IN THE FEDERAL SHARIAT COURT
(Appellate Jurisdiction)

PRESENT

MR.JUSTICE SYED AFZAL HAIDER

CRIMINAL APPEAL NO.151/L OF 2005

Muhammad Aslam son of Khan Muhammad, resident of village No.47/15-L, Tehsil Mian Channu, District Khanewal.

..... Appellant

Versus

1. The State.

2. Mustafa son of Dost Muhammad, resident of Chak No.47/15L, Tehsil Mian Channu, District Khanewal.

..... Respondents

.....

For the appellants	---	Mr.Tahir Naeem, Advocate
For the State	---	Ch.Abdul Razzaq, D.P.G
F.I.R No., dated P.S, District	---	126/2004, 07.05.2004, Saddar Mian Chunian, Khanewal.
Date of Judgment of Trial Court	---	03.05.2005
Date of Institution	---	17.05.2005
Last date of hearing	---	01.10.2009
Date of Decision	---	01.10.2009

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JUDGMENT

SYED AFZAL HAIDER, JUDGE.- Through this appeal Muhammad Aslam has challenged judgment dated 03.05.2005 delivered by learned Additional Sessions Judge, Mian Channu whereby Mustafa respondent was acquitted from a charge under sections 18 of Offence of Zina (Enforcement of Hudood) Ordinance VII of 1979 and 457 of the Pakistan Penal Code, Police Station Saddar Mian Channu.

2. The information laid with local Police by complainant Muhammad Aslam PW-1 was to the effect that he alongwith his children including Mst.Nasira Bibi, aged 15-16 years, were asleep in the court-yard of their house on the night between 06/07.05.2004 in their Chak. His wife Mst.Rehmat Bibi had gone to another village for condolence. During the night Mustafa, armed with pistol, trespassed into the house after scaling the wall and forcibly took Mst.Nasira Bibi to the adjoining room and attempted to commit Zina-bil-Jabr with her. The complainant got awakened as a result of alarm raised by the victim. Allah Ditta and Fida Hussain, complainant's brother who lives nearby were also attracted to the spot. All of them

attempted to apprehend the accused but he managed to escape after brandishing his pistol. The complainant thereupon moved an application Ex.PA on 07.05.2004 before the Inspector/Station House Officer, Police Station Saddar Mian Channu at 5/6.00 p.m regarding the incident of the previous night. The Station House Officer marked the same to Assistant Sub Inspector Zameer who received it while was present at bus stand 124/15L, Tehsil Mian Channu. He recorded Police Karvai on the application and sent the same to Police Station on the basis of which Abdul Mujeeb 622/MHC (PW-4) recorded formal F.I.R Ex.PA/1.

3. Investigation ensued as a consequences of the registration of the crime report. After investigation, report under section 173 was submitted in Court on 09.08.2004 requiring the accused to face trial. Learned trial Court framed charge against accused under section 457 of the Pakistan Penal Code and section 18 read with section 10(3) of the Offence of Zina (Enforcement of Hudood) Ordinance VII of 1979. The accused did not plead guilty and claimed trial.

4. Prosecution produced six witnesses at the trial whereafter they closed the prosecution case on 08.03.2005. Statement of accused was recorded on 28.03.2005 under section 342 of the Code of Criminal Procedure. In response to question No.6" "Why this case against you and why have the PWs have deposed against you", the accused stated as under:-

> "My brother Muhammad Iqbal had got registered a criminal case bearing F.I.R No.61/04 dated 18.3.2004 under section 440/148/149 PPC, against Ramzan and Zamah alias Ghuman son of Baqir, real Phuphizad of the complainant, 1½ months prior to the registration of instant case and due to enmity complainant, in league with said Zaman etc, concocted a false story in order to blackmail our family. No such occurrence has ever been taken place. Allah Ditta PW is real brother of the complainant. To strengthen the complainant's case, he deposed falsely. I am innocent."

5. The accused neither opted to make statement under oath as provided under section 340(2) of the Code of Criminal Procedure nor produce any evidence in defence.

6. The learned trial Court after completing codal formalities of the trial in Hudood Case No.36-H/2004, Hudood Trial No.04/2005 returned a verdict of not guilty. Consequently accused Mustafa was acquitted. He was

granted benefit of doubt. In arriving at this conclusion, the learned trial Court had found that:

i) That the prosecution account was full of material contradictions;

ii) That PW-1 Muhammad Aslam made improvements in his statement;

iii) That the evidence of Muhammad Aslam PW-1 and Allah Ditta PW-2 was neither convincing nor trust worthy;

The complainant Muhammad Aslam now seeks to challenge the order of acquittal through this criminal appeal.

7. We have gone through the file. The evidence produced by prosecution as well as the statement of accused has been perused. Relevant portions of the Judgment have been appraised.

8. Learned counsel for the appellant raised the following points:-

i) That the accused had taken a plea that he was falsely implicated due to the grudge that F.I.R No.61/2004 was registered against the cousin of the complainant;

ii) That the learned trial Court did not give any finding about the charge of house trespass;

iii) That it was not possible for a father to involve his daughter in a false case and

iv) There was evidence on record that the accused made an attempt to commit Zina-bil-Jabr with the victim Mst.Nasira Bibi.

9. Attention of learned counsel for the appellant was invited to paragraphs No.12 through 15 of the impugned judgment where the entire evidence and the points raised by the defence have been incorporated and discussed. The learned counsel failed to point out any infirmity, arbitrariness, or unreasonableness in the conclusion arrived at by the learned trial Court in the impugned judgment.

10. We have read the statement of the complainant. It does not inspire confidence at all. A lot of improvements have been made in the statement. It is not possible to agree with the contention of the learned counsel that in his view a verdict of guilt should have been announced in this case. It is not a fit case for interference. It is an established principle of law

that once the accused is acquitted by a Court of competent jurisdiction the initial presumption of innocence of the accused gets judicial recognition and because of this double presumption of innocence, it must be established at this stage that the evidence on record has been misread or material evidence has not been considered by the learned trial Court and the conclusions arrived at are not supported by the facts and circumstances of the case. Reference may be made to the cases of (i) State Vs. Faisal Munir reported as PLJ 2009 FSC 284 (ii) Muhammad Azam and others Vs. The State reported as 2009 SCMR 1232 and (iii) the case of Mst.Saira Bibi Vs. Muhammad Asif reported as PLJ 2009 SC 769.

11. In the case of Mst.Saira Bibi Versus Muhammad Asif PLJ 2009 SC 769, the petition to seek leave against the acquittal Judgment recorded by Federal Shariat Court, was refused inter-alia on the ground that before an order of acquittal was reversed it must be shown that the impugned judgment was devoid of reason. It was also found that if two conclusions were equally possible, the order of acquittal should not be reversed. Reliance was placed on the case of Ghulam Sikandar and another Versus Mamaraz

Khan and others PLD 1985 SC 11 where the following four principles were enunciated:

> "(i) In an appeal against acquittal the Supreme Court would not on principle ordinarily interfere and instead would give due weight and consideration to the findings of Court acquitting the accused. This approach is slightly different than that in an appeal against conviction when leave is granted only for the re-appraisement of evidence which then is undertaken so as to see that benefit of every reasonable doubt should be extended to the accused. This difference of approach is mainly conditioned by the fact that the acquittal carries with it the two well-accepted presumptions: One initial, that till found guilty, the accused is innocent; and Two that again after the trial a Court below confirmed the assumption of innocence.
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> (1) PLD 1980 SC 317 (2) PLD 1981 SC 286
> (3) 1981 SCMR 95 (4) 1981 SCMR 415
> (5) 1981 SCMR 474 (6) PLD 1951 FC 107
> (7) PLD 1960 SC 286 (8) PLD 1964 SC 422
> (9) PLD 1966 SC 424 (10) PLD 1969 SC 293
> (11) PLD 1973 SC 469 (12) PLD 1975 SC 227
> (13) PLD 1976 SC 234 (14) PLD 1977 SC 4
> (15) PLD 1977 SC 529
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> (2) The acquittal will not carry the second presumption and will also thus loose the first one if on points having conclusive effect on the end result the Court below: (a) disregarded material evidence; (b) misread such evidence; (c) received such evidence illegally.
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> (3) In either case the well known principles of re-appraisement of evidence will have to be kept in view when examining the strength of the views expressed by the Court below. They will not be brushed aside lightly on mere assumptions keeping always in view that a departure from the normal principle must be necessitated by obligatory observances or some higher principle as noted above and for no other reason.
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> (4) The Court would not interfere with acquittal merely because on re-appraisal of the evidence it comes to the conclusion different from that of the Court acquitting the accused provided both the conclusions are reasonably possible. If however, the conclusion reach by that Court was such that no reasonable person would conceivably reach the same and was impossible then this Court would

interfere in exceptional cases on overwhelming proof resulting in conclusion and irresistible conclusion; and that too with a view only to avoid grave miscarriage of justice and for no other purpose. The important test visualized in these cases, other purpose. The important test visualized in these cases, in this behalf was that the finding sought to be interfered with, after scrutiny under the foregoing searching light, should be found wholly as artificial, shocking and ridiculous."

Reliance was also placed on the case of Muhammad Iqbal Versus Rana Sana Ullah PLD 1997 SC 569.

12. In view of what has been stated above, the learned counsel has not been able to establish that the impugned judgment suffers from any infirmity without which it is not possible to interfere in the order of acquittal. The impugned judgment is based upon reasons and no material fact has been over looked. Consequently Criminal Appeal No.151-L of 2005 moved by Muhammad Aslam is hereby dismissed.

JUSTICE SYED AFZAL HAIDER

JUSTICE MUHAMMAD ZAFAR YASIN

Dated Lahore the 01st October, 2009.

*Amjad /**

Fit for reporting.

JUSTICE SYED AFZAL HAIDER