

IN THE FEDERAL SHARIAT COURT
(Appellate Jurisdiction)

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PRESENT

MR.JUSTICE NAZIR AHMAD BHATTI, CHIEF JUSTICE

CRIMINAL APPEAL NO.145/L OF 1994

1. Arshad Ali son of
Manzoor Hussain
 2. Nasir Hussain alias
Nasru son of
Muhammad Hussain
- ... Appellants

both residents of Thatha
Bahadar Shah, Distt.
Sheikhpura

Versus

The State ... Respondent

For the appellants ... Ch.Ghulam Murtaza Khan,
Advocate

For the State ... Mr.Waheed Anwar, Advocate

F.I.R. No., date and
Police Station ... 69, 25.2.1993 P.S.
Khanqah Dogran

Date of the Order of
the Trial Court ... 10.5.1994

Date of Institution ... 17.5.1994

Date of hering ... 3.10.1994

Date of decision ... 3.10.1994

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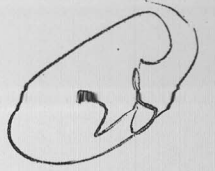
JUDGMENT:

NAZIR AHMAD BHATTI, CHIEF JUSTICE.- Complainant

Muhammad Abbas went to his house at about 12.00 noon on 24.2.1993 and found the main gate locked. He was standing near the gate when he heard the shrieks of his unmarried daughter Mst.Zarina Bibi from inside. The complainant raised alarm whereupon Tanweer Hussain and Javed reached near him. Tanweer Hussain scaled the wall and opened the gate from inside and then all of them saw that Abdul Qayyum alias Papu was committing Zina-bil-jabr with Mst.Zarina Bibi and he escaped on seeing them. Muhammad Abbas went to Police Station, Khanqah Dogran at 1250 hours on 25.2.1993 and recorded F.I.R. No.69. Mst.Zarina Bibi was medically examined by P.W.5 lady Dr.Basharat Jehan on 26.2.1993 and according to that examination Mst.Zarina Bibi was used to sexual intercourse as her vagina admitted two fingers easily. The vaginal swabs taken by the lady doctor were found stained with semen on chemical analysis.

2. It transpires that on 28.2.1993 Mst.Zarina Bibi made a statement under section 164 Cr.P.C. before P.W.8 Rao Ghulam Hussain, Magistrate wherein she charged Arshad Ali and Nasir Hussain appellants herein for subjecting her to rape

on 24.2.1993.



3. After investigation all the three accused Arshad Ali, Nasir Hussain and Abdul Qayyum alias Papu were sent up for trial before Mr. Muhammad Mehmood Ch., Additional Sessions Judge, Sheikhpura, who charged them under section 452 P.P.C. and section 10(3) of the Offence of Zina (Enforcement of Hudood) Ordinance, 1979 to which all the accused pleaded not guilty and claimed trial. After the conclusion of the trial the learned Additional Sessions Judge acquitted accused Abdul Qayyum alias Papu and convicted Arshad Ali and Nasir Hussain appellant herein under section 10(3) of the Hudood Ordinance and sentenced each of them to undergo rigorous imprisonment for 5 years and to suffer 30 stripes. Both the convicts have challenged their conviction and sentence by the appeal in hand.

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4. The facts which came to light after the conclusion of the prosecution evidence are that P.W.1 complainant Muhammad Abbas father of Mst. Zarina Bibi had charged Abdul Qayyum alias Papu acquitted accused for subjecting his daughter to Zina-bil-jabr and he had seen the said accused coming out of the room of his house, that Tanweer Hussain and Javed mentioned as eye witnesses of the occurrence were not produced as witnesses during the trial and instead P.W.2 Abdul Rashid and P.W.3 Faqir Hussain were made eye witnesses of the



occurrence, however, both of them had not seen the actual occurrence and saw both the appellants escaping by scaling over the wall of the house, that although occurrence had taken place on 24.2.1993 but the report was made more than 24 hours thereafter and the delay is unexplained, that there were clear indications that report was made after much deliberation, that medical examination of Mst.Zarina Bibi took place again after a lapse of one day and actually two days after the alleged occurrence, that it was also deposed by the lady doctor that Mst.Zarina Bibi was used to sexual intercourse previously and she appeared to be a girl of lax morals; that the F.I.R. charged one person for the commission of the offence while during trial two other persons were named as accused.



5. All the aforesaid circumstances would show that it was not known as which of the three accused was the culprit. Consequently the appeal is accepted. The conviction and sentence of appellants Arshad Ali son of Manzoor Hussain and Nasir Hussain alias Nasru son of Muhammad Hussain recorded on 10.5.1994 by the learned Additional Sessions Judge, Sheikhpura are set aside. They are acquitted of the offence

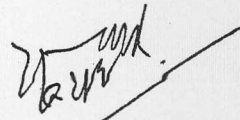
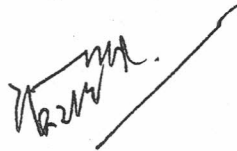
Cr.A.No.145/L/94

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for which they were convicted and sentenced. They shall be set at liberty forthwith if not wanted in any other case.

Fit for reporting.



CHIEF JUSTICE

Lahore,
3rd October, 1994.
Bashir/*