

IN THE FEDERAL SHARIAT COURT

(Appellate / Revisional Jurisdiction)

PRESENT

MR. JUSTICE SYED AFZAL HAIDER
MR. JUSTICE MUHAMMAD ZAFAR YASIN

CRIMINAL APPEAL NO.105/L/2007

Muhammad Aslam son of Chiragh Din, Caste Rajput,
resident of Chak No.27/SB, Tehsil & District Sargodha.

... APPELLANT

VERSUS

The State

... RESPONDENT

CRIMINAL APPEAL NO.135/L/2007

Irfan son of Muhammad Khan, Caste Rajput,
resident of Chak No.27/SB, Tehsil & District Sargodha.

... APPELLANT

VERSUS

The State

... RESPONDENT

JAIL CRIMINAL APPEAL NO.135/L/2007

Tanveer alias Weeda son of Abdul Ghafoor, Caste Arain,
resident of Chak No.27/SB, Tehsil & District Sargodha.

... APPELLANT

VERSUS

The State,

... RESPONDENT

Counsel for the appellant M.Aslam	...	Sh. Naveed Shahryar, Advocate.
Counsel for the appellant Irfan	...	Mr.Muhammad Asghar Rokhri, Advocate.
Counsel for the appellant Tanveer	...	Mr. Aziz Ahmad Chughtai, Advocate.
Counsel for the State	...	Mr. Asjad Javed Ghurrat, Deputy Prosecutor General.
F.I.R No. Date & Police Station	...	209/05, dated 05.09.2005, Bhagtanwala, Sargodha
Date of judgment of trial Court	...	17.05.2007
Date of institution	...	29.5.07, 9.7.07 & 3.11.08 respectively
Last date of hearing	...	15.12.2008
Date of decision	...	15.12.2008

Cr. Appeal No.105/L/2007
Cr. Appeal No.135/L/2007
J.Cr.Appeal No.92/L/2008

2

JUDGMENT:

Justice Syed Afzal Haider, Judge: Cr. Appeal No.

105/L/2007, Cr. Appeal No.135/L/2007 and Jail Cr. Appeal

No.92/L/2008 are being decided through this judgment as all

the three appeals arise out of the common judgment dated

17.05.2007, passed by Additional Sessions Judge, Sargodha

whereby the appellants namely Muhammad Aslam, Irfan and

Tanveer alias Weeda have been convicted and sentenced as

under:

- | | | | |
|-------|---|---|---|
| (i) | U/S 324 PPC | : | Ten years R.I. each with fine of Rs.50,000/- each or in default to further undergo six months S.I. each. |
| (ii) | U/S 337-L(i) PPC | : | Seven years R.I. each with direction to pay Daman of Rs.50,000/- each to the victim. |
| (iii) | U/S 337-F(ii) PPC | : | Three years R.I. each and to pay Daman amounting to Rs. 10,000/- each to the victim. |
| (iv) | U/S 11 of the Offence of Zina (EOH) Ord: 1979 | : | Life Imprisonment each with fine of Rs.50,000/- each or in default to further undergo six months S.I. each. |

Cr. Appeal No.105/L/2007
Cr. Appeal No.135/L/2007
J.Cr.Appeal No.92/L/2008

3

Appellant Muhammad Aslam was also convicted under Section 10(3) of the Offence of Zina (Enforcement of Hudood) Ordinance, 1979 and sentenced to 25 years R.I.

2. The prosecution story as mentioned in the impugned judgment is that on 05.09.2005 at about 6.00 A.M Mst. Ghazala Ameen aged about 15/16 years daughter of complainant Muhammad Ameen went outside to answer the call of nature in the Jawar crop of one Abdul Latif alias Papu. Irfan and Tanveer appellants both armed with daggers alongwith three unknown persons reached there. Both the aforesaid accused inflicted dagger blows to Mst. Ghazala. The dagger blow of Irfan hit Mst. Ghazala on her neck, whereas Tanveer alias Weeda caused dagger blow to Mst. Ghazala on her right and left hand. Mst. Ghazala raised alarm which attracted Muhammad Asif and Ashfaq PWs, who were passing nearby. On seeing the PWs accused Irfan and Tanveer alongwith three unknown persons

Cr. Appeal No.105/L/2007
Cr. Appeal No.135/L/2007
J.Cr.Appeal No.92/L/2008

4

fled away while leaving Mst. Ghazala in injured condition. On receiving the said injuries Mst. Ghazala became unconscious. Muhammad Asif and Ashfaq PWs informed the complainant about the details of the occurrence, upon which he reached at the spot and took Mst. Ghazala to Civil Hospital, Sargodha where she was admitted and treated. The motive behind the occurrence was that accused Irfan and Tanveer wanted to develop illicit relations with his daughter but she did not agree to it and due to this reason Irfan and Tanveer appellants caused injuries to Mst. Ghazala, PW.11.

3. As a consequence of this incident, Crime Report bearing number 209/2005 was got registered on 05.09.2005 with Police Station Bhagtanwala, District Sargodha under Section 324/34 of the Pakistan Penal Code on the statement of Muhammad Ameen PW.8. Police investigation ensued thereafter. PW.13 Muhammad Akbar S.I. on receiving information of the incident

Cr. Appeal No.105/L/2007
Cr. Appeal No.135/L/2007
J.Cr.Appeal No.92/L/2008

5

had reached Civil Hospital and after recording the statement of the complainant, prepared injury statement Ex.PC of Mst. Ghazala Ameen injured, recorded supplementary statement of the complainant, prepared rough sketch Ex.PV of place of occurrence and of the Jawar field where the victim had received injuries. He also took possession of the stained swabs as well as blood stained Dopatta and vest. Appellants Tanveer and Irfan were got medically examined apart from recovering cash from the appellant. The other codal formalities were completed and ultimately report under Section 173 of the Code of Criminal Procedure was submitted in the Court whereby all the three accused were sent up to face trial before the trial. Formal charge was framed by the trial Court against all the three accused persons on 20.02.2006. They pleaded not guilty and claimed trial.

4. The prosecution in support of its case produced 12 PWs.

PW.1 Muhammad Ashraf, Moharrar at Police Station

Bhagtanwala deposed that Muhammad Akbar SI handed over to

him one sealed bottle and one sealed envelope containing

semen specimen of Irfan accused and one sealed bottle and one

sealed envelope containing semen specimen of Tanveer

accused, which he kept in the Mallkhana and on 16.09.2005 he

handed over the same to Abdul Razaq Constable for onward

transmission to the office of Chemical Examiner, Rawalpindi.

5. Abdul Razaq Constable appeared as PW.2 to depose that

on 08.09.2005 Muhammad Ashraf MHC handed over to me one

sealed envelop containing swabs relating to the medical

examination of Mst. Ghazala for onward transmission to the

office of Chemical Examiner, Rawalpindi which he deposited

intact in the said office on 09.09.2005. On 06.09.2005

Muhammad Ashraf Moharror handed over to him two sealed

bottles and two sealed envelopes containing semen specimen of Irfan and Tanveer accused for onward transmission to the office of Chemical Examiner Rawalpindi which he deposited in the said office on 17.09.2005 intact.

6. PW.3 Lady Doctor Feroza Sikandar undertook medical examination of Ghazala Ameen victim on 09.05.2005 and observed the following injuries:

- “1. An incised wound on neck. Size of wound 11 cm x 3 cm above Thyroid Cartilage on front and side of neck. Skin, muscle cut. Bleeding of the wound. Depth not probed.
2. Incised wound of 1.5 cm x 1/2 cm on Palmer aspect of Proximlephaly of left little finger muscle deep.

On vaginal examination she observed as under:

“Hymen ruptured, healed. Vagina admits one finger tight. Uterus infantile in size. Three cotton vaginal swabs taken and sealed in glass bottle and sent to Chemical Examiner through police for detection of semen.

Injury No.1 was kept under observation whereas injury No.2 was declared as Jurh Badiah. The duration was six to eight hours. Injuries were inflicted with sharp edged weapons.”

Cr. Appeal No.105/L/2007
Cr. Appeal No.135/L/2007
J.Cr.Appel No.92/L/2008

8

On the receipt of the report of the Chemical Examiner the Lady Doctor opined that the victim was subjected to rape. According to the report of the Chemical Examiner, the swabs were stained with semen which swabs were reportedly sent to the Serologist for grouping. In view of the report of E & T Specialist dated 10.09.2005 on the subject MLC as 147/06 the Lady Doctor declared the injury No.1 as 337-L(i) whereas injury No.2 on the person of victim Ghazala was described as Jurh Badiyah 337-F(ii).

7. PW.4 Zafar Ullah Constable deposed that on 04.10.2005 he was entrusted with non-bailable warrants against Muhammad Aslam appellant. He went to his house many a time but the appellant was not traceable. Consequently a report on the reverse page of Warrant was made to that effect. He made statement before the Illaqa Magistrate on 20.10.2005 and Illaqa Magistrate issued proclamation for execution. After legal

formalities he pasted one copy of the proclamation outside the Court of learned Illaqa Magistrate and the other on the house of the accused.

8. Dr. Muhammad Zahid Shah appeared as PW.5. He had medically examined Irfan and Tanveer accused for potency and found that they were fit to perform sexual intercourse.

9. PW.6 Dr. Tahir Muneer deposed that on 05.09.2005 at 9.45 a.m. he received Mst. Ghazla Ameen in the emergency ward of the hospital. She was anaemic and blood transfusion was arranged by the emergency staff. She was conscious. Her throat was cut at multiple places of the neck. Most of them were skin deep. One cut was deep to the level that it had cut the Thyroid cartilage of larynx, all superficial deep muscle, all vessels including injury to the sternocleidomastoid muscle. Only carotid arteries were intact. It was repaired under Anesthesia (G.A) and tracheotomy was done. She was unable to speak. The

witness proceeded to state that on the same date and at the same time he started repair of the cut neck. She had multiple cuts on the skin and the cut of larynx deep. The thyroid was cut just below the glottis and the right half was missing. The structures were identified and larynx was repaired, layer to layer after cleaning and washing the bones, and after complete homeostasis. Finally drain was placed and skin stitches applied and then tracheostomy was done under general Anesthesia by Dr. Imtiaz. Patient was shifted to emergency ward fully stable and Nasogastric Tube was passed.

10. Zulfiqar Ahmad S.I. PW.7 deposed that on 06.09.2006 at 6.10 p.m, on the receipt of complaint, written and sent by Muhammad Akbar S.I. and brought by Allah Ditta Constable, he recorded F.I.R Ex.PI/1 on the basis of said complaint without any addition or omission correctly, which is in his hand and bears his signatures.

11. PW.8 Muhammad Ameen is complainant and reiterated the story as recorded in the said Crime Report.

12. Mst. Ghazala Ameen victim appeared as PW.11 before the trial Court. At that time she was unable to speak and her throat was completely cut and there was a mark of wound on her neck. As she was educated, so her statement was recorded in her own writing by the trial Court. She deposed that on 04.09.2005 at about 6.00 a.m, she was present at home when Irfan, Tanveer and Aslam accused came and enticed her and took her to the Dera of Muhammad Bashir son of Muhammad Cheragh. She further deposed that "I was having an amount of Rs.36,000/- for domestic needs at that time. The accused tied my hands and feet. Irfan and Muhammad Aslam used to go and come whereas Tanveer alias Veeda remained present as a guard with me when Irfan and Aslam came to know that my family is in search of me, they thought that if I would be free then I will

Cr. Appeal No.105/L/2007
Cr. Appeal No.135/L/2007
J.Cr.Appeal No.92/L/2008

12

tell the whole occurrence and will also implicate them.

Muhammad Aslam advised Irfan and Tanveer that I should be

murdered. Muhammad Aslam then left that place and went to

village. Irfan and Tanveer were having two daggers. In the

evening time when it was darkness both the accused brought

me out of sugar cane field and took me to the southern side of

Dera of Muhammad Bashir in the crop of Barley belonging to

Abdul Satar". Irfan and Tanveer snatched away the cash

amount of Rs.36,000/- and then Irfan committed Zina-bil-jabr

with her. Then Irfan and Tanveer with the intention to kill her

inflicted injuries on her throat with daggers and thought that she

was dead. She became unconscious. In the morning when she

regained senses she walked to the Barley crop of one Abdul

Latif alias Pupoo on 05.09.2005 at 6.00 a.m. Abdul Latif was

cutting the fodder. She called him who informed members of

her family who took her to Civil Hospital, Sargodha. She

Cr. Appeal No.105/L/2007
Cr. Appeal No.135/L/2007
J.Cr.Appeal No.92/L/2008

13

submitted an application Ex.PR before the police on
12.10.2005.

13. Asif Mehmood PW.9 and Muhammad Irfan PW.10 made
their statements in line with the statement of victim Mst.
Ghazala Ameen PW.11.

14. PW.12 Nadeem Akhtar Constable, deposed that he "took
Mst. Ghazala Ameen to District Headquarters Hospital
Hospital, Sargodha for her medical examination. She was
already admitted in the hospital and we reached the hospital
after getting the information. The I.O. prepared the injury
statement" and handed over the same to him. After the medical
examination the doctor handed over to him a sealed phial and
an envelope and other documents and the clothes which he
handed over to Muhammad Akbar S.I intact, who took these
articles into possession.

Cr. Appeal No.105/L/2007
Cr. Appeal No.135/L/2007
J.Cr.Appeal No.92/L/2008

14

15. PW.13, Muhammad Akbar Sub Inspector, is the Investigating Officer. He conducted the investigation of the case. He recorded the statement of complainant Muhammad Ameen Ex.P.I. He prepared injury statement of Mst. Ghazala Ameen Ex.PC and gave to Nadeem Akhtar Constable for giving it to the doctor, and sent the complaint Ex.P.I to the Police Station. for registration of the F.I.R. He also recorded supplementary statement of complainant Muhammad Ameen on the same day. He prepared rough site plan. He took into possession blood stained earth. Nadeem Akhtar Constable produced before him one envelope containing swabs and certain blood stained clothes, which he took into possession vide memo Ex.PU. He also recorded the statements of Asif and Ramzan PWs. He made recoveries from the accused persons.

16. The prosecution case was closed on 09.03.2007. Statements of accused Tanveer and Muhammad Aslam without

Cr. Appeal No.105/L/2007
Cr. Appeal No.135/L/2007
J.Cr.Appeal No.92/L/2008

15

oath under Section 342 of the Code of Criminal Procedure, was recorded on 31.03.2007 whereas the statement of Irfan accused was recorded on 28.03.2007. The accused denied having played the role attributed to them and also denied recoveries having been effected. However Aslam accused stated that "Police tortured my Sala and extorted money from him and factually there was no recovery."

17. We have gone through the file and also perused the deposition of witnesses as well as the statements of the accused with assistance of the learned Counsel for the appellants. Learned Counsel were asked to formulate the points they would like to urge on behalf of the appellants.

18. Learned Counsel for Aslam appellant raised the following points:-

- (i) That the crime report was got registered after the recovery of the victim and hence the story stated therein should be viewed with caution.

(ii) Aslam appellant has not been mentioned in the F.I.R even though the victim had all the time to narrate the facts to her father Muhammad Ameen PW.8.

(iii) Aslam appellant is not attributed the role of Zina.

(iv) Aslam appellant is also not saddled with the accusation that he snatched cash from the victim.

(v) The incident is alleged to have taken place on 05.09.2005 at 6.00 a.m. whereas the application, Ex.PK moved by the victim is dated 12.10.2005 which means that the name of Aslam appellant was introduced five weeks after the registration of crime report.

(vi) The prosecution does not attribute dagger or any other injury to Aslam appellant.

(vii) That the allegation of abduction recorded in the crime report, Ex.PI/1, is belied by the written application, Ex.PR, moved by PW.11 Ghazala Ameen, the victim herself.

(viii) That Asif Mahmood PW.9 and Muhammad Ashfaq are admittedly not eye witnesses but both of them made an effort to corroborate as an eye witness all the facts mentioned in the crime report. In the cross examination both PWs admitted not having seen abduction/enticement or any other incriminating fact alleged by the complainant or the victim in the crime report or their deposition in the Court.

(ix) That, as indicated in recovery memo Ex.PQ, the cash amounting to Rupees Ten Thousand was handed over by one Sajid on behalf of Aslam

appellant but the said Sajid has not been produced
by the prosecution.

(x) The place of occurrence and the manner in which
the incident reportedly took place is not factually
possible.

(xi) Lastly that the conviction of Aslam appellant
under Section 34 of the Pakistan Penal Code in
view of the attending circumstances is illegal
because PW.11 herself stated that Aslam appellant
had left the place of occurrence and gone to the
village.

19. Learned Counsel for Irfan appellant raised the following
points for consideration of the Court.

(i) The victim is the solitary narrator and her
testimony has not been corroborated on any count
even by biased witnesses.

(ii) The testimony of the alleged two eye witnesses,

Asif Mahmood PW.9 and Muhammad Ashfaque

PW.10, falls under the category of hearsay

evidence. No reliance can be placed on this

category of evidence.

(iii) The medical evidence does not corroborate the

ocular account in as much as PW3, Lady Doctor

Feroza Sikandar, after vaginal examination stated

that Hymen was ruptured but healed. The medical

examination reportedly took place within hours of

the incident. It was medically impossible for a

wound to heal within three to four hours. The

witness stated, in reply to a question put in the

cross-examination, that it takes a few days for the

ruptured hymen to heal.

(iv) The medical evidence in no way supports the allegation of PW.11 that she was raped in the barley field. In fact the medical evidence clearly negates the allegation of rape due to the absence of marks of violence on the body.

(v) That conviction of Irfan appellant under the circumstances was not justified.

20. Learned Counsel for Tanveer appellant adopted the arguments advanced on behalf of two other appellants. However it was urged that the appellants are facing the agonizing effects of trial and consequent appeal for over a period of three years. It was further urged that all the accused were acquitted from the charge leveled under Sections 394 and 412 of the Pakistan Penal Code.

21. Learned Deputy Prosecutor General, representing the state supported the conviction on the basis of oral as well as medical evidence. It was further contended that even if the

Cr. Appeal No.105/L/2007
Cr. Appeal No.135/L/2007
J.Cr.Appel No.92/L/2008

21

Court comes to the conclusion that the entire case rests upon the solitary statement of PW.11 Mst. Ghazala Ameen even then conviction can be maintained. Learned Counsel also referred to recovery of cash from Irfan and Muhammad Aslam appellants as corroborative piece of evidence. Learned Counsel for the State also relied upon the recovery of two daggers but on being confronted that the daggers were not stained with blood the learned Counsel stated that the appellant must have washed them after the occurrence. In the end it was urged that PW.11 received injuries as a consequence of which she lost her speech.

22. On a Court question as to why acquittal of appellants from the charges of Section 394 and 412 of the Pakistan Penal Code was not challenged, learned Counsel for the State said that he was not in a position to answer this question. However Sections 394 and 412 of the Pakistan Penal Code were read. Former section makes the voluntary causing of hurt in

Cr. Appeal No.105/L/2007
Cr. Appeal No.135/L/2007
J.Cr.Appeal No.92/L/2008

22

committing robbery and the later section relates to dishonestly receiving stolen property in the commission of dacoity.

Acquittal of appellants under these sections adversely affects the element of recovery of money, distributed among the appellants, alleged to have been illegally acquired during the course of occurrence. Particularly when Sajid, the person alleged to have returned the stolen money, was neither produced by the prosecution nor independent evidence was led to prove that Sajid had infact returned the money knowing that it was illegally acquired by the appellants.

23. We have given anxious consideration to the facts of the case. While feeling sorry for the victim we are of the opinion that the prosecution has not taken the courts into confidence. The injury was certainly caused but not in the manner the prosecution would make us believe while connecting different chains of the story.

24. PW.11 in cross-examination herself stated as follows:

“The amount of rupees thirty six thousand were in the suit-case. Irfan accused came to our house and he took rupees sixty thousand from me by way of seducing me. At that time nobody was present in the house. It is incorrect to suggest that I voluntarily took rupees thirty six thousand from my house and left the house with my own consent to run away with any person after taking the above money with me without informing my father and other family members as I wanted to marry the said person without the consent of my parents. On 04.09.2005 I left my house on the asking of Muhammad Irfan accused at morning time at about 10.00 A.M. I gained my senses on 05.09.2005 at 5.00 P.M. I had told to my father that Irfan, Tanveer and Muhammad Aslam had seduced me and snatched away rupees mentioned above and Irfan accused committed Zina-bil-jabr with me. Irfan, Tanveer and Aslam accused used to visit our house prior to this occurrence. Irfan accused seduced me by saying that he will marry me. It is correct that two months prior to the instant occurrence Irfan accused got married. I did not

want to get married with Irfan accused. I did not want to get marry with any of the three accused. My statement regarding seduction is incorrect. The accused took me forcibly. Again said that Irfan accused seduced my by promise of marriage. I wanted to get married with Irfan accused. It is correct that my house is situated in center of the Chak. It is correct that I went with the accused by crossing from the village. When I went with the accused there were no people around in the village.”

25. We have also perused the deposition of complainant PW.8, father of PW.11, the victim, whom the latter told the whole story. The version of the complainant as regards the time of incident, number of persons and manner of incident is quite different. According to the complainant (i) The incident took place at 6.00 a.m. on 04.09.2005 in the field when she had gone to answer the call of nature but PW.11 on the contrary states that she was seduced from her house at 6.00 a.m. on

04.09.2005. However in her cross-examination the time of seduction is 10.00 a.m.

(ii) The story of snatching Rupees 36,000/- was introduced by the complainant party almost a month after the crime report was registered.

(iii) The factum of seduction or abduction is missing when crime report was registered on 05.09.2005.

(iv) The medical examination of PW.11 took place on 05.09.2005 immediately after she was removed to the hospital but the incident is alleged to have taken place on 04.09.2005.

(v) According to PW.11 the abduction/rape and dacoity drama consumed almost 24 hours and it was on 5th September morning that she gained consciousness.

(vi) PW.11 also alleges that Irfan (appellant) etc. tied her hands and feet but there is neither recovery of any rope nor it is medically corroborated that hands and feet bore lacerated wounds.

Cr. Appeal No.105/L/2007
Cr. Appeal No.135/L/2007
J.Cr.Appeal No.92/L/2008

26

(vii) PW.11 also alleges that from 11.00 p.m. through 6.00 a.m. she was lying in Jawar field where she was also raped but Ex.PV, the site plan, does neither mention any Jawar field nor does it mention the place where the rape was alleged to have been committed. According to the site plan point No.1 sugar cane field in Square No.2 Killa No.7, PW.11 has been shown as sitting while tied down. The prosecution relied upon this document which did neither show Jawar field nor mention the place where she was raped. We are conscious of the fact that as compared to defending the allegation of rape it is far more easier to level accusation of rape particularly when the girl is not virgin.

(viii) In this case the swabs contaminated with semen were sent to the Serologist for grouping. PW.5, Doctor Muhammad Zahid, had taken the samples of the semen of Irfan appellant for grouping purposes and the same was handed over to Constable

Cr. Appeal No.105/L/2007
Cr. Appeal No.135/L/2007
J.Cr.Appel No.92/L/2008

27

Nadeem Akhtar but prosecution has failed to produce positive grouping result.

26. In the light of what has been stated above by learned Counsel for the appellants and our own observation and assessment of evidence, both ocular and documentary, we are not convinced that the incident took place in the manner suggested by the prosecution. Even the date of occurrence is not truthfully stated. On a Court question regarding conviction of appellant Irfan and Tanveer under Sections 324 and 337-F(ii) the learned Counsel for both the appellants conceded that the conviction be maintained but prayed that sentence already undergone be deemed sufficient in the stated circumstances of the case. Learned Counsel for Aslam appellant pleaded for clean acquittal as his presence at the spot when injuries are alleged to have been caused, is not only not proved but the

victim herself states that Aslam appellant had gone to the village.

27. It is also worth mentioning that in the F.I.R Ex.PI/1 the number of the persons involved in the case is five and the names of Muhammad Asif and Ashfaq PWs is only to the extent of causing injuries to the victim. However in the written statement of the victim dated 12.10.2005 placed on record as Ex.PR there is no mention of the name of Muhammad Asif and Ashfaq PWs as having seen any part of the story built up by the prosecution. Evidence of witnesses mentioned in the Crime Report and introduced after a lapse of time certainly caused doubt and, therefore, such a testimony merits exclusion from consideration. It is, of course, not a rule of law but certainly it is a rule of prudence. In the instant case had Asif Mahmood PW.9 and Muhammad Ashfaq PW.10 been eye witnesses of the seduction, tying down of the legs and arms of Mst. Ghazala

Ameen PW.11 or having seen Irfan, Tanveer and Aslam appellants guarding her and got indication that the accused wanted to kill her it was well nigh impossible for them to have remained mum and elected later on to become witnesses of this prolonged drama that the prosecution placed before the trial Court for appreciation. In this view of the matter the evidence of PW.9 and PW.10 of the alleged eye witnesses is not worthy of credence. We, therefore, are left only with the solitary statement of PW.11 which has not been corroborated and, therefore, it has to be assessed with great caution. Particularly when her own testimony is not consistent.

28. In this view of the matter the conviction and sentence of Muhammad Aslam appellant recorded by learned Additional Sessions Judge, Sargodha in Hudood Case No.01 of 2006/Hudood Trial No.05 of 2007 vide judgment dated 17.05.2007, assailed in Cr. Appeal No.105/L/2007 is hereby set

Cr. Appeal No.105/L/2007
Cr. Appeal No.135/L/2007
J.Cr.Appeal No.92/L/2008

30

aside and he shall be released forthwith unless required in any other case.

29. So far as the conviction and sentence of appellant Irfan assailed in Criminal Appeal No.135/L/2007 and the conviction and sentence of Tanveer appellant challenged in Criminal Appeal No.92/L/2008, we have already passed a short order dated 15.12.2008 which is reproduced as follows:

“As regards Cr. Appeal No.105/L/2007 filed by appellant Muhammad Aslam, the same is accepted and the appellant is acquitted.

Cr. Appeal No.135/L/2007 and Jail Cr. Appeal No.92/L/2008 are accepted to the extent that the convictions under Section 337-L(i) of Pakistan Penal Code and under Sections 11 and 10(3) are set aside. The convictions under Sections 324 and 337-F(ii) of the Pakistan Penal Code are maintained.

So far as the sentence is concerned the appellants Irfan and Tanveer are sentenced to the period already undergone by them under both the counts and their sentences are presumed to have run concurrently. In so far as the sentence of fine is concerned, the same is

Cr. Appeal No.105/L/2007
Cr. Appeal No.135/L/2007
J.Cr.Appeal No.92/L/2008

31

reduced from Rs.50,000 to Rs.5000/- each under Section 324 of Pakistan Penal Code and in default of payment of fine both the appellants will undergo simple imprisonment for two months whereas the sentence of Daman of Rs.10,000/- under Section 337-F(ii) of Pakistan Penal Code remains intact.

For reasons to be recorded later, the appellants will be set at liberty forthwith after payment of fine of Rs.5000/- and Daman of Rs.10,000/-, unless they are required in any other case.”

30. Reasons for the short order dated 15.12.2008 have been given in the aforementioned judgment whereby three Criminal Appeals arising out of judgment dated 17.05.2007 passed by learned Additional Sessions Judge, Sargodha are disposed of in the terms stated in our short order dated 15.12.2008.

S. Maida

Justice Syed Afzal Haider

M. Z. Yasin

Justice Muhammad Zafar Yasin

Dated, Lahore the
15th December, 2008
M. Imran Bhatti/*

Fit for reporting

S. Maida

Justice Syed Afzal Haider