

**Cr. A. No.97/I/2008**

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**2. 14.11.2008** Mr. Muhammad Sharif Bhatti, Advocate for  
**Islamabad.** appellant.  
Mr. G. N. Goral, Advocate for complainant.  
Mr. Shahid Mehmood Abbasi, D.P.G.

**Cr. Misc. A. No.126/I/2008**

In these two appeals the appellants were convicted under Section 16 of Offence of Zina (Enforcement of Hudood) Ordinance, 1979 for seven years R.I. and fine of Rs.50,000/- in default whereof to undergo R.I. for one year. They were also convicted under Section 10 (2) the said Ordinance for 10 years R.I. and fine of Rs.50,000/- in default whereof to undergo R.I. for one year. Both the sentences shall run concurrently under the two sections.

It is contended by the learned counsel for the appellants that the case against them has not been proved and there are number of discrepancies in the deposition of witnesses. It was emphatically stated by him that there was flagrant breach of law and procedure as no opportunity whatsoever was given to the appellants to cross examine P.W.6

who is an eye witness and on whose deposition, the conviction against appellants was made. This position is admitted by learned counsel for the State as well as learned counsel for the complainant.

I have gone through the testimony of P.W.6 and noted that the Court has asked a number of questions to P.W.6 but he has not been cross examined by the appellants nor there is any thing to suggest that the appellants were given the opportunity of cross examining P.W.6. and they failed to avail it. It was further contended by the learned counsel for the appellants that questions asked by the Court in any case are not a substitute for cross examination by the appellants who have inherent and basic rights under law to cross examine a prosecution witness.

Without going into the merits of the case and the evidence on record, I am inclined to allow both the applications for suspension of sentence of the

merit

**appellants, and accordingly grant bail to both the appellants in the sum of Rs.3 lacs by each of them upon furnishing personal bail bonds by them with one surety in the like amount to the satisfaction of the learned trial Court.**

*SK*

*Justice Haziqul Khairi*

14/11/08

**JUSTICE HAZIQUL KHAIRI  
CHIEF JUSTICE**

*Approved for reporting  
14/11/08 SK*

**Hummayun/-**