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Judgment Sheet

LAHORE HIGH COURT
BAHAWALPUR BENCH, BAHAWALPUR

JUDICIAL DEPARTMENT

Criminal Appeal No. 448/2022

Imdad Ullah

Vs.

The State and another

JUDGMENT

Date of hearing:	25.10.2023
For the Appellant:	Mirza Muhammad Nadeem Asif, Advocate.
For the State:	Mr. Najeeb Ullah Khan Jatoi, Deputy Prosecutor General.
For the Complainant:	Ch. Ahmad Mehmood Goraya, Advocate.
Research assistance:	Mr. Asim Murtaza Cheema, Research Officer, LHCRC.

Tariq Saleem Sheikh, J. – This appeal is directed against the judgment dated 25.08.2022 delivered by the Additional Sessions Judge, Chishtian, in case FIR No. 37/2021 dated 04.02.2021 registered for an offence under section 377-B PPC at Police Station City A-Division Chishtian, District Bahawalnagar.

2. On 04.02.2021, Complainant Muhammad Javaid (PW-1) submitted a written application (Exh. PA) to Muhammad Aslam/SI (PW-5). He stated that his son B.J. (name withheld to preserve privacy), aged about 10 years, was a student of 4th Class in Evergreen Public School in Mehboob Colony, Tehsil Chishtian. On 02.02.2021, when B.J. returned from school, he was terrified and running a fever. Upon inquiry, he began crying, and in the presence of Muhammad Shabbir (PW-2), Muhammad Akram, and Muhammad Yasin, he stated that he would no longer attend school because his Principal, Imdad

Ullah (the Appellant), called him daily into his office and molested him. On the mentioned day, shortly before the school ended, the Appellant summoned him to his office and, after bolting the door, sexually abused him. B.J. further stated that the Appellant threatened him with dire consequences and warned him not to tell anybody about the incident. The Complainant requested that legal action be taken against the Appellant for sexually abusing his child. Based on the said application, FIR No. 37/2021 (Exh. PC) was registered.

3. Muhammad Aslam/SI (PW-5) investigated this case. On 5.2.2021, he arrested the Appellant. After completing the investigation, he determined that he had committed the alleged offence. The report under section 173 Cr.P.C. was submitted accordingly.

4. On 03.03.2021, the Additional Sessions Judge indicted the Appellant, who denied the charge and claimed trial. The prosecution examined five witnesses to prove its case. Complainant Muhammad Javaid (PW-1), Muhammad Shabbir (PW-2), and B.J. (PW-3) reaffirmed the contents of the application Exh. PA (and FIR No.37/2021 Exh. PC). Dr. Muhammad Idrees (PW-4) provided evidence regarding the Appellant's medical fitness. The Investigating Officer, Muhammad Aslam/SI (PW-5), gave the details of the investigation and the evidence he collected in this case. The Deputy District Public Prosecutor gave up PWs Muhammad Yaseen and Muhammad Akram as unnecessary and closed the prosecution evidence.

5. After the prosecution completed its evidence, the trial court recorded the Appellant's statement under section 342 Cr.P.C. and confronted him with the incriminating material brought against him during the trial. He refuted the allegations and professed innocence. He maintained that the Chief Executive Officer (DEA), Bahawalnagar, also found him innocent in an inquiry. Subsequently, the CEO issued Letter No. 5745 dated 14.10.2021, confirming that no immoral activity

was discovered in the Evergreen School owned by the Appellant. When asked why this case was registered against him and why the PWs deposed against him, the Appellant replied:

> "Complainant and PWs deposed falsely against me and a false case was registered against me in connivance with my ex-in-laws because I have divorced my ex-wife namely Naseem Kousar d/o Ilam-ud-Din caste Malik r/o 69-ED Tehsil Arif-wala, District Pakpattan, and I handed over dowry articles to her family on 24-01-2021. After a few days, my ex-in-laws, due to the grudge of my divorce, registered the instant false FIR against me in connivance with complainant and police because my ex-in-laws have a deep relationship with the complainant. So, in connivance and being in league with each other, they registered this false case against me."

6. The Appellant neither opted to make a statement on oath under section 340(2) Cr.P.C. nor examined any witness in his defence. However, he tendered in evidence the Certificate dated 14.10.2021 issued by the Chief Executive Officer (DEO), Bahawalnagar (Exh. DA) and a copy of the divorce deed (Mark-A).

7. On the conclusion of the trial, vide judgment dated 25.08.2022, the Additional Sessions Judge convicted the Appellant under section 377-B PPC and sentenced him to rigorous imprisonment for fourteen years with a fine of Rs.1,000,000/- and, in default thereof, to undergo simple imprisonment for further six months. The benefit of section 382-B Cr.P.C. was extended to him. Hence, this appeal.

8. In support of this appeal, Mirza Muhammad Nadeem Asif, Advocate, argued that the Anti-Rape (Investigation and Trial) Act, 2021 (the "2021 Act"), enacted on 4.12.2021, established Special Courts by section 3 to try the scheduled offences. The Additional Sessions Judge, who delivered the impugned judgment dated 25.8.2022, was not a Special Court constituted/notified under the 2021 Act. Consequently, the said judgment was without jurisdiction. On the case's merit, Mr. Mirza contended that the FIR was lodged with inexplicable delay, which impinged upon its credibility. He maintained that the Appellant was innocent. The Complainant had lodged a false case against him at the behest of his ex-wife, Naseem Kausar, and her parents. Mr. Mirza further argued that Complainant Muhammad Javaid

(PW-1) and Muhammad Shabbir (PW-2) were not eyewitnesses to any wrongdoing by the Appellant. The prosecution had planted them to bolster its fabricated case. Regarding B.J.'s testimony, Mr. Mirza contended that it was inadmissible because the Additional Sessions Judge failed to assess his competence through the *voir dire test*. The counsel further argued that even if B.J.'s testimony was admissible without the said test, the Appellant could not be convicted on its basis due to the lack of corroboration. He prayed that the Criminal Appeal No. 448/2022 be accepted and the Appellant be acquitted of the charge.

9. The Deputy Prosecutor General, assisted by the Complainant's counsel, controverted the above contentions. He argued that the Additional Sessions Judge presiding over the Appellant's trial was duly notified as a Special Court under the 2021 Act. The Appellant's objection that the impugned judgment dated 25.8.2022 was without jurisdiction was misconceived and had no legal foundation. On the merits of the case, the Deputy Prosecutor General contended that the prosecution proved its case to the hilt. The victim, B.J., fully supported the prosecution case and withstood cross-examination with intelligence. Complainant Muhammad Javaid (PW-1) and Muhammad Shabbir (PW-2) corroborated B.J. on all crucial points. According to him, B.J.'s testimony was not vitiated merely because the Additional Sessions Judge did not carry out the *voir dire* test. The Appellant had not adduced any evidence suggesting that the FIR against him was *mala fide*. The contention that he has been falsely implicated in this case at the instigation of his ex-wife Nasreen Kausar and her parents was implausible. He prayed for the dismissal of the Appellant's appeal.

10. We heard the learned counsel and examined the record with their assistance.

11. The prosecution alleges that the Appellant habitually molested B.J. but the present case centres on the incident of 2.2.2021. During this episode, it claims, the Appellant summoned B.J. to his office, locked the door, and subjected him to sexual abuse. The boy

disclosed this to his father, Muhammad Javaid (PW-1), in the presence of Muhammad Shabbir (PW-2) and two others. The incident was reported to the police at 4:20 p.m. on 4.2.2021 upon which FIR No.37/2021 (Exh. PC) was registered. The Additional Sessions Judge, Chishtian, indicted him on 3.3.2021 for an offence under section 377-B PPC.

12. Parliament has enacted the Anti-Rape (Investigation and Trial) Act, 2021 to ensure expeditious redressal of rape and sexual abuse crimes in respect of women and children through special investigation teams and special courts providing for efficacious procedures, speedy trial, evidence and incidental matters.[1] It was published in the Gazette of Pakistan on 4.12.2021 and extends to the entire country. However, section 1(3) of the 2021 Act stipulates that it shall come into force on a date the Federal Government may appoint. Section 3(1) provides that the Federal Government, in consultation with the Chief Justice of the High Court concerned, shall establish as many Special Courts throughout the country, as it may deem necessary, to try the scheduled offences. Section 3(3) states that, in addition to or in lieu of the establishment of Special Courts under section 3(1), the Federal Government may, in consultation with the Chief Justice of the High Court concerned, designate as many courts of Additional Sessions Judges or such other courts as Special Courts, as it may deem fit. The proviso to section 3(3) adds that where gender-based violence (GBV) courts, juvenile courts or child protection courts have already been designated, they shall be deemed to be the Special Courts under this Act. Section 18 states that any person aggrieved by the final judgment of a Special Court may file an appeal to the High Court in whose jurisdiction the Special Court which rendered the judgment is situated. A Division Bench of the High Court decides such an appeal.

13. Section 23 of the 2021 Act stipulates that the Special Court shall have exclusive jurisdiction to try the scheduled offences.

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[1] Preamble of the Anti-Rape (Investigation and Trial) Act, 2021

Once the Act comes into effect, any ongoing trial of scheduled offences in any other court will be automatically transferred to the Special Court having jurisdiction under the Act. The Special Court will then proceed with the case from the point at which it was pending immediately before the transfer. Section 377-B PPC is one of the scheduled offences under the 2021 Act.

14. The Federal Government, while exercising powers under section 3(3) of the 2021 Act, designated Mr. Muhammad Nawaz Bhatti, Additional District & Sessions Judge, Chishtian, as Special Court vide notification dated 11.5.2022.

15. Mr. Zafar Iqbal Tarar, Additional Sessions Judge, conducted the Appellant's trial. He recorded the prosecution evidence and the Appellant's statement under section 340(2) Cr.P.C. He fixed the case for final arguments but, in the meantime, the notification dated 15.5.2022 was issued. Thereupon, the case was transferred to Mr. Muhammad Nawaz Bhatti. He heard the parties and delivered the impugned judgment dated 25.8.2022 as the Special Court designated under section 3(3) of the Act.

16. Mr. Mirza, the Appellant's counsel, does not dispute the above facts. His objection to the impugned judgment is based on the fact that Mr. Bhatti did not mention his designation as the Special Court when signing it. This objection is overly technical because Mr. Bhatti was duly notified and had jurisdiction in the matter. His failure to explicitly write "Special Court" under his signature has no legal consequence. In ***Piao Gul v. The State*** [PLD 1960 SC (Pak) 307], the trial for offences under section 8 of the North-West Frontier Province Corps Law, 1941, could only be competently conducted before a Court of Session, and for the Khyber Agency, the Court of the Political Agent served as such a court. Mr. Faridullah Shah conducted Piao Gul's trial in his capacity as a Court of Session under the Criminal Procedure Code, 1898, as applied to the Khyber Agency. However, he described himself as a District Magistrate while framing the charge. The Supreme

Court of Pakistan ruled that as long as the person conducting the proceedings had the jurisdiction, any misdescription would not affect the legality of the trial. In ***Muhammad Ramzan v. Mst. Khalida*** Parveen (PLD 1971 Lahore 813), the Senior Civil Judge and the Additional District Judge, Sheikhupura, disposed of the suit and the appeal, respectively, as an ordinary civil suit and appeal. The appellant argued that the trial Judge, Malik Mushtaq Ahmed, incorrectly designated himself as the "Senior Civil Judge, Sheikhupura," instead of "Judge, Family Court, Sheikhupura." Subsequently, while deciding the appeal, the Additional District Judge referred to the trial court as the "Civil Judge" instead of the "Judge, Family Court." The appellant argued that the matter had all along been treated as one governed by the Civil Procedure Code and urged the High Court to treat the case filed before it as a Second Appeal under section 100 of the Code. The High Court rejected this argument, holding that the validity of a judgment or order depends on whether the court had jurisdiction, not on the fact that the court in question misdescribed itself or put an incorrect designation under its orders. Further reference may be made to ***Allah Jiwaya v. Judge Family Court and another*** (1990 MLD 239), and ***Matiullah v. Mst. Saddiqa*** (2017 MLD 1871).

17. In view of the above, the impugned judgment dated 25.8.2022 rendered by Mr. Bhatti is to be reckoned as that of the Special Court under the 2021 Act. The Appellant's objection in this respect is rejected. It is also essential to highlight that this appeal has been categorized and treated as an appeal under section 18 of the Act, which is why it has been referred to a Division Bench of this Court for adjudication.

18. Now, we delve into the merits of the case. Mr. Mirza has taken a strong exception to the fact that Muhammad Javaid (PW-1) lodged the FIR with a delay of two days and wants us to throw out the prosecution case on this ground alone. We must not do so. While the law generally encourages prompt reporting of crimes, courts recognize that child abuse is a sensitive issue. Several factors can contribute to

delays in reporting child sexual abuse, including fear, shame, threats from the perpetrator, or a lack of awareness. Hence, the courts in our country do not consider the delay in making a report to the police material[2] unless the circumstances are such that they warrant an adverse view.[3] 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, the Appellant has not referred us to any circumstance which may require us to take an adverse view against the prosecution because of the delay.

19. The victim, B.J., who testified as PW-3, is the key prosecution witness. In his examination-in-chief, he reiterated the allegations levelled against the Appellant in the application Exh.PA and FIR No.37/2021 Exh. PC. Mr. Mirza's primary contention is that the trial judge recorded his testimony without the *voir dire test* which, according to him, was mandatory. Consequently, he claims that his testimony is inadmissible. This raises the following two questions for this Court's determination: first, whether the *voir dire test* is mandatory to assess the competency of a child witness and whether his testimony is inadmissible without it. Second, whether an individual can be convicted on the basis of solitary uncorroborated testimony of a child who is a victim of sexual abuse. We shall answer these questions *seriatim*.

20. In ***R v. DAI*** [2012] 2 LRC 633, the Supreme Court of Canada distinguished between three often conflated distinct concepts: (i) the competence of the witness to testify, (ii) admissibility of their evidence, and (iii) the weight of the testimony (its evidentiary value). The rules governing these concepts share a common objective: to ensure that convictions are based on reliable evidence and that the accused receives a fair trial. Competence pertains to whether a proposed witness has the capacity to provide evidence in court. The purpose of this principle is to exclude worthless testimony at the outset

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[2] *Zahid v. The State* (2022 SCMR 50), *Irfan Ali Sher v. The State* (PLD 2020 SC 295).

[3] *Mubeen Ahmed v. The State and another* (PLD 2021 Islamabad 431).

on the grounds that the witness lacks the fundamental capacity to communicate evidence. Competence is a threshold requirement. Although it is presumed in witnesses as a matter of course, it may be challenged in cases involving children and adults with mental disabilities. The second concept is admissibility, determining which evidence from a competent witness can be received in the court record. Admissible evidence must be relevant and not subject to exclusionary rules. Admissibility rules aim to enhance the accuracy of fact-finding, respect policy considerations, and ensure trial fairness. The third concept involves the responsibility of the trier of fact to decide whether to accept evidence, assuming the witness is competent and admissibility rules are followed. The judge or jury evaluates factors like demeanour, internal consistency, and consistency with other evidence to determine acceptance. Conviction requires the prosecution to establish all elements of the offence beyond a reasonable doubt.

21. In ***R. v. Marquard*** [1993] 4 R.C.S. 223, Justice McLachlin from the Canadian Supreme Court meticulously described the standards for evaluating the competency of a child witness. She elucidated that the assessment of testimonial competence encompasses three key aspects: (a) the capacity to observe (including interpretation), (b) the capacity to recollect, and (c) the capacity to communicate. The judge must ensure that the witness possesses these capacities by determining whether the witness can observe, remember, and communicate the events. The focus is on assessing the minimum threshold for the evidence to be receivable, not its credibility. McLachlin J. emphasized that the inquiry is into the *capacity* to perceive, recollect, and communicate, not whether the witness *actually* perceived, recollects and can communicate about the events. Generally, a witness's performance during the trial provides the most reliable measure of their capacity, and according to common law, a witness demonstrating the ability to testify is permitted to do so. McLachlin J. stated that there is no need to establish in advance that a child perceives and remembers the precise events under consideration in the trial as a

prerequisite for admitting their testimony. This requirement does not apply to adult witnesses and should not be imposed on children. McLachlin J. clarified that the test she introduced was not founded on assumptions about the incompetency of children as witnesses, nor was it intended to make it difficult for children to testify. Instead, the test outlined the essential abilities that individuals, including children, must possess to testify. Once this capability is established, any deficiencies in the witness's perception or recollection of events can be addressed as factors affecting the weight of the evidence.

22. In Pakistan, the competency of a witness is determined under Articles 3 and 17 of the Qanun-e-Shahadat, 1984 ("QSO"),[4] 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. Before the enactment of QSO, Pakistan followed the Evidence Act of 1872, which is still in force in India with certain modifications. The 1872 Act has similarities with the QSO, especially regarding the underlying assumptions, basic concepts, and

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[4] Article 3 of the Qanun-e-Shahadat, 1984 provides:

> 3. **Who may testify.** All persons shall be competent to testify unless the Court considers that they are prevented from understanding the questions put to them, or from giving rational answers to those questions, by tender years, extreme old age, disease, whether of body or mind, or any other cause of the same kind:
>
> Provided that a person shall not be competent to testify if he has been convicted by a Court for perjury or giving false evidence;
>
> Provided further that the provisions of the first proviso shall not apply to a person about whom the Court is satisfied that he has repented thereafter and mended his ways;
>
> Provided further that the Court shall determine the competence of a witness in accordance with the qualifications prescribed by the injunctions of Islam as laid down in the Holy Quran and Sunnah for witness, and, where such witness is not forthcoming, the Court may take the evidence of a witness who may be available.

Article 17 reads as follows:

> 17. **Competence and number of witness.** – (1) The competence of a person to testify, and the number of witnesses required in any case shall be determined in accordance with the injunctions of Islam as laid down in the Holy Quran and Sunnah.
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> (2) Unless otherwise provided in nay law relating to the enforcement of Hudood or any other special law,
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> (a) in matters pertaining to financial or future obligations, if reduced to writing, the instrument shall be attested by two men, or one man and two women, so that one may remind the other, if necessary and evidence shall be led accordingly; and
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> (b) in all other matters, the Court may accept, or act on, the testimony of one man or one woman or such other evidence as the circumstances of the case may warrant.

terminology. Section 118 of that Act resembles Article 3 of the QSO, minus the provisos. The legal principles established in India and the pre-QSO Pakistan regarding section 118 of the 1872 Act provide valuable insights into understanding Article 3.

23. Under Article 3 of the QSO, a child is competent to 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.*"[5] In certain jurisdictions, specific guidelines and procedures exist for evaluating a child's competency to testify. In ***R. v. DAI***, [2012] 2 LRC 633, while considering section 16 of the Canada Evidence Act, the Supreme Court of Canada provided guidelines concerning witnesses with challenged mental capacity. These guidelines, which are also applicable to child witnesses, include: (i) The *voir dire* on a proposed witness's competence is an independent inquiry and should not be combined with other issues, such as the admissibility of their out-of-court statements. (ii) The *voir dire* should be brief and it is preferable to consider all available relevant evidence before precluding a witness from testifying. A witness should not be found incompetent hastily. (iii) The primary source of evidence for a witness's competence is the witness himself. Their examination should be permitted, with special consideration and accommodation for adults with mental disabilities, ensuring that questions are phrased patiently in a clear and simple manner. (iv) Individuals familiar with the proposed witness and their everyday situation, often from their surroundings, may be called as fact witnesses as they are the best sources of evidence on their development. (v) Expert evidence may be produced if it meets admissibility criteria, with a preference for experts having personal and regular contact with the proposed witness. (vi) During the *voir dire* on competence, the trial judge must inquire whether the proposed witness understands the nature of an oath or affirmation and can effectively communicate the evidence. (vii) The second inquiry into the witness's

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[5] 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.

ability to communicate evidence requires the trial judge to explore whether the witness can relate concrete events, understand and respond to questions, and differentiate between true and false everyday factual statements. (viii) If the witness passes both parts of the test, they testify under oath or affirmation; if they pass only the second part, they promise to tell the truth.[6]

24. Satisfaction of the court in terms of Article 3 of the QSO is not a mere procedural formality but a legal obligation. Hence, it 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" which the presiding Judge applies at the start of a child witness's examination-in-chief, should extend throughout his entire testimony. The Supreme Court approvingly cited *Marquard* and added:

> "This threshold has been referred to as passing the 'rationality test' and the practice that has developed with time in our jurisdiction is for the same to be carried out by a presiding Judge prior to recording the evidence of the child witness … the 'rationality test', which is applied by the presiding Judge at the commencement of the examination-in-chief of a child witness, should be made applicable throughout the testimony of the child witness. If at any stage, the presiding Judge observes any hindrance or reluctance in the narration of events, the evidence should be stopped, and remedial measures should be taken to ease the stress and anxiety the child witness might be under, and if required, the case be adjourned to another date. And further, in case the child witness is still unable to narrate his testimony with ease, then the presiding Judge ought to record his findings on the demeanour of the child witness, conclude his evidence, and relieve him as a witness."

25. Courts have considered the issue of whether an omission by the judge or a magistrate to conduct a preliminary examination of a child witness would, by itself, render his evidence inadmissible in various cases. In ***Rameshwar v. The State of Rajasthan*** (AIR 1952 SC 54), the trial judge certified that the witness did not understand the nature of an oath and did not administer one. Despite this, he took her evidence without any objection from the accused. The

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[6] Section 6 of the Canada Evidence Act requires the trial court to inquire (a) whether the proposed witness understands the nature of an oath or affirmation, and (b) whether he can communicate the evidence. For this reason, *R. v. DAI* and *R. v. Marquard* make this inquiry an essential part of the *voir dire test*. Article 3 of the QSO in Pakistan does not expressly mandate inquiry on the first issue.

Supreme Court of India underscored the importance of judges and magistrates recording their opinions regarding the child's comprehension of the duty to speak the truth and provide reasons therefor. However, it clarified that the absence of a formal certificate does not automatically reduce the witness's credibility. In this specific case, considering the circumstances of the case and the lack of objection by the accused, the Supreme Court concluded that the child witness was competent, and her evidence was admissible.

26. In ***State of Orissa v. Machindra Majhi and another*** (AIR 1964 Ori 100), while considering section 118 of the Indian Evidence Act 1872, the Orissa High Court ruled that the said provision allows all individuals to testify unless the court determines they are incapable of understanding or responding rationally to questions due to factors like tender years, extreme old age, disease, or other similar causes. The section is framed negatively, indicating that if the court deems a witness incapable of comprehension and rational responses, their evidence will not be accepted. Although there is no specific legal provision mandating preliminary questions to test a child witness's capacity to testify, it is often regarded as prudent practice. The object of such preliminary questioning is not to legalize the evidence but to save the court time, ensuring it does not proceed further if satisfied that the child is not a competent witness. The court can gauge the child's capacity through the evidence itself and its manner of delivery. If satisfied, there is nothing illegal in directly recording the evidence without resorting to preliminary questions.

27. In ***State of Maharashtra v. Prabhu Barku Gade*** (1995 Cri LJ 1432), the trial judge neglected to document the questions put to the child victim before recording her testimony and only took down her answers. It was contended that the trial judge's preliminary examination to assess the child's comprehension was perfunctory. A Division Bench of the Bombay High Court held that no legal or procedural rule considers such an omission as introducing an infirmity that would render the evidence unacceptable. The Court cited a

previous decision, which held that it is "always desirable" to record the questions, but it is not an absolute requirement.

28. In ***Khalil v. The State*** (PLD 1956 Lah 840), the trial judge did not document the questions, if any, he might have asked the two child witnesses to satisfy himself that they were intelligent enough to understand what they were testifying about. After recording the name, parentage, and address of each child witness, he examined them under solemn affirmation, with a note that they appeared to him "fairly" intelligent and capable of making a rational statement. Shabir Ahmad, J. stated that the trial judge has no legal obligation to record specific questions testing the child's intelligence before taking down their statement. While it is desirable to ask the child simple and ordinary questions and record a brief proceeding so that the appellate court may feel satisfied with his capacity to give evidence, failing to follow such a course does not render the child's evidence defective. In a separate note, Abdul Aziz Khan, J. emphasized the importance of recording questions and answers during the testimony of child witnesses to assess their capacity. He stated that although there is no specific legal provision mandating such documentation, the absence of it leaves the appellate court uninformed about the child's testifying ability and it has to rely exclusively on the trial court's judgment. On the other hand, recording these interactions enables the appellate court to independently evaluate the trial court's justification in accepting or rejecting the child witness's evidence. Therefore, His Lordship suggested that the courts examining child witnesses should adhere to the prudent rule. This thought was echoed in ***Muhammad Ramzan alias Jana v. The State*** (1968 PCr.LJ 392).

29. In ***Abdul Ghani and others v. The State*** (PLD 1959 Dacca 944), a Division Bench of the Dacca High Court ruled that it is not obligatory for the court to undertake a preliminary examination of a child witness before admitting their evidence. The court can gauge the child's ability to understand and respond coherently while providing testimony. Even though the testimony is admissible without a

preliminary examination, the court is encouraged to conduct one because it would save time if it finds the witness incompetent.

30. In ***Muhammad Ilyas v. Kabir Hussain and another*** (2003 YLR 806), the trial court did not explicitly comment on the witness's competency. However, the statement indicated the witness's understanding of questions and ability to answer, suggesting competency. The High Court ruled that the minor girl's testimony should not be discarded merely because the trial court did not inquire about her fitness, emphasizing that a preliminary inquiry is a prudent practice, not a legal obligation.

31. In ***The State v. Muhammad Boota*** (2014 YLR 306), the trial court asked PW Gull Bano questions and was satisfied with her understanding and rational answers, and documented this satisfaction before recording her statement. During cross-examination, Gull Bano responded logically. A Division Bench of the High Court repelled the defence counsel's contention that the trial court erred by not transcribing the questions into writing. It emphasized that the sole requirement is the court's satisfaction.

32. In ***Iftikhar Ali v. The State*** (2022 PCr.LJ 1396), a Division Bench held that while Article 3 of the QSO does not outline a specific procedure for assessing a witness's competence before administering an oath, the practice is generally followed for very young and elderly witnesses. However, the court emphasized that this practice should not be viewed as a statutory barrier, and a child witness's deposition should not be excluded if they were not subjected to questions confirming their competency before being sworn in.

33. The Sindh High Court took a somewhat different view in ***Bashir Ahmed v. The State*** (PLD 1979 Karachi 147). It ruled that before examining a child witness, the trial judge must determine their competency by posing simple questions. If satisfied, the judge can proceed with recording evidence. Otherwise, the examination should be declined. The issue of administering an oath can be addressed

separately. If a mature child provides rational answers but does not understand the oath, evidence can be recorded without administering the oath. Failure to conduct such an inquiry and make determinations may render the witness's testimony unreliable.

34. Analysis of the above-cited cases shows that the essential requirement for a child, or any individual, to appear and testify as a witness is that they should have the ability and intelligence to comprehend the posed questions and furnish coherent responses. There is a preponderance of opinion that the testimony of a child witness cannot be discarded merely because the trial judge did not carry out a *voir dire* test. Although it is advisable for the trial judge to meticulously document the questions and corresponding answers to ensure that the child understands the duty to speak the truth, the lack of such documentation or the trial judge's omission to opine on the child's competency does not render the testimony inadmissible.

35. At this stage, we must refer to the case of ***Muhammad Mansha v. The State*** (2019 SCMR 64). One of the grounds for the Supreme Court of Pakistan to acquit the accused was the trial court's failure to determine the witness's comprehension level. In this case, the sole prosecution eyewitness was deaf and dumb. The record did not indicate how the trial court verified the proficiency of the individual interpreting the signals of the witness during testimony, ensuring that he was indeed "well versed in the language of signals". The role of the said individual was also ambiguous. It was unclear whether he acted as a translator or an expert under Article 59 of the Qanun-e-Shahadat. Furthermore, the trial court did not administer an oath to him, and lastly, there was a conflict of interest as he was inimical towards the accused. These details highlight that *Muhammad Mansha's* case is distinguished by its unique facts and cannot be cited to argue that it holds a viewpoint different from our conclusions in the preceding paragraph.

36. Proceeding further, let's address the second question: Can an accused be convicted on the basis of solitary uncorroborated testimony of a child who is a victim of sexual abuse? However, before doing so, we must examine the status of a child's testimony. In ***Vetrovec v. The Queen***, [1982] 1 S.C.R. 81, Dickson J. stated:

> "Because of the infinite range of circumstances which will arise in the criminal trial process, it is not sensible to attempt to compress into a rule, a formula, or a direction the concept of the need for prudent scrutiny of the testimony of any witness. What may be appropriate, however, in some circumstances, is a clear and sharp warning to attract the attention of the juror to the risks of adopting without more, the evidence of the witness. There is no magic in the word corroboration, or indeed in any other comparable expression such as confirmation and support. The idea implied in those words may, however, in an appropriate case, be effectively and efficiently transmitted to the mind of the trier of fact."

37. In ***R v. W. (R.)***, [1992] 2 S.C.R. 122, the Supreme Court of Canada warned against applying negative stereotypes to children's evidence. At the same time, it emphasized on p.134 that the trier of fact must be mindful of the weaknesses of a particular piece of evidence:

> "Protecting the liberty of the accused and guarding against the injustice of the conviction of an innocent person requires a solid foundation for a verdict of guilt, whether the complainant be an adult or a child. What the changes [in the way the courts look at evidence of children] do mean is that we approach the evidence of children not from the perspective of rigid stereotypes, but on what Wilson J. called a 'common sense' basis, taking into account the strengths and weaknesses which characterize the evidence offered in the particular case."

38. Here, we may refer to ***Abdullah Khan v. The Queen***, [1990] 2 R.C.S. 531. The accused was a physician who was charged with sexually assaulting a 3½-year-old girl in his office. The trial judge rejected the girl's testimony because of her immaturity and it was one of the main grounds for acquitting him. The Supreme Court of Canada ruled that the judge erred by giving excessive importance to the child's tender age and creating a distinction between young and older children. It stated:

> "The trial judge also erred in placing critical weight on the child's young age. The Act makes no distinction between children of different ages. The trial judge, in effect, found that T. met the two requirements for permitting a child to testify under s. 16, but, emphasizing her immaturity, rejected her evidence. He found that T. had sufficient intelligence, and conceded that she 'seemed to be aware at least of the

> consequences of telling a lie.' Having found that the two requirements for reception of the evidence under s. 16 had been fulfilled, the trial judge erred in letting himself be swayed by the young age of the child. Were that a determinative consideration, there would be danger that offences against very young children could never be prosecuted."

39. In ***Rameshwar v. The State of Rajasthan*** (AIR 1952 SC 54), the Supreme Court of India took notice of the divergent views on the need for corroboration in the testimony of adult women compared to children. The Court stressed that in every such case, the judge should bear in mind the rule concerning the advisability of corroboration. In jury trials, he must convey this rule to the jury, while in non-jury cases, he should show that it is present in his mind by indicating that in his judgment. The Supreme Court clarified that corroboration may be dispensed if the judge or the jury is satisfied that it is safe to do so in the particular circumstances of the case. The child's tender years and other circumstances appearing in the case, such as demeanour and the unlikelihood of tutoring, may render corroboration unnecessary.

40. In ***Dattu Ramrao Sakhare and others v. State of Maharashtra*** [(1997) 5 SCC 341], the Supreme Court of India held that the testimony of a child witness, if considered competent and reliable, could serve as a basis for a conviction. Even without an oath, a child's testimony might be admissible under section 118 of the Evidence Act as long as he can comprehend the questions and respond rationally. The credibility of a child witness and their testimony hinges on the specific circumstances of each case. When evaluating the evidence of a child witness, the court should exercise caution, ensuring that the witness is trustworthy, exhibits a demeanour similar to any competent witness, and shows no signs of being coached.

41. In ***Panchhi and others v. State of U.P.*** [1998 (7) SCC 177], the Supreme Court of India stated that the court should not summarily reject the testimony of a child. Instead, it should evaluate the same carefully and cautiously because children can easily be influenced by what others tell them and are susceptible to tutoring. The

court's responsibility lies in determining whether the child's statement is a genuine and voluntary expression, free from external influences.

42. In ***Ratansingh Dalsukhbhai Nayak v. State of Gujarat*** [(2004) 1 SCC 64], the Supreme Court of India emphasized that the determination of whether a child witness possesses sufficient intelligence primarily falls within the domain of the trial judge. He is expected to assess the child's demeanour and apparent level of intelligence. He may employ any examination method to determine the child's capacity, intelligence, and understanding of the obligation of oath. While the trial court's decision is typically respected, a higher court may intervene if it becomes evident from the records that the conclusion was flawed. This precaution is necessary because child witnesses can be easily influenced and often inhabit a world of imagination. Despite the acknowledged risk that child witnesses can be malleable and susceptible to external influences, the established principle is that if, upon scrutiny, the court finds a genuine ring of truth in their testimony, there is no impediment in accepting it.

43. In our country, the courts are somewhat hesitant and cautious in accepting the testimony of a child witness as a safe piece of evidence. In ***Muhammad Afzal v. The State*** [PLD 1957 (W.P.) Lahore 788], this Court held that each case depends on its unique facts, and it cannot be stipulated as a universal rule that the evidence of a child witness should never be believed. It emphasized that the evidence of a child witness should be subjected to close and careful scrutiny before being acted upon.

44. In ***Ulfat Hussain v. The State*** (2010 SCMR 247), the Supreme Court of Pakistan stated that while, in principle, a conviction can be based on the testimony of an intelligent and understanding child witness, the courts have generally preferred to follow the established principles of prudence and the cautious approach associated with the sole testimony of a child witness, regardless of the child's intelligent

disposition. The Supreme Court emphasized that the degree of prudence or care exercised depends on the specific facts of each case.

45. In ***State through Advocate General Sindh v. Farman Hussain and others*** (PLD 1995 SC 1), the Supreme Court of Pakistan, by a majority decision, while dilating upon the competence and evidential value of a child witness, opined:

> "Evidence of child witness is a delicate matter and normally it is not safe to rely upon it unless corroborated. It is a rule of prudence. Great care is to be taken that in the evidence of child element of coaching is not involved. Children are a most untrustworthy class of witnesses, for, being of tender age, they often mistake dreams for reality, repeat glibly as of their own knowledge what they have heard from others and are greatly influenced by fear of punishment, by hope of reward and by desire of notoriety. In any case the rule of prudence requires that the testimony of child witness should not be relied upon unless it is corroborated by some evidence on the record."

46. Child abuse is one of the most challenging crimes to detect and prosecute primarily because there often are no witnesses except the victim. It becomes more difficult when the perpetrator is a parent or a close family member. The child may feel afraid, burdened by guilt, and may be hesitant to disclose the abuse to others. Due to these complexities, the courts deal with these cases with extra care and special attention. In ***Bashir Ahmed v. The State*** (PLD 1979 Karachi 147), the Sindh High Court held that the rule as to corroboration is one for the guidance of the courts and is not a rigid rule of law. Where the prosecutrix is a minor girl and has been the victim of outrage, she cannot be regarded as an accomplice, and her testimony should be evaluated according to the ordinary principles which stress its intrinsic worth and credibility. In such cases, the girl's conduct may be sufficient to justify the acceptance of her version.

47. In ***Raja Khurram Ali Khan and others v. Tayyaba Bibi and another*** (PLD 2020 SC 146), the Supreme Court of Pakistan held:

> "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."

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

48. 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.

49. We conclude that the evaluation of a child's testimony as a victim of sexual abuse requires a thorough and balanced approach to ensure the protection of their rights and interests while upholding principles of justice. The absence of corroboration should not automatically discredit the child's testimony in such cases. The tender age of the child, combined with other case-specific circumstances, such as demeanour and the unlikelihood of tutoring, may make corroboration unnecessary. However, this is a factual consideration in each case. Courts must acknowledge that children may respond to the trauma of abuse in diverse ways, which may include confusion, fear, or emotional distress.

50. It is crucial to emphasize that the sexual abuse of a child can take the form of penetrative or non-penetrative acts. Non-penetrative cases pose more significant challenges, especially in our

societal context, because this category has a heightened risk of false accusations. Judges must determine the guilt or innocence of an accused by thoroughly examining all available evidence, considering the surrounding circumstances, and adhering to applicable legal standards. Although a conviction based on the uncorroborated testimony of a child victim of sexual abuse is legally possible, its viability depends on the circumstances of the case and the strength of the child's testimony.

51. In the present case, B.J. testified that the Appellant called him to his office daily and molested him. He further stated that on 02.02.2021, just before the school's closure, the Appellant summoned him, bolted the door of his office, and sexually abused him. B.J. alleged that he threatened him with severe consequences and warned him against disclosing the incident. Despite extensive cross-examination by the Appellant, B.J. remained steadfast, answering each question confidently and maturely despite his young age. During cross-examination, the Appellant attempted to establish that CCTV cameras were installed in the school, which could disprove the charges against him, and the prosecution was deliberately withholding that evidence. However, the Investigating Officer, Muhammad Aslam/SI (PW-5), unequivocally affirmed that no such cameras were installed at the site.

52. According to the prosecution, on 2.2.2021, when B.J. came home from school, he complained to his father, Muhammad Javaid (PW-1), about sexual abuse by the Appellant. It claims that Muhammad Shabbir (PW-2) and two others were also present on the occasion. Both Javaid and Shabbir testified about this fact during the trial. The next question that needs determination is whether this evidence is legally admissible.

53. Hearsay evidence is the evidence given by a witness consisting of a report of something which someone else has said rather than a statement of something the witness has actually seen or

experienced.[7] *Wigmore on Evidence* states: "[The Hearsay Rule] prohibits the use of a person's assertion, as equivalent to testimony to the fact asserted, unless the assertor is brought to the court on the stand, where he may be probed and cross-examined as to the grounds of his assertion and of his qualifications to make it."[8] The principle that bars the admission of hearsay statements is rooted in the enduring belief that cross-examination is the most effective means of uncovering the truth. Many potential sources of inaccuracy and untrustworthiness that may lay beneath a witness's bare untested assertion can be brought to light and exposed, if they exist, by subjecting them to cross-examination. The opportunity to put the individual under oath and to observe their demeanour is another traditional reason for requiring an appearance in court.[9]

54. Despite the pivotal role of cross-examination, exceptions to the hearsay rule have long existed in evidentiary law. The rationale for permitting the use of hearsay revolves around two main factors. Firstly, certain hearsay statements can carry reliability even without subjecting the original declarant to cross-examination. Trustworthiness can be established from the circumstances under which the statement was made, guaranteeing a level of reliability comparable to that found in a statement that has undergone cross-examination. Secondly, there are situations where applying the cross-examination test is impossible – such as in cases where the declarant has died – and thus, it becomes necessary to consider the statement in its untested form if it is to be used at all. Hence, exceptions to the hearsay rule are based on two fundamental principles: trustworthiness and necessity.[10]

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[7] https://www.collinsdictionary.com/dictionary/english/hearsay-evidence

[8] Wigmore on Evidence (1940), § 1364, Vol. V, p.9

[9] Yun, J. (1983). *A Comprehensive Approach to Child Hearsay Statements in Sex Abuse Cases*, Columbia Law Review, Vol. 83, No.7 (Nov. 1983), pp. 1745-1766. https://www.jstor.org/stable/1122326

[10] *ibid.*

55. *Wigmore on Evidence* enumerates 14 exceptions to the hearsay rule.[11] Out of them, a few are more widely employed. These include: dying declarations, statements of facts against interest, and spontaneous exclamations.

56. Historically, *res gestae* and spontaneous exclamations have been used synonymously. However, the term *res gestae* is broader and overlaps with other exceptions of hearsay and different rules of evidence. In ***Keefe v. State***, 50 Ariz. 293, 72 Pac. 2d 425, Lockwood J. explained that *"res gestae"*, which literally means "the thing done", refers in law to automatic and unintended circumstances accompanying the particular act in issue. These circumstances are admissible as evidence when they illustrate and explain the act, often involving statements or explanations from witnesses present during the episode. Lockwood J. distinguished between two classes of such statements or explanations – "spontaneous exclamations" and "verbal acts", adding that the admissibility of each class is based upon entirely different principles of law and logic. He further stated:

> "A spontaneous exclamation may be defined as a statement or exclamation made immediately after some exciting occasion by a participant or spectator and asserting the circumstances of that occasion as it is observed by him. The admissibility of such exclamation is based on our experience that, under certain external circumstances of physical or mental shock, a stress of nervous excitement may be produced in a spectator which stills the reflective faculties and removes their control, so that the utterance which then occurs is a spontaneous and sincere response to the actual sensations and perceptions already produced by the external shock. Since this utterance is made under the immediate and uncontrolled domination of the senses, rather than reason and reflection, and during the brief period when consideration of self-interest could not have been fully brought to bear, the utterance may be taken as expressing the real belief of the speaker as to the facts just observed by him. Verbal acts are utterances which accompany some act or conduct to which it is desired to give a legal effect. When such an act has intrinsically no definite legal significance, or only an ambiguous one, its legal purport or tenor may be ascertained by considering the words accompanying it, and these utterances thus enter merely as a verbal part of the act. The use of utterances as verbal acts has four limitations: (a) The conduct to be characterized by these words must be material to the issue; (b) it must be equivocal in its nature; (c) the words must aid in giving legal significance to the conduct; and (d) the words must accompany the conduct."

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[11] Wigmore on Evidence (1940), Vol. V, § 1425, pp.208-9

57. Courts sometimes apply time limitations to spontaneous exclamations, which is incorrect and causes confusion. Such limitations should only be applied to verbal acts. The real test in spontaneous exclamations is not when the exclamation was made but whether the speaker can be deemed to be expressing themselves under the stress of nervous excitement and shock produced by the act in question. "There can be *no definite and fixed limit* of time. Each case must depend upon its own circumstances."[12]

58. As adumbrated, in instances of sexual abuse involving a young child, the primary evidence very often consists of statements made by the child to a third party. Usually, these statements do not meet the criteria for admission under the conventional exceptions to the hearsay rule. Faced with this situation, courts have increasingly opted to relax the admissibility standards for statements made by children regarding sexual abuse to others. In some jurisdictions, courts have done this by making adjustments within the framework of the spontaneous declarations doctrine. However, some commentators have expressed disapproval of this approach. Yun writes:[13]

> "Under this approach, the use of the spontaneous exclamation exception is virtually indistinguishable from its use in cases involving adults. Some commentators criticize this approach. They are that by treating child declarants as adults, the exception fails to take into account the special circumstances surrounding child sex abuse. It ignores the unusual need for child hearsay statements. The emphasis on spontaneity is improper for two reasons. First, most children do not view a sexual episode as shocking or even as particularly unusual. Children often do not recount the event with the shock or emotion required under the exception. Children are simply not as highly sexualized or moralized as adults. They may not know what has happened to them is wrong. This may be especially true if the child has been involved in an incestuous relationship. A parental imprimatur on the entire situation may often cause the child to view everything as normal. Secondly, a significant delay frequently precedes the child's statement, thereby violating the time requirement of the spontaneous exclamation exception. Even when a child is aware of the nature of his or her assault, a report of the event may still not be instantly forthcoming. This delay may be caused by a variety of factors: the victim's fears of not being believed, feelings of confusion and guilt, efforts to forget, and threats against the victim by the defendant. Consequently, a child often keeps silent until something compels him or her to relate what

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[12] Wigmore on Evidence (1940), Vol. VI, § 1750, p.143

[13] See note 9.

> has happened. Thus, the spontaneous exclamation unnecessarily bars a significant proportion of probative evidence that should be admitted."

59. The shortcomings inherent in a rigid application of the spontaneous exclamation exception to hearsay statements from child victims in cases of sexual abuse have led to the emergence of the "tender years exception." It is designed explicitly for out-of-court statements made by child victims of sexual crimes. Although the tender years exception is sometimes considered a variation of the spontaneous exclamation exception, it differs significantly. The requirement of contemporaneity is eliminated. This exception allows for the admission of statements from young victims regardless of the time elapsed between the assault and the statement, provided that the delay is adequately explained. The underlying rationale seems to be the assumption that the child is under continuous duress throughout the entire period. Notably, the tender years exception permits the introduction of hearsay only to corroborate the child's in-court testimony. This exception was first recognized in ***People v Gage,*** 62 Mich. 271, 28 N.W. 835 (1886), where the court admitted the hearsay statements of a ten-year-old victim of sexual assault that were made approximately three months after the incident.

60. The Supreme Court of Canada made the following statement of law in ***Abdullah Khan v. The Queen***, [1990] 2 R.C.S. 531, on the above subject:

> "The first question should be whether reception of the hearsay statement is necessary. Necessity for these purposes must be interpreted as 'reasonably necessary'. The inadmissibility of the child's evidence might be one basis for a finding of necessity. But sound evidence based on psychological assessments that testimony in court might be traumatic for the child or harm the child might also serve. There may be other examples of circumstances which could establish the requirement of necessity."
>
> "The next question should be whether the evidence is reliable. Many considerations, such as timing, demeanour, the personality of the child, the intelligence and understanding of the child, and the absence of any reason to expect fabrication in the statement, may be relevant to the issue of reliability. I would not wish to draw up a strict list of considerations for reliability, nor to suggest that certain categories of evidence (for example, the evidence of young children on sexual encounters) should be always regarded as reliable. The

> matters relevant to reliability will vary with the child and with the circumstances and are best left to the trial judge."

61. In *Abdullah Khan*, supra, the Supreme Court of Canada concluded that hearsay evidence related to a child's statement about crimes committed against them should be accepted, provided that the criteria of necessity and reliability are satisfied. This acceptance is subject to such safeguards as the judge may deem necessary and the considerations affecting the weight that should be given to such evidence. This does not automatically make out-of-court statements by children generally admissible. The necessity requirement will probably mean that, in most instances, children still need to testify in person.

62. In ***re Cindy L.*** (1997) 17 Cal.4th 15, 69 Cal.Rptr.2d 803, 947, P2d 1340 (Ciny L.), the Supreme Court of California held that "the out-of-court statements of children who are subject to juvenile dependency hearing pursuant to Welfare and Institutions Code section 300, may be admitted in that proceeding if the statements show particular indicia of reliability, if the statements are corroborated, and if interested parties have notice that the statements will be used ... The requirement of corroboration [is] an extra prudential rule. Unlike the special indicia of reliability requirement … it is not mandated by due process. Indeed, the United States Supreme Court has held in the context of a child sexual abuse prosecution that the confrontation clause of the Sixth Amendment to the United States Constitution is not offended by the introduction of and full reliance on the child victim's hearsay so long as it meets the test of reliability. (*Idaho v. Wright*)."

63. In the present case, the testimony of Muhammad Javaid (PW-1) and Muhammad Shabbir (PW-2) is admissible in view of Illustration (j) to Article 21 of QSO, which provides as follows:

> (j) The question is, whether A was ravished:
>
> The facts that, shortly after the alleged rape, she made a complaint relating to the crime, the circumstances under which, and the terms in which, the complaint was made are relevant.
>
> The fact that, without making a complaint, she said that she had been ravished is not relevant as conduct under this Article though it may be relevant as a dying declaration under Article 46 paragraph (1), or as corroborative evidence under Article 153.

64. Article 21 of the QSO is analogous to section 8 of the Indian Evidence Act 1872. In ***Rameshwar v. The State of Rajasthan*** (AIR 1952 SC 54), while considering that provision, the Supreme Court of India held that it is "indisputable" that the rape victim's statement to her mother was admissible in evidence and added that it could also be used for corroboration. It stated:

> "… we are concerned here not only with its legal admissibility and relevancy as to conduct but as to its admissibility for a particular purpose, namely corroboration. The answer to that is to be found in section 157 of the Evidence Act[14] which lays down the law for India … The section makes no exceptions, therefore, provided the condition prescribed, that is to say, 'at or about the time etc.,' are fulfilled there can be no doubt that such a statement is legally admissible in India as corroboration. The weight to be attached to it is, of course, another matter and it may be that in some cases the evidentiary value of two statements emanating from the same tainted source may not be high, but in view of section 118 its legal admissibility as corroboration cannot be questioned. To state this is, however, no more than to emphasizes that there is no rule of thumb in these cases. When corroborative evidence is produced it also has to be weighed, and in a given case, as with other evidence, even though it is legally admissible for the purpose on hand its weight may be nil. On the other hand, seeing that corroboration is not essential to a conviction, conduct of this kind may be more than enough in itself to justify acceptance of the complainant's story. It all depends on the facts of the case."

65. In ***Raja Khurram Ali Khan and others v. Tayyaba Bibi and another*** (PLD 2020 SC 146), the Supreme Court of Pakistan held that in cases where the child witness is also the victim of the crime and is unable to depose in the courtroom, and his evidence is "necessary" to find the truth, and the same has a ring of "circumstantial trustworthiness" attached therewith, then courts may consider the out-of-court evidence thereof, as an exception to the "hearsay rule".

66. Complainant Muhammad Javaid (PW-1) is B.J.'s father while Muhammad Shabbir is the minor's paternal uncle who has adopted him. The PWs do not harbour any ill will towards the Appellant that could serve as a motive for falsely implicating him in this case. Their statements are in line with B.J.'s testimony, providing consistent and corroborative evidence.

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[14] Section 157 of the Indian Evidence Act is analogous to Article 153 of Pakistan's Qanun-e-Shahadat, 1984.

67. We conclude that the prosecution has established the charge against the Appellant beyond any shadow of doubt. Hence, we **dismiss** this appeal.

68. We may write an additional note before parting with this judgment.

69. When a child engages with the judicial system, the response should be supportive, collaborative, and aligned with a child-right-driven approach.[15] Involvement with the legal system can take various forms, such as being a party in a legal case, acting as a witness, undergoing legal proceedings, or seeking legal remedies. The aforementioned approach is based on acknowledging children as rights holders and vulnerable individuals, emphasizing the crucial need to establish an environment that prioritizes their well-being and protection throughout legal processes. The United Nations has issued several sets of guidelines and recommendations related to child witnesses and child victims of sexual abuse. Notable documents include *"UN Guidelines on Justice in Matters Involving Child Victims and Witnesses of Crime,"* which provide extensive guidance on the treatment of child witnesses during legal proceedings. Similarly, the United Nations Children's Fund (UNICEF) offers resources and guidelines on child protection, including recommendations on child-friendly legal procedures. UNICEF's *"Justice for Children"* initiative aims to ensure that children who are victims, witnesses, or offenders in legal processes are treated with respect and provided with the necessary support. Our government has adopted some of these international standards, but there is a need for more concerted efforts, particularly in terms of the rehabilitation and reintegration of these children into society.

70. Child sexual abuse is a deeply traumatic and sensitive issue that demands that the justice system handle these cases with exceptional care and consideration for the unique needs and vulnerabilities of child victims. Parliament passed the Anti-Rape

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[15] *Arif Fareed v. Bibi Sara and others* (2023 SCMR 413).

(Investigation and Trial) Act 2021 to effectively deal with rape and sexual abuse offences (enumerated in the Schedules thereof). Regrettably, some of its provisions have not been implemented, although the Act was passed two years ago. As a result, the Act's intended goals have not been realized. The Federal Government is directed to immediately review the steps taken to implement the Act and ensure that the requisite systems are in place within sixty days.

71. The 2021 Act contains comprehensive provisions to address child victims' distinctive requirements and susceptibilities. The courts are obligated to adhere to these provisions. In particular, they should ensure that:

(i) Every child is treated with respect, dignity, and sensitivity throughout the legal process.

(ii) The child's identity is protected and confidentiality is maintained to reduce potential stigma and harm to him.

(iii) The examination of child witnesses is conducted in a manner that is sensitive to their age, maturity, and capacity to understand, and it should be designed to elicit their testimony in a child-friendly and supportive manner.

(iv) Cross-examination is a fundamental component of the legal process. Judges should balance the child's rights and their need for protection with the accused's right to a fair trial. They may intervene to prevent aggressive or inappropriate questioning during cross-examination. This approach helps reduce the potential emotional impact on the child while maintaining the integrity of the legal process.

(v) Section 12 of the 2021 Act mandates that the trial of the scheduled offences must be conducted in-camera. However, in his discretion or upon application of either party, the judge may allow specific persons to observe the court proceedings or remain in the court. Moreover, notwithstanding any other law for the time being in force, the judge may take suitable measures, such as conducting the trial through video-link or utilizing screens, to ensure the protection of the victims and witnesses. The Special Courts must allow this provision in letter and spirit.

(vi) The Special Courts should also hear bail applications in-camera in cases involving the scheduled offences.

72. Section 26 of the 2021 Act explicitly prohibits the disclosure or revelation of the identity of a victim or the victim's family concerning the scheduled offences unless prior written permission is obtained from the victim, the victim's family, or the guardian in the case of a minor victim. It is disconcerting that, in the present case, the Additional Sessions Judge repeatedly used the victim's full name instead of employing an acronym in the present case. It is true that section 26, *supra*, does not relate to the printing or publication of the court judgments, but it is essential to recognize that this provision was enacted with the societal goal of preventing the social victimization or ostracism of sexual offence victims. Therefore, judges should exercise extreme caution when writing judgments. Henceforth, they shall identify the victims using acronyms rather than full names.

73. The Registrar of this Court is directed to circulate copies of this judgment to all the District and Sessions Judges in the Punjab to ensure compliance with the above directives.

(Muhammad Tariq Nadeem)
Judge

(Tariq Saleem Sheikh)
Judge

Naeem

Announced in open court on _____

Judge **Judge**

Approved for reporting

Judge **Judge**