

**IN THE SUPREME COURT OF PAKISTAN**  
(Appellate Jurisdiction)

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**PRESENT:**

MR. JUSTICE MUHAMMAD HASHIM KHAN KAKAR  
MR. JUSTICE ISHTIAQ IBRAHIM  
MR. JUSTICE ALI BAQAR NAJAFI

44/25

**CRIMINAL PETITION. NO. 297-L/2025**  
(Against the judgment dated 17.01.2025 passed by  
Lahore High Court, Lahore in CrI. Appeal No.  
76861/2019)

**SULEMAN**

...Petitioner

**VERSUS**

**THE STATE etc.**

...Respondent(s)

For the Petitioner : Mr. Mehmood Naveed Shabir, ASC

For the State : Mr. Rai Akhtar Hussain, Add'l PG Punjab

Assisted By : Ms. Tayyaba Munir, Judicial Law Clerk

Date of hearing : 26.05.2025

**JUDGEMENT**

**Ishtiaq Ibrahim, J.-** Petitioner Suleman, a juvenile of around 13 years age, along with co-accused Mst. Sajida Bibi, charged for committing rape of a minor girl, namely, Shahida Bibi aged 10 years vide case FIR No.399/2018 dated 12.08.2018, under section 376 of the Pakistan Penal Code, 1860 ("PPC"), registered at Police Station Saddar, Pakpattan, was tried by the learned ASJ/Judge Juvenile Court Pakpattan ("Trial Court"). Upon conclusion of trial, the petitioner was convicted under section 376(3) PPC and sentenced to undergo imprisonment for life and to pay Rs.20,000/- as compensation to victim Shahida Bibi and in default thereof to further undergo two months simple imprisonment with benefit of Section 382-B Cr.P.C. However, co-accused Mst. Sajida Bibi was acquitted vide judgment dated 04.12.2019.



2. The learned Lahore High Court, Lahore while dismissing appeal of the petitioner-convict upheld his conviction and sentence vide judgment dated 17.01.2025 ("impugned judgment").
3. Through the instant petition under Article 185(3) of the Constitution of Islamic Republic of Pakistan, 1973, the petitioner-convict has questioned his conviction and sentence.
4. The prosecution's case as unfolded in the First Information Report (FIR) Exh.PA/1, registered on the basis of written complaint Exh.PA of complainant Muhammad Ijaz (PW.1) is that on 11.08.2018 at about noon, his 10 years old daughter Shahida Bibi (PW.2), was told by their neighbor/accused Mst. Sajida Bibi (acquitted) to provide mobile phone number to the petitioner-convict Suleman at his residence situated near the complainant's house. The minor Shahida Bibi went to the house of the petitioner for handing over the mobile number and when she did not return home within a reasonable time, the complainant along with Muhammad Azhar and Muhammad Mazhar (PW.3) went to search for her at Suleman's residence. Upon arrival, they heard noises and cries coming from the petitioner's room. The complainant and his above name companions forcibly breakopen the door of the room and saw the petitioner committing rape of the minor. When the complainant tried to overpower him, the petitioner aimed his pistol at them and made his escape good from the spot. The complainant shifted his minor daughter to his house whereafter so many persons approached him on behalf of the accused and insisted not to initiate criminal proceedings against the accused. The complainant on finding an opportunity reached Police Station and lodged report on 12.08.2018 at 08.25 p.m.
5. After a full dressed trial, the petitioner was convicted and sentenced under Section 376(3) of the Pakistan Penal Code (PPC) by the learned Trial Court and his conviction and sentence were upheld by the learned High Court by dismissing the petitioner's appeal through the impugned judgment.
6. We have heard the arguments of the learned counsel for the petitioner as well as the learned Additional Prosecutor General Punjab, representing the State and have carefully examined the record and evidence with their valuable assistance.



7. The instant matter concerns a juvenile accused, a boy of around 13 years, whose age alone necessitates a more careful and compassionate legal lens. It is therefore appropriate to now undertake a structured discussion beginning with the juvenile justice legal framework operative in Pakistan, and to examine the merits of the present case side by side. It is not denied by the prosecution that on the date of occurrence, the petitioner had not attained the age of fourteen years. Historically, Section 83 PPC exempts from criminal liability any child between the ages of seven and twelve who lacked sufficient maturity to understand the nature and consequences of his act. However, pursuant to the Criminal Law (Second Amendment) Act, 2016, Section 83 PPC now reads as under:

*"Nothing is an offence which is done by a child above ten years of age and under fourteen, who has not attained sufficient maturity of understanding to judge of the nature and consequences of his conduct on that occasion."*

The statutory prerequisites encapsulated in Section 83 PPC may thus be bifurcated into two distinct elements

- (i) The child's maturity of understanding to judge the "nature" of the act; and
- (ii) The child's maturity of understanding to judge the "consequences of the act committed."

In light of the principles of statutory interpretation, it is manifest that mere understanding of the nature of an act, unaccompanied by an appreciation of its consequences, does not suffice to establish criminal liability. It is common knowledge that a child might possess a basic awareness that certain acts are 'wrong' or may lead to parental or social disapproval. However, the term "consequences of the act, as envisaged in Section 83 PPC, is to be interpreted not merely in terms of familial or societal effects but as encompassing knowledge that the act constitutes a criminal offence and may attract penal consequences prescribed by law. In order to ascertain whether a child offender possesses the requisite maturity to understand the consequences of his act, it is imperative that the Court assesses the cognitive abilities of the accused child. This requires a meaningful inquiry into whether the child was aware that: "the act he was committing was prohibited by law; and that "the act attracted specific criminal penalties". These considerations lie at the heart of the statutory presumption of doli incapax a common law doctrine embedded within Section 83 PPC. Unlike Section 82 PPC, which provides for an absolute immunity for children under ten years of age, Section 83 PPC



introduces a rebuttable presumption of criminal incapacity for children between the ages of ten and fourteen years. It is incumbent upon the prosecution to rebut this presumption by establishing that, at the relevant time, the child possessed sufficient maturity to understand both the nature and the penal consequences of his conduct. As Thomas Crofts cogently observes in his commentary, *Rebutting the Presumption of Doli Incapax* (1998) 62 JCL 185, it is insufficient for the prosecution merely to establish the elements of *actus reus* and *mens rea*. Rather, the prosecution must go further and demonstrate that the child acted with a mischievous discretion, namely, an understanding that what he was doing was seriously wrong and not merely mischievous or childish in nature.

8. The determination of "sufficient maturity of understanding" under Section 83 PPC has been left by the legislature to the sound discretion of the Court. However, it is regrettable that the law presently does not mandate the constitution of a psychological board or any other objective mechanism for evaluating the mental maturity of the child accused. Consequently, the ascertainment of a child's criminal capacity under Section 83 PPC rests solely upon judicial discretion, a matter that inevitably varies from case to case and which lacks standardized safeguards. This judicial discretion, especially in cases involving offences that attract severe sentences such as life imprisonment, must be exercised with utmost caution. In the absence of any expert psychological evaluation, the Court runs the risk of imposing punishment upon a juvenile in a manner contrary to both the domestic principles of juvenile justice and Pakistan's obligations under international law, particularly the United Nations Convention on the Rights of the Child (UNCRC), ratified by Pakistan in 1990. In accordance with General Comment No. 24 (2019) on children's rights in the child justice system under UNCRC, the Committee on the Rights of the Child has discussed documented evidence from the fields of child development and neuroscience which confirms that children aged 12 to 13 years remain in a stage of significant cognitive and emotional maturation. Specifically, the frontal cortex that is responsible for abstract reasoning, impulse control, and understanding long-term consequences continues to develop during this period. Accordingly, such children may lack the requisite comprehension to fully appreciate the criminal nature of their actions.



9. The Constitution of the Islamic Republic of Pakistan, 1973, recognizes the special status of children. Article 25(2) empowers the State to enact special provisions for the protection of children. Article 35 imposes an obligation upon the State to protect the child, thereby underscoring the constitutional ethos that children constitute a vulnerable class, deserving of particular care and protection. The principles embodied in the UNCRC, especially its emphasis upon the child's right to harmonious development and the primacy of the child's best interests, reinforce the State's obligation to ensure a juvenile justice system that is not merely punitive but reformatory in its spirit and operation.

10. The Juvenile Justice System Act, 2018 represents a vital legislative effort to bring into line Pakistan's juvenile justice framework with the aforementioned international standards. Section 15 of the Act is particularly significant as it stipulates that no sentence of imprisonment may be imposed upon a juvenile unless it carries with it the possibility of release, thereby rejecting retributive punishment in favour of a reformatory approach.

11. It is deeply alarming that in the instant case, no meaningful attempt was made by the learned trial Court, the prosecution, or even the defence to assess the petitioner's level of maturity or to determine whether he fell within the exception provided by Section 83 PPC. No questions were posed to the petitioner to examine his cognitive awareness or comprehension of the consequences of his act. Despite the gravity of the offence, a charge under Section 376 PPC, carrying life imprisonment, the learned trial Court proceeded in a casual and mechanical manner. It is also a disturbing and unfortunate revelation that the petitioner, a child of merely around 13 years, was handcuffed while in custody. The act of restraining a child in such a degrading manner not only undermines the legislative intent of affording dignity and care to minors in conflict with the law but also reflects a troubling disregard for the statutory safeguards specifically designed to protect their physical and psychological well-being. Astonishingly, the age of the petitioner was not recorded in the charge sheet. Age is a crucial factor in assessing the reliability, credibility, and maturity of a witness or accused, and its absence reflects a serious procedural lapse. We deem it essential to reiterate that the recording of age is not a discretionary matter or a juvenile-specific safeguard alone, but should be treated as a mandatory requirement that should be uniformly followed in all criminal proceedings. Police and Trial courts



shall ensure that the age of the accused and all witnesses is to be duly recorded at every relevant stage.

12. Now coming towards the merits of the case. According to record the alleged occurrence of committing rape with minor Shahida Bibi aged 10 years, took place on 11.08.2018 at noon time, inside a room in the petitioner's house which was reported by her father/complainant Muhammad Ijaz (PW.1) on the next day i.e. 12.08.2018 at 08.25 p.m. In his report, the complainant has directly charged the petitioner for committing rape with her minor daughter. It is important to mention here that if at the time of the alleged occurrence, the victim girl was 10 years old at the same time, the petitioner was also a child of 13 years of age. Accordingly, both, the victim and the petitioner were minors on the day of the alleged incident. In such a scenario where the case involves two children, it becomes imperative that the scales of justice are held in careful balance. The appreciation of evidence must be carried out with utmost caution and sensitivity, ensuring that the rights and protections afforded to both minors under the law are not infringed.

13. Complainant Muhammad Ijaz (PW.1) and his nephew Muhammad Mazhar (PW.3), have furnished ocular account of the incident. According to their statements, on hue and cries of the minor victim, they attracted to the petitioner's house and when breakopen the door of the room, they saw the petitioner committing rape of minor Shahida Bibi. They have deposed that the petitioner while aiming his pistol at them made his escape good from the room/spot. As per statement of complainant he and PWs Muhammad Mazhar and Azhar did not chase the petitioner when he was fleeing away from the spot. Contrary, according to PW Muhammad Mazhar, he along with others chased the petitioner for about 2/3 acres. The account furnished by the aforementioned alleged eyewitnesses is difficult to reconcile with the reasoning of a prudent mind. It is highly improbable that a father, upon allegedly witnessing the commission of such a heinous act with his minor daughter would allow the culprit to escape unchallenged at any cost. The natural and expected human reaction, particularly, from a parent in such a shocking situation would be to deal with the offender with an iron hand and attempt to apprehend him even at the stake of his life. The alleged escape of the petitioner, a 13 years boy at the time of the incident, from three adult men present at the entrance of the room, strains credulity and does not appeal to a prudent mind. The conduct attributed to the eyewitnesses appears inconsistent



with normal human behavior and raises serious doubts regarding their presence at the spot at the time of occurrence and the veracity of their accounts. Furthermore, the statements of the alleged eyewitnesses, specifically concerning their arrival at the petitioner's residence in response to the victim's cries for help, are directly contradicted by the testimony of the minor victim Shahida Bibi. According to her deposition, the petitioner had forcefully covered her mouth with his hand when she was taken into a room, thereby preventing her from making any noise or raising an alarm. No independent person from the petitioner's neighbourhood has been cited as witness to corroborate either the presence of the alleged eyewitnesses at the spot at the time of occurrence or the occurrence of the offence. The absence of such impartial testimony significantly further weakens the prosecution's case and calls into question the overall reliability of the evidence produced by the prosecution.

14. It is a well-settled principle of law that in cases of rape, the testimony of the victim is accorded significant weight, particularly when it is corroborated by medical and forensic evidence. The alleged incident took place on 11.08.2018, yet the medical examination of the victim was conducted approximately 30 hours later on 12.08.2018 without any explanation by the prosecution. The testimony of Lady Dr. Sajida Anwar (PW-4), who medically examined the victim, delivers a serious blow to the prosecution's case. According to her she observed certain clinical signs such as fresh bleeding, hyperemia (redness due to increased blood flow), swelling in the genital area, and a torn hymen. However, she did not observe any tears, bruises, lacerations, contusions, or other external injuries that are typically expected in cases involving sexual assault of a minor. Furthermore, no injuries or marks of violence were found on any other part of the victim's body, which would normally be indicative of resistance or coercion. The investigating officer failed to take into the broken bolt of the room of the petitioner's house which according to the alleged eyewitnesses was present at the spot any blood-stained clothing of the victim, particularly her trouser/Shalwar, which could have served as vital corroborative evidence. Moreover, forensic analysis conducted by the Punjab Forensic Science Agency (PFSA) revealed that no semen was detected on the vaginal swabs collected from the victim. The petitioner has not been subjected to potency test. No doubt, the medical Officer (PW.9) who examined the petitioner has opined that petitioner was potent,



however, without potency test, mere such opinion, particularly, when the petitioner was a minor boy at the time of occurrence would be sufficient. Even otherwise, in absence of any other credible evidence qua commission of the rape with the victim by the petitioner, mere potency of the petitioner would not be sufficient for the purpose of his conviction. No piece of circumstantial evidence has been taken into possession by the Investigating Officer from the spot room. In light of these material contradictions and omissions, the medical and forensic evidence fails to substantiate the prosecution's claim of rape.

15. The above discussed contradictions, discrepancies and omissions create serious doubts in the prosecution's case and are sufficient for acquittal of the petitioner. The learned courts below by not appreciating the evidence in its true perspective have fallen in error by holding the petitioner guilty of the offence. Mere heinous nature of an offence, if not proved through cogent and confidence inspiring evidence beyond reasonable doubt, cannot justify the conviction of an accused. It is a foundational principle of criminal jurisprudence that it is preferable for multiple guilty persons to go unpunished than for a single innocent person to suffer a wrongful conviction.

16. The Juvenile Justice System Act, 2018 is not a decorative piece of legislation nor a token expression of legislative benevolence. It is a solemn statutory commitment by the State to deal with juvenile offenders in a manner that is child-sensitive, developmentally appropriate, and aimed at rehabilitation. It bears reiteration that children are not little adults. Subjecting them to adult punitive procedures undermines the very philosophy of juvenile justice. It is paradoxical that a person deemed too immature to vote or contract civil obligations may, nevertheless, be exposed to the full rigour of criminal prosecution and sentencing without any assessment of his mental maturity. It is, therefore, imperative that all stakeholders, the judiciary, prosecution, defence counsel, and law enforcement agencies, give full and meaningful effect to the spirit and safeguards enshrined in the JJSA, 2018, and the principles of Section 83 PPC. Failure to do so risks not only a miscarriage of justice but also the erosion of society's collective commitment to the welfare and reform of its most vulnerable members.



17. In view of the foregoing discussion, this petition is converted into an appeal and is hereby allowed. The conviction and sentence awarded to the petitioner/appellant through the impugned judgments are set aside. The petitioner is acquitted of the charge. He shall be released forthwith, if not required in any other case.

18. The Registrar of this Court is directed to transmit copy of this judgment to the Registrar(s) of the High Courts with instruction to circulate copy thereof among all the Juvenile Courts/ Child Protection Courts for guidance and compliance.

Announced in Open Court at Islamabad on 30/6/25

M. Siraj Afridi, PS / Tayyaba Munir, LC

APPROVED FOR REPORTING

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