The court dismissed the defense contentions regarding the two-day delay in FIR, inter-se relationship of witnesses, minor contradictions, and the accused's profession, citing various precedents. It also rejected the defense's claim of false implication due to a prior dispute for lack of proof.

5. The appellant has assailed the impugned judgment on numerous grounds, inter alia that impugned judgment is a result of misreading and non-reading of the evidence. Learned counsel for appellant mainly contended that the prosecution's case is riddled with material contradictions, omissions, and inconsistencies that render it utterly unreliable. His key arguments includes that there was an inexplicable delay of two days in lodging the FIR, despite the police station being merely 1.5 KM away. He questioned the plausibility of a father waiting two days for a "nek-mard" or "father" (highlighting the inconsistency in the term used) to arrive before reporting such a heinous crime involving his minor daughter. The place of incident is inconsistently stated, fluctuating between the appellant's house in the FIR/charge and an "abandoned house near the accused's house" in the ocular evidence. He emphasized that PW-2 (eyewitness) admitted she had never seen the accused's house, making her identification of an abandoned house *near* it illogical. Furthermore, he pointed out contradictions in the physical description of the house (e.g., absence/presence of boundary walls or structures on the first floor). Despite the alleged incident occurring in a "thickly populated area" during "broad daylight," no independent witnesses were cited or examined. The IO's admission that he did not record statements of 15-20 persons present at the inspection site further compounded this omission. The non-production and non-examination of the minor victim (Baby Bisma, 6/7 years old) was a fatal flaw. He argued that the trial court erred in accepting the ADPP's plea without assessing the child's competence to testify under Article 3 of the Qanun-e-Shahadat Order, 1984. The entire premise of sexual abuse and attempted rape rested on the unverified disclosure made by the child to the complainant and eyewitness. The complete lack of medical examination of the victim or collection of her clothes, even in a case of attempted rape/sexual abuse, deprived the prosecution of crucial

corroborative evidence. The FIR claimed the incident was witnessed from a roof top, while the witnesses in court deposed they heard cries from the street and then entered. This material contradiction indicated an embellishment in the initial report. Despite the presence of multiple male relatives of the victim, no effort was made to apprehend the fleeing appellant, which defies natural human conduct. He maintained that the appellant was falsely implicated due to a prior dispute over a door installation towards the Masjid, which the appellant opposed, although this was denied by the complainant. The overall prosecution story was vague, sketchy, and did not appeal to a prudent mind, particularly the reaction of a father seeing his daughter in such a compromised position. He concluded that the contradictions and omissions collectively created an overwhelming reasonable doubt, warranting the appellant's acquittal. Learned counsel relied upon the case laws cited at 2025 SCMR 810, 2014 MLD1 1073, 2018 SCMR 149 and un-reported appeal No.S-82 of 2020 of Sindh High Court, Hyderabad Circuit Court Larkana.

6. Conversely, the learned Deputy Prosecutor General, vehemently supported the impugned judgment, asserting that the prosecution had proved its case beyond a shadow of doubt. He countered the defense arguments that the incident was witnessed by the complainant and his sister (PW-2), whose testimonies fully supported the prosecution case. He argued that there were no material contradictions or improvements that would create reasonable doubt in their statements, which were confidence-inspiring and connected the accused to the offense. He submitted that the two-day delay in lodging the FIR was adequately explained, as families in child abuse cases are often reluctant to immediately report due to embarrassment, humiliation, and the trauma suffered. He argued that while witnesses might be related, their inter-se relationship alone cannot discard their statements, as the intrinsic

value of evidence is paramount. He further explained that in tribal areas like Kamber, people are often reluctant to come forward as independent witnesses due to fear of enmity. He dismissed any perceived contradictions as minor variations that naturally creep in over time and do not affect the core of the prosecution's case, particularly when witnesses are testifying about a traumatic event. He emphasized that the witnesses were uniform on the basic facts, especially finding Baby Bisma naked. Since the case was not one of actual rape but attempted rape and child abuse, he argued there was no necessity to subject the victim to a medical examination or collect her clothes, as such evidence would not be crucial for the charges leveled. He justified the non-examination of Baby Bisma (6/7 years old) by stating she was too young to provide a specific account in court. He asserted that no family would falsely implicate someone in such a case, thereby ruining their child's life. Learned advocate contended that the accused being a Mualim (teacher) does not preclude him from committing such a heinous offense, lamenting that such incidents are unfortunately prevalent. He further argued that defense failed to bring any concrete evidence or witnesses to prove the alleged prior enmity or the door dispute. He concluded that the prosecution had successfully established its case beyond reasonable doubt.

7. This Court meticulously perused the record and proceedings of the trial court, heard the learned counsel for the appellant, the learned DPG and given careful consideration to their respective contentions.

8. At the outset, it is a settled principle of criminal jurisprudence that the prosecution must prove its case against an accused person beyond any reasonable doubt. Any doubt, however slight, arising from the evidence or lack thereof, must accrue to the benefit of the accused. In light of this principle, let’s proceed to

examine the evidence on record. The incident is alleged to have occurred on June 9, 2024, but the FIR was lodged on June 11, 2024, a delay of two days. The complainant (PW-1) initially stated in the FIR that he waited for his nek-mard, and in cross-examination, he clarified this as his father. While the learned trial court, citing Zahid V/S The State (2022 SCMR 50), observed that delay in such sensitive cases can be natural due to trauma and shame, the explanation offered (waiting for an elder's arrival) stretches credulity when a minor daughter is found in such a deplorable state. The natural human reaction of a father in such circumstances would be immediate action, not a two-day wait for consultation, especially given the short distance to the police station. This delay, while not fatal on its own, when coupled with other weaknesses, certainly casts a shadow of doubt on the promptness and spontaneity of the report. The inconsistency in the term *nek-mard vs. father* further diminishes the precision of the explanation.

9. This is perhaps the most glaring inconsistency in the prosecution's case, fundamentally impacting the credibility of the ocular account. The FIR, the charge framed, and the accused's statement under Section 342 Cr.P.C. all point to the accused's house as the scene of the crime. However, the complainant (PW-1) and eyewitness (PW-2) consistently deposed that the incident occurred in an abandoned house situated very near to the house of accused Asim Kharani. This is a fundamental divergence that cannot be termed a minor variation. The precise location of the crime is a basic tenet of any criminal case. Furthermore, PW-2 Mst. Amna, while claiming to have entered this abandoned house near the accused's scene, admitted in cross-examination, “but it is fact that I had never seen the house of accused Asim”. If she had never seen the accused's actual house, her identification of an abandoned house *near* his house becomes highly questionable and renders her testimony unreliable on

this crucial point, thus impeaching her credibility. PW-1 stated "No construction was available on the first floor... the outer wall (Palvero) was not constructed, as the same had already fallen down." PW-2 said the first floor was "without surrounding walls (Palvera)." However, PW-3 (Mashir) stated the place had a "wall in shape of surrounding wall Palvera, having the height of 03 to 04 feet," a direct contradiction with PW-1's claim of a fallen wall. The Investigating Officer (PW-5) further confused the matter by stating in cross-examination that the place of incident was the house of Asim and that it was the central room of the house, which was situated on the ground floor of the house. This directly contradicts the complainant and eyewitness who found the victim on the first floor of an abandoned house. Such a blatant discrepancy in the core element of the *locus crimini* strikes at the very root of the prosecution's narrative and cannot be brushed aside as a minor variation.

10. The prosecution claims the incident occurred in a thickly populated area during daylight (1:00 pm). Yet, both the complainant (PW-1) and eyewitness (PW-2) admitted that no other independent persons came at the place of incident from nearby houses on hearing cries of my daughter/baby Bisma. Their voluntary explanations, because all those had already gone to Quetta (PW-1) and because it was afternoon time of peak summer season (PW-2), appear to be convenient afterthoughts and serve as mere embellishments. This is further contradicted by PW-3 (Mashir), who stated that more than 30/40 persons from our neighbor were also available, when investigating officer had visited the same. More alarmingly, the investigating officer (PW-5) admitted that despite 15-20 persons being present at the time of inspection, he had not recorded their statements, so also, they had also not disclosed anything to me about the incident. This critical omission by the investigating agency, coupled with the conflicting accounts of public presence, significantly weakens

the prosecution's claim of a public incident and raises serious doubts about the veracity of the cries being heard. The argument that people are reluctant to come forward in tribal areas does not excuse the IO's failure to even record the statements of those already present. The victim, Baby Bisma, aged 6/7 years, was concededly not examined in court. The statement produced at Ex.08 stated she was under age/minor unable to record her statement, which the trial court readily accepted. This is a profound procedural flaw. While a child's tender age may affect their ability to testify, Article 3 of the Qanoon-e-Shahadat Order, 1984, mandates that "All persons shall be competent to testify unless the Court considers that they are prevented from understanding the questions put to them, or from giving rational answers to those questions, by tender years..." The proper course was for the learned trial court to conduct a preliminary examination (voir dire) of the child to assess her competence, irrespective of her age. Simply giving her up as unable to record her statement without such an assessment is an irregularity that cannot be condoned. The prosecution's entire case regarding sexual abuse and assault hinges on the inferences drawn from her alleged disclosure to the complainant and eyewitness. Without her direct testimony, subjected to cross-examination, or at least a judicial determination of her inability to testify, the crucial link connecting the accused's actions to the offense of sexual abuse (as distinct from just finding her naked) remains unproven by admissible direct evidence. The trial court itself noted that the *"allegation of attempt of rape has not been proved... because, per prosecution story, it was she, who had disclosed to the complainant and witnesses about attempt of committing rape on her,"* yet it proceeded to convict for sexual abuse on the same unverified premise.

11. There is no medical evidence on record, nor were the victim's clothes collected. The learned DPG's argument that this was

unnecessary as it was a case of attempted rape and not actual rape is legally untenable. Even in cases of attempted rape or sexual abuse without penetration, medical examination for signs of struggle, bruises, or trauma on the victim's body is vital corroborative evidence. The absence of such evidence, especially when the victim was allegedly found naked, constitutes a significant investigative omission and deprives the prosecution of an independent and crucial piece of corroboration. The FIR explicitly states, *after going at the roof top of the house we saw that the shalwar of my daughter Bisma was removed...* This implies observation from a rooftop. However, all prosecution witnesses (PW-1, PW-2) in their court depositions stated they heard cries *from the street* and then *entered inside the house* by pushing the outer door. This is a material contradiction between the initial complaint and the subsequent ocular account, suggesting an embellishment in the FIR that was later abandoned, thereby casting further doubt on the entire prosecution narrative. This inconsistency significantly impeaches the credence of the prosecution witnesses.

12. The prosecution's version suggests that the complainant, his sister, and brother and potentially other villagers as per PW-3's statement regarding the IO's visit were present when the accused allegedly fled. It is a natural human instinct for aggrieved parties, especially a father seeing his child in such a state, to immediately attempt to apprehend the culprit. The record is silent on any such attempt, which makes the narrative less convincing and creates doubt about the actual sequence of events, thus highlighting an incoherent aspect of the evidence. The argument of the learned DPG regarding confidence-inspiring evidence falls short here. The defense consistently raised the plea of false implication due to a prior dispute over installing a door towards the Masjid. While the trial court found no concrete proof of this, the persistence of this defense, coupled with the numerous other weaknesses in the prosecution's case, cannot be

entirely ignored as it could potentially provide a plausible alternative explanation for the charges, thus contributing to the cumulative effect of reasonable doubt. The onus was on the prosecution to dispel any such motive if it existed, by presenting an unimpeachable case. The learned trial court appears to have fallen into error by dismissing the profound and material contradictions and omissions in the prosecution's evidence as small variations and improvements of unimportant character. A bare reading of the depositions reveals glaring inconsistencies regarding the locus crimini, the presence of independent witnesses, and the manner in which the incident was allegedly discovered. The non-examination of the victim without a proper competence test, and the complete absence of medical corroboration, are fundamental flaws that cannot be overlooked. The cumulative effect of these infirmities creates a pervasive cloud of reasonable doubt over the prosecution's case. It is a cardinal principle that the burden of proof rests entirely on the prosecution, and any failure to discharge this burden, by establishing the charge beyond reasonable doubt, must result in the accused's acquittal. The evidence, when scrutinized against the principles of reliability and creditworthiness, fails to withstand the test of judicial scrutiny.

13. The learned trial court convicted the appellant under Section 377-B PPC. For clarity, reproduce the relevant provision of the Pakistan Penal Code, 1860:

> Section 377-B: Sexual abuse.
>
> *"Whoever employs, uses, forces, persuades, induces, entices, or coerces any person to engage in, or assist any other person to engage in fondling, stroking, caressing, exhibitionism, voyeurism or any obscene or sexually explicit conduct or stimulation of such conduct either independently or in conjunction with other acts, with or without consent where age of person is less than eighteen years, is said to commit the offence of sexual abuse."*

The essential ingredients to constitute an offence under Section 377-B PPC are:

1. *The accused must employ, use, force, persuade, induce, entice, or coerce a person.*
2. *The purpose must be to engage in, or assist another to engage in, specific acts such as fondling, stroking, caressing, exhibitionism, voyeurism, or any obscene/sexually explicit conduct or its stimulation.*
3. *The age of the person subjected to such acts must be less than eighteen years.*

14. While the victim, Baby Bisma, undoubtedly falls within the age criterion (7/8 years old), the prosecution's ability to prove the other ingredients, particularly the *act* of sexual abuse beyond reasonable doubt, becomes highly problematic given the flaws identified in the ocular evidence and the absence of crucial corroboration. The trial court's conviction under Section 377-B PPC was based on the premise that the prosecution proved the appellant "had taken baby Bisma inside one abandoned house, where, he removed her shalwar and made her naked and thereby subjecting her to sexual abuse and assault." However, this finding is drawn largely from the inferences made from the depositions of PW-1 and PW-2. The locus crimini itself is inconsistent and highly disputed. Without a clear and undisputed place of incident, the very foundation of where the alleged act took place is shaky. This directly impacts the veracity of the claim that the accused committed the acts at a specific location. The non-examination of the victim (Baby Bisma) is a critical void. Her alleged "disclosure" to the complainant and eyewitness, which forms the basis for inferring the appellant's intent and the nature of the act (removing clothes, attempting rape, and by extension, sexual abuse), remained unverified by judicial scrutiny. The trial court explicitly stated that the "allegation of attempt of rape has not been proved... because, per prosecution story, it was she, who had disclosed to the complainant and witnesses about attempt of committing rape on her." This same reasoning should logically extend to the specific acts of

"sexual abuse" that the victim allegedly described, as the proof for both originates from her unverified narrative. In the absence of the prime witness's testimony, the essential elements of the offense, particularly the *mens rea* and the specific *acts* of sexual abuse, become unprovable beyond reasonable doubt. The absence of medical evidence is a significant lacuna. Even if the incident did not involve penetration, any acts of "fondling, stroking, caressing" or "removing her shalwar and made her naked" could potentially leave physical signs of struggle or trauma, especially on a minor child. The lack of such objective evidence leaves the alleged physical act solely reliant on the dubious ocular accounts. The contradictions in the manner of discovery (FIR claiming "from their roof" vs. witnesses claiming "from the street" and entering) further diminish the reliability of the eyewitness accounts as to what precisely they observed and how they observed it. This inconsistency directly affects the credibility of the narrative describing the discovery of the alleged "sexual abuse." The failure of the complainant and eyewitnesses to apprehend the fleeing accused, despite allegedly witnessing the scene, also raises questions about the entirety of the incident as narrated, making it difficult to accept the chain of events as presented by the prosecution for the purpose of proving the offense under Section 377-B PPC. While the act of making a child naked and exposing them to such a situation would generally fall within the ambit of "obscene or sexually explicit conduct or stimulation of such conduct" as per Section 377-B PPC, the prosecution has failed to establish *beyond reasonable doubt* that the appellant was the person who actually committed these acts in the manner described, due to the cumulative effect of the serious flaws, contradictions, and omissions in their evidence. The evidence on record, when meticulously scrutinized, does not provide an unimpeachable basis to sustain a conviction under Section 377-B PPC.

The benefit of these grave doubts must, therefore, be extended to the appellant.

15. In view of the foregoing discussion, the prosecution has failed to establish the charges against the appellant, Molvi Asim @ Muhammad Asim, beyond all reasonable doubt. The material contradictions, omissions, and inconsistencies in the ocular evidence, coupled with the absence of crucial corroborative evidence (victim's testimony, medical report), render the prosecution story unsafe to maintain a conviction. Therefore, this appeal is allowed. The impugned judgment dated February 7, 2025, passed by the learned 1st Additional Sessions Judge, MCTC/GBV Court, Kamber, is hereby set aside. The appellant, Molvi Asim @ Muhammad Asim, is acquitted of the charge under Section 377-B PPC. He shall be released from custody forthwith, unless required in any other case. Let a copy of this judgment be transmitted to the learned trial court for information;

J U D G E

Asghar Altaf/P.A