

IN THE FEDERAL SHARIAT COURT
(Appellate/Revisional Jurisdiction)

PRESENT

MR. JUSTICE HAZIQUL KHAIRI, CHIEF JUSTICE

CRIMINAL APPEAL No. 258/L of 2005

Inayat Masih son of Wallayat Masih, --- Appellant
Caste Christian r/o Mauza Arayan,
Police Station City Raiwind, Lahore.

VERSUS

The State --- Respondent

Counsel for appellant --- Qazi Muhammad Arshad Bhatti,
Advocate

Counsel for State --- Malik Muhammad Rafique Khokher,
Deputy Prosecutor-General, Punjab

F.I.R. No. Date & Police Station --- 498/2002, 29.11.2002. P.S. City
Raiwind, Lahore

Date of the Judgment of Trial Court --- 25.05.2005

Date of Institution --- 03.08.2005

Date of hearing --- 11.09.2008

Date of decision --- 11.09.2008

(0)

JUDGMENT:

Justice Haziqul Khairi, Chief Justice:- The prosecution story as per statement made by Javaid Masih complainant is that on 29.11.2002 he came back to his village from Lahore after receiving the information from his wife Mst. Maryam Bibi that on 27.11.2002, at 2.30 p.m. appellant Inayat Masih had committed carnal intercourse against the order of nature with his daughter Rabia Bibi 5/6 years old. She was taken by his wife, William Masih and Bashir Masih, smeared in blood, from the house of appellant who scaled over the boundary wall of his house and on seeing them he ran away. The appellant made every effort to compromise with his wife but she reported the occurrence to the complainant.

2. In pursuance of this statement, formal FIR was registered. A formal charge was framed against the appellant to which he pleaded not guilty and claimed trial.

3. PW.2 William Masih and PW.3 Bashir Masih have furnished ocular account of the occurrence. According to PW.2

on 27.02.2002 at 2.30 p.m. he alongwith Bashir Masih and Mst. Maryam Bibi mother of the victim saw Inayat Masih accused committing sodomy with Mst. Rabia Bibi in a room. On seeing them the accused Inayat Masih sped away without his Shalwar.

PW.3 Bashir Masih has corroborated him adding that he alongwith other PWs were attracted to the place after hearing the cries coming from the house of the appellant where Mst. Rabia was lying smeared in blood in naked condition and the appellant was committing sodomy with her. Their statements gain support from the evidence led by Dr. Farrukh Jalal WMO

who examined Mst. Rabia on 29.11.2002 as under:-

“Raddish brown swelling present on perianal area, Sphincter tone is normal. On examination of anal canal, a laceration measuring 1.5 cm x 0.1 cm at 12’ O Clock position visible with redness of mucosa all around. Examination is tender. One swab from the outer part of anus and two swabs from inside anal canal taken, sealed and handed over to the police for onward transmission to the Chemical Examiner Punjab for detection of semen/blood/grouping. According to report of Chemical Examiner the above swabs are stained with semen and blood. One swab is being sent to Serologist for semen and blood grouping.”

The above clinical data speaks of un-natural sexual offence/sodomy and the final opinion as per report from the Chemical Examiner was to the effect that the above swabs were stained with semen and blood and was positive.

4. The appellant took the plea that an FIR u/s 354/337 PPC was registered by his mother against Pala Masih, grand father of complainant and William Masih PW.2 which created enmity between the two families. Although this matter was compromised but the complainant carried a grudge against him and has falsely involved him in this case. His plea find support from DW.1 Rehmat Ali. But DW.2 Muhammad Anwar produced by the appellant said nothing and simply stated that he came to know about the case as he was the neighbour of the accused. The prosecution on the other hand through the PWs has fully established the case against the appellant. The medical report establishes beyond any shadow of doubt that sodomy was committed on Rabia Bibi. It is hard to believe that any one

will involve his innocent daughter aged 5/6 years and put the honour of his family at stake.

5. During his arguments learned Counsel for the appellant pointed out that the appellant is a child within the meaning of Section 2(b) of the Juvenile Justice System Ordinance, 2000 since FIR dated 29.11.2002 disclosed the age of the appellant as 15/16 years and again in his statement under Section 342 Cr.P.C. dated 05.03.2005 his age is shown as 16/17 years.

It is true that under Section 2(b) a 'child' means a person who at the time of commission of an offence has not attained the age of eighteen years. Similarly under Section 7 of the Juvenile Justice System Ordinance, 2000, "If a question arises as to whether a person before it is child for the purpose of this Ordinance, the Juvenile Court shall record a finding after such inquiry which shall include a medical report for determination of the age of the child".

However, Learned Counsel for the appellant, Qazi Muhammad Arshad Bhatti, candidly conceded that no question whether the appellant was a child or not was raised at the trial by the defence, but it was urged by him that it was the duty of the Court to see itself if the age disclosed by the accused or his counsel was correct or not.

6. No doubt in case where the medical evidence or school certificate or some other evidence on record discloses or where the trial Judge has reasons to believe that the accused is a child, he may take suo moto notice of it and proceed to determine the age of the accused under Section 7 of the Juvenile Justice System Ordinance, 2000. There is nothing in Section 7 which prevents a Court to itself raise such question to the prosecution and determine the age of an accused.

7. Lastly learned Counsel for the appellant conceded that the appellant was rightly convicted but urged that the appellant has undergone sentence for about five years and ten months out

of seven years awarded to him which may be considered sufficient and be reduced upto this date. Similarly his fine may be waived as the appellatant is a very poor person.

8. Malik Muhammad Rafique Khokher, D.P.G. for the State submits that it is a fit case of reduction of sentence and he will not oppose the appellatant's Counsel. Accordingly I reduce the sentence of the appellatant upto this date viz. 11.09.2008 and his fine is also reduced to Rs.1,000/- or in default of payment of fine he shall undergo 7 days S.I. The Jail authorities are directed that after payment of fine the appellatant shall be released forthwith unless he is required in some other criminal case.

9. These are the reasons vide my short order dated 11.09.2008 announced in the Court.


Justice Haziqul Khairi
Chief Justice

Dated Lahore, the
11th September, 2008
M. Imran Bhatti/*

Approved in report

11/9/08