IN THE FEDERAL SHARIAT COURT
(Appellate Jurisdiction)

PRESENT

MR. JUSTICE SYED AFZAL HAIDER

CRIMINAL APPEAL NO.11/P OF 2010

1. Ijaz Ahmed son of Umar
2. Mst. Aseya Bibi d/o Ali Muhammad
   Both residents of Kasoo Tehsil Adenzai, District Lower Dir

Appellants

Versus.

The State

Respondent

Counsel for appellants	....	Mr. MuhammadAjmal Khan, Advocate
Counsel for State	.....	Mr. Muhammad Sharif Janjua, Advocate
FIR No. Date and Police Station	.....	68, 19.01.2010 Ouch, Lower Dir
Date of Judgment of trial court	.....	22.03.2010
Date of Institution	.....	08.05.2010
Date of hearing	.....	10.03.2011
Date of decision	.....	10.03.2011

JUDGMENT:

SYED AFZAL HAIDER, Judge.- Appellants Ijaz Ahmed and Mst. Aseya Bibi have filed this common appeal against the judgment dated 22-03-2010 delivered by learned Sessions Judge/Zila Qazi, Timergara Camp Court at Chakdara.

PRELIMINARY

Both of them were convicted under section 7 of the Offence of Zina (Enforcement of Hudood) Ordinance, 1979 and sentenced to 05 years simple imprisonment each. The benefit of section 382 (b) of the Code of Criminal Procedure was extended to them. Both the appellants were unmarried and minors in terms of section 2(a) of Ordinance VII of 1979.

PROSECUTION CASE

2. Brief facts of this case, as narrated in Ex.P.A. FIR No.68 dated 19-1-2010 registered formally by PW.5 Muhammad Yaqoob Khan S.I. on the Murasala Ex.PA/1drafted by PW.3 Badshah Hazrat SHO Police Station Ouch on the statement of Mst. Aseya Bibi (subsequently made an accused in the instant case), are that on 19-1-2010 at about 15.00 hour accused Ijaz Ahmed came to her house and started committing sexual intercourse with her. In the meantime, her father Ali Muhammad and step mother Mst.

Abida arrived at the spot and locked them in the room as they were seen in objectionable condition. The crime report shows further that police arrived at the spot. Hence, the case was registered against Ijaz accused as well Mst. Aseya Bibi who had reportedly furnished the information.

3. Muhammad Ghani, Sub Inspector, P.W.10 conducted the investigation of this case. He got accused Mst. Aseya medically examined vide application Ex-PW 10/2 dated 20.01.2010 and thereafter received sealed parcels containing swabs through memo of recovery Ex-PW-8/2. He also received last worn clothes of Mst. Aseya Bibi accused vide memo Ex-PW 8/1 as well as the clothes of accused Ijaz Ahmed through Fard Ex-PW 10/7. He produced accused Mst. Aseya Bibi and Ijaz Ahmed before court of judicial magistrate and got recorded their confessional statements. He prepared site plan Ex-PB and recorded statements of witnesses under section 161 of the Code of Criminal Procedure. He sent application Ex-PW 10/12 to Forensic Science Laboratory Peshawar for obtaining report of swabs. After completing investigation he handed over file to the SHO who submitted a report in the court under section 173 of the Code of Criminal Procedure requiring the accused to face trial.

4. The learned trial court framed charge against both the accused on 13-3-2010 under sections 5/10 of the Offence of Zina (Enforcement of Hudood) Ordinance, 1979. The accused pleaded not guilty and claimed trial.

5. The prosecution in order to prove its case produced twelve witnesses at the trial. The gist of evidence given by witnesses is as follows:-

(i) Dr. Sanaullah appeared as P.W-1. He had conducted medical examination of accused Ijaz Ahmed on 20-1-2010 and found him fit to perform sexual act. The doctor in his report stated that: "Deep urethral and shalwar cut piece (seminal stained) were taken and sealed for analysis and handed over to police for FSL" i.e,

(ii) Lady doctor Najma Mukhtiar appeared as P.W-2 to state that she conducted medical examination of accused Mst. Aseya Bibi. The witness opined that Mst. Aseya was used to sexual intercourse;

(iii) Badshah Hazrat, SHO appeared at the trial as PW-3 to state that on the report of complainant he prepared *Murasala* Ex.PA/1 and sent the same to police station for registration of formal FIR. He arrested both the accused Ijaz as well as the complainant Mst. Aseya Bibi whom the witness declared as accused in this case. After completing the investigation he prepared report under section 173 of the Code of Criminal

Procedure and submitted the same to the trial court requiring the accused to face trial;

(iv) Nadeem Akhter, Judicial Magistrate, PW-4 recorded confessional statement of Mst. Aseya Bibi on 20-1-2010 whereas the statement of Ijaz Ahmed appellant was recorded on 21.01.2010 under section 164 of the Code of Criminal Procedure after observing legal formalities as prescribed in section 364 ibid;

(v) Muhammad Yaqoob Khan, Sub-Inspector appeared as PW-5 to depose that he recorded formal FIR Ex-PA/1 on receipt of Murasala Ex.PA;

(vi) Ali Muhammad, father of appellant Mst. Aseya Bibi appeared before the learned trial judge as PW-6. He stated that on 19-1-2010 he heard cries whereupon he knocked at the door which was opened by Ijaz accused. His daughter Aseya Bibi was also in the room whereafter he bolted the door from outside. He then consulted his relatives whereafter the police came at the spot and firstly took him to police station and afterwards the two accused were nabbed by local police. The witness claimed that his grievance complaint was only against Ijaz accused who had trespassed in his house.

(vii) Mst. Shakeela, sister of accused Mst. Aseya Bibi, appeared as PW-7 to corroborate statement of her father PW-6 Ali Muhammad; However she also did not allege Zina having been

witnessed by her. She conceded that she was not present in the house at the time of occurrence.

(viii) Mst. Jehan Begum PW-8 lady Constable 1165 had attested recovery memo Ex.PW-8/1 relating to clothes of accused Mst. Aseya Bibi and recovery memo pertaining to sealed bottle Ex.PW-8/2 as well as the memo of search Ex.PW-8/3;

(ix) PW-9 Tahir Shah, ASI, stated that the place of occurrence was shown by the accused while in custody on 21.01.2010. On this information pointation memo Ex.PW-9/1 was prepared. This document was attested by Tahir Shah as marginal witness.

(x) Muhammad Ghani, Sub-Inspector appeared at the trial as PW-10 and stated about the part of the investigation conducted by him in this case whose detail has already been mentioned in an earlier paragraph of this Judgment;

(xi) Bahadar Zaib, Constable No. 724 appeared as PW-11 to state that he was a marginal witness of memo of recovery of last worn clothes of accused Ijaz Ahmed which the I.O. took into possession vide recovery memo Ex.PW-10/7. Memo of recovery of swabs, Ex.PW-10/6, and memo of pointation of Ex.PW-9/1 of the place of occurrence also bear his signatures as marginal witness;

(xii) Amir Nawab, Head Constable No.202, appeared as PW-12 and stated that he received five parcels from Muharrar of Thana and deposited the same intact in the FSL Peshawar office.

THE DEFENCE PLEA

6. The prosecution closed its case on 13.03.2010. Thereafter statements of accused were recorded under section 342 of the Code of Criminal Procedure. The accused Ijaz Ahmed in answer to question, "Why the P.Ws have deposed against you?" stated that the witnesses for prosecution were interested and made false statements. No independent witness had deposed against him. His co-accused Mst. Aseya Bibi denied the allegation of illicit sex in her statement under section 342 of the Code of Criminal Procedure. She urged that no one had charged her for Zina during the trial. She alleged that her father at the behest of her step mother had involved her in this false case. She also stated that the confessional statement was given under police pressure.

7. Total eleven questions were put to her by the learned trial court during her examination without oath. The most important question i.e, Did you lodge crime information on 19.01.2010 before PW.3 Badshah Hazrat S.H.O. Police Station Ouch at 15.00? was not put to her. Ijaz accused neither opted to make statement on oath under section 340 (2) of the Code of Criminal Procedure nor produced any evidence in his defence. Mst. Aseya Bibi however made a short and pithy statement on oath on 15.03.2010 in the presence of her counsel as under:

> That she has been arrayed in this case as an accused person; The Court may decide the case but she would not go to the house of her parents or other relatives because her life was in serious danger at hands of her parents and other relatives.

She also signed the statement made on oath before the learned trial court.

8. The learned trial court after close of the prosecution case and recording statements of accused and completing all legal formalities, returned a verdict of guilt against both the accused facing trial under section 7 of Offence of Zina (Enforcement of Hudood) Ordinance, 1979. Conviction and sentences were recorded as noted in the opening paragraph of this Judgment. Being aggrieved of the result of trial, the two appellants have jointly moved the present appeal for appraisal of the impugned judgment.

THE IMPUGNED JUDGMENT

9. The reasons that found favour with the learned trial court for recording conviction and consequent sentences against the appellants have been mentioned in the judgment under challenge. The relevant portion of the impugned verdict is being reproduced as under:-

> "It may be observed that subsequently Mst. Aseya Bibi herself lodged an FIR, in which she has admitted that at the time of occurrence they were caughted red handed by her father and step mother and witnessed them in

objectionable condition. Since, subsequently Mst. Aseya Bibi was arrayed as an accused person in the instant case, therefore, her this version in the shape of FIR, is inadmissible according to Art. 38 of Qanoon-e-Shahadat Order1984, as it amount to confession before a Police Official. However, it is pertinent that after the arrest of Mst. Aseya Bibi, she was produced before the court of Illaqa Qazi/Judicial Magistrate on 20.01.2010, for recording her confessional statement, where her confessional statement Ex.PW.4/1 was recorded, in which she had admitted her guilt. Similarly, on 21/01/2010, accused Ijaz Ahmed was also produced before the court of Illaqa Qazi for recording his confessional statement, who too has admitted his guilt. Although, both the accused have retracted their respective confessional statements at the stage of trial in their statements recorded U/S 342 Cr.P.C. But it is settled principal of law that on the basis of retracted confession alone an accused can be convicted and sentenced for the offence charge with but, the rule of prudence and caution requires that before placing reliance on retracted confession the same must be corroborated by the other facts and circumstances of the case, which corroboration of evidence is fully available in the instant case. It may be observed that the said confessional statement of the accused were recorded by a Judicial Magistrate having sufficient knowledge of law, who has provided sufficient time and opportunity to both the accused for pondering over the matter before recording their confessional statements, all the relevant and necessary question were put to the accused. It is pertinent that Mst. Aseya Bibi was produced before the court of Judicial Magistrate for recording confessional statement without obtaining any

police custody, this aspect of the matter totally exclude the possibility of torture, pressure and undue influence on the part of local police. Moreover, both the confessional statements are exculpatory in nature, in which both the accused have admitted their guilt. Though the said Magistrate Namely Nadeem Akhter (PW.04) was cross examined at great length but nothing beneficial were squeezed from his mouth in favour of accused. Therefore I feel no hesitation to hold that both the accused have voluntarily got recorded their confessional statements before the Magistrate, in which they have admitted their guilt, Beside that, the said retracted confessions are also fully supported by the statement of PW.06 and PW.07, who have categorically stated that both the accused were found in one and the same room of the house of PW.06. Beside that the female accused was also examined by the lady doctor namely Najma Mukhtiar, who was examined as PW.02, according to her statement not only the hymen of Mst. Aseya Bibi was found ruptured. But as per her opinion Mst. Aseya is used to sexual intercourse, as her begin easily allowed two fingers without pain.

The crux of the above discussion is that, it is a daylight occurrence, the accused are directly charged for the commission of offence; sufficient circumstantial evidence in the shape of PW.06 and PW.7, coupled with the retracted confessional statements of both the accused alongwith medical evidence are available on file, from which it proved beyond reasonable shadow of doubt that both the accused are guilty for the offence charged with."

10. I have gone through the file. The evidence brought on record including the statements of accused recorded under sections 164, 340(2) and

342 of the Code of Criminal Procedure have been perused. Relevant portions of the impugned judgment have been examined.

11. After careful perusal of the file I was not at all persuaded to maintain the conviction and consequent sentences awarded by learned trial court. I therefore did not call upon the learned counsel for the appellants to address the Court to challenge the verdict of guilt but asked the learned counsel for the State straight away to advance reasons why the convictions and ensuing sentences be not set aside . Learned counsel for the State urged vehemently *that the accused had herself lodged and signed the FIR* and that both the accused were caught red handed and both of them had made voluntary confessions before a Magistrate. In his view, it was maintained, that the verdict of learned trial court did not merit interference.

OBSERVATIONS AND FINDINGS

12. I have examined the chronology of events as narrated by prosecution as well as the evidence brought on record. My observations and findings as a result of evaluation of the same are detailed below:-

i. The information laid to police was in consequence of consultation and deliberation by PW.6 Ali Muhammad with his relatives. The witness admitted that he had himself invited his relatives for consultation before the

arrival of police.

ii. PW.3, Badshah Hazrat of Ouch Police Station stated that he was on patrol duty when he received information whereupon he reached the place of occurrence where the complainant Mst. Aseya Bibi (the appellant) in the presence of her father (P.W.6) laid information which was recorded as Murasala Ex.PA/1. The other thing done by him was to transpose the complainant Mst. Aseya as an accused and issue directions (to subordinate officers) to proceed further in the case. The other step undertaken by him in this case was "completion of Challan" against the appellants. This witness admitted that he had heard the story from the parents of Mst. Aseya Bibi but he did not deem it expedient to make them the complainant party. He also admitted that before recording the crime report he was in contact with parents of the female appellant. This sort of conduct by Station House Officer is beyond comprehension. What factors prompted him to firstly make the minor Mst. Aseya Bibi a complainant, and then after deliberations he proceeded to declare her an accused person. This performance was enacted after he had been in fact instructed by the people present there. This is not bona-fide action. It reflects extraneous influence. He denied the appellant Mst. Aseya Bibi the opportunity of a fair trial. A fair trial presupposes an independent and fair investigation. A fair trial becomes difficult if the investigation is one-sided. The purpose of investigation is to collect evidence of the crime and not to apportion blame straight away before even the commencement of formal investigation;

iii. PW.6 however did not utter a single word about the manner, mode, time or place of recording the crime report. His evidence does not support

the version of PW.3 about recording of FIR at the spot. In fact the essence of his evidence is that he was offended by the presence of Ijaz appellant in his house. Learned counsel for the female appellant had on 13.03.2010 moved an application, after P.W.6 had been cross-examined by the learned counsel for Ijaz appellant, urging that he did not want to cross-examine the witness as he had not *"claimed anything against the female accused"*.

iv. Learned trial court, as indicated above, found that the statement in the nature of a confession Ex.PW 4/2 recorded by PW.4 was inadmissible in view of Article 38 of Qanun-e-Shahdat Order 1984. According to this provision " no confession made to a police officer shall be proved as against a person accused of any offence.." First Information recorded on the confessional statement of an accused has always been excluded from consideration by the Courts. Learned counsel for the State however urged strenuously that the appellant had lodged and signed an inculpatory statement before the police and also made a judicial confession before a Magistrate. This is no doubt the factual position but we have to examine the legality of the various circumstances. The assertions of prosecution have not to be accepted as gospel truth. The principle of law referred to by the learned trial court finds mention in the following reports:

i. Nisar Ali Vs. The State of Uttar Pardesh
PLD 1957 SC (India) 297

A first information report is not a substantive piece of evidence and can only be used to corroborate the statement of the maker under section 157, Evidence Act, or to contradict it under section 145 of that Act. It cannot be used as evidence against the maker at the trial if he himself becomes an accused, not to corroborate or contradict other witnesses.

ii. The State Vs. Ghandal

PLD 1960 Peshawar 137

Confessional statement of an accused incorporated in the first information report cannot be used against him as it amounts to a confession to a police officer which section 25 of the Evidence Act, 1872 does not allow to be proved. However, there is no legal bar to the use of such a confession in favour of the accused.

iii. Ghulam Muhammad and another Vs. The State.
PLD 1961 Lahore 146 (DB)

A first information report which amounts to a confession is not admissible, being a confession made to a police officer, but a F.I.R. not amounting to a confession can be admitted in evidence. However, a report of latter kind which is made by an accused and not witness, cannot be treated as evidence against the co-accused.

iv. Muhammad Saleh Vs. The State
PLD 1965 SC 366

Muhammad Saleh himself went to the Police Station to report the matter. What he said was recorded at 11.30.a.m., on the 26th February. That statement was inadmissible in evidence on account of its inculpatory nature.

v. Gullan and 2 others Vs. The State
1976 PCr.LJ 1.

The statement made by appellant Gullan incorporated in the F.I.R. (Exh.18) was clearly of an inculpatory nature and was, therefore, inadmissible in evidence. Reliance was placed on the three following reports:-

i. Muhammad Bux vs. State PLD 1956 SC (Pak) 420;

ii. Muhammad Saleh vs. State PLD 1965 SC 386 and

iii. Sulleman Shah vs. Ayub and others PLD 1971 SC 751 ref.

vi. A First Information Report is supposed to be the basis of the charge in a criminal case initiated on information laid before

police in a cognizable case. The extent of sanctity attached to this document can be measured from the fact that persons nominated as accused and having played some role in the alleged commission of a cognizable offence can be denied the privilege of bail even though the complainant neither makes a statement on oath nor is obliged to produce witnesses before the police officer at the time of lodging a crime report. In this view of the matter, when it become clear that such a document was prepared on instruction after discussion and debate with relatives of the complainant, the report becomes a suspect record of information. Of course correctness of the allegation is not a legal requirement for lodging a FIR because what is legally required is that there should be information about the commission of a cognizable offence but the judicial mind while assessing the prosecution evidence for the purpose of determining the culpability of an accused cannot be oblivious of such a motivated step at the initial stage of the case. In the instant case neither the father nor the sister came forward to lay information with incharge of local police station who had arrived at the place of occurrence and had been properly instructed by the parents of Mst. Aseya Bibi before recording the Murasla. The fact that the police officer, knowing the law fully well that inculpatory statement by a person before a police officer cannot be used against him/her opted to record FIR on the basis of a confessional statement of Mst. Aseya Bibi and

then arrayed her as an accused certainly shows malice on the part of police officer;

vii. I have dilated upon the question of First Information Report only because learned counsel for the State laid stress on this aspect of prosecution case. In order to appreciate the correct legal position a discussion on this issue had therefore become necessary. First Information Report can be proved at the trial by producing the complainant who laid information before police. The facts mentioned therein cannot be taken into account against the accused unless the living maker of the statement has appeared at the trial. This document as well as recovery or other memos prepared by police can be proved only because Article 153 of the Qanoon-e-Shahadat Order, 1984 stipulates as under:-

> "**Former statements of witness may be proved to corroborate later testimony as to same fact.** In order to corroborate the testimony of a witness, any former statement made by such witness relating to the same fact at or about the time when the fact took place, or before any authority legally competent to investigate the fact, may be proved".

In view of what has been stated above the document Ex.PA purported to be a First Information Report based upon a Murasla Ex.PA/1 recorded on the statement of appellant Mst. Aseya Bibi in this case does not exist in the eyes of law. The

argument of learned counsel for the State that the female appellant herself lodged the First Information Report is therefore of no consequence. Reference may be made to the case of Muhammadullah Vs. The State PLD 2001 Peshawar 132 where is was held as under:-

> "First of all we examine the FIR and its probative value. As is clear from its contents it was recorded on the basis of the statement made by the appellant. There is no cavil and quarrel with the proposition that the FIR itself is not a substantive piece of evidence unless its content is affirmed on oath and subjected to the test of cross-examination. It, as far as the provisions of section 154 of the Cr.P.C., Articles 140 and 153 of the Qanun-e-Shahadat Order, are concerned is a previous statement which can be used for the purpose of contradicting and corroborating its maker. So long as it is not proved in accordance with the law mentioned above, it is, as such, no evidence and, therefore, cannot be taken as a proof of anything stated therein. But when it is based on a statement made by an accused, as in this case, before the police which tends to incriminate him with reference to the offence he is charged with, in that even, it being inadmissible in evidence by virtue of Article 38 of the Qanun-e-Shahadat Order, is not even worth

the paper it is written on, hence has to be left entirely out of account".

viii. Under the circumstances the conclusion is that First Information Report is non-existing in this case because this document is violative of legal provision contained in Qanoon-e-Shahadat. In the absence of a First Information Report, even though it is not a substantive piece of evidence, we are left only with the testimony of two eye witnesses namely PW.6 Ali Muhammad the father and PW.7, Mst. Shakeela, the sister of appellant Mst. Aseya Bib. None of them has alleged Zina being committed in their view. PW.6 states that his only worry is that accused entered his house without his permission. The evidence is to the effect that both the accused were in a room but no one alleges to have seen them even partly naked. Both the accused are related with each other. They are neighbours. The chance of a meeting between the two, when there was no body in the house of P.W.6, cannot be ruled out but secret contacts between two aficionados is not at all hit by the mischief of sections 7 or 10 of Ordinance, VII of 1979. It may be recognized as a social or a moral wrong in a section of society. It may also be discouraged on religious basis but the courts can record conviction on those acts or omissions which have been declared as offences by an existing law. Ordinance

VII of 1979 does neither prohibit young people from expressing emotive expressions nor declare such a thing as an offence.

ix. The testimony of Mst. Shakeela PW.7, under the circumstances does not inspire confidence. Not only that she was not at home and had come on the call of his father after he had locked the two accused in the room, but she cannot otherwise be believed particularly because she says that during *all this time the accused were in an "objectionable position."* She was not present when the two accused had met in the room.

x. The prosecution case is that appellant Mst. Aseya Bibi was medically examined by lady doctor Najma Mukhtar who had taken vaginal swabs on 20.01.2010 and delivered to lady constable which were delivered to the Investigating officer vide memo Ex.PW.8/2. Ijaz appellant was also medically examined on 20.01.2010 by PW.1 Dr. Sana Ullah who had obtained "deep urethral and shalwar cut piece (seminal stained)" and handed over the same to police for analysis by F.S.L. The prosecution failed to produce either the positive report of the Chemical Examiner or Forensic Science Laboratory to verify semen contamination either on the swabs relating to the female appellant or clothes of the male appellant. Prosecution is supposed to produce best possible

evidence. The courts do not condone serious lapses on the part of prosecution. Report of Chemical Examiner or Forensic Science Laboratory should not have been suppressed from courts. Suppression of relevant and reliable evidence is blameworthy as indicated by Ayah 42 of Chapter 2, Sura Al-Baqrah of Holy Quran:-

> "Do not confound Truth by overlaying it with falsehood, nor knowingly conceal the Truth".

It is therefore confirmed that Zina did not take place.

xi. It is proved on record that there was a step mother in the house. The birth mother of appellant Mst. Aseya Bibi is dead. The appellant has asserted in both the statements that she was involved on the instigation of her step mother. I am not sure what actually happened and the way it happened but lurking doubt persists as to why the report was not lodged by any male adult member of the house. Who stopped the father from becoming the complainant and who persuaded him to instruct the police officer to record confessional statement of the female appellant at the outset?

xii. It is a well settled principle of law that convincing legal evidence alone is the factor which determines culpability of an accused. If a situation can be explained away in favour of an accused person then he is entitled to its

benefit. Of course the court has to sift chaff from grain but the principle of safe administration of justice has also to be kept in view. The quality and not quantity of evidence is the decisive element. Islamic principles lay emphasis on production of reliable direct evidence or strong circumstantial evidence to bring home the guilt to the accused. Ayah 36 Chapter 10 Surah Younus of Holy Quran proclaims:

> "Most of them only follow conjectures; and surely conjectures can be no substitute for the Truth. Allah is well aware of whatever they do".

Reference may also be made to Ayah No.6 Chapter 49, Surah Al-Hujrat where the believers have been instructed to ascertain the truth of every information that reaches them lest they hurt someone un-wittingly and then repent on what they had done. This is the guiding criteria given by Holy Quran for safe administration of justice. This principle has to be kept in view at the time when evidence is being appreciated particularly for the purpose of determining the guilt or otherwise of an accused.

xiii. After I had heard the learned counsel for the State, learned counsel for the appellant stated at the Bar that the appellants are emotionally attached to each other and they genuinely desire to marry each other. The learned

counsel in response to a Court question stated that he has made this statement with full responsibility. A statement made at the Bar has to be honoured. Consequently the proposed step merits approval and encouragement. Ayah No.3 of Chapter 4, Surah An-Nisa is a pointer to the fact that men may marry those women who are agreeable to such a proposed union. Since both the appellants have suffered on account of a common factor so the chances are that they would have learnt a lesson in the prison solitude. The travails of incarceration would help them make mends in future. If the female appellant apprehends reprisals at the hand of her father, step mother and other relatives then it is better she marries a person who had already expressed fondness for her when his statement was being recorded by the Magistrate. The female appellant will not only be enabled to lead a normal life but will get a secure home and may be her parents reconcile with the changed circumstances in due course of time. It may also be mentioned that Kindness of Allah is without bounds. He has declared in Ayah 222 of Chapter 2, Surah Al-Baqara that He loves those who undertake Tawbah, i.e, abstain from evil and keep themselves pure.

xiv. I am not inclined therefore to maintain the conviction under the given circumstances. It would not be advisable

to expose the female appellant to any retaliatory episode in the event of her release. If advised, it will be better if the appellants marry soon after their release and lead a life in accordance with the dictates of Shariah.

xv. Not being convinced with the findings of the learned trial court I had already dictated a short order this morning by which the impugned judgment was set aside and the appellants were directed to be released forthwith in the following terms:

> "Arguments heard. For reasons to be recorded later in the day, the appeal is accepted. The convictions and sentences of both the appellants recorded by the trial court in the impugned judgment dated 22.03.2010 delivered in Zina Juvenile Case No. 01 of 2010 are hereby set aside. Both the appellants i.e. Ejaz Ahmed and Mst. Aseya Bibi are directed to be released forthwith unless they are required in some other case."

13. The reasons for the short order mentioned above have been put down in this judgment.

[redacted]

JUSTICE SYED AFZAL HAIDER

Islamabad the 10th March, 2011
Mujeeb ur Rehman/*

Fit for reporting

[redacted]

JUSTICE SYED AFZAL HAIDER