

**IN THE FEDERAL SHARIAT COURT**

(Appellate Jurisdiction)

**PRESENT**

**MR. JUSTICE ALLAMA DR.FIDA MUHAMMAD KHAN  
MR.JUSTICE SHEIKH AHMAD FAROOQ  
MR.JUSTICE SHAHZADO SHAIKH**

**CRIMINAL APPEAL NO. 37/I OF 2011**

Mst.Zohra Bibi wife of Rashid Jamil,  
Presently Resident of Deona Mandi,P.O. Basko,  
District Gujrat.

Appellant

Versus

The State and others

Respondents

For the appellant

Appellant in person

For the respondent No.3.

Ch.Abdul Ghaffar, Advocate

Counsel for the State

Dr.Muhammad Anwar  
Gondal,Addl.P.G.Punjab.

FIR No., date  
Police Station

No.449/05,dt.22.8.2005  
P.S Saddar Gujrat.

Date of judgment of Trial Court

16.6.2011

Date of Institution of appeal

16.8.2011

Date of hearing

24.10.2013

Date of decision

24.10.2013

Date of Judgment

24.10.2013

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## JUDGMENT

**SH.AHMAD FAROOQ, J.** – Through the instant criminal appeal, the appellant/Mst.Zohra Bibi has challenged the judgment dated 16.6.2011, whereby the learned Additional Sessions Judge, Gujrat has acquitted respondent No.3/Zafar Shah of the charges under section 16 and 10(4) Offence of Zina (Enforcement of Hudood) Ordinance, 1979 and under section 109 PPC by extending him benefit of doubt.

2. The prosecution story as narrated in the FIR which was lodged by Mst.Zohra Bibi is that on 22.8.2005, while she had gone to the house of her neighbourer/Manzoor Bibi, her daughter namely Saiqa Rashid was taken from her house by Mst.Zubaida Bibi and Mst.Sumaira Bibi on the pretext of visiting the shrine of Baba Hanju Sarkar for lighting *agarbatties* . The youngest daughter of the complainant namely Mst.Asia Rashid also informed the complainant that the said accused/Mst.Zubaida and Sumaira along with two unknown male accused boarded Mst.Saiqa Rashid in a white coloured car and went towards Zaman Hotel. The complainant alleged that the accused have abducted her daughter on the

abetment of Zafar Ali Shah, Zulfiqar Shah, Ahmad Ali Shah and Javed alias Mitho Butt with an intention to kill her. The motive for the occurrence is stated to be the registration of a case earlier by the complainant against the accused regarding the murder of her other daughter namely Mst.Asifa Rashid.

3. After completion of usual investigation, a report under section 173 Cr.P.C was submitted in the learned trial court for taking cognizance of the offences.

4. The learned trial court framed the charge against the accused on 19.3.2011 under sections 16 and 10(4) Offence of Zina (Enforcement of Hudood) Ordinance, 1979 and under section 109 PPC. The accused did not plead guilty and claimed to be tried.

5. The prosecution in order to substantiate the charges against the accused produced nine witnesses. However, the learned Prosecutor gave up P.W. Iftikhar Ahmad being unnecessary and closed the prosecution evidence after tendering the reports of Serologist/Ex.PK and Chemical Examiner/Ex.PL. The learned trial court also examined Mst.Asia Rashid as C.W.1. There is no need to reproduce the gist of the statements of the witnesses of the prosecution in this judgment as the

same has been done by the learned trial court in the impugned judgment dated 16.6.2011. However, the relevant portion of the statements of the witnesses of the prosecution would be discussed and examined in the subsequent paragraphs of this judgment.

6. After the completion of the evidence of the prosecution, the learned trial court examined the acquitted accused/ Zafar Ali Shah as envisaged under section 342 Cr.P.C wherein he categorically denied the occurrence and claimed innocence.

In response to a crucial question during the course of his examination, the Zafar

Shah/present respondents No. 3 replied as follows:

“I am innocent and was also declared innocent in all the successive investigation of police department including RIB, Gujranwala which remained un-challenged and even case was also recommended to be cancelled. Complainant and her other family members are having bad repute and are habitual blackmailer and there many criminal cases registered against complainant, P.Ws and her other family members i.e F.I.R No.62/93 under Article 3/4 Prohibition (Enforcement of Hadd) Order, 1979, P.S Civil Line, Gujrat Ex.DA, FIR No.383/92,250/2001,251/2001,734/86,450/89,435/89 under Article 3/4 Prohibition (Enforcement of Hadd) Order, 1979 at P.S Sadar Gujrat Ex.DB,Ex.DC,Ex.DD,Ex.DE,Ex.DF and Ex.DG respectively. FIR No.249/01,191/96,192/96,269/89,263/89,735/86 under section 13-20 Arms Ordinance police station Sadar Gujrat i.e Ex.DH,Ex.DJ,Ex.DK, Ex.DL,Ex.DM and Ex.DN, FIR No.434/89 under section 353/322/307 PPC, 13 20-65 A.O at P.S Sadar Gujrat i.e Ex.DP.

However, the acquitted accused/Zafar Shah neither opted to make statement on oath in disproof of the charges as provided under section 340(2) Cr.P.C nor produced any evidence in his defence.

7. Upon conclusion of the trial, the learned trial court vide judgment dated 16.6.2011 has acquitted the accused/present respondent No.3 of the charges by extending him benefit of doubt.

8. During the proceedings of the instant appeal, the appellant/Mst.Zohra Bibi made a statement in the court on 18.9.2013 whereby she withdrew the power of attorney executed by her in favour of Muhammad Yousaf Zia, Advocate . She also deposed that she did not want to engage and produce any counsel to address the arguments in the instant appeal. However, she requested that the instant appeal against respondent No.3/Zafar Shah may be decided on merits. Nevertheless, the Additional Prosecutor General Punjab, who was representing the State, did not support the impugned judgment dated 16.6.2011. He submitted the two co-accused namely Mst.Zubaida and Mst.Sumaira Bibi, who enticed away Mst.Saiqa Rashid were not only convicted and sentenced thereof by the learned trial court but also

had undergone their entire period of sentence. He further submitted that there is a specific allegation in the FIR against the present respondent No.3/Zafar Ali Shah to the effect that he along with his co-accused abetted the abduction of Mst.Saiqa Rashid within an intention to kill her. He pointed out that Mst.Saiqa Rashid(victim) while appearing as P.W.3 has clearly stated that Zafar Ali Shah/respondent No.3 during the period of her illegal detention had been committing acts of indecency with her. Lastly, he argued that Zafar Ali Shah had a motive for the commission of the alleged offences as he was earlier involved in the murder of another daughter of the complainant namely Mst.Asifa Rashid. He pleaded for conviction of Zafar Ali Shah/Respondent No.3 for commission of offences under section 16 of the Offence of Zina (Enforcement of Hudood) Ordinance, 1979 and section 109 PPC.

9. Conversely, the learned counsel for the respondent No.3/Zafar Ali Shah vehemently opposed the instant appeal on the ground that there is no incriminating evidence available on the record of the learned trial court for recording conviction and awarding sentence there of to the said respondent. He contended that despite

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an allegation of abetment leveled by the complainant against Zafar Shah and others in the FIR, neither the complainant nor victim produced any witness in support of their allegation, during the trial. He emphasized that the co-accused/ Muhammad Sharif (Respondent No.2) has not only been acquitted by the learned trial court vide judgment dated 16.6.2011 but also this Court vide judgment dated 15.2.2013 has dismissed the appeal of the present appellant against the said order of acquittal. He argued that the case of present respondent No.3/Zafar Ali Shah is on a better footing as compared to Muhammad Sharif, /co-accused, (Respondent No.2) who has already been acquitted.

10. We have heard the appellant in person, learned Additional Prosecutor General Punjab and the learned counsel for the respondent No.3/Zafar Ali Shah. We have also gone through the record of the learned trial court including the impugned judgment dated 16.6.2011 as well as the judgment of this Court dated 15.2.2013.

11. A bare perusal of the FIR would reveal that the only allegation leveled by the complainant in the FIR against Zafar Shah, (present respondent No.3) is that

he along-with his co-accused hatched a conspiracy and abetted the abduction of Mst.Saiqa Rashid with an intent to murder her. In this connection it would not be out of place to mention here that the co-accused of abetment namely Zulfiqar Ali Shah and Ahmad Ali Shah are real brother and father, respectively, of the present respondent/Zafar Ali Shah. We have gone through the statements of all the witnesses including the complainant as well as the victim made in the learned trial court and had not been able to find even mere assertion, what to talk of proof, of any abetment or conspiracy which was allegedly hatched by the present respondent/Zafar Shah for the commission of the offence. No doubt, P.W.2/Mst.Zohra Bibi/complainant alleged a motive to the present respondent as well as Zulfiqar Ali Shah, Ahmad Ali Shah and Javed alias Mithu Butt for the occurrence as they wanted to get a compromise effected in an earlier case which was registered against them in respect of another daughter of the complainant namely Mst.Asifa alias Chanda. But P.W.2/complainant admitted in her cross-examination that she neither mentioned any witness of conspiracy in her application/Ex.PB nor produced any independent witness in this regard. Similarly,

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the victim namely Mst.Saiqa while appearing as P.W.3 only stated that Zafar Ali Shah had been committing acts of indecency with her after putting off her clothes, during the period of her illegal detention in the 'dera' of one Muhammad Sharif. As there is no allegation of 'zina-bil-jabr' against Zafar Shah/ present respondent N.3 falling within the mischief of section 10(4) of the Offence of Zina (Enforcement of Hudood) Ordinance, 1979. Hence, there is no need to discuss the medical evidence furnished by P.W.1/ Lady Dr.Anjum Ara as well as the report of the Chemical Examiner/ Ex.PF and the report of the Serologist/Ex.PK. However, it would be relevant to mention here that one vaginal swab of Mst.Saiqa which was found to be stained with semen by the Chemical Examiner was subsequently declared to be insufficient for semen grouping by Serologist vide his report dated 29.1.2010/Ex.PK. Needless to emphasize that the solitary statement of Mst.Saiqa/P.W.3 to the effect that Zafar Shah/present respondent No.3 had been committing acts of indecency with her after putting off her cloths, is neither confidence inspiring or corroborated by any other independent witness nor would attract the provision of section 10(4) of the Ordinance ibid.

In these circumstances, we hold that the prosecution failed to prove the charge falling under section 10(4) of the Offence of Zina (Enforcement of Hudood) Ordinance, 1979 against the present respondent No.3/Zafar Shah.

12. Similarly, neither in the FIR nor in the evidence of the complainant, particularly, the statements of Mst.Zohra/P.W.2 and Mst.Saiqa Rashid/P.W.3 there is any allegation that the present respondent No.3/Zafar Shah took or enticed away Mst. Saiqa from her house with criminal intent. The allegation of enticing away or abduction was specifically leveled in F.I.R by the complainant against Mst.Zubaida, Mst.Sumaira and two un-known accused. Furthermore, the complainant could not produce any witness in whose presence, Zafar Shah/present respondent No.3hatched the conspiracy or abetted the co-accused for commission of the alleged offence. In this back drop, the necessary ingredients for constituting of an offence falling under section 16 of the Offence of Zina (Enforcement of Hudood) Ordinance, 1979 as well as section 109 PPC are missing in this case.

13. Additionally, there are material contradictions and discrepancies in the statements of the complainant/P.W.2, the victim Mst.Saiqa Rashid/P.W.3 and

P.W.7/Tasawar Ali, who was the Investigating officer of this case. It is also worth consideration that the present respondent No.3/Zafar Shah was declared innocent in various investigations conducted by the police including the one, which was carried by R.I.B Gujranwala and the case against him was recommended to be cancelled. Hence, there are serious dents and doubts in the prosecution story and benefit thereof must be given to the acquitted accused/present respondent No.3 as a matter of right and not as a matter of grace. The animosity between the parties is also fully established from various FIRs, copies of which were produced by the acquitted accused/Zafar Shah during his examination under section 342 Cr.P.C as Ex.DH, Ex.DJ, Ex.DK, Ex.DL, Ex.DM, Ex.DN and Ex.DP. As such, the chances of the false implication of the present respondent/Zafar Shah by the complainant cannot be ruled out.

14. Finally, we cannot ignore the fact that a co-accused namely Muhammad Sharif, who was tried along with the present respondent, was not only acquitted by the learned trial court vide impugned judgment dated 16.6.2011 but this Court has also maintained the said judgment vide its judgment dated 15.2.2013. We would

also like to observe that the case of the present respondent No.3/Zafar Shah is on a better footings as compared to the said co-accused/Muhammad Sharif, against whom there was an allegation, though not proved, of commission of illegal sexual intercourse with Mst.Saiqa Rashid.

15. Before parting with this judgment, we would like to bring on record that this is an appeal against an order of acquittal, which could not be set-aside until the same is found to be perverse, arbitrary or out come of mis-reading or non-reading of evidence, resulting in miscarriage of justice. In the instant case, we have not been able to lay our hands on any illegality or mis-reading and non-reading of the evidence by the learned trial court while delivering the impugned judgment dated 16.6.2011.

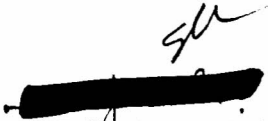
16. The upshot of the above discussion and observations is that the impugned judgment dated 16.6.2011 is un-exceptionable and the same is, accordingly, upheld. Consequently, the instant appeal filed by Mst.Zohra Bibi against the acquittal of present respondent No.3/Zafar Shah is dismissed. Zafar

Shah/respondent No.3 is present in the Court and the bail bonds submitted by him

are discharged and the sureties are ordered to be released.

  
JUSTICE SHEIKH AHMAD FAROOQ

  
JUSTICE DR.FIDA MUHAMMAD KHAN

  
JUSTICE SHAHZADO SHAIKH

Islamabad, 24.10.2013.

M.Akram/