

IN THE FEDERAL SHARIAT COURT

(Appellate Jurisdiction)

PRESENT:

MR. JUSTICE SYED AFZAL HAIDER

MR. JUSTICE SHAHZADO SHAIKH

CRIMINAL APPEAL NO.62/L OF 2008

1. Ahmed Nawaz alias Bholi son of Nawaz, Caste Maneka
 2. Bakhtiar son of Muhammad Hayat, Caste Wattoo
 3. Muhammad Iqbal son of Muhammad Yar, Caste Wattoo,
All residents of Sodhe-Ke, Tehsil Depalpur, District Okara.
- Appellants

Versus.

1. The State
2. Taj Hussain son of Said Muhammad, Caste Nasar Ka Wattoo, resident of
Sodhe-Ke, Tehsil Depalpur, District Okara.

Respondents

CRIMINAL APPEAL NO.81/L OF 2008

Ghulam Farid son of Sultan Caste Machi, resident of Sodhe-Ke, Tehsil
Depalpur District Okara.

Appellant

Versus

1. The State

Respondent

CRIMINAL APPEAL NO. 91/L OF 2008

Muhammad Zafar son of Niaz Ahmed, Caste Wattoo,
Resident of Sodhe-ke, Tehsil Depalpur District Okara.

Appellant

Versus

1. The State
2. Taj Hussain son of Said Muhammad, Caste Nasar Ka Wattoo, resident of
Sodhe-ke, Tehsil Depalpur, District Okara.

Respondents

Counsel for appellants	....	Mr. Shaukat Rafique Bajwa, Sardar Muhammad Tariq Khan Dareshak, Mr. Irfan Sadiq Tarrar & Mian Muhammad Mudassar Bodla, Advocates,
Counsel for the complainant	....	Ch. Farid-ul-Hassan, Advocate
Counsel for State	.....	Ch. Muhammad Ishaque, Deputy Prosecutor General
FIR, Date & Police Station	.....	511/06, 23.08.2006 Haveli Lakha, District Okara
Date of Judgment of trial court	.....	23.07.2008
Date of Institutions of Appeals	06.08.2008, 19.09.2008 and 01.11.2008 respectively
Date of hearing	17.02.2011
Date of decision	24.02.2011

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JUDGMENT:

Justice Syed Afzal Haider, Judge: The five convicts have filed the following three appeals to challenge the convictions recorded by learned Additional Sessions Judge, Depalpur vide his judgment dated 23.07.2008 delivered in Hudood Private Complaint No.74 of 2006, Hudood Trial No.14 of 2007:-

- i. Cr. Appeal No.62/L/2008 filed by appellants Ahmed Nawaz alias Bholi, Bakhtiar and Muhammad Iqbal.
- ii. Cr. Appeal No.81/L/2008 filed by appellant Ghulam Farid.
- iii. Cr. Appeal No.91/L/2008 filed by appellant Muhammad Zafar.

The appellants were convicted and sentenced as under:-

Appellants Ahmed Nawaz alias Bholi, Bakhtiar, Muhammad Iqbal & Ghulam Farid:

- | <u>Conviction</u> | : | <u>Sentence</u> |
|--|---|---|
| i. under section 11 of the Offence of Zina (Enforcement of Hudood) Ordinance, 1979 | : | life imprisonment each with fine of Rs.50,000/- each payable to Mst. Ghazala Bibi and Mst. Sobia Bibi each i.e. separately. |
| ii. under section 10(3) of the Ordinance ibid | : | twenty five years rigorous imprisonment each. |

Both the sentences were ordered to run concurrently.

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Appellant Muhammad Zafar:

<u>Conviction</u>	:	<u>Sentence</u>
under section 10(3) of the Ordinance ibid	:	twenty five years rigorous imprisonment.

The benefit of section 382-B of the Code of Criminal Procedure was extended to all the convicts/appellants.

2. This single judgment will dispose of all the abovementioned three connected matters as they have arisen out of the same judgment. It might as well be noted that Criminal Revision No.29/L/2008 was moved by Complainant Taj Hussain for enhancement of sentence which was however withdrawn on 30.03.2009.

3. The prosecution case in brief is that complainant Taj Hussain PW.1 filed an undated private complaint against six accused persons namely Ghulam Frid, Ahmed Nawaz alias Bholi, Bakhtiar, Muhammad Iqbal, Zafar and Shaukat Ali wherein he stated that on 17.08.2006 at about 11.00 a.m. his daughter Mst. Ghazala Bibi PW.4 and his niece Mst. Sobia Bibi PW.3 went out to answer the call of nature. Accused Ghulam Farid, Ahmad Nawaz alias Bholi Bakhtiar and Muhammad Iqbal armed with firearms were hiding in the field who abducted both the girls on two motorcycles by harassing them with their respective weapons. Javed Iqbal, Ghulam Abbas

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and Muhammad Anwar had seen the occurrence on account of noise raised by the abductees. The four accused took both the girls to Zafar Iqbal and Shaukat Ali accused. The complainant further stated that he contacted the relatives of the accused persons for restoration of abductees but to no avail. Then he submitted complaint Ex.PA to local police upon which FIR No.511/2006 Ex.PA/1 was registered at police station Haveli Lakha on 23.08.2006 under section 10/11 of the Offence of Zina (Enforcement of Hudood) Ordinance, 1979. The complainant further stated that the abductees managed release from the clutches of accused and returned home whereafter their statements were recorded under section 161 of the Code of Criminal Procedure. The abductees were then produced before the Illaqa Magistrate for recording their statements under section 164 of the Code of Criminal Procedure. The police got the abductees medically examined. Both the abductees levelled allegations against the accused persons in their statements but the police in connivance with the accused persons did not arrest the accused persons. The complainant then stated that the accused persons in order to harass him also lodged a false case

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against him under section 324/34 of the Pakistan Penal Code which after investigation was cancelled by the Deputy Superintendent of Police Headquarter Investigation. The complainant further stated that the local police in connivance with the accused persons had not investigated the case properly.

Hence the complainant filed the instant private complaint on 13.12.2006.

4. As a consequence of filing of private complaint the learned trial Court summoned all the accused persons to face trial. However Shaukat Ali accused did not appear despite issuance of proclamation against him. He was, therefore, declared as proclaimed offender. The learned trial Court framed charge under section 11, 10(4) of the Offence of Zina (Enforcement of Hudood) Ordinance, 1979 against the remaining five accused persons.

5. The complainant/prosecution produced six witnesses to prove its case. The police investigation report about this case was also entrusted to the trial Court hence the

witnesses mentioned in the calendar of witnesses were summoned as Court Witnesses. The gist of the deposition of both the sets of the witnesses is as follows:-

- (i) Taj Hussain complainant appeared as PW.1 and endorsed the contents of his complaint Ex.PA with addition that after 17/18 days after the occurrence both the abductees returned to their respective homes. He produced them before the Investigating Officer and got recorded their statements. The police got them medically examined and produced them before the learned Illaqa Magistrate for recording their statements under section 164 of the Code of Criminal Procedure. The police arrested only Ghulam Farid accused whereas the remaining accused were not arrested by the police therefore he filed private complaint Ex.PB.
- (ii) PW.2 Muhammad Anwar stated that his two nieces Mst. Sobia and Mst. Ghazala went to Charri crop for urination. He on hearing hue and cry of his nieces went out and saw that accused Ahmed Nawaz, Iqbal and Mst. Ghazala victim were sitting on one motorcycle and accused Ghulam Farid, Mukhtar and Mst. Sobia victim were sitting on

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another motorcycle. He went forward but the accused threatened him with weapons and went towards graveyard with Ghazala and Sobia. This occurrence was also witnessed by Ghulam Abbas and Javed PWs.

- (iii) PW.3 Sobia Bibi stated that she alongwith her cousin Ghazala went to urinate in Charri crop where Iqbal, Ahmed Nawaz, Bakhtiar and Ghulam Farid accused armed with weapons came on motorcycles and abducted her and Ghazala Bibi. They took them towards graveyard where a car was parked. The accused boarded them in the car and took them to some city where they confined them in a locked room for 21 days where the accused persons alongwith Zafar and Shaukat accused had been committing zina bil jabr with them. After 21 days a lady came there and got them free. The said lady hired a rickshaw in which they alongwith the said lady came to bus stand. She boarded them in a bus and went away. They returned to their house and then joined the investigation and got recorded their statements.
- (iv) PW.4 Mst. Ghazala Bibi supported the version of Mst. Sobia Bibi PW.3.

(v) PW.5 Dr. Rubina Nasreen had medically examined Mst. Ghazala victim on 12.09.2006 and observed as under:-

“On examination a young girl clad in ordinary clothes. No signs of violence.

Local examination:

No tear laceration blood or semen stained on local parts. Vagina admitted one finger loosely. Hymen absent. Three vaginal swabs were taken sealed and sent for chemical examiner.

Ex.PC is the correct carbon copy of medical examination report, which is in my hand and bear my signature and seal.”

The lady doctor also medically examined Sobia victim and observed as under:-

“A young girl clad in ordinary clothes. No signs of violence.

On local examination:

No tear laceration, blood or semen on the local parts. Vagina permitted one finger loosely. Hymen completely absent. Brownish discharge was present.

Three vaginal swabs were taken, sealed and sent for Chemical Examiner.

Ex.PD is the correct carbon copy of Medico legal report, which is in my hand and bear my signature and seal.

As per report of Chemical Examiner of Mst. Ghazala Ex.PE the swabs were found to be stained with semen and according to report of Chemical Examiner regarding Mst. Sobia Bibi Ex.PF the swabs were not stained with semen.”

- (vi) PW.6 Waajab Ali Sub Inspector stated that on 23.08.2006 he received application Ex.PA for registration of the case and he formally recorded the FIR Ex.PA/1.
- (vii) CW.1 Muhammad Mansha, Sub Inspector of Police, stated that the investigation of the case was entrusted to him on 24.12.2006. He, through application Ex.CW.1/A, obtained warrants of arrest of accused Shaukat Ali and Ahmed Nawaz CW.1/B and CW.1/C respectively and his report thereon is Ex/CW.1/B/1 and CW.1/C/1. He, through application Ex.CW.1/D, obtained proclamation against accused Shaukat and Ahmed

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Nawaz Ex.CW.1/E and CW.1/F and his report thereon is Ex.CW.1/E/1 and CW.1/F/1. He submitted final investigation report against accused Shaukat and Ahmed Nawaz on 29.03.2007 requiring them to face trial. On 12.04.2007 Ahmed Nawaz accused joined the investigation after obtaining interim pre-arrest bail. During investigation he found accused Ahmed Nawaz innocent.

- (viii) CW.2 Dr. Khurshid Ahmed had medically examined accused Ghulam Farid on 10.10.2006 and found him sexually potent.
- (ix) CW.3 Manzoor Ahmed Assistant Sub Inspector stated that he, on 12.09.2006 under the direction of the Station House Officer/Incharge Investigation, presented an application Ex.CW.3/A for recording statements of Mst. Ghazala and Mst. Sobia abductees under section 164 of the Code of Criminal Procedure but the learned Illaqa Magistrate vide his order dated 12.09.2006 Ex.CW.3/A/1 turned down his request. He got both the abductees examined medically.

(x) CW.4 Muhammad Rashid Sub Inspector stated that on 20.09.2006 he was entrusted with the investigation of the case. He arrested accused Ghulam Farid on 09.10.2006 and got him medically examined. During investigation he found Ghulam Farid accused involved in the occurrence and found accused Iqbal and Bakhtiar innocent.

(xi) CW.5 Ghulam Murtaza Sub Inspector stated that on 23.08.2006 file of this case was entrusted to him for investigation. He inspected the place of occurrence, prepared site plan Ex.CW.5/A and recorded statements of the witnesses under section 161 of the Code of Criminal Procedure. He recorded statements of Mst. Ghazala Bibi and Sobia Bibi victims on 08.09.2006.

(xii) CW.6 Muhammad Sarwar Sub Inspector stated that on 17.08.2007 Ahmed Nawaz accused appeared before him. He was on bail and joined investigation. During investigation he found Ahmed Nawaz accused not involved in the occurrence.

6. The prosecution closed its evidence on 08.07.2008.

Thereafter the learned trial Court recorded statements of the

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accused under section 342 of the Code of Criminal Procedure.

The accused denied the allegations leveled against them. In reply to question "Why this case against you and why the PWs have deposed against you?" the appellants stated as under:-

Muhammad Iqbal, appellant:

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"PW Anwar was my lessee and I got vacate my land due to non-payment of lease amount, whereupon Taj Hussain complainant bore grudge in his mind and he implicated me in this case. The other PWs are relative of Taj Hussain complainant. They have falsely deposed against me. Taj Hussain complainant deposed against me for the reasons that he demanded the hands of daughter of my real uncle Muhammad Amin but I opposed the said Rishta and Taj Hussain became inimical to me. On the day of occurrence I alongwith Ahmed Nawaz my co-accused had gone to Haveli Lakha at 8.00 A.M. to get repair our peter Engine in the workshop of Mistory Maqsood and

remained there till evening. The Police declared me as not involved, in the present occurrence, during investigation. I am innocent.”

Bakhtiar, appellant:

“The PWs are related inter-se. I had been supporting the named in the FIR namely Ghulam Farid, Ahmed Nawaz, during the police investigation, for which the complainant of the case bore grudge against me and due to the said reason, PWs falsely involved me in this case subsequently, in this case. On the day of occurrence, I was present at Lahore in regard with the treatment of my daughter who was sick and was admitted in the Hospital. I am not involved in the case. During investigation I was also found as not involved in this case.”

Ahmed Nawaz alias Bholi, appellant:

“The PWs are closely relative interse. I was servant of my co-accused Muhammad Iqbal and still serving him as a servant. The PWs involved me in this case due to their enmity

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with Iqbal accused. I rely on the statement/answer of my co-accused Iqbal made in the reply of this question.”

Muhammad Zafar, appellant:

“The PWs are closely related with each other. I had been pursuing the case of Ahmed Nawaz co-accused during investigation before the police, for which the complainant party bore grudge in their mind and during the investigation subsequently involved me in this case falsely. I did not commit any offence. I am innocent.”

Ghulam Farid, appellant:

“I was employed with Riaz Ahmed brother of complainant and father of Sobia Bibi alleged victim/PW.3. Five/six months prior to the alleged occurrence, I used to collect the milk from different places as purchased by said Riaz Ahmed. Thereafter I got employment with Bakhtiar co-accused, after leaving the employment of Riaz Ahmed father of Sobia Bibi. Due to that grudge I was involved falsely by the complainant

party at the instance of Riaz Ahmed, his brother. I am Machi by caste whereas the complainant and other alleged witnesses are belong to Zamindar family and also related interse. They deposed falsely against me. I am innocent.”

7. The learned trial Court after completing codal formalities of the trial returned a verdict of guilt. Convictions and sentences were awarded to the appellants as mentioned in opening paragraph of this judgment.

8. We have gone through the file. Evidence of witnesses of prosecution and statements of accused has been perused. Relevant portions of the impugned judgment have been scanned. Arguments of contending parties have been heard.

9. Mr.Shaukat Rafique Bajwa, Advocate appearing for Ahmed Nawaz, Muhammad Iqbal and Bakhtiar appellants urged the following points:-

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- i) That in the initial report, Ghulam Farid and Ahmad Nawaz were the only two persons nominated by the complainant for the offence of abduction;
- ii) That the complainant is not an eye witness of the occurrence;
- iii) That the complainant alleged that he was informed of the incident but no one appeared at the trial to say that he had given information to the complainant about the incident of abduction. Therefore, the statement made by the complainant would be hearsay and hence not admissible;
- iv) That the F.I.R is an after thought and was lodged after a delay of 6 days;
- v) That the alleged abductees were neither recovered from the possession of the appellants nor were they recovered on the pointation of any one of the appellants;
- vi) That the return of both the abductees is shrouded in mystery because the women who had allegedly rescued the abductees was not produced at the trial;
- vii) That even the statements of two witnesses about the return of the abductees are contradictory;
- viii) That the filing of the complaint was also delayed and there is no reference for the return of abductees;

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- ix) That the alleged abductees returned to their respective homes on 08.09.2006 but the complaint was filed on 13.12.2006;
- x) That there is no specific allegation of Zina bil Jabr having been committed by any one of the 06 accused;
- xi) That except Ghulam Farid no one was medically examined in order to ascertain their potency;
- xii) The learned Counsel relied upon the case of "*Mst. Ehsan Begum Vs. The State*" reported in *PLD 1983 FSC page 204* and *Shahid and others Vs. The State* reported in *2002 SLR 554* wherein it was held that grouping of semen was necessary. The learned Counsel further relied upon the case of *Mst. Sharman Vs. The State* reported as *2002 P.Cr.L.J 831* to assert that semen remains alive for 17 days;
- xiii) That the semen was collected on 12.09.2006 but the same was received in the office of Chemical Examiner on 12.10.2006 and the person who had taken the swabs to the office of Chemical Examiner, namely Constable Javed Iqbal was not produced at the trial. Therefore in the peculiar facts and circumstances of this case, the report of the Chemical Examiner was of no help to the prosecution;

- xiv) That no incriminating material was recovered from any of the appellants;
- xv) That the prosecution has not produced any independent evidence even though the incident is alleged to have taken place at 11:30 a.m in the vicinity of village Abadi;
- xvi) That the statements of the two victims is interse contradictory;
- xvii) That PW-3 and PW-4 do not state that PW-2 had also seen the occurrence. In this way the statements of PW.2, the complainant who alleges to be eye witness, is rendered of no value;
- xviii) That PW-2 states that he is Khalu of the victims but this relationship is denied by PW-1;
- xix) That Ghulam Abbas and Jayed, who were nominated as eye witnesses of the occurrence of abduction, were not produced. The presumption is that the evidence which is withheld is not helpful to the prosecution;
- xx) In so far as Ghulam Farid appellant is concerned, it is in evidence that he had left the job of Muhammad Riaz father of the victim and had joined Bukhtiar accused; and

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xxi) That the statement of Muhammad Anwar PW.2 was never recorded under Section 161 of the Code of Criminal Procedure;

xxii) That Manzoor Hussain S.I did not state that he received swabs although he had got the two victims medically examined.

10. Learned Counsel for accused Ghulam Farid urged

the following points:

i) That the house of the alleged abductee Mst.Sofia is one Killa away from the place of abduction. It has been brought on the record that brothers and other family members of the victims were present in their respective homes at the time of occurrence. Had the abduction taken place then some one from the family would have come to rescue the abductee; and

ii) The victims maintained that they were wearing the same clothes for about 21 days but no piece of their

clothes have been produced which would have corroborated the strong allegation of rape.

- iii) That the complainant has deliberately shown the victims to be the minors even though according to the medical evidence they were found to be of 20 years each and one of them was menstruating;
- iv) That there is no proof that the Investigating Officer did visit the place where the two victims were confined and there are no mark of violence on their persons;

11. Learned Counsel for appellants Iqbal and Ahmad

Nawaz urged the following points:

- i) That Iqbal had leased out agricultural land to Muhammad Anwar PW-3. The accused wanted this land back which was being refused by the witnesses. It was for this reason that the appellant was involved in this case falsely;

- ii) That the evidence of Muhammad Rashid Sub Inspector CW-4 has not been considered who had declared the accused innocent.
- iii) That CW.1 Mansha Sub Inspector had exonerated appellant Ahmad Nawaz;
- iv) That the learned Counsel relied upon the case of Atteeq-ur-Rehman alias Kali Vs. The State, reported in 2008 P.Cr.L.J 657;
- v) That the appellant Zafar was not nominated in the F.I.R and not mentioned in the statement under Section 161 of the Code of Criminal Procedure;
- vi) That the appellant was named for the first time in the complaint after a delay of four months;
- vii) The specific allegation of Zina was leveled 01 year and 11 months after filing of the belated complaint;
- viii) That the appellant was assisting the co-accused in their case, and hence he has been falsely involved;

12. Learned D.P.G appearing for the State on the other hand supported the conviction and sentence and stated that PW.1, PW.2, PW.3 and PW.4 have supported the allegation of Zina bil Jabr. He, however, further urged the following points:-

- i) That the age of one of the victim was stated to be 13 years and it was not challenged by the defence;
- ii) That the testimony of the victims stood corroborated by the independent witnesses;
- iii) That the witnesses are natural;
- iv) That appellants Muhammad Iqbal and Bakhtiar have failed to prove their alibi and they were required to prove the special plea;
- v) That offence under Sections 11 and 10(3) of the Offence of Zina (Enforcement of Hudood Ordinance VII of 1979 fully proves;

13. Learned counsel for the complainant urged the following points:-

- i) That it is a case in which the allegation of Zina bil Jabar has been fully proved;
- ii) That the ocular testimony is corroborated by the medical evidence;
- iii) That the statements of the victims show that there is no ill will or malice on their part to falsely involve the appellants in this case;
- iv) That all the appellants fully participated in the offence of Zina bil Jabr as alleged by both the victims;

- v) That all the witnesses produced by the prosecution are independent and are residents of the same village;
- vi) That it has not been proved that the witnesses were ill disposed towards the appellants;
- vii) That no person will falsely involve any person in such a case;
- viii) That the opinion of the Investigating Officer whereby he declared the certain appellants to be innocent, is not binding on this Court.
- ix) The learned counsel relied upon the following

Judgments:-

Muhammad Iqbal and others Versus Muhammad Akram and another
1996 SCMR 908,

Shahzad alias Shaddu and others Versus The State
2002 SCMR 1009,

Haji Ayoob Versus The State
PLD 1994 FSC 39 to show that absence of semen in vagina was immaterial.

Zahoor Ahmed Versus The State
1995 SCMR 1338 to urge that penetration was sufficient to prove charge of rape.

14. We have considered all the arguments in the light of facts and circumstances of this case. Our observations are as

follows:-

- i. That the time, place, mode and manner of abduction of Mst. Ghazala and Mst. Sobia are not

convincing. There is no evidence that the appellants knew that the two abductees would be going to Charri crop for urination and they would lay in wait for them in order to abduct them. It does not appear to reason that the abduction took place in broad day light in the vicinity of village *Abadi*. It is not clear whether the accused had hidden themselves before the arrival of the abductees or they had arrived at the spot on their motorcycles after the abductees had reached the Charri crops. Why should have the two girls gone out in the field for urination when wash room facility was available to them?

ii. Initially two persons were nominated in the FIR i.e. Ghulam Farid and Ahmed Nawaz alongwith two unknown persons whereas the belated complaint disclosed the names of four other persons involved in the abduction. There is no plausible reason for this contradictory statement. It is a clear case where calculated improvements had taken place. Parties are known to each other. The progressive upgrading of list of accused is reprehensible.

iii. That even though the complaint was lodged after quite some time yet it was silent on the question of zina-bil-jabr. Not a single appellant was attributed any role in the complaint.

iv. The prosecution did not take the Court into confidence on manner of the return of both abductees. This fact was not even disclosed in the belated complaint. The introduction of an unknown woman in the den of captors who rescued the abductees is a theme suitable for plays but it does not inspire confidence in this case.

v. The appellants were charged under section 10(4) of the Offence of Zina (Enforcement of Hudood) Ordinance VII of 1979 but the conviction was recorded under section 10(3) of the Ordinance VII of 1979. No appeal against acquittal from the charge of gang rape was filed by the complainant.

vi. It is certainly not a case of abduction by four appellants. It may be a case of elopement. The two girls went away with two appellants but the question is how to determine the identity of the two male partners. The female collaborators are known but the definitive finding about the two accomplices is not available on record. We cannot make a guess. In order to record conviction the offence must be clamped with a known person.

vii. PW.5, lady doctor Rubina Nasreen stated that she did not notice any sign of violence. The swabs taken from the private part of only one girl were found stained with semen. The police officer who took the swabs to the

Chemical Examiner was not produced at the trial. In this view of the matter the allegation of zina qua Mst. Sobia becomes doubtful.

viii. There is element of unexplained delay at both the stages. Firstly the crime report was lodged with police after a delay of six days and then the complaint was also moved with considerable delay. Delay coupled with deliberation and calculated improvements makes the entire story doubtful. The prosecution cannot claim benefit of doubt;

ix. The places of confinement of the abductees were not shown to the police;

x. The victims do not agree with each other on the first issue. PW.3 Mst. Sobia stated that four accused were sitting already in Charri crop while PW.4 Mst. Ghazala Bibi in cross-examination stated that the accused came when these two females were already in Charri crop. She, however, in the same breath stated that the accused were in the crop and some of them were standing. Women folk do not urinate when men are standing around in the field.

15. We are convinced that it is a case of elopement but it is absolutely difficult to give a clear finding as regards the identity and number of the paramours. It is not at all safe to

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record conviction when the identity of the actual offenders cannot be established. The Courts, for the safe administration of justice, under such circumstances give benefit of doubt to all the accused. The fault lies with the prosecution because complainants do not come with clean hands. Courts are not taken into confidence. Innocent persons are involved with the result that the real culprit also gets the benefit. Acquittal does not however mean that all the accused were falsely involved. The prosecution must stand on its own legs and the guilt must be brought home to an accused. In the absence of moral certainty as to the commission of the offence, in the mind of Judge, the benefit certainly accrues to the accused.

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16. In this view of the matter the three appeals are accepted. Conviction and sentences recorded under sections 10(3) and 11 of the Offence of Zina (Enforcement of Hudood) Ordinance VII of 1979 by learned Additional Sessions Judge,

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Depalpur on 23.07.2008 in Hudood Private Complaint Case

No.74 of 2006, Trial No.14 of 2007 are set aside. The

appellants are directed to be released forthwith unless required

in any other case. Appellant Bakhtiar is on bail. His bail bonds

are discharged.

 Sd -
JUSTICE SYED AFZAL HAIDER

 Sd -
JUSTICE SHAHZADO SHAIKH

Announced in open Court
on 24-02-2011 at Islamabad
*M. Imran Bhatti/**

Fit for reporting.

 Sd -
JUSTICE SYED AFZAL HAIDER



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