

IN THE FEDERAL SHARIAT COURT
(Appellate Jurisdiction)

PRESENT

MR.JUSTICE NAZIR AHMAD BHATTI, CHIEF JUSTICE.
MR.JUSTICE ALLAMA DR.FIDA MUHAMMAD KHAN.

CRIMINAL APPEAL NO.172/L OF 1994.

1. Zulfiqar son of Hamind, ... Appellants
2. Ghulam Muhammad alias Goma
son of Muhammad, and
3. Naseer Ahmad son of Muhammad,
All residents of Chak No.122/15-L,
Tehsil Mian Channu District
Khanewal.

Versus

The State ... Respondent

For the appellants ... Mehr Muhammad Nawaz Khan,
Advocate

For the State ... Mrs.Anwar Raza,Advocate

No.& date of F.I.R ... No.113/92,dt.2.5.1992,
Police Station P.S Saddar, Mian Channu

Date of order of ... 31.5.1994.
the trial court

Date of Institution ... 14.6.1994.

Date of hearing ... 18.10.1995.
and decision

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JUDGMENT

NAZIR AHMAD BHATTI, CHIEF JUSTICE.- Zulfiqar son

of Hamind, Ghulam Muhammad alias Goma and Naseer Ahmad both sons of Muhammad, appellants herein, were convicted by learned Additional Sessions Judge Khanewal under section 354-A PPC by judgment dated 31.5.1994 and each of them was sentenced to undergo imprisonment for life and to pay a fine of Rs.2000/- or in default to further undergo rigorous imprisonment for one year. Their co-accused Muhammad son of Sarang, Riaz, Ramzan and Allah Ditta sons of the aforesaid Muhammad were acquitted. The convicted accused have challenged their conviction and sentence by the appeal in hand.

2. The facts briefly stated are that complainant Ghulam Muhammad son of Mithha and husband of Mst.Jindo were proceeding towards bus stop near tahli bridge on 1.5.1992 at about 1300 hours. When they reached near the fields of Salabat Sanpal they were confronted by accused Zulfiqar armed with rifle, accused Ghulam Muhammad alias Goma armed with rifle, accused Naseer Ahmad armed with rifle, accused Allah Ditta armed with a shot gun and accused Ramzan armed with an axe. All the accused started firing in the air and reached near the complainant and his wife. The accused threatened the complainant and his wife ~~for taking xxxxxx~~ as Haq Nawaz



their son had abducted their girl and had caused insult to the accused party by abducting their girl and they were going to teach them a lesson. Thereafter the accused started firing in the air. Accused Zulfiqar, Ghulam Muhammad and Naseer caught hold of Mst. Jindo by her hair, hands and legs and started dragging her on the ground and removed her chaddar. They dragged Mst. Jindo up to two squares whereupon the complainant raised alarm whereby Haitam, Riaz, armed with rifle and Sohna reached the spot. The latter persons also started firing in the air whereupon the accused left Mst. Jindo and went away. Thereafter the complainant picked up Mst. Jindo whose wearing clothes were torn and she was without a chaddar and in naked condition. The cause of enmity as disclosed in the F.I.R was that Haq Nawaz son of the complainant had abducted Mst. Naziran daughter of Shamma about a year ago but the matter was settled through punchayat. However, the accused party still felt aggrieved and had committed the offence. Ghulam Muhammad complainant went to Police Station Saddar Mian Channu on 2.5.1992 and recorded F.I.R No.113/92 at 1230 in the night.

3. All the accused, except accused Naseer Ahmad, were arrested on 19.5.1992 whereas the said Naseer was arrested on 3.6.1992. After investigation all the accused were sent

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up for trial before Additional Sessions Judge Khanewal who charged them under sections 148 and 354-A PPC and sections 11/18 of the Offence of Zina(Enforcement of Hudood) Ordinance, 1979. All the accused pleaded not guilty to the charges and claimed trial.

4. Eight witnesses were produced by the State in proof of the prosecution case whereas all the accused made depositions under sections 342 Cr.P.C but none of them either made any deposition on oath nor produced any defence evidence.

5. P.W.4 Ghulam Muhammad complainant narrated the contents of the F.I.R. and he was supported by P.W.3 Mst.Jindan his wife, P.W.5 Riaz, P.W.6 Haitam and P.W.8 Sohna.

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P.W.4 Ghulam Muhammad deposed that on the day of occurrence he and his wife had got down from a bus at Adda Tallan wala and were proceeding to their house. He further stated that when they reached the land of Salabat Sanpal all the accused appeared armed with rifles, shot gun and a stick. He further stated that they grappled with his wife and accused Zulfiqar caught her from her hair, accused Ghulam Muhammad caught hold of her arms and accused Naseer caught hold of her legs and they started dragging her. They also continued firing in the air. He further deposed that they covered about two squares distance while dragging his wife and then P.Ws Haitam and Riaz reached



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the spot armed with guns whereupon the accused fled away.

The complainant further deposed that the accused made his wife naked, removed her clothes and took the clothes with them.

This testimony of the complainant was supported and corroborated by P.W.3 Mst.Jindan his wife, P.W.4 Ghulam Muhammad, P.W.5 Riaz,

P.W.6 Haitam and P.W.8 Sohna. It was the case of the accused

that P.Ws 3 to 6 were related to the complainant party and

so their testimony was not believable. However, we have

found from the record that P.W.8 Sohna was not in any way

related to the complainant party. He was an independent

witness, neither having any relationship with the complainant

nor any enmity against the accused. His presence is also

disclosed in the F.I.R. His testimony would also show that

he had reached the spot before arrival of P.Ws 4 to 6 and

had seen the occurrence of Mst.Jinda being dragged in the

fields by the accused, whereby her clothes were torn and she

became naked. The testimony of P.W.8 Sohna would not be

shattered by any means which clearly corroborated the F.I.R

and supported the complainant.

6. In rebuttal there was only the denial simpliciter of

the occurrence by each accused. None of them made any

deposition on oath. The contention of the accused was that

was that she of complainant party had no old enmity

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with them and had falsely implicated them in the case.

However, it was contended by the complainant that his son Haq Nawaz had abducted Mst.Naziran who was related to the accused party and for that reason the accused felt disgraced and had committed the offence in revenge. The motive for the commission of the offence had,therefore, been proved by the prosecution evidence. Although all the three eye witnesses were related to the complainant and they could also be considered as interested witnesses on account of the previous enmity between the parties over the abduction of Mst.Naziran but it had been proved beyond any doubt whatsoever that P.W.8 Sohna was an independent witness and he reached the spot immediately and found the accused dragging Mst.Jindo wife of the complainant. He saw Mst.Jindo being dragged on the ground by the appellants. He also said that her clothes were torn as a result of that dragging and she was without a chadar and shirt and her body had become naked. His presence at the spot at the time of occurrence was established because his name had been mentioned in the F.I.R and he also appeared as a witness during the trial and made deposition on oath. The bare denial of occurrence by the accused in their depositions under section 342 Cr.P.C was entirely insufficient to throw any doubt against the prosecution case.

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7. It was contended by the learned counsel for the appellants that it was alleged in the prosecution evidence that Mst.Jindo had received injuries while being dragged but no medical evidence had been produced in this respect. No doubt Mst.Jindo had received some scratches on her body while she was being dragged but it would not cause any doubt in the prosecution story because non-production of any evidence in this respect would not mean that no occurrence had taken place while many witnesses had seen her being dragged on the ground by the accused party. It was also contended by the learned counsel for the appellants that there are serious contradictions in the prosecution story. He had contended that the F.I.R disclosed that the complainant and his wife were proceeding towards bus stand to board a bus while at the trial both of them deposed that they had got down from a bus and were proceeding towards their home. Although there was a departure in this respect at the time of trial from the contents of the F.I.R but we did not think that it was a serious contradiction. In this respect the main point appeared to be that the complainant and his wife were confronted by the appellants near the fields of Slabat Sunpal and the wife of the complainant was dragged by the accused party as a result of which her clothes were torn and she became naked and this version had been clearly supported by an independent witness of the occurrence.



8. It was also contended by the learned counsel for the appellants that the prosecution evidence which was brought on the record showed that the clothes of Mst.Jindo were torn as a result of which she became naked and none of the appellants had deliberately removed her clothes or had made her naked or had stripped her of her clothes and as such the matter was not covered by the provisions of section 354-A PPC.

We have considered this contention of the learned counsel very seriously. The wording of section 354-A PPC shows that whoever assaults or uses criminal force to any woman and strips her of her clothes and in that condition, exposes her to the public view, is stated to have committed the offence thereunder.

W We have come to the conclusion that the process of dragging of Mst.Jindo by the appellants was a deliberate action whereby her clothes would have naturally torn during the process of her being dragged and so it was a voluntary action of the appellants to strip her of her clothes. As such the offence was fully covered by the provisions of section 354-A PPC.


9. It was also contended by the learned counsel for the appellants that the occurrence had allegedly taken place in the fields owned by a private person and Mst.Jindo was not exposed to public view as is laid down for the completion of the offence in section 354-A PPC. We have also considered this aspect very anxiously.

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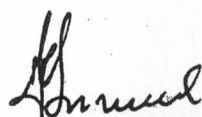
We have come to the conclusion that although the occurrence took place in a privately owned land but the public had free excess to that place and the occurrence could be seen by any and every one who may have been present there or roundabout that place at that time. So the offence committed by the appellants had the effect of exposing Mst.Jindo to the public view.

10. After taking into consideration all the aforesaid circumstances we have come to the conclusion that the offence of stripping of Mst.Jindo of her clothes and thereby exposing her to the public view had been fully proved against the appellants while no clear and positive evidence had been produced against the other co-accused. Consequently the learned Additional Sessions Judge appropriately convicted the appellants and acquitted their co-accused by the impugned judgment. The offence was very grave and the appellants were appropriately convicted and sentenced. We do not find any merit in this appeal which is dismissed. The conviction and sentence of all the appellants recorded on 31.5.1994 by the learned Additional Sessions Judge Khanewal are maintained. They shall, however, be entitled to the benefit under section 382-B Cr.P.C.

Fit for reporting.



(Nazir Ahmad Bhatti)
Chief Justice



(Dr. Fida Muhammad Khan)
Judge