

IN THE FEDERAL SHARIAT COURT
(Appellate Jurisdiction)

(21)

PRESENT

Mr. Justice (Retd) Salahuddin Ahmed Chairman
Mr. Justice Aftab Hussain Member
Mr. Justice Karimullah Durrani Member

CRIMINAL APPEAL NO.24/I OF 1980

Muhammad Din alias Pindo ---- Appellants
& Amanat Ali

Versus

The State ---- Respondent

For the appellants ---- Mr. M. Bilal
Advocate

Mr. M. Sadaqat Ali,
Advocate.

For the respondent ---- NEMO

Date of hearing ---- 13-5-1981

JUDGEMENT

SALAHUDDIN AHMED CHAIRMAN: The Addl: Sessions Judge, Lahore by his order dated 13th November, 1980, convicted the two appellants under Section 12 of the Offence of Zina (Enforcement of Hudood) Ordinance, 1979 and under Section 377 of the Pakistan Penal Code and sentenced them respectively thereunder to rigorous imprisonment for 10 years, whipping 15 stripes, and a fine of Rs.2,000/- each, in default of payment of fine to suffer rigorous imprisonment for 6 months more, and to undergo rigorous imprisonment for 10 years, a fine of Rs.1,000/- each, and in default of payment of fine to suffer rigorous imprisonment for 6 months more.

2. According to the prosecution case, complainant Muhammad Aslam, aged 18 years, having missed the train for Narowal where he resided, on the 18th March, 1980 slept at Lahore Railway Station. At mid-night the two appellants, who are labourers, woke him up on the

22

pretext that the Police would arrest him for sleeping on the platform. They took him to a spot under the stairs of a Railway bridge, and forcibly committed sodomy on him, one after the other. In the early hours of the morning of the 19th March, 1980, having seen PW.Talib Hussain, Foot Constable, Railway Police Station, Lahore, and Naseer Ahmad, Head Constable, the complainant reported to them about the occurrence, and the 2 appellants were arrested. The complainant and the two appellants were immediately produced at Lahore Railway Police Station, where the statement of the complainant was recorded and on the same day he was medically examined by Doctor Muhammad Siddique (PW.6), a Medical Officer. On completion of the investigation PW.Khuda Dad, A.S.I Railway Police, Lahore, submitted a challan against the two appellants and they were tried, convicted and sentenced as mentioned above.

3. Both the appellants in their statements under Section 342 of the Code of Criminal Procedure denied the allegations made against them, and stated they were malitias (masseur) by occupation at Lahore Railway Police Station. They further stated that PW.Talib Hussain and the aforesaid Naseer Ahmad, Head Constable, were known to the two appellants, and that they had instigated the appellants to sell Charas for them at Lahore Railway Station, but the appellants had declined. This was the reason why the two Constables implicated the appellants falsely. The 2 appellants were sleeping near the office of coolies where-from they were taken to the Police Station. It may be stated here that no suggestion was put to PW.Talib Hussain for having ever instigated the appellants to sell Charas. PW.Naseer Ahmad was given up by the prosecution as un-necessary, and although three defence witnesses were examined, Naseer Ahmad was not

examined on behalf of the defence. PW. Khuda Dad Investigating Officer states that he was duty Officer at the Police Station at the relevant time and Naseer Ahmad, Head Constable, and Talib Hussain, Foot Constable, produced before him the complainant and the 2 appellants, and he recorded the statements of the witnesses and arrested the two accused. PW. Khuda Dad has not been challenged on these points and the witness denied that Naseer Ahmad, Head Constable, with the connivance of the complainant made out this false story in the case. There is no doubt about the facts that the 2 appellants were apprehended at the Lahore Railway Station and they were produced at the Police Station on the date of occurrence.

4. Medical evidence furnished by Doctor Muhammad Siddique (PW.6) showed that the two appellants were capable of performing sexual intercourse. The Doctor found no marks of fresh violence on the anus and rectum of complainant Muhammad Aslam, who in the opinion of the Doctor was 15/16 years old. The anus of Muhammad Aslam was found moderately funnel shaped and he appeared to be a habitual passive agent. Two swabs taken from the anus were found by the Chemical Examiner to be stained with semen, and accordingly the Doctor was of opinion that sodomy had been committed on Muhammad Aslam.

5. It appears that the complainant had gone to the Railway Station long after ^{the} train for Narowal had left, and it was, therefore, not un-likely that complainant had gone to the Railway Station for some other purpose. This view receives support from the

24

medical evidence that he appeared to be a habitual passive agent. In this view of the matter, it is difficult to believe that the complainant had been kidnapped or abducted for the purpose of subjecting him to un-natural lust. Nevertheless, the fact remains, as proved by the medical evidence, that the complainant was subjected to the un-natural lust by the two appellants, who were arrested at the spot and produced at the Police Station. No ill-will and enmity between him and two appellants has been suggested to the complainant and there appears no reason why he should falsely implicate the two appellants. The complainant denied the suggestion that Naseer Ahmad, Head Constable, with the connivance of the complainant, made out a story to implicate falsely the present accused.

5. The evidence of the complainant Muhammad Aslam, victim of the occurrence, has received ample corroboration from the medical evidence, as well as the evidence of the Police Officers, and the fact that the appellants were immediately produced at the Police Station. We think that the prosecution has proved the case against the two appellants so far as the offence under 377 Pakistan Penal Code is concerned. We, however, think that the sentences thereunder of 10 years' rigorous imprisonment and a fine of Rs.1,000/- imposed upon each of the two appellants are severe. The charge under Section 12 of the Offence of Zina (Enforcement of Hudood) Ordinance, 1979, is ~~also proved~~ not made out.

7. We accordingly maintain the conviction of each of the appellants under Section 377 of the Pakistan Penal Code, but reduce the sentence of each

25

to two years rigorous imprisonment only. The sentences of fine, and in default of payment of fine to suffer rigorous imprisonment for 6 months more, are set aside. The conviction and sentences of both the appellants under Section 12 of the Offence of Zina (Enforcement of Hudood) Ordinance 1979, are set aside. The appeal is ^{thus} disposed of. ~~there~~

CHAIRMAN

MEMBER II

MEMBER III