

IN THE FEDERAL SHARIAT COURT
(Appellate Jurisdiction)

PRESENT

MR. JUSTICE B.G.N. KAZI
MR. JUSTICE CH. MUHAMMAD SIDDIQUE

CRIMINAL APPEAL NO. 20/I OF 1984

Obaidur Rehman --- Appellant
Versus
The State --- Respondent
For the appellant --- Mr. M. A. Chughtai,
Advocate.
For the State --- Mr. Muhammad Aslam Uns,
Advocate.
Date of hearing --- 8-5-1984
Date of decision --- 16-5-1984

JUDGMENT

who
B.G.N. Kazi, J. The appellant was tried by the Sessions Judge, Rahimyar Khan and convicted under section 10(3) of the Offence of Zina (Enforcement of Hudood) Ordinance, 1979 (here-in-after referred to as the Ordinance), and sentenced to suffer life imprisonment and whipping numbering thirty stripes, has filed the instant appeal against his conviction and sentences.

2. We have heard the arguments of the learned counsel for the parties and perused the record of the trial. The case against the appellant was that he is a business man and is resident of Basti Amanat Ali in the City of Rahimyar Khan. He is husband of Mst. Naima Batool, Lady Councillor of Municipal Committee, Rahimyar Khan. On 4-8-1982 a procession was taken out in the City in which the appellant with his face blackened and arms bound was seated on donkey as punishment on the part of punchayat of the relations and other local citizens for inter alia committing zina with the daughter of his consanguine sister and of Muhammad Younis another business man, and a relative of the appellant.

3. The matter was brought to the notice of the authorities by Muhammad Nawaz s/o Mian Ghulam Muhammad Veeha, a member of the District Crime Control Committee Rahimyarkhan, who addressed application (Ex.PC) dated 5-8-1982 to Superintendent of Police Rahimyarkhan about the procession which took place on 4-8-1982. A copy of the application was taken by hand also to the Deputy Commissioner, Rahimyarkhan. Muhammad Nawaz aforesaid who is also the Ameer of defunct Jamait-e-Islami, District Rehimyarkhan, had made the application after fully satisfying himself in the matter and had requested for holding of impartial inquiry as he had come to know that the charges against the appellant were of committing sodomy and zina. He had further heard that the appellant had given in writing his confession about the matter. The fact about making such writing had been confirmed by the appellant on telephone.

4. Ch. Muhammad Siddique, who was posted as SHO/Inspector, City Police Station, Rahimyarkhan, partly investigated the case, which was also mainly investigated by SIP Muhammad Siddique of that police station. On the basis of the application of Muhammad Nawaz (Ex.PC) he prepared formal FIR (Ex.PC/1) and registered the same. He prepared site plan and also submitted application before AC/MIC, Rahimyarkhan for medical examination of Mst.Asifa, who had earlier given her statement implicating the appellant. The Magistrate allowed medical examination of Mst. Asifa who was taken before Dr.(Mrs.) Khawar Rana. SIP Muhammad Siddique also had Ubaidur Rehman medically examined for potency. He also took into possession photo-stat^{copy} of Birth certificate (Ex.PE) about Mst. Asma Bibi and photostat (Ex.PK) of the writing said to have been over signature of Ubaidur Rehman accused vide Memo. Ex.PH. After recording the statements of the prosecution witnesses he submitted the papers to the SHO who challaned the appellant.

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5. The matter with regard to taking out procession was taken cognizance of by the police and a case under section 188 PPC was registered at the instance of SIP Muhammad Siddique at FIR No.277 dated 6-8-1982 at police station City Rahimyarkhan against Muhammad Younis (father of the victim) Muhammad Shafique, Muhammad Jamil Shaida and Rizwanul Haq. The case was also under section 16 of Maintenance of Public Order Ordinance, 1960 and sections 357/500/348 PPC. The case under trial was registered on 7-8-1982 on the written order of Deputy Superintendent of Police (Saddar)Rahimyarkhan.

6. There is ocular evidence of the victim namely Mst. Asifa Bibi aged about 13 years and a student of 8th class, against the appellant. She has definitely implicated the appellant, who is her maternal uncle. According to her 2/3 months before the taking out of the appellant in procession, she had gone to his factory. He was alone and had taken her to his office. After closing the door from inside he had committed zina with her forcibly. As she felt pain, she wanted to raise alarm but the appellant threatened her with a knife. She admitted that due to fear she did not inform anybody about the occurrence and since there was bleeding from her private parts she was treated for piles. Again 2/3 days before the appellant was made to sit on a donkey and the procession was taken out, he had taken her to his factory and committed zina with her. She further explained that when the secret became open she informed her parents about the occurrence. The young girl in the cross-examination stated that the appellant had committed zina with her 3/4 times. The learned counsel for the appellant has argued that there is only the ocular evidence of Mst. Asifa which should not be believed against the appellant. It may, however, at this stage be observed that the appellant-accused is maternal uncle of the victim and there is nothing on the record to show any enmity of

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the victim, her father and any of the prosecution witnesses who have corroborated the testimony of the young girl. The defence plea that Mst. Shahida Qari was angry with him over his refusal to marry her, could not be considered as sufficient ground for his false implication by the aforesaid persons, in as much as Muhammad Younis, the father of the girl and other witnesses who are related to the parties would not have involved the honour of the girl and the two minor sons of Muhammad Younis ^{with} ~~on~~ whom the appellant is further alleged to have ~~been~~ committed sodomy, at the instance of Shahida Qari or anyone else. The evidence of the victim is also corroborated by the medical evidence and the certificate of the Chemical Examiner with regard to zina having been committed on Mst. Asifa. Moreover, in the instant case there is evidence of extra judicial confession in the presence of entire punchayat about which evidence has been given by Muhammad Younis, Hakim Muhammad Abdullah, Muhammad Jamil Shaida, who all state that the appellant confessed before them of having committed zina with Mst. Shagufta, Mst. Asifa and sodomy on the two minor sons of Muhammad Younis. It is on the record of the case that the cases of the sodomy on the two boys and the zina with Mst. Shagufta are proceeding in other Courts.

7. Besides the aforesaid evidence there is also a writing (Ex.PD) ^{on} which admittedly appears the signature of the appellant, which was also signed by Muhammad Younis Muhammad Jamil Shaida, Rizwanul Haq and Muhammad Siddique, father of the appellant. It is true that in the writing there is confession about two children of Muhammad Younis but the omission of the girls' names is understandable, ^{as} ~~in that~~ an effort to save the two young girls' from ignominy and dishonour. It is apparent from the record, specially the statement of witnesses, who were members of the punchayat and took part in the proceedings resulting

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in the taking out the procession that the compromise not to report to the police had made to save reputation and goodname of the girls involved. The learned counsel for the appellant has referred to the evidence of Dr. Abid Hussain of Rahimyarkhan which shows that the appellant had received extensive multiple contusions which though simple in nature were enough to establish that the appellant had received beatings. He has also further argued that it was after the beatings ^{that} the appellant was forced to make confessional statement. Mr. Muhammad Aslam Uns, the learned counsel for the State, however, pointed out that the procession was taken out after the compromise and after the writing was signed by the appellant and the simple injuries were in all probability caused to the appellant while he was riding on the donkey with his face blackened and hands bound ^{and} therefore, the same could not serve as evidence of coercion for signing the writing.

8. As already stated the parties are inter-related and this is a case of zina committed on the niece by her maternal uncle. The only explanation sought to be made by the appellant is too far fetched and besides is not proved by any admission made by the prosecution witnesses in that behalf. The matter was not put to the witnesses concerned in cross-examination and the defence plea, therefore, appears to be an after thought.

9. In cases of this nature there is no ocular evidence and since in this case the victim is young girl and not full grown woman, who has given evidence against her own maternal uncle in detail, there can be no question of disbelieving her evidence, specially when it is fully supported by medical evidence. It may here be stated that the learned counsel for the appellant has also contended that the evidence about the vaginal swabs being sent to the Chemical Examiner is not satisfactory in that the ^{who took the same to Chemical Examiner} entire chain of evidence of persons is, obviously, not on

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the record. However, it was for the defence to put question to the investigating officer and other police officials to support their plea, if was their case that the vaginal swabs were in fact not the same which were sent by the lady doctor to the Chemical Examiner through the police. However, it is apparent that no such question was put in the cross-examination.

10. The subsequent conduct of the appellant is also indicative of his consciousness of guilt. He is an educated businessman who obviously is socially highly placed, so much so that his wife is Councillor of the Municipal Committee. He however, allowed the blackening of his face, the ride on the donkey back, insults and abuses and received even multiple injuries and abrasions but neither he nor his wife complained to the law enforcing authorities of the locality, of the district, the Province, ^{or} and the Federal Government. It was left to the local head of the Jamait-e-Islami to report the incident and the fact that the procession was taken out illegally to the disgrace a local citizen. It is also significant to note that his father who had signed his written confession as a witness and as member of the Panchayat and who was cited as a defence witness by the appellant was given up by him and, therefore, there is the obvious presumption that he would not have supported the defence.

11. Lastly the contention has been raised that the learned Sessions Judge, Rahimyarkhan, while convicting the appellant under section 10(3) of the Ordinance to imprisonment for life has over-looked the fact that under that section the offence is punishable with imprisonment for a term which shall not less than four years and not more than 25 years. The giving of punishment of imprisonment for life, though technically not envisaged under the section, the irregularity ~~which~~ could be cured under section 537 Cr.P.C.

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12. For the reasons given above, there is nothing urged to support the appeal which could be considered as even creating doubt about the guilt of the accused-appellant. The appeal is, therefore, dismissed and the conviction and sentences are maintained with the modification that under section 10(3) the appellant is punished with imprisonment for a term of twentyfive years and also to suffer whipping numbering thirty stripes,

Raza Ali
JUDGE-II

M. Siddiq
JUDGE-III

Islamabad, the
^{16th} May, 1984
M. Faridun

Approved
for reporting
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