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**IN THE FEDERAL SHARIAT COURT**  
(Appellate/Revisional Jurisdiction)

**PRESENT**

**MR.JUSTICE SHAHZADO SHAIKH, JUDGE**  
**MR.JUSTICE RIZWAN ALI DODANI, JUDGE**

**CRIMINAL APPEAL NO.84/L of 2010**

Muhammad Ayoub son of Allah Ditta, Badhal alias Balhorra by caste, Resident of Mahloo Mubarat Kot Samaba, District Rahim Yar Khan.

... Appellant

*VERSUS*

The State.

... Respondent

Counsel for the appellant	...	Mr.Rauf Ahmed, Advocate
Counsel for the complainant	...	Rai Abdul Basit, Advocate
Counsel for the State	...	Mian Muhammad Awais, Deputy Prosecutor General
F.I.R No. Date & Police Station, District	...	10/2005, 12.01.2005 Fazilpur, District Rajanpur.
Date of Judgment of Trial Court	...	29.04.2010
Date of institution	...	26.06.2010.
Date of hearing	...	30.09.2011
Date of Judgment	.....	<u>06-10-2011.</u>

(0)



**JUDGMENT:**

**JUSTICE RIZWAN ALI DODANI, J:** Appellant

Muhammad Ayub, has through this appeal, challenged the judgment dated 29.04.2010 delivered by learned Additional Sessions Judge, Rajanpur whereby the appellant was convicted under section 11 of the Offence of Zina (Enforcement of Hudood) Ordinance, 1979 and sentenced to life imprisonment with fine of Rs.10,000/-, in default whereof, to further undergo four months simple imprisonment. Benefit of Section 382-B of the Code of Criminal Procedure was extended to the appellant. However co-accused Irshad and Mst. Azeezan Bibi were declared proclaimed offenders during the trial.

2. The prosecution case in brief is that complainant Manzoor Hussain PW.4 laid oral information recorded by Ashiq Hussain Assistant Sub Inspector as Ex.PA on 12.01.2005 which was registered as FIR No.10/05 Ex.PA/1 wherein it was stated that on 23.10.2004 *nikah* of his daughter Mst. Naz Bibi



was contracted with Haq Nawaz but *rukhsati* had not taken place. In the night between 01.01.2005, accused Ayub, Irshad and Mst.Azizan Bibi came to his house as guests to participate in a marriage ceremony. After concluding the marriage on 3/4.01.2005 at night, after taking dinner, Mst. Azizan Bibi alongwith his daughter Mst. Naz Bibi made tea and served all the inmates of the house as well as the guests. In the morning the complainant found Mst. Naz Bibi as well as Ayub, Irshad and Mst.Azizan Bibi missing. He inquired from his relatives. His brother Hazoor Bux and Rabnawaz informed him that they had seen Mst. Naz Bibi going alongwith Ayub etc. and on their query the accused stated that they were taking Mst. Naz Bibi to her sister Mst. Bano Bibi wife of Muhammad Ismail at Mao Mubarak. The complainant alongwith the PWs went to the house of accused Ayub at Mao Mubarak where accused Ayub and Mst.Naz Bibi were not present. On query Irshad and Mst.Azizan Bibi had not given satisfactory reply. He also inquired from his son in law Muhammad Ismail about Mst. Naz Bibi but he showed ignorance about her. The complainant



alleged that the accused had enticed away his daughter Mst. Naz Bibi with intention to commit Zina with her. The complainant further stated that he made efforts through *Panchayat* for return of his daughter but could not succeed and ultimately reported the matter to the police. Hence FIR Ex.PA/1 was registered at Police Station Fazilpur, District Rajanpur under Sections 11 of the Offence of Zina (Enforcement of Hudood) Ordinance, 1979.

3. Investigation ensued as a consequence of registration of crime report. The Station House Officer first submitted incomplete report under section 512 of the Code of Criminal Procedure before the Court on 28.02.2006 wherein it was stated that the Police conducted various raids for arrest of accused persons but to no avail; got issued their non-bailable warrants of arrest and then initiated proceedings under Section 87 of the Code of Criminal Procedure. Then another incomplete report under section 173 of the Code of Criminal Procedure was



submitted before the Court on 16.03.2006 stating that Mst.Naz Bibi was retrieved with the intervention of *Brathri* people on 22.04.2005 and she was murdered by her brother Abdul Hameed. Aurangzeb, Sub Inspector arrested accused Irshad Hussain on 05.03.2006 and sent him to judicial lock up on 14.03.2006 while Mst. Azizan and Ayub, proclaimed offenders, had not been arrested. Ultimately Ayub and Mst. Azizan Bibi were arrested on 25.08.2009 and complete report under Section 173 of the Code of Criminal Procedure was submitted before the Court on 26.08.2009 requiring the accused to face trial.

4. The learned trial Court summoned the accused but only Ayub accused was produced before the Court under custody while Mst. Azizan Bibi did not appear before the Court and after fulfilling codal formalities she was proceeded under Section 87 of the Code of Criminal Procedure vide order dated 15.01.2010. Irshad accused, who was earlier tried, was also declared proclaimed offender vide order dated 27.11.2006.

Ayub accused was charged on 22.01.2010 under section 11 of the Offence of Zina (Enforcement of Hudood) Ordinance, 1979.

The accused did not plead guilty and claimed trial.

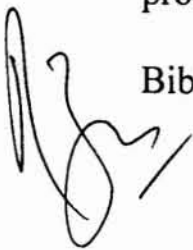
5. The prosecution produced ten witnesses to prove its case. The gist of the deposition of the witnesses is as follows:-

(i) PW.1 Muhammad Sadiq, Assistant Sub Inspector arrested accused Ayub and Mst. Azizan who were proclaimed offenders and sent them to judicial lock up.

(ii) PW.2 Rahmat Ullah Inspector had formally recorded FIR Ex.PA/1 on receipt of complaint Ex.PA which was sent to him by Ashiq Hussain, Assistant Sub Inspector through Abdul Majeed Constable.

(iii) PW.3 Doctor Muhammad Usman had medically examined accused Irshad on 09.03.2006 and found him sexually potent.

(iv) Complainant Manzoor Hussain appeared as PW.4 and endorsed the contents of his complaint Ex.PA. He produced original copy of *Part Nikah* Ex.PC of Mst. Naz Bibi with Haq Nawaz which was taken into possession



by the Investigating Officer through recovery memo Ex.PC/1.

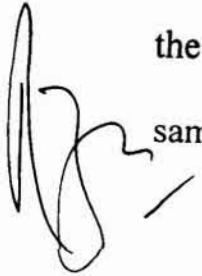
(v) PW.5 Hazoor Bux and PW.6 Rabnawaz supported the version of complainant Manzoor Hussain PW.4.

(vi) PW-6: Rabnawaz is the Waj Takkar witness. He corroborated the version of the complainant Manzoor Hussain PW-4.

(vii) PW.7 Irshad Hussain stated that he participated in Nikah ceremony of Haqnawaz with Mst. Naz Bibi. He alongwith Khadim Hussain was appointed as witness of Nikah and the Nikah was performed by Qazi Abdul Ghaffar.

(viii) PW.8 Fida Hussain stated that on 23.10.2004 he participated in the Nikah ceremony of Haqnawaz with Mst. Naz Bibi and he signed the '*Part Nikah*' as witness on behalf of Mst. Naz Bibi. The Nikah was recited by Qazi Abdul Ghaffar.

(ix) PW.9 Aurangzeb Sub Inspector stated that on 15.01.2006 he was entrusted with the investigation of the case. On 23.01.2006 he got issued non-bailable warrants of arrest of accused Irshad, Ayub and Azeez Mai from the concerned Illaqa Magistrate and after entering the same in the relevant register handed over to Haqnawaz



constable for execution. On 25.02.2006 he got issued proclamation under Section 87 of the Code of Criminal Procedure against the accused. He recorded statement of Haq Nawaz Constable under section 161 of the Code of Criminal Procedure. On 28.02.2006 he submitted the file before the Station House Officer who prepared challan/report under Section 512 of the Code of Criminal Procedure. He arrested accused Irshad on 05.03.2006 from Adda Chowk Qureshan and got him medically examined on 09.03.2006. During investigation he found accused Irshad guilty and sent him to judicial lock up on 14.03.2006.

(x) PW.10 Aurangzeb Sub Inspector had identified the handwriting and signatures of Ashiq Hussain, Assistant Sub Inspector, on complaint Ex.PA, recovery memo of 'Part Nikah' Ex.PC and site plan of place of occurrence Ex.PD.

6. The prosecution closed its evidence on 26.03.2010.

Thereafter the learned trial Court recorded statement of the accused under section 342 of the Code of Criminal Procedure on 26.04.2010. The appellant denied the allegations levelled against him. In reply to question "Why this case against you



and why the PWs have deposed against you?" the appellant

stated as under:-

"P.Ws are related inter se; thus, they deposed falsely against me and I have been falsely involved in this false case."

7. The learned Counsel for the appellant submitted

his arguments:-

- i) That grave injustice was caused to the appellant as he was not given any Counsel on State expenses by the learned trial Court. He relied on PLD 1987 S.C 304 and PLD 1987 S.C 356.
- ii) That the accused contracted Nikah with the alleged abductee Mst.Naz Bibi.
- iii) That the FIR was lodged after a delay of 08 days.
- iv) That there are contradictions in the statements of the

PWs.



v) That the alleged abductee was not produced before the trial Court nor her statement under Section 161 Cr.P.C was recorded.

vi) The accused was involved in this case due to rivalry.

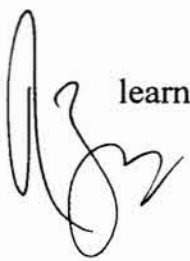
vii) The alleged abductee was not recovered from the possession of the appellant Muhammad Ayub.

viii) During and after the abduction, the alleged abductee did not raise any hue and cry despite the fact that she had many chances to do so.

ix) That the alleged abductee filed Writ Petition No/1116-2005/BWP against the District Police officer, Rajanpur, complainant Manzoor Hussain and the witnesses of the case seeking protection and a direction to the respondents not to interfere in her matrimonial life. In the petition, she posed herself to be the wife of the appellant Muhammad Ayub.

8. Learned counsel for the complainant and the

learned D.P.G for the State urged the following points;-



- i) That the prosecution witnesses deposed against the accused before the learned trial Court.
- ii) That it is on the record that the abductee was returned to his father through Panchayat from the accused side.
- iii) That Nikah Nama is alleged to be dated 22.08.2004 but it was not produced by the accused at the time of the trial nor any suggestion was put to him to that effect.
- iv) That no Nikah Nama was produced even in the statement under Section 342 Cr.P.C.

Learned D.P.G relied upon the judgments reported as:-

1988 SCMR 819

1991 SCMR 2300

PLJ 2001 FSC page 46.

The accused remained P.O and he did not surrender himself before the law but he was arrested. The learned D.P.G placed

reliance on the Judgments reported as:-



PLJ 1985 191

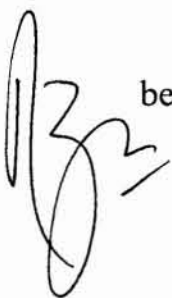
1992 SCMR 1036

v) That nothing was rebutted in this case.

9. We have gone through the arguments advanced by learned counsel for the parties and the State as well and evidence of the prosecution witnesses. The relevant portions of the impugned judgments have also been scanned.

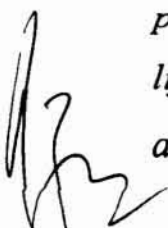
10. The complainant stated that in the morning of 04.01.2005, he found his daughter Mst.Naz Bibi and above said three guests including the appellant missing and on searching he was informed by Hazoor Bux PW-5 and Rab Nawaz PW-6, who are relatives of the complainant, that accused persons were taking Mst.Naz Bibi and on their query they told that they were going to meet the sister of Mst.Naz Bibi (daughter of the complainant). The same narration was reiterated by the complainant and the PWs as well in their respective testimonies

before the learned trial Court.



The fact which comes up from these statements is that neither any hue and cry nor any call for help on the part of the alleged abductee have been emphasized by the prosecution witnesses, therefore, it can safely be observed that no force had been applied by the accused persons at any relevant point of time although the alleged abductee had got a chance when the PWs had made query from them but she had not called for any help from them. That the charge against the appellant is under Section 11 of the Offence of Zina (Enforcement of Hudood) Ordinance VII of 1979, which is being reproduced hereunder:-

*"11: Kidnapping, abducting or inducing woman to compel for marriage, etc.--Whoever kidnaps or abducts any woman with intent that she may be compelled, or knowing it be likely that she will be compelled, to marry any person against her will, or in order that she may be forced or seduced to illicit intercourse or knowing it to be likely that she will be forced or seduced to illicit intercourse, shall be punished with imprisonment [which may extend to life] and with whipping not exceeding thirty stripes, and shall also be liable to fine; and whoever by*



*means of criminal intimidation as defined in the Pakistan Penal Code, (Act XLV of 1860) or of abuse of authority or any other method of compulsion induces any woman to go from any place with intent that she may be, or knowing that it is likely that she will be, forced or seduced to illicit intercourse with another person shall also be punishable as aforesaid."*

11. While going through the ingredients of Section 11 of the Offence of Zina (Enforcement of Hudood) Ordinance VII of 1979, it has been observed that the words "kidnapping", "abduction" or "inducement" have been used. To understand the offence of abduction as a whole, it would be appropriate to reproduce also Section 362 of the Pakistan Penal Code, 1860 which deals with the offence of abduction:-

**"Section 362: Abduction:** *Whoever by force compels, or by any deceitful means induces, any person to go from any place, is said to abduct that person."*

That there are two essential ingredients which form offence of "Abduction", use of 'force' and secondly 'inducement by any deceitful means'. As far as the first



requirement i.e the 'use of force' is concerned, as discussed in the preceding para, the same has not been seen on the record. In so far as the second one i.e 'inducement by deceitful means', it may be mentioned here that while making arguments, the counsel for the appellant submitted that a Constitution Petition No.1116/2005 titled "*Mst.Naz Bibi wife of Muhammad Ayub vs. DPO Rajanpur and 04 others*" was filed in the Hon'ble Lahore High Court, Bahawalpur Bench, Bahawalpur, as the certified copy of the said petition alongwith an order passed thereon on 15.04.2005 has been provided to this Court and being record of a Court, the same can be considered. As obvious from the title, it was filed by the alleged abductee who mentioned herself as wife of the appellant Muhammad Ayub, the said petition was filed with the prayer which is reproduced for convenience as under:-

*"It is humbly prayed that directions be issued to the respondents No.1 to 4 not to harass and pressurize the petitioner and respondent No.5 illegally and*



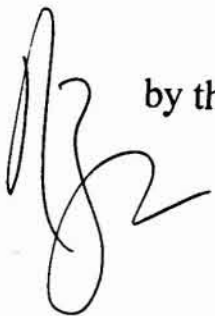
*also not to interfere into the matrimonial life of the petitioner and respondent No.5. Any other remedy which is available to this August and Hon'ble Court may kindly and graciously be granted."*

12. The contents of this Prayer show that Mst.Naz Bibi, the alleged abductee, has appeared before the Hon'ble High Court seeking protection and an order against the four respondents {(DPO Rajanpur, S.H.O Fazalpur, complainant Manzoor Hussain and Haq Nawaz (alleged husband)}. She placed appellant Muhammad Ayub as respondent No.5 in the Writ Petition, therefore, it shows that no 'inducement' was applied on part of the appellant, inasmuch as had it been so, the petitioner/alleged abductee would not have filed the said petition and produced herself before the Hon'ble High Court. So under these circumstances, neither the 'Force' nor inducement by deceitful means have been undertaken by the accused persons. So much so it is also on the record that the recovery of the alleged abductee has not been



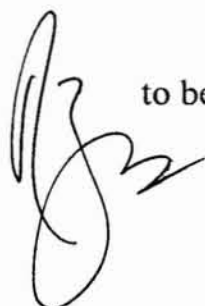
effected from the appellant as the complainant and PWs on every relevant point of time stated that the recovery of the alleged abductee was effected by the Panchayat and they nowhere named the appellant as to this effect.

13. That the vital piece of evidence of the alleged abductee has also not come on the record as it was brought to the notice of this Court that she was murdered allegedly by her brother in complainant's house immediately after her recovery through Panchayat and an FIR was lodged to this effect. Besides, the murder of the abductee in the house of the complainant further strengthens that she was not abducted as if it was so then she would not have been done to death after coming back to the complainant. That the existence of Nikahnama as produced by the complainant's side too does not help the prosecution




story in order to connect the appellant with the offence he has been charged with.


14. Under these circumstances, the case in hand seems to be the willful disappearance of the alleged abductee and, as such, Section 11 of the Offence of Zina (Enforcement of Hudood) Ordinance VII of 1979 is not attracted in the instant case. We, therefore, find that the conviction and sentence awarded under Section 11 ibid to the appellant Muhammad Ayub son of Allah Ditta to life imprisonment with a fine of Rs.10,000/- by the learned Additional Sessions Judge, Rajanpur vide Judgment dated 29.04.2010 in Hudood Case No.19 of 2009 and Hudood Trial No.01 of 2010 is not correct and warrants to be interfered. As such, we acquit the appellant by setting-aside his conviction and sentence as stated above. Consequently the appeal is allowed and the appellant is ordered to be released unless required to be detained in any other case.



15. These are the reasons of our short order dated

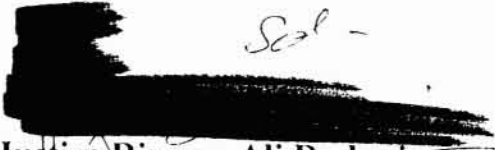
30.09.2011.

 Seal -  
**Justice Rizwan Ali Dodani**

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**Justice Shahzado Shaikh**

Dated 06-10-2011.

*Fit for Reporting*

 Seal -  
**Justice Rizwan Ali Dodani**