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JUDGMENT SHEET  
**LAHORE HIGH COURT,**  
**BAHAWALPUR BENCH, BAHAWALPUR**  
JUDICIAL DEPARTMENT

**Criminal Appeal No. 422/2023**

**Muhammad Saleem**  
**Vs.**  
**The State and another**

**JUDGMENT**

<b>Date of hearing:</b>	31.1.2024
<b>For the Appellant:</b>	Mr. Zafar Iqbal Cheema, Advocate.
<b>For the State:</b>	Mr. Tahir Mehmood Mufti, Deputy Attorney General and Ch. Asghar Ali Gill, Deputy Prosecutor General.
<b>For the Complainant:</b>	Nemo.

**Tariq Saleem Sheikh, J.** – This appeal is directed against the judgment dated 15.9.2023 handed down by the Additional Sessions Judge, Chishtian, in case FIR No.271/2021 dated 10.8.2021 registered at Police Station Shaher Fareed, District Bahawalnagar, for an offence under section 377 of the Pakistan Penal Code 1860 (PPC).

2. On 10.8.2021, Parveen Bibi (PW-1) appeared before Fazal Abbas/TSI (referred to as PW-7) at Police Station Shaher Fareed, Bahawalnagar, and submitted an application (Exh. PA). She stated that on 8.8.2021, around 4:00 p.m., her 10-year-old son, M.F., was standing outside his house when Muhammad Saleem and Muhammad Muneeb approached him. They persuaded him to accompany them on a motorcycle under the pretext of purchasing milk. After driving approximately 10 to 12 acres, they stopped the bike at Kacha Road and forcibly took M.F. to a sugarcane field belonging to Ch. Atif where Saleem committed sodomy with him, while Muhammad Muneeb stood guard. M.F.’s hue and cry attracted PWs Muhammad Afzal and Khadim Hussain to the spot. The accused fled on seeing them. Parveen Bibi

prayed that legal action be initiated against them. Based on the aforementioned application, Fazal Abbas/SI (PW-7) registered FIR No.271/2021 dated 10.8.2021 (Exh. PE).

3. The investigation of the case was conducted by a joint investigation team (JIT) comprising Farooq Ahmad Anwar/SI (PW-8), Arshad Latif/DSP (PW-10), and Muhammad Zafar Rafiq/SI (PW-5) under the Anti-Rape (Trial and Investigation) Ordinance, 2020. The JIT inspected the crime scene, prepared a rough site plan (Exh. PD), and recorded statements of the victim and witnesses under section 161 Cr.P.C. On 11.8.2021, it arrested Saleem and obtained his physical remand. The same day, it received M.F.'s MLC No.183/21, his clothes, and one sealed envelope containing his swab. The sealed package was entrusted to Moharrar Saifullah 1096/HC (PW-6) for safekeeping. Saifullah subsequently handed over the same to Zafar Rafiq/SI (PW-5) for its delivery at the office of the Punjab Forensic Science Agency, Lahore (PFSA). On 12.8.2021, Zafar Rafiq/SI produced M.F. and Saleem in the office of the PFSA for DNA profiling and also deposited the sealed parcel. On 18.8.2021, Saleem was sent to judicial lockup. On 26.8.2021, Muneeb joined the investigation and was found not involved in the matter. After the completion of the investigation, a report under Section 173 Cr.P.C. was submitted to the court against Muhammad Saleem (the "Appellant").

4. On 16.10.2021, the Magistrate Section-30 indicted the Appellant. He denied the charge and opted for trial. Following the enactment of the Anti-Rape (Investigation and Trial) Act 2021, the Additional Sessions Judge, Chishtian, proceeded with the case. The prosecution examined ten witnesses to prove its case. Among them, Complainant Parveen Bibi (PW-1), Victim M.F. (PW-2), and Khadim Hussain (PW-3) furnished the ocular account. Dr. Intsar Ali Jatala (PW-4) provided medical evidence. Muhammad Saifullah 1096/HC (PW-6) testified about receiving the victim's clothing and a sealed envelope containing his swab from Zafar Rafiq/SI (PW-5) for safekeeping in *Malkhana* and then giving back the envelope to him for onward transmission to PFSA. Farooq Ahmad Anwar/SI (PW-8), Arshad Latif/DSP (PW-10), and Muhammad Zafar Rafiq/SI (PW-5) gave details

of the investigation and the evidence that the JIT collected in this case. The remaining witnesses were formal. The Deputy District Public Prosecutor gave up PW Muhammad Afzal, deeming him unnecessary, and closed the prosecution evidence after tendering the Forensic DNA and Serology Report Exh. PG/1-2.

5. After the prosecution was through with its evidence, the Additional Sessions Judge recorded the Appellant's statement under section 342 Cr.P.C. He confronted him with the incriminating material presented against him during the trial, which he refuted while maintaining his innocence. When questioned about his purported involvement in the case, the Appellant asserted:

“There was a simple quarrel with the children of the complainant because she is our neighbour. The complainant had suspicion that my elder brother had illicit relations with the complainant's sister; for that reason, the complainant booked me in this false case. I am innocent.”

The Appellant neither got his statement recorded on oath under section 340(2) Cr.P.C. nor examined any witness in his defence.

6. On the conclusion of the trial, vide judgment dated 15.9.2023, the Additional Sessions Judge convicted the Appellant under section 377 read with section 511 PPC and sentenced him to simple imprisonment for two years with a fine of Rs.10,000/- and, in default thereof, to undergo simple imprisonment for further ten days. The Judge extended him the benefit of section 382-B Cr.P.C. Hence, this appeal.

7. In support of this appeal, Mr. Zafar Iqbal Cheema, Advocate, contended that the FIR was lodged with an inordinate delay. Since there was no explanation for the said delay, it reflected on the veracity of the prosecution's version. He next contended that the trial court had failed to appreciate the evidence correctly, which had caused a grave miscarriage of justice. Mr. Cheema argued that M.F. was the prosecution's key witness but was very young. His testimony could not be relied upon without corroboration. The prosecution produced Parveen Bibi (PW-1) and Khadim Hussain (PW-3) for that purpose, but they could not be relied upon because they were closely related to M.F. Additionally, there were material contradictions in their statements. Mr. Cheema further contended that M.F.'s DNA report, Exh. PG/1-2, falsified the prosecution's case in

its entirety because no seminal material, much less the Appellant's semen, was found on his body or clothes. Even his medical report, Exh. PB, was not suggestive of sodomy. Mr. Cheema maintained that the Complainant had falsely implicated the Appellant in this case due to suspicions regarding his brother's relationship with her sister. The counsel prayed that Crl. Appeal No. 422/2023 be accepted, and the Appellant be acquitted of the charge.

8. Ch. Asghar Ali Gill, Deputy Prosecutor General, submitted that Parliament had inserted Sections 377-A and 377-B into the Pakistan Penal Code through the Criminal Law (Second Amendment) Act X of 2016. Section 377-A describes the offence of sexual abuse, and section 377-B provides for its punishment. According to him, Sections 377-A/377-B override section 377 PPC to the extent that it applied to sodomy, and the Additional Sessions Judge had erred in indicting the Appellant under section 377 PPC. The case should, therefore, be remanded for a *de novo* trial.

9. On the merits of the prosecution's case, the Deputy Prosecutor General argued that the complainant party lacked any motive to implicate the Appellant falsely. He asserted that the prosecution's evidence was both credible and consistent. M.F. and PWs Parveen Bibi and Khadim Hussain stood the test of cross-examination and were corroborated by medical evidence. He conceded that the forensic report Exh PG/1-2 did not favour the prosecution but stated that it would not outweigh compelling ocular and medical evidence.

10. Arguments heard. Record perused.

11. Sexual violence is a grave violation of human rights, with profound and lasting consequences for survivors. In many societies, it remains a pervasive issue perpetuated by systemic failures in addressing and preventing such crimes. Robust legal frameworks are indispensable to combat this scourge and ensure justice for survivors.

12. The Pakistan Penal Code contains comprehensive provisions in Chapter XVI-A under the headings "*Of Rape*" and "*Of Unnatural Offences*" to check sexual violence and prosecute perpetrators. Parliament has amended these provisions several times over the years to address the

complexities of sexual offences and fulfil its commitment to ensuring justice for survivors of sexual violence and safeguarding vulnerable populations. For our present purposes, sections 375, 376, 377, 377A and 377B PPC are relevant.

13. Section 375 PPC defines rape. It elaborates on various circumstances and scenarios in which rape can occur, identifying four primary criteria: penetration with the penis, insertion of objects or body parts other than the penis, manipulation of the victim's body for penetration, and oral-genital contact. Additionally, it specifies seven descriptions under which such acts can be considered rape, including instances involving lack of consent, coercion, deception, incapacity to consent, underage victims, and inability to communicate consent. The section also provides crucial explanations to aid in interpretation. Explanation 1 broadens the definition of "vagina" to include the labia majora for legal purposes. Explanation 2 clarifies the concept of consent as an unequivocal voluntary agreement communicated verbally or non-verbally, emphasizing that lack of physical resistance does not imply consent. Explanation 3 extends the definition of "person" to include male, female, and transgender persons and adds that "rape" encompasses "gang rape". Lastly, Explanation 4 exempts *bona fide* medical procedures from being considered as rape.

14. Section 376 outlines the punishments for committing rape, ranging from imprisonment to the death penalty, reflecting the gravity with which society views such offences. Furthermore, it includes provisions for enhanced penalties in cases where additional harm is inflicted during the commission of the offence, targeting specific categories of victims, such as minors or individuals with disabilities, and addressing instances of abuse of authority by public servants.

15. Moving on, section 377 criminalizes voluntary carnal intercourse that deviates from the "natural" order of sexual intercourse. The term "carnal intercourse" refers to sexual penetration, and "against the order of nature" is interpreted broadly to include any sexual acts other than heterosexual vaginal intercourse for procreation. This includes acts such as homosexual intercourse, bestiality, and certain types of

heterosexual intercourse, like anal sex. Notably, the law does not distinguish between consensual and non-consensual acts, making both parties involved liable to prosecution. The explanation provided in the section clarifies that mere penetration is sufficient to constitute the offence, underscoring penetration as the pivotal factor in determining whether an offence under section 377 has been committed.

16. Sections 377A and 377B, enacted through the Criminal Law (Second Amendment) Act 2016, have introduced the offence of sexual abuse. Section 377A defines sexual abuse as any act or series of acts that involve employing, using, forcing, persuading, inducing, enticing, or coercing any person to engage in certain sexually explicit conduct where the age of the victim is less than eighteen years. These acts include fondling, stroking, caressing, exhibitionism, voyeurism, or any other obscene or sexually explicit behaviour or simulation thereof. Importantly, this provision specifies that such conduct can occur independently or in conjunction with other acts, and it applies regardless of the victim's consent. Section 377B delineates the punishment for individuals found guilty of committing sexual abuse under section 377A.

17. The phrase "such conduct either independently or in conjunction with other acts" in section 377A is legally significant as it expands the definition of sexual abuse. It implies that sexual abuse can arise from either a single act or a series of acts, whether they occur alone or in combination with other behaviours. For instance, if an individual coerces a minor into engaging in fondling or exhibitionism, whether solely through coercion or in conjunction with other actions like persuasion or inducement, it would still constitute sexual abuse under section 377A. Similarly, if an offender engages in stroking or caressing a victim, whether independently or in conjunction with other forms of sexual conduct, such as voyeurism or coercion, it would also fall under the purview of sexual abuse as per this provision. Essentially, this phrase ensures that perpetrators cannot evade accountability, whether they commit sexual abuse through one or multiple prohibited acts.

18. Sections 377A and 377B PPC play a pivotal role in aligning Pakistan's legal framework with international human rights principles and

conventions, particularly concerning the protection of children from sexual abuse and exploitation. The United Nations Convention on the Rights of the Child (UNCRC) emphasizes the right of every child to protection from exploitation and abuse, including sexual abuse. This treaty obligates the signatory States to take appropriate measures to prevent and address all forms of violence and exploitation against children, as outlined in Article 19 of the UNCRC.

19. The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) aims to eradicate discrimination against women and ensure their equal rights across various aspects of life. Pakistan is a signatory to it. While CEDAW does not explicitly address sexual abuse or specific criminal offences, its fundamental principles of gender equality and non-discrimination are highly relevant. Sections 377A and 377B resonate with CEDAW's mandate in the following ways:

- (a) CEDAW recognizes gender-based violence, including sexual abuse, as a form of discrimination against women. By addressing sexual abuse, sections 377A and 377B contribute to Pakistan's adherence to CEDAW's mandate to combat gender-based violence and discrimination.
- (b) CEDAW underscores the importance of facilitating access to justice and providing effective remedies for victims of gender-based violence, including sexual abuse. Sections 377A and 377B provide legal avenues for prosecuting offenders and securing redress for victims, thus aligning with Pakistan's commitments under CEDAW.
- (c) CEDAW mandates States to take necessary measures to safeguard women and girls from all forms of violence and exploitation, including sexual abuse. Sections 377A and 377B aim to protect individuals, particularly minors, from exploitation and harm in sexual contexts, thereby resonating with Pakistan's obligations under CEDAW.

20. It is important to note that while sections 375, 377, and 377A all pertain to sexual misconduct, they differ significantly in their focus, scope, and application. Section 375 is centred on non-consensual sexual acts, defining the parameters of rape, whereas section 377 targets voluntary intercourse against the natural order, regardless of consent. It

aims to prohibit socially or morally unacceptable behaviours and imposes penalties such as imprisonment or fines for transgressions. Section 377A introduces the offence of sexual abuse, particularly concerning minors, broadening the spectrum to encompass behaviours like fondling, stroking, exhibitionism, or any sexually explicit conduct involving individuals under eighteen years of age. It targets acts that may not necessarily involve penetration but still constitute forms of exploitation and harm, aiming to protect vulnerable individuals from sexual abuse and exploitation. While section 377A broadens the scope of sexual offences to include additional behaviours, it does not override or replace sections 375 and 377. Instead, it complements them by addressing specific aspects of sexual abuse, particularly concerning minors. Each section serves a distinct purpose within the legal framework, ensuring clarity, precision, and effectiveness in addressing various forms of sexual violence and exploitation while upholding principles of justice and human rights.

21. In certain cases, there may be overlaps or connections between offences under sections 375, 377, and 377A, especially concerning the sequence of events leading to the alleged offences. In such instances, the prosecution bears the burden of meticulously establishing the elements of each offence beyond a reasonable doubt, including both the *actus reus* (the wrongful act) and the *mens rea* (the guilty mind) required for criminal liability. The court's resolution must be thorough, delving into the facts of the case and examining witness testimonies, forensic evidence, and documents to fully understand the circumstances surrounding the alleged offences. Moreover, the court must analyze the elements of each offence in light of the established legal principles and case law to determine the scope and applicability of each offence in the specific factual context of the case.

22. For completeness, we may also refer to section 511 PPC, which delineates the legal consequences for individuals attempting to commit the offences specified in the Code. It stipulates that attempting such offences, if no express provision exists for punishment, can lead to imprisonment or fines. Consequently, if someone tries to commit crimes under sections 375, 377, or 377A but fails, they may face liability under



section 511 PPC. For example, attempting rape, unnatural acts, or sexual abuse, even unsuccessfully, could result in prosecution and punishment under Section 511 PPC. This provision ensures accountability for those attempting sexual offences, bolstering deterrence and prevention efforts against such crimes.

23. In the present case, in her application marked as Exh. PA and in FIR No. 271/2021 marked as Exh. PE, Complainant Parveen Bibi recounted that on 8.8.2021 at about 4:00 p.m., M.F. was standing outside his residence in Mauza Taloka when the Appellant, accompanied by co-accused Muhammad Muneeb, arrived on a motorcycle and deceitfully lured M.F. to a nearby sugarcane field. There, the Appellant allegedly committed sodomy with M.F. As we shall see later, the prosecution led evidence on the same lines during the trial. It never alleged that the Appellant sexually abused M.F. within the meaning of section 377-A PPC at any point in time. Therefore, we hold that the Appellant was rightly indicted under section 377 PPC. The objection raised by the Deputy Prosecutor General in this regard is rejected.

24. The prosecution produced Complainant Parveen Bibi (PW-1), victim M.F. (PW-2), and Khadim Hussain (PW-3) for the ocular account. We begin with M.F.'s testimony. During his examination-in-chief, he reaffirmed the allegations outlined in the application Exh. PA and FIR Exh. PE. The Appellant extensively cross-examined him but he confidently answered each question. His testimony is highly credible and inspires confidence.

25. Mr. Cheema wants us to discard M.F.'s testimony because of his tender age. We must not do so. In Pakistan, the competency of a witness is determined under Articles 3 and 17 of the Qanun-e-Shahadat, 1984 (QSO), while the credibility of a witness is a question of fact which the court decides following the principles settled for the appraisal of evidence. Article 3 of the QSO does not explicitly specify any particular age qualification for a witness. Under Article 3 of the QSO, a child can be

a witness if he possesses the capacity and intelligence to understand and respond rationally to questions – a criterion known as the “*voir dire test*.”<sup>1</sup>

26. The court’s satisfaction in terms of Article 3 of the QSO is not merely a procedural formality but a legal obligation that must be discharged with utmost care and caution. In **Raja Khurram Ali Khan and others v. Tayyaba Bibi and another** (PLD 2020 SC 146), the Supreme Court of Pakistan ruled that the “rationality test”, initially applied by the Presiding Judge at the commencement of a child witness’s examination-in-chief, should continue to be implemented throughout their testimony. If, at any point, the Judge observes any difficulty or reluctance in the child witness’s narration of events, he should stop the proceedings and take appropriate measures to alleviate their stress and anxiety. If necessary, the case may be adjourned to a later date. If a child witness is still unable to narrate their testimony with ease, then the Presiding Judge ought to record their findings on the demeanour of the child witness, conclude their evidence, and relieve them as a witness.

27. We have noted that before allowing M.F. to testify in the present case, the Additional Sessions Judge did conduct the *voir dire* test. M.F. responded to his questions intelligently. Furthermore, while he remained on the witness stand, M.F. answered each question rationally.

28. M.F.’s testimony is vital because he is the victim in this case. In *Raja Khurram Ali Khan’s* case, while highlighting the significance of the testimony of a child witness who is himself the victim of a crime, the Supreme Court stated:

“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.”

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<sup>1</sup> Under this test the court puts certain preliminary questions before the child which have no connection with the case, in order to know the competency of the child witness.

A similar view was expressed in *Zahid v. The State* (2022 SCMR 50).

29. 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 discourse. Recognizing the inherent difficulty in securing direct evidence for sexual crimes due to their private nature, 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.

30. In the present case, PWs Parveen Bibi and Khadim Hussain strongly supported M.F.'s testimony. They consistently corroborated his account on crucial details such as the date, time, location, and manner in which the incident occurred. Despite thorough cross-examination, the Appellant failed to undermine their credibility. Mr. Cheema's contention that the witnesses' close relationship with the victim renders their testimony unreliable is unfounded. It is a well-established legal principle that mere friendship or association is insufficient to discredit a witness unless there is evidence of hostility towards the accused. Reliance is placed on *Iqbal alias Bhala and others v. The State* (1994 SCMR 1) and *Wahid Bukhsh and others v. The State* (1997 SCMR 1424). There is nothing in the record to suggest that the aforementioned witnesses harboured animosity towards the Appellant.

31. Mr. Cheema contended that the two-day delay in lodging the FIR by Parveen Bibi (PW-1) raised doubts about the prosecution's case. The courts in our country generally do not consider the delay in making a report to the police material unless circumstances are such that they warrant an adverse view. Several factors can contribute to a delay in reporting child sexual abuse, including fear, shame, threats from the perpetrator, or a lack of awareness. The legal system aims to balance the

need to protect children from abuse with the principles of fairness and due process. In the present case, Mr. Cheema has not referred us to any circumstance that may require us to take an adverse view against the prosecution because of the delay.

32. Dr. Intsar Ali Jatala (PW-4) conducted M.F.'s medical examination at the Rural Health Centre Shaher Fareed, Chishtian, on 9.8.2021. He testified that he was dressed in a green Shalwar Qameez when the police brought him. His Qameez had two broken buttons and was stained with blood and mud. While the Shalwar also bore mud stains, Dr. Jatala did not detect any semen stains. During M.F.'s general physical examination, Dr. Jatala noted multiple abrasions on both his buttocks, a one cm linear abrasion near the left forearm's wrist joint, a similar abrasion with redness surrounding the right knee joint, and a pink bruise two cm below the left knee joint. Upon anal examination, Dr. Jatala observed no lubricating material around it, and there were no signs of oedema, redness, or abrasion in the anal region. Internally, the tone of the anal sphincter appeared normal, with intact superficial anal reflexes and no tears. He collected swabs from both external and internal anal areas for forensic analysis, sealed them, and handed them over to the police along with M.F.'s clothing for safekeeping. He issued MLR No. 183/21 Exh. PB. During cross-examination, Dr. Jatala deposed that while scratches could result from falling, the presence of bruises alongside scratches was not possible by a fall.

33. Dr. Jatala also testified that he conducted the Appellant's potency test on 13.8.2021, found him potent, and issued MLR No. 190/21 Exh. PC.

34. According to the DNA and serology analysis report dated 24.9.2021 Exh. PG/1-2, no seminal material was detected on M.F.'s anal swabs or stained clothing sections. Consequently, further DNA analysis, specifically Short Tandem Repeat profiling, was not conducted on these items. The report contains a disclaimer that the absence of seminal material does not necessarily rule out the possibility of condom usage, non-ejaculation, delayed medico-legal examination, improper preservation, packaging, self-cleaning, or bathing. On 20.12.2022, Dr.

Jatala reviewed the report, marked as Exh. PG/1-2, and provided his final opinion, marked as Exh. PB/1, which stated:

“So, based on the initial examination of the victim and the report of PFSA S.No.0000795612, it can be concluded that an act of sodomy has not occurred; however, chances of a failed attempt cannot be ruled out.”

35. M.F.’s blood and mud-stained clothes, along with his body abrasions and bruises, including multiple scratch marks on both buttocks, support the eyewitness account that the Appellant sexually assaulted him. However, the medical evidence suggests that the act of sodomy was not completed; it was rather a failed attempt.

36. Mr. Cheema attempted to leverage the negative DNA report (Exh. PG/1-2), contending that it undermines the prosecution’s case. However, this argument is flawed. It is well settled that the strength and credibility of the evidence presented by the prosecution, including eyewitness testimonies and medical findings, hold substantial weight in establishing guilt beyond a reasonable doubt. Courts have historically recognized that DNA evidence can be highly persuasive, but its absence or negativity does not automatically invalidate the prosecution’s case if other evidence provides robust corroboration. In past cases, courts have upheld convictions based on compelling non-DNA evidence, highlighting the importance of considering the overall strength and credibility of the prosecution’s case. In *Abdul Ghani v. The State and another* (2022 SCMR 544), the Supreme Court held:

“Negative reports do not reflect upon the veracity of prosecution case for reasons more than one. D.N.A. profile generation, though a most meticulous method with unfailing accuracy, nonetheless, requires an elaborate arrangement for storage and transportation of samples, a facility seldom available. Even the slightest interference with the integrity of samples may alter the results of an analysis. Thus, the fate of the prosecution case cannot be pinned down on the forensic findings alone; otherwise, merely presenting corroborative support is hardly needed in the face of the overwhelming evidence presented by the prosecution through sources most unimpeachable.”<sup>2</sup>

37. In his statement under section 342 Cr.P.C., the Appellant stated that Complainant Parveen Bibi had falsely implicated him in this case for two reasons: firstly, he claimed that there was a quarrel with her

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<sup>2</sup> Further reference may be made to *Zahid and another v. The State* (2020 SCMR 590), *Wishal Masih v. The State and others* (2017 YLR 2031), and *Khadim Hussain v. The State* (2011 PCr.LJ 1443).

children. Secondly, she suspected that his elder brother had illicit relations with her sister. However, he failed to provide evidence to substantiate either of these claims.

38. To conclude, the prosecution has established that the Appellant attempted to commit an unnatural offence against the order of nature with M.F. Therefore, the Additional Sessions Judge has rightly convicted him under section 377 read with section 511 PPC. As adumbrated, the prosecution neither alleged nor led evidence to prove that the Appellant had committed the offence of sexual abuse described in section 377-A PPC. Hence, the question of conviction under that provision does not arise.

39. Admittedly, the Appellant was a juvenile, being 14 years old, when he committed the offence. Therefore, the Additional Sessions Judge rightly took a lenient view in sentencing him.

40. This appeal is **dismissed**. The Appellant's conviction and sentence are upheld.

**(Sadiq Mahmud Khurram)**  
**Judge**

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

*Naeem*

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

Judge

Judge

Approved for reporting

Judge

Judge