

IN THE FEDERAL SHARIAT COURT

(Appellate/Revisional Jurisdiction)

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PRESENT

MR.JUSTICE MIR HAZAR KHAN KHOSO, CHIEF JUSTICE.
MR.JUSTICE NAZIR AHMAD BHATTI.

CRIMINAL APPEAL NO.250/I OF 1993
CRIMINAL APPEAL NO.252/I OF 1993
CRIMINAL APPEAL NO.279/L OF 1993
CRIMINAL REVISION NO.93/L OF 1993.

1. Zulfiqar Ahmad Khan s/o Mumtaz Ahmad Khan,	...	Appellants
2. Iftikhar Ahmad Khan s/o Mumtaz Ahmad Khan, both residents of Jinnah Street Gujrat.		
3. Sh. Qamar Zaman s/o Muhammad Shafi, r/o Mohallah Khawajgan, Gujrat. and		
4. Muhammad Aslam s/o Muhammad Akram, r/o Mohallah Township, Lahore.		

Versus

The State	...	Respondent
For the appellants	...	Sardar Muhammad Ishaque Khan, Malik Rab Nawaz Noon Mr. Muzaffar Iqbal Chaudhry on behalf of Zafar Pasha, Advocates.
For the petitioner	...	Mr. Inayat Ullah Cheema, Advocate.
For the State	...	Mr. Javed Aziz Sindhu, Advocate.
No. & date of F.I.R Police Station	...	No. 271, dt. 9.10.1991, P.S B-Division Gujrat.
Date of order of the trial court	...	13.7.1993.
Dates of Institution of all the appeals.	...	28.7.1993, 31.7.1993 and 1.9.1993 respectively.
Date of Institution of Cr. Rev. No. 93/L/93	...	11.8.1993.
Dates of hearing	...	7.12.1993 and 8.12.1993.
Date of decision	...	26.1.1994.
Mir Ghulam Sarwar	...	Petitioner
Versus		
Zulfiqar Ahmad Khan etc.	...	Respondents.

JUDGMENT

NAZIR AHMAD BHATTI, J.- Complainant Mir Ghulam

Sarwar submitted a written complaint in Police Station 'B' Division Gujrat on 9.10.1991 wherein he charged accused Zulfiqar Ahmad Khan appellant herein, for the offence of zina-bil-jabr with his daughter Mst.Saira Parveen, although the accused had got her married to his son named Sohail Shahzad on 4.9.1991 on telephone as the alleged bridegroom was then in America.

2. It transpired during investigation that the complainant and the accused party were on visiting terms with each other, that ~~xxx~~ appellant Zulfiqar Ahmad Khan was formerly married to absconding accused Mst. Shazada Khanum but they were issueless, that the victim Mst.Saira Parveen also used to visit the family of the accused party frequently and used to call appellant Zulfiqar Ahmad Khan as uncle, that the appellant Zulfiqar Ahmad Khan himself wanted to have sexual relations with Mst.Saira Parveen and he had arranged her fake marriage with his alleged son Sohail Shahzad and he himself subjected her to zina-bil-jabr. On the contrary the plea of appellant Zulfiqar Ahmad Khan was that since he was issueless he had contracted second marriage with Mst.Saira Parveen and had married her on 5.5.1991 but subsequently their relations became strained and the complainant party made a bogus nikah nama of Mst.Saira Parveen with Sohail Shahzad.

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3. Mst.Saira Parveen was examined by P.W.10 Lady

Dr.Shagufta on 9.10.1991, according to which Mst.Saira Parveen was subjected to sexual intercourse but vagina admitted one finger easily and when two fingers were inserted into the vagina, a tight ring of hymen was felt all around.

4. After investigation accused Zulfiqar Ahmad Khan, Iftikhar Ahmad Khan, Sh.Qamar Zaman, Munawar Ahmad and Muhammad Aslam were sent up for trial before the Additional Sessions Judge Gujrat. Appellant Zulfiqar Ahmad Khan was accused of committing rape with Mst.Saira Parveen and for forging a fake and fictitious nikahnama on 5.5.1991 while the other accused were charged for forgery of the said nikahnama and abetment etc. The learned Additional Sessions Judge charged all the accused for offences under sections 419/420/468/471/109 PPC and accused Zulfiqar Ahmad Khan under section 10 of the Offence of Zina(Enforcement of Hudood) Ordinance, 1979. All the accused pleaded not guilty to the charges and claimed trial.

5. After the conclusion of the trial the learned Additional Sessions Judge convicted and sentenced all the appellants by judgment dated 13.7.1993 as follows:-

Appellant Zulfiqar Ahmad Khan was convicted under section 10(3) of the Hudood Ordinance and sentenced to undergo rigorous imprisonment for 20 years and to suffer 20 stripes. He was ^{also} convicted under section 468 PPC and sentenced ~~him~~ to undergo rigorous imprisonment for 2 years and to pay a fine of Rs.2000/- or in default to further undergo rigorous imprisonment for 3 months. He was also convicted under section 467 PPC and sentenced

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xxx to undergo rigorous imprisonment for 8 years and to pay a fine of Rs.10,000/- or in default to further undergo rigorous imprisonment for 2 years.

Appellant Muhammad Aslam was convicted under section 419 PPC and sentenced him to undergo rigorous imprisonment for 4 years .

Appellant Sh.Qamar Zaman was convicted under section 468 PPC and sentenced him to undergo rigorous imprisonment for 4 years and to pay a fine of Rs.5000/- or in default to further undergo rigorous imprisonment for 6 months. He was also convicted under section 469 PPC and sentenced him to undergo rigorous imprisonment for 2 years and to pay a fine of Rs.1000/- or in default to further undergo rigorous imprisonment for 3 months.

Appellant Iftikhar Ahmad was convicted under section 468 PPC and sentenced him to undergo rigorous imprisonment for 2 years and to pay a fine of Rs.2000/- or in default to further undergo rigorous imprisonment for 3 months.

Accused Munawar Ahmed was also convicted under section 468 PPC and sentenced to undergo rigorous imprisonment for 2 years and to pay a fine of Rs.2000/- or in default to further undergo rigorous imprisonment for 6 months. He was also convicted under section 463 PPC and sentenced to undergo rigorous imprisonment for one year and to pay a fine of Rs.1000/- or in default to further undergo rigorous imprisonment for 3 months but he did not file any appeal. The learned Additional Sessions Judge has also ordered that all the substantive sentences of imprisonment shall run concurrently.

Appellant Sh.Qamar Zaman has challenged his conviction and sentence by Cr.A.No.250/I of 1993, Appellants Zulfiqar Ahmad Khan and Iftikhar Ahmad Khan have challenged their convictions and sentences by Cr.A.No.252/I of 1993, Appellant Muhammad Aslam has challenged his conviction and sentence by Cr.A.No.279/L of 1993 and complainant Mir Ghulam Sarwar had filed a revision petition bearing No.93/L/1993 for enhancement of the sentences of the appellants .

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Since all the appeals have arisen out of the same matter, the judgment written in Cr.A.No.250/I of 1993 in hand will also dispose of the other appeals and the criminal revision.

6. During trial the State produced 24 witnesses in proof

of the prosecution case while each accused made a statement under

section 342 Cr.P.C but none of them made a deposition on oath

nor produced any defence witness. Ex.PB is nikah nama of

Mst.Saira Parveen with Sohail Shahzad, It is dated 4.9.1991.

According to this nikah nama, Mst.Saira Parveen was allegedly

married with Sohail Shahzad son of Zulfiqar Ahmad Khan who was

born on 16.3.1968. Appellant Zulfiqar Ahmad Khan acted as

vakeel of the bridegroom while Mst.Shahzada Khanam and appellant

Iftikhar Khan wife and brother of appellant Zulfiqar Ahmad Khan

were witnesses for appointment as vakeel whereas Mian Abdul

Rashied Pagganwala and Mir Masood A.Khalid were witnesses

of this marriage. This nikah was registered by Qari Abdul Rauf.

Mir Ghulam Sarwar father of the bride acted as her vakeel.

Qari Abdul Rauf appeared as P.W.9 and stated that he had performed

the nikah of Sohail Shahzad with Mst.Saira Parveen. This witness

further stated that the telephone receiver was handed over to him

by accused Zulfiqar Ahmad Khan, who had told him that Sohail

Shahzad was speaking from America and that he should get the

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formalities completed and on this the witness inquired from the person on the other side as to who was speaking, to which he replied that he was Sohail Shahzad. The witness further stated that then he inquired his father's name, and in reply Zulfiqar Ahmad Khan was stated to be his father. This witness further stated that thereafter he read over khutba and completed the formalities of nikah. Mian Abdul Rashid Pagganwala witness of the nikah appeared as P.W.13 and confirmed the contention that in his presence the nikah of Mst.Saira Parveen was read by P.W.9 Qari Abdul Rauf with Sohail Shahzad and he had attended the marriage. This witness further stated that a telephone call was received which was attended by appellant Zulfiqar Ahmad Khan and nikah khawn was called and nikah was performed between the son of the accused Zulfiqar Ahmad Khan with the daughter of Ghulam Sarwar on telephone. This witness admitted his signature on nikahnama Ex.PB, dated 4.9.1991. P.W.2 Javed Hafeez was a nikah Registrar and he had registered the nikah-nama of Mst.Saira Parveen with Sohail Shahzad executed on 4.9.1991. He admitted his signature on the nikahnama Ex.PB. A video cassette of this marriage ceremony was also prepared and the same was produced by P.W.8 Mir Azhar Sarwar brother of Mst.Saira Parveen. P.W.16 Haji Muhammad Bashir participated in the marriage ceremony on an invitation card

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received by him(copy Ex.P/2). P.W.16 Haji Muhammad Bashir had also attended the said marriage ceremony.

7. Appellant Zulfiqar Ahmad Khan also produced a nikah nama Ex.PC, according to which Mst.Saira Parveen was married to him on 5.5.1991. According to the appellant this nikah was performed by P.W.11 Mehmood Ahmad and P.W.12 Tariq Mehmood Khan and P.W.14 Javed Akhtar Butt were witnesses of this nikah and P.W.17 Abdul Ghani was also stated to be the witness of this nikah. P.W.11 Mehmood Ahmad flatly contradicted that he had performed nikah of Mst.Saira Parveen with Zulfiqar Ahmad Khan. He also denied his signature, Ex.PC/3, on Ex.PC. He had also stated that he was not a nikah khawn. Similarly P.W.12 Tariq Mehmood Khan and P.W.14 Javed Akhtar Butt, denied that they had acted as witnesses of nikah of Mst.Saira Parveen with Sohail Shahzad. Similarly P.W.17 Abdul Ghani also contradicted that he had acted as vakeel of any marriage of any girl with appellant Zulfiqar Ahmad Khan and that his signatures, Ex.PC/7, on nikah-nama, Ex.PC, were not in his hand. He also stated that he was not aware of this nikah nor this nikah was performed in his presence. P.W.18 Mr.Naseer Ahmad Qazi Magistrate First Class had taken the specimen signatures of Javed Akhtar Butt and Mehmood Ahmad for comparison with the

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signatures on Ex.PC. Similarly P.W.19 Kh.Riaz Ahmad, Special Magistrate, had also taken specimen signatures of Zulfiqar Ahmad Khan, Sh.Qamar Zaman and Munawar Ahmad for comparison with the signatures on Ex.PC. The said signatures were examined by P.W.21 Qamar Ahmad Bhatti and his report stated that the specimen signatures of the aforesaid persons did not tally with the signatures on Ex.PC except those of appellant Zulfiqar Ahmad Khan.

8. In rebuttal all the accused denied the commission of any offence. The plea of appellant Zulfiqar Ahmad Khan was that his family and the family of the complainant party were on visiting terms with each other and he was himself actually married with Mst.Saira Parveen with her consent and with the consent of her family because he was issueless from his first wife. He also stated that these circumstances were known to the complainant party but subsequently differences arose between them and so the complainant party prepared a fictitious nikahnama of Mst.Saira Parveen with Sohail Shahzad. The evidence of both the parties recorded during the trial would clearly indicate that Mst.Saira Parveen was married to one Sohail Shahzad, that appellant Zulfiqar Ahmad Khan gave out that Sohail Shahzad was his son and residing in America, that this marriage ceremony had taken place openly and many persons had participated therein, that the parents of Mst.Saira

Parveen had not married their daughter to appellant Zulfiqar Ahmad Khan, that the latter subsequently prepared a forged nikahnama to show that the girl was married to him instead of Sohail Shahzad, that however, the signatures of witnesses of the alleged nikah were all forged by the appellant Zulfiqar Ahmad Khan. The latter was also guilty of not only committing zina-bil-jabr with Mst.Saira Parveen but had also prepared a false nikahnama.

9. It was the contention of the prosecution that appellant Sh.Qamar Zaman being Nikah Registrar of Mohallah Khawajgan Gujrat city had registered the nikahnama of alleged nikah of Zulfiqar Ahmad Khan with Mst.Saira Parveen on 5.5.1991 and according to the testimony of P.W.3 Muhammad Boota, Headclerk, Municipal Committee, Gujrat a copy of the same was found in the bound volume of nikahnamas pertaining to the year, 1990-91 maintained by this appellant. However, there was no further evidence to show that entries in this nikahnama were made by appellant Sh.Qamar Zaman or he had registered this nikah. It was also contended that appellant Iftikhar Ahmad Khan was witness of this nikah alongwith appellant Sh.Qamar Zaman and the other convict Munawar Ahmad whereas appellant Muhammad Aslam had impersonated as Sohail Shahzad alleged son of Zulfiqar Ahmad Khan. However, no evidence was brought on the record to show that the other appellants had in any way

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abetted any of the offences of appellant Zulfiqar Ahmad Khan.

No offence of any kind could be proved against the other appellants.

10. The net result of the above discussion is that the State had proved the guilt of appellant Zulfiqar Ahmad Khan beyond any doubt but no offence was proved against the other appellants. Appellant Zulfiqar Ahmad was appropriately convicted and sentenced by the learned Additional Sessions Judge and we do not find any merit in his appeal which is dismissed accordingly. The substantive sentences of appellant Zulfiqar Ahmad Khan shall run concurrently. He shall also be entitled to the benefit under section 382-B Cr.P.C. The appeals of other appellants namely Sh.Qamar Zaman son of Muhammad Shafi, Iftikhar Ahmad Khan son of Mumtaz Ahmad Khan, and Muhammad Aslam son of Muhammad Akram are accepted. The convictions and sentences recorded against them on 13.7.1993 by the learned Additional Sessions Judge Gujrat are set aside. They are acquitted of the offence for which they were convicted and sentenced. They are on bail. Their bail bonds stand discharged. We are of the opinion that the appellant Zulfiqar Ahmad Khan has been appropriately convicted and sentenced and there is no ground for enhancement of the sentence. The revision petition is dismissed.

Fit for reporting.

[Signature]

[Signature]
(Nazir Ahmad Bhatti)
Judge

[Signature]
(Mir Hazar Khan Khoso)
Chief Justice

Announced on 26.1.1994.
at Lahore.
M.Akram/ *[Signature]*

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