

IN THE FEDERAL SHARIAT COURT  
( APPELLATE JURISDICTION )

Present

MR. JUSTICE ZAFAR PASHA CHAUDHRY, JUDGE.

CRIMINAL APPEAL NO.70/L OF 2003

Mustafa son of Allah Ditta,  
caste Muslim Sheikh,  
resident of Chak No.46/2-L,  
District Okara.

.....Appellant.

Versus

The State

.....Respondent.

For the appellant

Ch. Muhammad Amjad,  
Advocate.

For the State

Mian Abdul Qayyum Anjum,  
Advocate.

No.&Date of FIR/PS

No.127/2001, 15-6-2001  
Shah Bhore, District Okara.

Date of judgment  
of the trial court

26-11-2002

Date of institution  
of appeal

12-3-2003

Date of hearing

24-7-2003

Date of decision

24-7-2003

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62

JUDGMENT

ZAFAR PASHA CHAUDHRY, J.- Mr. Irshad Ullah Khan Sial,

Additional Sessions Judge, Okara convicted Mustafa, appellant in case

F.I.R. No.127/2001 registered with Police Station, Shah Bhore, District

Okara under section 18 of Offence of Zina(Enforcement of Hudood)

Ordinance, 1979 (hereinafter referred to as the Ordinance) and sentenced

to five years R.I. The learned trial judge omitted to specify the main

offence regarding which attempt was made. The main section has not

been specified even in the charge sheet. However, from the allegations

enumerated in the charge sheet, it transpires that it would be a case

under section 18 read with section 10(3) of the Ordinance because

an attempt was made to forcibly commit zina with Mst. Ghulam Fatima.

2. The prosecution case as disclosed in the F.I.R. Ex.PA

is that Mst. Ghulam Fatima daughter of Waryam, caste Muslim Sheikh,

aged about 18 years lodged report with the police that she was

resident of Chak No.46/2-L. On 10-5-2001 at noon time, she alongwith

her father after harvesting the wheat crop, went to her house for

meal, when Mustafa s/o Allah Ditta, the accused came and by taking

her into Jappa took her into the residential room and wanted to

commit zina-bil-jabr after breaking the string of her shalwar, whereas

she resisted and during the scuffle, her shirt was torn at the front.

She raised hue and cry and Muhammad Hussain s/o Waryam, her brother

and Sultan came there, who witnessed the occurrence. They tried to

apprehend the accused but he succeeded in fleeing away from there.

It is further stated that till the date of lodging of F.I.R., the legal heirs of the accused have been making requests to pardon him but she did not agree.

The police investigated the matter and after investigation, found the accused/appellant guilty of the offence levelled against him and challaned him.


3. As the appellant did not plead guilty to the charge he was put up to trial. Prosecution in support of its case examined five witnesses. Ghulam Fatima, victim was examined as PW.2. She reiterated the statement already made by her in the F.I.R. and described in the preceding para in the facts of the case. The next witness is Muhammad Hussain, PW.3, brother of the victim. According to him, he saw the accused grappling with Mst. Ghulam Fatima and he tore her clothes whereafter he attempted to commit zina-bil-jabr with her. He tried to apprehend the accused but he succeeded in escaping. <sup>Tahir</sup> PW.4/Parvez attested the recovery of shirt P.1 and shalwar P.2 which were torn during grappling when the appellant attempted to commit zina. Muhammad Ashraf, SI, PW.5 investigated the case, arrested the accused, recorded statements of the witnesses, effected recovery of clothes P.1 and P.2 of Mst. Ghulam Fatima. He arrested the accused on 6-7-2001. The challan was submitted by him in court.

4. On close of the prosecution case, the appellant was examined under section 342 Cr.P.C. He denied the allegation against him. He came up with the plea that Mst. Ghulam Fatima was his relative.



She developed illicit relations with Muhammad Aslam s/o Noora. The appellant forbade her from having illicit relations, for which she turned inimical towards him and got him involved in this case. Although he did not appear as his own witness as admissible under section 340(2) Cr.P.C. but produced Muhammad Akram, DW.1 and Mukhtar-Ahmad, DW.2 in his defence. Both of them stated that the appellant had been falsely implicated on account of enmity with the complainant's family.

5. The statement of Mst. Ghulam Fatima, PW is supported by Muhammad Hussain, PW.3 who is the brother of Mst. Ghulam Fatima. Although both Mst. Ghulam Fatima and Muhammad Hussain are brother and sister yet mere relationship interse is not the ground to discard their testimony. The appellant has pleaded false implication on account of enmity which arose due to non-payment of the money advanced by the appellant to them but no evidence in this behalf was produced. The defence witnesses, no doubt, stated that the complainant party had enmity against the appellant but both of them made divergent and vague statement which is not worthy of any credence. The statement of Mst. Ghulam Fatima find a substantive support from the fact that during struggle in between the appellant and Mst. Ghulam Fatima, her shirt and shalwar were torn. Both were produced during investigation which were exhibited during trial as P.1 and P.2. The statements of both the witnesses coupled with the recovery of torn clothes and the result of investigation, the prosecution successfully proved the case against the appellant.



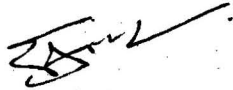
6. The learned counsel instead of arguing the appeal on merits straightway come forward with the prayer that the victim Mst. Ghulam Fatima and her father Waryam have forgiven the appellant. A reconciliation has been arrived at between the parties through involvement of the respectables of the locality. The same is likely to create goodwill and harmony between the parties. He has produced Mst. Ghulam Fatima and her father Waryam in Court. They have submitted an affidavit affirming the compromise in between the parties. Both of them have been identified by Mr. Abdul Aziz, Advocate who knows them personally and was their counsel during trial. The learned counsel for the State has also not disputed the factum of compromise. In view of the compromise, the learned counsel has prayed that the appellant may be forgiven and acquitted of the charge as he has expressed repentance.

7. It is true that compromise in between the parties has taken place which has been attested by the parties and their counsel but offence under section 18 read with section 10(3) of the Ordinance is not compoundable, therefore, no order of acquittal can be passed merely on account of a compromise. Confronted with the situation the learned counsel has prayed that in a number of cases effecting of compromise has been appreciated by the courts in larger interest of the society and the same has been treated as mitigating circumstance. He has, therefore, prayed that in the present case as well, the same may be treated as an extenuating circumstance. The sentence of the

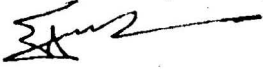
appellant may be reduced adequately. The learned counsel for the State has neither contested nor opposed this prayer.

8. After taking into consideration the prosecution case and also the circumstance that the parties are related interse, if a lenient view is taken the same will help reducing the bad blood in between them. The conciliation and repentence expressed by the appellant is treated as a mitigating circumstance. By taking into account the above facts and circumstances, the sentence of five years R.I. awarded to the appellant is reduced to two years R.I. Benefit of section 382-B Cr.P.C. shall remain available to the appellant.

With the above modification in the sentence, the appeal is dismissed and the conviction is maintained.

  
( Zafar Pasha Chaudhry )  
Judge

Lahore:24-7-2003.  
M.Khalil

Approved for reporting.  


IN THE FEDERAL SHARIAT COURT  
( Appellate Jurisdiction )

PRESENT

MR.JUSTICE CH. EJAZ YOUSAF CHIEF JUSTICE

CRIMINAL APPEAL No:284-I OF 2002

Wahid Iqbal son of Muhammad Iqbal-- Appellant  
Caste Jatt, resident of Al-Noor  
Colony, Rawalpindi.

Versus

The State -- Respondent

Counsel for the appellant -- Mr.Muhammad Munir  
Peracha, Advocate

Counsel for the State -- Mr.Muhammad Sharif  
Janjua, Advocate

No.date of FIR and Police station -- No.416 dt: 24.12.1997  
Airport, Rawalpindi.

Date of the order of Trial Court -- 20.11.2002

Date of institution -- 3.12.2002

Date of hearing -- 22.5.2003

Date of decision -- 22.5.2003

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JUDGMENT

CH. EJAZ YOUSAF, CHIEF JUSTICE.- This appeal is directed against the judgment dated 20.11.2002, passed by the learned Additional Sessions Judge, Rawalpindi whereby appellant Wahid Iqbal son of Muhammad Iqbal was convicted under section 11 of the Offence of Zina (Enforcement of Hudood) Ordinance, 1979 and sentenced to ten years rigorous imprisonment alongwith a fine of Rs.5,000/- or in default thereof to further undergo two months' simple imprisonment. Benefit of section 382-B Cr.P.C. was, however, extended to the appellant.

2. Facts of the case, in brief, as gathered from the record, are that on 24.12.1997 complaint Exh.PA, was lodged by one Tahir Mahmood with SHO police station Airport, Rawalpindi, wherein, it was alleged that her daughter namely, Mst.Shamila Tahir, aged about 13 years, student of sixth class of Government High School, Dhoke Gangal, Rawalpindi had on 23.12.1997 gone to her school. She, as per routine, was bound to return by 1.00 p.m. However, since she did not return at