

IN THE FEDERAL SHARIAT COURT
(APPELLATE JURISDICTION)

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PRESENT:

Mr. Justice Aftab Hussain	Chairman
Mr. Justice Karimullah Durrani	Member
Mr. Justice Mohammad Siddiq	Member
Mr. Justice Zahoorul Haq	Member
Mr. Justice Pir Karam Shah	Member
Mr. Justice Maulana Ghulam Ali	Member
Mr. Justice Mohd. Taqi Usmani	Member

CRIMINAL APPEAL NO.27/I OF 1981

Khalid Parvez & Others	Appellants
Vs		
The State	Respondent
For the Appellants	Mr. M. Bilal, Advocate.
For the Respondent		Hafiz S.A. Rehman, Advocate.
Date of hearing	16.6.1981

JUDGMENT:

SH.AFTAB HUSSAIN, CHAIRMAN: Khalid Parvez and Mst. Naziran have been convicted by the learned Additional Sessions Judge, Sargodha by an order dated 25.2.1981. The conviction of Khalid Parvez is under Sections 16 and 10 of the offence of Zina (Enforcement of Haddood) Ordinance, 1979. He has been sentenced to four year's Rigorous Imprisonment on each count. Both sentences have been ordered to run concurrently. Mst. Naziran has been convicted under Section 10 and sentenced to four years Rigorous Imprisonment.

2. The prosecution story as disclosed in the First Information Report as well as the evidence of Abdul Jabbar P.W.1 is that Mst. Naziran appellant was abducted by Khalid Parvez appellant on the night between 10th and 11th of March, 1979 from Chak-34 Janubi, Tehsil and District Sargodha and that they had been committing Zina with each/other. The First Information Report of the offence was given in Police

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Station Bhagatanwala on the 16th of March, 1979 by Abdul Jabbar P.W.1, the sister's husband of Mst.Naziran. (30)

3. It appears from the evidence of Ch.Mohammad Ashraf, A.S.I. that at the time of arrest the appellant had produced before him the Nikahnama as well as the birth certificate of Mst.Naziran which have been admitted in evidence as Ex.D.B. and Ex.D.C.

4. At the trial the prosecution examined Abdul Jabbar P.W.1 who supported his First Information Report, Arshad Ahmed P.W.3 who claims to have seen Mst.Naziran going alongwith Khalid Parvez and Khalid Javed, and Jewan Khan P.W.5 who claims to have seen the two appellants committing Zina with each other in a garden. Mohammad Yusuf P.W.2 recorded the First Information Report. Ch. Shaukat Ali Magistrate P.W.7 is stated to have recorded the statement of Mst.Naziran under Section 164 but since that statement is obviously on oath, it could not be admitted in evidence nor any reliance could be placed upon it. It may be stated that Shaukat Ali, P.W. stated that he had recorded the statement of Mst.Naziran in her capacity as witness, but this is ~~the~~ ^{far} incorrect since Mst.Naziran has been treated to be an accused person from the very start. All these witnesses are formal.

5. Both the appellants pleaded that they were married to one another. It appears from Ex.D.B. that their Nikah was performed on the 10th of March, 1979 which falsified the prosecution story that the abduction took place between the night of 10th and 11th of March, 1979. It may also be stated that Abdul Jabbar P.W.1 submitted an application (Ex.P.B) before the Police condemning this Nikhnama

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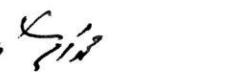
as a mere fabrication but inspite of this no evidence was led by the prosecution to prove that it was a forged or fabricated document. In these circumstances there is no reason why the Nikahnama which is registered in accordance with the provision of the Muslim Family Laws Ordinance should be treated as any thing else but genuine. The prosecution case is that the two appellants had been living in sin since the night between 10th and 11th of March, 1979 but this story is falsified by the Nikahnama which shows that the date of Nikah was prior to the date of alleged abduction. It, therefore, transpires that the two appellants have been living in wedlock.

6. Arshad Ahmed is a chance witness and no reliance can be placed upon his statement. Jewan Khan who claims to have seen this couple, which happens to be married, committing Zina in the open has obviously made a false statement which is also absurd. He is a person who should have been ordered to be prosecuted by the learned Additional Sessions Judge under the offence of Qazf (Enforcement of Hadd) Ordinance, 1979 for having committed the offence of Qazf. It is also surprising that the learned Additional Sessions Judge has not made any reference to this valuable defence of the appellants.

7. In view of what is stated above we accept this appeal and acquit the two appellants. Their bail bonds are discharged.

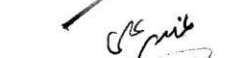
8. We further direct the S.H.O. Police Station Bhagatanwala to call Mst. Naziran and register at her instance a case against Jewan Khan under Section 7 of the offence of Qazf (Enforcement of Hadd) Ordinance, 1979 and prosecute him under the above Section.

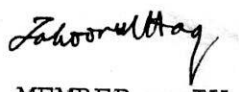

MEMBER - II


MEMBER - V


CHAIRMAN

MEMBER - III


MEMBER - VI


MEMBER - IV


MEMBER - VII


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