

JUDGMENT SHEET
THE HIGH COURT OF SINDH, CIRCUIT COURT, MIRPURKHAS

Criminal Appeal No. S-199 of 2024
Abdul Qadir versus The State

Appellant : Abdul Qadir, through Mr. Rao Faisal, Advocate
Respondent : Mr. Neel Parkash, Deputy Prosecutor General, Sindh.
Amicus Curiae : Mr. Maisum Hussain Sahar, Advocate
Date of Hearing : 08.10.2026
Date of Judgment : 22.10.2026

JUDGMENT

Muhammad Humayon Khan, J.: Through this appeal, the appellant Abdul Qadir has called in question the judgment of the learned trial Court. That judgment was passed in the Sessions Case arising out of Crime No. 18 of 2023, registered at Police Station Darya Khan Rind alias Maqsoodo Rind, District Sanghar, under sections 302, 376 and 34 PPC. The record before me describes the case as Sessions Case No. 79 of 2023 in the charge and as Sessions Case No. 759 of 2023 in the heading of the judgment, and it gives the date of the judgment both as 30.09.2024 and as 24.09.2024. By the impugned judgment, the appellant and his co-accused Muhammad were acquitted of the charge of murder, and Muhammad was acquitted altogether. The appellant was convicted of rape of a minor under section 376(3) PPC. He was sentenced to imprisonment for life and a fine of Rs. 200,000/-, or in default to undergo simple imprisonment for six months, with the benefit of section 382-B Cr.P.C. He prays that his conviction and sentence be set aside.

2. According to the prosecution, at about 1500 hours on 01.06.2023 the minor daughter of the complainant Ali Gul left home to visit the shrine of Misri Shah and did not return. The family searched for her that evening and again the next morning. On 02.06.2023 they learnt that her body was lying in an abandoned hut at Gulshan-e-Mahar Ali Colony, Shahdadpur, and they reached it at about 1000 hours. The police carried out the inquest proceedings, and the body was examined at Taluka Hospital, Shahdadpur. After the post-mortem examination and burial, the complainant lodged the FIR at 2030 hours on 02.06.2023 against unknown persons

under sections 302, 376 and 34 PPC, placing the offences in the intervening night of 01/02.06.2023.

3. A Joint Investigation Team was constituted on 03.06.2023. Reference samples were taken from a number of suspects in two groups. Dr. Mumtaz Ali took samples from the first group, which included Muhammad, on 03.06.2023, and Dr. Irfan Khan took blood samples from the second group, which included the appellant, on 05.06.2023. The samples taken from the deceased at the post-mortem were received by the Investigating Officer on 03.06.2023 and deposited in the malkhana under Register No. 19, Entry No. 13 (Ex. 12/D). They were dispatched with the reference samples to the laboratories at Rohri, Nawabshah and Jamshoro on 05.06.2023.

4. The appellant was formally arrested on 08.06.2023 and produced on 09.06.2023 before the Civil Judge and Judicial Magistrate, who recorded his confessional statement (Ex. 13/B). In that statement, according to the Magistrate, he admitted sexual intercourse with the child but denied killing her. Muhammad was formally arrested on 11.06.2023. The laboratory reported that the appellant was the contributor of the male DNA found in the urethral and vaginal samples taken from the deceased, and that Muhammad's DNA did not match.

5. The charge was framed on 12.10.2023. The prosecution examined eleven witnesses and gave up Lady Police Constable Hajani (Ex. 11), and closed its side at Ex. 15. In his statement under section 342 Cr.P.C. (Ex. 16), the appellant denied the allegations. He said that his confession had been obtained under pressure and that the DNA evidence had been manipulated, and he claimed to be fifteen years old, producing a photocopy of a school leaving certificate (Ex. 15/A). Neither accused gave evidence on oath or led defence evidence.

6. The learned trial Court held that the murder charge had not been proved against either accused and acquitted Muhammad. It convicted the appellant of rape on the strength of the DNA evidence and his judicial confession. It rejected the plea of juvenility, relying on an age of twenty recorded in a medical certificate and on the CNIC number entered in the challan. This appeal followed.

7. PW-1 Ali Gul, the complainant and father of the deceased, was examined at Ex. 03 and produced the FIR at Ex. 03/A. He described his daughter's departure, the search, the discovery of her body, the police proceedings, the post-mortem examination, the burial and the lodging of the FIR against unknown persons. He said that he learnt of the involvement of the appellant and Muhammad on

08.06.2023. In cross-examination he accepted that it was the police who told him of their involvement, that the attendant of the shrine was not a witness, and that the FIR does not mention the village boy who brought news of the body. His evidence proves the disappearance and discovery of the child. It does not identify the offender from personal knowledge.

8. PW-2 Abdul Kareem, the maternal uncle of the deceased, was examined at Ex. 04. He confirmed the child's departure at 1500 hours on 01.06.2023, the search, and the discovery of the body the next morning, and described carrying the body in a Suzuki pickup that he drove. He admitted in cross-examination that he had not seen the accused commit the offence and had learnt of their involvement from the police. His statement in chief that the appellant's involvement became known on 01.06.2023 cannot be reconciled with an FIR lodged against unknown persons on the next day. It is, however, plainly an error about a matter of which he had no personal knowledge, and it does not touch the scientific evidence.

9. PW-3 Ghulam Nabi, the paternal uncle of the deceased, was examined at Ex. 05 as a mashir. He described the search and discovery and produced the memos of the inspection of the place, the body, the video recording, the clothes and the arrest, from Ex. 05/A onwards. He placed the appellant's arrest at about 1100 hours on 08.06.2023 and attributed to him an admission, made in police custody, implicating himself and Muhammad in the murder. In cross-examination he said that the appellant was handcuffed when a police munshi recorded a video at the police station, and that the admission came six or seven days after the arrest. His account of that recording differs from that of the Investigating Officer. For the reasons given below, I place no reliance on any statement made by the appellant in police custody.

10. PW-4 PC Lal Muhammad was examined at Ex. 06 and produced the receipt for the body (Ex. 06/A). He said that the complainant came to the police station at 1100 hours on 02.06.2023, that the police party left for the site under Entry No. 07, and that he took the body to hospital and brought back the sealed clothes of the deceased at about 1600 hours for delivery to SIP Murad Ali. His evidence concerns the movement of the body and the clothes.

11. PW-5 Dr. Ifrah, the Woman Medical Officer, was examined at Ex. 07. She conducted the post-mortem examination on 02.06.2023 between 1310 and 1430 hours, noted the external injuries, and collected the biological samples. She produced the police letter (Ex. 07/A), the provisional post-mortem report (Ex. 07/B), and the final report together with the DNA material (Ex. 07/C).

12. She gave the final cause of death as strangulation, and reported that the appellant was the contributor of the male DNA identified in the urethral and vaginal samples. She found no visible tear of the genitals and no fresh mark of violence there. She first estimated the child's age at twelve to fifteen years, and in cross-examination at about fourteen or fifteen. In reply to the Court she said that she sealed the DNA samples and handed them over on the second day. Her evidence establishes the collection and sealing of the samples taken from the deceased, and it is the medical foundation of the DNA finding.

13. PW-6 Dr. Irfan Khan was examined at Ex. 08. He stated that on 05.06.2023 the police brought the appellant and seven other suspects to him, that he took their blood samples, sealed them, and handed them to Inspector Dildar Ali. He produced the request and the provisional and final certificates (Ex. 08/A to 08/C). He said that, according to the laboratory report, the appellant's DNA matched the samples taken from the deceased. In cross-examination he accepted that he did not take semen from the suspects. That answer does not weaken the evidence. The purpose of a blood sample from a suspect is to provide a reference DNA profile for comparison with the material recovered from the victim, and a blood sample serves that purpose fully.

14. PW-7 Dr. Mumtaz Ali was examined at Ex. 09. He took reference samples from the first group of suspects, including Muhammad, on 03.06.2023, and produced the request and certificates (Ex. 09/A to 09/C). In cross-examination he confirmed that Muhammad's DNA did not match. His evidence is significant for a reason beyond Muhammad's acquittal. It shows that the laboratory process excluded one suspect and identified another, which is inconsistent with the appellant's suggestion that the result was manipulated against him.

15. PW-8 Ahmed Nawaz, the Tapedar, was examined at Ex. 10. He visited the site on 09.06.2023 and produced the request and the sketch (Ex. 10/A and 10/B). The sketch shows an abandoned hut near houses, a street and an open plot. He admitted that he was not given the FIR or the memo, that the position of no accused is shown, and that he saw no blood. His sketch describes the setting only.

16. PW-9 Inspector Dildar Ali, the Investigating Officer and a member of the Joint Investigation Team, was examined at Ex. 12. He described receiving the case papers on 02.06.2023 and taking over the investigation on 03.06.2023. He also described the collection of the samples, their deposit in the malkhana under Register No. 19, Entry No. 13 (Ex. 12/D), and their dispatch to the laboratories at Rohri,

Nawabshah and Jamshoro on 05.06.2023, producing the entries, forwarding letters and receipts. He attributed the appellant's arrest on 08.06.2023 to information from the complainant's party. He also described a recording made outside the Court on 09.06.2023 and the appellant's production before the Magistrate. In cross-examination he admitted three things: that the family witnesses did not disclose the source of their information, that neither the shrine attendant nor the boy who found the body was examined, and that no CCTV footage was collected. He said that the appellant appeared to be about seventeen years old, and admitted that no certificate of age or medical determination of age was obtained.

17. PW-10 Mr. Asif Ali, then the Civil Judge and Judicial Magistrate in charge, was examined at Ex. 13. He produced the police application (Ex. 13/A) and the original confessional statement running to four pages (Ex. 13/B). He said that the appellant was produced on 09.06.2023, that his handcuffs were removed and the police sent out, and that the consequences of confessing were explained to him. He said that about four hours were allowed for reflection, and that after the statement was recorded he obtained the appellant's signature and thumb impression, certified that it was voluntary, and remanded him to judicial custody. In cross-examination he accepted that the proforma mentions two hours. He said he took the appellant to be about eighteen from his appearance, without calling for documents of age or ordering an ossification test. He said that, although the appellant's mother tongue is Brohi, the statement was recorded in Sindhi because the appellant said he spoke and understood Sindhi. He denied any coercion and said that the appellant made no complaint of maltreatment.

18. PW-11 SIP Murad Ali, the first Investigating Officer, was examined at Ex. 14. He described receiving information by telephone at 1100 hours on 02.06.2023, visiting the scene, preparing the inquest papers, arranging the post-mortem examination and recording the FIR, and produced the relevant entries (Ex. 14/A and 14/B). His description of the body differs from that of the Medical Officer on matters that bear on the time of death, such as warmth, the position of the eyes and the tongue. Those differences were relevant to the charge of murder, of which the appellant has been acquitted, and they have no bearing on the identity of the person whose DNA was found in the samples.

19. Mr. Rao Faisal, learned counsel for the appellant, contended that the conviction cannot stand. He submitted that there is no eye-witness, and that the family witnesses admittedly learnt of the appellant's involvement only from the police. He pointed out that the appellant had been brought to the doctor for sampling

on 05.06.2023, three days before his supposed arrest on 08.06.2023, which, he argued, shows that he was in police hands throughout. On that basis he characterised the confession as the product of prolonged police custody. He argued that it was recorded in Sindhi although the appellant's mother tongue is Brohi, and without a translator. He relied on the Magistrate's evidence that he allowed four hours for reflection, which contradicts his own proforma recording two hours. The appellant retracted the confession at the first opportunity.

20. Counsel argued that the DNA evidence was unreliable and had been manipulated. He said that no semen was taken from the appellant, that the storekeeper and the officials who carried the samples to the laboratories were not examined, and that the Medical Officer found no tear or mark of violence on the genitals. He relied on the contradictions among the witnesses as to how the matter was first reported to the police, as to when and where the alleged video confession was recorded, and as to the condition of the body. He submitted that, the appellant having been acquitted of murder and the co-accused acquitted altogether on the same evidence, the conviction for rape could not be sustained.

21. Finally, he submitted that the appellant was about fifteen years old at the time of the occurrence, as shown by his school leaving certificate. He argued that the trial Court rejected that plea without the inquiry required by law, and that the appellant was entitled to the protections of the Juvenile Justice System Act, 2018. He prayed for acquittal.

22. Mr. Maisum Hussain Sahar, learned Amicus Curiae, submitted a detailed written synopsis and rendered valuable assistance. He submitted that the appeal cannot be decided by counting witnesses. The relatives prove the child's disappearance and the discovery of her body but do not identify her assailant, and no statement attributed to the appellant in police custody, including the disputed video recording, can lawfully be relied upon. In his submission, the evidentiary foundation of the conviction is the DNA match and the admissible part of the judicial confession, read with proof of the child's age.

23. He described those two pieces of evidence as presenting a substantial prosecution case. He pointed out that every estimate of the child's age places her below sixteen, so that any suggestion of willingness in the confession supplies no defence under section 375 PPC. He also submitted that neither the absence of an eye-witness, nor of a fresh genital tear, nor of semen taken from the appellant creates reasonable doubt by itself. In his submission, the acquittal of Muhammad, whose

DNA did not match, and the appellant's own acquittal of murder do not require the appellant's acquittal of a separately established offence of rape.

24. The learned Amicus Curiae drew attention to matters calling for scrutiny. The first was the safeguards attending the confession: the conflict between two and four hours of reflection, the language in which it was recorded, and the absence of express evidence of an assurance against return to police custody. The second was the integrity of the samples, including the non-examination of the storekeeper and the officials who carried them. He submitted that these matters must be assessed on the documents actually proved, and that neither tampering nor intact receipt can be presumed.

25. His principal concern was the appellant's age. He submitted that the appellant claimed to be fifteen, that the Investigating Officer thought he looked seventeen and the Magistrate eighteen, and that the trial Court relied on an age of twenty recorded in a medical certificate and a CNIC number in the challan. In his submission, there was no verification of school or NADRA records and no proper medical determination of age under section 8 of the Juvenile Justice System Act, 2018. He recommended that, before finally affirming the conviction, the Court direct a focused inquiry into the appellant's age at the date of the offence under section 428 Cr.P.C. He added candidly that he did not recommend acquittal on the material available. If the DNA linkage and the judicial confession survive scrutiny, he submitted, the conviction for rape may be maintained, subject to the consequences of any finding of juvenility.

26. Mr. Neel Parkash, learned Deputy Prosecutor General, Sindh, supported the impugned judgment. He contended that the conviction rests on scientific evidence of the highest order. Samples taken from the body of a child under sixteen contained male DNA, and that DNA was matched to the appellant's reference sample by the laboratory. The same process excluded the co-accused Muhammad, which, he argued, answers any suggestion of manipulation. He submitted that the custody of the samples was proved by the doctors who sealed them, by the Investigating Officer, by the malkhana entry, and by the movement entries, forwarding letters and laboratory receipts. He further submitted that the appellant's judicial confession, recorded after the removal of the police and the handcuffs, a warning, time for reflection and committal to judicial custody, independently admits sexual intercourse with the child.

27. The learned Deputy Prosecutor General argued that the child's age made consent irrelevant. He submitted that the absence of a genital tear does not negate penetration, and that the absence of an eye-witness is natural in an offence of this kind. As to the appellant's age, he argued that the plea rested on an unproved photocopy. Against it stood the medical certificate recording an age of twenty, the appellant's CNIC entered in the challan, and the impressions of both the Investigating Officer and the Magistrate. He submitted that the trial Court had considered and rejected the plea on that material. He prayed for the appeal to be dismissed.

28. Heard. Perused.

29. The acquittals recorded by the learned trial Court on the charge of murder have not been challenged before me. The questions that arise in this appeal against the appellant's conviction for rape are the following. First, whether the appellant's plea that he was a juvenile on the date of the alleged offence was determined in the manner required by section 8 of the Juvenile Justice System Act, 2018. Secondly, if it was not, whether the conviction recorded at a joint trial with an adult co-accused, by a Court not shown to have been designated as a Juvenile Court, can be sustained. Thirdly, whether the appropriate course is for this Court to determine the appellant's age itself, to decide the appeal on the merits, or to remand the case. Finally, if a remand is required, what directions should govern it.

30. The Juvenile Justice System Act, 2018 (Act XXII of 2018) provides a separate criminal justice system for persons who have not attained the age of eighteen years. Section 2(b) of the Act defines a child as a person under eighteen. Under section 4, Juvenile Courts are to be established or designated by notification, after consultation with the Chief Justice of the High Court, to try cases in which a juvenile is accused. The Act requires a juvenile to be tried separately from an adult accused, save that a Juvenile Court may, where the interests of justice so require, allow a joint trial with the juvenile appearing through an audio-visual link. It also guarantees a juvenile the right to legal assistance, and contains other protections relating to arrest, custody, the privacy of the proceedings and sentence. As noted in the synopsis of the learned Amicus Curiae, the Act has overriding effect.

31. Section 8 of the Act governs the determination of age. Where a person accused of an offence physically appears to be, or claims to be, a juvenile, the police officer in charge or the investigating officer must inquire into his age. That inquiry is to be made on the basis of his birth certificate, educational certificates or other pertinent documents, and, in their absence, on the basis of a medical examination.

When such a person is produced before a Magistrate for remand, the Magistrate must record a finding as to his age on the available material. The Peshawar High Court in *Ishfaq Khan v The State* 2024 PHC 198 held these duties to be mandatory. It also noted that the superior Courts have repeatedly found that subordinate courts and police officials were not paying proper attention to the issue of juvenility. The same concern arises here.

32. In the present case, none of the steps required by section 8 was taken. The appellant was taken into custody and produced before the Magistrate without any inquiry into his age. The Investigating Officer admitted that he obtained no certificate of age and arranged no medical determination of age, although he thought the appellant looked about seventeen. The Magistrate assessed his age at about eighteen from his appearance alone, without calling for any document or ordering an ossification test, and recorded no finding.

33. At the trial, the appellant claimed to be fifteen and relied on a school leaving certificate. The learned trial Court rejected the plea for two reasons. The first was an age of twenty noted in a medical certificate that was prepared for a different purpose, the taking of a reference sample. The second was a CNIC number entered in the challan. Neither the CNIC itself nor any record of the National Database and Registration Authority was produced. No record of the school was called for to verify the certificate, no birth registration was sought, and no medical board was constituted to assess the appellant's age.

34. The material on record is therefore conflicting. The prosecution's own Investigating Officer placed the appellant below eighteen. The Magistrate placed him at the threshold. A routine medical note placed him above it. The appellant's document, if genuine, placed him well below it. Conflicting material of this kind is exactly what section 8 requires to be resolved by a proper inquiry. That inquiry should have verified the original documents and, where necessary, obtained a medical assessment, and it should have ended in a reasoned finding of the appellant's age on the date of the offence. The trial Court did not hold such an inquiry, and its rejection of the plea does not amount to a determination in accordance with law.

35. The consequences are not merely formal. If the appellant was under eighteen on 01/02.06.2023, three things follow. He could be tried only by a Juvenile Court. He could not be charged and tried together with his adult co-accused Muhammad, except as the Act permits. And he was entitled to legal assistance and to the other protections the Act provides, including protections relevant to how and in

what circumstances any confessional statement was recorded. The record does not show that the learned trial Court had been designated as a Juvenile Court. It is common ground that the appellant was tried jointly with an adult.

36. These matters go to the competence of the forum and to the fairness of the trial guaranteed by Article 10-A of the Constitution. They cannot be treated as irregularities curable under section 537 Cr.P.C. on the footing that the evidence was otherwise sufficient. A conviction recorded in disregard of these protections cannot safely be sustained while the question of the appellant's age remains unresolved.

37. The learned Amicus Curiae suggested that this Court might itself take additional evidence on the age question under section 428 Cr.P.C. and decide the appeal on that basis. I have given that suggestion careful consideration. If the appellant is found to have been a juvenile, the result would in any event be that his trial must be held afresh by a Juvenile Court, separately from the adult co-accused and with the protections of the Act. The inquiry into age is, moreover, one that section 8 entrusts in the first instance to the authorities and the Court of trial, where the original records can be summoned and a medical board constituted. In these circumstances, the just and appropriate course is to set aside the conviction and send the case to the Juvenile Court. That Court should determine the appellant's age in accordance with section 8, and then try him afresh in accordance with the Act.

38. I am conscious that a remand is not to be ordered as a matter of course, or to give the prosecution an opportunity to fill gaps in its evidence. The Supreme Court in *M. Younus Habib v The State* PLJ 2006 SC 802 cautioned against retrials ordered without real necessity. This is not such a case. The defect does not lie in the prosecution evidence. It lies in the failure to determine a jurisdictional fact, the appellant's age, and in the consequent risk that he was tried by the wrong forum, jointly with an adult, and without the safeguards the law guarantees to a child. Where the trial itself is vitiated in this way, this Court has remanded the case for a de novo trial: see *Mubeen alias Haji Muhammad Mubeen v The State* 2006 YLR 359. The remand will not prejudice the prosecution, which will be free to lead its evidence afresh before the competent forum.

The remand must be confined to the charge under section 376 PPC. The appellant has been acquitted of the charge of murder, and the co-accused Muhammad acquitted altogether. Those acquittals have not been challenged and cannot be reopened, consistently with section 403 Cr.P.C. and the protection against double jeopardy in Article 13 of the Constitution.

39. Since the case is to be tried afresh, I refrain from expressing any opinion on the merits, including on the DNA evidence, the judicial confession or the custody of the samples. The Juvenile Court shall decide every question independently on the evidence led before it, uninfluenced by the impugned judgment or by anything said in this judgment. If the appellant is found to have been a juvenile, the Juvenile Court shall examine the admissibility and voluntariness of any confession in the light of the safeguards the Act provides for juveniles. It shall also take into account the precautions laid down by the Supreme Court in *Azeem Khan v Mujahid Khan 2016 SCMR 274*.

40. For the foregoing reasons, Criminal Appeal No.S-199 of 2024 is allowed. The conviction of the appellant Abdul Qadir under section 376(3) PPC, and the sentence of imprisonment for life and fine awarded to him by the impugned judgment, are set aside. The case, to the extent of the charge against the appellant under section 376 PPC, is remanded for trial by the Juvenile Court having jurisdiction in District Sanghar, on the following terms.

41. The learned Sessions Judge, Sanghar, shall transmit the record and proceedings to the Juvenile Court designated under section 4 of the Juvenile Justice System Act, 2018 for the area, immediately on receipt of this judgment.

42. The Juvenile Court shall first determine the appellant's age as on 01/02.06.2023 in accordance with section 8 of the Act. For that purpose it shall summon and verify the original school admission and leaving records, any birth registration, and the record of the National Database and Registration Authority. If the documentary record is insufficient or conflicting, it shall have the appellant examined by a duly constituted medical board. It shall record a reasoned finding on his age within thirty days of receiving the record, after giving both sides an opportunity to be heard and to produce material.

43. If the appellant is found to have been under eighteen years of age on the date of the offence, the Juvenile Court shall try him afresh on the charge under section 376 PPC in accordance with the Act. In particular, it shall try him separately from any adult person, provide him legal assistance, observe the provisions of the Act as to his custody and the privacy of the proceedings, and record the evidence afresh. If he is found to have attained eighteen years of age on that date, the Court shall record its reasons and proceed with his trial afresh in accordance with law as a Court of competent jurisdiction.

44. The trial shall be concluded within four months of the finding on age, and the case shall be heard as far as possible on a day-to-day basis.

45. The appellant shall be treated as an under-trial prisoner. His custody and any application for bail shall be dealt with by the Juvenile Court in accordance with the Act and the law, on their own merits. If the appellant is found to have been a juvenile, his name and identity shall not be disclosed in any report of the proceedings.

46. The acquittals recorded by the learned trial Court, of the appellant on the charge of murder and of the co-accused Muhammad on all charges, are not affected by this judgment. Nothing in this judgment is an expression of opinion on the merits of the case.

47. The office shall send a copy of this judgment, together with the record and proceedings, to the learned Sessions Judge, Sanghar for onward transmission to the Juvenile Court, and a copy to the Superintendent of the jail where the appellant is confined. The Juvenile Court shall submit a compliance report through the Additional Registrar of this Court on conclusion of the trial.

JUDGE

APPROVED FOR REPORTING

**FAISAL*