

IN THE FEDERAL SHARIAT COURT
(Revisional Jurisdiction)

PRESENT

MR.JUSTICE SH.NAJAM UL HASAN
MR.JUSTICE ZAHOOR AHMED SHAHWANI

CRIMINAL PSLA No.1/L/2014

Nasrullah S/o Jaffar Hussain, Caste Rajpoot, R/o Chak No.67 EB, Tehsil and District Sheikhpura.

Petitioner

V E R S U S

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| 1. The State | : | |
| 2. Muhammad Arshad S/o
Muhammad Hussain | : | |
| 3. Mst. Ishrat Bibi alias Saima D/o
Muhammad Arshad | : | Respondents |
| 4. Muhammad Yousaf S/o
Muhammad Rafique and | : | |
| 5. Muhammad Ramzan S/o
Muhammad Siddique, all
Rajpoot by Caste R/o Kot
Suleman Bashmola Mananwala,
District Sheikhpura | : | |
| For the petitioner | : | Rana Safdar Hussain,
Advocate |
| Date of Judgment of trial Court | : | 29-01-2014 |
| Date of institution of the petition | : | 10-03-2014 |
| Date of hearing | : | 09-01-2015 |
| Date of decision | : | 09-01-2015 |

JUDGMENT

SH. NAJAM UL HASAN, J.- Through this petition for special leave to appeal, the petitioner Nasrullah has requested for grant of permission to file appeal against acquittal challenging the order dated 29-01-2014 passed by the learned Additional Sessions Judge, Sheikhpura whereby the complaint filed by him under section 203(b) Cr.P.C against respondents Muhammad Arshad, Mst. Ishrat Bibi alias Saima, Muhammad Yousaf and Muhammad Ramzan for offence under section 7 of the Offence of Qazaf (Enforcement of Hadd) Ordinance 1979 was dismissed and they were acquitted on the application filed by the above mentioned respondents under section 265-K Cr.PC.

2. Rana Safdar Hussain, Advocate, the learned counsel for the petitioner states that a false case FIR No.159/2011 dated 03-05-2011 under section 365-B PPC was registered at Police Station Mananwala, District Sheikhpura on the statement of respondent No.2 Muhammad Arshad against the petitioner Nasrullah and one Asad with the allegation that they abducted Mst. Ishrat Bibi, respondent No.3 daughter of respondent No.1 for committing zina with her. The matter was investigated and the petitioner and his co-accused Asad were found involved for offence under sections 365-B, 376 and 337-A PPC by the investigation officer.

They were charged and faced the trial and were ultimately acquitted by the learned Additional Sessions Judge, Sheikhpura vide impugned order dated 26-04-2012. It is stated that false allegation of zina was leveled against the petitioner by the respondents No.2 and 3 who appeared in court and made a direct allegation of committing zina against the petitioner and his co-accused Asad, whereas the respondents No.4 and 5 made false statement that they saw the petitioner, his co-accused alongwith Mst. Ishrat Bibi who was being abducted and as such, they have leveled false allegation of zina against the petitioner and his co-accused. It is stated that the trial court after recording the evidence of prosecution witnesses,(respondents No.2 to 5) acquitted the petitioner and his co-accused Asad, vide judgment dated 26.4.2012. That as the allegation of zina was leveled against the petitioner by the respondents which was ultimately not proved and the learned Additional Sessions Judge acquitted the petitioner and his co-accused Asad, So respondents No.2 to 5 were liable for committing offence of Qazf. The petitioner filed a complaint under section 203 (b) Cr.P.C against the respondents for an offence under section 7 of the Offence of Qazaf (Enforcement of Hadd) Ordinance 1979. The matter was referred to the inquiry Magistrate who after recording evidence of petitioner Nasrullah, Haji Muhammad Khan and Asif as PW-1,2 and 3 found sufficient material for summoning the respondents to face trial vide his report dated 2.4.2013. After going through the report of the learned

Magistrate, the learned Additional Sessions Judge (trial court) summoned the respondents to face the trial under Qazaf Ordinance. The respondents appeared in court and on their application under section 265-K Cr. PC they were acquitted and the complaint was dismissed by the learned trial court vide impugned order dated 29-01-2014.

3. It is argued that the learned inquiry Magistrate, after recording the evidence of the witnesses found sufficient material available against the respondents and while relying on such reports of the inquiry Magistrate under section 202 Cr. PC, the learned trial court summoned the accused on 06-07-2013 to face trial under sections 5/7 of Offence of Qazaf (Enforcement of Hadd) Ordinance 1979. The learned counsel strongly emphasized that no new material was brought on record still the learned trial court acquitted the respondents under section 265-K Cr. P.C. It is stated that when the learned trial court came to conclusion that sufficient material was available on record to summon the accused, then acquittal of respondents without any new material is against the law. The learned counsel further states that clear allegation of zina was leveled against the petitioner, in court which was sufficient for the conviction of respondent but the learned trial court acquitted the respondent under section 265-K Cr.P.C without even recording evidence which is in violation of principals of criminal justice. The respondents are clearly liable under the Qazaf Ordinance and the impugned order

of acquittal passed by the learned trial court without recording of evidence of witnesses is liable to be set aside.

4. We have heard the learned counsel for the petitioner and have also gone through the record.

5. A case under section 365(b) PPC was registered against the petitioner and one Asad by respondent No.2 Muhammad Arshad in respect of an occurrence in which his daughter a young girl of 23 years, Mst. Ishrat Bibi was abducted by the petitioner Nasrullah and his co-accused Asad. Later on Mst. Ishrat Bibi appeared in court and leveled allegations of zina against the petitioner Nasrullah and his co-accused. In investigation section 376 and 337-A -1 were also added. During trial Muhammad Yousaf respondent No.4 and Muhammad Ramzan respondent No.5, appeared as PWs and made a statement that they saw the petitioner Nasrullah alongwith his co-accused Asad taking away Mst.ishrat Bibi daughter of respondent No.2 Muhammad Arshad, on their motorcycle as such supported version of complainant and victim. The case was registered on the next date of occurrence and thereafter Mst. Ishrat Bibi was recovered and was produced before a Magistrate where she made a statement against petitioner. She was medically examined and the lady doctor observed that no evidence or material was available to indicate commission of zina on her. The victim filed an application before learned Magistrate on which a medical board was constituted

to re-examine her. She was re-examined by the medical board after almost a month. The vaginal swabs were also taken during her examination by the board of doctors and later on they were found to be stained with semen in the report of Chemical Examiner. The Medical Board gave report in positive. The learned trial court while considering the two Medical reports and the positive report of Chemical Examiner in respect of vaginal swabs taken after one month found the case highly doubtful and acquitted the petitioner and his co-accused while extending them benefit of doubt. After such order of acquittal the petitioner filed criminal complaint under section 203(b) Cr.P.C for an offence under section 7 Offence of Qazaf (Enforcement of Hadd) Ordinance 1979, the learned trial court while relying on the report of the Inquiry Magistrate who recorded the statement of the witnesses summon the respondents. They were supplied with the statements and on their application under section 265-K Cr. PC they were acquitted by the learned Additional Sessions Judge mainly on the ground that the allegation of zina leveled against the petitioner were not found false by the court but in absence of sufficient material, the same were not accepted by the learned trial court and the petitioner alongwith his co-accused Asad were acquitted while extending them benefit of doubt. There is no direct verdict or observation of court that allegations leveled by the respondents were not correct and they made false statement in this respect. The Respondents were summoned while keeping in

view that the accused/petitioner was acquitted by the learned trial court for an offence of zina. But later on while dealing with the application filed by respondents under section 265-K Cr.P.C. It was observed that the petitioner and his co-accused were acquitted in the case of zina while extending them benefit of doubt. So it was not established that the allegations of zina leveled by the respondents were incorrect. As such the respondents No.2 to 5 were not liable under Offence of Qazf (Enforcement of Hadd) Ordinance, 1979 and that is why that complaint for the offence of Qazf was dismissed and the present respondents were acquitted. In the case of **Bakhat Ali and others Vs. The State reported in 1993 P.Cr.L.J 1872** while dealing in such like situation, this court acquitted the accused of Qazf case, as the allegation of zina was not clearly found false by the learned trial court in the trial for offence of zina, and the accused were acquitted while extending them the benefit of doubt.

6. We have minutely considered each and every aspect of case. Qazf is defined in section 3 of Offence of Qazf (Enforcement of Hadd) Ordinance 1979 which is reproduced for analysis:-

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Sec.3. **Qazf:** Whoever by words either spoken or intended to be read, or by signs or by visible representations, makes or publishes an imputation of 'zina' concerning any person intending to harm, or knowing or having reason to believe that such imputation will harm the reputation, or hurt the feelings, of such person, is said except in the cases hereinafter excepted, to commit 'qazf'.

Explanation 1:

It may amount to 'qazf' to impute 'zina' to a deceased person, if the imputation would harm the reputation, or hurt the feelings, of that person if living, and is harmful to the feelings of his family or other near relatives.

Explanation 2:

An imputation in the form of an alternative or expressed ironically, may amount to 'qazf'.

First Exception (Imputation of truth which public good requires to be made or published): It is not 'qazf' to impute 'zina' to any person if the imputation be true and made or published for the public good. Whether or not it is for the public good is a question of fact.

Second exception (accusation preferred in good faith to authorized person): Save in the cases hereinafter mentioned, it is not 'qazf' to refer in good faith an accusation of 'zina' against any person to any of those who have lawful authority over that person with respect to the subject-matter of accusation:-

- (a) a complainant makes an accusation of 'zina' against another person in a Court, but fails to produce four witnesses in support thereof before the Court;
- (b) according to the finding of the Court, a witness has given false evidence of the commission of 'zina' or 'zina-bil-jabr;
- (c) according to the finding of the Court, a complainant has made a false accusation of 'zina-bil-jabr'.

(Underlines are ours)

7. In the present case, the complainant, respondent No.2 got a case registered against the petitioner only in respect of abduction of his daughter. It was mentioned that the purpose of abduction was to commit zina. No direct allegation of commission of zina was leveled in the FIR. The position is the same in respect of respondents No.4 and 5 who only witnessed the occurrence of abduction.

8. As far as respondent No.3 Mst. Ishrat Bibi, the victim is concerned, she was recovered and later on produced before a Magistrate to make a statement. Thereafter she narrated the facts on the asking of the Magistrate (the authorized officer). The position remains the same when she was called by the learned trial

court to make the statement. The underlined words in the definition of Qazf mentioned in the last para No.6. The most important and essential ingredient for Offence of Qazf is the bad intention of the person leveling such imputation of zina. To prove the Offence of Qazf, the prosecution must indicate that such imputation was made with the intention to harm the person or his reputation by imputing such accusation of zina. In the present case, no intention to harm the person or reputation of petitioner or circumstance indicating such intention by imputing false accusation of zina was brought on record during the trial for the offence of zina, in the statement of witnesses or in cross-examination in the form of suggestions given to witnesses or in statement of accused under section 342 or 340 (2) Cr. PC or in the form of defence evidence, so in absence of such evidence indicating such intention to harm the person and reputation of accused/petitioner the Offence of Qazf as mentioned in section 3 of Offence of Qazf (Enforcement of Hadd) Ordinance, 1979 is not clearly made out. So far as the second exception mentioned in section 3 in the definition of Qazf is concerned, a person can be held for the Offence of Qazf if he gives false evidence of commission of zina, in court or according to findings of the court false accusation of zina-bil-jabr were leveled. In the present case, the learned trial court has not stated that the witnesses have given false evidence in respect of commission of zina and similarly the court has not come to any conclusion that accusation of zina-bil-jabr was false, rather the petitioner and his co-accused was acquitted while extending them benefit of doubt.

9. As far as the matter regarding making accusation of zina in court and fail to produce four witnesses in support thereof is concerned, in the present case the complainant has not leveled the allegation of zina, rather he has leveled the

allegation of abduction for committing zina against the petitioner and his co-accused. So far as the victim/respondent No.3 is concerned, she was produced before the Magistrate to make a statement in respect of an occurrence of her abduction. She was under legal obligation to make such statement before the magistrate and the learned trial court, so we think that she cannot be held liable for not producing four witnesses. Now it is well settled that solitary statement of victim is sufficient for conviction of an accused for an offence of zina or zina-bil-jabr. Reliance is placed on the case of **Shahid Maqsood Siddiqui Vs. The State reported in 2003 SD-68, Shehzad alias Shadu and others Vs. The State reported in 2002 SCMR 1009 and Rana Shahbaz Ahmed etc. Vs the State reported in 2002 SC 118**. In the given circumstances, we are of the view that when a victim is produced before an authorized officer and under obligation to make statement in respect of an occurrence in which she was victim of zina or zina-bil-jabr, then her solitary statement is sufficient for conviction of an accused but if the Courts acquit the accused while extending the benefit of doubt, then she cannot be held liable for failure to produce four witnesses. She was a victim and has not made statement in Court to harm the accused/petitioner or his reputation, rather she narrated the facts on the direction of the Court when she was called to make statement of facts. In the present case, as there was contradiction in two Medico Legal Reports of the victim and for this reason the petitioner was acquitted for the offence of zina by the learned trial court while extending him benefit of doubt. So in no stretch of imagination, it could be presumed that for the purpose of harming the petitioner or his reputation false allegation was leveled. The acquittal of accused in case of zina or zina-bil-jabr does not automatically establish the involvement of the victim for the Offence of Qazf.

10. So in the circumstances, we think that the learned trial court has rightly dismissed the complaint and acquitted the respondents as there was no likelihood of their conviction. There is no merit in this case, the instant petition for special leave to appeal is declined and the same is dismissed *in limine*.


MR. JUSTICE SH.NAJAM UL HASAN


Mr. JUSTICE ZAHOOR AHMED SHAHWANI

Lahore, 09.01.2015
M.Akram/

APPROVED FOR REPORTING


MR. JUSTICE SH.NAJAM UL HASAN