

(10)

IN THE FEDERAL SHARIAT COURT  
(Appellate Jurisdiction)

PRESENT

MR. JUSTICE SYED AFZAL HAIDER  
MR. JUSTICE SHAHZADO SHAIKH  
MR. JUSTICE DR. MAHMOOD AHMAD GHAZI

CRIMINAL APPEAL NO. 86/L OF 2009 L.W  
CR. REFERENCE NO.12/I OF 2009

Muhammad Iqbal son of Haji Muhammad Ramzan,  
Caste Rajput, Resident of Mohalla Kachkot Shorkot City,  
District Jhang.

Appellants

Versus

1. Mst. Zakia Bibi daughter of Fazal Muhammad,  
Caste Khokhar, Resident of Mohalla Kachkot  
Shorkot City, District Jhang.

2. The State

Respondent

Counsel for appellant

Mian Shah Abbas, Advocate

Counsel for the State

Mrs. Rukhsana Malik,  
Additional Prosecutor General  
for State

No. & date of F.I.R.

Private Complaint No.26/2007,  
dated 06.12.2007

Police Station

Nil

Date of judgment of  
the trial court

18.08.2009

Date of Institution of  
the appeal

01.09.2009

Date of hearing of  
the appeal

26.05.2010

Date of decision

21.07.2010

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JUDGMENT:

DR. MAHMOOD AHMAD GHAZI, J:- Through this judgment we propose to decide the Criminal Appeal No.86-L-2009 filed by the Appellant Muhammad Iqbal son of Haji Muhammad Ramzan, against the judgment dated 18.08.2009 passed by learned Additional Sessions Judge, Shorkot, whereby the Appellant has been convicted under section 7 of the *Offence of Qazf (Enforcement of Hadd) Ordinance, 1979* and awarded punishment of whipping numbering 80 stripes. The learned trial court has also forwarded a Criminal Reference No.12-I-2009 for confirmation of punishment of whipping awarded to the Appellant.

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2. Briefly stated, the facts of the case as mentioned in the private complaint lodged by the Complainant, Mst. Zakia Bibi, are that she is a school teacher by profession and belongs to a respectable family. Her father Fazal Muhammad was elected twice as B.D Member in Union Council Kakki Nau. On 6.7.2001 she was married to Muhammad Iqbal the Accused who used to maltreat her. He would grab her pay on every

occasion. He was not a good man. That is why she filed a suit for dissolution of marriage against Muhammad Iqbal in the Family Court, Shortkot (on 19 September 2003). The suit was decreed in her favour in the year 2005 and the marriage was dissolved. The Accused Muhammad Iqbal had filed a written statement in the suit for dissolution of marriage and leveled against her false charges of adultery: he alleged in his written statement that she was Incharge of prostitution den, *Fasha Kamini* and *Ghishti* (sic). He also leveled allegations against her for elopement with one Sajid Khathia and Mobarik. He had pasted copies of his written statement in street which publicized such false allegations against her and her good name in her mohallah and Education Institution as badly suffered. The accused also defamed her family including her sisters, father and other family members and also leveled false allegations against them. All the above said allegations leveled against her and her family are false and incorrect. The accused also leveled allegation against her that she had developed illicit relations with her own real brother, which were also

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incorrect. The accused alleged her to be *Jisum-Farosh (sic)* and defamed her with other false allegations, from Shorkot to Lahore. The complainant also submitted that she holds the degrees of M.A, B.Ed, and is a teacher, her Department had awarded her the honour of best teacher twice. The accused Muhammad Iqbal leveled allegations of adultery against her with Iqbal Gil, Naseer Shopkeeper and several other people. After the submission of written statement, the learned Judge, Family Court had recorded the statement of Muhammad Iqbal, Accused, and he was sentenced for imprisonment for three months under section 292 and 186 of the Pakistan Penal Code. The Accused filed an appeal against the above said sentence in the court of learned Additional Sessions Judge Shorkot. In the meanwhile, her suits for dissolution of marriage and the return of dowry articles were decreed in her favour. On 12.10.2005 the Respondent, Mst. Zakia Bibi submitted a private complaint against the Appellant Muhammad Iqbal under section 7 of the Offence of *Qazf* (Enforcement of Hadd) Ordinance, 1979 before the Ilaqah Magistrate, Shorkot, District Jhang.

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3. After the recording of cursory evidence, the Accused Muhammad Iqbal was summoned to face the trial under above said allegation. After delivery of copies as required under section 265-C of the Code of Criminal Procedure, the Accused Muhammad Iqbal was charge-sheeted under section 7 of Offence of *Qazf* (Enforcement of Hadd) Ordinance, 1979 to which he pleaded not guilty and claimed trial.

4. In order to prove its case, the Complainant produced two witnesses in all. P.W-1 Mst. Zakia is the complainant. She reiterated the version contained in her private complaint. However, she produced in evidence certified copy of written statement Ex.PA, certified copy of order sheet Ex.PB, certified copy of statement of Rana Muhammad Iqbal Ex.PC, certified copy of order dated 11.4.2005 Ex.PD, certified copy of judgment in suit titled "Mst. Zakia vs. Muhammad Iqbal", for dissolution of marriage Ex.PE, certified copy of decree-sheet Ex.P.E./1 and a photostat copy of notice under section 292 PPC Mark-A and a photo stat copy of judgment dated 11.4.2005 Mark-B.

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5. P.W.2 Muhammad Ikram is the brother of the Complainant Mst.Zakia. He deposed that Rana Muhammad Iqbal Accused was ex-husband of his sister Mst.Zakia. Their marriage was dissolved. He and his sister Zakia belonged to noble family having good reputation in their locality. Their family was educated. Their father had been Chairman of the Union Council. Mst.Zakia Bibi was M.A. M.Ed and she was a teacher in a Government school. His sister had filed a suit for dissolution of marriage and a written statement was filed by the Accused in the said suit in which he leveled false charges of adultery and other obnoxious allegations against her and her sisters and brother. The accused had delivered copies of the written statement in bazaar, to his friends, to the school of the Complainant and also got it pasted at different places. Due to this act of the Accused and his false allegation of *zina* leveled against his sister and against his family members, the honour of their family was injured and they were disreputed in the vicinity and in the Education Department. He further deposed that the accused had committed the offence of *qazf* and ruined their honour.

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6. The trial court undertook the trial of the case. After completion of complainant's evidence, the statement of the accused under section 342 of the Code of Criminal Procedure was recorded wherein he denied the allegations leveled against him and claimed to be innocent. Neither he opted to record his statement under section 340 (2) of the Code of Criminal Procedure nor produced any witness in his defence.

7. The learned trial court after completing the legal procedure and formalities of the trial convicted and sentenced the accused/appellant *vide* judgment dated 18.8.2009 as noted in para one of this judgment.

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8. We have heard the learned counsel for the Appellant and have perused the file. The learned counsel for the Appellant insisted that the learned trial Court should have undertaken the process of *Li'an* as provided under the Shariah in cases where a husband levels the allegations of *zina* against his own wife during the subsistence of legitimate marriage with her. According to him, the only way open before the learned trial Judge was the initiation of the proceedings of *Li'an*. According to the learned Counsel, the punishment of *qazf* as

awarded by the learned trial court was, therefore, inappropriate and called for interference.

9. We have given thought to the submissions of the learned Counsel in the light of the Injunctions of Islam as laid down in the Holy Quran and the Sunnah, as well as in the light of the provisions of Section 14 of the *Offence of Qazf (Enforcement of Hadd) Ordinance, 1979*. However, we find that the submissions of the learned Counsel for the Appellant do not justify any interference with the judgment of the learned trial Court.

10. In order to fully understand the principles of *Li'an*, we may reproduce here the text of section 14 of the *Offence of Qazf (Enforcement of Hadd) Ordinance, 1979*:

**14. Lian.**---(1) When a husband accuses before a Court his wife who is '*muhsan*' within the meaning of Section 5, of '*zina*' and the wife does not accept the accusation as true, the following procedure of *lian* shall apply, namely:---

- (a) the husband shall say upon oath before the Court: "I swear by Allah the Almighty and say I am surely truthful in my accusation of '*zina*' against my wife (name of wife)" and, after he has said so four times, he shall say: "Allah's curse be upon me if I am a 'liar' in my accusation of '*zina*' against my wife (name of wife)"; and

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(b) the wife shall, in reply to husband's statement made in accordance with clause (a), say upon oath before the Court: "I swear by Allah the Almighty that my husband is surely a 'liar' in his accusation of 'zina' against me, and after she has said so four times, she shall say: "Allah's wrath be upon me if he is truth in his accusation of 'zina' against me".

(2) When the procedure specified in sub-section (1) has been completed the Court shall pass an order dissolving the marriage between the husband and wife, which shall operate as a decree for dissolution of marriage and no appeal shall lie against it.

11. A simple reading of this section indicates that the provision of this section apply to a situation in which the accusation of *zina* is leveled by the husband against his wife during the subsistence of their marriage. This section does not contemplate a situation in which the couple is not living as husband and wife and in which the wife is seeking dissolution of marriage as a result of strained relations between the two. In the present case the wife had applied for the dissolution of marriage on September 19, 2003, and had already left the house of the husband and was living in her own house with her brothers' and sisters. According to the submissions of the Complainant, the Accused had expelled her from his house in 2002 and refused to pay any maintenance to her despite her demands. The case for dissolution of

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marriage continued pending in the family court for almost two years and decree of dissolution was formally granted on April 11, 2005.

12. It has been clearly and expressly laid down in the authoritative works of fiqh that the primary condition of *li'an* is the subsistence of a valid marriage. Allamah Ibn Abidin has expressly said وشرطه

قيام الزوجية i.e. its condition is the subsistence of the spousal relationship. Here, in the present case, the spousal relationship, or *zawjiyyah*, was virtually absent and had discontinued since 2002 when the wife left or was expelled from the house of the husband and filed a case for the dissolution of marriage. The purpose of the Shariah through the process of *li'an* is to effect permanent separation between such spouses who do not trust each other's fidelity and expressly accuse each other of *zina*. Therefore, in such cases where separation is already initiated or destined, the question of *li'an* does not arise. That is why *li'an* is not resorted to in cases of invalid marriage or in cases of irrevocable divorce. Since in these and similar cases judicial separation

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is certain, *li'an* is neither needed nor is resorted to. In these cases, the only alternative is the conviction under the *Hadd* of *qazf*.

13. In a nut-shell, the subsistence of marriage or *baqa al-zawjiyyah* is an important condition for resorting to *li'an*. The question of subsistence of marriage has been differently and variously explained by the jurists. All of them have relied on the Quranic term *azwaj* or spouses (*surah al-Nur: 6*) for their understanding of the meaning of *baqa al-zawjiyyah* or subsistence of marriage. For example, according to the Hanafi jurists an invalid marriage shall not be considered to be a subsisting marriage. As such, a person committing *qazf* against his wife during an invalid marriage shall not be subject to *li'an* because an invalid marriage is not actually a marriage for purposes of *li'an*. Likewise, commission of *qazf* against the wife during the waiting period after a revocable divorce has been a subject of difference of opinion even during the days of Companions. According to one view he will be punished for *qazf* while according to the other view he shall not be punished for *qazf* but shall be subject to *li'an*.

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14. It may be pointed out here that the Shariah has differentiated between the allegation of *zina* leveled against a stranger and the allegation of *zina* against one's own spouse. The latter has more serious and far-reaching repercussions not only on the conjugal and familial life of the parties but also on the society as a whole. The Shariah contemplates a pleasant and cordial family atmosphere based on mutual love, trust and cooperation among the members of the family. Any mistrust between the spouses ruins the family. The Shariah has, therefore, provided for detailed and elaborate laws to protect and preserve the institution of family and has tried to close all possible avenues that may lead to the weakening of the conjugal and familial ties. The law of *qazf* should be understood and applied in this perspective. The Shariah does not allow the continuance of a situation where a husband openly distrusts the moral integrity of his wife and publicly challenges the fidelity of his own life partner. When the mistrust between two pillars of the family reaches this stage, they must either separate from each other through *li'an* or face the punishment

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laid down by the Shariah. In the instant case, the spouses had already practically separated and the process of their final legal separation was almost complete and announcement of judicial separation was a mere formality.

15. It may be appropriate to discuss here the philosophy of the law of *qazf* as indicated in the Quran and the Ahadith and as explained by the celebrated commentators of the divine texts. This is necessary not only to understand the law of *Qazf* in its true perspective but also to relate it with other branches of Islamic law, particularly the law relating to family relations. Like other branches of Islamic law, the law of *qazf* is also closely inter-related and intertwined with the moral foundations and social ethics on the basis of which the structure Shariah is built.

Islam visualizes a society based on spiritual foundations and inter linked with its moral fabric. It is the Muslim society which has the ultimate responsibility of realizing the Islamic ideals in different areas of human activity. The role of the state is primarily that of the facilitator. As long as the society continues to uphold the spiritual and

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moral ideals of the Shariah, the state does not have to intervene. The state apparatus and its law intervenes only when the moral principles and social ethics of the Shariah are violated. This necessitates strong and systematic dove-tailing between the socio-moral ideals and the legal principles enunciated by the Shariah, each having its own sphere of operation.

16. The institution of family occupies a fundamental position and plays an important role in the preservation of the moral fabric of the society. As long as the institution of family is strong and is based on, and is motivated by, the socio-moral ideals of Islam, the society successfully retains its integrity and solidarity. But as soon as the family disintegrates the society also shows signs of disintegration. The primary unit of the family is the union of wedlock created between the husband and wife. The Shariah seeks to strengthen this union as much as possible on the basis of mutual love, trust, confidence and cooperation between the spouses. Mutual love gets strengthened by mutual trust and confidence and vice versa. Marital fidelity is the most

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important and basic component of the edifice of mutual love trust and confidence. The Quran strongly condemns those who level false allegation of infidelity against innocent ladies. The Prophet of Islam has considered false allegation against chaste woman among the seven most heinous and devastating sins. He also reported to have said that whosoever levels false allegation against a non-Muslim citizen of the Islamic state he will be punished on the Day of Judgment with a stripe of fire. This shows the seriousness of the crime of *qazf* in the light of the injunctions of Islam. This is because a false imputation of *zina* against an innocent person not only harms the reputation of the victim but also violates the norms of Muslim society. That is why the *Hadd* of *qazf* includes not only the right of the individual concerned but also the right of Allah. The right of Allah is predominant in this *Hadd*, because the crime of *qazf* offends the dignity and reputation of the people and harms the integrity of the family and the solidarity of the society. The punishment of *qazf* aims at protecting the dignity of the people, integrity of the family and the moral fabric of the society.

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17. In view of these considerations, the punishment of *qazf* has been considered to be predominantly the right of Allah. However, there is a difference between the *hadd* of *qazf* and the *Hadd* in other offences. In other offences, the *hadd* has only one aspect, that is the right of Allah. On the other hand, the *hadd* of *qazf* has also an element, though subservient, of the right of human beings. In view of this aspect of *qazf* it is not subject to law of limitation, or *Taqadum*. The well-known Hanafi jurists, Imam Alauddin Kasani and Allama Ibn Abidin, among others, have expressly mentioned that the right to move the case of *qazf* by the victim does not abate merely because of delay in the submission of the case; because the rights of human beings do not abate on the basis of limitation \_\_\_\_\_ و حق العبد لا يسقط بالتقادم .

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(المشروع في القذف : ٣ : ٢٢٣) At the same time, in view of the fact that the right of Allah is predominant in this *Hadd*, it can neither be compromised nor waived nor pardoned after it is taken notice of by the state. Any compromise made by the victim with or without the payment of any money or gratification is void.



18. The allegation of adultery by the husband against his own wife is much more serious than the allegation against other ladies. The process of *li'an* has been provided by the Quran to effect an immediate and permanent separation between the spouses who have lost mutual confidence and trust and where one of the spouses repudiates the fidelity of the other. In such a situation the offender has only two options: either to divorce the wife or to produce four witnesses to prove his charge. If he fails in both he has to face the punishment of *qazf*. It may be pointed out that the process of *li'an* cannot be initiated on the demand of the husband if it is merely on the basis of false allegation. It is the right of the wife to demand the process of *li'an* and the resultant permanent separation. It has been unanimously held by the four major legal schools that the process of *li'an* is the right of the wife. It cannot be initiated without an express demand from her. If she does not demand *li'an* it cannot be resorted to. The well-known Hanafi jurist,

Kamal ibn al-Humam has said: ويشترط طلبها لأنه حقها -

فلا بد من طلبها كسائر الحقوق - وبه قالت الأئمة الأربعة -

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لأنه حقها، لأنه لا دفع العار عنها فيشترط طلبها. (فتح القدير :  
ج ٥ : ١١٥)

“Her demand is necessary because it is her right. Therefore her demand is inevitable like all other rights. This view is also held by three other Imams because *li'an* is considered to be her right. It is to remove disgrace and shame from her. Therefore, her demand is the basic condition”. However, if the husband repudiates the child given birth by the wife during the subsistence of marriage and denies its legitimacy, the husband also can demand the process of *li'an*.

19. In case of compound, collective or composite *qazf*, there are situations where both the punishment of *qazf* as well as *li'an* are resorted to. Allamah Alauddin Kasani, among others, has clearly said that if a person levels allegation of *zina* against his wife as well as against her mother he will be liable to both the *li'an* as well as the *hadd*; because the *qazf* committed here is both against his wife as well as against her mother. The first shall necessitate *li'an* and the latter shall necessitate the *hadd*. Likewise, if a person commits *qazf* in respect of a woman and then marries her, and afterwards levels the allegation

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of *zina* against her he shall be liable to both *hadd* and *li'an*. (see *Badā'i' al-Sanā'i'*, Vol-III, Karachi, 1400 A.H. p.239).

20. The case of *qazf* in the present case initially arose from the statement submitted by the Appellant in response to the application submitted by the respondent, Mst.Zakia Bibi, in a family Court for the dissolution of marriage. We have painfully gone through the statement submitted by the Appellant which is full of filthy statements and dirty remarks not only against the lady who had been his wife but also against a number of other people related in one way or another with his ex-wife Mst. Zakia Bibi. The fact that the Appellant leveled emphatic and unambiguous allegations of *zina* against his wife is clear from almost every page of his statement. Moreover, the appellant circulated copies of the filthy statement on a wide scale.

21. Apart from leveling the allegations of *zina* against his ex-wife, the statement of the Appellant contains allegations of *zina* against several other persons including Muhammad Saeed, brother of his ex-wife, Shamshad Bibi, elder sister of the ex-wife, Muhammad Akram

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brother of his ex-wife, his own father-in-law as well as against Bashir Clerk, Abid Clerk, Gulzar, Umer Din, Ijaz Baloch and Muhammad Iqbal Gill. Even if we consider the submissions made on behalf of the Appellant for instituting the procedure "*li'an*", we cannot ignore the commission of the crime of *qazf* by the Appellant against a number of other persons.

22. The Appellant has submitted that the case of *qazf* filed against him was false, frivolous, baseless and with malafide intention. On careful perusal of the file, this ground itself turns out to be frivolous and baseless in view of the serious allegations leveled by the Appellant against his ex-wife and several other persons in his written statement of which copies were circulated by him. He has further submitted that the oral as well as documentary evidence is contradictory which casts serious doubt and has prayed that the benefit of doubt should be given to the Appellant. The Appellant has simply ignored the fact that the charge of *qazf* was proved against him on the basis of his own signed statement in which the crime of *qazf* has been committed against the

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number of persons including his own ex-wife and her brothers. In this situation there is no need to produce or rely on any oral evidence to establish the commission of the crime. It is worth mentioning that the offence of *Qazf* (Enforcement of Hadd) Ordinance, 1979 clearly provides for the proof of *qazf* liable to Hadd. Section 6 provides as under:

6. Proof of *Qazf* liable to Hadd (1) proof of *qazf* shall be one of the following forms namely:

- a) .....
- b) The accused commits *qazf* in the presence of the Court;  
and
- c) At least two Muslims adult male witnesses, other than the victim of *qazf* ..... give direct evidence of the commission of *qazf*.

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In the instant case the material containing *qazf* was presented by the Appellant himself to the court. As such the crime of *qazf* stands proved and there is no need to require further evidence, oral or documentary.

23. The Appellant also submitted that in view of the animosity between the two parties the allegations leveled by him should not be treated as *qazf*. He also submitted that in order to constitute the crime of *qazf* there must be criminal intention on the part of the accused/offender. He further submits that the intention to harm the reputation is not proved by the complainant through cogent evidence. These submissions are totally irrelevant to the question of *qazf*. The presence of any criminal intention or intention to harm the reputation of the victim becomes relevant only when there is a reasonable possibility of interpreting the disputed statement in a manner falling outside the definition of *Qazf*. In the instant case the intention of the Appellant was clear. He was not stating the factum of *zina* for any legal or academic purpose. His intention and motive was clearly to put his ex-wife and her family into disrepute. The Appellant has further submitted that the process of *Tazkiyatu-Shuhood* has not been observed. He has conveniently ignored the fact that the charge of *qazf* has been established against him under paragraph (b) of section (6) and not

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under paragraph (c) of that section. The question of *Tazkiyatu-Shuhood*, therefore, does not arise.

24. The Appellant also submitted an application on 06.03.2010 in which he has claimed that a compromise has taken place between him and his ex-wife who has forgiven him. We have considered the plea of compromise carefully. We find that plea is as frivolous and baseless as are his earlier pleas. Apart from the fact that he neither submitted any proof of having compromised with his ex-wife nor submitted any affidavit or application signed by the ex-wife (who is not the only victim of *qazf*), the legal position is that the punishment of *qazf* relates to the Hudood which primarily fall under the category of *Huquq-Allah*. The established principle of the Shariah is that there can be no compromise in cases of Hudood particularly when the matter comes to the cognizance of law and the judiciary. These are several *Ahadith* to the effect that once a case of Hadd comes to the notice of the State or the Court it cannot be forgiven by the victim and cannot be compromised.

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25. The learned trial court rightly relied on a judgment given by the Division Bench of this Court in Cr. Appeal No.22-K of 1992 Mst. Rabia Sultana vs. Riaz Ahmad and Abdul Majeed reported in NLR, 1992, S.D (pages 600-618). The judgment was written by the then Chief Justice of this Court Mr. Justice Dr. Tanzil-ur-Rehman. The learned trial judge has identified common points between the case cited and the instant case. These common points may be reproduced here:-

- i. In both the cases suit for dissolution of marriage was filed.
- ii. In the cited case, the accused (husband) made imputation of *Zina* upon his wife appearing in the witness box as D.W. and in the instant case, the defendant/accused made imputation of *Zina* upon the complainant (Ex-wife) while filing written statement.
- iii. In the cited case as well as in the instant case suit for dissolution of marriage was decreed on the basis of *Khula*.

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- iv. In the cited case wife filed the complaint under section 7 of the *Offence of Qazf (EOH) Ordinance, 1979* and in the instant case position is the same.
- v. In the cited case, the proceedings of *Li'an* under section 14 of the *Qazf* were not carried out before the Family Court and same is the position in the instant case.
- vi. In the cited case mode of imputation of *Zina* (sic) was made in presence of the court and in the instant case the accused filed written statement in the Court by leveling allegations of *Zina* and also got recorded his statement admitting the contents of the written statement.

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26. In this elaborate judgment, Mr. Justice Dr. Tanzil-ur-Rehman had pointed out that since the statements and depositions made about *Zina* at various stages in court proceedings in family/criminal litigation, it was sufficient to prove *qazf*. In such cases complainant is not required to produce evidence in support of *qazf* charge. In the cited case, the father and the son charged in the *qazf* case have been making *Zina*

imputation by deposing that his wife was pregnant on the night of marriage as a result of *Zina* with her paramour. It was held that the offence of *qazf* stood proved by evidence on record. The appeal against acquittal was set-aside and the son and the father were convicted for *qazf* with sentence of 80 stripes each. It may be pointed that in the cited case also, the allegation of *zina* was leveled against a woman who was married to the offender but the proceedings of separation were pending between the parties. The learned Division Bench of this Court did not consider this situation to be one of subsistence of marriage.

27. In another similar case, same Division Bench of this Court delivered similar judgment reported in Cr. Appeal No.14-K of 1992 Mst. Rubi Akhtar vs. The State and Capt. S.M. Aslam NLR, 1992, SD (pages 788-800). In this case also the husband had leveled allegations of illicit relations with several people against his wife in a legal notice which he got served through his advocate. The learned Division Bench of this Court had convicted the husband and declared him guilty of committing the offence of *Qazf* under section 7 of the offence of *Qazf*

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(Enforcement of Hadd) Ordinance, 1979. It may be pointed out that the

allegations leveled by the husband in the cited case were very mild and polite as compared to the allegation leveled by the husband in the instant case which are in very dirty and filthy language.

28. The superior courts in Pakistan have considered the cases where suits for separation were pending in family courts and treated them as cases of non subsistence of marriages for purposes of *qazf*. In the case of Muhammad Safdar Satti vs. Mst. Asia Khatoon, the Hon'ble Shariat Appellate Bench of the Supreme Court had upheld the judgment of this Court in awarding the punishment of *qazf* to the husband. In this case the Appellant No.1 Muhammad Safdar Satti had married Mst. Asia Khatoon Respondent No.1 in 1988. In the year 1992 their relations became strained and finally culminated in divorce. The appellant vide notice dated 4.9.1992 finally pronounced *Talaq* stating, inter alia, that the respondent Mst. Asia Khatoon engaged in the nefarious activities and had given birth to an illegitimate child. Respondent No.1 Mst. Asia Khatoon filed a complaint under section 7/11 of the Offence of *Qazf*

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(Enforcement of Hadd) Ordinance, 1979 against the Appellant No.1

Muhammad Safdar Satti. The Appellant submitted an application before the trial court and demanded that proceedings for *li'an* be initiated. The trial court accepted the plea of the appellant and issued directions for the initiation of the proceedings of *li'an* under section 14 of the said Ordinance. Feeling aggrieved the Respondent No.1 filed a Criminal Revision No.11-I/1989 which was accepted by this Court. While deciding the case in favour of Mst. Asia Khatoon this Court had observed that the marriage between the Appellant Muhammad Safdar Satti and Respondent No.1 Mst. Asia Khatoon had already been dissolved because final notice of divorce was issued. The same view was upheld by the learned Shariat Appellate Bench of the Supreme Court (PLJ, 2005, SC, pp. 572-576). It may be mentioned here that the husband had given notice of divorce which according to Muslim Personal Law was to be effective after the procedure laid down in Muslim family Law Ordinance, 1961.

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29. In another case namely Abdul Rasheed vs. Mst. Safia Bibi (NLR, SD, FSC, 1984, p.81) this court had decided to uphold the punishment of *qazf* in a case where the husband had leveled allegations of *zina* in a written statement in the court.

30. In the light of the above we do not find any justification to interfere with the judgment of the learned trial Court. We, therefore, dismiss the appeal, uphold the conviction and maintain the sentence awarded by the learned trial court.

The Criminal Reference No.12-I of 2009 is answered in the AFFIRMATIVE.

*Mahmood A.L.*

JUSTICE DR. MAHMOOD AHMAD GHAZI

*Syaidan.*

JUSTICE SYED AFZAL HAIDER

*[Signature]*  
JUSTICE SHAHZADO SHAIKH

Announced in open Court on 21.07.2010

At ISLAMABAD  
M.Sadiq/\*

Fit for reporting

*Mahmood A.L.*  
Judge