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IN THE FEDERAL SHARIAT COURT
(Appellate/Revisional Jurisdiction) Jurisdiction

PRESENT

MR. JUSTICE NAZIR AHMAD BHATTI, CHIEF JUSTICE

CRIMINAL APPEAL NO. 271/I OF 1994

Suleman son of Kalu,
r/o Village Battian,
P.S. Dhoonga Gali,
Distt. Abbottabad

... Appellant

Versus

The State

... Respondent

For the appellant

... Sh. Zamir Hussain, Advocate

For the State

... Mr. Sohail Akhtar, Advocate

re
F.I.R. No., date and
Police Station

... 120, 22.9.1992 P.S. Dhoonga Gali

Date of the Order of
the Trial Court

... 6.11.1994

Date of Institution

... 7.12.1994

Date of hearing

... 14.5.1995

Date of decision

... 4.6.1995

JUDGMENT:

NAZIR AHMAD BHATTI, CHIEF JUSTICE.- Complainant Muhammad

Azram submitted a written complaint in Police Post, Dhoonga Gali on 22.9.1992 wherein he charged accused Mehrban, Ihsan, Suleman, Zarban and Khakan for the abduction of his daughter Mst.Rabia Bibi, aged about 15 years for the purpose of marrying her to accused Suleman on the night between 1st and 2nd of August, 1992. This report was incorporated in F.I.R. No.120 of Police Station, Dhoonga Gali on the same date. Mst.Rabia Bibi and Suleman were both recovered on 3.10.1992 from a house in Mohallah Dhowk Ali Akbar Khan, Rawalpindi by P.W.7 Adalat Shah, A.S.I. At that time Mst.Rabia Bibi had a newly born son with her. Both the accused made confessional statements on 4.10.1992. Accused Rabia Bibi in her confessional statement deposed that she had been subjected to sexual intercourse by one Khalid Khan forcibly who was engaged as a domestic servant by her father and she became pregnant. She further deposed that when she could not get rid of pregnancy she eloped with her co-accused Suleman. The latter wanted to perform Nikah with her but due to pregnancy that could not happen, that she had not been subjected to sexual intercourse by co-accused Suleman. The latter in his confessional statement deposed that he had knowledge about pregnancy of accused Mst. Rabia Bibi, that he wanted to marry her but on account of the

pregnancy that was not possible.

2. After investigation appellant Suleman and accused Mst.

Rabia and Khalid Khan were sent up for trial before Sessions

Judge, Abbottabad, who charged them under sections 5/10 of the

Offence of Zina (Enforcement of Hudood) Ordinance, 1979 to which

they pleaded not guilty and claimed trial.

3. After the conclusion of the trial the learned Sessions

Judge acquitted accused Khalid Khan and convicted accused Suleman

and accused Mst.Raiba Bibi under section 10(2) of the Hudood

Ordinance and sentenced each of them to undergo rigorous imprisonment

for 3 years, to suffer 30 stripes and to pay a fine of Rs.1,000/-

or in default to undergo simple imprisonment for 2 months each.

Convict Suleman has challenged his conviction and sentence by the

appeal in hand whereas no appeal has been filed by convict Mst.

Rabia Bibi to challenge her conviction and sentence.

4. I have heard learned counsel for the parties at length

and have also gone through the entire record of the case very

carefully.

5. The facts of the case which came to light during the

trial are that Mst.Rabia Bibi had become pregnant and she gave birth

to a son on 9.9.1992, that appellant Suleman and accused Mst.Rabia

were apprehended together on 3.10.1992 from a house in Rawalpindi, that in her confessional statement convict Mst.Rabia did not charge appellant Suleman for committing any zina with her but she charged acquitted accused Khalid Khan for the said offence, that in her deposition under section 342 Cr.P.C. she charged appellant Suleman for subjecting her to zina as a result of which she gave birth to a son.

6. The evidence recorded during the trial will show that no charge of any said offence was levelled by Mst.Rabia Bibi against acquitted accused Khalid Khan. On the contrary the same charge was also not proved against appellant Suleman because when Mst.Rabia Bibi disappeared from the house of her father she was already pregnant and when appellant Suleman and she were apprehended together on 3.10.1992 she had already given birth to a son on 9.9.1992 and for the period thereafter no evidence was available on the record that she had been subjected to sexual intercourse by any person. In her confessional statement Mst.Rabia Bibi charged acquitted accused Khalid Khan and in her deposition under section 342 Cr.P.C. she charged appellant Suleman for the said offence.

7. It shall thus be seen that ~~xxxxxx xxx~~ no conclusive evidence was brought on the record to prove that Mst.Rabia Bibi

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had been subjected to sexual intercourse by appellant Suleman. His conviction and sentence could not be maintained. The appeal in hand is accepted and the conviction and sentence of appellant Suleman son of Kalu awarded by the learned Sessions Judge, Abbottabad on 6.11.1994 are set aside. He is acquitted of the offence for which he was convicted and sentenced. He shall be set at liberty forthwith if not wanted in any other case.

8. Convict Mst.Rabia Bibi did not file any appeal regarding her conviction and sentence. However, there was brought no independent evidence on the record to prove that she had been subjected to sexual intercourse by appellant Suleman and in so far as the allegations against acquitted accused Khalid Khan were concerned, the same were not believed by the learned Sessions Judge, Abbottabad. It could not, therefore, be said with certainty that the son born to Mst.Rabia Bibi was the result of a sexual intercourse committed with her by acquitted accused Khalid Khan or by appellant Suleman but this fact is clear that she was victim of zina-bil-jabr and was never consenting party to the sexual intercourse committed with her by anyone of them and so she was not guilty of any offence under section 10(2) of Hudood Ordinance. In such view of the matter the offence under section 10(2) of the Hudood Ordinance was also not proved beyond any doubt against Mst.Rabia Bibi. But she had

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not filed any appeal. However, for the purpose of conviction and sentence her case is also at par with the case of appellant Suleman. The record can be considered in Suo Moto revisional powers of this Court as contained in Article 203DD of the Constitution as there is no evidence on the record to prove that she was a consenting party to the offence of zina committed with her, so she had committed no offence. She is also, therefore, acquitted of the offence for which she was convicted and sentenced by the learned Sessions Judge, Abbottabad on 6.11.1994. She shall also be set at liberty forthwith if not wanted in any other case.

FIT FOR REPORTING.

[Signature]

CHIEF JUSTICE

Announced on

4.6.1995

at

Bashir/*

dahare

[Signature]