

IN THE FEDERAL SHARIAT COURT  
(APPELLATE/REVISIONAL JURISDICTION)

PRESENT

MR. JUSTICE ALLAMA DR. FIDA MUHAMMAD KHAN  
MR. JUSTICE RIZWAN ALI DODANI

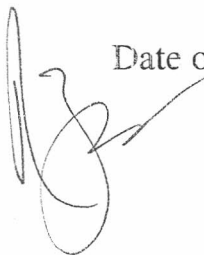
CRIMINAL APPEAL NO.216/L OF 2003

Mst. Sajida Bibi d/o Manzoor Ahmed ..... Appellant  
caste Channar, r/o Chak No.313-HR,  
presently resident of Chak No.316-RH,  
Tehsil Fort Abbas, District Bahawalnagar.

Versus

1. Mukhtar Ahmed son of Muhammad Sadiq, ..... Respondents  
caste Chanad, resident of Chak No.310-HR,  
Tehsil Fort Abbas, District Bahawalnagar.
2. Muhammad Amin son of Muhammad Murad,  
caste Chanad, resident of Chak No.313/HR,  
Tehsil Fort Abbas, District Bahawalnagar.
3. The State.

Counsel for the appellant/ complainant	....	Mian Muhammad Nawaz, Advocate
Counsel for the respondents	....	Mr. Abdul Waheed Sheikh, Advocate
Counsel for the State	...	Dr. Muhammad Anwar Khan Gondal, Additional Prosecutor General Punjab.
FIR No. Date and Police Station	....	No.24/2002, dated 15.02.2002 P.S. Maroot, District Bahawalnagar.
Date of Judgment of the trial Court	....	12.06.2003
Date of Institution of appeal in FSC	....	26.07.2003
Date of hearing	....	02.05.2014
Date of decision	....	02.05.2014
Date of judgment	....	14.05.2014

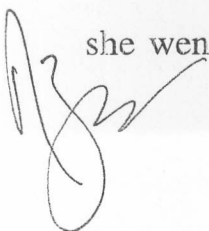


JUDGMENT

RIZWAN ALI DODANI, JUDGE:- Through this appeal, complainant Mst. Sajida Bibi d/o Manzoor Ahmed has challenged the impugned judgment dated 12.06.2003 delivered by learned Additional Sessions Judge, Haroonabad, Camp at Fortabbas whereby accused/respondents Mukhtar Ahmed son of Muhammad Sadiq and Muhammad Amin son of Muhammad Murad were acquitted of the charge under section 10 (3) of the Offence of Zina (Enforcement of Hudood) Ordinance, 1979.

2. Brief facts of the prosecution case are that complainant/victim PW.2 Mst. Sajida Bibi through complaint Ex.PA stated that she was a virgin girl and on the fateful day i.e. 4/5 days prior to the registration of this case, her father had gone to Bahawalpur for the purpose of labour. She alongwith her mother Mst. Kareem Khatoon was present in her house. At about 8.00/9.00 p.m.

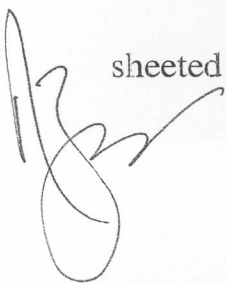
she went out of her house to answer the call of nature. The accused



persons namely Mukhtar Ahmed armed with 12 bore gun and Muhammad Amin empty handed were standing outside the gate of her house. Mukhtar Ahmed accused forcibly took her in the house of Muhammad Amin accused. The accused Muhammad Amin caught hold her arms and Mukhtar Ahmed accused committed zina-bil-jabr with her after removing her shalwar. She raised alarm whereupon the PWs Allah Wasaya and Kabeer Ahmad attracted to the spot and witnessed this occurrence. On seeing the PWs, both the accused fled away. She narrated the above said occurrence to her mother and her father was intimated about this occurrence. The accused tried to patch up the matter but was refused.

3. Investigation was carried out by PW.5 Bashir Ahmad and report under section 173 of the Code of Criminal Procedure was submitted before the trial Court against the aforementioned accused/respondents for trial. The learned trial Court formally charge

sheeted them on 16.10.2002 under section 10 (3) of the Offence of



Zina (Enforcement of Hudood) Ordinance, VII to which they pleaded not guilty and claimed to be tried.

4. During the trial, the prosecution in order to prove its case examined in all five prosecution witnesses, gist of which is given herein below for the sake of convenience:-

5. PW-1 is Dr. Hamid Akhtar, Medical Officer, R.H.C, Marot, who medically examined accused/respondent Mukhtar Ahmed and conducted the potency test Ex.PA. PW.2. is Mst. Sajida Bibi complainant/appellant/victim who narrated the same story as mentioned in the crime report. PW.3 is Kabeer Ahmed, who is witness of the occurrence. PW.4 is Dr. Farzana Yasmeen, Medical Officer, THQ Hospital, Fortabbass, who conducted the medical examination of Mst. Sajida Bibi and issued a medico legal certificate Ex.PB and report of chemical examiner Ex.PB/1. Bashir Ahmed, S.I. PW.5 is investigating officer of this case. Mst. Sajida Bibi submitted an application (Ex.PA) before him and he drafted the FIR Ex.PA/1. He





inspected the place of occurrence and prepared rough site plan of place of occurrence Ex.PC.

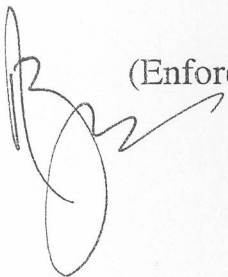
6. The prosecution gave up Shabbir Ahmad, Inspector/PW as being un-necessary.

7. The prosecution has closed its evidence on 21.05.2003.

8. After close of prosecution evidence the learned trial Court recorded statements of the accused under section 342 Cr.P.C. on 28.05.2003. They denied the allegations leveled against them and claimed their innocence. The accused did not opt to record their statements under section 340(2) Cr.P.C. nor did they produce any evidence in their defense.

9. The learned trial Court after completing the legal formalities of the trial, returned the verdict of the acquittal of the respondents from charge under section 10 (3) of the Offence of Zina

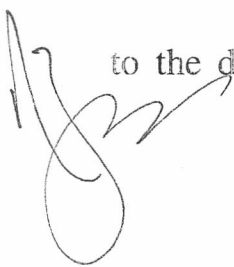
(Enforcement of Hudood) Ordinance VII of 1979.



10. We have heard the learned counsel for the parties, examined the evidence and scanned the impugned judgment with their able assistance.

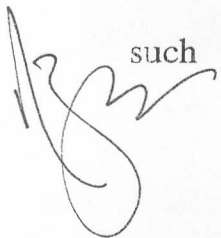
11. It has been observed that the FIR was lodged on 15.02.2002 and admittedly after 4/5 days of the occurrence, wherein the allegation of rape was attributed to respondent No.1 Mukhtar Ahmed while respondent No.2 Muhammad Amin has been assigned with the role to have facilitated the respondent No.1 Mukhtar Ahmed in commission of that crime. The medical was conducted on 16.02.2002 i.e. after 5 days of the incident. The doctor who, conducted the medical examination of the victim Mst. Sajida Bibi opined that the alleged rape was committed within 56 hours of the occurrence, this aspect cast serious doubt on the prosecution story of alleged incident of rape inasmuch as admittedly the medical examination was conducted after 5 days i.e. 144 hours and according

to the doctor the rape was committed within 56 hours, which is a



material contradiction let alone the delay in lodging the report of the incident.

12. The reasons for belated FIR have been attributed to the father of the prosecutrix, who was allegedly away from the town and took time to come back. The argument of learned counsel for the appellant/victim Mst. Sajida Bibi in this context was that father of the prosecutrix was in Bahawalpur at the time of incident that is why the FIR could be lodged after 4/5 days of the occurrence when her father came back to the town. Conversely, it was contended by the learned counsel for the respondents that no plausible reason was shown in this regard, he vehemently submitted that Bahawalpur is situated hardly at 2/3 hours journey's distance from the town and as such his coming back to the town from Bahawalpur in 4/5 days is absolutely not justifiable, when admittedly he has immediately been informed of the alleged incident of rape. We are convinced with the arguments of the learned counsel for the respondents that there was no point to take such a considerable time of 4/5 days by the father of the

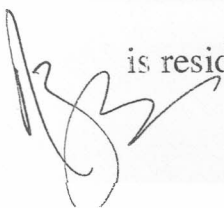


appellant/victim Mst. Sajida Bibi particularly after hearing about such harsh incident. The significant aspect to mention here is that father of the victim Mst. Sajida Bibi has not been produced as a witness before the learned trial Court, which is more astonishing, in such circumstances where daughter has been subjected to zina-bil-jabr. This state of the matter creates serious ambiguity into the prosecution case when no justified reasons available on the record.

13. The further noticeable fact on record is that per statement of the victim Mst. Sajida Bibi she got no injury during the alleged incident of rape, the medical report also opined that there was no mark of violence or injury found on the person of victim Mst. Sajida Bibi. This very fact cast serious doubt in mind when the manner in which alleged offence of rape said to have been committed.

14. The testimony of PW.3 Kabeer Ahmad, who gave ocular account in respect of the incident, in cross-examination his presence at the place of incident was made convincingly doubtful as he admittedly

is resident of Chak No.312/HR, Tehsil Fortabbas, which is about three

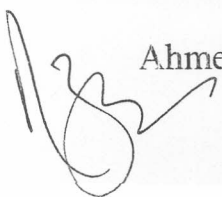




(3) K.Ms. away from the town of the victim. The explanation in this regard as given by him was that he alongwith Allah Wasaya (PW. not produced) used to keep their cattles in the *ihatta* which was located near the house of respondent No.2 Muhammad Amin where the incident of rape took place and the said *ihatta* is owned by a Murad Channar. He admitted in his cross-examination that two/three criminal cases are registered against him. In view of these pieces of evidence of PW.3 Kabeer Ahmed, his presence at the time and place of the occurrence becomes very much doubtful, when admittedly he is resident of other town and no evidence has been brought to corroborate his plea of being present at the *Ihatta* such as the other PW. Allah Wasaya who has not been produced as witness nor the owner of *ihatta* Murad Channar was produced.

15. It was contended by the learned counsel for appellant/prosecutrix that during cross-examination a suggestion was put to Kabeer Ahmed PW.3 that instead of respondent No.1 Mukhtar

Ahmed, the father of respondent Muhammad Amin in fact, has



committed rape with the prosecutrix, which was although denied by the victim Mst. Sajida Bibi but the vehement emphasis of the counsel was that this very suggestion amounts to an admission of offence by the respondents. In our view, though such astonishing suggestion has been put to the witness PW.3 by the counsel for acquitted respondents but such suggestions while cross-examination of witnesses may be in nature of admissions of some incriminating fact or guilt, but could not be construed as an admission of fact or a guilt unless proved by some independent evidence, inasmuch as these may at the most be said to be the result of an inarticulate, or inappropriate art of cross-examination and as such cannot be given that much significance.

16. That some more material facts which have been observed as being detriment to the prosecution case, that the prosecution did not bother to produce the clothes of victim Mst. Sajida Bibi she was wearing at the time of incident, which could play a major role in such like cases of rape, particularly when the same was said to have been stained with semen and blood as per the statement of victim. It was

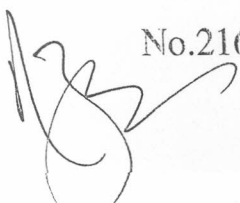


also found on record that the victim Mst. Sajida Bibi has recorded her statement before the Magistrate under section 164 Cr.P.C., but strangely Magistrate was not examined before the Court to substantiate such statement therefore, this Court has been restrained to ponder such substantive piece of evidence. More-so, no recovery of weapon was effected from the accused persons.

17. In view of above discussion, we are of the considered view that the prosecution could not make out the case against the respondents and under this state of the matter even the sole testimony of prosecutrix cannot be believed inasmuch as it depends upon the facts and circumstances of each case and has to be assessed by the Court on the basis of the entire evidence on the record. Therefore, the respondents are extended benefit of doubt. Hence, impugned judgment of acquittal passed by the learned trial Court is upheld as does not warrant interference of this Court.

18. As a sequel of above, acquittal Criminal Appeal

No.216/L of 2003, the instant appeal is dismissed.



19. These are the reasons of our short order dated

02.05.2014.

  
JUSTICE RIZWAN ALI DODANI

  
JUSTICE ALLAMA DR. FIDA MUHAMMAD KHAN

Islamabad, the  
dated 12.05.2014  
*Hummayun/-*

*Approved for reporting.*

  
JUSTICE RIZWAN ALI DODANI