

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

Criminal Appeal No. S-08 of 2026

Appellants : 1. Shahbaz Ahmed alias Shahbaz Ali
s/o Abdul Majeed Pathan.
2. Shan @ Shah Ali s/o Sher
Muhammad @ Sher Zaman Pathan.
3. Allah Dino @ Illaho s/o M. Uris Ibupoto
4. M. Asif s/o M. Rafique @ Habibullah
5. Ikram s/o Habibullah Brohi
Through Mr. Aziz Ahmed Laghari, Advocate.

Complainant : Mst. Zahida widow of Ghulam Qadir.
Through Mr. Farhan Ahmed Bozdar, Advocate.

Respondent : The State.
Through Mr. Dhani Bakhsh Mari, A.P.G

Date of hearing 03.07.2026
Date of judgment : 10.07.2026

J U D G M E N T

KHALID HUSSAIN SHAHANI, J.— This criminal appeal, preferred in invocation of section 410 of the Code of Criminal Procedure, 1898, assails the judgment dated 15.01.2026 rendered by the learned First Additional Sessions Judge/Model Criminal Trial Court, Sanghar, in Sessions Case No.20 of 2025, whereby the appellants were convicted under section 375-A of the Pakistan Penal Code, read in conjunction with section 149 thereof, and condemned to imprisonment for life, together with fine and compensation payable to the complainant.

2. The genesis of the prosecution narrative, as unfolded through the First Information Report lodged by the complainant Mst. Zahida, widow of Ghulam Qadir, resident of village Workshop, Taluka Sanghar, is that on 05.04.2025 she repaired to the establishment of appellant Shahbaz Ahmed alias Shahbaz Ali, a device-holder disbursing financial assistance under a public welfare programme, to solicit payment due to her, and was thereupon directed to await at the Otaq/inn of co-appellant Shah Alam alias Shah Ali, situated within the same village. It is alleged that at or about 2100 hours, the appellant Shahbaz Ahmed, armed with a firearm, compelled her to consume intoxicating liquor, thereby reducing her to a state of semi-

consciousness, whereupon the five appellants, acting in furtherance of common intention, divested her of her nether garment and subjected her to successive ravishment until about 0400 hours the following morning. The complainant claims to have thereafter returned to her domicile, narrated the occurrence to her brother and one Hussain Bux, sought recourse to an informal conciliatory tribunal styled "Nek Mard," and, upon the failure thereof, reported the matter to Police Station Mangli on 12.04.2025 at 1300 hours, some seven days subsequent to the alleged occurrence, culminating in the registration of Crime No.39 of 2025 under section 375-A P.P.C.

3. Consequent upon registration, Inspector Wali Muhammad Bhanbhro undertook the investigation, inspected the locus in quo on 12.04.2025, effectuated the arrest of the appellants between 12.04.2025 and 13.04.2025, procured the medico-legal examination of the complainant at Civil Hospital, Sanghar, and secured biological specimens of the complainant and the appellants for forensic DNA ascertainment, which were transmitted, through the custodial and dispatching chain, to the DNA and Serology Laboratory, LUMHS, Jamshoro, on sundry dates between 16.04.2025 and 29.04.2025. Upon culmination of investigation, the report under section 173 Cr.P.C. was submitted before the Court of the Judicial Magistrate-I, Sanghar, on 08.11.2025, whereafter the record was transmitted for trial before the Sessions Court, which framed the charge on 05.12.2025, to which the appellants pleaded not guilty and claimed trial.

4. In substantiation of its case, the prosecution examined nine witnesses. The complainant appeared as PW-1, tendering the FIR. Hussain Bux Khaskheli, mashir of site inspection and arrest of three appellants, appeared as PW-2. Inspector Dhani Bux Brohi, author of the FIR, deposed as PW-3. Incharge Malkhana WHC Muhammad Din Shar, PW-4, proved the safe custody and onward transmission of case property. PC Nasir Mehmood, dispatching official, PW-5, deposed regarding the physical carriage of sealed parcels to the laboratory on three separate occasions. Women Medical Officer Dr. Sehrish Bhatti, PW-6, proved the medical examination and the DNA report. The Investigating Officer, PW-7, and District Police Surgeon Dr. Shaheed Nawaz Pathan, PW-8, deposed as to investigation and the medico-legal certification of the appellants' potency. Upon closure of prosecution evidence on 30.12.2025, the statements of the appellants were recorded under section 342 Cr.P.C.,

wherein each controverted the allegations, impugned the prosecution witnesses as interested, declined to record statement on oath under section 340(2) Cr.P.C., and elected not to lead evidence in defence.

5. Learned counsel for the appellants submitted, with considerable force, that the impugned judgment proceeds upon a manifest non-application of judicial mind, occasioned by non-reading and misreading of the evidentiary record. It was contended that the FIR was lodged after an inordinate and wholly unexplained delay of seven days, offending the settled principle that delay in the reporting of an offence of this character affords fertile opportunity for deliberation and false implication, as authoritatively enunciated in 1996 SCMR 1910. Emphasis was laid, with particular vehemence, upon the DNA report, which returned a result unequivocally negative, the male genetic profile recovered from the complainant's vaginal swabs and clothing failing to concord with that of the appellants, a circumstance candidly conceded by PW-6 and, regrettably, wholly disregarded by the trial court. It was further urged that the medical officer discerned no mark of violence upon the complainant's person, nor any abnormality upon external examination, notwithstanding the alleged seven-hour ordeal; that the complainant herself admitted to having raised no alarm and sustained no injury; that no independent witness from the densely populated vicinage was examined, though the occurrence allegedly persisted through the night in a settlement surrounded by habitations; and that the investigation stood conducted in flagrant violation of section 9 of the Anti-Rape (Investigation and Trial) Act, 2021, no woman police officer having participated therein. It was additionally contended that the complainant, in collusion with a police functionary, falsely implicated the appellants with a view to extortion, that no evidence of the alleged welfare disbursement was adduced, and that the ocular account stands materially contradicted and shattered upon cross-examination, thereby entitling the appellants to acquittal upon the benefit of doubt.

6. Learned counsel for the complainant, per contra, supported the impugned judgment, submitting that the ocular account of the victim, being natural, consistent, and unshaken upon the material particulars of time, place, and identification, constitutes a confidence-inspiring piece of testimony sufficient, of itself, to sustain conviction, and that the absence of DNA corroboration cannot, without more, demolish an otherwise credible prosecution case, more particularly where the victim, an indigent and

source-less widow, could harbor no conceivable motive to falsely implicate five named persons of her own village at the peril of her own reputation.

7. The learned Assistant Prosecutor General adopted the reasoning of the trial court, urging that the prosecution evidence comprising the ocular account, the medical evidence establishing recent sexual congress, and the documentary chain of custody, cumulatively establishes guilt beyond reasonable doubt, and further raised, by way of preliminary submission, a question touching the propriety of the trial forum, namely why the matter, being a scheduled offence, was not entrusted to the appropriate special tribunal, an aspect which, though duly noted, does not detract from the substantive merits requiring determination in this appeal.

8. Having subjected the rival contentions to anxious and meticulous scrutiny against the touchstone of the record, this Court finds itself constrained, *ex necessitate*, to hold that the verdict of conviction cannot, in law or in conscience, be sustained. The delay of seven days interposed between the alleged occurrence and the ventilation of the grievance before the constituted authority remains wholly unexplained by any specific, particularized, or credible circumstance; the complainant's bald and unparticularized assertion of having labored "under pressure" from the appellants, bereft as it is of corroborative substratum, cannot be permitted to fill so material a lacuna. That the complainant and her kinsmen, in the interregnum, chose to invoke the informal arbitrament of a jirga in preference to the majesty of law is a circumstance ill-reconcilable with the spontaneous outrage that the law, as a matter of ordinary human experience, expects of a victim of so grave a violation. Delay of this magnitude, unexplained and unaccounted for, is, per the settled dicta of the superior courts, pregnant with the sinister inference of deliberation, consultation, and embellishment, and casts the gravest and most enduring shadow upon the spontaneity and veracity of the prosecution's version.

9. The medical testimony, far from lending sinews to the prosecution edifice, operates, upon anatomization, to its own undoing. PW-6, the examining Women Medical Officer, candidly and without equivocation conceded in cross-examination the total absence of any mark of violence upon the person of the complainant, and the absence of any abnormality on external examination, notwithstanding the grave allegation of a sustained, multi-perpetrator ordeal extending over some seven hours. The

complainant herself, with commendable candor, admitted that she raised no alarm and sustained no injury during the commission of the alleged offence. While it is axiomatic that the absence of injury does not, *per se*, extinguish an allegation of this character, in a narrative postulating such protracted and multiple violation, the utter absence of any corporeal trace assumes an evidentiary significance of no mean order, weighing heavily against the credibility of the prosecutrix's account.

10. Decisive, however, indeed dispositive of the fate of this appeal is the forensic evidence. The report of DNA profiling, a species of evidence objective, dispassionate, and impervious alike to the frailties of human perception and the promptings of motive or malice, returned an unequivocally negative result: the male genetic material recovered from the vaginal swabs and wearing apparel of the complainant bore no concordance whatsoever with the genetic profile of the appellants. This is scientific testimony of the highest probative pedigree, and it stands in direct, irreconcilable, and fatal contradiction to the very identification upon which the prosecution's edifice is raised. The precedent invoked by the trial court, to the effect that a negative DNA report is not, without more, fatal to the prosecution where substantial corroborative evidence otherwise exists, can afford no succor in the case at hand, for the corroboration relied upon, being no more than the testimony of witnesses who witnessed nothing themselves and merely reiterate, parrot-like, the complainant's own narration, is corroboration in name alone. Such derivative, hearsay repetition cannot, by any canon of evidentiary appreciation, be elevated to the dignity of independent confirmation capable of neutralizing so fundamental and scientifically-grounded a contradiction.

11. These infirmities, grave in themselves, are compounded, and indeed aggravated, by the total and unexplained absence of a single independent witness from a locality admittedly thickly inhabited by the complainant's own community, and situated, moreover, within a stone's throw of an establishment equipped with functioning video-surveillance apparatus, a circumstance rendering detection eminently feasible, yet neither the footage of that camera nor the testimony of a solitary independent inhabitant was adduced to lend the color of truth to the occurrence. The admitted non-compliance with the peremptory mandate of section 9 of the Anti-Rape (Investigation and Trial) Act, 2021, requiring the participation of a woman police officer in the investigation of offences of this genus, further

vitiates the sanctity of the investigative process at its very root, and lends credence to the suggestion of extraneous design underlying the framing of the accusation.

12. Learned APG further assailed the jurisdiction of the learned trial Court, contending that the trial had been conducted by the learned First Additional Sessions Judge/MCTC, Sanghar, in derogation of the Anti-Rape (Investigation & Trial) Act, 2021. He submitted that in terms of the said Act, wherever Gender-Based Violence (GBV) Courts, Juvenile Courts, or Child Protection Courts stand already designated, such Courts are deemed to be Special Courts for purposes thereof. Reliance was further placed on Section 23 of the Act, which stipulates that upon its commencement, trial of scheduled offences pending before any Court shall stand transferred to the Special Court possessing jurisdiction thereunder.

13. The contention so raised, however, is devoid of merit. The record demonstrates that the case was transferred by administrative order from the Court of Sessions to the trial Court, which itself stood established as an MCTC for the expeditious disposal of cases and was simultaneously designated to try offences of gender-based violence. Such designation was effected pursuant to letter No. F.No. 1(8)2021-AR(VOL-IV) dated 15.06.2023, issued by the Government of Pakistan, Ministry of Law and Justice, Islamabad, communicated vide letter of the Member, Inspection Team, High Court of Sindh, dated 22.06.2023, and further forwarded by the learned District & Sessions Judge, Sanghar, vide letter No. DJ SGR (HC): 7836/2023 dated 24.06.2023. It is further noted that this objection was never raised by the complainant at any earlier stage of the proceedings, and it is settled law that an objection as to jurisdiction, if not raised before the Court of first instance at the earliest opportunity, cannot be permitted to be agitated before an appellate or revisional forum.

14. The cumulative and conjoint effect of the unexplained delay, the exculpatory medical findings, the conclusively negative forensic evidence, the absence of independent corroboration, the derivative and hearsay character of the supporting testimony, and the admitted non-compliance with statutory safeguards, ineluctably persuades this Court that the prosecution has failed to discharge the onus resting upon it to the exacting standard of proof beyond reasonable doubt that the law, in its solicitude for personal liberty, imperatively exacts in a matter of this gravity. It is a

principle inviolable and axiomatic in the criminal jurisprudence of this jurisdiction that where the evidence on record admits of two views, each reasonably possible, that view which inclines in favor of the accused must, as a matter of right and entitlement and not of grace or concession be adopted; the benefit of doubt, however slender, belongs to the accused *ex debito justitiae*.

15. In consequence of the foregoing, this appeal is allowed, and the judgment dated 15.01.2026 passed by the learned First Additional Sessions Judge/Model Criminal Trial Court, Sanghar, in Sessions Case No.20 of 2025, stands set aside. The appellants Shahbaz Ahmed alias Shahbaz Ali, Shah Alam alias Shah Ali, Allah Dino alias Illaho, Muhammad Asif, and Ikram are hereby acquitted of the charge under section 375-A P.P.C. read with section 149 P.P.C., by extension to them of the benefit of reasonable doubt. They shall be released forthwith, unless required in connection with any other case. Fine, if realized, shall stand refunded, and any compensation recovered or deposited shall be restored to the appellants. A copy of this judgment shall be transmitted to the Superintendent, Central Prison, Mirpurkhas, for compliance.

J U D G E

Adnan Ashraf Nizamani