

IN THE FEDERAL SHARIAT COURT
(Appellate Jurisdiction)

PRESENT:

MR. JUSTICE SHAHZADO SHAIKH
MR. JUSTICE MUHAMMAD JEANGIR ARSHAD

CRIMINAL APPEAL NO.07/Q of 2000 L/W
CRIMINAL SUO MOTU REVISION NO.02/I OF 2000

The State

Appellant

Versus

1. Horan son of Sarwara Khan, Respondents
2. Manzoor Hussain son of Sarwara Khan,
both by caste Samit.
3. Abdul Hameed alias Hameed,
son of Abdul Majeed, caste Khosa,
All residents of Goth Hameed Khan Khosa,
District Dera Allah Yar.

Counsel for the State : Syed Pervaiz Akhtar Bukhari,
Deputy Prosecutor General Baluchistan
for State.

Counsel for the respondents : Shah Muhammad Jatoi,
Advocate.

FIR No. and date : 205/1999, dated 26.08.1999, Police
Station, Dera Allah Yar, District
Jaffarabad

Date of impugned : 30.11.1999
Judgment of Trial
Court

Date of Institution of : 26.01.2000
Cr.A.No.102/I of 2010

Criminal appeal No.07/Q of 2000 L/w
Criminal Suo Motu Revision No.02/I of 2000

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Date of Institution of :
Cr. Suo. Motu Rev. No.
02/I of 2000

Date of hearing : 13.11.2012

Date of Judgment : 13.11.2012

JUDGMENT

Muhammad Jehangir Arshad, Judge.▪ This appeal filed by the

State is directed against the judgment dated 30.11.1999, handed down by the learned Sessions Judge, Jaffarabad at Dera Allah Yar, whereby the learned trial Court acquitted respondents Horan son of Sarwara Khan, Manzoor Hussain son of Sarwara Khan and Abdul Hameed alias Hameed son of Abdul Majeed in case FIR No.205/1999, dated 26.08.1999, P.S. Dera Allah Yar, District Jaffarabad from the charge under section 10/11 of the Offence of Zina (Enforcement of Hudood) Ordinance, 1979 read with section 343 PPC.

The Criminal Suo Motu Revision No.02/I of 2000 has also been taken up in the ~~light~~ of reference forwarded by Registrar Hon'ble High Court of Balochistan ~~to this Court~~ for taking ~~action in the instant case~~.

Both the above mentioned matters are being disposed of through this single judgment as ~~the~~ same ~~arise~~ out of the same crime report and judgment.

2. Brief facts of the case as set out in the FIR No.205/1999, dated 26.08.1999, P.S. Dera Allah Yar, District Jaffarabad, upon the complaint/report (Ex.P/1-A) of Mst. Waziran daughter of Dhani Bakhsh through the Superintendent, District Jail Dera Murad Jamali at 05.10 p.m. wherein she stated that she was residing at Goth Hameed Khan Khosa. Her father had since died and her mother performed her second marriage, she had a brother namely Yaseen aged about 7 years. She was residing with her maternal uncle Ramzan son of Abdul Hameed. About 06 months ago, she was married to Hussain Bakhsh son of Karim Bakhsh. She was abducted forcibly from her house by the Naib of Hameed Khan Khosa, namely Horan etc. respondents. There were two rooms, in one room Hameed Khan Khosa son of Abdul Majeed Khosa used to commit zina, forcibly with her in the night. Thereafter, the Naibs of Abdul Hameed Khosa also committed zina, forcibly with her during day hour whose names were Horan Khan and his brother Manzoor Ahmed for about 8 days. Thereafter, a woman came there, whom she told her that she had been subjected to commit zina and

she may inform inmates of her house. Thereafter, respondents No.1-2 took her to the house of her maternal uncle Ramzan to whom she narrated the entire story. Her uncle went to Dera Allah Yar for lodging the FIR but the administration of Dera Allah Yar did not lodge the FIR. Rather, to the contrary a case was registered against her under section 342 PPC and under sections 10/11/16 of the Offence of Zina (Enforcement of Hudood) Ordinance, 1979 with Police Station, Dera Allah Yar on 19.08.1999 vide FIR No29/99, because the accused were influential person. The Dera Allah Yar police took her in custody and referred her to Civil Hospital, Dera Allah Yar, where her condition became aggravated and she remained unconscious for two days. Thereafter, she was shifted to District Jail, Dera Murad Jamali. At the time of lodging FIR, she was under treatment in Civil Hospital. In this connection, her maternal uncle had moved an application before the Hon'ble Chief Justice, High Court of Baluchistan that she was subjected to Zina-bil-Jabr but so far no FIR was registered against the accused persons. However, after hectic efforts of her maternal uncle,

present FIR No.205/1999 was registered with Police Station, Dera Allah Yar on 26.08.1999.

3. The case was duly investigated; the respondents were arrested and statements of the PWs were recorded under section 161 Cr.P.C. After completion of investigation, challan was submitted in the trial Court against the accused/respondents, under section 173 of the Code of Criminal Procedure.

4. The learned trial Court on receipt of challan framed the following charge against all the accused on 23.10.1999:-

1. *Hooran son of Sarwara Khan,*
2. *Manzoor Hussain son of Sarwara Khan,*
3. *Abdul Hameed alias Hameed son of Abdul Majid.*

As follows:-

"That some time prior to 26.08.1999, you abducted Mst. Waziran from her house and detained her in the house of accused Hameed Khan Khosa and then repeatedly committed zina-bil-jabr with her for about 08 days and thereby committed an offence punishable under sections 10/11 of the Offence of Zina (Enforcement of Hudood) Ordinance, 1979, read with section 343 PPC and within the cognizance of this Court.

And I hereby direct that you be tried by this Court on the said charge”.

The accused persons did not plead guilty and claimed trial.

5. The prosecution in order to prove its case produced 06 witnesses at the trial. The prosecution also produced the following documents, besides other connected documents:-

- i. Fard-e-Biyan of complainant Mst. Waziran daughter of
Dhani Bakhsh, PW.1 Ex,P/1-A
- ii. FIR Ex.P/6-A.
- iii. Challan of accused persons Ex.P/6-C to Ex.P/6-F.
- iv. Medico Legal Report of complainant Mst. Waziran
Ex.P/3-A.
- v. Inspection memo Ex.P/4-A.
- vi. Medico Legal Report of Horan Ex.P/5-A.
- vii. Medico Legal Report of Manzoor Hussain Ex.P/5-B.
- viii. Medico Legal Report of Abdul Hameed alias Hameed
Ex.P/5-C.

ix. Site Sketch Plan as Ex.P/6-B

x. Report of Chemical Examiner Ex.P/6-F.

As the oral evidence of the PWs has already been noted in detail by the learned trial Court in the impugned judgment, therefore, the same need not to be reproduced in this judgment, in order to avoid repetition.

6. After completion of prosecution evidence, the statement of the accused persons under section 342 of the Code of Criminal Procedure were recorded, wherein they denied the allegations leveled against them and claimed to be innocent.

7. The learned trial Court, after completing requirements of the trial, acquitted all the appellants as mentioned in opening paragraph of this judgment. Hence, this appeal by State.

8. Before proceeding further, it would not be out of place to mention here that when this State appeal was pending, a Reference was received from the Registrar of Hon'ble High Court of Baluchistan, Quetta

alongwith the copy of Inspection Report of Hon'ble Mr. Justice Amanullah Khan, Inspection Judge, Nasirabad Division pointing out certain illegalities or irregularities committed by the learned Sessions Judge, Nasirabad at Dera Allah Yar, while acquitting the respondents. It was also requested by the Registrar of the Hon'ble High Court of Baluchistan, Quetta, in the light of the Inspection Report, the matter be placed before the Hon'ble Chief Justice of Federal Shariat Court for taking Suo Motu action. Accordingly, the matter was placed before, then the Hon'ble Chief Justice of Federal Shariat Court who on 21.02.2000 directed that the matter be treated as Suo Motu Revision under Article 203-DD of the Constitution and linked with the present appeal and fixed before the available Division Bench. Resultantly, the said reference was registered as Criminal Suo Motu Revision No.02/I of 2000 and was put up before the Court alongwith this appeal. On 06.03.2000, Division Bench of this Court formally admitted the said revision for regular hearing and directed that the Notice be issued and record be requisitioned. Today, the above noted Criminal Suo Motu

Revision No.02/I of 2000 was also put up and heard alongwith the present appeal and same is also being disposed of through this single order.

9. Syed Pervaiz Akhtar, learned DPG appearing for the appellant/State has formulated the following points in support of this appeal:-

- i) The accused were nominated in the FIR.
- ii) Initially the police did not register the FIR and on the direction of Hon'ble High Court, the present case was registered against the accused.
- iii) PW.5 Dr. Muhammad Siddique, who conducted medical examination of the accused, confirmed that they had committed sexual intercourse.
- iv) The medical evidence proves that repeated sexual intercourse was committed with the victim.
- v) The negative report of Chemical Examiner is not important because the chemical analysis was done after about 17 days.

However the physical examination of the victim and the statement of the victim fully implicated the accused.

vi) The solitary statement of the victim is sufficient to connect the accused with the commission of offence of rape.

vii) The prosecution has fully proved its case against the accused beyond any reasonable doubt.

viii) The learned Counsel for the appellant/State has prayed that the appeal may be accepted and the case may be remanded back.

10. On the other hand, Mr. Shah Muhammad Jatoi, learned Counsel for respondents has raised the following submissions:-

i) The victim was abducted by one Sabz Ali and FIR No.197/09 was registered and when she was recovered in that case she did not implicate the present accused but on the instigation of Dhani Bakhsh Lashari and Qasim Omrani she implicated the present accused.



- ii) The medical evidence did not show that gang rape was committed with the victim.
- iii) The accused were involved in this case due to political rivalry.
- iv) The prosecution has not been able to prove its case against the accused beyond reasonable shadow of doubt.
- v) The statement of I.O, medical evidence and statement of the victim clearly show that the accused were involved in the case on the political basis.
- vi) The learned Counsel for the respondents prayed that the appeal filed by the State against acquittal of the respondents may be dismissed.

11. We have considered the above noted arguments of the learned Counsel for the parties and have also perused the record as well as the impugned judgment.

12. Both these matters have been filed for challenging the judgment of acquittal, passed by the learned trial Court against respondents

Horan and Manzoor Hussain. In series of judgment Hon'ble Supreme Court of Pakistan has held that "Superior Court while dealing with the appeal against acquittal can interfere only in such cases where the judgment and acquittal is based on misreading, non-appraisal of evidence or is speculative, artificial, arbitrary and foolish on its face".

13. We have examined the impugned judgment in the light of above noted criteria laid down by the Apex Court while deciding the appeal against acquittal. No doubt, the solitary statement of victim in the cases of zina is sufficient to convict the accused, but the question is whether the statement of victim is confidence inspiring to connect the accused with the commission of offence. It is observed that prior to the registration of the present FIR, Hussain Bakhsh son of Karim Bakhsh husband of victim Mst. Waziran also got registered FIR No.197/1999, dated 18.08.1999, Police Station Dera Allah Yar, District Jaffarabad alleging that one Sabaz Ali had developed illicit relations with his wife namely Mst. Waziran and in that case she was perhaps arrested by the police and produced before the Court.

But at no stage of the said case the appellant raised any voice against any of the accused. It is further noted that according to the FIR the victim Mst. Waziran was abducted for the purpose of rape and she remained absent from her residence for more than eight days, but none of her relative during this period lodged any complaint about her absence from the house. It is further observed that though victim Mst. Waziran was got medically examined and her swabs were taken and sent to the Chemical Examiner, but according to the report of Chemical Examiner, Government of Sindh, Karachi semen was not detected in the swabs report Ex.P/6-F. The learned trial Court in the impugned judgment while acquitting the accused/respondent after thorough appraisal of evidence and taking into consideration, the entire evidence came to the conclusion that the charge against the accused/respondent was not established. Further the judgment is based on sound reasoning. We are of the view that while recording above noted finding, the learned trial Court neither committed any illegality nor irregularity and the impugned judgment also did not suffer from misreading

or non-reading of evidence. Despite our repeated question, no satisfactory explanation has been forthcoming that the impugned judgment is either speculative, artificial, arbitrary or foolish on its face as held by the Apex Court in the cast of *Mst. Zahida Saleem Vs. Muhammad Naseem and others (PLD 2006 Supreme Court 427)* and *The State and others Vs Abdul Khaliq and others (PLD 2011 Supreme Court 584)*, particularly when acquittal carries presumption of double innocence.

14. Resultantly, this appeal is dismissed having no force. In view of the above noted decision Criminal Suo Motu Revision No.02/I of 2010 is also disposed of having become infructuous.

15. Non-bailable warrants of arrest were ordered to issue against Horan son of Sarwara Khan vide Court's Order dated 29.06.2010 and in compliance with the same respondent Horan was arrested by local police and was sent to District Jail, Quetta. He was produced by jail authority before the Court on 13.11.2012. However, since the appeal against



acquittal has been dismissed on merits, therefore, respondent Horan son of Sarwara Khan be released forthwith if not required in any other case.

16. Above are the reasons of our short order of even date.



JUSTICE MUHAMMAD JEHANGIR ARSHAD



JUSTICE SHANZADO SHAIKH

*Announced at Quetta
on 13.11.2012
Hummayun/-*

Approved for reporting.



JUSTICE MUHAMMAD JEHANGIR ARSHAD