

(Revisional Jurisdiction)

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

Muhammad Ramzan son of Darya Khan,  
R/o Village Mohra Bakhtan Tehsil and  
District Rawalpindi.

Versus

1. The State
2. Sajida Bibi widow of Naseeruddin resident of Mohra Bakhtan Tehsil and District Rawalpindi

**CRIMINAL REFERENCE NO.05/I OF 2011**

The State .... Petitioner  
Versus

Muhammad Ramzan son of Darya Khan,  
R/o Village Mohra Bakhtan Tehsil and  
District Rawalpindi.

Counsel for appellant	....	Mr. Qauasain Faisal Mufti and Mr. Muhammad Sahrif Janjua, Advocates
Counsel for complainant/ respondent	.....	Raja M. Sattarullah, Advocate
Counsel for State	.....	Dr. Muhammad Anwar Gondal, Additional Prosecutor General
Complaint case	.....	Dated 5.5.2010
Date of judgment of trial court	.....	08.10.2011
Date of Institution	.....	22.11.2011
Date of hearing	.....	17.10.2012
Date of decision	.....	17.10.2012

**JUDGMENT**

**DR. FIDA MUHAMMAD KHAN, Judge.**- This appeal filed by Muhammad Ramzan is directed against the judgment dated 08.10.2011 passed by learned Additional Sessions Judge, Rawalpindi, whereby he has convicted the appellant under section 7 of Offence of Qazf (Enforcement of Hadd) Ordinance, 1979 (hereinafter referred to as the said Ordinance) and sentenced to suffer eighty stripes as Hadd.

2. The learned Additional Sessions Judge, Rawalpindi has sent Criminal Reference No.5/I of 2011 for confirmation of the sentence.

3. Since both the matters arise out of one and the same judgment, we would like to dispose of both the matters by this single Judgment.

4. Brief facts of the case are that Mst. Sajida Bibi filed private complaint under sections 5 and 7 of the said Ordinance before the District and Sessions Judge, Rawalpindi wherein she alleged, inter-alia, that her marriage was solemnized with Muhammad Javed son of Darya Khan and out of this wedlock, a female child was born on 04.10.1979. However, Muhammad Javed her husband died in the year 1981 and after his death, the mutation of inheritance of deceased Muhammad Javed was sanctioned and a share of property was transferred in the name of Fozia on account of her being the



legal heir of deceased Muhammad Javed. Thereafter, the accused Muhammad Ramzan alongwith other co-accused (since P.O.) filed a suit for declaration and injunction before the Court of learned Civil Judge, Rawalpindi. In the plaint of aforesaid suit, the accused have mentioned in Para No.2 that Fozia is not legitimate child of deceased Muhammad Javed. Thus, they have committed an offence falling within the ambit of allegation of Zina/Qazaf against the complainant.

5. After recording the preliminary evidence, the learned trial court formally charged the accused Muhammad Ramzan under sections 5 and 7 of the said Ordinance. He denied the charge and claimed trial.

6. The prosecution produced four witnesses at the trial to prove its case. A gist of their evidence is mentioned hereinunder:-

\* PW.1 is Mst. Sajida Bibi, complainant. She reiterated the same facts as she had got recorded in her private complaint.

\* PW.2 Abdul Rasheed, who is father of Mst. Sajida Bibi and PW.3/Muhammad Younas corroborated the statement of complainant.

\* PW.4 Imran Mehmood, who is Secretary, Union Council, Ghazan Abad, produced birth certificate of Mst. Fozia Parveen as (Ex.PB) and birth register as (Ex.PB/1).

7. The learned trial court, thereafter, recorded statement of the appellant/accused Muhammad Ramzan under section 342 Cr.P.C wherein he denied the prosecution allegation and pleaded innocence. In answer to the question, "why this case against you and why the PWs have deposed against you?", he stated as under:-

"There are numerous civil and criminal cases pending between me and the complainant in different courts. Therefore, the complainant has filed a false complaint against me. Younas PW had falsely deposed against me as there is also litigation against the father of Younas PW with me."

He also opted to make statement on oath under section 340(2) Cr.P.C.

However, he did not make statement on oath and, instead, produced Farzan Ahmed Khan as DW.1. The learned trial Court on conclusion of the trial found the appellant/accused Muhammad Ramzan guilty of commission of offence under section 7 of the said Ordinance and, therefore, convicted and sentenced him as mentioned hereinabove.

8. We have heard the learned counsel for the appellant, learned counsel for the complainant and learned Additional Prosecutor General for State.

9. Mr. Qausain Faisal Mufti learned counsel for the appellant contended that:-



- \* the appellant made statement under section 342 Cr.P.C. and merely on the basis of this statement, conviction cannot be recorded. He placed reliance on 2011 P.Cr.L.J.778 and PLD 2011 page 796;
- \* the allegation leveled by the appellant does not fall within the definition of Qazaf as there was no mala-fide on his part and his intention was only for the purpose of property;

10. Raja M. Sattarullah learned counsel for the respondent/complainant submitted that:

- \* The appellant/accused could not produce four eye witnesses to prove his allegation as prescribed in section 6 of the said Ordinance;
- \* It is a case of confession made, firstly, in the declaration suit and, secondly, under section 342 Cr.P.C. and also by DW as well who was produced by the appellant/accused.

11. We have given anxious consideration to the points raised by the learned counsel for the parties and have thoroughly gone through the evidence on record. It transpires from the record that, admittedly, the complainant Mst. Sajida Bibi was validly married to Muhammad Javed on 12.08.1976. She has duly produced Nikahnama (Ex.PA) as well. From this wedlock she gave birth to one daughter Mst. Fozia on 04.10.1979. Her husband Muhammad Javed



died in 1981 and his inheritance comprising of agricultural land devolved on Fozia as his legal heir and her due share was admittedly transferred to her vide mutation. The complainant thereafter got married with Naseer-ud-Din who also died later on. The appellant Muhammad Ramzan promised to purchase the share of Mst. Fozia in lieu of Rs.100,000/- per Kanal. However, he did not pay her any amount and instead, on 31.01.2005, he got transferred her land in his name as "Hiba". The complainant and her daughter made several applications to the concerned authorities and kept on informing them accordingly. However, in the meanwhile, Muhammad Ramzan in connivance with Mst. Zarina and Mst. Akhtar Nisa filed suit as well as petition for stay order. The said suit and petition is still pending adjudication. In addition to that Muhammad Ramzan, using his influence, deprived Mst. Fozia from her share and all the other dues as well.

12. The stand taken by the appellant Muhammad Ramzan was based on a false allegation against the complainant wherein he alleged in the said plaint that Muhammad Javed had divorced the complainant and had neither visited her house during leave nor had performed conjugal rights with her and the complainant had given illegal birth to Mst. Fozia which made basis for her divorce.



13. So far as the allegation is concerned that is available, on record, in written form in a plaint submitted by the appellant Muhammad Ramzan for the cancellation of mutation already executed in favour of Mst. Fozia on the basis of her being the legal heir of Muhammad Javed deceased who had died during a military operation, in Abbottabad Hospital. During the trial Muhammad Ramzan while making statement on oath admitted that he had filed a civil suit against the complainant for declaration and permanent injunctions. Regarding the allegation he maintained that it was not a false allegation and added that in fact Mst. Fozia is an illegitimate daughter of the complainant. He also stated that the Birth Certificate (Ex.PB) in respect of Mst. Fozia who was born in the year 1979 was fabricated and forged. Regarding the birth entry (Ex.PB/1) in the concerned birth register, he further stated that it was forged and fictitious and the Secretary Union Council Ghazan Abad did not satisfy the Court as the page of the said register was cut with blade. Moreover, he added, there was also no Serial No. for the entry of birth of Mst. Fozia. While responding to Question No.8, he made the following statement:-

‘There are numerous civil and criminal cases pending between me and the complainant in different courts, therefore, the complainant has filed a false complaint against me. Younas PW had falsely deposed against me as there is also litigation against the father of Younas PW with me’.



He produced one Farzan Ahmed Khan as DW.1 who deposed in the following words:-

‘Mst. Sajida Bibi was previous wife of Muhammad Javed. Javed divorced his wife Mst. Sajida Bibi due to the reason that he claimed that Mst. Fozia Bibi is not his legitimate daughter. Javed was employed in Pakistan Army. Javed died about after one year after pronouncement of Talaq upon the complainant. Thereafter, the complainant contracted second marriage with Naseer-ud-Din, within a period of one year. After the death of Javed, his amount of pension, gratuity etc. was given to the mother of the deceased Javed. I requested Ramzan to give land to Mst. Fozia upon which he got mutation of inheritance recorded before the Revenue Authorities’.

14. In this connection we would like to refer to Sections 3, 5 and 6 of the said Ordinance. Section 3 reads as under:-

‘Whoever by words either spoken or intended to be read, or by signs or by visible representations, makes or publishes an imputation of zina concerning any person intending to harm, or knowing or having reason to believe that such imputation will harm, the reputation, or hurt the feelings, of such person, is said, except in the cases hereinafter excepted, to commit qazf’.

.....  
*Second Exception (Accusation preferred in good faith to authorized person):-*

Save in the cases hereinafter mentioned, it is not *qazf* to prefer in good faith an accusation of zina against any person to any of those who have lawful authority over that person with respect to the subject-matter of accusation.

- (a) A complainant makes an accusation of zina against another person in a Court, but fails to produce four witnesses in support thereof before the Court.
- (b) According to the finding of the Court, a Witness has given false evidence of the commission of zina or *zina-bil-Jabr*.



(c) According to the finding of the Court, complainant has made a false accusation of *zina-bil-Jabr*.

Section 5 reads as under:

**“Qazf liable to hadd.** Whoever, being an adult, intentionally and without ambiguity commits *qazf* of ‘zina’ liable to ‘hadd’ against a particular person who is a ‘muhsan’ and capable of performing sexual intercourse is, subject to the provisions of this Ordinance, said to commit *qazf* liable to ‘hadd’.

*Explanation 1.-* In this section, “*muhsan*” means a sane and adult Muslim who either has had no sexual intercourse or has had such inter-course only with his or her lawfully wedded spouse.

*Explanation 2.* If a person makes in respect of another person the imputation that such other person is an illegitimate child, or refuses to recognize such person to be a legitimate child, he shall be deemed to have committed *qazf* liable to had in respect of the mother of that person.”

Section 6 reads as under:

**“Proof of qazf liable to hadd.** (1) Proof of *qazf* liable to *hadd* shall be in one of the following forms, namely:

- (a) the accused makes before Court of competent jurisdiction a confession of the commission of the offence;
- (b) the accused commits *qazf* in the presence of the Court; and
- (c) at least two Muslim adult male witnesses, other than the victim of the *qazf*, about whom the Court is satisfied, having regard to the requirements of *tazkiyah al-shuhood*, that they are truthful persons and abstain from major sins *Kabair*), give direct evidence of the commission of *qazf*:

Provided that, if the accused is a non-Muslim, the witnesses may be non-Muslims:

Provided further that the statement of the complainant or the person authorized by him shall be recorded before the statements of the witnesses are recorded.”

15. A bare reading of the above sections make it quite clear that the appellant Muhammad Ramzan has leveled an allegation which is well covered within the definition of Qazaf as given in Sections 3 and 5 of the said Ordinance. However, in order to prove his allegation he has not been able to bring four witnesses to support his allegation, as envisaged under section 3 of the said Ordinance. Though the allegation was made by him in a suit filed by him for declaration and permanent injunctions against the complainant, he has reiterated and reaffirmed the same allegations in the instant case as well, as mentioned hereinabove, and has stuck to the position taken by him in the civil suit. He has repeated the same allegation again and again and has also tried to support it by DW.1 Farzan Ahmad Khan. However, it is note-worthy that as admitted by, DW.1, he is not a witness of the divorce deed. He even did not know who wrote that divorce deed. According to him, Mst. Fozia was born on 04.10.1979 when her mother Mst. Sajida Bibi was still the legally wedded wife of Javed who, according to him, divorced her on 09.06.1980 i.e. about 08 months after the birth of Mst.Fozia. He also admitted that the inheritance of the Estate of Javed had devolved upon his daughter Mst. Fozia according to her due share as being a legitimate daughter of deceased Muhammad Javed, who was legally wedded husband of complainant Mst.



Sajida Bibi, against whom the false allegation of zina has been made by the appellant Muhammad Ramzan.

16. It is crystal clear from the above discussion that the appellant/accused is a liar who has fabricated an allegation of commission of zina against the complainant/illegitimacy of her daughter Mst. Fozia, which is not at all supported by the four witnesses as required under section 3 of the Qazaf Ordinance. The said section is based on the following Verse of the Holy Qur'aan:-

“(24:4) Those who accuse the chaste women (of fornication), but they do not produce four witnesses, flog them with eighty stripes and do not admit their testimony ever after. They are indeed transgressors.”

17. The appellant Muhammad Ramzan has made an allegation and has obviously failed to bring four witnesses in its support, thus he has been rightly found guilty of committing the offence of Qazaf by the trial court as envisaged by the Ordinance and has been properly convicted and sentenced.

18. We have perused the impugned judgment and found it well reasoned. It is neither perverse nor arbitrary and calls for no interference whatsoever by this Court.



19. Consequently for the reasons stated above, we maintain the conviction of appellant Muhammad Ramzan under section 7 of the said Ordinance and uphold the punishment of 80 stripes as Hadd as awarded by the learned Additional Sessions Judge, Rawalpindi vide judgment dated 08.10.2011, and dismiss the instant appeal. The appellant Muhammad Ramzan is present in Court, he shall be taken into custody and sent to Central Jail, Rawalpindi to undergo the punishment.

20. Consequently, the Criminal Reference No. 05/I of 2011 submitted by the learned trial court is **confirmed** and answered in **affirmative**.

21. These are the reasons of our short order dated 17.10.2012

  
JUSTICE DR. FIDA MUHAMMAD KHAN

  
JUSTICE SHAHZADO SHEIKH

  
JUSTICE SHAIKH AHMAD FAROOQ