

# IN THE FEDERAL SHARIAH COURT

(Appellate Jurisdiction )

**PRESENT:**

**MR. JUSTICE AGHA RAFIQ AHMED KHAN, CHIEF JUSTICE.**

**CRIMINAL APPEAL NO.94/I OF 2010.**

1. Javed son of Haq Nawaz,  
2. Muhammad Irfan S/o Khadim Hussain,  
3. Amjad Ali son of Noor Muhammad &  
4. Ghulam Abbas son of Ahmad Nawaz,  
All residents of Mauza Sial Faqir,  
Mauza Char Yari, Mauza Wagha,  
respectively, Tehsil Ahmad Pur Sial,  
District Jhang. .... Appellants.

Versus

1. Rab Nawaz son of Sultan  
R/o Ahmad Pur Sial,  
District Jhang. &

2. The State. .... Respondents.

Counsel for appellants. .... Mr.Tahir Mehmood Khokhar,  
Advocate.

Counsel for complainant. .... Mr. M. Aurangzeb Khan,  
Advocate

Counsel for State .... ChMuhammad Sarwar Sidhu,  
Addl: Prosecutor General  
Punjab.

Private Complaint .... No.02/2010 U/s 10 (4) of the  
Offence of Zina (E.O.II)  
Ordinance VII of 1979.

Date of impugned  
Judgment. .... 16.10.2010.

Date of Institution .... 04.11.2010.


Date of hearing .... 06.05.2011.

Date of decision ... 06.05.2011.

.....

**JUDGMENT:**

**Justice Agha Rafiq Ahmed Khan, Chief Justice.-** Appellants Javed, Muhammad Irfan, Amjad Ali and Ghulam Abbas have filed this criminal appeal against the judgment dated 16.10.2010 delivered by learned Additional Sessions Judge, Ahmad Pur Sial, District Jhang, whereby the appellants have been convicted under section 10 (3) of the Offence of *Zina* (Enforcement of Hudood) Ordinance, 1979 (hereinafter referred to as 'the Ordinance'), and sentenced them to ten years Rigorous Imprisonment each, with fine of Rs.20000 (twenty thousand) each, in default whereof to further undergo two months Simple Imprisonment each. The appellants have also been convicted under section 11 of the Ordinance, and sentenced to ten years Rigorous Imprisonment each, with fine of Rs.20000 (twenty thousand) each, or in default thereof to further undergo two months Simple Imprisonment, each.



Both the sentences awarded to the appellants were ordered to run concurrently with the benefit of Section 382 (b) of the Code of Criminal Procedure extended to them.

2. Brief facts of the case as arise from the contents private complaint submitted by Rab Nawaz against the appellants/accused, are that his daughter Mst.Sumera Bibi who had been married to Ghulam Abbas about one and a half year ago, had come to his (complainant's) house on 16.6.2006. On the night between 16<sup>th</sup> & 17 June, 2006 at 12.30 a.m. (mid-night) his daughter Mst. Sumera Bibi

went out of the house to answer the call of nature but when she did not return till 1/2 hour, the complainant alongwith Allah Ditta and Muhammad Iqbal started her search. After covering 2/3 acres distance, they heard the cries. In the light of torch they identified accused Javed, Imran, Muhammad Irfan alongwith Ghulam Abbas & Amjad taking away Mst.Sumera Bibi on a motorcycle. The complainant party tried to chase the accused whereupon accused Javed armed with 12 bore gun warned the complainant party not to chase them. Thereafter complainant approached the elders of accused persons for return of his daughter. In the beginning the accused assured the complainant that his daughter would be returned but later on they refused.

3. After receiving private complaint, the learned Sessions Judge, vide order dated 23.2.2007, sent the same to learned Additional Sessions Judge, Shorkot for its trial in accordance with law, who after recoding the cursory statement of the complainant, sent it to the learned Area Magistrate for inquiry under section 202 of the Code of Criminal Procedure. The learned Area Magistrate Section-30, completed the inquiry under section 202 of the Code of Criminal Procedure and submitted his report to the learned Additional Sessions Judge, Shorkot on 27.4.2007, with observation that the complainant has prima-facie proved the instant complaint.

4. The learned Additional Sessions Judge heard the learned counsel for the complainant and perused the report submitted by the

Area Magistrate. Resultantly he admitted the private complaint for hearing and summoned the respondents, vide order dated 7.5.2007. All the accused except the one unknown, turned up. Thereafter challan against the accused under section 173 Cr.P.C in case vide FIR No.109 dated 20.6.2006 registered on the report of the complainant at Police Station Ahmad Pur Sial, District Jhang was also submitted before the learned Area Magistrate, who also sent the same to the court of the learned Sessions Judge, Jhang. The learned Sessions Judge, Jhang sent the same to the court of learned trial judge on 23.2.2007 for its disposal in accordance with law.

5. On 10.5.2007, the learned counsel for the complainant requested that the file of challan case may be consolidated with the complaint case.

6. The learned trial judge after fulfilling all the legal formalities, framed the charge on 21.7.2007 against the accused under section 109 PPC read with section 10 (4) of the Offence of Zina (Enforcement of Hudood) Ordinance, 1979 in the complaint case. Thereafter amended charge under sections 11 and 10 (4) of the Offence of Zina (Enforcement of Hudood) Ordinance, 1979 against the accused was framed on 18.8.2010.

7. In order to prove the charge against the accused, five witnesses were examined in the complaint case, while two witnesses namely Manzoor Hussain and Muhammad Riaz Aziz Sub-Inspectors were

examined as CW.1 and CW.2, respectively. The gist of the evidence given by the witnesses is as follows:-

- (i) PW.1 Rab Nawaz, complainant deposed the same facts as contained in his complaint.
- (ii) PW.2 is Mst. Sumera Bibi, victim/abductee. She endorsed the contents of complaint and further deposed that accused Javed, Imran, Irfan, Ghulam Abbas and Amjad committed Zina-bil-jabar with her at different times and places. She gave details of the period of her abduction and detention by the accused. She was returned by accused Ghulam Abbas to Syed Qaim Medhi who handed over her to her father who later produced her before the police.
- (iii) PW.3 Muhammad Iqbal deposed that about two years ago Mst. Sumera Bibi was married to Ghulam Abbas. She came to their house to see them. On the night between 16/17-6-2006 at about 12.00/1.00 a.m. Mst. Sumera Bibi went out of the house to answer the call of nature. On hearing hue and cry of Mst. Sumera Bibi he along with Rab Nawaz, Qaisar Medhi and Allah Ditta rushed towards the place of occurrence. They identified the accused in the light of torch. On seeing them, the accused fled away by taking Mst. Sumera Bibi for commission of Zina.
- (iv) PW.4 Dr. Ahmad Ali S.M.O Ahmad Pur Sial stated that on 07.09.2006 at about 10.15 a.m. he medically examined accused Javed and found him fit for sexual act.
- (v) CW.1 Manzoor Hussain, Sub-Inspector, deposed that on 20.6.2006 at about 5.15 p.m. he was present at Meat Chowk. Rab Nawaz complainant appeared before him

with application. After observing the said application he sent it through Mehdi Khan Constable to the police station for registration of formal FIR. He inspected the place of incident on the same day and made rough site plan Ex.CW.2. He recorded the statements of PWs under section 161 of the Code of Criminal Procedure. On 30.06.2006 the complainant produced Mst. Sumera Bibi, victim, before him. He also recorded her statement under section 161 Cr.P.C and produced her before the learned Area Magistrate at Shorekot. The learned Area Magistrate did not record her statement under section 164 Cr.P.C. On 2.7.2006 during investigation he was of the opinion that Mst. Sumera Bibi had gone with accused Javed with her own free will and consent, therefore, he recommended for submission of challan against both Javed and Mst. Sumera Bibi. According to him, as a result of the investigation, all the remaining accused namely Ghulam Abbas, Imran, Irfan and Amjad were found not involved in the commission of offence.

- (vi) CW.2 is Muhammad Riaz Aziz Sub-Inspector Police Station Ahmed Pur Sial. He stated that according to his investigation, he also found that Ghulam Abbas, Imran, Irfan and Amjad accused were not involved in the commission of offence. He arrested accused Javed and found him involved in the said offence. He recommended for submission of report under section 173 of the Cr.P.C against accused Javed. According to him, his investigation was verified by the D.S.P Circle Ahmad Pur Sial.

8. Thereafter the appellants/accused were examined under section 342 of the Code of Criminal Procedure. They denied the allegations

and pleaded their innocence. They did not record their statements on oath, as provided under section 340 (2) of the Code of Criminal Procedure and also produce no evidence in their defence. Appellant Javed while answering to question No.6 "Why this case has been registered against you and why the PWs deposed against you?" he replied as under:-

"Before this occurrence, Mst.Sumera Bibi contracted court marriage with one Ghulam Abbas s/o Rab nawaz without consent of her parents. When Mst.Sumera Bibi returned back to the house of her parents, her father got registered false case due to the grudge that I had helped the said Ghulam Abbas for contracting the court marriage with Mst.Sumera Bibi. At the time of occurrence I was about the age of 13/14 years".

9. After hearing both the parties, the learned trial judge convicted and sentenced the appellants/accused as mentioned in opening para of this judgment.

10. Mr.Tahir Mehmood, Advocate for appellants has argued that there is inordinate delay in lodging the FIR as the offence <sup>is said to</sup> have been committed in the night between 16<sup>th</sup> & 17 June, 2006 but the FIR was lodged on 20.6.2006 at 5.00 p.m. According to him, during investigation of the case all the appellants were found innocent except Javed, who was sent up for trial. Thereafter the complainant filed direct complaint against seven accused persons. The complainant made several improvements in the direct complaint in comparison to the FIR. The star witness of the case Syed Mehdi Shah, who had

returned the victim to the complainant, has not been examined in the case. The torch, in the light of which the witnesses have identified the culprits, has not been produced. He further argued that no recovery has been made from the appellants who have been involved in the case due to enmity as stated by Muhammad Javed appellant in his statement under section 342 of the Code of Criminal Procedure. He has relied on the following case law:-


- i. SCMR 2001 page 883 (Muhammad Amir & another.vs..The State).
- ii. PLD 2003 SC Page 863 (Muhammad Ababs & anotehr..Vs..The State).
- iii. SCMR 1995 Page 1498 (Abdul Waheed..Vs..The State).
- iv. SCMR 2007 Page-486 (Akbar Ali..Vs..The State).
- v. 1994 SCMR Page-755 (Muhammad Maroof..Vs..The State).
- vi. 1995 SCMr Page-1403 (Muhammad Siddique..Vs.The State).
- vii. 2007 SCMR Page-605 (Ibrar Hussain..Vs..The State).
- Viii 2006 SCMR Page-348 (M.Asalam..Vs..Shakeel Liaqat & others).
- ix. 1995 SCMR P.1639 (Muhammad Arshad..Vs..The State).
- x. 1993 SCMR P.550 (Saeed Muhammad Shah..Vs..The State).

11. Mr. Muhammad Aurangzeb Khan, Advocate for complainant and Ch.Muhammad Sarwar Sidhu, Additional Prosecutor General Punjab for State have supported the prosecution case and have argued that all the witnesses have involved the appellants in the commission of offence, therefore, the trial court has rightly convicted them.

12. I have given full consideration to the arguments advanced by learned counsel and have gone through the above case law. Admittedly, the incident had taken place at mid night time between



16<sup>th</sup> and 17 June, 2006 but the FIR was lodged on 20.6.2006 at 5.50 p.m, although the police station is at a distance of about one and half kilometer from the house of the complainant. This is an inordinate delay. The explanation given by the complainant in the FIR does not appeal to mind. As per FIR Mst.Sumera Bibi, the alleged victim was forcibly abducted by Javed, Imran and Muhammad Irfan alongwith two unknown persons and the complainant and the witnesses identified them in the torch light but they did not come to police station for lodging the FIR and waited for more than three days, which is unnatural attitude on the part of the complainant.



13. Victim Mst.Sumera Bibi has not been recovered from the appellants but she was returned by one Syed Qaim Mehdi Shah on 30.6.2006. This fact has also been admitted by Mst.Sumera Bibi in her cross-examination by stating that she has spent one or two hours with Syed Qaim Mehdi Shah prior to return to her house and that Syed Qaim Mehdi Shah taken her to the house of her parents on the motor cycle. Under these circumstances, Syed Mehdi Shah would have been most important witness of the case but he has neither been examined by the police nor by the complainant before the trial court. The story given by victim Mst.Sumera Bibi that at about mid night time she went out of the house all alone for attending the call of nature at a distance of about 2/3 acres from her house, is also unnatural as how a young lady would leave the house all alone at mid night time towards the jungle. How is it possible that accused persons armed with guns

and on two motor cycles were waiting for her knowing that she would come in the jungle and that they would thereafter forcibly take her on the motor cycle. This is also absurd and unnatural that at the same time father of the complainant and witnesses namely Muhammad Iqbal, Allah Ditta and Qaisar Mehdi came immediately and identified the accused persons in the light of torch.

14. The Investigating Officer Manzoor Hussain Sub-Inspector while appearing as CW.1 before the trial court has deposed that during his investigation he was of the opinion that Mst.Sumera Bibi had gone with accused Javed with her own free will and consent and further that all the remaining accused were found not involved in the commission of the offence. CW.2 Muhammad Riaz Aziz Sub-Inspector has also deposed that he had also investigated the matter and all the accused persons namely Ghulam Abbas, Imran, Irfan and Amjad were found not involved in the commission of the offence. The S.P. Investigation has also found non-involvement of Ghulam Abbas in the commission of the offence. This Investigation Officer had also exonerated the accused Ghulam Abbas, Imran, Irfan and Amjad.

15. It is also an admitted fact that victim Mst.Sumera Bibi has not been examined by any lady doctor, therefore, <sup>there</sup> is no opinion from the medical side that any rape was committed upon her. The prosecution case mainly rests on the statement of victim Mst.Sumera Bibi on the point of rape, which is not supported by any other evidence. The prosecution story seems to be a fiction rather than reality. The


statements of victim, her father and other close relatives being inconsistent, does not inspire confidence and there appears serious doubts in the prosecution case.

16. In view of the above discussion, I am of the considered opinion that the prosecution ~~has~~ had failed to prove the charge against the appellants and that they were wrongly convicted and sentenced by the learned trial court. Resultantly, the appeal is allowed. Conviction and sentences awarded to the appellants are set-aside and they are acquitted of the charge. They are on bail, their bail bonds stand discharged.

17. These are the reasons for my short order of even date.

 *Sd/-*  
**JUSTICE AGHA RAFIQ AHMED KHAN**  
Chief Justice.

Islamabad the  
May 6, 2011.  
F.Taj/\*

 *Sd/-*  
Approved for reporting.