IN THE FEDERAL SHARIAT COURT
(Appellate Jurisdiction)

(47)

PRESENT

MR.JUSTICE NAZIR AHMAD BHATTI, CHIEF JUSTICE.

CRIMINAL APPEAL NO. 54/K OF 1994

Intizar Hussain son of Muhammad Rafique, resident of near Usmani Masjid, Usmania Colony, Martin Road, Karachi.	...	Appellant
Versus		
The State	...	Respondent
For the appellant	...	Mr.M.R.Sayed, Advocate
For the State	...	Mr.M.A.I.Qarni, Advocate
No.& date of F.I.R Police Station	...	No.95,dt.16.4.1987, P.S Jamshed Quarters, Karachi East.
Date of order of the trial court	...	28.7.1994.
Date of Institution	...	19.9.1994.
Date of hearing	...	21.12.1994.
Date of decision	...	27.12.1994.

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JUDGMENT

NAZIR AHMAD BHATTI, CHIEF JUSTICE.- Complainant Mst.Shahzadi Bano aged about 13 years, virgin daughter of Syed Gulzar Hussain Zaidi was alone present in her house on 16.4.1987. At about 1430 hours appellant Intizar Hussain, who was a vegetable vender, requested her for some drinking water. She went inside to bring water but the appellant followed her and forcibly committed rape with her. The complainant shrieked whereupon her brother Syed Izhar and neighbourer Sheikh Badrul Hassan reached the spot and apprehended the appellant at the spot. Mst.Shahzadi Bano went to Police Station Jamshed Quarters Karachi East and recorded F.I.R No.95/87 at 1515 hours. The appellant was also produced in the Police Station. The prosecutrix was medically examined on the same day at 1800 hours by P.W.6 Dr.Aisha Siddiqui, according to which there was one small abrasion 1/2 CM on her left side of neck near the cavital. The lady doctor also found her hymen freshly torn with swelling of the edges, bleeding present from hymen edges and also from vaginal orifice, vagina admitted one fingure with pain. The lady doctor gave the opinion that the prosecutrix had been subjected to forcible sexual intercourse freshly. The lady doctor also took vaginal slides for chemical exmination.

2. After investigation the appellant was sent up for trial before VIIIth Additional Sessions Judge Karachi East who

charged him under section 451 PPC and section 10(3) of the Offence of Zina(Enforcement of Hudood) Ordinance,1979 to which the appellant pleaded not guilty and claimed trial.

3. 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 witness nor made any deposition on oath.

4. After the conclusion of the trial the learned Additional Sessions Judge convicted the appellant under section 10(3) of the Hudood Ordinance and under section 451 PPC. For the offence under section 10(3) of the Hudood Ordinance the appellant was sentenced to undergo rigorous imprisonment for 10 years and to suffer 10 stripes. For the offence under section 451 PPC he was sentenced to undergo rigorous imprisonment for 6 months. He has challenged his conviction and sentence by the appeal in hand.

5. I have very minutely gone through entire record of the case and have also heard learned counsel for the parties at length.

6. Four sealed packets were sent to the office of the Chemical Examiner which contained cloth piece of the prosecutrix, slides of her vagina, clothes piece of the appelalnt and his urethral discharge. The result of the Chemical Analysis showed that the human semen and blood were detected on the

clothes of the prosecutrix and the appellant but no semen was detected on the vaginal slide of the prosecutrix.

7. The testimony of the lady doctor would clearly show that the prosecutrix was virgin before the occurrence for which the appelalnt had been charged by her. She was examined by the lady doctor after less than 3 hours of the occurrence and at that time her vagina was swelling,bleeding, her hymen was freshly torn and admitted only one fingure with difficulity and pain. All this evidence will clearly establish that the prosecutrix had been freshly raped. The prosecutrix charged the appellant for subjecting her to rape. He was also apprehended from inside her house immediately after the occurrence. As such the accusation of the prosecutrix against the appellant was truthful. There is only the denial simplicitor and also without oath of the appellant indisproof of the accusation of the prosecutrix. In his deposition under section 342 Cr.P.C the appellant only stated that he was innocent, his blood group was 'B' and it did not tally with the blood group in the case.

8. It was contended by the learned counsel for the appellant that no semen was deteced on the vaginal slides of the prosecutrix and so she had not been subjected to sexual intercourse by the appellant. This contention is devoid of any

force for the reason that the prosecutrix was virgin before she was subjected to rape and the lady doctor who examined her less than 3 hours of the occurrence, had given the definite opinion that the prosecutrix had been subjected to rape freshly. The latter had accused the appellant for subjecting her to sexual intercourse by force and without her consent. The medical examination had clearly established that penetration had taken place. The absence of traces of semen on the vaginal swabs of the prosecutrix would not mean that no sexual intercourse had taken place. There was clear proof of penetration having taken place and the same was sufficient to prove the offence of rape. It was immaterial that the appellant did not discharge inside the vagina. The chemical examination of the pieces of shalwars of both the prosecutrix and the appellant showed that the appellant had suceeded in making penetration but he most probably discharged outside. In such view of the matter the contention that no semen was found inside the vagina is immaterial as there was clear proof of penetration having taken place.

9. The learned counsel for the appellant further contended that the appellant had stated in his deposition under section 342 Cr.P.C that like his blood group was 'B' his semen group was 'B' but semen of group 'O' was detected on the clothes of the prosecutrix and the appellant could not be

presumed to have committed rape upon the prosecutrix. This contention is without any force for the reason that although no semen was found inside the vagina of the prosecutrix but there was clear evidence of the penetration having taken place. It was, therefore, immaterial whether semen of any other group was detected on the clothes of the prosecutrix.

10. Lastly the learned counsel for the appellant contended that the prosecutrix was a consenting party to the offence allegedly committed with her and it was punishable under section 10(2) of the Hudood Ordinance and the sentence awarded to the appellant was very harsh. I have considered this aspect of the contention of the learned counsel very seriously. I have come to the conclusion that the circumstances which had come to light in the medical examination of the prosecutrix clearly established that she had been subjected to sexual intercourse forcibly and she was not a consenting party to it. The appellant subjected a minor girl of about 13 years of age to rape very mercilessly and destroyed her chastity and the offence committed by him clearly came within the mischief of section 10(3) of the Hudood Ordinance. He also trespassed into her house in order to commit the offence of rape.

11. Both the offences, for which the appellant was charged, convicted and sentenced, were proved against him to the hilt.

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There is no merit in this appeal which is dismissed. The conviction and sentence of the appellant awarded by the learned Additional Sessions Judge are maintained. Both the substative sentences of imprisonment shall run concurrently. He shall also be entitled to the benefit under section 382-B Cr.P.C.

CHIEF JUSTICE

Fit for reporting.

Announced in open Court
on 27.12.1994 at Kararchi.
M.Akram/