

IN THE FEDERAL SHARIAT COURT
(Appellate Jurisdiction)

PRESENT

MR.JUSTICE NAZIR AHMAD BHATTI, CHIEF JUSTICE

CRIMINAL APPEAL NO.28/Q OF 1994 (Linked with)
CRIMINAL APPEAL NO.33/Q OF 1994 (Linked with)
CRIMINAL APPEAL NO.34/Q OF 1994 (Linked with)
CRIMINAL APPEAL NO.40/Q OF 1994 (Linked with)
JAIL CRIMINAL APPEAL NO.43/Q OF 1994

- 1. Mumtaz Hussain son of Rehmatullah
- 2. Rohullah son of Khan Muhammad
- 3. Shaj Wali and Khanan sons of Ghulam Nabi ... Appellants
- 4. Abdul Rashid son of Saleh Muhammad and
- 5. Fateh Khan son of Nazar Muhammad

Versus

The State ... Respondent

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For the appellants ... Ch.Muhammad Rafiq, Mr.Muhammad Aslam Chishti, Mr.Inayatullah Kansi and Mr.Ayaz Zaheer for Mr.Mumtaz Hussain, Advocates

For the State ... Mr.Muhammad Yaqub Khan Yousafzai, Advocate General, Baluchistan

F.I.R. No., date and Police Station ... 35/93, 22.3.1993 P.S. Saddar Quetta

Date of the Order of the Trial Court ... 25.4.1994

Date of Institution ... 2.5.1994, 12.5.1994, 16.5.1994, 17.6.1994 and 30.6.1994 respectively

Date of hearing ... 20.3.1995

Date of decision ... 20.3.1995

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JUDGMENT:

NAZIR AHMAD BHATTI, CHIEF JUSTICE.- On hearing a knock at the door of his house at 11.00 in the night of 15.3.1993, complainant Haqi went out and saw 6 persons standing there. Out of them he only identified Musa Khan and Abdul Rashid sons of Fateh Khan and Muhammad Jan alias Mama Jan son of Gul Muhammad, all of them absconding while the other three accused were unidentified persons. All the 6 persons forcibly took away Mst.Bibi Koh unmarried daughter of the complainant on the pretext that she had been promised to be married to one of them by brother of the complainant. On 18.3.1993 Haqi father of the alleged abductee went to Police Station, Saddar Quetta at dead of night and recorded the incident which was entered in the daily diary. A preliminary investigation was carried out by the police and Fateh Khan, Roohullah, Abdul Rashid, Khanan, Shah Wali and Mumtaz Hussain were found to be implicated in the matter besides the aforesaid three absconding accused. Thereupon F.I.R. No.35/93 was recorded on 22.3.1993. Accused Roohullah and Fateh Khan were arrested on 22.3.1993 while accused Mumtaz Hussain, Shah Wali and Abdul Rashid were arrested on 23.3.1993 and accused Khanan was arrested on 3.4.1993. The alleged abductee Mst.Bibi Koh has not so far been recovered and the three accused Musa Khan and Abdul Rashid sons of Fateh Khan and Muhammad Jan alias Mama Jan are still absconding. All the aforesaid 6 accused were sent up for trial before Additional Sessions Judge-I,

Quetta, who charged all of them under sections 451/366/109/34 P.P.C. and sections 10/11/16 of the Offence of Zina (Enforcement of Hudood) Ordinance, 1979. All the 6 accused pleaded not guilty to the charges and claimed trial. In the meantime the case was transferred to the file of the learned Sessions Judge, Quetta, who on conclusion of the trial, convicted all the 6 accused under sections 451/366/109/34 P.P.C. and sections 10/11/16 of the Hudood Ordinance and sentenced each of them to undergo rigorous imprisonment for 10 years.

2. Convict Mumtaz Hussain has challenged his conviction and sentence by criminal appeal No.28/Q of 1994. Convict Roshullah has challenged his conviction and sentence by criminal appeal No.33/Q of 1994. Convicts Shah Wali and Khanan have challenged their conviction and sentence by criminal appeal No.34/Q of 1994. Convict Abdul Rashid has challenged his conviction and sentence by criminal Appeal No.40/Q of 1994 and convict Fateh Khan has challenged his conviction and sentence by jail criminal appeal No.43/Q of 1994. Since all the 5 appeals have arisen from one judgment, they are being disposed of by one judgment being written in criminal appeal No.28/Q of 1994. in hand.

3. The facts which came to light from the F.I.R. and during the trial are that only 3 accused were mentioned by name in the F.I.R. and all ~~the~~ 3 of them are absconding, that the other accused

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who were apprehended and tried and convicted were unknown and unidentified, that 6 persons were mentioned as accused in the report made by the complainant but after investigation 9 persons were found involved and 6 were tried and 3 are yet to be apprehended and arrayed before the court, that the alleged abductee has not so far been recovered, that no identification parade had been held after the arrest of the 6 appellants and they were not identified by any of the prosecution witnesses and that no one had seen any of the appellants either present at the spot or taking any part in the alleged abduction.

4. The impugned judgment will show that the appellants were charged for the commission of as many as 6 offences and the learned Sessions Judge found all of them guilty of each charge but strangely enough he awarded only one sentence to each of them. It is also to be noted that for some offences fine was mandatory and no fine had been imposed by the learned Sessions Judge. It is also to be noted that for the Hudood Offences awarding of the sentence of stripes was mandatory but the learned Sessions Judge also did not award the said ~~xxxx~~ sentence. It is also to be noted that all the appellants have also been convicted and sentenced under section 10 of the Hudood Ordinance whereas no evidence was available on the record with regard to this offence as the alleged abductee

has yet to be recovered and she may or may not charge any of them for this offence. Yet there is another aspect of the matter that all the appellants have been convicted and sentenced for the offence under section 366 P.P.C. whereas the said provision has since been deleted from the P.P.C. after the promulgation of the Hudood Ordinance. It is also a basic principle of criminal justice that if any accused is charged for more than one offence and he is also convicted for more than one offence then he is to be separately sentenced for each distinct offence but the learned trial Judge held each appellant guilty of as many as six offences but awarded only one sentence to each of them. This would show that the learned trial Judge did not deal with the matter appropriately.

5. All the aforesaid facts and circumstances will clearly indicate that no sufficient evidence was brought on the record to prove any of the offences against any of the appellants. Consequently all the 5 appeals are accepted. The conviction and sentence of appellants Mumtaz Hussain son of Rehmatullah, Roohullah son of Khan Muhammad, Shah Wali and Khanan sons of Ghulam Nabi, Abdul Rashid son of Saleh Muhammad and Fateh ~~Khan~~ son of Rehmatullah are acquitted of the offences for which they were convicted and sentenced by the learned Sessions Judge (Adhoc), Quetta on 25.4.1994. All the appellants except appellant Fateh Khan are on bail. Their bail bonds



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stand discharged. Appellant Fateh Khan is in custody. He shall be set at liberty forthwith if not wanted in any other case.

CHIEF JUSTICE

Quetta,
20th March, 1995.
Bashir/*

FIT FOR REPORTING

CHIEF JUSTICE