

**IN THE SUPREME COURT OF AZAD JAMMU AND KASHMIR**  
(Shariat Appellate Jurisdiction)

**PRESENT:**

*MR. JUSTICE KHAWAJA M. NASIM*  
*MR. JUSTICE RAZA ALI KHAN*

**CRIMINAL APPEAL NO. 12 OF 2024**

(On appeal from the judgment of the Shariat Appellate Bench of the High Court dated 12.12.2023, passed in Crim. Appeal No. 05/2018).

Katib Mir s/o Mir Zaman caste Doli, r/o Chak Darah Sher Khan Tehsil Hajira District Poonch.

...Convict-Appellant

**VERSUS**

The State through Additional Advocate-General Azad Jammu and Kashmir and another.

... Respondents

**Appearances:**

For the convict-Appellant: Syed Zulqarnain Raza Naqvi,  
Advocate.

For the State: Sh. Masood Iqbal, Advocate-General.

Date of hearing: 02.07.2025

**JUDGMENT:**

. **Raza Ali Khan, J:-** This appeal impugns the judgment dated December 12, 2023, rendered by the Shariat Appellate Bench of the High Court, (High Court)

whereby the convict-appellant's challenge was partially allowed, and the trial Court's verdict was modified to the extent that the sentence of 30 stripes was set aside.

3. According to the prosecution, on October 1, 2014, at approximately 2:00 p.m., the convict-appellant, Katib Mir, allegedly accosted a 15-year-old girl, who was student of Class 9, when she was returning home. He then forcibly subjected her to sexual intercourse causing her to lose consciousness. An FIR was subsequently registered in the offences under Section 10(3) of the Offence of Zina (Enforcement of Hudood) Ordinance, 1985, leading to appellant's apprehension. Following investigation, police submitted a report under Section 173, Cr.P.C to the Additional Tehsil Criminal Court, (Court No. 1), Rawalakot. After indictment and trial, the Court, vide judgment dated May 6, 2016, convicted the appellant and awarded twenty-five years' simple imprisonment under aforementioned provision. Dissatisfied with the outcome, the appellant appealed to the Additional District Criminal Court, Hajira, however, in its judgment dated January 18, 2018, that Court upheld the conviction and additionally imposed a sentence of thirty stripes. In the appeal filed by the convict-appellant, the High Court while exercising jurisdiction over the matter, partially allowed the appeal by setting-aside the corporal punishment component of the sentence, holding such infliction impermissible under the prevailing principles of jurisprudence and constitutional safeguard.

4. Syed Zulqarnain Raza Naqvi, learned counsel for the convict-appellant, submitted that the impugned judgments are afflicted with manifest legal infirmities and

are *per incuriam* to the extent of awarding twenty-five years' simple imprisonment. He argued that the prosecution's narrative is fraught with inherent inconsistencies, as the testimonies of the witnesses significantly diverge on material particulars of alleged incident. He further asserted that the garments worn by the alleged victim were sent for chemical examination after an unexplained delay of fourteen days, which gravely undermines the evidentiary integrity of the case. He highlighted that the FSL report categorically ruled out the presence of seminal stains on clothing, thereby, rendering the charge of forcible intercourse unsubstantiated. Counsel maintained that these anomalies constitute fatal flaws in the prosecution's case, entitling the convict to the benefit of doubt, a cardinal principle in criminal jurisprudence, therefore, prayed for appellant's acquittal. Mr. Naqvi, finally submitted that the convict-appellant being 17 years of age at the time of the alleged occurrence, was juvenile within the meaning of section 2(b) of the Azad Jammu and Kashmir Juvenile Justice System Act 2021, as such, his trial was required, in law, to be conducted by Juvenile Court, constituted under section 4 of the said Act. The fact that the convict-appellant was tried by an ordinary Court, without a formed determination of his age or referred to a Juvenile Court, constitutes a serious illegality and violation of his statutory and constitutional right. He submitted that it is the trite law that non-compliance with mandatory procedural protections vitiate the whole proceedings. In support of his contentions, reliance was placed on 2019 YLR 1470 and 2020 YLR (Peshawar) 96.

5.           Conversely, Sh. Masood Iqbal, Advocate-General, appearing on behalf of the State, staunchly

defended the impugned judgment rendered by the High Court, asserting that it is consistent with settled principles of criminal jurisprudence. While conceding absence of seminal stains in the Forensic Science Laboratory (FSL) report but maintained that the prosecution's case did not rest on biological residue but was firmly anchored in ocular and circumstantial evidence. He submitted that the victim was found in a state of complete undress, a fact contemporaneously corroborated by the immediate arrival of the complainant at the scene of occurrence. This, he argued rendered the absence of seminal traces on clothing legally inconsequential. He further argued that the evidentiary corpus, though devoid of forensic substantiation remained coherent, credible and unimpeached, thereby, justifying the conviction. Concluding his submissions, the learned Advocate General maintained that the appellate interference was wholly warranted and the sentence of twenty-five year's imprisonment was both lawful and proportionate to the gravity of the offence; he urged that the appeal be dismissed.

6. We have heard the rival contentions advanced by the learned counsel for the parties and examined the entire evidentiary record. The FIR was lodged by the complainant, Amir Imran, pursuant to which criminal proceedings were initiated. The victim, herself, appeared before the learned trial Court and recorded a comprehensive, sworn testimony, she deposed that at approximately 1:30 p.m., while traversing a secluded pathway, she encountered the convict-appellant who was engaged in cutting grass. Upon seeing her, he began to hasten his activity in suspicious manner. As she attempted

to walk past, the convict-appellant suddenly caught her, struck her forcefully across the face, and dragged her into an adjacent grassy field. Despite her efforts to resist and repeated cries for help, he forcefully covered her mouth and violently disrobed her. She was then subjected to non-consensual sexual intercourse, during which she became physically incapacitated, unable to resist or summon assistance. She sustained multiple abrasions and blunt-force injuries, ultimately losing consciousness following the incident.

7. The testimony of the victim remained unwavering, internally consistent and unshaken during cross-examination. There is no indication of ulterior or collateral motive to falsely implicate the convict-appellant. It is a trite principle of criminal jurisprudence that the evidentiary value of a witness is not determined by number but by the intrinsic credibility and probative force of the testimony. In offences involving sexual assault, particularly those governed under the Hudood laws, independent eye witnesses are seldom available due to the inherently clandestine nature of such crimes. Our jurisprudence has repeatedly affirmed that a conviction may be sustained solely on the basis of the victim's statement, provided that it inspires confidence and is free from material contradictions. In the present case, the victim's account meets this threshold. Her evidence is corroborated by circumstantial indicators, most notably her disheveled and undressed state upon discovery, which is consistent with the alleged assault, as well as medical evidence indicating multiple injuries on her person. Our view is fortified by the authoritative pronouncements, most notably in *Istikhar*

*Hussain v. Shahbaz and other's*<sup>1</sup> case wherein this Court enunciated the following legal position: -

"The standard of proof in every case is to be considered in the light of the case story. Ordinarily, in rape and sodomy cases, except the statement of victim, no other direct evidence is possible. While considering this aspect, the Courts always attached great sanctity to the solitary testimony of the victim and deem it sufficient for passing the conviction order."

This jurisprudential principle was also affirmed by the Federal Shariat Court in a case reported as *Saleem Khan & others vs. State & others*<sup>2</sup>, wherein, it was held: -

"... In cases of Zina and sodomy, there are generally hardly any witnesses other than the victim, as it is very rare that such offence takes place in view of others or at public place. That is why, the superior Courts in this country have attached great sanctity to the statement of the victim and it has been repeatedly laid down that sole testimony of the victim would be sufficient to base conviction thereon if it inspires confidence."

The principle (supra) has also been reiterated in another case, titled *Mudassir Hussain vs. The State*<sup>3</sup>, that the solitary statement of victim if found trustworthy, reliable and confidence inspiring, is sufficient for maintaining the punishment.

08. It is also pertinent to underscore that improbability of false implication in offences of this grave and stigmatic nature as a matter of human experience, no person of ordinary prudence would voluntarily expose themselves to public disgrace, reputational harm and social ostracization by levelling a fabricated accusation of sexual assault. This principle finds judicial endorsement in

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<sup>1</sup> [PLJ 2013 SC (AJ&K) 106]

<sup>2</sup> [PLJ 2001 FSC 46]

<sup>3</sup> [NLR 2005 SD 827]

*Nasrullah Khan v. The State's*<sup>4</sup> case, wherein the Court pertinently observed: -

"10. Besides no reasons whatsoever have been stated for the victim a young student of college agreeing to implicate them falsely at the cost of his own ignominy and injury to his reputation. The preferring of the charges against appellants involve injury to the male ego and dignity of the victim beside making him the object of ridicule and pity."

09. The defence in the present case, utterly failed to offer any credible hypothesis of a false implication. This aspect assumes particular significance considering the prosecutrix's tender age, merely 14 or 15 years at the time of occurrence, and her evident sociocultural vulnerability. Jurisprudence consistently hold that a minor girl is unlikely to fabricate a charge of sexual assault in absence of a compelling reason or provocation especially in contexts where such allegations carry grave social consequences. The Doctrine of *Falsus in uno, falsus in omnibus* has limited application in cases involving accusation of this moral and legal gravity, unless a clear ulterior motive is discernible from record. In absence of such motive, the defence version appears inherently weak, infirm and legally unsustainable.

10. The omission of scientific assays, such as seminal serology or DNA profiling, though constituting a procedural irregularity, does not *ipso facto* undermine the evidentiary probity of the prosecution's case, particularly where ocular and circumstantial accounts exhibits inherent credibility, internal consistency and logical coherence. Moreover, in light of the prosecution's claim that the victim

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<sup>4</sup> [1985 P.Cr.L.J. 683]

was discovered in a state of total undress at the time of complainant's arrival, the absence of seminal material on the garments dispatched for forensic examination remain within the realm of plausible forensic inference. As such, no adverse presumption under Article 129(a) of the Qanun-e-Shahadat, 1984, can be legitimately drawn against the prosecution.

11. The appellant has raised a plea of Juvenility for the first time before this Court, asserting that he was 17 years of age at the time of alleged occurrence. Although under settled principles enunciated by the Superior Courts such claim can be raised at any stage, including after final disposal of the case, but the burden lies upon the accused to substantiate such a claim through credible documentary or medical evidence. In the present case, apart from the verbal assertion made by the learned counsel, no material whatsoever, has been placed on record to establish the appellant's age at the relevant time. In absence of any supporting evidence, such as birth certificate, NADRA record, school registration or medical opinion, the claim remains unsubstantiated. Accordingly, no benefit under the Juvenile Act can be extended at this stage and the plea of Juvenility is hereby declined.

12. We find ourselves in agreement with the concurrent findings of both subordinate Courts which reflect a sound appreciation of evidentiary corpus and firmly anchored in settled legal principles and are free from jurisdictional infirmity or palpable misreading of record. The learned counsel for the convict-appellant has failed to demonstrate any error of law, factual misapprehension or perversity of reasoning that would justify interference



within the scope of jurisdiction. Accordingly, the conviction and sentence handed down by the trial Court and upheld by the High Court are affirmed in toto. The appeal, being devoid of legal merit, stands dismissed.

**JUDGE**

**JUDGE**

Muzaffarabad:  
07.07.2025