

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Present:

Mr. Justice Athar Minallah
Mr. Justice Irfan Saadat Khan
Mr. Justice Malik Shahzad Ahmad Khan

Criminal Appeal No.231 of 2023

Against the judgment dated 23.06.2021
passed by the High Court of Sindh, Circuit
Court Hyderabad in Criminal Appeal
No.D-134 of 2016 and Confirmation Case
No.26 of 2016.

Amjad and Irfan

...Appellant(s)

VERSUS

The State

...Respondent(s)

For the Appellant(s):

Syed Rifaqat Hussain Shah, ASC/AOR

For the State:

Mr. Salim Akhtar Buriro, Addl. PG, Sindh

For the Complainant:

Mr. Ali Hyder, In person
(via video-link, Karachi)

Date of Hearing:

12.05.2025

JUDGMENT

Irfan Saadat Khan, J.- Leave in the instant case was granted by this Court *vide* order dated 23.02.2023, in the following manner:

"The petitioners were involved in a case bearing FIR No.59 of 2014 dated 23.06.2014 registered with PS Rukkan District Daddu offence under Section 302, 377, 341, 147, 148 and 149 PPC. The petitioners were found to be involved during the course of investigation and as such the report in terms of Section 173 Cr.PC was submitted. During the course of trial, the accusation against the petitioners was found to be correct and as such they were convicted for capital punishment. The matter before the High Court was agitated and the learned Division Bench of the High Court upheld the findings of the learned trial Court. Hence, the instant petition.

2. *The main crux of the argument advanced by the learned counsel for the petitioner is that there is delay of 31 hours in lodging FIR for which no explanation has been rendered. Further contends that the conduct of the prosecution witnesses at the time of occurrence is not natural as they have not made any attempt to save the child from such a brutal act. Contends that the story advanced*

by the prosecution is not probable and it requires reappraisal to evaluate the evidence in its true perspective.

3. *We deem it appropriate to reappraise the entire prosecution evidence in order to evaluate the genuineness of the prosecution case in the interest of safe administration of criminal justice. Consequently, leave to appeal is granted. Appeal stage paper books be prepared on the available record with liberty to the parties to file additional documents, if so desired."*

2. Briefly stated the facts of the case are that the complainant, Ali Hyder Panhwar, a labourer by profession, reported a crime on 23.06.2014 at 2300 hours (11:00 p.m.) stating that the accused-Amjad Panhwar and others were annoyed with him over some matter. He narrated that during the afternoon on the previous day, i.e. 22.06.2014, he had left for the village of Nawazio Kandi from his own village Tajo Panhwar, along with his son Altaf Hussain aged 10/11 years, who was a student of class IV, and his brother Ghulam Muhammad to meet his cousin Muhammad Juman regarding some personal work. At about 03:30 p.m. the complainant and his party arrived near a sugarcane field, belonging to one Meer Panhwar, where they saw accused Amjad (son of Saban) armed with hatchet; Irfan (son of Ghulam Abbas) armed with sickle; Ghulam Abbas (son of Shadi Khan) armed with a gun; and two unidentified accused also armed with guns, who could be identified if seen again. The armed men emerged from the sugarcane crops and after pointing weapons at them, took them into the said sugarcane field, tied their hands and mouths with their kerchiefs (*Romal*). The accused Amjad and Irfan then took off the *Shalwar* of Altaf Hussain and after putting him on the ground committed sodomy with him. Since the complainant and his brother's hand and mouth were tied, they were unable to intervene or raise any hue and cry. After committing the sodomy Amjad inflicted a sharp hatchet blow on Altaf Hussain's right flank and other parts of his body while the accused Irfan cut Altaf's neck with his sickle and also inflicted blows on his head and other body parts. Altaf Hussain then succumbed to these grievous injuries on the spot. The accused Amjad, after leaving the other accused Irfan and others at the spot then fled from the scene. The complainant

and his brother remained there in the said condition whole night and at about 05:30 a.m. in the morning, when the remaining accused persons left them and headed towards west side, the complainant and his brother managed to untie their hands.

3. The complainant then left his brother Ghulam Muhammad with the dead body of the deceased Altaf Hussain and went to his village where he met *Nekmard* Ghulam Mustafa, his uncle Ali Gohar and other co-villagers. Complainant narrated the whole story to them, who informed him that they have been looking for them since the last whole night. Thereafter, Ghulam Muhammad, Ali Gohar and the co-villagers went along with the complainant to the place of occurrence, where they saw the dead body of Altaf Hussain. As per the FIR, the complainant's uncle Ali Gohar informed the police about the incident, whereafter, the police arrived at the place of occurrence and took the dead body of Altaf Hussain into possession for completion of necessary legal formalities. The dead body was then firstly taken to the Civil Hospital Dadu for postmortem after which it was handed over to the complainant party. The complainant then brought the dead body to his village and then burial of Altaf Hussain-deceased took place. After that the complainant went to the Police Station and lodged the FIR *supra* against Amjad, Irfan and others for committing sodomy with his son and thereafter murdering him in a brutal and gruesome manner.

4. The matter proceeded before the Additional Sessions Judge-II, Dadu in Sessions Case No. 575 of 2014, who after completing all the legal and codal formalities, examining the witnesses regarding their depositions and taking into consideration other factors, *vide* his order dated 22.12.2016, found Amjad and Irfan (the "**accused**") guilty of the charges levelled against them. The accused were then convicted under sections 302(b) of the Pakistan Penal Code, 1860

(hereinafter referred to as "**PPC**") and sentenced to death in terms of section 265-H(ii) of the Code of Criminal Procedure, 1898 (hereinafter referred to as "**Cr.P.C.**"). They were ordered to be hanged by their necks till death. In addition, each was directed to pay Rs.500,000/- (five *lac*) as compensation to the legal heirs of the deceased, in terms of section 544-A Cr.P.C. and in default thereof to undergo one-year's Simple Imprisonment ("**S.I.**"). They were also convicted under section 377 PPC and sentenced to imprisonment for life, with a further direction to pay a fine of Rs. 50,000/- each and in default thereof to suffer S.I for six months. They were further convicted under section 341 PPC, read with section 149 PPC, to suffer S.I for one month. The matter was then finally referred to the High Court, under section 374 PPC, for confirmation or otherwise of the death sentence awarded by the Trial Court to the accused. Being aggrieved with the said order the accused preferred Criminal Appeal bearing No.D-314 of 2016 and Criminal Jail Appeal No.D-136 of 2016 (corresponding to the Confirmation Case No.26 of 2016) before the High Court of Sindh, Circuit Court Hyderabad, which after hearing the matter, *vide* order dated 23.06.2021, dismissed both the appeals and upheld the convictions and the sentences of the accused, by answering the reference in "Affirmative". It is against these orders of the Trial Court as well as the High Court that the present Jail Appeal has been filed and, as stated above, leave was granted in the manner and method *supra*.

5. Syed Rifaqat Hussain Shah, learned ASC/AOR has appeared on behalf of the appellants and, at the very outset, stated that the FIR was delayed by 31 ½ hours and has been filed after due consultation with Ghulam Mustafa, Ali Gohar and the police. He stated that on these two grounds alone the accused are liable to be acquitted as it is evident from the contents of the FIR that the same was not only delayed by several hours but also admittedly was lodged after due consultation, rendering the instant case shrouded with mystery and doubts – the benefit of which ought to be given to the accused persons. He stated that

there were marked contradictions in the deposition of the various witnesses, which aspect has totally been ignored by the Trial Court as well as the High Court. He stated that there was no enmity between the parties and that there was no motive available with the accused persons to kill the minor Altaf Hussain. He stated that since the story narrated by the complainant, Ali Hyder, does not appeal to a prudent mind since even after the complainant and his brother's mouths were tied by the accused persons during the occurrence they did not raise any hue and cry so as to attract any passersby or any other person. He stated that the recovery of the hatchet and the sickle was also doubtful since no independent *Masheer* was associated in respect of the said recoveries. He stated that no recovery was effected from the accused at the time of their arrest amply proving that the recoveries were foisted upon them. He lastly stated that since the instant matter is rife with doubts, surmises and conjectures, therefore, by giving benefit to the accused they may be acquitted from the charges levelled against them and the judgments of the Trial Court as well as the High Court may be set aside.

6. Mr. Salim Akhtar Buriro, learned Additional Prosecutor General, Sindh ('APG') has appeared on behalf of the State and vehemently refuted the arguments of the learned counsel for the accused. He stated that though there was delay in lodging of the FIR but the same was satisfactorily explained by the complainant. He stated that the evidences and the depositions of the PWs have remained consistent and confidence inspiring and all the PWS have fully implicated the appellants in respect of the allegations levelled against them. He stated that the postmortem report has proved that human sperms were found on the anal swabs of the deceased-Altaf Hussain. He stated that the accused persons do not deserve any leniency, as they committed sodomy with an innocent child of 10/11 years turn by turn and thereafter brutally murdered him.

7. So far as the motive is concerned, the learned APG stated that though motive was not proved but equally true is the fact that from the various evidences appraised and examined by the Trial Court, as well as the High Court, it has come on the record that the accused persons firstly committed sodomy and then brutally murdered the child of 10/11 years in a barbaric manner. He, therefore, stated that the accused do not deserve any leniency and that the death sentence awarded to them may be confirmed.
8. Mr. Ali Hyder, complainant, has appeared in person (via video-link from Karachi) and has adopted the arguments of the learned APG.
9. We have heard the learned counsel for the petitioner, the APG as well as the complainant at considerable length and have also perused the record with their able assistance.
10. At the very outset, we note that there was a considerable delay of more than 31 ½ hours in lodging of the FIR. It is also a matter of record, rather it is an admitted position on the part of the complainant, that the FIR was registered after due consultation with Ghulam Mustafa, Ali Gohar and the local police. From the deposition of Ali Hyder (PW-1), it is evident that the postmortem of the deceased was conducted before lodging of the FIR. He has admitted that after leaving the dead body at the spot he did not go to the Police Station for lodging of the FIR rather he went to the *Nekmard* Ghulam Mustafa and his uncle Ali Gohar to inform them about the incident. Even after picking the dead body from the spot he made no effort to lodge the FIR as again he went to the Hospital and had the postmortem conducted and, finally after completing the burial of the deceased, thereafter he went to the Police Station for lodging the FIR, causing a delay of 31 ½ hours. The word FIR, stands for "First Information Report", which is to be lodged at the very initial stage of the incident

so that the legal process may be put into motion. In the instant case however, the FIR was registered after the above-mentioned events i.e. informing Ghulam Mustafa and Ali Gohar so also the co-villagers, taking them to the spot, taking the deceased's body to the Hospital, getting postmortem and medical checkup done and finally the burial of the deceased. It was only after all these episodes that the FIR was lodged after due consultation and preliminary investigation/enquiry of the Police of the spot, which, in our opinion, has put a major dent on the case of the complainant as well as that of the prosecution.

11. The deposition of Ali Hyder regarding the *Romal*, with which his and his brother's hands and mouth as well as the mouth of deceased Altaf Hussain were tied also contradicts the deposition of the other PWs, as he has stated that the *Romal* was red and white in colour whereas according to PW.2, his brother Ghulam Muhammad, it was red in colour. Even in the postmortem report the said *Romal* has been mentioned as red and white. PW.3 Muhammad Khan has deposed that he did not remember the colour of the said *Romal*. From the deposition of Ali Hyder, it is also evident that he has stated that the deceased Altaf was not tied with the kerchief whereas in the FIR he has mentioned that Altaf's mouth was tied with it.

12. There is also a contradiction regarding the sodomy done by Amjad and Irfan, as according to the deposition of Ali Hyder it was Amjad who committed the said act first and then Irfan; whereas according to PW.2, his brother Ghulam Muhammad, Irfan committed the said offence first and then Amjad. There is also no mention in the FIR as to who committed the sodomy first either Amjad or Irfan.

13. The PW.2, Ghulam Muhammad, has also given some contradictory statements he stated that Ali Gohar informed the police over the telephone whereafter the police arrived at the place of incident/*wardaat* and inspected the

dead body, whereas according to H.C Sikandar Ali, Ali Gohar came to the Police Station and informed him that Amjad and Irfan have committed murder of Altaf Hussain. Moreover, in his cross-examination he stated that Muhammad Khan, Ali Gohar, he himself and his brother Ali Hyder went to the Police Station for lodging the FIR. He admitted that no one from the complainant's side has raised any hue and cry while being at the spot due to fear. Lastly, he admitted that police did not obtain his signatures on his statement whereas they obtained the signatures of the complainant, his brother, on a white plain paper.

14. PW.4, Dr. Niaz Ahmed, has categorically mentioned that crime number was not mentioned in the police letter nor CNIC Number of the identifiers of the deceased's body were mentioned in the postmortem report. He also admitted that in the postmortem proforma there was no mention with regard to the sodomy. He also admitted that no chemical report with regard to the sodomy was produced. He also admitted that there was no mention of the specific weapon, with which the head of deceased Altaf was allegedly cut off, in the said postmortem report. He also admitted that the postmortem started at about 9:00 a.m and finished at 10:00 a.m. (it would not be out of place to mention that the FIR was lodged at 2300 hours).

15. Niaz Hussain *Tapedar* (PW.5) has admitted that in the sketch prepared by him there was no mention of the Police Station or sugarcane crop. (PW.6) Ghulam Sarwar (Police Official) has stated that the letter given to him by the Head Constable Sikandar Ali did not bear crime number, section and the name of Police Station. (PW.7) Sikandar Ali (police official) stated that Ali Gohar came to him and gave information that Amjad and others had committed the murder of Altaf however this statement contradicts with the statement given by Ali Gohar himself and the statement given by Ghulam Muhammad that Ali Gohar informed the police over the telephone. H.C. Sikandar Ali has also admitted that

it was only after postmortem, preparation of inquest report and *Danishnama* that the FIR was lodged. (PW.8) Qurban Ali (SHO) has stated that Ali Hyder came to his police station at about 2300 hrs on 23.06.2014 and thereafter, he registered the FIR which contradicts with the deposition of Ali Hyder, Ghulam Muhammad and Ali Gohar that they all went to the Police Station for lodging FIR. He has also stated that both the accused persons, namely, Amjad and Irfan have voluntarily produced the crime weapons i.e. the hatchet and the sickle from bushes near a Boring Machine which was installed at an open place and such recovery took place in the presence of the *masheers*, who were police officials.

16. If all the above aspects are examined, it would reveal that the present case is full of contradictions and doubts. The most significant aspect of this case is the unexplained delay in registering the FIR. It is also an undeniable fact that the FIR was lodged, after due consultation and even after the visit of Head Constable Sikandar Ali to the spot, who conducted some formalities there and then the dead body was taken for postmortem and then after the said postmortem and medical checkups etc. burial took place and then the instant FIR was lodged after a prolonged period of unexplained delay of 31 ½ hours. When assessed alongside the contradictions, omissions, and improvements discussed above, this delay renders the FIR — and by extension the prosecution's case — highly doubtful. It is a settled proposition of law that the benefit of such doubt always accrues in the accused's favour. Reference in this regard may also be made to the case of *Asia Bibi vs The State* (PLD 2019 Supreme Court 64), wherein this Court explained that:

"There is no cavil to the proposition, however, it is to be noted that in absence of any plausible explanation, this Court has always considered the delay in lodging of FIR to be fatal and casts a suspicion on the prosecution story, extending the benefit of doubt to the accused. It has been held by this Court that a FIR is always treated as a cornerstone of the prosecution case to establish guilt against those involved in a crime; thus, it has a significant role to play. If there is any delay in lodging of a FIR and commencement of investigation, it gives

rise to a doubt which, of course, cannot be extended to anyone else except to the accused. Furthermore, FIR lodged after conducting an inquiry loses its evidentiary value. [See: Iftikhar Hussain and others v. The State] (2004 SCMR 1185)]."

This Court's observations in the case of Altaf Hussain vs The State (2019 SCMR 274) are also helpful and are reproduced below:

"The inordinate delay in setting the machinery of law in motion speaks volumes against the veracity of the prosecution version"

Attention may also be made to the decision given in the case of Muhammad Hassan and others vs. The State wherein it was observed that:

"The delayed FIR shows dishonesty on the part of the complainant and that it was lodged with deliberation and consultation."

Similar views were taken in the cases of Amir Muhammad Khan vs. The State (2023 SCMR 566) Khial Muhammad vs. The State (2024 SCMR 1490), Abid Hussain and another vs. The State and another (2024 SCMR 1608) and Shaukat Hussain vs. The State through PG Punjab and another (2024 SCMR 929). In Ayub Masih vs The State (PLD 2002 Supreme Court 1048) this Court has articulated a foundational principle with regard to benefit of doubt in the following words:

"It is hardly necessary to reiterate that the prosecution is obliged to prove its case against the accused beyond any reasonable doubt and if it fails to do so the accused is entitled to the benefit of doubt as of right. It is also firmly settled that if there is an element of doubt as to the guilt of the accused the benefit of that doubt must be extended to him. The doubt of course must be reasonable and not imaginary or artificial. The rule of benefit of doubt, which is described as the golden rule, is essentially a 'rule of prudence which cannot be ignored while dispensing justice in accordance with law. It is based on the maxim, "it is better that ten guilty persons be acquitted rather than one innocent person be convicted". In simple words it means that utmost care should be taken by the Court in convicting an accused. It was held in The State v. Mushtaq Ahmed (PLD 1973 SC 418) that this rule is antithesis of haphazard approach or reaching a fitful decision in a case. It will not be out of place to mention here that this rule occupies a pivotal place in the Islamic law and is enforced rigorously in view of the saying of the Holy Prophet (p.b.u.h) that the "mistake of Qazi (Judge) in releasing a criminal is better than his mistake in punishing an innocent."

17. In this case, it also stands admitted that the FIR was registered after due consultation with Ghulam Mustafa, Ali Gohar and the police and even after

conducting an enquiry, which loses its evidentiary value. Hence the rule laid down and reiterated in the extract taken from the decision rendered in the case of Asia Bibi (*supra*), in our view would squarely apply to this case as well.

18. In view of the foregoing discussion, the convictions and the sentences of the appellants, Amjad and Irfan, cannot be sustained. The instant appeal is thus allowed and the judgments of the Trial Court and the High Court are set aside. The appellants are acquitted of the charges levelled against them by extending them the benefit of doubt and they are ordered to be released from the jail forthwith, if not required to be incarcerated in any other matter.

19. These are the reasons of our short order dated 12.05.2025, which is reproduced hereinbelow.

"For reasons to be recorded later, this appeal is allowed and the appellants Amjad son of Saban and Irfan son of Ghulam Abbas are acquitted from the charges framed against them by extending the benefit of doubt. The judgment of the Trial Court and the High Court are set aside. In case the appellant are not required to be incarcerated in any other matter then they shall be released forthwith."

ISLAMABAD
12.05.2025
arshed

"Approved for Reporting"