

IN THE FEDERAL SHARIAT COURT OF PAKISTAN

(Appellate/Revisional Jurisdiction)

PRESENT

MR. JUSTICE MUHAMMAD NOOR MESKANZAI, CHIEF JUSTICE
MR. JUSTICE SYED MUHAMMAD FAROOQ SHAH,

Crl. Appeal No.321/L of 2002

Muhammad Mumtaz son of Haji Ahmad Din, Caste Qazi
Resident of House # 283/Y, Iqbal Colony, Sargodha.

.....Appellant

Versus

1. Muhammad Ramzan,
2. Mukhtar Ahmad,
3. Muhammad Sharif,
4. Allah Bakhsh, all sons of Qadar Bakhsh, Caste Khokhar,
Residents of House # 17, Block No.30, Main road, near
Tawakali Hospital, Sargodha.
5. Mst. Shazadan wife of Ijaz Ahmad, Caste Majawar,
Resident of Muhammadi Colony, Sargodha.
6. The State.

...Respondents

Counsel for the Appellant	---	Mr. Nazir Ahmed Bhutta, Advocate
Counsel for respondents	---	Mr. Aamir Majeed Rana, Advocate
Counsel for the State	---	Ch. Muhammad Sarwar Sidhu Additional PG, Punjab.
Case FIR No, date & Police Station.	---	No. 140 dated 07.06.2000. Police Station City, Sargodha.
Date of impugned Judgment.	---	28.10.2002.
Date of institution	---	21.11.2002
Date of hearing	---	17.09.2019.
Date of announcement of Judgment	---	25.09.2019

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## JUDGMENT.

SYED MUHAMMAD FAROOQ SHAH, J.— Through captioned appeal by calling in question the legality, validity and perversity of the judgment, delivered and pronounced on 28.10.2002, by the learned Additional Sessions Judge, Sargodha, thereby the respondents were acquitted from the case FIR No.140, dated

07.06.2000, under section 10/16 of the Offence of Zina (Enforcement of Hudood) Ordinance, 1979, registered at police station City, Sargodha, the appellant has made a prayer to set-aside the impugned judgment and the respondents be convicted on facts and grounds averred in the memo of appeal.

2. Brief facts of the prosecution case as narrated in the aforesaid FIR are that the daughter of Muhammad Mumtaz complainant namely, Mst. Safia Mumtaz was married on 01.03.1998 with Hussain Ahmad son of Haji Ahmad, resident of *Dherema* and was studying in Inter-College and was taking her exams. She alongwith her husband were putting up with the complainant while Muhammad Ramzan son of Qadir Bakhsh used to take tuition and for that purpose he used to come to his house and established illicit relation with her; when the complainant came to know about this fact then he refrained him to come to his house. On 31.05.2000, Mst. Safia Mumtaz was dropped by the complainant to the examination hall and returned back. When he came back again at 11:00 A.M to the College and waited for much time but his daughter could not come out so he became puzzle and started her search. In the meanwhile, Dost Muhammad and Muhammad Khan residents of *Dherema* met him in the Katchery Bazar, Sargodha, who disclosed that they had seen Muhammad Ramzan, Mukhtar Ahmad sons of Qadir Bakhsh and Mst. Shazadan in a car in the chowk near Taj Cinema. They had abducted his daughter in order to commit Zina with her and enticed her away.

3. A perusal of record reflects that on 19.09.2000 the alleged abductee Mst. Safia Mumtaz alongwith respondent No.1 Muhammad Ramzan was arrested. On 21.01.2000, challan under section 173 Cr.P.C was submitted against both of them in the Court. On 02.09.2000, statement under section 164 Cr.P.C of alleged abductee Mst. Safia Mumtaz was recorded before the judicial magistrate Section-30, Faisalabad. In her statement, she had

categorically stated that by exercising her right of puberty/freewill, being sui-juris, stated that she contracted marriage with co-accused Muhammad Ramzan after solemnization of *Nikkah*; further stated that FIR of her abduction lodged by her father is false. Later on, alleged abductee Mst. Safia Mumtaz and respondent No.1 Muhammad Ramzan were admitted on bail after arrest through Order dated 30.10.2000 passed by the learned Additional Sessions Judge, Sargodha. The accused/respondent No.1 Muhammad Ramzan has also filed a writ petition before the Hon'ble Lahore High Court, where the alleged abductee Mst. Safia Mumtaz was produced and in light of statement of abductee, the concerned police was directed to arrest the accused persons including Allah Bakhsh, Muhammad Sharif and others nominated in the FIR lodged by her father.

4. On submission of subsequent challan, as per direction of Hon'ble High Court Lahore; Charge was framed by the learned trial Court against respondents No.1 to 5 for an offence punishable under section 16 read with section 10 (3) of the offence of *Zina* (Enforcement Of Hudood), Ordinance 1979, to which they did not plead guilty and claimed to be tried. On commencement of trial, prosecution examined almost all prosecution witnesses. After recording the statement of the accused persons under section 342 Cr.P.C, and affording opportunity of hearing to the learned counsel for the parties, the learned trial Court recorded acquittal judgment of the respondents.

5. We, with the assistance rendered by the learned counsel, carefully scanned the impugned judgment as well as the evidence and have also heard lengthy arguments advanced by both the learned counsel for the parties so also the learned counsel appearing for the State.

6. Mr. Nazir Ahmad Bhutta, learned counsel representing the appellant/complainant submitted that the impugned judgment is result of misreading/non-reading and mis-appreciation of evidence on record; learned counsel next submitted that the ocular account has fully been corroborated by medical evidence, so much so with regard to forged *Nikahnama* of respondent No.1, a suit for jactitation for marriage of Mst. Safia Mumtaz in family Court Sargodha was instituted. Learned counsel for the appellant Muhammad Mumtaz while arguing the appeal challenged the validity of the impugned judgment and contended that the evidence available on record has not only been misread by the trial Court but has also not appreciated the evidence brought forwarded by the prosecution in its true perspective thus, the impugned judgment being result of perversity is unsustainable. He maintained that the prosecution has successfully proved the charges against the respondents.

7. Conversely, Mr. Aamir Majeed Rana, learned counsel for the respondent No.1 submitted that the matter relating to the matrimonial dispute i.e. family suit No.17/2004 for jactitation of marriage filed by Mst. Safia Mumtaz had been dismissed. Suit for Restitution of conjugal rights viz. family suit No. 18/2014 filed by Hafiz Muhammad Ramzan/respondent No.1 had also been dismissed. However, the learned family judge, Sargodha while deciding both suits through consolidated judgment dated 23.12.2005 dissolved the marriage of the parties on the basis of '*Khula*'. Thereafter, appeal filed before the learned district judge had also been dismissed. Writ petition No.653/2007 preferred against the concurrent findings of both learned lower courts before the Hon'ble Lahore High Court had also been dismissed vide Order dated 02.06.2015. Subsequently, on dismissal of Civil petition No. 2044-L of 2015, the Civil Review Petition No. 22-L of 2018 had also been dismissed by the Hon'ble Supreme Court. Keeping in view the aforementioned development, learned counsel argued that on

declaration of family court, it cannot be presumed that either Mst. Safia Mumtaz was abducted or that Zina or Zina-bil-Jabar had committed with her by the respondent No.1. Learned counsel maintained that the learned trial Court has elaborately discussed the evidence adduced by the parties and submitted that there is no sufficient reason or plausible cause to discard or brushed aside the findings of the trial Court; more particularly, penultimate paragraph 19 of the impugned judgment, reads as follow:

*“19. The abductee contracted Nikah with Ramzan accused at Faisalabad where she had been residing there for so many months, alongwith her husband so there was no question of subjection of Zina by the other co-accused named Allah Bakhsh and other who were happened to be Government Servants and members of Tableeghi Jamat having beared on their faces and they were married persons as well. While in fact the victim Safia Mumtaz Bibi being sui juris had already performed her Nikah with Hafiz Ramzan and when she did not go before the complainant or the prosecution then she was challaned with Hafiz Mohammad Ramzan and later on they were released by the court of Sessions on bail. In case they were supporting the cause of prosecution then she could easily disclose this fact about any coercion or undue influence when she was moving bail before arrest or bail after arrest. So much so the complainant being her father did not help her in this regard and she was got released on bail by Hafiz Mohammad Ramzan and others. If we carefully peruse the statement of abductee in this court then it is reflected that she has totally deviated from her previous statement even before the Hon'ble Lahore High Court, Lahore and made so many improvements about her intoxication etc. She was making a statement before the Magistrate at Faisalabad admitting her consent with Hafiz Mohammad Ramzan and admitting him as her husband in the writ petition before the Hon'ble Lahore High Court, Lahore, but later on made improvements in her statement in this court as against the real facts set in the prosecution story so her statement was not reliable regarding commission of Zina at the ends of Allah Baksh and others who were real brothers of Mohammad Ramzan accused and were married persons having beared on their faces which reflects that Mst: Safia Mumtaz went with Hafiz Mohammad Ramzan at her freewill and performed Nikah at Faisalabad and also got recorded her statement u/s 164 Cr.P.C. Although this version was not accepted by the prosecution yet they had not exonerated Mst: Safia Mumtaz and challaned her alongwith Hafiz Mohammad Ramzan but later on the remaining accused Allah Bakhsh and others accused were implicated under statement made before the Hon'ble Lahore High Court just to exonerate herself and to implicate some other persons who were never nominated in the FIR by her father i.e. complainant even so the prosecution has failed to make out any case against all the*

*accused u/s 10 and 16 of the Offence of Zina (Enforcement of Haddood) Ord: 1979 and its story is full of conjecture and surmises rather the prosecution has failed to make out any case beyond any shadow of doubt against all the accused persons and it was beating about the bush while in fact she was a consenting party in performance of Nikah with Hafiz Mohammad Ramzan while Nikah of Hussain Ahmad with Mst: Safia Mumtaz was seemed to be forged one."*

8. Learned State counsel at the very outset opposed the appeal and straightaway supported the impugned judgment by submitting that the impugned judgment is elaborate, well-reasoned and contended that the entire evidence on record had been duly appraised and the findings are neither capricious, arbitrary nor the impugned judgment is suffering from illegality, perversity, thus prayed for dismissal of appeal filed against acquittal of the respondents.

9. From cursory examination of evidence, it appears that PW-2 Hussain Ahmad in his examination-in-chief stated that on 01.03.1998 his *Nikkah* was solemnized with Mst. Safia Mumtaz and subsequently she was abducted by accused Muhammad Ramzan/respondent No.1 for the purpose of *Zina*. However, in cross-examination, admitted that *"It is correct that my first statement was recorded by the police on 16.09.2000. It is correct that I did not mention in the said statement about the occurrence. I had only mentioned that I had Nikah with Safia Mumtaz. It is correct that I did not state in the above statement that Muhammad Ramzan was a tutor of Safia Mumtaz and that she was abducted by him for the purpose of Zina"*. PW-3/complainant Muhammad Mumtaz father of Mst. Safia Mumtaz stated in examination-in-chief that after alleged occurrence he contacted the accused, who firstly promised to return Mst. Safia Mumtaz to him and after his refusal he lodged the report with the police. The complainant did not mention such fact in the FIR to cover-up delay in lodging the FIR after 7 days of occurrence. PW-4 Malik Dost Muhammad stated that on 31.05.2000, Mst. Safia Mumtaz alongwith Muhammad Ramzan sitting in car, on query

accused Muhammad Ramzan told him that Safia Mumtaz was not feeling well and they were taking her to *Dherema* for medical advice. Complainant was accordingly informed by him. PW-5/WMO, Dr. Robina Shaheen medically examined Mst. Safia Mumtaz on 19.09.2000 and observed as under:

*"No sign of violence. Hymen is old torn and healed. It admits two fingers loose. Three cotton Swabs were taken and sent to the Laboratory for Chemical Analysis of semen and grouping. She is to habitual intercourse.*

*"I have seen the report of Chemical Examiner regarding vaginal swabs of Mst. Safia Mumtaz which is Ex.P.F, according to the report of Chemical Examiner dated 30.09.2000 the swabs taken from showed that the swabs are stained with semen and she was habitual to intercourse."*

PW-9 Mst. Safia Mumtaz being star witness of the prosecution, in her testimony resiled from her earlier statement recorded on 02.09.2000 under section 164 Cr.P.C and stated before the learned trial Court that she was subjected to *Zina-bil-Jabar* by accused Allah Bakhsh, Muhammad Sharif and Muhammad Ramzan during almost 3 ½ months. Her such statement was also recorded by a judge of Lahore High Court on 19.04.2001 i.e. after considerable delay of more than 10 months of alleged occurrence. PW-14, SI Akbar Ali, conducted the investigation, submitted the challan as per directions of District Attorney and stated in cross-examination that he could not succeed to record the statement of Mst. Safia Mumtaz. In defence, the accused persons vehemently denied the charges leveled against them, claimed to be innocent and asserted their false implications in a fabricated case by the complainant.

10. We do not see any legal or factual infirmity in the reasons given by the learned trial judge. We are also conscious with the legal proposition that mere delay in lodging the FIR is not fatal but in a case where the circumstances give rise to deliberation and consultation that the delay had been caused without any plausible explanation, cannot be taken lightly, as it makes the entire case

suspicious. In the instant case there is no justifiable and cogent explanation for delay in lodging the FIR, which adversely affects the prosecution case, creating doubt. Inordinate delay of 7 (seven) days in lodgment of FIR, without any sufficient reasons or convincing explanation furnished by the complainant for such a long delay is fatal. Recently, in an identical case viz Muhammad Siddique vs. The State and others (2019 SCMR 1048), the Hon'ble Supreme Court held the delay of 7 days in lodgment of FIR, by the father of the abductee to be fatal.

**“(a) Penal Code (XLV of 1860)---**

**----Ss. 365-B & 376---Kidnapping, abducting or inducing woman to compel for marriage etc., rape---Reappraisal of evidence---Unexplained delay in reporting the matter to the police---Occurrence in the present case, as per prosecution, took place on 06-03-2010, whereas the matter was reported to police by the complainant on 13-03-2010---If the contents of the FIR were accepted as correct, it was hard to believe that in an incident where a young married woman was abducted from a house by three men and two women on gunpoint, the complainant side waited for about seven days to report the matter to police---No explanation was provided in the FIR for such inordinate delay---Complainant in his examination-in-chief, made an evasive explanation that after the occurrence, he along with respectable of the locality contacted the elders of the accused for recovery of his daughter and when they refused, he reported the matter to police---Complainant did not give the name of any respectable of the area in his statement during trial--Other two witnesses, including the abductee herself, also did not explain delay in reporting the matter to police---Prosecution had failed to prove its case against the accused beyond reasonable doubt---Jail petition was converted into appeal and allowed and the accused was acquitted of the charge.”**

*(underline supplied).*

11. It is pertinent to mention that parameter and yard stick to make interference in the judgment of acquittal was highlighted by the Hon'ble Supreme Court in the case of Ghulam Sikandar and another Vs. Mamaraz Khan and others (PLD 1985 Supreme Court 11) the criteria laid down by Hon'ble Apex Court in the cited ruling, placitum (b) is as under

*“In an appeal against acquittal the Supreme Court would not on principle ordinarily interfere and instead would give due weight and consideration to the findings of Court acquitting the accused. This approach is slightly different from that in an appeal against conviction when leave is granted only for the re-appraisal of evidence which then is undertaken so as to see that benefit of every*

*reasonable doubt should be extended to the accused. This difference of approach is mainly conditioned by the fact that the acquittal carries with it the two well-accepted presumptions : One initial, that, till found guilty, the accused is innocent ; and two that again after the trial a court below confirmed the assumption of innocence. The acquittal will not carry the second presumption and will also thus lose the first one if on points having conclusive effect on the end result the Court below : (a) disregarded material evidence ; (b) misread such evidence ; (c) received such evidence illegally.*

*In either case the well-known principles of re-appraisal of evidence will have to be kept in view when examining the strength of the view expressed by the Court below. They will not be brushed aside lightly on mere assumptions keeping always in view that a departure from the normal principle must be necessitated by obligatory observance of some higher principle as noted above and for no other reason.*

*The Court would not interfere with acquittal merely because on re-appraisal of the evidence it comes to the conclusion different from that of the Court acquitting the accused provided both the conclusions are reasonably possible. If, however, the conclusion reached by that Court was such that no reasonable person would conceivably reach the same and was impossible then this Court would interfere in exceptional cases on overwhelming proof resulting in conclusive and irresistible conclusion ; and that too with a view only to avoid grave miscarriage of justice and for no other purpose. The important test visualised in these cases, in this behalf was that the finding sought to be interfered with, after scrutiny under the foregoing searching light, should be found wholly as artificial, shocking and ridiculous.*

*Ali Sher v. The State and 3 others P L D 1980 S C 317 ; State through Advocate- Lieneral, N.-W. F. P. Peshawar v. Amir Nazar and others P L D 1981 S C 286 ; Mst. Habibun Nisa alias Bivi v. Zafar Jqbal and others 1981 S C M R 95 ; Nazir Ahmad v. Muhammad Din etc. 1981 S C M R 415 ; Capt. Mahmood Jan v. Madad Khan and another 1981 S C M R 474 ; Ahmad v. Crown P L D 1951 F C 107 ; Fateh Muhammad v. Bago P L D 1900 S C 286 ; Abdul Majld v. Superintendent and Remembrancer of Legel Affairs, Government of East Pakistan P L D 1964 S C 422 ; Feroze Khan v. Capt. Ghulam Nabi P L D 1966 S C 424 ; Usman Khan v. The State P L D 1969 S C 293 ; Noora and another v. The State P L D 1973 S C 469 ; Abdul Rashid v. Umid Ali etc. P L D 1975 S C 227 ; Taj Muhammad v. Muhammad Yousaf etc. P L D 1976 S C 234 ; Farid v. Aslarn P L D 1977 S C 4 and Fazalur Rehman v. Abdul Ghnai P L D 1977 SC 529 ref."*

12. The above principle of law have also been laid down in the case of *Khadim Hussain Vs Manzoor Hussain Shah and 3 others* (2002 SCMR 261). Aforecited fundamental and regulatory principles for conversion of judgment of acquittal

into a conviction judgment have been settled in the case of acquittal appeals, highlighted in the case of Azhar Ali Vs The State (PLD 2010 SC 632). It shall be advantageous to reproduce the relevant paragraph 18 and 19 of the said judgment as follows:

*18. These fundamental and regulatory principles were defined and endorsed from time to time. In the case of "Sheo Swarup and others v. King Emperor" AIR 1934 Privy Council 227(2), it was held that:--*

*".....the High Court should and will always give proper weight and consideration to such matters as:*

*(1) the views of the trial Judge as to the credibility of the witnesses;*

*(2) the presumption of innocence in favour of the accused, as presumption certainly not weakened by the fact that he has been acquitted at his trial;*

*(3) the right of the accused to the benefit of any doubt;  
and*

*(4) the slowness of an appellate Court in disturbing a finding of fact arrived at by a Judge who had the advantage of seeing the witnesses".*

*In Mirza Noor Hussain v. Farooq Zaman and 2 others 1993 SCMR 305, it was observed that:--*

*"..... the judgment of the trial Court is supported by sound reasons and this Court cannot substitute its own findings in place thereof unless.....that the findings..... are*

*'artificial'*

*'shocking'*

*'ridiculous',*

*'based on misreading of evidence'*

*'and leading to miscarriage of justice'."*

*The Court in the case of "Yar Muhammad and 3 others v. The State" 1992 SCMR 96 observed that:--*

*"Unless the judgment of the trial Court is perverse, completely illegal and on perusal of evidence no other decision can be given except that the accused is guilty or there has been complete misreading of evidence leading to miscarriage of justice, the High Court will not exercise jurisdiction under section 417, Cr.P.C. In exercising this jurisdiction the High Court is always slow unless it feels that gross injustice has been done in the administration of criminal justice." ..and*

*"that the judgments of the learned Sessions Judge is perverse or is a result of complete misreading of evidence or that it is due to incompetence, stupidity or perversity that he has*

*reached any distorted conclusions as to produce a positive miscarriage of justice".*

*This judgment also instructively discussed "Ahmed v. The Crown" PLD 1951 Federal Court 107 and "Abdul Majid v. Superintendent of Legal Affairs, Govt. of Pakistan" PLD 1964 SC 426 respectively quoting that:---*

*"Before an order of acquittal is reversed it must be shown that the judgment of the Sessions Judge was unreasonable or manifestly wrong. If two conclusions were equally possible an order of acquittal should not have been reversed."*

AND

*"where he (Trial Judge) has read the evidence fairly, and has formulated grounds of doubt which are not perverse or were illogical or unreasonable, there is a clear risk of departure from the rule of the benefit of the doubt in reversing his findings".*

19. *In the case of "Feroze Khan v. Fateh Khan and 2 others" 1991 SCMR 2220, held:--*

*" .....at best it could be a case of mere difference of opinion regarding appreciation of evidence but this alone is not a good ground for setting aside an acquittal ..."*

13. Federal Shariat Court in the case of Mst. Salma Bibi Vs. Niaz alias Billa and 2 others (2011 PCr.LJ 856) has also settled the principles for deciding appeals against acquittal while placing reliance on the case reported as The State Vs Tanveer-Ul-Hassan and 5 others (2009 PCr.LJ 199), wherein the following points were required to be considered by the appellate Court while hearing an appeal against acquittal:

*"(i) Court will not normally interfere in the verdict of acquittal, (ii) Court will give due weight and consideration to the finding of the lower Court, particularly the trial Court which had the occasion of not only recording the evidence but also watching the demeanor of the witnesses and attending to the plea of the person facing trial, (iii) what is the view of the trial Judge regarding the credibility of witnesses, (iv) verdict of acquittal affirms the initial plea that every person is presumed to be innocent unless proved guilty, (v) it is not a sufficient ground of interference that on re-appraisal of the evidence on record a different view might as well be formed, (vi) whether reappraisal of evidence shows any manifest wrong, perversity or uncalled for conclusion from facts proved on record, (vii) whether the findings arrived at by trial Court are wholly artificial, shocking and ridiculous, (viii) whether material evidence has been disregarded, (ix) whether material evidence has been misread blatantly to an extent that miscarriage of justice has been occasioned,*

*(x) whether evidence has been brought on record illegally, (xi) there is, however, no bar upon the superior Courts to interfere in the acquittal judgment, but the Courts exercise extra caution while exercising jurisdiction in appeals against acquittal, (xii) the rights of accused to any benefit of doubt and (xiii) mere disregard of technicalities in a criminal trial without resulting injustice, is not enough for interference."*

14. It needs to be clarified that from very first glance on prosecution evidence, the story as set up by the prosecution is not inspiring confidence and cannot be considered trustworthy due to contradictions and inconsistencies in between the ocular account and circumstantial/medical evidence. In these circumstances, we are not hesitant to hold that the prosecution has miserably failed to prove its case against the accused/respondent No.1 to 5 beyond shadow of reasonable doubt. Settled proposition of law as laid down by the Hon'ble Supreme Court of Pakistan in an authoritative pronouncement in the case of Muhammad Mansha vs. The State (2018 SCMR 772), in paragraph 4 of the judgment is as follows:

*"4. Needless to mention that while giving the benefit of doubt to an accused it is not necessary that there should be many circumstances creating doubt. If there is a circumstance which creates reasonable doubt in a prudent mind about the guilt of the accused, then the accused would be entitled to the benefit of such doubt, not as a matter of grace and concession, but as a matter of right. It is based on the maxim, "it is better that ten guilty persons be acquitted rather than one innocent person be convicted". Reliance in this behalf can be made upon the cases of Tariq Pervez v. The State (1995 SCMR 1345), Ghulam Qadir and 2 others v. The State (2008 SCMR 1221), Muhammad Akram v. The State (2009 SCMR 230) and Muhammad Zaman v. The State (2014 SCMR 749)."*

15. Suffice it to say that reasoning of acquittal recorded by the learned trial Court does not warrant any interference as impugned judgment does not suffer from lack of appreciation of evidence, the acquittal judgment on the face of it is not based upon surmises and conjectures. A bare reading of impugned judgment does not reflect that the learned trial Court had committed gross injustice in the administration of justice. Keeping in mind the law as

laid down by the August Supreme Court of our country, reproduced herein above, the scope of interference in appeal against acquittal is narrowest and limited because after acquittal the accused shall be presumed to be innocent; in other words, the presumption of innocence is doubled. Resultantly, the captioned appeal is dismissed.

Criminal Miscellaneous Application No. 23-I of 2019 for fixation of said appeal is disposed of.

JUSTICE MUHAMMAD NOOR MESKANZAI  
CHIEF JUSTICE

JUSTICE SYED MUHAMMAD FAROOQ SHAH  
JUDGE

Islamabad the  
25<sup>th</sup> September of 2019  
M.Ajmal/\*\*.

Approved for reporting

**Judge**