

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

JUSTICE MUHAMMAD HASHIM KHAN KAKAR
JUSTICE ISHTIAQ IBRAHIM

JAIL PETITION NO.390 OF 2021

(Against dated 04.08.2021, passed by the Islamabad High Court, Islamabad in Criminal Appeal No.48 of 2021 and Jail Appeal No.50 of 2021)

Asim Gulfraz

...Petitioner (s)

Versus

The State

...Respondent(s)

For the Petitioner(s): Mr. Shoukat Hayat, ASC

For the State: Ms. Chand Bibi, DPG

For the Complainant : Sardar M.Tariq Fareed, ASC along with Syed Rifaqat Hussain Shah, AOR

Date of hearing: 19.11.2025

JUDGMENT

ISHTIAQ IBRAHIM, J.- Complainant Mst. Naveeda Shah (PW-9), was residing with her minor son Muhammad Shahvaiz, aged about eight years, at House No. 1216, Street No. 19, Farash Town, Islamabad. On 11.06.2019 about 4:30 p.m., her minor son Muhammad Shahvaiz left the house to play in the vicinity. After about half an hour, he returned home in a distressed condition, weeping and bearing visible scratch marks on his neck who told her mother (complainant) that a boy wearing maroon-coloured clothes had forcibly taken him to an under-construction shop in Street No. 21, where he committed sodomy upon him. The complainant along with her minor son immediately proceeded to Police Station Shahzad Town, Islamabad, and lodged a written complaint (Exh.PA) to Mehdi Khan, ASI (PW-1), upon which he registered FIR (Exh.PA/1) against an unknown assailant. It was also stated in the complaint that the victim would be able to identify the culprit if produced before him.

2. Mehdi Khan ASI (PW-1) produced the victim boy for medical examination before lady Dr. Komal Yousaf Sandhu (PW-7) at Polyclinic Hospital. The lady doctor examined the child, noted the scratch marks on his neck and called the surgery department to collect an anal swab from the victim for onward submission to the Punjab Forensic Science Agency (PFSA). Mehdi Khan ASI also took into possession the pant stained with semen worn by the victim at the time of the occurrence along with the DNA samples secured by the medical officer from the victim, and deposited the same with the Moharrir of the Police Station. On 13.06.2019, ASI Mehdi Khan retrieved the sealed parcels from the Moharrir and deposited them at PFSA, Lahore, on the same day. He thereafter took the victim and his father to the CIA Unit, Islamabad, where, on the basis of the information provided by the minor, a sketch of the alleged culprit was prepared. Upon completion, the victim confirmed that the sketch bore approximately 80% resemblance to the assailant. Thereafter, the investigation was entrusted to Rafaqat Hussain, ASI (PW-2). On 30.08.2019, he received wireless information that an accused person, allegedly habitual of committing sodomy upon children, had been arrested in FIR No. 224/2019 under Sections 377/506 PPC by Police Station Koral. Upon receiving this information, he proceeded to the said Police Station, where he learnt that the arrested accused had already been sent to jail. On 06.09.2019, after obtaining permission from the learned Magistrate concerned, PW-2 visited Central Jail Adyala and interrogated the said accused, who confessed his involvement in the present case. During interrogation, he disclosed his name as Asim Gulfras (the petitioner). On 17.09.2019, Rafaqat Hussain ASI submitted an application to the ADCG for conducting an identification parade, which was entrusted to the Assistant Commissioner (Saddar). Consequently, on 20.09.2019, an identification parade of the said arrested accused was held at Central Jail Adyala, wherein the minor victim positively identified the said accused to the person who had committed sodomy upon him. Subsequently, on 25.09.2019, the petitioner was summoned from jail and produced before the learned Judicial Magistrate, who granted three days' physical remand for further investigation. On 26.09.2019, the investigating officer produced the petitioner before Dr. Nirmal (PW-3) at Polyclinic Hospital for medical examination, during which his blood samples were obtained for DNA analysis. The petitioner was further examined by Dr. Amir Abbas, Urologist (PW-4), who opined that he was capable of performing sexual

intercourse. On 02.10.2019, PW-2 received the sealed parcel containing the accused's samples from Polyclinic Hospital and deposited the same with the Moharrir for safe custody. Thereafter, on 07.10.2019, he deposited the said samples at the Punjab Forensic Science Agency (PFSA), Lahore.

3. Upon completion of the investigation, a report under Section 173 of the Code of Criminal Procedure, 1898 ("**the Code**") was submitted against the petitioner before the learned Additional Sessions Judge, Special Court (GBV) East/West, Islamabad ("**the Trial Court**"). The petitioner was then put to trial and, after a regular and full-dressed trial, the Trial Court, vide judgment dated 12.04.2021, convicted the petitioner for the offence punishable under Section 377-B PPC and sentenced to fourteen years' rigorous imprisonment as well as directed him to pay a fine of Rs. 1,000,000/-, and in default thereof, to further undergo six months' simple imprisonment. The benefit of Section 382-B of the Code was duly extended to him.

4. The petitioner-convict questioned his conviction and sentence before the Islamabad High Court, Islamabad ("**the High Court**") by filing Criminal Appeal No.48 and Jail Appeal No.50 of 2021, but the same were dismissed vide judgment dated 04.08.2021 ("**impugned judgment**").

5. Through the instant Jail Petition, the petitioner-convict seeks leave to appeal against the impugned judgment of the High Court.

6. It is a case of sexual abuse of a minor victim boy of 8 years, namely, Muhammad Shahvaiz. In cases of a like nature, the testimony of the victim is given much importance and conviction can be recorded on the sole testimony of the victim provided the same is supported by medical evidence. The victim of this case, namely Muhammad Shahvaiz, appeared before the Trial Court in the witness box as PW-10. Being a child at the relevant time, the Trial Court, prior to recording his statement, put certain questions to him, which he answered rationally. In his statement, the minor victim deposed that on 11.06.2019, he, along with his cousin, went to a park, where a boy approached him and promised to give him a kite, kite thread, and marbles (bantay). On this pretext, he took him to an under-construction shop in Street No.21, where he was forcibly subjected to sexual intercourse. He further deposed that upon returning home, he narrated the incident to his mother, who immediately took him to the police station where the matter was reported. The minor victim stated that he was medically examined by a doctor and that he identified the petitioner-convict during an

identification parade conducted inside the jail. During cross-examination, the minor victim reiterated that he had identified the petitioner-convict inside Adyala Jail and that no police officer had pointed out the petitioner to him. No beneficial inference for the defence, nor any adverse fact for the prosecution, could be elicited from the victim during cross-examination.

7. The identification parade of the petitioner-convict was conducted on 17.09.2019 by Mr. Gohar Zaman Wazir (PW-8) through the minor victim, Muhammad Shahvaiz. PW-8 deposed that after complying with all legal formalities, he conducted the identification parade of the petitioner inside Adyala Jail. During the parade, the minor victim correctly identified the petitioner-convict and specifically narrated the role of the petitioner, reiterating the mode and manner in which he was subjected to unnatural offence. The identification parade report was tendered in evidence by PW-8 and marked as Exh.PJ (Exh.PD). PW-8 was cross-examined, but nothing could be elicited to discredit the identification proceedings or to cast doubt on the correctness of the victim's identification. It is well-settled that identification of an accused by the victim is a piece of substantive evidence and has great evidentiary value, particularly in cases where the offence is committed in private and there are no other eyewitnesses. Admittedly, a correct identification, especially by a victim who had the opportunity to observe the culprit during the commission of the offence, is of utmost significance and cannot be lightly discarded. In the present case, the minor victim's identification of the petitioner-convict inside the jail, without any prompting by the police, carries substantial weight and reinforces the credibility of his testimony.

8. On the very day of the occurrence, the minor victim was medically examined by Dr. Komal Yousaf Sandhu (PW-7). In her deposition, she stated that upon examination she observed scratch marks on both sides of the victim's neck. She further stated that the anal swabs of the victim were obtained by the Surgery Department, sealed, and handed over to the police for analysis by the PFSA. The victim was thereafter referred to Dr. Zulfiqar Khan Tanoli (PW-11). According to his testimony, upon clinical examination he noted scratch marks on both sides of the victim's neck just below the jawline, as well as visible bruises in the perianal region, accompanied by fissures at the 5, 6, and 8 o'clock positions, though without active bleeding. On arrest of the petitioner-convict, he was produced before Dr. Nirmal (PW-3) on 26.09.2019, who obtained his blood sample for DNA analysis and subsequently referred him to

Dr. Amir Abbas, Urologist (PW-4). As per the statement of PW-4, upon medical examination the petitioner-convict was found to be capable of performing sexual intercourse. Mehdi Khan ASI (PW-1) took into possession the clothes of the victim, including his trousers bearing semen stains, and deposited the same in the PFSA on 14.06.2019 along with the DNA blood samples of the victim. The blood samples of the petitioner-convict, obtained by the Medical Officer, were handed over to Rafaqat Hussain ASI (PW-2), who deposited them in the PFSA Lahore on 07.10.2019. According to the PFSA report Exh.PK, seminal material was detected on the stained section of the victim's trousers. Furthermore, as per PFSA report Exh.PL, the DNA profile developed from the sperm fraction of the trousers matched the DNA profile obtained from the blood sample of the petitioner-convict. The buccal swab standard of the victim also matched correspondingly, thus eliminating any possibility of contamination or error. The PFSA reports Exh.PK and Exh.PL provide strong forensic corroboration of the minor victim's account, conclusively connecting the petitioner-convict with the commission of the offence.

9. Mst. Naveeda Shaheen, the mother of the victim, appeared as PW-9. In her statement she has also charged the petitioner-convict for commission of the offence. She deposed that immediately after the occurrence, her minor son narrated the entire occurrence. She has faithfully reproduced before the Court the facts as disclosed to her victim son at the first available opportunity and she reported the same to the police. Her statement, being contemporaneous with the occurrence and forming part of the same transaction, squarely falls within the ambit of the doctrine of res gestae and is, therefore, admissible in evidence under Article 19 of the Qanun-e-Shahadat Order, 1984, which for ready reference is reproduced below:-

“19. Relevancy of facts forming part of same transaction:-

Facts which though not in issue are so connected with a fact in issue as to form part of the same transaction, are relevant, whether they occurred at the same time and place or at different time and places”.

The law is well-settled that a spontaneous and contemporaneous declaration made by a victim or witness, without affording any opportunity for reflection, tutoring, or fabrication, carries a high degree of intrinsic reliability and is receivable as an exception to the general rule against hearsay. In the present case, the victim, a minor boy of about eight years of age, returned home within half an hour of the occurrence and immediately narrated the incident to his mother. A child of such

tender years cannot reasonably be expected to devise or tailor a concocted story within such a short span of time. His narration, therefore, bears the hallmark of truth and spontaneity. The doctrine of *res gestae*, literally meaning “things done,” constitutes a recognized exception to the inadmissibility of hearsay. Our Courts have consistently accepted statements falling within this doctrine when the following conditions are fulfilled (i) The statement must be made at or immediately after the occurrence, leaving no room for deliberation, invention, or external influence. It must arise instinctively and naturally from the event itself; and (ii) The statement must form an integral part of the same transaction, being so closely interconnected in time, place, and circumstance that it becomes inseparable from the occurrence. The underlying rationale is that such utterances, made under the stress and excitement of the event, possess a degree of reliability that excludes the likelihood of fabrication. These spontaneous declarations illuminate the nature, character, and context of the incident and thereby assist the Court in arriving at the truth.

10. For what has been discussed hereinabove, we are satisfied that the concurrent findings recorded by the Courts below rest upon a proper and meticulous appreciation of the evidence as well as the applicable law. Both the trial Court and the High Court/Appellate Court have correctly evaluated the material brought on the record and, on the basis thereof, have rightly concluded that the petitioner-convict is guilty of the offence charged. We find no illegality, perversity, or jurisdictional defect in the impugned judgment. Likewise, no instance of misreading, non-reading, or improper appraisal of evidence has been pointed out that may justify interference by this Court in the exercise of its discretionary jurisdiction. The conclusions drawn by the Courts below are well-reasoned, supported by the evidence, and call for no indulgence. Consequently, the petition is devoid of merit and is hereby dismissed. Leave is refused.

Judge

Judge

Islamabad
19th November, 2025
Approved for reporting.
M.Siraj Afridi PS

