

IN THE FEDERAL SHARIAT COURT
(Appellate Jurisdiction)

PRESENT

MR.JUSTICE NAZIR AHMAD BHATTI, CHIEF JUSTICE

CRIMINAL APPEAL NO.330/L OF 1994

Munir Ahmad son of
Hassan Muhammad, r/o
Jewansingwala, ... Appellant
Distt. Sheikhupura

Versus

The State ... Respondent

For the appellant ... Rai Muhammad Hayat Kharrel,
Advocate

For the State ... Mr.Irshad Ahmad Khan,
Advocate

F.I.R. No., date and ... 71/93, 17.7.1993 P.S.
Police Station Safdarabad

Date of the Order of ... 17.10.1194
the Trial Court

Date of Institution ... 24.11.1994

Date of hearing ... 21.2.1995

Date of decision ... 21.2.±995

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JUDGMENT:

NAZIR AHMAD BHATTI, CHIEF JUSTICE.- Mst.Amna

Bibi aged about 22/23 years, unmarried daughter of Barkat Ali used to live in the house of her maternal uncle Ghulam Hussain as her mother had died and her father had married another wife. On the night between 16+17.5.1993 she was asleep on the roof of the house. At about one in the night appellant Munir Ahmad came there, gagged her mouth with a cloth, forcibly opened the string of her shalwar and forcibly subjected her to zina. The prosecutrix raised alarm whereupon her uncle Ghulam Hussain and Mehmud Ahmad went to the roof whereupon the appellant tried to escape but he was apprehended by the aforesaid persons. On the morning of the next day at 8.30 the prosecutrix and other witnesses were proceeding towards the Police Station, Safdarabad but A.S.I. Muhammad Ismail met them in the way to whom she narrated the occurrence and he wrote a complaint which was sent to the Police Station where F.I.R. No.71/93 was recorded at 9.00 a.m. The complainant party also produced the appellant at the time of recording the complaint.

2. Mst.Amna Bibi was medically examined on 18.5.1993 at 12.30 p.m. by P.W.7 Dr.Basharat Jehan. The lady doctor

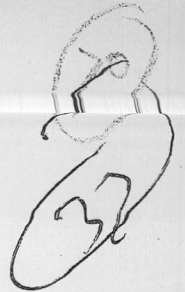
did not find any injury on the vagina nor any tear at
entrouitus or and vagina admitted one finger easily but two
fingers with resistance. The lady doctor took two vaginal
swabs which were found stanied with semen by the Chemical
Examiner.

3. After investigation appellant Munir Ahmad was
sent up for trial before Sessions Judge, Sheikhupura, who
charged him under section 10 of the Offence of Zina
(Enforcement of Hudood) Ordinance, 1979 to which the
appellant pleaded not guilty and calaimed trial. Eight
witnesses were examined by the State in proof of the
prosecution case. The appellant made a deposition under
section 342 Cr.P.C. but he neither produced any defence
evidence nor made any deposition on oath. After the
conclusion of the trial the learned Sessions Judge convicted
the appellant under section 10 (3) of the Hudood Ordinance
and sentenced him to undergo rigorous imprisonment for 10 years,
to suffer 30 stripes and to pay compensation of Rs.10,000/- to the complainant
or in default to further undergo rigorous imprisonment
for two years. The convict has challenged his conviction
and sentence by the appeal in hand.

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

5. The prosecution case was that prosecutrix Mst. Amna Bibi was a virgin girl on the day of occurrence, who was alone asleep on the roof of the house of her uncle on the night of occurrence and at about 11.00 in the night the appellant went there and subjected her to Zina-bil-Jabr, that her uncle and one Mehmud Ahmad were attracted to the spot on the alarm raised by her and apprehended the appellant on the spot and then produced him in the Police Station alongwith the written complaint of the prosecutrix. However, during the trial at the time of recording of the evidence the prosecutrix changed the time of occurrence and stated that it had taken place at one in the night. A.S.I. Muhammad Ismail, who had written the complaint of the prosecutrix, appeared as P.W.6 and stated that he had written complaint at one in the night between 16th and 17th May, 1993. This witness further stated that he arrested the accused from the village whereas the contention of the prosecutrix was that they had apprehended the appellant immediately after the occurrence and they had themselves produced him



before the said Police Officer. The F.I.R. disclosed that the prosecutrix was asleep alone on the roof but during the trial she stated that 3 grown-up daughters of her uncle were also asleep on the same roof very close to her and they did not see the occurrence nor they were awoken although the prosecutrix had raised alarm. Then the assertion of the prosecution was that she was virgin before the said occurrence, but the medical examination neither showed fresh tear of the hymen nor any other injury on the vagina nor there was any swelling of the hymen which are prerequisites of a first sexual intercourse. ^W Sine according to her assertion it was a case of rape and in that event the aforesaid signs were a must and their non-presence shows that she was previously used to sexual intercourse. Moreover although the report was made on 17th May, 1993 but the prosecutrix was medically examined on 18th May, 1993 and no explanation is available on the record as why she was examined with a delay of one day whereas the appellant had already been arrested on 17.5.1993 which shows that the appellant had been apprehended before any positive proof of rape was available.

6. There is another interesting aspect of the

matter. The appellant had denied the commission of the offence and had further stated as follows:-

"My father had civil litigation with P.W Ghulam Hussain who is an uncle of P.W. Mst. Amna. I had got a criminal case registered against P.W. Mahmood. P.Ws. Ghulam Hussain and Mahmood were pressing my father for withdrawal of these cases. P.W.Mst.Amna wanted to marry me but I had refused. For that reasons he turned against me. At the time of alleged occurrence I was sleeping in my house. From there I was called by P.W. Ghulam Hussain on the pretext that my she donkey was damaging his crop. I was taken to the haveli by P.Ws. Ghulam Hussain and Mahmood. They told me that my she donkey was kept there. There I was given merciless beating by both of them. Then in collaboration with Mst.Amna and A.S.I. Ismail they implicated me in this case. I am innocent."

The factum of previous litigation between the parties, as alleged by the appellant in his aforesaid explanation, was admitted by the maternal uncle of the prosecutrix. It was also admitted that on the complaint of the appellant P.W. Mehmud Ahmad had been involved in a case of seeing blue films.

7. There is yet another interesting aspect of the matter. A photograph was produced during the trial by the accused purportedly showing him and prosecutrix sitting together and the prosecutrix having her hand around his neck. The prosecutrix denied that it was her photograph but her



maternal uncle had admitted that the girl in the photograph was the prosecutrix. This photograph may raise a presumption that the prosecutrix and the appellant were known to each other previously and they were on very intimate terms with each other.

8. There is yet one more aspect of the matter.

The house of maternal uncle of the prosecutrix was surrounded on three sides by houses of other persons and on the fourth side there was street. None of the houses which were surrounding the house of the uncle belonged to the appellant nor he was living in any of them. The main door of the house of the complainant was locked from inside. It is anybody's guess as how the appellant got into the house of the uncle and climbed up the roof.

9. The ocular testimony in the case consisted of the deposition of the prosecutrix and her uncle Ghulam Hussain whereas the other eye witness Mehmud Ahmad was not produced. P.W.4 Ghulam Hussain was not only real maternal uncle of the prosecutrix but he had previous litigation with the father of the appellant. He was therefore, not only an interested witness but had also got animosity with the appellant. Although relationship



of eye witnesses interse is not per se sufficient to discard their testimony unless there is any other motive shown. It shall be seen in this case that the other eye witness besides the prosecutrix was also a close relative and had also got previous enmity with the appellant. His testimony could not therefore, be relied upon to corroborate the testimony of the prosecutrix.

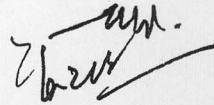
u 10. The appellant was also examined by P.W.5 Dr. Muhammad Saeed on 17.5.1993 and the doctor had found as many as 16 simple injuries on different parts of his body. The explanation of the appellant was that he was called by the uncle of the prosecutrix to his house where he was beaten.

11. The aforesaid circumstances will clearly indicate that no sufficient evidence was brought on the record to prove the guilt of the appellant beyond any doubt. Consequently the appeal is accepted. The conviction and sentence of appellant Munir Ahmad son of Hussan Muhammad awarded by the learned Sessions Judge, Sheikhupura on 17.10.1994 are set aside. He is acquitted of the offence

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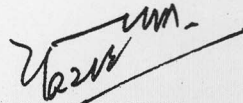
for which he was convicted and sentenced. He shall be
set at liberty forthwith if not wanted in any other case.



(NAZIR AHMAD BHATTI)
Chief Justice

Lahore,
21st Februar, 1995.
Bashir/*

FIT FOR REPORTING



CHIEF JUSTICE