

IN THE FEDERAL SHARIAT COURT
(Appellate Jurisdiction)

17

PRESENT

MR. JUSTICE NAZIR AHMAD BHATTI

CRIMINAL APPEAL NO. 222/I OF 1994.

Muhammad Aslam son of ... Appellant
Muhammad Hussain, resident
of village Thesi, P.S. Nara,
Tehsil and District Abbottabad.

Versus

The State ... Respondent

For the appellant ... Mr. Muhammad Nasim,
Advocate

For the State ... Mr. M. Sohail Akhtar,
Law Officer, NWFP.

No. & date of F.I.R ... No. 73, dt. 12.10.1993,
Police Station P.S Nara

Date of order of ... 13.9.1994.
the trial court

Date of Institution ... 4.10.1994.

Date of hearing ... 30.10.1994.
and decision



JUDGMENT

NAZIR AHMAD BHATTI, CHIEF JUSTICE.- Complainant

Mst.Roshan Jan widow of Hassan Khan aged about 70/75 years had gone to the Hills at sun rise time on 11.10.1993 for bringing grass for the cattle. She was busy cutting grass when appellant Muhammad Aslam aged about 50/55 years came there, tied the hands of the complainant with a grass rope, untied her trouser as well as his ~~down~~ and throwing her on the ground committed zina-bil-jabr with her. The complainant raised alarm but no other person was present around. The complainant went back to the village and narrated the occurrence to one Hanif son of Sharf Ali. At 1610 hours she went to Police Station Nara and reported the occurrence which was recorded in the daily diary at serial No.9. The complainant was referred to the hospital for medical examination. P.W.4 Lady Dr.Sunbal Daud examined the complainant on the same day at 1930 hours. The lady doctor found the following injuries on ther person of the complainant:-

1. Reddish blue bruise on fore-arm right side with the skin on top grazed size 1"x 1/2".
2. Blue bruise below the left eye 1/2"x1/2".
3. Scratch mark on right cheek 1"x1/8" reddish in colour.
4. Scratch mark on back over the left scapular region 1/2"x 1/8".

The lady doctor also took two high vaginal swabs and sent them for chemical analysis. Upon the receipt of the medical report F.I.R.

No.73 was recorded in the said police station on 12.10.1993 at 1510 hours.

2. After investigation the appellant was sent up for trial before Sessions Judge Abbottabad who charged him under sections 6/10



of the Offence of Zina(Enforcement of Hudood) Ordinance,1979

to which the appellant pleaded not guilty and claimed trial.

3. Seven prosecution witnesses were examined on behalf of the State. The report of the Chemical Examiner Ex.PK showed that no semen was detected on the swabs. The appellant only made a deposition under section 342 Cr.P.C. He neither produced any defence evidence nor made any deposition on oath.

4. 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 4 years, and to suffer 30 stripes. The convict has challenged his conviction and sentence by the appeal in hand.

He
5. I have heard learned counsel for the parties at length and have also very carefully perused the entire record of the case.

6. There was no positive evidence that the complainant was subjected to sexual intercourse. The injuries detected on medical examination were suffered on the left eye, fore-arm right side, right cheek and left scapular region but there was found no injury near or around the vagina of the complainant. The report of the Chemical Analyst was also in the negative. It is, however, interesting to note that no injury was noticed on the body of the complainant by the investigating officer when she went to the police station



to make the report. It had come in evidence that the appellant was the father-in-law of a son of the complainant and there had developed some differences between the husband and wife. It is also a fact that that son of the complainant had submitted an affidavit in the court on 16.10.1993 wherein it was mentioned that some misunderstanding had been developed between their families and the appellant had not committed the offence for which he was charged by his mother, the complainant. According to the occurrence it had taken place at sun-rise time and she had returned to the village thereafter but she went to the police station at 1610 hours to make the report which shows that the report was made with considerable delay and no explanation has been furnished to justify the said delay. The person mentioned in the report, to whom the complainant had narrated the occurrence, was also not produced as a witness during the trial.

He

7. From the aforesaid circumstances and from the other evidence recorded during the trial I have come to the conclusion that the complainant was not subjected to sexual intercourse but on account of differences which had developed between the son of the complainant and the daughter of the appellant, some altercation may have taken place between the appellant and the complainant. The charge which was levelled against the appellant by the complainant could not be proved by any evidence whatsoever.

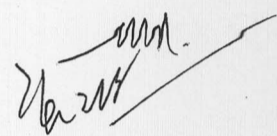
21

8. For the aforesaid reasons this appeal is accepted.

The conviction and sentence of the appellant recorded on 13.9.1994 by the learned Sessions Judge, Abbottabad are set aside and 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.

Fit for reporting.


CHIEF JUSTICE

Islamabad, 30.10.1994.
M.Akram/