

IN THE FEDERAL SHARIAT COURT  
( Appellate Jurisdiction )

PRESENT

MR. JUSTICE S. A. MANAN

Criminal Appeal No. 2/P of 2003

Mst. Sitara Bibi d/o Dr. Zahid Hussain r/o College Colony, Saidu Sharif Swat Now r/o Odigram Tehsil Babozai, District Swat

..... Appellant

Versus

1. The State

2. Dr. Zahid Hussain son of Muzaffar Hussain r/o College Colony Saidu Sharif District Swat.

..... Respondents

Counsel for appellant ..... Mr. Latif Afridi, Advocate

Counsel for State ..... Mr. Muhammad Ayaz Khan,  
Deputy Advocate General

FIR.No. Date & ..... 87, 31.3.2002  
Police Station ..... Saidu Sharif Distt. Swat

Date of judgment of ..... 23.12.2002  
trial court

Date of Institution ..... 6.1.2003

Date of hearing ..... 04.4.2005

Date of Judgment ..... 04.4.2005

JUDGMENT

S. A. MANAN, JUDGE.- This appeal is directed against the judgment dated 23.12.2002 of the Sessions Judge, Swat convicting the appellant/Mst. Sitara Bibi under section 494-PPC for a term of five years R.I. with a fine of Rs.10,000/- and in default to further suffer six months S.I.

2. The case of the prosecution is that during the substance of first nikah with Ijaz Ali she has entered into nikah with Ikram-ul-Haq co-accused

3. In order to prove the allegations, the prosecution has produced 11 witnesses.

4. FIR.No.87 dated 31.3.2002 police station, Saidu Sharif was registered at the instance of Dr. Zahid Hussain, father of the appellant with the allegations that his daughter, present appellant, was abducted by Ikram-ul-Haq accused.

5. After evidence was recorded Ikram-ul-Haq aged 21/22 years was examined under section 342 Cr.P.C. with a positive plea denying the allegations and further that he was validly married to the present appellant.

6. The victim Mst. Sitara Bibi was also examined under section 342, Cr.P.C. and denied any previous nikah with Ijaz Ali, P.W.3. She denied the entire evidence produced against her by the police. In response to a questions, she deposed that her nikah with accused Ikram-ul-Haq was not invalid.

7. I have heard the learned counsel Mr. Latif Afridi, --- Mr. Muhammad-Ayaz Khan, Deputy Advocate General and Dr. Zahid Hussain, complainant.

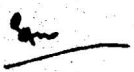
The appellant is also present with two children.

8. Learned counsel for the appellant vehemently contended that there is no sustainable evidence on the record proving the nikah of the appellant with one Ijaz Ali and there is only one nikah of the appellant with Ikram-ul-Haq who has been acquitted by the trial court. Learned counsel further submits that in view of the acquittal of the accused Ikram-ul-Haq, alleged second husband of the appellant there was no legal justification whatsoever to award sentence to the appellant particularly when there is evidence on record that there is only one nikah and the evidence on this point has not been rebutted.

9. Learned Deputy Advocate General has rendered valuable assistance to me by pointing out documentary evidence on the record to show that there is only one Nikah of the appellant with Ikram-ul-Haq who has been acquitted. According to him the prosecution has not been able to prove its case, therefore, benefit of doubt will go to the appellant.

10. Dr. Zahid Hussain, father of the appellant is also present and states that he is now convinced that his daughter has not entered into more than one nikah and the only one is with Ikram-ul-Haq and out of this wedlock there are two minor children aged about 3½ years and 8 months.

According to the statement made by the father of the appellant in presence



of the learned counsel for the appellant, he submits that the case was filed by him on some misunderstanding.

11. Whatsoever may be statement of the father the fact still remains that the prosecution has failed to prove its case. Benefit of doubt, therefore, is granted to the appellant particularly when Ikram-ul-Haq accused has already been acquitted.

12. For reasons stated above, this appeal is accepted and the impugned judgment dated 23.12.2002 of the Sessions Judge, Swat is set aside. The appellant is on bail and her bail bonds are discharged.

  
( S. A. MANAN )  
Judge

Peshawar the 04th April, 2005.

UMAR DRAZ/