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IN THE FEDERAL SHARIAT COURT
(Appellate Jurisdiction)

PRESENT:

MR. JUSTICE SYED AFZAL HAIDER, ACJ
MR. JUSTICE SHAHZADO SHAIKH

CRIMINAL APPEAL NO.73/L OF 2008

Muhammad Naeem alias Bablu son of Abdul Razzaq,
Caste Rajput, Resident of Channun Mori,
Near Shereen Chowk, Jhang City.

---Appellant

Versus

The State

--- Respondent

Counsel for the appellant	---	Mr. Muhammad Arshad Rana, Advocate
Counsel for the State	---	Ch. Muhammad Ishaque D.P.G.
FIR No., date & Police Station	---	32/06 dated 20.02.2006 Jhang City.
Date of Judgment of Trial Court	---	05.07.2008
Date of Institution	---	06.09.2008
Date of Hearing	---	10.02.2011
Date of Judgment	---	14.02.2011
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E.I.

JUDGMENT:

Justice Syed Afzal Haider, ACJ: Appellant

Muhammad Naeem alias Bablu has through this appeal challenged the judgment dated 05.07.2008 delivered by learned Additional Sessions Judge, Jhang whereby he was convicted under section 10(3) of the Offence of Zina (Enforcement of Hudood) Ordinance, 1979 and sentenced to fourteen years rigorous imprisonment with benefit of section 382-B of the Code of Criminal Procedure.

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2. The prosecution case in brief is that complainant Riasat Ali PW.5 lodged crime report Ex.PA before the Station House Officer, Police Station City Jhang on 20.02.2006 wherein he stated that on 19.02.2006 he alongwith Sabir Ali and Muhammad Hanif had gone to the house of his nephew Muhammad Yameen to effect a compromise between him and his wife Yasmeen (grand daughter of the complainant) as

relations between them had been strained of late and the latter had left the house of her husband and was putting up with her parents. After a short while, when they came out in the street they heard wailing of a female child whereupon following the distress noise they entered the shop of Muhammad Naeem alias Bablu accused and saw that he was committing zina-bil-jabr with Mst. Saliah Bibi victim aged 2 years who was smeared with blood. On seeing them the accused fled away. As a consequence of the crime information lodged with the police a formal first information report Ex.PA/1 was registered on 20.02.2006.

E.I.

3. Investigation ensued as a consequence of registration of crime report. Muhammad Yar Sub Inspector PW.8 undertook the investigation. He visited the place of occurrence, recorded statements of witnesses, prepared site plan Ex.PG and arrested the accused. After completion of

investigation, the Station House Officer submitted report under section 173 of the Code of Criminal Procedure before the Court on 22.02.2006 requiring the accused to face trial.

4. The learned trial Court framed charge against accused on 28.03.2006 under section 10(3) of the Offence of Zina (Enforcement of Hudood) Ordinance, 1979 and under section 7 of the Anti-Terrorism Act, 1997. The accused did not plead guilty and claimed trial.

5. The prosecution produced eight witnesses to prove its case. The gist of the deposition of the witnesses is as follows:-

- (i) PW.1 Fayyaz Muhammad Moharrar/Head Constable formally recorded FIR on 20.02.2006. On the same day the Investigating Officer handed over to him two sealed phials and one envelope which he delivered to Mukhtar Ahmad Constable for onward transmission to the office of Chemical Examiner, Lahore.

- (ii) PW.2 Mukhtar Ahmad Constable had delivered two sealed phials and one sealed envelope in the office of Chemical Examiner, Lahore on 21.02.2006 which were handed over to him by the Moharrer on 20.02.2006.
- (iii) PW.3 Lady Doctor Kaneez Zahra alongwith Dr. Bilqees had medically examined Mst. Saleh Bibi victim aged 1½ years on 20.02.2006 and observed as under:-

- “1. A second degree perinial tear measuring 1.5 cm x 1 cm bleeding present, tear repaired.
2. Multiple small lacerations present near the urethrae.
3. Three vaginal swabs (blood stained) taken, sealed, piece of blood stained clothes sent to Chemical Examiner, Lahore for semen analysis and Serologist Examination by handing over to Khadim Hussain 141/C, PS City Jhang.”

Medical experts opined that the victim had been raped and the probable duration of injuries was within about 24 hours.

- (iv) PW.4 Dr. Muhammad Zafar Iqbal Khan had medically examined Muhammad Naeem alias Bablu accused and found him sexually potent.
- (v) Riasat Ali complainant appeared as PW.5 and endorsed the contents of his complaint Ex.PA.
- (vi) PW.6 Sabir Ali and PW.7 Haifz Muhammad Hanif supported the version of complainant PW.5.
- (vii) PW.8 Muhammad Yar Sub Inspector undertook the investigation whose detail has already been mentioned in paragraph 3 of this judgment.

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6. The prosecution closed its evidence on 30.10.2007.

Thereafter the learned trial Court recorded statement of the accused under section 342 of the Code of Criminal Procedure on 31.10.2007. The accused denied the allegations leveled against him and stated that the case was false and he had been involved due to personal enmity of his parents with the complainant. The accused also stated that all the witnesses for prosecution were inter-se closely related and as such they were interested witnesses.

7. The learned trial Court after completing the codal formalities of the trial returned a verdict of guilt. Conviction and award of sentence ensued as mentioned in the opening paragraph of this judgment.

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

9. The reasons that found favour with the learned trial Court to record conviction have been summed up in paragraph 19 of the impugned judgment. A portion of this para is reproduced below:-

“The accused is nominated in the FIR with specific role. The prosecution evidence is cogent, natural and confidence inspiring. Eye witnesses supported the prosecution version.
PW.5 Riasat Ali, PW.6 Sabir Ali and

PW.7 Muhammad Hanif are eye witnesses.

There is nothing on record to show any malice, malafide, any enmity of the accused or his parent with the PWs. The ocular account is supported by medical evidence.”

10. Learned Counsel for the appellant raised the

following points for consideration of the Court:-

- i. That the time of occurrence has not been mentioned in the charge;
- ii. That the allegation of rape has not been corroborated through independent evidence;
- iii. That it is doubtful if the clothes of the victim were stained with semen when they had been washed before being sent to the hospital;
- iv. That the report of the Chemical Examiner is fake;
- v. That the victim was allegedly in the lap of the accused and hence rape could not have taken place;

- vi. That strange enough one accused managed to escape in the presence of three eye-witnesses; and lastly
- vii. That the prosecution has failed to prove the charge against the accused through reliable evidence.

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11. Learned Counsel for the State supported the conviction. He urged the following points in support of his contention:

- i. That the accused was nominated in the first information report.
- ii. That the oral account is direct and consistent;
- iii. The eye witnesses account of this horrible incident is amply corroborated by medical evidence;
- iv. That there is no enmity nourished by prosecution party against the accused to falsely involve him in such an appalling episode; and

v. That the plea that the accused was lunatic was not accepted by the High Court.

12. Our observations after considering the various aspects of the case are as follows:-

i. That the accused while replying to Question 7, during his examination under section 342 of the Code of Criminal Procedure, stated that he was a minor and a lunatic. The element of minority has been duly considered by the learned trial Court. The plea of lunacy of the appellant was considered by the High Court. Learned trial court in paragraph 16 of the impugned judgment has recorded the following finding:-

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“The Hon’ble Lahore High Court, Lahore vide order dated 1.3.2007 observed that no case has been made out to declare the accused as lunatic/insane.”

Again in paragraph 19 referred to the order of the High Court in the following terms:-

“The Hon’ble Lahore High Court, Lahore vide order dated 1.3.2007 held as under:-

“We have examined the above report. According to which, no serious ailment has been noticed and this is due to the medication that he is taking. Therefore, no

case has been made out to declare the petitioner as a lunatic/insane.””

- ii. A report dated 22.12.2009 is available on record which was sent by Medical Officer of B.I. & J. Jail Faisalabad in response to an order of this Court dated 09.12.2009. It is stated that the appellant is suffering from tuberculous osteomyelitis i.e. the T.B of bone/joint. The treatment will take almost a year and a half. It is also reported that due to mental condition the appellant needs attention because he sometimes refuses to take medicine. On the strength of this report the learned Counsel requested that reduction of few years be ordered. This is no ground to reduce the quantum of sentence because on a similar report the High Court had already not accepted the plea of lunacy which fact, as noted above, finds mention in the impugned judgment. We cannot sit in review of the final order passed by Lahore High Court. As regards the ailment of Tuberculosis it is no more fatal and even the report suggests that with proper medication the disease would disappear in about eighteen months time. The patient is being treated for at least fourteen months.
- iii. The appellant has been attributed a specific role in the crime report;

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iv. There are three eye witnesses of this occurrence which is not only cruel but highly frightening;

v. Corroboration from medical source and the positive report of the Chemical Examiner is conclusive;

vi. The incident took place on 19.02.2006. The victim was admitted in the hospital on the same day. A complaint was then lodged and thereafter FIR was registered. In this way it is one of those few cases where the action was prompt obviously for the reason that the child was bleeding.

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vii. Dr. Muhammad Zafar Iqbal Khan examined the accused to determine potency for sexual activity. He was found potent. The accused refused to give semen for the purpose of analysis. The Medical Officer did not notice erratic behaviour or abnormal conduct of the appellant.

viii. The objection that the clothes of victim had been washed before her medical test is not relevant for the reason that the child was bleeding even at the time when she was being medically examined in the hospital and the semen stained swabs were taken from the internal private parts of the victim during her medical examination. The positive report of the Chemical Examiner offers additional corroboration of the prosecution allegation.

ix. The impugned judgment is not lacking in any respect. The entire evidence and the statement of accused have been duly considered. The conclusions arrived at by the learned trial Court are backed by evidence. The evidence given by the eye witnesses is consistent. There is no enmity between the parties. The special plea taken by the accused was found false. The incident was of the nature which caused horror in the neighbourhood. The accused has already been dealt with leniently by the learned trial Court because he was 18 years of age.

11.

x. The prosecution has established that the case against the appellant and the charge stands proved.

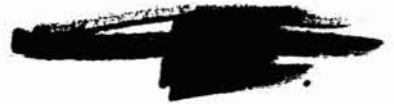
13. In view of what has been stated above the impugned judgment does not merit interference. The nature of the offence committed by the appellant does not admit of any further concession by way of reduction of sentence of four years.

14. Criminal Appeal No.73/L/2008 consequently fails.

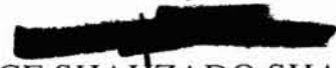
The impugned judgment dated 05.07.2008 delivered in Hudood Case No. 34/HC of 2007, Hudood Trial No. 26/2008 delivered

by Special Court of Juvenile Justice System

Ordinance/Additional Sessions Judge, Jhang is maintained.

Sect -



JUSTICE SYED AFZAL HAIDER
ACTING CHIEF JUSTICE

Sect -

JUSTICE SHAHZADO SHAIKH

Dated, Lahore the
14.02.2011

M. Imran Bhatti/*

Fit for reporting.

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JUSTICE SYED AFZAL HAIDER
ACTING CHIEF JUSTICE