

Hassan Khan v. The State

2025 SCP 461

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In the contemporary judicial landscape, a new line of jurisprudence seems to be emerging from the superior judiciary that demonstrates a palpable shift towards gender-biased legal reasoning. A quintessential example of this shift is the judgment of the Supreme Court of Pakistan (‘Court’) in *Hassan Khan v. The State* case.¹ The ruling re-characterised rape as a consensual act of fornication based on stereotypical assumptions about the normative responses to violence expected of a female victim. Justice Malik Shahzad Ahmad Khan authored the majority verdict, which was concurred by Justice Aqeel Ahmed Abbasi, whereas Justice Salahuddin Panhwar expressed a strong dissenting view.

This case concerned a rape allegation dating back to 2015, when the victim was allegedly raped by a man named Hassan Khan (‘appellant’), resulting in her pregnancy. DNA tests subsequently confirmed that the appellant was the biological father of the child, leading to his conviction by the trial court, with a sentence of twenty years imprisonment along with a fine of Rs. 500,000. This sentence was later upheld by the High Court as well. The appellant then challenged the High Court judgment before the present Supreme Court bench in an appeal, which set aside the decision and converted the rape conviction into fornication.

The majority opinion relied on two primary arguments to overturn the conviction: a delay of seven months in lodging the FIR, and the absence of marks of violence on the victim’s body. Based on these grounds, the judgment notes that the victim did not adequately resist the act of violence against her, and thus, consent was imputed to her to re-classify the case as one of fornication.

On the other hand, the dissenting note by Justice Salahuddin Panhwar, recognises the role played by social taboos and notions of honour in impeding the timely reporting of sexual offences. In particular, he relies on *Mehboob Ahmad v. The State*,² which identifies that a victim

¹ *Hassan Khan v. The State* 2025 SCP 461.

² *Mehboob Ahmad v. The State* 1999 SCMR 1102.

of rape should not be penalised for delay in lodging the FIR, and secondly, citing *Zahid v. The State*,³ Justice Panhwar notes that delays in reporting such offences are often a corollary of the socio-cultural pressures surrounding the notion of honour.

Importantly, the majority judges failed to appreciate the myriad patriarchal challenges which rape victims confront in our society. Complaining about sexual offences often hinders prospects of marriage, especially in rural areas, which devalues the victim per the societal standards.⁴ Notions of ‘honour’ are often associated with women in Pakistani society, which puts them at risk of being victimised by their families if they were to open up about the assault they have been victim to.⁵ Secondly, the presence of marks of violence and/or resistance is not an absolute requirement for an allegation of rape to be established. This has been explained in Section 375 of the Pakistan Penal Code (‘PPC’), and was also interpreted similarly in *Shakeel v. The State*:

*“[t]he contention of learned Advocate Supreme Court that in the absence of visible marks of violence it cannot be inferred that the prosecutrix was subjected to Zina-bil-Jabr is devoid of merit for the simple reason that medical evidence has confirmed it that sexual intercourse had taken place and even otherwise the marks of violence were not necessary to prove the factum of Zina-bil-Jabr”.*⁶

Moreover, the complainant in this case had alleged the use of force on the pointation of a firearm, which was also recovered by the police during the investigation, but the recovery was disregarded on a procedural ground,⁷ leading the court to presume that the firearm was not used during the occurrence, hence, resistance was deemed necessary to prove lack of consent. However, the established jurisprudence of the Court indicates that the possession of a firearm

³ *Zahid & another v. The State* 2020 SCMR 590.

⁴ Samantha Willan, Nwabisa Shai, Thobeka Majola and others, ‘South African rape survivors expressions of shame, self-blame and internalized-stigma’ (2024) 5 SSM – Mental Health 100310 <https://www.sciencedirect.com/science/article/pii/S266656032400015X?ref=pdf_download&fr=RR-2&rr=9b67b567ddadb7f7#section-cited-by> accessed December 31, 2025.

⁵ Mahum Nazar, ‘The analysis of honor killings in Pakistan and how it is related to the notion of “what will other people say?”’ (Undergraduate Honors Theses, Binghamton University 2020) <https://orb.binghamton.edu/undergrad_honors_theses/5> accessed December 31, 2025.

⁶ *Shakeel v. The State*, PLD 2010 SC 47 [7].

⁷ *Hassan Khan* (n 1) [5] (The Court contended that the recovery did not involve the presence of local witnesses, as required under sec 103 CrPC).

or explicit use of force by the accused is not the only factor to explain the lack of resistance, since victims react differently when confronted with trauma. In her dissenting note in *Muhammad Imran v. The State*, Justice Ayesha Malik explains how exposure to violence triggers multiple psychological responses in a victim who may fight (resist), flight (escape), or freeze (become unresponsive) during the violent activity.⁸ Therefore, the degree of force or intimidation involved, the nature of the act, and the victim's response can differ significantly from one individual to another, making the experience inherently subjective.

The patriarchal mindset exhibited by the majority opinion could be best explained by Catharine MacKinnon's dominance theory.⁹ According to her theory, injustices faced by women do not merely arise from routine gender-based distinctions; instead, they are rooted in the structural subordination of women to men. Therefore, the law systematically normalises male sexual access to women unless there is visible resistance. Any sexual encounter in the absence of such forms of resistance may be deemed to be consensual, notwithstanding the consent.

While the majority considered the complainant also guilty of fornication alongside the appellant, they forwent her punishment on procedural grounds, noting she was neither challaned nor charged. Even otherwise, the conversion of a rape charge into a charge of fornication runs squarely against the established principles of law. Section 5A of the Zina Ordinance clearly stipulates that 'no case where an allegation of rape is made, shall at any stage be converted into a complaint of fornication under section 496B of the Pakistan Penal Code'.¹⁰ However, the judgment relied on Section 238(2) of the Code of Criminal Procedure (CrPC), which provides that when a person is charged with an offence but 'facts are proved which reduce it to a minor offence', they may be convicted of the minor offence despite not being charged for it.¹¹

This legal interpretation of Section 238(2) is opposed in the dissenting note, as Justice Panhwar noted that the conversion of a charge of major offence into a minor offence is only plausible when the act squarely falls within both of the said offences, and all the ingredients of

⁸ *Muhammad Imran v. The State* PLD 2025 SC 662 [7]-[8] (Ayesha Malik J., dissenting).

⁹ Catharine A MacKinnon, 'Difference and Dominance: On Sex Discrimination' in Anne Phillips (eds), *Feminism And Politics: Oxford Readings In Feminism*, (OUP 1998).

¹⁰ The Offence of Zina (Enforcement of Hudood) Ordinance, 1979, s 5A.

¹¹ The Code of Criminal Procedure, 1898 (Act V of 1898), s 238(2).

the minor offence are also proven beyond a reasonable doubt.¹² Therefore, the conversion of the offence of rape under Section 376 of the PPC into that of fornication under Section 496 B is legally invalid as the primary ingredients of both offences are in sharp conflict. The latter requires a ‘wilful sexual intercourse’, while the former is when sexual conduct is committed against the victim’s will and consent. The majority opinion circumvented this important legal nuance and assumed the existence of consent based on stereotypical assumptions about force and resistance.

Another important legal nuance overlooked by the majority is that it convicted for fornication based on the same DNA evidence, which it rejected for establishing rape. Justice Panhwar points out this fallacy in his dissent, noting that if a certain piece of evidence appears not credible enough to prove the primary charge of rape, then the same can not be relied upon to prove a different charge. Consequently, as the independent evidentiary ingredient of fornication—willful consent—was not proven, the conversion of charge and the conviction of the appellant stand on mere preponderance of evidence in vivid defiance of the traditional standard of ‘beyond a reasonable doubt’ for criminal offences.

In conclusion, the judgment in *Hassan Khan v. The State* reflects deeper structural and institutional shortcomings within Pakistan’s judicial system, particularly in its treatment of sexual violence and women’s lived realities. Addressing these issues requires a gender-sensitive reform strategy, involving increased female representation across all tiers of the judiciary so that the matters of consent and resistance are dealt with the required sensitivity and understanding of the victim’s subjective position. Secondly, the judgment exposes entrenched gender stereotypes at high-judicial fora, which calls for a robust gender-sensitisation initiative through judicial training to prevent societal myths from influencing judicial reasoning. These reforms are essential to restore public trust, enhance fairness in adjudication, and move towards meaningful gender justice.

¹² *Hassan Khan v. The State* 2025 SCP 461 [5]-[6] (Salahuddin Panhwar J., dissenting).