IN THE FEDERAL SHARIAT COURT
(Appellate Jurisdiction)

PRESENT

MR.JUSTICE S. A. RABBANI

CRIMINAL APPEAL NO. 221-I -2005

1. Babar son of Ghulam Muhammad,
2. Imran son of Abdul Rehman,
3. Mst.Samina d/o Muhammad Iqbal
4. Mst.Samreen d/o Muhamamd Ramzan
   (All confined in District Jail, Jhang)

Appellants

Versus

The State

Respondent

For the appellants	Malik Rab Nawaz-Noon, Advocate
For the State	Mr. M.Sharif Janjua, Advocate
No. Date of FIR Police Station	No 537/04,dt 28.10.2004 P.S Kotwali,Jhang
Date of order of trial court	13.7. 2005
Date of institution	6.8.2005
Date of hearing	2.11.2005
Date of decision	2.11.2005

JUDGMENT

S. A. RABBANI,J. The two men and two women, who filed this appeal, were jointly tried before the Additional Sessions Judge Jhang on the charge under section 10(2) Offence of Zina (Enforcement of Hudood) Ordinance, 1979. Mr.Akmal Khan, Additional Sessions Judge, convicted all of them on the said charge and sentenced each of them to five years rigorous imprisonment, with a fine of Rs.10,000/-.

2. The prosecution story was that S.I Muhammad Akram, incharge Police Post, Ali Abad Police Station Kotwali, district Jhang, conducted a raid at Al-Noor Hotel, on 28.10.2004 at about 2.30 a.m (night), where he found that these four appellants were engaged in commission of zina in one room of the hotel, door of which was not locked and was a bit open. He arrested the accused/appellant and, after investigation, sent them up for trial.

3. The F.I.R was also lodged by this investigation officer and the witnesses examined include him, five police constables subordinate to him and one Dr.Kausar Parveen. The appellant/accused, in their statements recorded under section 342 Cr.P.C, before the trial court, denied the charge

against them and they said that they were coming back after attending a ceremony and when they reached Jhang at the time of 'sehri' during Ramzan, they went to Al-noor hotel and, while they were taking meals, the police came and started questioning them and demanded illegal gratification and, on refusal to pay the illegal gratification, they were involved in this false case.

4. Malik Rab Nawaz Noon, learned counsel for the appellants, pointed out that though the appellants were arrested in a hotel no person from the hotel administration was joined in the investigation, nor any thing was secured from the room where the alleged offence was being committed. He further pointed out that the swabs taken during the medical examination were sent to Chemical examiner after fifteen days. The learned counsel contended that although the witnesses are subordinate to the investigation officer, even then there are material contradictions in their evidence, such as one witness says that the door of the room had one plank and the other says that it had two planks. He submitted that the investigation officer admitted

that he did not join in investigation any body from the hotel staff or other persons, although a witness says that some persons were present there.

5. Mr.Muhammad Sharif Janjua, learned State counsel, supported the conviction and sentences and submitted that despite the fact that no record of the hotel was secured and produced in evidence, the fact is that the appellants were arrested from the hotel.

6. The prosecution story, made by the investigation officer, S.I Muhammad Akram that the two couples were engaged in commission of zina on one bed, in the same room, with an open door in a hotel, looks odd and the fact that neither record of the hotel about stay of the appellants there was secured and produced, nor any body from the staff of the hotel or any person staying there was joined in investigation and made a witness, makes it absurd.

7. The word of the investigation officer, corroborated by the version of six police constables subordinate to him, could not be deemed adequate for proof of the charge in the circumstances. The evidence of the medical officer would also not add veracity to the evidence of these witnesses

8. The learned judge of the trial court observed that, according to law, police officials are as good witnesses as any other witness, when there is no animosity alleged against them. Despite this law, there remains a duty on a trial court to examine the evidence of police officials carefully and skeptically when their evidence is not corroborated by independent evidence. Man cannot be made moral through law. About the motive, the appellants have alleged that the investigation officer demanded illegal gratification and involved them in this false case on their refusal. It is not necessary that there should be a previous animosity with the police witnesses to discard their evidence.

9. The learned judge of the trial court did not mention points for determination in his judgment, as is required by section 367 Criminal Procedure Code, and after narrating and discussing the evidence, he observed that in view of that discussion the prosecution case was proved beyond a shadow of doubt. It was not clearly mentioned as to which points were established by the evidence to constitute the charge against the accused persons.

10. An unnecessary lengthy judgment indicates that the author of the judgment is either incompetent or dishonest. He is incompetent because he is unable to decide as to what material is necessary to insert in the judgment and what is not required for the reason that it would add nothing meaningful to it. The author of a lengthy judgment would be dishonest when he gives a verdict that is not the logical outcome of the evidence and material on record and, to justify the verdict, he adds more and more material. As far one travels from the truth, as much material he needs to justify it.

11. The evidence of the medical officer was inconsequential as there was no credible direct evidence to which it would corroborate. The evidence of other witnesses lacked veracity for proof of the incredible prosecution story. No record of the hotel was produced to establish that the appellants/accused were staying in that hotel. The evidence placed on record could not be deemed sufficient by a man of ordinary prudence for proof of the charge. The impugned judgment and the consequent conviction and sentences awarded to the appellants are not sustainable and, accordingly, the appeal is

allowed and conviction and sentences awarded to the appellants are set aside. The appellants shall be released forthwith in this case.

S. A. RABBANI
JUDGE

Fit for reporting.

JUDGE

Islamabad, 2.11.2005
M.Akram