

IN THE FEDERAL SHARIAT COURT
(Appellate Jurisdiction)

PRESENT

MR. JUSTICE ZAFAR PASHA CHAUDHRY
MR. JUSTICE S A RARRANI

CRIMINAL APPEAL NO 198/T OF 2002

Abdul Sattar son of Rehmatullah,
Resident of Ward No.10/14, Pindigheb, Tehsil Pindigheb,
District Attock.

Appellant

Versus

1. Sher Amjad son of Muhammad Hayat,
Caste Rajput, r/o Pari, Tehsil Pindigheb,
Distt. Attock

2. The State

Respondent

Counsel for the
appellant

-- Malik Itaat Hussain Awan,
Advocate

Counsel for the State

-- Syed Muzahir Naqvi,
Advocate

Counsel for respondent

-- Sh. Ihsan-ud-Din,
Advocate

No date of FIR and
Police Station

-- No 140 dated 17.8.2000
P.S. Pindigheb, Attock

Date of Judgment --
of trial Court

Not mentioned

Date of institution

-- 6.8.2002

Date of hearing

-- 8.10.2003

Date of decision

-- 8.10.2003

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JUDGMENT

S. A. RABBANI, J. - On the complaint lodged by one Abdul Sattar, on 17.8.2002, at Pindigheb Police Station, Attock, the present respondent was sent up for trial before Additional Sessions Judge Attock for offences under section 12 of the Offence of Zina (Enforcement of Hudood) Ordinance, 1979 and section 377 PPC. The charge was that, on the previous night, the present respondent kidnapped Sohaib Sattar, son of the complainant, from his house and committed sodomy with him in a school building. Since the respondent/accused pleaded not 'guilty'. The prosecution examined eight witnesses, before the trial court, to prove the charge. These witnesses include the complainant Abdul Sattar, his son, the alleged victim, Sohaib Sattar aged about 17 years, two medical officers and four police officials who were involved in the investigation at different stages.

2. The trial court found that the prosecution evidence had failed to establish the guilt of the accused beyond reasonable doubt. The

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accused/respondent was, therefore, acquitted. The complainant in the case challenged the acquittal by way of present appeal.

3. Substantially, Mr. Malik Itaat Hussain Awan, learned counsel for the appellant, challenged acquittal on two counts. He submitted that even in case there was no supporting medical evidence, at least an attempt of commission of sodomy was proved. Secondly, he pointed out, that the impugned judgment bears no date of announcement, which is a violation of section 367 Cr.P.C. In support of his first contention, he relied upon 'Muhammad Ayub Vs. The State' (1986 P.Cr.L.J-268-FSC). About his next contention, he relied upon 'Muhammad Inayat etc Vs. The State' (1978 P.Cr.L.J-865-Lahore).

4. Sheikh Ihsan-ud-Din, learned counsel appearing for respondent Sher Amjad, submitted that the trial court has given definite finding that the case was not proved by the evidence placed on record and the finding is based on the material on record and, therefore, the judgment cannot be interfered with. In support of his contention, he referred to 'The State Vs. Muhammad Aslam and others' (1999 MLD-335-Lahore) and 'The State Vs. Syed

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Mazhar Alam and others' (PLD 2003-Karachi-122). Syed Muzahir Naqvi, learned counsel for the State, contended that a case of attempt to commit sodomy was proved on record.

5 P.W. Dr Muhammad Parvez was the Medical Officer who examined the alleged victim Sohaib Sattar on the same day when the complaint was lodged. He found scratches on right side of the face and forehead of the boy.

The Medical Officer, however, stated that there was no stains or blood on the clothes and no sign of violence injury on the body and around the anal area. He also did not find any internal anal injury. He sent perianal and rectal swabs and pieces of shalwar to the Chemical Examiner for detection of semen. The Chemical Examiner's report was that the said swabs and pieces of shalwar were not stained with semen. The Medical Officer, on the basis of medical examination as well as the Chemical Examiner's report, gave a definite opinion that no sodomy was committed with the victim.

6. The evidence of the complainant is of no help because, on this point, he only stated what was told by his son. Thus it was the solitary evidence of alleged victim, that was available before the trial court about commission of

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sodomy. The argument that in the absence of positive medical evidence, a case of attempt of commission of sodomy was proved, cannot be accepted because the alleged victim himself did not allege that only an attempt was made. He stated that till 12 night he remained in the school building and during this period accused-respondent had been committing sodomy with him. He further stated that, after the commission of the offence, the accused-respondent washed his (victim's) body. Thus, according to victim himself, it was not a case of mere attempt. The case of Muhammad Ayub Vs. The State relied upon by the learned counsel for the appellant, is different because in that case the accused was not acquitted, but he was convicted by the trial court for an attempt. It was observed in the State Vs. Syed Mazhar Alam and others', referred to above, that the established principle is that, with the acquittal of an accused person by the trial court, a double presumption of innocence accrues in his favour, and the consistent view of the superior courts is that prosecution is required to show very strong reasons. In the case of 'The State Vs Muhammad Aslam and others' referred to above, it was held that in case of two views are possible of the

case and view taken by the trial court can be justified on the basis of fact or on principle of law then the order of acquittal is not interfered with.

7. Regarding the objection relating to non-compliance with section 367 Cr.P.C, the case law cited by learned counsel for the appellant does not help him because it was only an order of admission of appeal to consider the point and facts and, also, for the reasons that the omission of date of judgment can be verified from the record and case diary shows when the judgment was announced.

8. We have, however, noticed that an other serious violation of section 367 Cr.P.C is being committed almost in all judgments of the trial courts under the jurisdiction of Lahore High Court and Peshawar High Court. This violation is also there in the present case. We will not remand this case for this violation because, for the same reason, every case will have to be remanded. For future guidance, we point out that section 367 Cr.P.C requires that a judgment shall contain the points for determination, the decision thereon, and the reasons for the decision. This is a mandatory requirement, but the practice appears to be that, without mentioning as to what are the points for determination in the case, the trial courts discuss the evidence of witnesses whereafter they give a finding that the charge is proved, or is not proved. Mere discussion of the evidence does not logically prove or disprove the charge. The trial courts should mention the relevant points for

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determination in a judgment and should give their findings on each point. It is only the cumulative effect of the decision and findings on these points that may prove or disprove the charge. We expect that the Lahore High Court and Peshawar High Court, supervising the trial courts in their jurisdiction, will guide the trial courts for writing judgments in criminal cases in accordance with the requirement of section 367 Cr.P.C.

9. For the reasons mentioned above, we do not see a need to interfere with the judgment of the trial court in this case. The appeal is dismissed accordingly.



ZAFAR PASHA CHAUDHRY
JUDGE



S A RARRANI
JUDGE

APPROVED FOR REPORTING



JUDGE

Islamabad, 8.10.2003

M Akram/