IN THE HIGH COURT OF SINDH, CIRCUIT COURT MIRPURKHAS

Present:-

Mr. Justice Shamsuddin Abbasi,
Mr. Justice Muhammad Hasan (Akber).

Criminal Appeal No.D-19 of 2025
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Appellants	1. Hamz Ali @ Hamzo son of Rehmatullah through Mr. Muhammad Waris Khyber, Advocate. 2. Mashooque Ali son of Dhani Bux through Mr. Naeem Akhtar Talpur, Advocate. 3. Wazir son of Allah Bux (since deceased – proceedings abetted).
Respondent	The State through Mr. Shahzado Saleem Nahiyoon, Additional Prosecutor General (Sindh).
Date of hearing	**22.12.2025**
Date of judgment	**22.12.2025**

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JUDGMENT

SHAMSUDDIN ABBASI, J:- Hamz Ali @ Hamzo son of Rehmatullah, Mashooque Ali son of Dhani Bux and Wazir son of Allah Bux, appellants, were tried by learned Additional Sessions Judge-Khipro, District Sanghar, in Sessions Case No.319 of 2021 (FIR No.126 of 2021) registered at Police Station Khipro, District Sanghar, for offences under Section 376(2), 377-B and 34, PPC. By a judgment dated 31.08.2022 they were convicted under Section 376(2) read with Section 34, PPC, and sentenced to life imprisonment and to pay a fine of Rs.2,00,000/- each and to suffer simple imprisonment for a further period of six months in lieu of fine, however, the benefit in terms of Section 382-B, Cr.P.C. was extended to them.

2. FIR in this case has been lodged on 08.07.2021 at 10:15 am whereas the incident is shown to have taken place on 27.06.2021 at 8:00 pm. Complainant Abdul Sattar son of Moula Bux has stated that on the fateful day he alongwith his maternal uncle Umaid Ali and other family members was present in the house while his younger unmarried sister Basran, aged about 18 /19 years, went out of the house to give water to cattle. It was about 8:00 pm they heard cries of Basran, coming from western side of field. The complainant alongwith Umaid Ali rushed towards western side and saw in the light of torches Hamzo son Rehmatullah and Mashooque son of Dhani

Bux grappling Basran and Wazir committing zina with her. They raised hakals upon which all three of them fled away towards northern side. On query, Basran told them that while she was sitting beside the cattle, the three accused came there, put hands on her mouth and took her to Jantar where they committed forcible zina with her turn by turn. The complainant took his sister to home and thereafter approached the accused party as well as Nekmards, who assured him to hold Faisla and failing to get any response from them, he went to P.S. and lodged FIR on 08.07.2021.

3. Pursuant to the registration of FIR, the investigation was followed and in due course challan was submitted before the Court of competent jurisdiction, whereby the appellants were sent to face the trial. Worth to mention here that initially the FIR was registered under Section 377-B, PPC and subsequently Section 376(2), Cr.P.C. was added in the final challan. It will also not be out of place to mention here that during pendency of the appeal, appellant Wazir Ali died during his confinement in jail and proceedings against him stands abetted vide order dated 09.05.2024.

4. A charge in respect of offences under Sections 376(2), 377-B and 34, PPC was framed against the appellants. They pleaded not guilty to the charged offences and claimed to be tried..

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

6. Complainant Abdul Sattar appeared as witness No.1 Ex.6, Mst. Basran (victim) as witness No.2 Ex.7, Umaid Ali as witness No.3 Ex.8, Bakhsh Ali as witness No.4 Ex.9, Dr. Sonia Kumari as witness No.5 Ex.10, Dr. Haresh Kumar as witness Ex.6 Ex.11 and Inspector Muhammad Nadeem (Investigating Officer) as witness No.7 Ex.12. All of them have exhibited certain documents in their evidence and were subjected to cross-examination by the defence. Thereafter, the prosecution closed its side vide statement Ex.13.

7. Statements under Section 342, Cr.P.C. of appellants were recorded at Ex.14, Ex.15 and Ex.16 respectively. They have denied the allegations imputed upon them by the prosecution, professed their innocence and

stated their false implication. They opted not to make a statement on Oath under Section 340(2), Cr.P.C. nor produce any witness in their defence.

8. Upon culmination of the trial, the learned trial Court found the appellant guilty of the offence under Section 376(2), PPC, and, thus, convicted and sentenced them as detailed in para-1 (supra), which necessitated the filing of the listed appeal.

9. It is jointly contended on behalf of the appellants that they have been falsely roped in this case by the complainant as otherwise they have nothing to do with the alleged offence and have been made of the circumstances. It is next submitted that the FIR has been lodged after 11 days of the incident and that too without furnishing any plausible explanation. No independent witness has been produced by the prosecution in support of its case and the witnesses who have been examined are related, interested and inimical to the appellants, hence their testimony cannot be termed as trustworthy and confidence inspiring. They were inconsistent with each other rather contradicted on crucial points. Per learned counsel the incident occurred at night time and the source of identification is torch light, which too has not been produced at trial, therefore, the identification of appellants remained doubtful. The medical evidence is in conflict with ocular version and DNA test is negative. The learned trial Court did not appreciate the evidence adduced by the prosecution in line with the applicable law and surrounding circumstances and based its findings on misreading and non-reading of evidence and awarded conviction without application of a conscious judicial mind, hence the convictions and sentences awarded to the appellants, based on such findings, are not sustainable in law and liable to be set-aside and the appellants deserve to be acquitted of the charge and prayed accordingly. Lastly, he argued that he will be satisfied if this appeal may be converted into 376(i) PPC whereby minimum sentence with 10 years can be awarded. In support of his submissions, the learned counsel for the appellants has relied upon the cases of *Muhammad Nawaz and others v The State and others* (2016 SCMR 267), *Sardar Bibi and another v Munir Ahmed and another* (2017 SCMR 344) and *Abdul Rahim v Ali Bux and 4 others* (2017 P.Cr.L.J. 228).

10. The learned Additional Prosecutor General while controverting the submissions of learned counsel for the appellants has submitted that the delay in FIR has been well explained. The appellants are nominated in the

FIR and the victim while appearing before the learned trial Court has fully identified them with their names and also involved them in the commission of offence. It is next submitted that the witnesses of ocular account as well as victim while appearing before the learned trial Court remained consistent on each and every material point, they were subjected to lengthy cross-examination but nothing adverse to the prosecution story has been extracted which can provide any help to the appellants and mere relationship with each other is not a sufficient ground to discard their evidence. The medical evidence supports the ocular version which fully corroborates the story of the FIR. The prosecution in support of its case has produced ocular as well as medical evidence coupled with circumstantial evidence, which was rightly relied upon by learned trial Court and the minor discrepancies are of no importance keeping in view heinousness of the offence. The findings recorded by the learned trial Court in the impugned judgment are based on fair evaluation of evidence and documents brought on record, to which no exception could be taken. The prosecution has successfully proved its case against the appellants beyond shadow of any reasonable doubt, thus, the appeal filed by the appellants warrant dismissal. On query posed, he admitted that appellants have been convicted for an offence under Section 376(2), PPC, which was not in field and omitted well before the dates of commission of offence as well as awarding conviction. He, therefore, suggested that the conviction and sentence awarded to the appellants may be converted from Section 376(ii) PPC under section 376(i) PPC. However, learned APG has recorded his no objection if the sentence is converted into 376(i) PPC.

11. We have given our anxious consideration to the submissions of both the sides and gone through the entire material available on record with their able assistance.

12. Insofar as the first contention of learned counsel for the appellants that the delay of 11 days in lodgment of FIR has caused a big dent to the prosecution case and prosecution overall has failed to discharge its duty of proving the guilt of the appellants and shifting onus on them is concerned, suffice to observe that the prosecution has examined as many as seven witnesses including complainant Abdul Sattar, eye-witness Umaid Ali and victim Mst. Basran. They all have fully involved the appellants in the commission of offence and remained consistent on each and every aspect of

the matter and the minor contradictions and discrepancies do not cast doubt on the guilt of the appellants in the judicial mind of the Court. Instead, these discrepancies are found to be trivial and can be overlooked, especially when the victim has directly named the appellants and involved them in the commission of offence. It has also come on record that the appellants, Hamz Ali and Mashooque Ali, are relatives of the victim as well as co-villagers and they have failed to point out any animosity or motive that could justify their false implication in this case.

13. It is by now well settled that prosecution witnesses are not to be expected to provide statements with mathematical precision, but to provide truthful testimony to the best of their recollection. Minor discrepancies or inconsistencies in testimony should be disregarded as long as the core facts remain consistent. It follows that parrot like narration of facts with mathematical precision is not required, nor necessarily trustworthy. As held by the Hon'ble apex Court in the case of *Aqil v. The State* (2023 SCMR 831), parrot like statements are discredited by the Courts. It is a normal course of human conduct that minor discrepancies may occur while narrating a particular incident. In appreciating the effect of minor discrepancies and contradictions in the prosecution case, the Hon'ble apex Court in the case of *Shamsher Ahmed & another v. The State & others* (2022 SCMR 1931) unequivocally held that undue importance should not be attached to such discrepancies that do not shake the salient features of the prosecution case, rather they should be ignored. The accused cannot claim a premium for such minor discrepancies and attaching too much importance to such insignificant inconsistencies would destabilize the purpose of criminal administration of justice, which is not solely intended for acquittal based on minor discrepancies. Likewise, the delay occasioned in lodgment of FIR would also not fatal to the prosecution case keeping in view the gravity of offence wherein a young girl has been subjected to an act zina by three men turn by turn, duly nominated in the FIR, therefore, if owing to some anguish and shock some time is consumed in lodgment of FIR, it cannot be considered fatal for prosecution case. Even otherwise, the complainant in his deposition has explained that he did not disclose the fact of zina to anyone and did not lodge FIR in time due to fear of reputation and lodged FIR failing to hold Faisla by the Nekmards. This explanation seems to a valid ground that he being hesitant to report the trauma just to protect family honour coupled with fear of exposition of his sister.

14. As to the argument that neither any independent is named in the FIR nor produced by the prosecution at trial to provide an independent support to the witnesses of ocular account and this fact alone is sufficient to discard the evidence of related and interested witnesses, who too have failed to prove their presence at the crime scene and their evidence cannot be termed as trustworthy and confidence inspiring, therefore, the conviction and sentence awarded to the appellants is unjustified. A bare perusal of the statements of complainant and eye-witness reveals that they have furnished graphic details of the incident and established their presence at the place of occurrence, which has not been shattered by the defence during cross-examination. Both of them have deposed same facts in their evidence, which are in line to that of their earlier statements recorded by the Investigating Officer during investigation. They have supported the case of the prosecution and deposed full account of the incident and also implicated the appellants in the commission of offence charged with. No doubt they are related to deceased, despite they cannot be considered as interested witnesses rather they are natural witnesses because they have explained their presence at the scene of occurrence. The complainant has deposed that while he was present in his house he heard cries of victim and came out of the house alongwith Umaid Ali and saw Hamz Ali, Mashooque and Wazir committing rape with Basran in the crop of Jantar. The eye-witness Umaid Ali has supported the complainant and deposed that on hearing cries of victim they went to the place from where the cries were coming and saw appellants coming from the crop and ran away and on query victim disclosed that all three accused have forcibly committed zina with her. The presence of complainant and eye-witness is natural and their testimony cannot be disbelieved because the Court has to see the truthfulness and credibility of such witnesses. Both the learned counsels for the appellants have vehemently argued that the story mentioned in the FIR has been supported by the interested witnesses and no independent corroboration has been provided by any independent witness. This submission cannot be appreciated because the law has now well settled on the point that the fact of relationship would not be sufficient to smash the evidence adduced by such witnesses or to disbelieve their credibility as well as legal sanctity. Even otherwise the rule requiring independent corroboration of testimony of related or interested witnesses is a rule of prudence which is not to be applied rigidly in each case especially when the Courts of law do not feel its necessity. Mere relation of a witness would not dub him as an interested witness because interested witness is one who has, of his own, a motive

to falsely implicate the accused, is swayed away by a cause against the accused, is biased, partisan, or inimical towards the accused, hence any witness who has deposed against the accused on account of the occurrence, by no stretch of imagination can be regarded as an "interested witness". There can be cases like the present one where implicit reliance can be placed on the testimony of related witnesses if it otherwise inspiring confidence of the Court. It is noteworthy that witnesses on account of their relations may be found more reliable, because they, on account of their relationship would not let go the real culprit or substitute an innocent person for him. Both complainant and eye-witness have deposed full account of the incident and fully involved the appellants in the commission of offence. We are am, thus, of the view that both complainant and eye-witness have sufficiently explained the date, time and place of occurrence as well as each and every event of the occurrence in clear cut manner. They while appearing before the learned trial Court provided full support to the case of the prosecution. They were subjected to lengthy cross-examination by the defence but could not extract anything from them as they remained stick to their stance and amply proved the identification of appellants. We are, thus, of the firm view that evidence of the complainant and eye-witness cannot be discarded merely on account of their relationship with the victim. I am also cognizant of the fact that in a crime of rape ground of relationship is misplaced and misconceived apart from being insensitive and absurd and does not has any merit.

15. The other argument that there was no sign of violence or injury on the body of victim more particularly when she has been subjected to rape by three person turn by turn and this sole aspect of the matter has made the case of the prosecution extremely doubtful. This contention of the learned counsel is not helpful to the appellants and merits no consideration. Guidance in this behalf is taken from the judgment of Hon'ble Supreme Court of Pakistan, delivered on 21.10.2021 in Criminal Petition No.75-Q of 2021 (Re: *Zahid v The State)* wherein it has been held as under:-

> *"In the instant case, the petitioner was proceeded against in pursuance of the aforesaid crime report wherein serious allegations are leveled against him. The most alarming allegation against the petitioner is that he tried to sexually harass a young girl aged about 7 years, which is a very disgusting act. The petitioner was investigated at length and was found involved as per accusation leveled in the crime report. During the course of trial, the learned Trial Court after*

taking into consideration all the facts and circumstances of the case and the evidence available on the record convicted the petitioner as stated above, which conviction and sentence was upheld by the learned High Court. Today during the course of proceedings before us we have carefully evaluated the testimonies of prosecution witnesses i.e. Mst. Najma, complainant (PW-1) and Mst. Shahida Bibi (PW-2). The whole prosecution case qua ocular account hinges upon the testimonies of these two witnesses. Amongst these two witnesses Mst. Shahida Bibi happens to be the victim of the occurrence. While making her statement in Court, she has narrated the whole occurrence in a very mature and natural manner touching the contents of the crime report on all aspects without any disconnection. Although the victim was of tender age, however, her statement depicts maturity of the highest level, which is in consonance with the statement of Mst. Najma (PW-1), who happens to be her mother. The victim has directly charged the petitioner for sexually abusing her while detailing the acts committed by him on the day of occurrence. She has further alleged that the petitioner was in the habit of doing this even earlier to the present incident. Although she was cross-examined at length but her statement remained in line and was testified in the most natural style, which reflects that whatever she has stated before the Court, she has stated the truth. As far as the identity of the petitioner is concerned, there is not an iota of doubt about his identity because he being the neighborer of the victim was conversant with her. It is an apathy to mention that such like cases are at the verge of rise in the society, which has to be curbed with iron hands. Although in the instant case, the statement of the victim is fully corroborated by the statement of PW-1 but law is very clear about this that the statement of the victim in isolation itself is sufficient for conviction if the same reflects that it is independent, unbiased and straight forward to establish the accusation against the accused. In a recent judgment reported as Atif Zareef Vs. State (PLD 2021 SC 550) this Court has categorically held that "rape is a crime that is usually committed in private, and there is hardly any witness to provide direct evidence of having seen the commission of crime by the accused person. The courts, therefore, do not insist upon producing direct evidence to corroborate the testimony of the victim if the same is found to be confidence inspiring in the overall particular facts and circumstances of a case, and considers such a testimony of the victim sufficient for conviction of the accused person. A rape victim stands on a higher pedestal than an injured witness, for an injured witness gets the injury on the physical form while the rape victim suffers psychologically and emotionally." The victim had specifically named the petitioner in his testimony before the Court and had fully identified him. There was no previous enmity between the parties, which could lead to false implication of the petitioner in the present case. So far as the delay in lodging the FIR is concerned, the learned High Court while relying on the judgment of this Court reported as Zahid Vs. State (2020 SCMR 590) has rightly held that in such like cases victims or their families are reluctant to come forward to promptly report the crime because of the trauma that has been suffered and they may have a perception of shame or dishonour in having the victim invasively examined by a doctor, therefore, the delay in reporting a sexual assault to the police is not very material. So far as the argument of learned counsel that according to medical evidence no sign of injury was found on the person of the victim is concerned, the prosecution case is that the petitioner had sexually abused the

minor girl by firstly undressing her and then by touching his genital organ on the chest of the victim and he also tried to put his organ in the mouth of the victim. In such eventuality when the victim was only of seven years old and did not know as to what is happening with her and keeping in view the fact that the petitioner was known to her previously, the victim may not have resisted in front of the petitioner, therefore, mere non-availability of any sign of injury is of no help to the petitioner. We have perused the statements of the three defence witnesses produced by the petitioner and could not find any credibility in the same. The DWs only made general statements and did not mention about the happening of the occurrence or anything related to the occurrence. They even could not remember the date of the incident.

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8. For what has been discussed above, this petition having no merit is accordingly dismissed and leave to appeal is refused".

16. As to the contention that the incident occurred at night time and that the identification of the appellants rests upon the light of a torch which was neither secured by the investigating officer nor produced at trial, it is argued that such omission undermines the prosecution's case. This argument, however, is devoid of merit. It is an admitted fact that the parties are related and well-known to each other, hence, there was no occasion for any mistaken identity. Even otherwise, the recovery of a torch, bulb or other source of light is always treated merely as a corroborative piece of evidence and the absence of such recovery by itself is never sufficient to overturn a conviction particularly when the direct evidence and other material brought on record by the prosecution regarding the guilt of the accused have been found to be trustworthy and confidence inspiring. More importantly, it has come on record that the appellants Hamz Ali and Mashooque Ali are close relatives and co-villagers of the victim, therefore, in such eventuality too the possibility of mistaken identity stands entirely excluded.

17. In view of the analysis and combined study of the entire evidence by way of reappraisal, with such care and caution, we are of the considered view that the prosecution has been able to prove the guilt of appellants beyond shadow of reasonable doubt. Therefore, the appeal, insofar as it impugns conviction, is bereft of merit and dismissed accordingly. At this juncture, we are in agreement with the learned counsel for the parities for conversion of sentence from Section 376(2), PPC to 376(1), PPC. It is an admitted position that the incident has taken place on 27.06.2021, the

charge was framed on 07.03.2022 and conviction was awarded under Section 376(2), PPC on 31.08.2022 when such a provision was not in filed and already omitted by Ordinance XVII of 2020 dated 17.12.2020. It seems that the learned trial Court was unaware of such omission and convicted the appellants being ignorant of the position. In such a backdrop, the convictions and sentences awarded to the appellants under Section 376(2), Cr.P.C. are, thus, without any lawful authority and contrary to Article 12(1)(a) of the Constitution of Islamic Republic of Pakistan, 1973, because the impugned Section was already omitted when the offence was committed, therefore, such a provision could not lawfully be applied and conviction under such omitted Section cannot be sustained in the eyes of law. We are, thus, of the considered view that it is a fit case for conversion of sentence from Section 376(2), PPC into Section 376(1), PPC. For the sake of convenience, Section 376(1), PPC is reproduced below:-

> *"**376. Punishment for rape—(1).** Whoever commits rape shall be punished with death or imprisonment for either description for a term which shall not be less than ten years or more than twenty-five years [or for imprisonment for the remainder period of his natural life] and shall also be liable to fine".*

18. As regards the quantum of sentence, it is pertinent to observe that the object of awarding punishment is to maintain balance and order in society. While divine laws speak of accountability in the hereafter, the criminal justice system is founded upon the principles of retribution, deterrence and reformation, each aimed at securing peace within society either by removing harmful elements (by incarceration) or by strengthening society through the reformation of the guilty. The statutory scheme itself classifies offences in a manner that reflects this distinction. Certain offences prescribe punishments using the phrase "not less than" whereas others employ the expression "may extend to". This legislative differentiation indicates that in the latter category the Courts are required to assess the attendant circumstances before determining the appropriate quantum of sentence as such offences contemplate the possibility of reform and permit imposition of a lesser sentence which, however low, would still remain within the bounds of law. The principle of reformation deserves considerable weight for a conviction does not affect the offender alone it invariably impacts his entire family. In the present case, appellants Hamz Ali @ Hamzo and Mashooque Ali are first offenders having no previous criminal history to their discredit and are young

persons, aged approximately 27 and 24 years, as reflected from their statements recorded under Section 342, Cr.P.C. They, therefore, deserve an opportunity to rehabilitate themselves and to reintegrate into society as law abiding citizens. Moreover, complainant and victim have recorded no objection for their acquittal. Per jail roll, they have served out sentence of more than 08 years and 07 months. A reformed individual not only becomes a meaningful component of society but may also contribute positively to the upbringing of his dependents. In view of these mitigating circumstances and in the exercise of judicial discretion, the conviction and sentence awarded to the appellants under Section 376(2), PPC are converted into Section 376(1), PPC and reduced from life imprisonment to ten (10) years' rigorous imprisonment. The fine of Rs.200,000/- is reduced to Rs.10,000/- each and in case of default of payment, they shall suffer S.I for one month more. With these modifications, Criminal Appeal No.D-19 of 2025 (Old No. 123 of 2022) is **dismissed**

JUDGE

JUDGE