

IN THE FEDERAL SHARIAT COURT
(Appellate Jurisdiction)

PRESENT

MR. JUSTICE DR. AGHA RAFIQ AHMED KHAN, CHIEF JUSTICE
MR. JUSTICE DR. FIDA MUHAMMAD KHAN
MR. JUSTICE RIZWAN ALI DODANI

CRIMINAL APPEAL NO. 59/L OF 2003

Muhammad Ashraf son of Ghulam Nabi, r/o Mauza Bara, Tehsil & District
Pakpattan Sharif

..... Appellant

Versus

1. Muhammad Ilyas,
2. Muhammad Akram (Both sons of Noor Ahmed)
3. Majeed Ahmed son of Ali Muhammad
4. Muhammad Ishaq son of Muhammad Amin
5. Muhammad Ibrahim son of Ghulam Rasul
6. Niaz Ahmed
7. Noor Ahmed
8. Muhammad Amir (All three sons of Wali Muhammad)
All residents of Mauza Bara, Tehsil & District Pakpattan Sharif
9. The State

..... Respondents

Counsel for appellant Mr. Muhammad Amin Javed
Advocate

Counsel for respondents Mr. Muhammad Yar Khan Daha
Advocate

Counsel for State Dr. Muhammad Anwar Khan Gondal,
Addl. Prosecutor General, Punjab

FIR.No. Date & 300/2000, 16.05.2000
Police Station Saddar, Pakpattan Sharif

Date of Judgment of 24.01.2003
Trial court

Date of Institution of 01.03.2003
Appeal

Date of hearing 28.04.2014

Date of Decision 28.04.2014

Date of Judgment 16.05.2014

JUDGMENT

DR. FIDA MUHAMMAD KHAN, JUDGE.- Through this appeal Muhammad Ashraf, appellant/complainant has challenged judgment dated 24.01.2003 passed by learned Additional Sessions Judge-I Pakpattan Sharif, whereby the respondents/accused namely Muhammad Ilyas, Muhammad Akram, Majeed Ahmad, Muhammad Ishaq, Muhammad Ibrahim, Niaz Ahmad, Noor Ahmad and Muhammad Amir have been acquitted from charge under sections 11/10(3) and 10(4) of the Offence of Zina (Enforcement of Hudood) Ordinance, 1979 (hereinafter referred to as the Ordinance) and under sections 148/149/460/324/397 PPC.

2. Briefly stated, facts of the case according to FIR (Ex.PA/1) are that the complainant, a labourer by profession, was residing in Basti Imampura, Dakhli Mauza Borah. During the night between 14/15.05.2000, while he was sleeping at his residence alongwith his other family members, the accused Noor Ahmad, Niaz Ahmad empty handed, Muhammad Akram armed with 12 bore gun, Muhammad Ilyas, Muhammad Ishaq, Muhammad Amir, Muhammad Anwar armed with sotas, Muhammad Tufail armed with

7 MM rifle, Ibrahim and Majeed Ahmad armed with sotas, suddenly entered his house. Noor Ahmad and Niaz raised lalkara that they had come to teach a lesson to the complainant for giving divorce to his daughter Mst. Naziran Bibi. He asked the other accused not to spare them alive. Then Muhammad Akram and Muhammad Tufail accused started aerial firing and caused harassment. In the meanwhile they forcibly took hold of his real sister Mst. Khursheed Bibi, aged about 13/14 years, who was then sleeping on a cot. His father and mother tried to rescue Mst. Khursheed Bibi but while Muhammad Akram accused inflicted a butt blow of gun on the left arm of his father, Muhammad Ilyas gave a sota blow on his left leg. Muhammad Akram also gave a butt blow of gun on the back of his father. Muhammad Ishaq inflicted sota blow on the left arm of his mother. A sota blow of Muhammad Amir accused landed on the left thigh of his mother. Muhammad Anwar also launched sota blow on the head of his mother. Muhammad Tufail accused inflicted butt blow of rifle on the right left of his mother. Majeed Ahmad accused gave a sota blow on the right leg of his mother. Muhammad Ibrahim and Anwar started beating his father and

mother with their sotas. Both the said injured fell down. The hue and cry were raised by the inmates which besides the firearm alarm caused by the accused attracted Muhammad Hanif, Muhammad Shan and others to the spot. The accused in the presence of PWs and other people of the village forcibly abducted Mst. Khursheed Bibi. In the meanwhile the accused also took with them a 12 bore gun, 50 live cartridges, a rifle 303 and 105 live bullets alongwith its license.

The motive behind the incident as alleged was that about 3/4 years back Muhammad Tufail, brother of the complainant, had divorced Mst. Naziran Bibi daughter of accused Noor Ahmed, which had caused grudge against the complainant party. The accused in pursuit of their common objective, armed themselves with lethal weapons and attacked which caused injuries on the persons of Mst. Khursheed Bibi, Ghulam Nabi and Mst. Zikran Bibi and subsequently abducted Mst. Khursheed Bibi with the intention of committing zina with her. Hence the present FIR. was got registered accordingly.

3. The case was partly investigated by Ghulam Raza Khan, ASI, (P.W.6). On 16.05.2000 he was present at Adda Malak Pur when Muhammad Ashraf, complainant appeared before him and he recorded his statement (Ex.PA). He sent the same to police station for formal registration of FIR. He visited the place of occurrence, prepared site plan (Ex.PG). He also prepared injury statements of Mst. Zikran Bibi (Ex.PH) and Ghulam Nabi (Ex.PJ) and got them medically examined. On 27.05.2000 he arrested Ishaq and Ibrahim accused. On 16.06.2000 Ishaq accused while in police custody got recovered sota (P1) which was taken into possession vide memo (Ex.PB). On the same day Ibrahim accused got recovered sota (P2) which was also taken into possession vide memo (Ex.PC). He recorded statements of PWs Ghulam Nabi, Mst. Zakran Bibi, Shan Muhammad and Hanif under section 161 Cr.P.C.

The case was further investigated by PW.7 Sarwar Kamal Din, S.I. On 18.08.2000 he was entrusted the task. On the same day Ilyas accused while in custody disclosed and got recovered sota (P3) from his residential house. He also prepared site plan (Ex.PD/1) of the place of recovery. On

the same day Akram accused while in custody after making disclosure got recovered 12 bore gun (P4), from his residential room, which was secured vide memo (Ex.PE). He also made different recoveries vide various recovery memos and recorded statements of PWs under section 161 Cr.P.C. He also moved applications (Ex.PK, Ex.PL and Ex.PM) to the doctor for potency test of accused Majeed, Muhammad Ilyas and Muhammad Akram and got them medically examined. After completion of all legal formalities, he submitted challan to court.

4. The learned trial court on receipt of challan, charge sheeted all the accused under sections 148/149/460/324/397 PPC and under sections 11, 10(3) and 10(4) of the said Ordinance. The accused did not plead guilty and claimed trial.

5. At the trial the prosecution produced as many as ten PWs. A gist of their evidence is given in the subsequent paras:-

- * P.W.1 is Muhammad Ashraf, complainant. He reiterated his statement as mentioned in the FIR;
- * P.W.2 is GhulamNabi, father of complainant. He is an eye witness of the occurrence. He corroborated the statement made by P.W.1, Muhammad Ashraf;

- * P.W.3 is Mst. Khursheed Bibi, sister of the complainant. She also made statement in line with the statement made by complainant P.W.1;
- * P.W.4 is Mst. Zakran Bibi, mother of the complainant also made a similar statement as deposed by, Muhammad Ashraf, PW.1, Ghulam Nabi, P.W.2 and P.W.3, Mst. Khursheed Bibi;
- * P.W.5 is Muhammad Khalid, ASI. On receipt of complaint (Ex.PA), he recorded formal FIR (Ex.PA/1);
- * P.W.6 is Ghulam Raza, ASI. He partly investigated the case, as mentioned hereinabove;
- * P.W.7 is Sarwar Kamal Din, S.I. He also partly investigated the case as stated above;
- * P.W.8 is Ghulam Murtaza, ASI. On 10.08.2000 he arrested accused Majeed, Akram, Muhammad Ameer, Noor Ahmad and Niaz Ahmad. On 12.08.2000 he also arrested accused Muhammad Ilyas from Adda Malik Pur;
- * P.W.9 is Dr. Muhammad Pervaiz Khalid. He made in the following words:-

“On 15.5.2000 at 8.40 p.m. I examined Ghulam Nabi son of Nizam Din mauza Imam Pura police station Saddar Pakpattan Sharif, I found following injuries on his person:

1. An Abrasion $\frac{1}{2}$ x $\frac{1}{2}$ cm on skin deep with diffuse swelling 10 x 8 on back of left forearm.
2. An Abrasion $\frac{1}{4}$ x $\frac{1}{4}$ cm on skin deep with diffuse swelling 8 x 4 cm on the right leg front middles.
3. Multiple bruises on the right and left cheek on its back 22 cm x 22 cm.

4. A bruises 10 cm x 3 cm on back of right just below below the knee.
5. A bruises 15 x 3 cm on back of left leg below the knee.

Injuries No.1, 2, 3 were kept under observation for X-ray. Injuries No.4 and 5 were declared as 337 L2. Probable duration of Injuries were 8 to 10 hours. I mentioned two identification marks on MLC No.16/PK as under No.1 Black mole below right eye, No. 2 Black mole on left side of face lateral left eye. Injuries kept under observation were declared as under:-

“Injury No.1 declared as Ghair Jaifia Munaqla as the is fracture of shaft of radius (left) with displacement of fragments. Injury No.2 was declared as G.J. Hashma as there is fracture of right fibula. Injury No.3 G.J, Damia as there is no bony liason seen in x-ray vide x-ray report No.290, 291, 292/2000 dated 16.5.2000, reported by Ms DHQ Pakpattan. No bony liason seen red for injury No.3. Ex.PN is the correct carbon copy of my medico-legal report, which his in my hand and bears my signatures. Ex.PN/1 is the diagram showing the location of the injuries and Ex.PN/2 is the declaration of the injuries which were kept under observation. All the documents are in my hand and bear my signatures.

On the same day I medically examined Zikram Bibi wife of Ghulam Nabi and found the following injuries on her person:-

1. Lacerated wound 2 x 2 cm x skin deep on mid right top of skull.

2. A bruise combination of multiple bruises 30 cm x 30 cm at back chest involving role back with swelling.
3. A contuse swelling 8 cm x 4 cm at mid and outer part of left forearm.
4. Lacerated wound 2.5 cm x .5 cm x muscle deep on the outer part left lower forearm just above wrist joint.
5. A bruise 5 cm x 2 cm on outer and upper of left thigh.
6. Multiple bruises on front of lower right leg just below right knee joint each 2 cm x 2 cm.
7. A lacerated wound 1.5 cm x 1.5 cm x muscle deep in front of right lower leg 9 cm below knee joint defused swelling around wound was present. No blackening was seen 8 complaint of pain all over the body.

Injury No.2, 3, 4 and 7 were kept under observation for x-ray. Injury No. 5, 6 and 8 were declared as 337-L(ii) Injury No.1 was declared as Shajja Khafifa. All the injuries except injury No.7 were caused by blunt weapon while the weapon for injury No.7 was kept under observation. The probable duration of injuries was 8 to 10 hours the injuries which were kept under observations declared as, injury No.2 as 337-L(ii), No bony liason seen, injuries No.3 and 4, which were kept under observation were declared as Ghair Jaffia Hashma as there was fracture of distal of left ulna. Injury No.7 KUO declared Ghair Jaffia Hashma as there was fracture of shaft of right tibia on its upper 1/3rd, x-ray report No.288, 289 and 289-A/2000 dated 15.5.2000 reported by MS DHQ Hospital Pakpattan Sharif as there was exit wound and there was no report of any metallic partial or pellet or radio/shadow seen so it was not firearm injury. Injury No.7 was caused by blunt

weapon. Ex.PL is the correct carbon copy of MLR of Zikaran Bibi Ex.PL/2 is the declaration of injuries which were kept under observations at the time of medical examination. Ex.PL, Ex.PL/2 and Ex.PL/1 are in my hand and bear my signatures.

On 19.8.2000 at 2.30 p.m. I conducted potency test of Majeed Ahmed son of Ali Muhammad caste Khokhar R/o Mauza Bera PS Saddar Pakpattan and found him fit to perform sexual act. Ex.PM is the correct carbon copy of my medical report which is in my hand and bears my signatures. On the same day I also medically examined Muhammad Ilyas son of Noor Ahmad aged 25 years and found him fit to perform sexual act. Ex.PN is the correct carbon copy of my MLR which is in my hand and bears my signatures. On the same day I medically examined Muhammad Akram son of Ch. Noor Ahmed for his potency test and found him fit to perform sexual act. Ex.PO is the correct carbon copy of my MLR which is in my hand and bears my signatures.”

- * P.W.10 is Lady Dr. Fazeelat Pervaiz, SWMO. She deposes in the following words:-

“On 21.6.2001 while I was posted as WMO DHQ Hospital Pakpattan I medically examined Mst. Khurshid Bibi d/o Ghulam Nabi aged 13/14 years cast Khokhar R/o Basti Imampura PS Saddar Pakpattan for rape. She was brought by police and made following observation;-

“She was a young girl of medium built, well oriented in time and space.

External examination.

1. An old scare mark about 1 x ½ cm on medial side (front of right upper arm)
2. An old scare mark about ½ x ½ cm on medial side (back) of right upper arm 3 cm above injury No.1.

No other mark of violence seen.

INTERNAL EXAMINATION

An old healed torn hymen. The vagina admitted two fingers easily, slightly congested, around the intestines was seen discharge per vagina positive. Uterus was normal in size. Last menses period 15 days back.

Two high vaginal swabs taken, dried at room temperature and sent to the chemical examiner for detection of semen in a packet and 4 seals over it and one specimen seal. Duration of injuries and kind of weapon could not be given as the injuries were healed.

Ex.PP is the correct carbon copy of my medico-legal report which is in my hand and bears my signatures.”

6. On conclusion of prosecution evidence, the learned trial court recorded statements of accused under section 342 Cr.P.C. The accused/respondents Muhammad Ilyas was put a question as to why this case was lodged against him and why the PWs had deposed against him.

He stated as follows:-

“Mst. Khursheed Bibi is my legally wedded wife. Because it was a love marriage against the will of her parents. On fateful

night Mst. Khursheed Bibi was present in my house and some unknown persons had committed theft in the house of the complainant and on the resistance, the complainant party received injuries and due to the above said reason the complainant party made a false case against me and my brotherhood. All the PWs are related interse. So they have falsely deposed against me. My suit for restitution of conjugal rights was decreed in my favour and the suit jactitation of marriage was dismissed. Mst. Khursheed Bibi filed an appeal against judgment of family court which was also dismissed by the learned Additional District & Sessions Judge, Pakpattan Sharif. After dismissal of the appeal Mst. Khursheed Bibi filed an appeal in the Hon'ble High Court at Multan Bench and got permission for production of additional evidence and after recording additional evidence in the family court Pakpattan Sharif, the suit for jactitation of marriage was again dismissed and suit for restitution of conjugal rights filed by Muhammad Ilyas accused was again decreed in his favour”.

All the other accused made statement under section 342 Cr.P.C. in line with statement of accused Muhammad Ilyas and claimed innocence. They also deposed that a false case had been registered against them on account of having relationship with and belonging to brotherhood of accused Muhammad Ilyas. None of them, however, made statement on oath under

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section 340(2) Cr.P.C. However they produced Zahid Mahmood, S.I. and Fayyaz Mehmood Lodhi, DSP as DWs.1 and 2 respectively. The learned trial court, after examining the whole material and hearing the counsel, extended benefit of doubt and acquitted all the accused/respondents. Feeling aggrieved the complainant has preferred the instant appeal whereby he has challenged their acquittal.

7. We have heard learned counsel for the parties and perused the record with their assistance. Learned counsel for the appellant submitted that:-

- * the respondents have committed a very heinous offence, but they have been acquitted by the learned trial court vide judgment dated 24.01.2003 which is against law and facts of the case and is not at all sustainable in law;
- * the trial court has not appreciated the prosecution evidence properly and has misread the evidence on record;
- * the FIR in this respect was promptly lodged by the appellant/complainant, which fact reveals that there was no deliberation or fabrication on the part of appellant;
- * there is nothing on record to show that there was any enmity between the parties;

- * out of the prosecution witnesses three PWs had got injured during the occurrence and the medical report conducted by P.W.9, Dr. Muhammad Pervaiz Khalid shows that the injuries were not self inflicted. It also reveals that they were present on the spot.
- * Mst. Khursheed Bibi was also medically examined by WMO, who appeared as P.W.10. Her positive report shows that Mst Khursheed Bibi was actually subjected to rape;
- * In our society no one would like to put at stake the honour of his family just to falsely implicate any one else in such a heinous Offence. Mst. Khursheed Bibi was produced by the respondents/accused and her statement under section 164 Cr.P.C. was duly recorded;
- * the weapons of offence 'sotas' were also recovered on the pointation of accused;
- * the reasons regarding the decision of family suit given by the trial court carry no weight;
- * Mst. Khursheed Bibi in her statement has categorically stated that she was subjected to gang rape by Majeed, Akram and Muhammad Ilyas respondents and her statement is corroborated by the alleged motive as well as the medical evidence which alongwith FSL report is sufficient for conviction of the respondents;

- * the minor discrepancies in the statements of PWs do not entitle them for acquittal; and
- * In view of the above the trial court has committed error by acquitting the respondents from a serious charge and has thus caused a great miscarriage of justice to the appellant/complainant.

8. Learned counsel for the respondents contended that:

- * no time is written in the FIR and it is delayed by almost 36 hours;
- * the lantern which was the main source of identification during that odd hours of the night has not been produced;
- * Nikahnama (Ex.D1) has been duly produced and placed on record and Mst. Khursheed Bibi being sui juris at that time was competent to contract her valid nikah with respondent Muhammad Ilyas;
- * In view of the Nikahnama, no abduction, theft or gang rape could be imagined by the respondents;
- * It was a sort of "watta satta" marriage and both sides are closely related.
- * the gun and cartridges etc have not been recovered and the recovered sotas are not sufficient for conviction;

* this was a valid marriage and judgment of the family court having been decreed in favour of the respondent has binding effect; and

9. The learned Additional Prosecutor General adopted the arguments advanced by learned counsel for the appellant.

10. It transpires from record that while the appellant alongwith his other family members was sleeping at his residence during the night intervening 14/15.05.2000, the respondents mentioned at S.No.1 to 8, alongwith Muhammad Anwar and Muhammad Tufail-both absconders-criminally trespassed into the house of appellant. At that time while Noor Ahmed and Niaz Ahmed respondents were empty handed and Muhammad Akram was armed with 12 bore gun and Muhammad Tufail was armed with rifle 7MM, all the other respondents were armed with sotas. After raising lalkara to the complainant party that they had come to teach a lesson for divorcing his daughter Mst. Naziran Bibi, Noor Ahmed respondent said that they were not going to spare any one of them. Muhammad Akram and Muhammad Tufail started firing in the air to create harassment and then forcibly took away Mst. Khursheed Bibi aged 13/14

2/6

years, real sister of the appellant/complainant. Father and mother of the appellant who tried to rescue her were inflicted butt blows on the father of the appellant by Muhammad Akram. The other respondents also caused injuries to his father and mother, and resultantly both the said injured fell down. On hearing hue and cry of complainant party and alarm of the firing made by the respondents, Muhammad Hanif and Muhammad Shan alongwith others were attracted to the spot. However, the respondents and their absconding co-accused succeeded in forcible abduction of Mst. Khursheed Bibi. They also took away gun 12 bore alongwith 50 live cartridges and rifle 303 alongwith 105 live bullets and its license. They also took away golden ornaments and an amount of Rs. 45,000/- with them. It was alleged that the motive behind the occurrence, was divorce of Mst. Naziran daughter of Noor Ahmed respondent by the appellant's brother which had caused grudge against them and therefore in furtherance of their common intention, they abducted Mst. Khursheed Bibi.

11. In this connection it is obviously noticeable that both the parties were well known to each other and had also entered into interse

relationships by wedding Mst. Naziran who was allegedly divorced some time afterwards. This was the alleged motive which inspired clash between the parties and resulted in the occurrence as stated in the FIR. It is further noticeable that the occurrence took place in night intervening between 14/15.05.2000 but FIR in this respect was lodged on 16.05.2000 at 2.00.p.m. This shows that the FIR was not prompt inspite of the fact that the distance between the police station and place of occurrence was 13 kilometers. This inordinate delay, in circumstances of the instant case, is really worth serious consideration. No explanation for this delay, however, is available on the file. It is also noticeable that the witnesses produced by the prosecution are all interse closely related. None of the independent witnesses who were allegedly attracted to the place of occurrence, after hearing firearm alarm, including Muhammad Hanif and Muhammad Shan, has been produced. It is also noticeable that no gun or rifle etc. allegedly looted by the respondents/accused was recovered from them. The sotas have been recovered but being commonly available items and not being conclusive proof could not be used as substantive piece of evidence to

prove the charge beyond any doubt. Though the injuries on the persons of three PWs which do not appear self inflicted, show their presence on the spot, non-production of the independent material witnesses creates doubts about varacity of deposition made by related PWs. Placed in juxta position the fact the defence plea taken by Muhammad Ilays about his marriage with Mst. Khursheed Bibi and duly supported by the Nikah Nama which was exhibited before the Family Court (as Ex/D1) and Judgments of Family Court changes the position altogether.

12. In this connection we would refer to the factum of Nikah between Muhammad Ilyas and Mst. Khursheed Bibi which according to him was duly solemnized on 02.04.2000. Perusal of record shows that admittedly Mst. Khursheed Bibi filed suit for jactitation of marriage whereby she prayed for annulment of her marriage with Muhammad Ilyas respondent/accused. A counter suit for restitution of conjugal rights was also filed by accused Muhammad Ilyas against Mst. Khursheed Bibi. Both the suits were consolidated by the concerned family court and decided vide its judgment and decree (Ex.DC) on 31.07.2001. The suit brought by

Muhammad Ilyas accused for restitution of conjugal rights was decreed and the other suit of Mst. Khursheed Bibi for jactitation of marriage was dismissed. The said judgment and decree were thereafter challenged by Mst. Khursheed Bibi in an appeal before Additional District & Sessions Judge, Pakpattan Shareef but both the appeals were dismissed vide its judgment and decree passed on 29.10.2001. The said judgment and decrees were again assailed by Mst. Khursheed Bibi before Honourable High Court, Multan Bench Multan who remanded the said appeals/cases to the family court for deciding afresh, after allowing Mst. Khursheed Bibi an opportunity of producing further evidence. The learned Judge family court vide judgment dated 13.07.2002 again dismissed the suit for jactitation of marriage and decreed the suit for restitution of conjugal rights in favour of Muhammad Ilyas respondent/accused. Thus the original decisions were reaffirmed by the judge family court Pakpattan Shareef. Thereafter the same was challenged by Mst. Khursheed Bibi which, though remained pending before the learned District Judge Pakpattan Shareef at the time of the impugned judgment were, however, subsequently maintained. On a

Court question the learned counsel for appellant stated at Bar that the said appeal was disposed of after the statement of Muhammad Ilyas respondent/accused who pronounced divorce to Mst. Khursheed before the said Court on 12.02.2004. In this context, it is thus established that the judgment of family court finalized the matter of restitution of conjugal rights in favour of Muhammad Ilyas respondent/accused. It is worth noticing that the words "I divorce" as allegedly uttered by respondent/accused Muhammad Ilyas presupposes the valid marriage having been solemnized and supports the defence plea of contracting valid marriage taken by respondent/accused Muhammad Ilyas in his statement under section 342 Cr.P.C.

13. Here we may refer to the dictum laid down by the Honourable Apex Court in Judgment reported as Muhammad Azam vs. Muhammad Iqbal and others PLD 1984 SC page 95. The relevant portion of the Judgment is reproduced hereinunder:-

"Issue of jactitation of marriage having been decided by the Family Court had been brought in appeal before the District Judge by the accused presumably to show that the decision of the Family Court was not correct and that a valid Nikah had

been established in fact and law. A request was made to the Federal Shariat Court for adjournment so as to await the decision of the Appellate Court regarding the final position under the Family Courts Act regarding the Nikah. This adjournment was refused on the ground that it was based on a mere hypothetical proposition; namely, that if the accused succeeded before the forum provided by the Family Courts Act it would react on the results of the criminal cases. The approach of the Federal Shariat Court regarding the question raised before it in that case as it was based on proceedings under the Family Courts Act, was not merely a hypothetical

The judgment of the Family Court, in the circumstances discussed would be binding in all relevant respects. Moreover it will not be correct to say that the statement made by a party in the case before the Family Court will be relevant only for purpose of contradiction under section 145, Evidence Act. It will also be a piece of evidence before the criminal trial Court regarding conduct and as to what was the plea in that Court. On the stay of proceedings on the criminal side, pending decision by the Family Court the approach of the Federal Shariat Court was not correct. When it is known that the decision of that forum original/appeal, will have a determining effect on the outcome of the criminal trial, it would be in the interest of justice and fairness to stay the latter proceeding or the appeal therefrom.

The foregoing discussion and question Nos.1 to 3 regarding effect of the decision of the Family Court regarding the plea of Nikah on the same plea before the criminal trial court, would show that the view of the Federal Shariat Court in this behalf expressed in the case of Din Muhammad mentioned in Question No.6 is, with respect, not correct. The judgment of the Family Court, in the circumstances discussed already would be binding in all relevant respects. Moreover it

will not be correct to say that the statement made by a party in the case before the Family Court will be relevant only for purpose of contradiction under section 145, Evidence Act. It will also be a piece of evidence before the criminal trial Court regarding conduct and as to what was the plea in that Court. It was so held, as already noticed, in the case of Malik Din. On the stay of proceedings on the criminal side, pending decision by the Family Court the approach of the Federal Shariat Court was not correct. When it is known that the decision of that forum original/appeal, will have a determining effect on the outcome of the criminal trial, it would be in the interest of justice and fairness to stay the latter proceeding or the appeal therefrom. Question No. 6 is answered accordingly.”

14. Since according to the said dictum, judgment of the family Court in such like cases where the plea of Nikah is taken by an accused charged under an offence under the said Ordinance, is binding on the Superior Courts, the decree and judgments of Family Court in the instant case which goes in favour of respondent/accused Muhammad Ilyas, creates dint in the case of prosecution. The above mentioned position has a vital effect on the outcome of the instant appeal. Hence the charge of abduction etc. in the circumstances becomes highly doubtful in the manner alleged by the PWs. Moreover, the respondents having been acquitted, have earned double presumption of innocence. To set aside their acquittal, therefore, requires an unimpeachable evidence which is not forthcoming on record,

especially in the light of final judgment of the Family Court. Therefore, the charge against them is not proved beyond reasonable doubt.

15. Before concluding, we may like to refer to the principles laid down by the Apex Court for consideration in appeals against conviction and in appeals against acquittal. In the latter case it has been held, inter alia, that considerations for interference in an appeal against acquittal and in an appeal from conviction are altogether different. The well-settled principles for the appreciation of appeals against acquittal in the light of many judgments of the Apex Court could be summed up as follow:-

- i) that with the acquittal, the presumption of the innocence of the accused becomes double; one initial, that till found guilty he is innocent, and two, that after his trial a Court below has confirmed the assumption of innocence;
- ii) that unless all the grounds on which a Court had purported to acquit the accused were not supportable from the evidence on record, the Superior Courts would be reluctant to interfere, even though, upon the same evidence it may be tempted to come to a different conclusion;
- iii) that unless the conclusion recorded by a Court below was such that no reasonable person would conceivably reach the same, the Superior Courts would not interfere;

iv) that the Superior Court, however, 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.

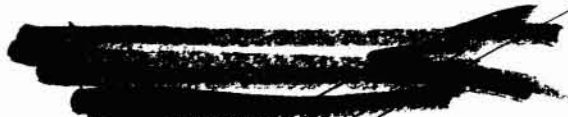
16. Since this is an appeal against acquittal and the type of evidence required for setting aside the acquittal is not available on record,

We do not find any merit in this appeal, therefore, dismiss it accordingly.

17. These are the reasons of out Short Order dated 28.04.2014.



JUSTICE DR. FIDA MUHAMMAD KHAN



JUSTICE DR. AGHA RAFIQ AHMAD KHAN



JUSTICE RIZWAN ALI DODANI

Fak for reporting -



Islamabad the 16th May, 2014
UMAR DRAZ/