

**LAHORE HIGH COURT**  
**MULTAN BENCH MULTAN**  
JUDICIAL DEPARTMENT

**Criminal Appeal No. 964/J/2023**

Nazar Hussain and another Vs. The State

**JUDGMENT**

<b>Date of hearing:</b>	<b>24.10.2024</b>
<b>For the Appellant:</b>	Malik Muhammad Usman Bhatti, Advocate, assisted by Mr. Mumtaz Hussain Awan, Advocate.
<b>For the State:</b>	Mr. Shahid Aleem, District Public Prosecutor.
<b>For the Complainant:</b>	Mrs. Kausar Parveen Awan, Advocate.

**Tariq Saleem Sheikh, J.** – This appeal is directed against the judgment dated 6.10.2023 delivered by the Additional Sessions Judge, Jatoi, in case FIR No. 497/2021 dated 26.8.2021 registered under sections 292-C and 376(iii) of the Pakistan Penal Code 1860 (PPC) at Police Station Shaher Sultan, District Muzaffargarh.

2. On 26.8.2021, PW-3 Abid Hussain (the “Complainant”) submitted a written application (Exh. PB) to Nusrat Parveen/SI (PW-11) at Police Station Shaher Sultan, District Muzaffargarh, stating that he lived in Basti Mochi, Mauza Bullu Sandeela, Jatoi. On 22.8.2021 at about 8:00 a.m., his daughter “S” (name withheld to preserve privacy), aged about 7 or 8 years, was on her way to school when Nazar Hussain, a grocer, deceitfully lured her into the washroom behind his store and raped her. S’s cries attracted Muhammad Niaz and Abdul Hameed to the scene. The accused fled from the spot on seeing them. The witnesses informed the Complainant about the occurrence through a phone call. The Complainant further stated that he possessed a video of the incident made by Atta Ullah, which he would produce to substantiate the allegation.

3. Nusrat Parveen/SI instructed the Complainant to bring the S’s clothing that she had been wearing at the time of the incident, issued a

docket for her medical examination, and deputed Faria Khadim 783/LC (PW-6) to take her to the hospital. Simultaneously, she handed over the application Exh. PB to Mehboob Ullah/ASI (PW-10), who registered FIR No.497/2021 Exh. PH.

4. On the same day, i.e., 26.8.2021, Nusrat Parveen/SI went to the crime scene, prepared the rough site plan (Exh. PJ), and recorded the statements of the PWs, including the Complainant. She also received a USB (P-6) from the Complainant through Recovery Memo Exh. PC, and made it over to Abdul Shakoor 527/C (PW-7) for getting print-outs. After sometime PW Abdul Shakoor brought five photographs (P-1 to P-5) which Nusrat Parveen/SI secured through Recovery Memo Exh. PE, and then handed the USB to the Moharrar for safekeeping.

5. On 27.8.2021, Faria Khadim 783/LC delivered S's MLC and two envelopes, one sealed and another unsealed, to Nusrat Parveen/SI, which the Medical Officer, Dr. Noor-ul-Falah (PW-9), had handed over to her. Nusrat Parveen/SI took the same into her possession through Recovery Memo Exh. PD and later gave them to the Moharrar for safekeeping. The same day, she arrested Nazar Hussain and, on 28.8.2021, obtained his physical remand. On 30.8.2021, she delivered the parcels and produced both the victim and Nazar Hussain at the office of the Punjab Forensic Science Agency (PFSA) for DNA profiling. On 31.8.2021, Nusrat Parveen/SI produced S before the Area Magistrate for recording her statement under section 164 Cr.P.C. Then, she arranged for Nazar Hussain to undergo a potency test, which Dr. Mehboob Ahmad (PW-1) conducted. On 2.9.2021, Nusrat Parveen/SI recorded the Complainant's supplementary statement by which he implicated Atta Ullah and Muhammad Jalal as accused in the case. The same day, she arrested them and, on 3.9.2021, obtained their physical remand. On 4.9.2021, Nazar Hussain was sent to judicial remand. On 9.9.2021, Jalal's father submitted an Infinix cellphone X680B (P-6) to Nusrat Parveen/SI, which she secured through Recovery Memo Exh. PF and later handed it over to the Moharrar for safekeeping. On 10.9.2021, Atta Ullah and Jalal were sent to judicial custody. On 13.9.2021, Nusrat Parveen/SI delivered the cellphone P-6 to the Punjab Forensic Science Agency (PFSA). The report under section 173 Cr.P.C. was submitted to the court upon completion of the investigation.

6. On 11.1.2022, the Additional Sessions Judge indicted Nazar Hussain, Atta Ullah, and Jalal. They denied the charge and claimed trial. The prosecution examined twelve witnesses to prove its case. Abid Hussain (PW-3) was S's father who lodged FIR No.497/2021. Muhammad Niaz (PW-4) furnished the ocular account while S, the victim, testified as PW-5. Dr. Noor-ul-Falah (PW-9) medically examined S. Dr. Mehboob Ahmad (PW-1) provided evidence regarding Nazar Hussain's fitness to have intercourse. Mehboob Ullah/ASI (PW-10) registered FIR No. 497/2021 Exh. PH. Ghulam Qasim 1047/HC (PW-2) was the Moharrar of the police station and deposed about the receipt of two envelopes and a USB (P-6) from the Investigating Officer and subsequently handing them over to her for their delivery at the PFSA. Faria Khadim 783/LC (PW-6) escorted S for her medical examination and subsequently handed over her MLC to the Investigating Officer. She was a marginal witness of Recovery Memos Exh. PD and Exh. PE. Abdul Shakoor 527/C (PW-7) testified about receiving the USB P-6 from the Investigating Officer, obtaining its print-out from the market (P-1 to P-5), and delivering them to her. He was a marginal witness of Recovery Memo Exh. PE. Anjum Shahzad 2101/HC (PW-8) testified about the production of a cellphone P-6 by Jalal's father. He was a marginal witness of Recovery Memo Exh. PF. Nusrat Parveen/SI (PW-11) gave the details of her investigation. Ms. Sajida Mehboob Alam Khan, Area Magistrate (PW-12), testified about recording the victim's statement under section 164 Cr.P.C. (Exh. PJ). The public prosecutor gave up PW Irshad Hussain/Constable being unnecessary and closed the prosecution evidence after tendering the reports of PFSA Exh. PK, Exh. PL and Exh. PM.

7. After the prosecution was through with its evidence, the Additional Sessions Judge recorded the statements of Nazar Hussain, Atta Ullah, and Jalal under section 342 Cr.P.C. and confronted them with the incriminating material brought against them during the trial. They refuted the allegations and professed their innocence. When questioned about the reason for their implication in the case, Nazar Hussain stated that he had been a witness in an FIR case lodged by Muhammad Bakhsh, the father of the brother-in-law (Behnoi) of Abid Hussain (the present Complainant). He claimed that he did not give evidence in that case, and due to this grudge,

Abid Hussain registered a false case against him. On the other hand, Atta Ullah and Jalal stated that the Complainant falsely implicated them because they refused to become witnesses in the present case against Nazar Hussain. None of the accused had their statements recorded on oath under section 340(2) Cr.P.C., nor did they examine any witnesses in their defence.

8. On the conclusion of the trial, vide judgment dated 6.10.2023, the Additional Sessions Judge acquitted Muhammad Jalal and convicted Nazar Hussain and Atta Ullah as follows:

**Nazar Hussain**

Convicted under section 376(iii) PPC and sentenced to life imprisonment with a fine of Rs.200,000/- and, in default thereof, to suffer rigorous imprisonment for further six months.

**Atta Ullah**

Convicted under section 292-C PPC and sentenced to rigorous imprisonment for fourteen years with a fine of Rs.200,000/- and, in default thereof, to suffer rigorous imprisonment for further one month.

However, the Additional Sessions Judge extended the benefit of section 382-B Cr.P.C. to the convicts. Hence, this appeal.

9. The Appellants, Nazar Hussain and Atta Ullah, have filed Crl. Misc. No.230/2024, an application under section 345 Cr.P.C. seeking permission to compound the offence and for their acquittal of the charge. They have appended affidavits of Complainant Abid Hussain and S with their application and submit that a *Panchayat* had brokered a compromise between the parties. Hence, they do not want to pursue the case anymore.

10. In support of Crl. Misc. No.230/2024, the Appellant's counsel, Advocate Malik Muhammad Usman Bhatti, relied upon **Zulfiqaruddin v. State etc.** [PLJ 2022 SC (Cr.C.) 40].

11. The District Public Prosecutor contended that the offences under sections 292-C and 376(iii) PPC are not compoundable. He argued that Mr. Bhatti's reliance on *Zulfiqaruddin's* case was misplaced, as it was decided on its peculiar facts. Consequently, he submitted that the aforementioned application was misconceived and should be dismissed.

12. Section 345 Cr.P.C. governs the compounding of offences. The offences listed in the Table under sub-section (1) of this section, which

are punishable under the Pakistan Penal Code, are compoundable by the persons mentioned in its third column without requiring the court's permission. In contrast, the offences listed in the Table under sub-section (2) are compoundable only if the court permits. As a result, the offences not enumerated in either Table cannot be compounded.

13. Offences created under special laws are governed by the provisions of those laws and may only be compounded if explicitly permitted by the law creating the offence. Section 345(5A) Cr.P.C. provides that a High Court, exercising its revisional powers under section 439 Cr.P.C., or a Court of Session under section 439-A Cr.P.C., may permit the compounding of any offence that is compoundable under section 345 Cr.P.C. Importantly, section 345(7) Cr.P.C. expressly states that no offence shall be waived or compounded except as provided under section 345 Cr.P.C. and section 311 PPC.<sup>1</sup>

14. In *Muhammad Rawab v. The State* (2004 SCMR 1170), the convict sought the court's permission to compound the offence, asserting that the complainant had pardoned him in the name of Almighty Allah. Upon examining the compromise, it was observed that the offences under section 365-A PPC and section 7(e) of the Anti-Terrorism Act, 1997, were not compoundable. The Supreme Court deliberated on whether it could allow the compounding of offences not listed in section 345 Cr.P.C., particularly in light of the express prohibition under section 345(7) Cr.P.C. against entertaining a compromise for offences not specified therein. It ruled:

“The provisions as contained in section 345(7) Cr.P.C. have been couched in such a plain and simple language that there is hardly any scope for any interpretation except that a non-compoundable offence cannot be made compoundable by this Court for the simple reason that no amendment, deletion, insertion or addition could be made by this Court and it could only be done by the Legislature as this aspect of the matter falls in its exclusive domain of jurisdiction. The provisions as contained in section 345 Cr.P.C. cannot be stretched too far by including

<sup>1</sup> Section 311 PPC provides:

**311. *Ta'zir after waiver or compounding of right of qisas in qatl-i-amd.***— Where all the *wali* do not waive or compound the right of *qisas*, or if the principle of *fasad-fil-arz* is attracted, the court may, in its discretion having regard to the facts and circumstances of the case, punish an offender against whom the right of *qisas* has been waived or compounded with death or imprisonment of life or imprisonment of either description for a term of which may extend to fourteen years as *ta'zir*.

Provided that if the offence is committed in the name or on the pretext of honour, the punishment shall be imprisonment for life.

the non-compoundable offence therein under the garb of humanitarian grounds or any other extraneous consideration. The offences committed by the appellant are not of grave and alarming nature but the same are against the society as a whole and cannot be permitted to compound by any individual on any score whatsoever. It may be noted that tabulation of the offences as made under section 345 Cr.P.C. being unambiguous remove all doubts, uncertainty and must be taken as complete and comprehensive guide for compounding the offences. The judicial consensus seems to be that ‘the Legislature has laid down in this section the test for determining the classes of offences which concern individuals only as distinguished from those which have reference to the interests of the State and Courts of law cannot go beyond that test and substitute for it one of their own. It is against public policy to compound a non-compoundable offence, keeping in view the state of facts existing on the date of application to compound. No offence shall be compounded except where the provisions of section 345 Cr.P.C. are satisfied as to all ‘matters mentioned in the section’.”<sup>2</sup>

15. In *Meenakshi Sundarammal and another v. K. Subramania Ayyar and others* (AIR 1955 Madras 369), while considering section 320 of the Indian Code of Criminal Procedure, 1973, which parallels section 345 Cr.P.C. in Pakistan, the Madras High Court held that an agreement intended to terminate criminal proceedings in a manner not in accordance with section 320 would fall within the mischief of section 23 of the Contract Act, 1872.

16. In *Shimbu and another v. State of Haryana* (AIR 2014 SC 739), the Supreme Court of India (SCI) emphasized that compromises in rape cases cannot justify even a reduction in punishment. It ruled that rape, being a non-compoundable offence, is a crime against society and cannot be resolved through private agreements between the parties. The Supreme Court highlighted that the victim’s consent to such a compromise might not be genuine, as it could be influenced by coercion from the accused or the psychological trauma endured over time. Accepting such compromises would unfairly burden the victim and allow the accused to exploit their influence. Therefore, in the interest of justice and to protect the victim from undue pressure or harassment, it would not

<sup>2</sup> The Supreme Court relied upon the following authorities for its holding:

*Dalsukhram Hargovandas v. Charles DeBretton* (28 Bombay 326); *Meenakshi Sundarammal v. Subramania Ayyar* (AIR 1955 Madras 369); *Akshoy Singh v. Rameshawar Bagdi* (AIR 1917 Calcutta 705); *Mt. Rani v. Mt. Jaiwanti* (AIR 1925 Nag. 395); *Crown v. Muhammad Hussain* (PLD 1950 Lahore 86); *Gurunarayan Das and others v. Emperor* (AIR 1948 Pat. 58); *Agha Nazarali Sultan Muhammad v. Emperor* (AIR 1941 Sind 186); *Emperor v. Jarnally and others* (AIR 1925 Lahore 464); *Ghulam Rasool v. State* (1999 MLD 3085); *Muhammad Asif v. State* (1991 MLD 1026); *Noor Muhammad alias Noora v. State* (1992 SCMR 2079); *Muhammad Nazir alias Jeera v. State* (PLD 2001 Lahore 212); *Muhammad Anwar v. State* (1986 MLD 1111); *Nawab-ul-Hassan v. State* (2003 SCMR 658) and *Yousaf Ali v. State* (2002 SCMR 1885).

be appropriate to consider a compromise between the parties as a basis for the court to exercise discretionary power under the proviso to section 376(2) of the Indian Penal Code to reduce the sentence.

17. In *State of M.P. v. Madanlal* (AIR 2015 SC 3003), the SCI categorically rejected the notion of compromise in cases involving rape or attempted rape, deeming it completely unacceptable. The Court underscored that such offences defile the sanctity of a woman's body, which is her sacred temple, and inflict irreparable harm on her dignity and reputation. The Court further observed that suggestions of compromise, often cloaked in the guise of the perpetrator agreeing to marry the victim, are nothing more than veiled attempts to exert pressure. It stated that such deceptive practices must be firmly opposed, as adopting a lenient stance would constitute a grave miscarriage of justice. The Court emphasized that mediation or any similar resolution mechanism in rape cases is strictly prohibited and legally impermissible.

18. Recently, in *Muhammad Imran v. The State and another* (Criminal Petition No. 725/2023), decided on 26.06.2024, the Supreme Court of Pakistan, while delivering a majority decision of 2:1 on the merits of the case, unanimously declined to accept the compromise regarding the offences under sections 376 and 449 PPC, reaffirming the non-compoundable nature of such grave offences.

19. It is necessary to examine Zulfiqaruddin's case, which was relied upon by Mr. Bhatti. In this case, Zulfiqaruddin faced charges of house trespass, abduction of Mst. A.B., a murderous assault on Mst. Haleema Bibi, and the rape of Mst. A.B. He was prosecuted under sections 452, 324, 337-A(i), 365-B, 376, and 34 PPC. After a full-fledged trial, the Additional Sessions Judge convicted him. During the appeal hearing, the parties entered into a compromise. The High Court set aside all convictions and sentences for compoundable offences, and reduced the sentences for non-compoundable offences. The Supreme Court noted that the affidavits from the complainant and victims stated that Zulfiqaruddin had been implicated due to a misunderstanding, denying the allegations of abduction and rape, and the High Court accepted these affidavits, acquitting Zulfiqaruddin of compoundable offences and reduced his sentences for

non-compoundable offences. The Supreme Court held that if the High Court accepted the affidavits declaring the allegations factually incorrect, it should have dismissed the entire prosecution case rather than merely reducing the sentences for non-compoundable offences. Accordingly, the Supreme Court allowed the appeal, set aside the outstanding convictions and sentences, and acquitted Zulfiqaruddin, granting him the benefit of doubt.

20. It would be seen that in *Zulfiqaruddin's* case, there was no compromise as such. Instead, the complainant and the victims swore affidavits completely exonerating the accused. They stated that they had implicated Zulfiqaruddin due to some "misunderstandings" and that he had neither abducted anyone nor committed the alleged offences. The High Court could have rejected the affidavits entirely, but it accepted them partially – to the extent of the compoundable offences – which was unjustified. Thus, *Zulfiqaruddin's* case proceeded on its own unique facts. It does not overrule or deviate from the settled law that non-compoundable offences cannot be compounded, the principle reaffirmed in *Muhammad Rawab* and *Muhammad Imran*.

21. In the present case, Complainant Abid Hussain's has stated in his affidavit that the respectable of the locality, and the *Punchayat* have assured him of the Appellants' innocence, that he does not want to pursue the case further and that he had got the case registered because of misunderstanding. On the other hand, S's affidavit categorically states that the *Punchayat* has effected a compromise between the parties. The relevant excerpt is reproduced below:

- 2. حلفاً بیان کرتی ہوں کہ پنجائیت / برادری نے ملزم نذر حسین ولد محمود احمد اور عطا اللہ ولد محمد یار سکنانے فیض پور کی بابت ہمہ قسمی تسلی و صفائی دی ہے۔
- 3. حلفاً بیان کرتی ہوں کہ معززین برادری نے ماہین فریقین صلح کروادی ہے اور من مخالف مزید پیروی مقدمہ نہ کرنا چاہتی ہوں۔
- 4. حلفاً بیان کرتی ہوں کہ اگر ملزم نذر حسین اور عطا اللہ کو بری کیا جائے یا آزاد برخانست کیا جائے تو من مخالف کو کوئی اعتراض نہ ہے۔

22. Given the above, we are of the considered opinion that the Appellants seek acquittal on the basis of a compromise. In fact, this is also what they have prayed for in Crl. Misc. No.230/2024. We hold that this

application is not maintainable and accordingly dismiss it. We would decide the case on merits.

### ***The main case***

23. In support of this appeal, Mr. Bhatti argued that the FIR was lodged with an unexplained delay of four days, which impinged upon its credibility. He maintained that the Appellants were innocent and the Complainant had falsely implicated them in this case. He contended that Abid Hussain (PW-3) and Muhammad Niaz (PW-4) were not eyewitnesses to any wrongdoing by the Appellants. As regards S, he submitted that being a minor of tender age, she could not be relied upon without corroboration, which was absent. Mr. Bhatti further contended that the DNA report (Exh. PK) completely discredited the prosecution's case, as no seminal material of Nazar Hussain was found on the victim's body or clothes. He argued that the prosecution's evidence was riddled with material contradictions, but the Additional Sessions Judge failed to properly evaluate these discrepancies, which had caused a grave miscarriage of justice. He prayed for the acceptance of Criminal Appeal No. 964/J/2023 and the acquittal of the Appellants.

24. The District Public Prosecutor controverted the above contentions. He argued that the prosecution proved its case to the hilt. The victim, S, fully supported the prosecution case and withstood cross-examination with intelligence. Complainant Abid Hussain (PW-3) and Muhammad Niaz (PW-4) corroborated S on all crucial points. He further contended that the Appellants' allegation of false implication was baseless and lacked evidence. He prayed for the dismissal of the Appellants' appeal.

### ***Opinion***

25. According to the prosecution, the occurrence took place on 22.8.2021 at 8:00 a.m., and the FIR was registered on 26.8.2021 at 5:30 p.m., i.e., after four days and 9½ hours. While the law generally emphasizes the prompt reporting of crimes, courts acknowledge that sexual abuse cases require a more nuanced approach due to their sensitive nature. Delays in reporting such offences cannot be equated with delays in other crimes. Several factors can contribute to delay in reporting child sexual

abuse, including trauma,<sup>3</sup> fear,<sup>4</sup> shame,<sup>5</sup> dishonour due to invasive examination by a doctor,<sup>6</sup> threat,<sup>7</sup> or a lack of awareness.<sup>8</sup> Consequently, courts in our country do not consider the delay in making a report to the police material unless the circumstances are such that they warrant an adverse view. This is especially true in cases involving child victims of sexual abuse.<sup>9</sup> In the present case, Mr. Bhatti has not referred us to any circumstance which may require us to take an adverse view against the prosecution because of the delay. No evidence suggests that this delay was used to fabricate or embellish the allegations.

26. The prosecution's case is that on 22.8.2021 at 8:00 a.m. S was on her way to school when Appellant Nazar Hussain deceitfully took her to the washroom behind his grocery shop and ravished her, and on seeing the witnesses, fled from the spot. The prosecution produced Abid Hussain (PW-3), Muhammad Niaz (PW-4), and the minor victim (PW-5) to prove the charge against him. The Complainant, who is S's father, is relevant only to the extent of lodging FIR No.497/2021 (Exh. PH). He categorically admitted that he had not witnessed the occurrence as he was at home at that time. During cross-examination, he deposed that his brother-in-law Muhammad Niaz (PW-4) informed him about it on his cellphone.

27. Muhammad Niaz (PW-4) deposed in line with the application Exh. PB and FIR No. 497/2021 (Exh. PH). He gave details of the incident, adding that he and PW Abdul Majeed witnessed it. He also confirmed that he informed the Complainant about it. Mr. Bhatti's primary objection to Niaz's testimony was that he was a chance witness, so his account should be viewed with skepticism.

28. A "chance witness" is a person whose presence at the scene of an incident at the critical moment is purely by coincidence. It is not a part of their usual activities or duties. The testimony of a chance witness is

<sup>3</sup> *Irfan Ali Sher v. The State* (PLD 2020 SC 295).

<sup>4</sup> *Hamid Khan v. The State* (1981 SCMR 448), *Zahid v. The State* (2022 SCMR 50), *Mubeen Ahmed v. The State and another* (PLD 2021 Islamabad 431).

<sup>5</sup> *Zahid and another v. The State* (2020 SCMR 590), *Zahid v. The State* (2022 SCMR 50).

<sup>6</sup> *Irfan Ali Sher v. The State* (PLD 2020 SC 295).

<sup>7</sup> *Hamid Khan v. The State* (1981 SCMR 448).

<sup>8</sup> *Imdad Ullah v. The State and another* (2024 LHC 1462).

<sup>9</sup> *Mubeen Ahmed v. The State and another* (PLD 2021 Islamabad 431).

considered suspect evidence. It is generally not accepted unless credible and justifiable reasons are provided to establish their presence at the crime scene at the relevant time.<sup>10</sup> Under normal circumstances, the law presumes their absence from the location.<sup>11</sup> Nevertheless, a chance witness is not necessarily a false witness.<sup>12</sup> His evidence should be scrutinized carefully.<sup>13</sup> If a chance witness reasonably explains his presence at the spot and his narration of occurrence inspires confidence, his evidence can be considered along with other evidence.<sup>14</sup> A passerby is not a chance witness when a crime is committed on a public thoroughfare,<sup>15</sup> at a place frequented by the public,<sup>16</sup> or when his house is situated in the close vicinity of the scene of the crime. The version of a chance witness can be accepted to be true if his presence at the place of the incident is not doubtful.<sup>17</sup>

29. Muhammad Niaz (PW-4) was a labourer who lived 2-3 acres away from the place of occurrence. He testified that he was on his way to work at the time of the incident. He heard S's cries as he passed by Appellant Nazar Hussain's shop. Since it was morning, when labourers typically head to work, his presence at the scene appears natural. Niaz withstood cross-examination, answering all questions confidently and naturally. Furthermore, as we shall see, his testimony aligns with the victim's account. It confirms his presence at the scene during the relevant time and his direct observation of the incident.

30. The victim, S, a minor aged 9-10 years, appeared before the trial court as PW-5. To evaluate her competency as a witness, the court conducted a *voir dire test* by asking her various questions and recorded her testimony after finding her competent. S identified Appellant Nazar Hussain by name and narrated the incident in detail, consistent with the

<sup>10</sup> *Mst. Sughran Begum and another v. Qaiser Pervez and another* (2015 SCMR 1142).

<sup>11</sup> *ibid.*

<sup>12</sup> *Wazir Zada v. Haji Rahim Khan and another* (2002 MLD 1804).

<sup>13</sup> *Abdul Rashid and others v. Abdul Ghaffar and others* (2001 PCr.LJ 524).

<sup>14</sup> *Anwar Shamim and another v. The State* (2010 SCMR 1791), *Riaz Ahmed v. The State* (2008 YLR 2754), and *Muhammad Azam v. The State* (2003 PCr.LJ 1479).

<sup>15</sup> *Iftikhar Ali v. The State* (1998 PCr.LJ 2022), *Farman Ali and others v. The State and others* (PLD 2007 Lahore 495), and *Sardar Khan etc. v. The State* (NLR 1999 Cr.LJ 363).

<sup>16</sup> *Iftikhar Ali v. The State* (1998 PCr.LJ 2022).

<sup>17</sup> *Javed Ahmad alias Jaida v. The State and another* (1978 SCMR 114), *Muhammad Ahmad and another v. The State and others* (1997 SCMR 89), *Imran Ashraf and others v. The State* (2001 SCMR 424), and *Mst. Mumtaz Begum v. Ghulam Farid and another* (2003 SCMR 647).

account provided in the FIR. She categorically denied the defence's suggestion that she had falsely involved him in this case at the behest of her parents. Importantly, S also recorded her statement under section 164 Cr.P.C. (Exh. PJ) as required under section 14(1) of the Anti-Rape (Investigation and Trial) Act, 2021, wherein she unequivocally accused Nazar Hussain of violating her. S's statement under section 164 Cr.P.C. was duly proved by Ms. Sajida Mehboob Alam Khan, Area Magistrate (PW-12). Despite being subjected to incisive cross-examination, the defence failed to discredit her testimony or extract anything favourable to their case.

31. Mr. Bhatti highlighted some inconsistencies in the testimonies of the aforementioned witnesses. These were insignificant, except for one that necessitates our comment. The Complainant and S stated that on 22.8.2021, S was on her way to school when the incident occurred. Mr. Bhatti argued that 22.8.2021 was a Sunday, so the question of S going to school does not arise. However, during his cross-examination, Muhammad Niaz (PW-4) clarified that S was actually going to her teacher's house for private tuition on that date. In a village setting, "tuition classes" are often referred to as "school." This clarification by Niaz is sufficient to address the objection. Even if it does not, this inconsistency does not affect the substance of the case. In *Nazir Ahmed v. The State* (2023 SCMR 1299), the Supreme Court of Pakistan stated:

"It is a well-settled proposition of law that as long as the material aspects of the evidence have a ring of truth, courts should ignore minor discrepancies in the evidence. The test is whether the evidence of a witness inspires confidence. If an omission or discrepancy goes to the root of the matter, the defence can take advantage of the same. While appreciating the evidence of a witness, the approach must be whether the evidence read as a whole appears to have a ring of truth. Minor discrepancies on trivial matters not affecting the material considerations of the prosecution case ought not to prompt the courts to reject evidence in its entirety. Such minor discrepancies which do not shake the salient features of the prosecution case should be ignored."<sup>18</sup>

32. In *The State of Punjab v. Gurmat Singh and others* [1996 (2) SCC 384], the SCI held:

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<sup>18</sup> Also see: *Mushtaq alias Shaman v. The State* (PLD 1995 SC 46), *Zakir Khan and others v. The State* (1995 SCMR 1793), *Roshan and others v. The State* (PLD 1977 SC 557) and *Ghulam Qadir v. The State* (2020 PCr.LJ 1097).

“A rapist not only violates the victim’s privacy and personal integrity but inevitably causes serious psychological as well as physical harm in the process. Rape is not merely a physical assault – it is often destructive of the whole personality of the victim. A murderer destroys the physical body of his victim, a rapist degrades the very soul of the helpless female. The courts, therefore, shoulder a great responsibility while trying an accused on charges of rape. They must deal with such cases with utmost sensitivity. The courts should examine the broader probabilities of a case and not get swayed by minor contradictions or insignificant discrepancies in the statement of the prosecutrix, which are not of a fatal nature, to throw out an otherwise reliable prosecution case.”

33. Dr. Mehboob Ahmad (PW-1) testified that he examined Appellant Nazar Hussain and confirmed that he was potent and capable of engaging in sexual intercourse. Dr. Noor-ul-Falah (PW-9) deposed that during the medical examination, S provided a history of the incident, recounting that Nazar Hussain had threatened her, forcibly raped her, and bitten, slapped, and kissed her. The lady doctor stated that she observed three small abrasions on a 2 cm area on the dorsal aspect of S’s right hand, approximately 1 cm above the wrist joint near the base of the little finger. She further observed that S’s hymen was completely ruptured and appeared fresh, indicating recent sexual intercourse. Hence, the medical evidence corroborates the victim’s testimony and supports the allegations against Nazar Hussain.

34. According to the PFSA report (Exh. PK), no seminal material from Appellant Nazar Hussain was detected on S’s vaginal swabs sent for forensic analysis. However, it notes that several factors could account for this result, including the possible use of a condom, non-ejaculation, significant delays in the medico-legal examination, improper preservation or packaging of the evidence, or self-cleaning and bathing by the victim. These findings underscore the complexities of DNA evidence and its interpretation in criminal cases.

35. DNA reports in criminal cases can be categorized into three types: positive, negative, and inconclusive, each carrying distinct implications. A positive DNA report conclusively links the accused to the biological evidence found at the crime scene or on the victim, serving as strong corroborative evidence to establish the identity of the perpetrator. However, its evidentiary value depends on safeguards, such as the proper chain of custody, preservation of evidence, and adherence to scientific protocols. Without these safeguards, its reliability may be questioned. On

the other hand, a negative DNA report indicates no match between the accused's DNA and the biological material analyzed. Nevertheless, such findings do not necessarily exonerate the accused, as factors like condom use, non-ejaculation, delays in examination, or contamination could explain the absence of DNA. Inconclusive DNA reports arise when forensic analysis fails to produce a definitive result due to issues like degraded samples, insufficient DNA material, or contamination. Such reports neither implicate nor exclude the accused, requiring courts to consider other available evidence to reach a fair conclusion. When the DNA report is negative or inconclusive, courts must consider other evidence, such as medical findings, eyewitness testimony, and circumstantial facts, to determine the accused's culpability.

36.        **In *Ali Haider alias Papu v. Jameel Hussain and others*** (PLD 2021 SC 362), the Supreme Court of Pakistan emphasized that DNA testing provides courts with a high degree of confidence in identifying perpetrators, thereby aiding in convicting actual offenders and exonerating the wrongfully accused.<sup>19</sup> Despite its strength, DNA evidence is considered corroborative rather than primary,<sup>20</sup> meaning it strengthens and supports other evidence but is not by itself conclusive proof.

37.        Section 375 PPC explicitly defines rape as the penetration of the vagina, mouth, urethra, or anus with any body part or object, regardless of whether seminal discharge occurs. Therefore, even the slightest penetration constitutes rape.<sup>21</sup> The presence of spermatozoa in the victim's private part is not a prerequisite to establish penetration.<sup>22</sup> The essence of the offence lies in the violation of bodily integrity and autonomy, not the physical outcomes of the act. The law prioritizes the protection of the victim's dignity and bodily autonomy over the presence of biological evidence like spermatozoa. In a nub, the absence of seminal material is not fatal to the prosecution's case.<sup>23</sup>

<sup>19</sup> In this regard, also see: *Salman Akram Raja and another v. Government of Punjab* (2013 SCMR 203).

<sup>20</sup> *Ali Haider alias Papu v. Jameel Hussain and another* (PLD 2021 SC 362), *Atta-ul-Mustafa v. The State and another* (2023 SCMR 1698).

<sup>21</sup> Also see: *Abdul Ghani v. The State and another* (2022 SCMR 544).

<sup>22</sup> Modi, A Textbook of Medical Jurisprudence and Toxicology, 27th Edn. (LexisNexis), p.861

<sup>23</sup> *Zahid and another v. The State* (2020 SCMR 590).

38. Appellant Nazar Hussain has not explained why the Complainant and prosecution witnesses would falsely accuse him. In his statement under section 342 Cr.P.C., he claimed that he was a witness in an FIR lodged by Muhammad Bukhsh, the father of the Complainant's brother-in-law, and that his failure to testify in that case led to his false implication in the present matter. This defence lacks credibility, as it is implausible that anyone would jeopardize their honour and reputation over such a trivial issue. Given the fact that medical evidence confirms the commission of the offence of rape, there is no plausible reason to assume that the complainant party would permit the actual perpetrator to go unpunished and instead implicate him. Instances of substituting an innocent person for the actual offender are extremely rare, and nothing in the record supports such a possibility in this case.

39. Child abuse cases are among the most challenging to detect and prosecute because the victim is often the sole witness. This difficulty is further compounded when the perpetrator is a parent or close family member. Courts must deal with these cases with extra care and sensitivity, balancing the need to protect children from abuse with the principles of fairness and due process.<sup>24</sup>

40. A critical distinction must be drawn between a child who is simply a witness to an incident and a child who is the victim of the crime. The testimony of a child victim carries unique weight and requires a different approach, as the child directly bears the emotional, psychological, and physical impact of the offence. This distinction was emphasized in various cases. In *Bashir Ahmed v. The State* (PLD 1979 Karachi 147), the Sindh High Court held that the rule as to corroboration is one for the guidance of the courts and is not a rigid rule of law. Where the prosecutrix is a minor girl and has been the victim of outrage, she cannot be regarded as an accomplice, and her testimony should be evaluated according to the ordinary principles that stress its intrinsic worth and credibility. In such cases, the girl's conduct may be sufficient to justify the acceptance of her version. In *Raja Khurram Ali Khan v. Tayyaba Bibi* (PLD 2020 SC 146), the Supreme Court of Pakistan criticized the trial court for failing to

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<sup>24</sup> *Imdad Ullah v. The State and another* (2024 LHC 1462), and *State of Rajasthan v. N. K. (accused)* (AIR 2000 SC 1812).

distinguish between a child witness and a child victim, emphasizing that the latter's testimony must be evaluated with specific regard to the trauma and circumstances they endured. The relevant excerpt is reproduced below:

“We also find that the trial court failed to appreciate the distinction between a child witness, who is a witness of the crime, with one who is herself a victim of the crime. This lack of distinction led the trial Court to wrongly apply the principle of appreciating evidence of an ordinary witness of a crime, and not applying the standard of proof required for appreciating the testimony of a child witness, who is herself a victim of the said crime. Even otherwise, this Court found that the prosecution had produced sufficient evidence against the accused-convicts to safely discharge its ‘legal’ burden to prove the guilt of the accused, which was not rebutted by the accused-convicts by producing any evidence creating any doubt in the prosecution’s case.”

41. The Supreme Court's observations in *Atif Zareef and others v. The State* (PLD 2021 SC 550), though made in the context of a rape case involving a woman, are relevant to the present discussion. The Court acknowledged the inherent challenges in obtaining direct evidence for rape, noting that such crimes are usually committed in private, and no eyewitness testimony is available. In view of this reality, the Supreme Court emphasized that the courts should not insist on additional direct evidence to corroborate the victim's testimony if it is found credible within the specific facts and circumstances of a case. In such instances, the victim's testimony should alone suffice for the conviction of the accused. The Supreme Court stated that a rape victim stood on a higher pedestal than an injured witness because the latter only suffered physical harm, while the former endured psychological and emotional distress.

42. In *Imdad Ullah v. The State and another* (2024 LHC 1462), a Division Bench of this Court stated that the evaluation of a child's testimony as a victim of sexual abuse requires a thorough and balanced approach to protect the child's rights and dignity while ensuring that the principles of justice are upheld. The Court recognized that sexual abuse may involve penetrative or non-penetrative acts, with the latter posing greater challenges due to an increased risk of false accusations in the societal context. Judges must determine the guilt or innocence of an accused by thoroughly examining all available evidence, considering the surrounding circumstances, and adhering to applicable legal standards. The absence of corroboration should not automatically discredit the child's testimony in child abuse cases. The tender age of the child, combined with

other case-specific circumstances, such as demeanour and the unlikelihood of tutoring, may make corroboration unnecessary. However, this is a factual consideration in each case. Courts must acknowledge that children may respond to the trauma of abuse in diverse ways, which may include confusion, fear, or mental anguish.

43. In the present case, as discussed, S successfully withstood cross-examination and substantiated her case with consistent and unwavering evidence. Her account is corroborated by medical evidence. Muhammad Niaz's testimony further supports her version of events, which we find reliable. Earlier in this judgment, we addressed and rejected Mr. Bhatti's contention that Muhammad Niaz was a chance witness and lacked credibility. However, even if his testimony is excluded, the remaining evidence against Appellant Nazar Hussain is sufficient to sustain his conviction.

44. We conclude that the prosecution has fully proved the guilt of Appellant Nazar Hussain. Hence, his conviction and sentence under section 376(iii) PPC are upheld, and the appeal is **dismissed** to his extent.

45. Next, we take up the case of Appellant Atta Ullah. In the application Exh. PB and FIR No. 497/2021 (Exh. PH), the Complainant claimed that Atta Ullah witnessed the occurrence. However, on 2.9.2021, seven days after the FIR was registered, he nominated him as an accused, alleging that he recorded a video of the rape incident using the cellphone of co-accused Jalal (since acquitted). The Complainant did not disclose the source of this information or explain the circumstances that prompted his implication.

46. We note that on 26.8.2021, while giving history to Dr. Noor-ul-Falah (PW-9), S stated that, at the time of the rape by Nazar Hussain, an unacquainted person recorded a video of the incident on a mobile phone. Then, during cross-examination at the trial, she categorically stated that she did not nominate Atta Ullah.

47. Given the above, the identity of the individual who made the video is not established. While the PFSA reports (Exh. PL and Exh. PM) confirm the authenticity of the video, they do not link Appellant Atta Ullah to the offence or establish that he was the one who recorded it.

48. It is essential to point out that the Investigating Officer, Nusrat Parveen/SI (PW-11), testified that the video in question was not recovered from Appellant Atta Ullah. She stated that the Complainant submitted it in a USB (P-6). In *Ishtiaq Ahmed Mirza and others v. Federation of Pakistan and others* (PLD 2019 SC 675), the Supreme Court of Pakistan has comprehensively outlined the requirements for the admissibility of audio and video tapes in evidence and the procedure for proving them in the court. The Supreme Court has *inter alia* mentioned that the source of such recordings must be clearly identified. In the present case, the prosecution did not provide any evidence regarding who transferred the video onto the USB, whether it was sourced from the internet, who uploaded or downloaded it, and when these actions took place.

49. *Ishtiaq Ahmed Mirza's case* further mandates that audio and video recordings must be played in court during the trial. This requirement is based on the fundamental right of the accused, or the person against whom they are to be used, to confront the evidence presented against them. In the present case, USB P-6 was not played in court during the trial, depriving Appellant Atta Ullah of his right to challenge or respond to its contents. Consequently, the said USB cannot be used as evidence against him, nor can any conviction be based on it.

50. Abdul Shakoor 527/C (PW-7) testified that on 26.8.2021, the Investigating Officer handed over USB P-6 to him for obtaining pictures from the bazaar. He extracted five pictures, marked as P-1 to P-5, and later delivered them to her in the presence of Faria Khadim/LC (PW-6), and she took them into her possession through Recovery Memo Exh.PE. PW Abdul Shakoor's testimony indicates that USB P-6 was never placed in safe custody. Under these circumstances, it would hold no evidentiary value even if it had been played before the trial court.

51. We have examined pictures P-1 to P-5. Three of them depict a washroom, likely the place where the offence was committed, while the remaining two show the victim in a home setting. If these pictures accurately represent the contents of USB P-6, they do not contain anything incriminating that would warrant punishment for Appellant Atta Ullah.

52. In our considered opinion, the prosecution has failed to establish the charge against Appellant Atta Ullah. Hence, we allow this appeal to his extent and acquit him of the charge. He shall be released from jail forthwith if he is not required to be detained in some other case.

**(Muhammad Amjad Rafiq)**  
**Judge**

*Naeem*

**(Tariq Saleem Sheikh)**  
**Judge**

Announced in open court on \_\_\_\_\_

Judge

Judge

Approved for reporting

Judge

Judge