IN THE FEDERAL SHARIAT COURT
(Appellate Jurisdiction)

PRESENT

MR.JUSTICE NAZIR AHMAD BHATTI, CHIEF JUSTICE.

CRIMINAL APPEAL NO.166/I OF 1995.

Shiraz son of Noor Ahmad, resident of Chitta Pul, P.S City Abbottabad, Tehsil and District Abbottabad.	...	Appellant
Versus		
The State	...	Respondent
For the appellant	...	Mr.Muhammad Aslam Uns, Advocate
For the State	...	Syed Amjad Ali, Advocate
No.& date of F.I.R Police Station	...	No.145,dt.29.4.1994, P.S Mirpur
Date of order of the trial court	...	16.8.1995.
Date of Institution	...	28.8.1995.
Date of hearing and decision	...	24.9.1995.

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JUDGMENT

NAZIR AHMAD BHATTI, CHIEF JUSTICE.- Hassan Mujahid aged about 11/12 years son of complainant Mujahid Pervez, a Professor in International Public School and College Abbottabad, resident of House No.267, Street No.4, Jinahabad Colony, Abbottabad, had gone to the market to fetch bottles of cold drink on 20.4.1994 at about 7.00 P.M. At that time the complainant was on his duty in the College. He received information from his home that the boy had not returned. However, the boy reached home at about 8.30 P.M and informed his father that he was returning to the house after purchasing cold drinks but a suzuki vehicle stopped nearby and the driver with a small beard asked him about the way to Mandian and took him along to show him the way. The driver took him to a distant lonely place where he committed carnal intercourse against the order of nature forcibly with the boy. On 29.4.1994 the complainant and his son were standing outside their house when the latter saw the same suzuky vehicle bearing No. ADB 730 coming. He pointed out the same to his father. The latter tried to catch the driver but he fled away. However, the complainant chased the vehicle. When he reached near Lady Gardan two motorcylists came to his help and they also chased the vehicle. When they reached near Chitta Pul Abbottabad, the driver stopped the vehicle and ran away towards the street. The

complainant was informed that the name of the driver was Shiraz son of Noor Zaman by the persons present there. Thereupon the complainant went to Police Station Mirpur and submitted a written complaint at about 2210 hours whereupon F.I.R No.145 was recorded.

2. The victim was medically examined by P.W.2 Dr.Masood Malik on 29.4.1994 at 2130 hours. The doctor found no evidence of seminal stains on the clothes of the boy neither any seminal fluid staining present on the body surface. However, external anal orifice of the anal region had got signs of old healed abrasions.

3. The appellant was arrested on 12.5.1994 and after investigation he was sent up for trial before Sessions Judge Abbottabad who charged him under section 12 of the Offence of Zina(Enforcement of Hudood) Ordinance,1979 and section 377 PPC. The appellant pleaded not guilty to both the charges and claimed trial.

4. The State produced 8 witnesses in proof of the prosecution, whereas accused made a statement under section 342 Cr.P.C but he neither produced any defnece nor made any deposition on oath.

5. After the conclusion of the trial the learned Sessions Judge convicted the accused under section 377 PPC

and sentenced him to undergo rigorous imprisonment for 5 years and to pay a fine of Rs.20,000/-, out of which an amount of Rs.10,000/- was paid to the victim as compensation. In default of payment of fine the accused had to suffer simple imprisonment for 6 months. The convict has challenged his conviction and sentence by the appeal in hand.

6. I have heard learned counsel for the parties at length who also led me through the entire record of the case.

7. Victim Mujahid Hassan son of the complainant appeared as P.W.5 during the trial and he clearly charged the appellant for subjecting him to carnal intercourse against the order of nature forcibly. He had also clearly identified the appellant when he was passing by their house and then pointed him out to his father. Although the boy was medically examined after 7 days of the occurrence yet there were still some signs of his having been subjected to sodomy. There were visible traces of the injuries caused inside his anus and for that he clearly and directly charged the appellant. There was also one distinct mark of identification about the appellant and that was his beard which circumstance was easily for the boy to remember. Consequently there was neither any

mis-identification of the appellant nor any other factor to throw any shadow of doubt on the testimony of the victim with regard to the offence committed with him by the appellant. Even otherwise the conduct of the appellant was a clear factor in the establishment of his own guilt. When the boy pointed him out and his vehicle to his father, instead of stopping the appellant tried to flee away. Had he not been guilty or he had not committed the offence towards the boy, his natural impulse would have been to stop and to find out as why the boy had pointed towards him. He was guilty of the offence and that was the reason for his attemping to escape when the boy recognized and identified him. His own conduct was an important factor improving the charge against him.

6. It was contended by the learned counsel for the appellant that the occurrence took place allegedly on 20.4.1994 but the report was made in the Police Station on 29.4.1994, with a delay of 9 days. It was argued by the learned counsel that this delay pointed towards the weakness of the prosecution case and its fabrication. On the contrary the reason given by the complainant in the F.I.R was that since the culprit had vanished, the complainant did not lodge any report immediately on account

of the involvement of his family honour. This is such an offence that parents generally avoid to disclose it on account of the dishonour which it may ultimately being to the family. The complainant is a respectable teacher. He holds a respectable position in the Society and the disclosure of the offence committed with his son would have definitely lowered his prestige among his pupils and members of the Society. However, he was compelled to make the report when the culprit was actually identified and recognized by the boy. Therefore, the reason furnished by the complainant for delay in making the F.I.R is quite reasonably explained. The victim and his father would have neither brought a false charge nor would have charged a wrong person. No doubt the appellant was not known to the complainant party previously, but he was correctly identified and his name was disclosed to the complainant party by the people living in the same street where the accused had disappeared.

7. The appellant only denied the commission of the offence and stated that he had been falsely charged on account of suspicion. However, there was no suspicion regarding his identity. There was also no motive and no intention to falsely charge him. The mere fact that semen was not found on the anal surface after 9 days would not weaken the

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prosecution case because more than sufficient evidence had been brought on the record to implicate the appellant.

8. Consequently the charge under section 377 PPC had been proved against the appellant beyond any doubt whatsoever and he was appropriately convicted and sentenced. There is no merit in this appeal which is dismissed. The conviction and sentence of the appellant recorded on 16.8.1995 by the learned Sessions Judge Abbottabad are maintained. He shall be entitled to the benefit under section 382-B Cr.P.C.

Fit for reporting.

CHIEF JUSTICE

Islamabad, 24.9.2995.