

**IN THE FEDERAL SHARIAT COURT.**

( Appellate Jurisdiction )

**PRESENT**

**MR.JUSTICE ZAFAR PASHA CHAUDHRY, JUDGE.**

**Criminal Appeal No.21/L of 2003 (Linked with)**  
**Criminal Appeal No.32/L of 2003.**

1. Nadeem Iqbal S / O Manzoor Hussain,
  2. Abid Hussain son of Ashiq Hussian,
  3. Shah Muhammad s/o Khurshid Ahmad,
  4. Mukhtiar Ahmad son of Allah Yar,
- All residents of Karam Pur,  
Tehsil Mailsi, District Vehari. ... Appellants.

**VERSUS**

The State	...	Respondent.
Counsel for the Appellants.	...	Mr.Abdul Qadus Rawal & Syed Hissam Qader, Advocates.
Counsel for the State	...	Mr.Asghar Ali Hashmi, Advocate.
Case FIR No, date & Police Station	...	No.26/96, 27.02.1996, P.S Karam Pur.
Date of Judgment The Trial Court.	...	03.01.2003.
Date of Institution	...	22.01.2003 & 27.01.2003 Respectively.
Date of Hearing.	...	17.07.2003.
Date of Decision.	...	17.07.2003.

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JUDGMENT

ZAFAR PASHA CHAUDHRY, J:- Criminal Appeal

No.21/L of 2003 on behalf Nadeem Iqbal and Criminal Appeal  
No.32/L of 2003 on behalf of Abid Hussain, Shah Muhammad  
and Mukhtiar Ahmad have been taken up together and being  
disposed of by this common judgment as both of them arise out  
of one and same impugned judgment passed by Shahid Rafique  
Sheikh, Additional Sessions Judge, Mailsi dated 03.01.2003,  
whereby all the four appellants were convicted under section 12  
Offence of Zina (Enforcement of Hudood) Ordinance, 1979 and  
sentenced to suffer five years R.I each. A fine of Rs.10,000/-  
each was also imposed, in default of payment of fine to undergo  
further six months R.I each.

2. The facts of the case briefly stated are that at the  
instance of Abdul Ghaffar, PW.1, the case FIR No.26/96 was  
registered with Police Station Karam Pur under section 377 PPC  
read with section 12 Offence of Zina (Enforcement of Hudood)

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Ordinance, 1979 on 27.2.1996. It was stated inter-alia by the complainant, who himself is the victim that he worked with his father at his tea stall. On 27.2.1996 at about 7.00 a.m. he left his house to ease himself; when he reached near Tube-well of doctor Ikram-ud-din within the area of Karam Pur suddenly four appellants Abid armed with pistol, Nadeem, Shah Muhammad and Mukhtiar Ahmad emerged from the adjoining graveyard. They caught hold of the complainant and gagged his mouth with the hand so that he may not be able to raise alarm. He was forcibly carried to the garden of Muhammad Khan Wesser. He was made to lie down on the ground whereafter all the four appellants, i.e. Abid, Nadeem, Shah Muhammad alias Sundri and Mukhtiar Ahmad committed sodomy with him one after the other. The complainant made hue and cry on which Muhammad Irshad and Gul Muhammad who were just passer by reached the place of occurrence. They also witnessed the incident. The accused finding the witnesses approaching them fled away from the place of occurrence. The victim was attended and supported



by Muhammad Irshad and Gul Muhammad and they also made him to wear the shalwar. The complainant was brought to his father where he narrated the entire occurrence.

3. After recording the FIR the investigation was carried out by PW.8 Saeed Ahmad S.I. He collected the relevant evidence and other record. Finding all the aforesaid four accused guilty they were sent up to face trial in the Court of Mr.S.M.Waqar-ul-Hassan Shah Bukhari, Additional Sessions Judge, Mailsi. The charge was framed under two heads, i.e. under section 12 Offence of Zina (Enforcement of Hudood) Ordinance, 1979 and under section 377 PPC. All the accused persons pleaded not guilty and claimed trial.

4. The prosecution examined eight witnesses. Abdul Ghaffar, the complainant/victim was examined as PW.1. He gave his age as 14/15 years. He made the deposition in Court as already made by him in the FIR. PW.2 is doctor Abdur Raziq. He examined all the four accused for their potency and found all of them sexually potent. PW.3 Gul Muhammad is an eye witness.

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PW.4. doctor Atta Muhammad is an important witness. He has examined Abdul Ghaffar, complainant/victim aged about 14 years and observed that an abrasion on perianal area was present. Anal margins were slightly red and swollen. Anal mucosa was congested. Internal and external anal swabs were obtained which were sent to the Chemical Examiner. The remaining witnesses, i.e. PW.6 and 7 are police officials and formal in nature. PW.8 Saeed Ahmad, S.I as already noted is the Investigating Officer. He furnished the details of the investigation carried out by him.

5. After close of the prosecution evidence all the four accused were examined under section 342 Cr.P.C. They denied the allegations against them and pleaded innocence. The learned trial Judge relying on the testimony of PW.1 and 3, i.e. Abdul Ghaffar and Gul Muhammad, convicted all the accused and awarded sentence as detailed above.

6. The prosecution case mainly rests upon the testimony of Abdul Ghaffar, the victim and Gul Muhammad, the

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eye witness. According to Abdul Ghaffar when he left his house for easing himself he was forcibly removed to a nearby garden and was subjected to sodomy by all the four accused one after the other. Gul Muhammad who just appeared to pass by the garden, reached the place of occurrence on hearing the alarm and according to him he saw that all the four persons committed sodomy with the boy one after the other. Gul Muhammad even if was attracted to the place of occurrence he at the maximum would have seen Abdul Ghaffar being subjected to sodomy but it is hard to believe that he could have seen all the four accused persons committing the sinful act one after the other, how it is possible that he would have stood as silent spectator and kept on watching the accused persons committing abhorrent act one after the other. It appears that Gul Muhammad PW has not come forward with the truth and it would be unsafe to rely upon his testimony.

7. The most important and relevant witness of-course is Abdul Ghaffar who is a victim and complainant as well. According

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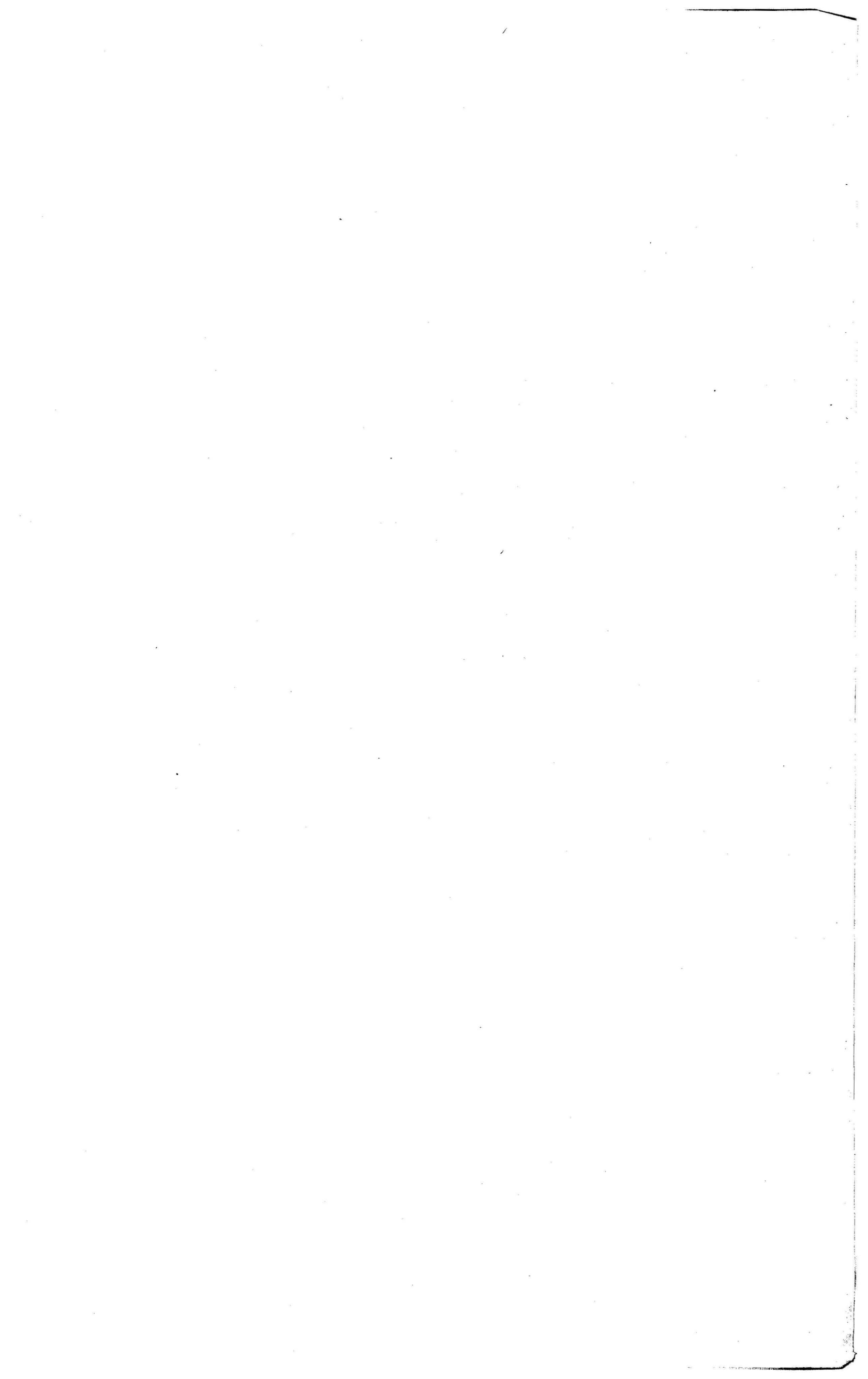
to him all the four accused persons one after the other subjected him to lust by committing unnatural offence. It is true that the victim is a young boy of about 14 years and he has no enmity or malice against the accused persons to falsely implicate them but the fact remains how to convict all the four accused persons and that too in case of a serious nature like the present one. The supporting evidence in form of medical examination is always relevant and helpful. According to the medical report an abrasion on perinal area was observed and margins were found slightly red and swollen. This suggests that the boy may have been subjected to commission of sodomy but from this report it cannot be gathered that four grownup persons would have committed the sodomy one after the other. The physical condition of the private area of the victim would have been much worse and injuries or ruptures would have been much severer. Unfortunately the medical evidence does not lend support to the ocular evidence, further the report of the Chemical Examiner professedly negatives the eye witness account. According to the

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doctor two swabs both from external and internal area of the anal canal were obtained and were sent to Chemical Examiner for detection of semen. The Chemical Examiner report is in negative and it has been found that the swabs were not stained with semen. Although the doctor in answer to a question stated that ejaculation might not have taken place, but considering that four persons committed sodomy one after the other even then absence of semen inside or outside the anal area is extremely significant and noteworthy. It is unconceivable that four persons would have committed this act and the victim was examined on that very date, i.e. 27.2.1996 at 2.30 p.m. just a few hours after the occurrence but no semen was found. Non-detection of semen on the anal swabs creates serious doubt in the prosecution story. Although the learned counsel for the State has argued that as per medical report commission of unnatural offence with the boy cannot be ruled out yet the fact remains that it cannot be believed in view of the above facts and circumstances that four persons would have committed the act one after the other. Even

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if the victim had been subjected to sodomy it is not only difficult but also practically impossible to pick up the culprit out of the four accused. As per prosecution case all the four accused are alleged to be equally guilty, no distinction or difference has been made by the prosecution viz-a-viz the four accused persons. In such a situation to pick up the real culprit person would just be based on guess work or conjecture. No conviction can be based on mere conjecture or guess work. The culprit may be amongst the accused but in such a situation all the accused persons would be entitled to the benefit of doubt. I am therefore constrained to acquit all the appellants by extending them the benefit of doubt. The appeal is allowed, the impugned judgment is set-aside and the appellants Nadeem Iqbal, Abid Hussain, Shah Muhammad and Mukhtiar Ahmad are acquitted of the charge. They are present on bail, they are discharged from their respective bail bonds.



( Zafar Pasha Chaudhry )  
Judge

Lahore the  
July, 17, 2003  
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Approved for reporting.