IN THE FEDERAL SHARIAT COURT
(Appellate/ Jurisdiction)

PRESENT

MR.JUSTICE MUHAMMAD JEHANGIR ARSHAD
MR.JUSTICE SHEIKH AHMED FAROOQ.

CRIMINAL APPEAL NO.136-L-1999

Mst.Lal Khatoon wife of Jalal Din, Caste Dephal,
Resident of Chah Peer Wala, Mauza Dephal,
Tehsil Jalalpur Pirwala, District Multan

Appellant

Versus

1. The State
2. Hazoor Bakhsh son of Jan Muhammad,
   Caste Dephal, Tehsil Jalalpur Pirwala
   District Multan

Respondents

For the appellant	...	Sheikh Khizar Hayat, Senior Advocate.
For the respondent No.2	...	Respondent in person
For the State	...	Mr.Humayun Aslam, D.P.G.
No.Date of FIR Police Station	...	No.257,dt.8.11.1988 P.S Jalalpur Pirwala,Distt:Multan
Date of order of Trial court	...	6.7.1999
Date of Institution	...	17.8.1999
Date of hearing and decision	...	20.3.2014
Date of judgment	...	21.3.2014.

JUDGMENT

SH.AHMAD FAROOQ, J. - Through the instant criminal appeal, appellant/Mst.Lal Khatoon, has challenged the judgment dated 6.7.1999 delivered by the learned Additional sessions Judge Multan, Camp at Jalpur Pirwala whereby accused/ present respondent No.2/Hazoor Bakhsh was acquitted of the charge under section 10(3) of Offence of Zina (Enforcement of Hudood) Ordinance, 1979.

2. Succinctly, the allegations leveled by the complainant/ appellant/Mst.Lal Khatoon in the FIR/Ex.PA/1 registered on 8.11.1988 at P.S Jalalpur Pirwala, District Multan are that six days earlier at about 'zuhar wella', she was going from Chah Pirwala to look after her cattle and when she reached at Chah Jogiwala, Hazoor Bakhsh/accused, who had hidden himself behind the store of Chaff, in naked condition with a knife in his hand confronted her. The accused threatened the complainant, forcibly put off her shalwar after breaking the string of the shalwar and then threw her on the ground and committed 'zina-bil-jabr' with her. The accused fled away from the scene of crime after taking his clothes and knife on hearing some noise.

Meanwhile, witnesses namely Qadir Bux and Wahid Bux came there and they identified the accused/Hazoor Bux. The complainant narrated the whole incident to the said P.Ws. The complainant explained that the delay in lodging the FIR/Ex.PA/1 occurred due to non-availability of her husband and 'Daiver' Karam Din, who had gone to Karachi and Bahawalpur, respectively.

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 14.1.1996 under section 10 of Offence of Zina (Enforcement of Hudood) Ordinance, 1979. The accused did not plead guilty and claimed to be tried.

5. The prosecution in order to substantiate the allegations and prove the charge, produced six witnesses during the trial. The ocular account of the occurrence was furnished by the complainant/victim/Mst.Lal Khatoon while appearing as P.W.1. Another eye witness/Wahid Bakhsh appeared as P.W.2 & deposed that he along-with Qadir Bakhsh had seen the accused/Hazoor

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Bakhsh committing 'zina' with Mst.Lal Khatoon. The medical evidence was tendered by P.W.5/Lady Dr.Mrs.Rashida Suharworthy who examined the victim/Mst.Lal Khatoon on 8.11.1988. P.W.5 also placed on record the reports of Chemical Examiner/Ex.PH and Ex.PJ. P.W.5 opined that the victim was subjected to sexual intercourse. P.W.4/Anwaar Hussain retired S.I was the I.O of this case and he narrated the various steps taken by him during the investigation including the arrest of the accused on 3.12.1988. The remaining witnesses are formal in nature. There is no need to reproduce the statements of the witnesses of the prosecution as the same has been done by the learned trial court in the impugned judgment. However, the relevant portions of the statements of the witnesses would be discussed in the subsequent paragraph of this judgment.

6. After closure of the evidence of the prosecution, the accused was examined under section 342 Cr.P.C, wherein he categorically denied the case of the prosecution and deposed that the P.Ws were closely related to the victim. Wahid Bux/P.W.2 is the brother of the husband of Mst.Lal Khatoon. They have deposed against him falsely due to enmity. Neither the accused

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opted to make his statement under section 340(2) Cr.P.C on oath nor produced any witness in his defence.

7. Upon conclusion of the trial, the learned trial court vide judgment dated 6.7.1999 , acquitted the accused as mentioned herein before in para-1 of this judgment.

8. Sheikh Khizar Hayat, Senior Advocate, learned counsel for appellant submitted that the present appellant/Mst.Lal Khatoon had no motive for false implication of the acquitted accused/Hazoor Bux/respondent No.2. He further submitted that the statement of the victim/P.W.1 is not only trust worthy but also fully corroborated by the medical evidence as well as the report of the Chemical Examiner, who found the shalwar and the vaginal swabs of the victim stained with semen. He claimed that the absence of any mark of violence on the body of Mst.Lal Khatoon/victim is neither significant nor fatal to the prosecution case as she was completely over awed by the accused. He emphased that the knife could not be recovered by the I.O during the investigation and the prosecution story does not become doubtful due to any lapse on the part of the I.O. He contended that the delay in

registration of the case has been fully explained by the complainant. He further contended that the impugned judgment is the result of mis-appreciation and mis-reading of the evidence available on the record. He also submitted that the minor contradictions in the statements of the P.Ws are not material as they were being examined after at least seven years of the occurrence. He argued that the learned trial court illegally evaluated the evidence in favour of the accused and delivered a laboured judgment, which is not supported by any cogent evidence available on record. He prayed for setting aside the impugned judgment dated 6.7.1999 and for recording the conviction of the respondent No.2/Hazoor Bux under section 10(3) of the Offence of Zina (Enforcement of Hudood) Ordinance, 1979 and awarding sentence thereof.

In support of his arguments, learned counsel for the appellant has relied upon the following reported judgments:

1) 1975 SCMR-69 (Haji Ahmad Vs. The State)
2) 2001 SCMR-424 (Imran Ashraf and 7 others Vs. The State)
3) PLJ 1982 FSC-58 (Janoo alias Jan Muhammad Vs. the State)
4) PLJ-1988-FSC(Bayazeed alias Kali Vs.The State)
5) 2004 YLR 602 (Gulsher and another Vs.The State)
6) PLJ 2002 FSC-49(Mst.Zafran Bibi Vs. The State)

9. Conversely, the learned D.P.G for the State, while supporting the impugned judgment dated 6.7.1999, submitted that the prosecution could not prove the case against the acquitted accused/present respondent No.2beyond reasonable shadow of doubt and as such, he was rightly acquitted by the learned trial court. He further submitted that there were material contradictions in the statements of the victim/P.W.1 and the only eye witness i.e Wahid Bakhsh/P.W.2. He highlighted that neither any mark of violence was found on the body of the victim nor the knife, which the accused was allegedly carrying at the time of the occurrence, was recovered from him during the investigation. Lastly, he argued that this is an appeal against acquittal and presumption of double innocence is attached to the accused after his acquittal by the learned trial court.

10. Respondent No.2/Hazoor Bakhsh; who is present in the court today, submitted that he has been falsely implicated in this case by the complainant party due to previous enmity.

11. We have heard learned counsel for the appellant as well as learned D.P.G in addition to examining the record and the impugned judgment dated

6.7.1999. We have also heard the respondent No.2/Hazoor Bakhsh, who was present in the court at the time of hearing of the instant appeal.

12. Admittedly, there is a delay of six days in the registration of the case as the occurrence took place on 2.11.1988 whereas the FIR was lodged on 8.11.1988. However, the complainant has given a plausible explanation for the delay in registration of the case as her husband was away to Karachi in order to earn his livelihood. The complainant lodged the FIR only when the brother of her husband namely Karam Din came back from Bahawalpur. The complainant/P.W.1 is an illiterate female and she cannot be expected to approach the police alone for registration of a case regarding an occurrence wherein she was subjected to 'zina-bil-jabr'. In this back drop, we are of the considered view that the explanation tendered by the complainant regarding the delay in the registration of the case, is genuine and plausible. Hence, no adverse inference could be drawn regarding the truthfulness of the prosecution story, merely, due to delay in the registration of the case.

13. As far as the minor contradictions between the statements of the victim/P.W.1 and P.W.2/Wahid Bux, which have been pointed out by the

learned D.P.G during the argument, are concerned, the same are neither material nor sufficient to disbelieve the prosecution story as the statements of the witnesses were recorded by the learned trial court after more than seven years of the occurrence. Even otherwise, the contradictions between the statements of the witnesses were required to be proved in accordance with Article 140 of the Qanun-e-Shahadat Order, 1984 but the same was not done in the instant case. None of the witnesses was confronted with his earlier statement for the purposes of contradicting him . In this regard, we would like to refer to the case of Imran Ashraf and 7 others Vs. The State reported as 2001 SCMR-424. A similar view was expressed by the Federal Shariat Court in a judgment reported as PLJ 1982 FSC-58. The most important factor is as to whether P.W.2/Wahid Bakhsh reached the place of occurrence at the relevant time or not. In this connection, we would like to observe that the presence of P.W.2/Wahid Bakhsh at the time of occurrence was not challenged by the learned counsel for the accused during the cross-examination before the trial court. Secondly, he identified the accused while

he was fleeing away from the scene of the crime. Hence, despite minor contradictions in the statement of P.W.2, his evidence cannot be discarded.

14. Adverting to the argument advanced by the learned D.P.G that no mark of violence or injury was found on any part of the body of the victim/P.W.1 by the lady Dr.Mrs.Rashida Sohrworthy/P.W.5. Suffice to observe that accused/Hazoor Bakhsh was only about 22 years old whereas the age of the victim/Mst.Lal Khatoon(P.W.1) was 38 years at the time of occurrence. It has been held in a judgment reported as 1975 SCMR-69(Haji Ahmad Vs.The State) that mere absence of marks of injury or violence on victim's body would not imply non-commission of rape. Existence of marks of struggle, presupposes struggle which depends on capability of victim to offer resistance. In the instant case, the victim/P.W.1, who is a married lady, was suddenly over powered by a young man/accused and as such, she could not have resisted the assault with her physical force. Similarly, the non-recovery of the knife, which was being carried by the accused at the time of the occurrence, is not fatal to the prosecution story as the complainant cannot be held liable for any lapse on the part of the investigating officer. Even

otherwise, the recovery of weapon of offence is a corroborative piece of evidence, which is not essential in a case of 'zina-bil-jabr'. In such like cases, the most important witness is the victim and if her statement is trust worthy and reliable, then conviction can safely be recorded on her evidence. In the present case, we have observed that there was no previous enmity between the complainant and the accused, which could have resulted in the false implication of the accused. The complainant is a married lady and there is no reason as to why she should level a false charge of rape against an accused, as it is equally disastrous for her own and her family's reputation. The acquitted accused/present respondent while recording his statement under section 342 Cr.P.C in the learned trial court could not give any reasonable explanation for his alleged false implication in this case or any instance to prove previous enmity. The Superior Courts in number of cases have repeatedly held that in cases of 'zina', the solitary statement of the prosecutrix/victim, if found to be confidence inspiring is sufficient to record conviction of the accused without any corroboration. Moreover, as laid down in 2002 SCMR-1009, corroboration is not a rule of law but that of prudence.

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Acid test of the veracity of the statement of the prosecutrix, no doubt, is the inherent merit of her statement because corroborative evidence alone could not be made a basis to record conviction.

15. We cannot ignore the fact that the shalwar as well as the swabs taken from the vagina of the victim/P.W.1 were found to be stained with semen by the Chemical Examiner vide his reports dated 29.11.1988. The lady Dr/P.W.5 also categorically stated that the victim was subjected to sexual intercourse. The statement of the victim/P.W.1 is fully supported and corroborated by the medial evidence. In these circumstances, there was hardly any justification for the learned trial court to acquit the accused of the charge. The learned trial court did not appreciate the evidence produced by the complainant in its true prospective and erred in law while acquitting the accused.

16. We are conscious of the fact that an accused after his acquittal from the trial court acquires double presumption of innocence but finding of acquittal is not sacrosanct, if the reasons given are of speculative or artificial in nature or the same is based on evidence or misreading or misinterpretation of evidence or the conclusions drawn as to the guilt or the innocence of

accused are perverse resulting into miscarriage of justice. A reference in this regard could be made to a judgment of the Apex Court report as PLD 2004-SC-37.

17. The upshot of the above discussion and observations is that the prosecution had proved the charge under section 10(3) of the Offence of Zina (Enforcement of Hudood) Ordinance, 1979 against the acquitted accused/present respondent No.2/Hazoor Bakhsh beyond reasonable shadow of doubt and the learned trial court mis-read the evidence, which has resulted in mis-carriage of justice.

18. For the foregoing reasons, the impugned judgment dated 6.7.1999, whereby the learned trial court has acquitted the accused, is set-aside. Admittedly, the occurrence took place way back in the year, 1988 and much water has flown under the bridges since then. Nevertheless, the accused/Hazoor Bakhsh cannot be allowed to go scot-free as he had committed 'zina-bil-jabr' with a married woman/Mst.Lal Khatoon, who is pursuing the instant case for the last more than two decades for rehabilitation of her honour and dignity. However, the period which has elapsed between the occurrence till the decision of the instant appeal i.e more than 20 years, is certainly a mitigating factor for awarding a lesser punishment to the accused. Hence, ends of justice would adequately be fulfilled, if a lesser punishment is

awarded to the accused for commission of the offence. Resultantly, accused/Hazoor Bakhsh is convicted for commission of offence punishable under section 10(3) of the Offence of Zina (Enforcement of Hudood) Ordinance, 1979 and sentenced to four years R.I. However, benefit of section 382-B Cr.P.C is extended to the convicted accused/Hazoor Bakhsh. He is present in Court. He be taken into custody and sent to concerned jail for serving out the remaining portion of his sentence. Consequently, the instant appeal is allowed.

These are the reasons for our short order dated 20.03.2014.

JUSTICE SHEIKH AHMAD FAROOQ

JUSTICE MUHAMMAD JEHANGIR ARSHAD

APPROVED FOR REPORTING

JUSTICE SHEIKH AHMAD FAROOQ

Lahore, 21.3.2014.
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