

IN THE SUPREME COURT OF PAKISTAN  
(APPELLATE JURISDICTION)

**PRESENT:**

MR. JUSTICE YAHYA AFRIDI

MR. JUSTICE SAYYED MAZAHAR ALI AKBAR NAQVI

**CRIMINAL PETITION NO. 1617 OF 2022**

(On appeal against the order dated 17.11.2022  
passed by the Islamabad High Court, Islamabad in  
Criminal Revision No. 99/2022)

Gufran Ali

... Petitioner

**Versus**

Haseeb Khan and another

... Respondents

For the Petitioner: Mr. Khalil-ur-Rehman Abbasi, ASC

For the Respondents: N.R.

Date of Hearing: 23.05.2023

**ORDER**

**SAYYED MAZAHAR ALI AKBAR NAQVI, J.**- Through the instant petition under Article 185(3) of the Constitution of Islamic Republic of Pakistan, 1973, the petitioner has assailed the order dated 17.11.2022 passed by the learned Single Judge of the learned Islamabad High Court, Islamabad, vide which the order dated 02.11.2022 passed by the learned Additional District & Sessions Judge-IV, East-Islamabad was upheld.

2. Briefly stated the facts of the matter are that the respondent No. 1 Haseeb Khan was proceeded against in terms of the case registered vide FIR No. 853/2021 dated 02.10.2021 under Section 302 PPC at Police Station Koral, Islamabad, for committing murder of Raja Nadeem Ghalib, paternal cousin of the petitioner/complainant. Pursuant to an application submitted by the respondent No. 1, the learned Trial Court vide order dated 02.11.2022 declared the respondent No. 1 juvenile at the time of commission of the offence. Being aggrieved, the petitioner/complainant filed Criminal Revision before the learned Islamabad High Court but it also met the same fate vide impugned order. Hence, this petition.

3. At the very outset, it has been argued by learned counsel for the petitioner that there is a conflict regarding the date of birth of the respondent-accused i.e. according to NADRA record, his date of birth is 14.07.2005 whereas the certificate issued by Secretary Union Council Naryab, Hangu shows his date of birth as 06.03.2007. Contends that the learned courts below overlooked the report of the Medical Board wherein according to Radiology Department the age of the accused was shown as 18 to 20 years whereas according to Dental Department, the age of the accused was 16 to 18 years. Lastly contends that the learned Trial Court ought to have called the members of the Medical Board and cross-examine them before arriving at the conclusion. In support of the contentions raised, learned counsel placed reliance on Muhammad Aslam Vs. The State (PLD 2009 SC 777).

4. We have heard learned counsel for the petitioner at some length and have perused the available record.

5. Ordinarily, the date of birth of a person is determined on the basis of documentary proof i.e. birth certificate, educational documents and National Identity Card etc but when the date of birth is disputed and varies on all such documents then the ossification test is the best way to determine a person's age. The ossification test is a test that determines age based on the "degree of fusion of bone" by taking the x-ray of a few bones. In simple words, the ossification test or osteogenesis is the process of the bone formation based on the fusion of joints between birth and the age of twenty five years in an individual. Bone age is an indicator of the skeletal and biological maturity of an individual which assists in the determination of age. The ossification test varies slightly based on individual characteristics such as climatic conditions where the person born and raised, dietetic values, hereditary differences etc. In the present case, there was a conflict between the Birth Registration Certificate issued by the Secretary Union Council Naryab, Hangu and the NADRA record regarding the date of birth of the respondent No. 1. In this backdrop, the learned Trial Court rightly constituted a medical board to examine the

respondent-accused. We have perused the report submitted by the medical board. The report consists of three opinions of (i) Radiology Department, (ii) General Medicine Department and (iii) Dental Department. Although the age of the respondent was found to be 18 to 20 years and 16 to 18 years by the two departments but it is settled principle of law that if two views are possible from the evidence adduced in the case then the view favourable to the accused is to be adopted. Reliance is placed on Saghir Ahmed Vs. State (2023 SCMR 241) and Sahib Ullah Vs. The State (2022 SCMR 1806). During the course of arguments, learned counsel repeatedly argued that the actual date of birth of the respondent was according to NADRA record i.e. 14.07.2005. However, even if the date of birth of the respondent as per the NADRA record is considered to be true, his age was 16 years 02 months and 19 days at the time of commission of the crime, therefore, in all eventuality he was a juvenile at that time. So far as the case law relied upon by the learned counsel for the petitioner is concerned, the same is distinguishable as in the case of Muhammad Aslam supra, no ossification test of the accused was conducted and the learned courts below had decided the issue of age of the accused on the basis of School Leaving Certificate and the Birth Register. This Court held that "*whenever such a question of age is raised or arises at the trial, the courts should not deal with the same in a cursory or in a slipshod manner but must proceed to hold an inquiry in the matter as commanded by the provisions of section 7 of the Juvenile Justice System Ordinance including medical examination of the accused for the purpose.*" As per Section 510 Cr.P.C. the report of the expert in various fields of science can be produced in evidence without calling them and can be used as evidence in any inquiry or trial or other proceedings. The learned High Court has correctly appreciated the material aspects of the case and the conclusions drawn are in line with the guidelines enunciated by this Court on the subject. Learned counsel for the petitioner has not been able to point out any legal or factual error in the impugned judgment, which could be made basis to take a different view from that of the learned High Court.

6. For what has been discussed above, we do not find any merit in this petition, which is dismissed and leave to appeal is refused. The above are the detailed reasons of our short order of even date.

JUDGE

JUDGE

Islamabad, the  
23<sup>rd</sup> of May, 2023  
Approved For Reporting  
Khurram