

IN THE FEDERAL SHARIAT COURT
(Appellate/Revisional Jurisdiction)

PRESENT:

Mr. Justice Agha Rafiq Ahmed Khan, Chief Justice
Mr. Justice Syed Afzal Haider
Mr. Justice Shahzado Shaikh

Criminal P.S.L.A. No. 15/L of 2007

Mst. Salma Bibi wife of Khushi Muhammad,
Caste Muslim Sheikh, resident of Qasim Colony,
Chak No.86/6-R, Tehsil & District Sahiwal.

---Petitioner

Versus

1. Niaz alias Billa son of Shah Nawaz,
2. Muhammad Shaukat alias Shoka
son of unknown, Caste Qasab,

Both residents of Qasim Colony,
Chak No.86/6-R, Tehsil & District Sahiwal.

3. The State

--- Respondents

Counsel for the Petitioner

--- Mr. M. A. Ghaffar-ul-Haq,
Advocate.

Counsel for the State

--- Ch. Abdul Razzaq, D.P.G.

Private Complaint No.

--- 18-ASJ/19.03.2005

FIR No. date &
Police Station

--- 472/04 dated 12.08.2004
Farid Town, District Sahiwal.

Date of Judgment of
the trial Court

--- 01.09.2007

Date of Institution
of PSLA

--- 06.10.2007

Date of Hearing

--- 05.10.2010

Date of Judgment

--- 11.10.2010

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JUDGMENT

Justice Agha Rafiq Ahmed Khan, Chief Justice:- Mst. Salma

Bibi petitioner has through this petition for special leave to appeal challenged judgment dated 01.09.2007 delivered by learned Additional Sessions Judge, Sahiwal whereby he acquitted accused/respondents Niaz alias Billa and Muhammad Shaukat alias Shoka from the charge under section 10(4) of the Offence of Zina (Enforcement of Hudood) Ordinance, 1979 by extending them benefit of doubt.

2. Brief facts of the case, as narrated by complainant Mst. Salma Bibi PW.1 in her private complaint Ex.PB filed before the learned Magistrate, Sahiwal, are that on 04.08.2004 her husband Khushi Muhammad had gone to Lahore for the purchase of grain. The complainant alongwith her three daughters was asleep in the courtyard of her house when at about 2.00 a.m. accused Niaz alias Billa and Muhammad Shaukat alias Shauka entered her house by scaling over the wall. Niaz alias Billa accused awakened her by holding her neck, put

his hand on her mouth and committed zina-bil-jabr with her after removing her shalwar. She made efforts to rescue herself due to which her *shirt* was also torn. Then Shaukat alias Shauka committed zina-bil-jabr with her. In the meanwhile she lost her senses. Her daughter helped her revive after water was put in her mouth. On the return of her husband she narrated the whole incident to him who took her to police station Farid Town where the police after completing initial formalities, sent her to DHQ Hospital, Sahiwal for her medical examination alongwith Nazar Muhammad policeman. The lady doctor after conducting her medical examination handed over medico-legal report No.1446/AA/04 and the torn clothes to the police. The police registered FIR No.472/04 against the accused persons under section 10(3) of the Offence of Zina (Enforcement of Hudood) Ordinance, 1979. The complainant further stated that the police in connivance with the accused persons neither arrested them nor were they interrogated. She allegedly made requests to the DPO Sahiwal many times for conducting investigation of the case by some senior police officer but

her requests were not acceded to while the accused were declared innocent by the police. Hence she filed the private complaint.

3. After recording cursory evidence of the complainant, the learned trial Court summoned both the accused and framed charge against them on 08.10.2005 under section 10(4) of the Offence of Zina (Enforcement of Hudood) Ordinance, 1979. The accused did not plead guilty and claimed trial.

4. The complainant in order to prove her case produced 3 witnesses at the trial. The gist of evidence of the witnesses is as under:-

i) Complainant Mst. Salma Bibi appeared as PW.1 and stated that on 04.08.2004 she alongwith her daughters was sleeping in the courtyard of her house while her husband Khushi Muhammad had gone to Lahore for purchasing grains. At 2.00 a.m. Niaz and Shaukat accused entered into her house, awoke her and asked here where was her husband. Both the accused caught her neck and they had "duel with her". Then her husband came and she narrated the whole occurrence to him. She alongwith her

husband went to the police post and got recorded her statement.

Nazar constable took her for medical examination. The police recorded her statement Ex.PA for registration of the case. During investigation the police connived with the accused persons and cancelled the FIR upon which she filed complaint Ex.PB.

ii) PW.2 Khushi Muhammad husband of Mst. Salma Bibi complainant stated that on 08.04.2004 he had gone to Lahore to purchase grams leaving his three daughters and wife at home. He came back on 5th of August, 2004 and he was apprised by his wife about the occurrence upon which he accompanied his wife to the police post wherefrom she was taken for medical examination. After her medical examination he accompanied her for registration of case. The case was cancelled by the police because they were in league with the accused persons.

iii) PW.3 Lady Doctor Afshan Akram had medically examined Mst. Salma Bibi complainant on 05.08.2004 and observed as under:-

“History of fight, and Zina-Bil-Jabr.

She was fully conscious, well oriented in time and space. She was married woman. Her LMP as she stated unsure. On examination no mark of violence all over the body at the time of examination were found. Clothes worn by her were Rashmi Kamiz, Yellow colour, Phooldar.

Per Abdomen. N.A.D. P/V. Pubic hairs were present. Vulva vagina were healthy. Vagina admitted two fingers easily. Uterus mobile and normal size.

Two vaginal swabs were taken, sealed and sent to the Chemical Examiner, Multan for detection of semen, if any. She was advised urine pregnancy test and Ultra-sound. Ex.PC is the attested copy of the medicolegal report, which is in my hand and bears my signatures.”

iv) PW.4 Rehmat Ali Sub Inspector stated that on 12.08.2004

he was on patrol duty at Noor Shah Road where Mst. Salma Bibi

met him and got recorded her statement Ex.PA.

5. The complainant, after tendering in evidence the report of the Chemical Examiner Ex.PD, closed the evidence.

6. The learned trial Court also recorded statements of three CWs. The gist of deposition of CWs is as under:-

- i) CW.1 Zakir Hussain Head Constable/Moharrir stated that on 12.08.2004 he received complaint through Muhammad Amjid constable sent by Rehmat Ali Sub Inspector whereupon he formally recorded FIR Ex.CW.1/A.
- ii) CW.2 Rehmat Ali Sub Inspector also appeared as PW.4. He recorded statement of Mst. Salma Bibi Ex.PA on 12.08.2004 at Noor Shah Road.
- iii) CW.3 Muhammad Ijaz Assistant Sub Inspector had undertaken the investigation. On 13.08.2004 he inspected the place of occurrence and recorded statements of two PWs under section 161 of the Code of Criminal Procedure. He arrested accused Niaz alias Billa on 15.08.2004, got him medically examined and sent to judicial lock up. On 21.08.2004 he summoned both the parties for investigation. The accused party alongwith several respectables came at police station but no one turned up from complainant side. He against summoned both the parties for investigation on 22.08.2004 and on that date also none appeared from the complainant side whereas 30 persons joined

the investigation from the accused side. He recorded statements of said persons 'Ber Daryaft' in the relevant Zimni and concluded that the accused was innocent. Then he produced both the parties before the DSP Investigation Sahiwal on 26.08.2004 who verified his investigation.

7. The learned trial court recorded statements of the accused under section 342 of the Code of Criminal Procedure on 07.07.2007.

The accused denied allegations leveled against them and pleaded innocence in the occurrence. In reply to question, "Why this case against you and why the PWs deposed against you?" accused Shaukat

Ali stated as follows:-



"There is no independent PW in this case. I am a poor person aged about 50 years and labourer. The complainant is litigant minded lady who earns her living through litigation and her case was found false during investigation. My first plea of innocence before the police was found correct. Large number of dwellers of the vicinity joined the investigation independent and respectables of the locality supported my innocence. The case was also investigated by Ch. Bashir Ahmad, DSP Investigation who verified my innocence and the case was recommended for cancellation where-after I filed suit for damages in the Civil Court and to avoid the consequence of the said suit, this complaint Ex.PB was filed with an inordinate delay to defeat the justice. I am a married man and

earlier to present false complaint, there is no such allegation against me. Mst. Salma Bibi is mother of six grown up children. None of the other inmates of the house out of her children has supported her on account of relationship between husband and wife. Being interested inter-se they have deposed falsely and implicated me dishonestly.

Niaz Ahmad accused made almost the similar reply to the above-mentioned question.

8. The accused did not opt to record their statements under section 340(2) of the Code of Criminal Procedure. However, they produced certified copy of application titled Khushi Muhammad Vs. SHO P.S. Farid Town, Sahiwal and others Ex.DA, order dated 16.12.2005 passed by Syed Hamid Hussain Shah, learned ASJ, Sahiwal Ex.DB and certified copy of civil suit for payment of Rs.24500/- as damages titled Mst. Manzooran Bibi Vs. Khushi Muhammad Ex.DC in their defence and closed their evidence.

9. The following points have been urged on behalf of the petitioner:-

- i) that both the accused were nominated in the complaint

Ex.PB;

ii) that the petitioner was subjected to rape on 04.08.2004 when her husband was not in the house;

iii) that the petitioner was medically examined on 05.08.2004 and according to the report of the Chemical Examiner the swabs were found stained with semen;

iv) that FIR No. 472/2004 was also registered by local police on 12.08.2004 on the statement of the petitioner but the police instead of supporting her favoured the accused with the result that the petitioner was forced to initiate criminal proceedings against the two respondents by way of private complainant, Ex.PB;

v) that the learned trial Court awarded benefit of doubt to the respondents only because according to the lady doctor there were no marks of violence on the person of the petitioner.

10. The learned DPG supported the impugned judgment.

He further submitted that the entire evidence on record had been duly appraised. The findings are neither capricious nor arbitrary.

11. We have seen the file. Evidence placed on record including statement of accused has been perused. Relevant portions of the impugned judgment have been scanned. Learned Counsel for the contending parties have also been heard.

12. The reasons that prevailed upon the learned trial Court to return a verdict of not guilty are mentioned in paragraphs 17 through 19 of the impugned judgment. The gist of the reasons is as

 follows:-

- i. that the allegation of rape was not leveled by the complainant in her statement recorded during the trial;
- ii. that the investigation of the case was transferred at the behest of complainant and the second Investigating Officer, a senior police officer, also found that the accused was not involved in the case;

iii. that there is no eye-witness account to support her allegation;

iv. that the lady doctor did not find sign of violence or use of criminal force on any part of the body of Mst. Salma Bibi; the clothes of the complainant were also not found stained by the lady doctor;

v. Leaned trial Court while concluding discussion on the merits of the case, found (paragraph 19 of the impugned judgment) as follows:-

 "Now it is well established from the above discussion that the alleged victim of this case is a grown up lady having six children out of whom are of her eldest issue was 12/13 years at the time of occurrence. She has failed to establish even absence of her husband from the night of occurrence. According to investigation as an outcome and result of some fight between the parties women, the complainant has got registered this case. So far as positive report of detecton of semen on the swabs taken by the vagina of the victim is concerned, without group matching of the same with the semen of any or both the accused how it can be held whether the swabs were containing semen of

any of the accused or both of the accused. I have already discussed above that there is only solitary statement of the complainant on the file in support of this private complaint whereas statement of PW-3 Lady Doctor who conducted examination of the victim also does not favour the prosecution version as according to Pw-3 no mark of violence or injury was found on the part of victim and this thing negates her allegation against both the accused that they had a duel with her during the occurrence. The complainant as PW-1 by using the word duel regarding occurrence has minimized her allegation and even she has failed to prove the duel with her by both of the accused because there were no sign of violence or injury on her body which would have been a natural result of a duel by two male persons with a woman. It is also on the file that both the accused facing trial are married persons having 6/6 children and their ages are also more than 50 and 60 years respectively. During the investigation, the complainant could not justify her allegation and as such cancellation report was prepared in this case. As I have already discussed above that there is no corroboration of any eye witness, so in this scenario and by placing reliance upon the esteemed case law relied upon by the learned defence counsel I have no option but to adjudicate that the complainant has miserably failed to establish the guilt of any of the accused free of any doubt. On the other hand



the defence plea taken by the accused is confidence inspiring.”

13. As a consequence thereof the learned trial Court acquitted both the accused. The judgment is well reasoned and all the important aspects have been considered.

14. The Federal Shariat Court, in the case of The State Vs. Tanveer-ul-Hassan & 5 others reported as 2009 P.Cr.L.J 199, has already identified the various factors which have been judicially considered while deciding appeals against acquittal.

Relevant portion of the report is reproduced below:-

“Appellate Court while hearing arguments in an appeal against acquittal will ordinarily consider the following points:---



(i) Court will not normally interfere in the verdict of acquittal, (ii) Court will give due weight and consideration to the finding of the lower Court, particularly the Trial Court which had the occasion of not only recording the evidence but also watching the demeanor of the witnesses and attending to the plea of the person facing trial, (iii) what is the view of the trial Judge regarding the credibility of witnesses, (iv) verdict of acquittal affirms the initial plea that every person is presumed to be innocent unless proved guilty, (v) it is not

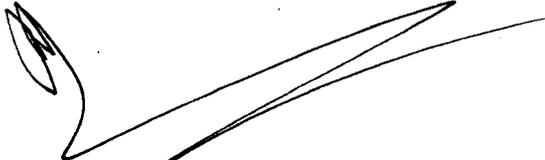
a sufficient ground of interference that on re-appraisal of the evidence on record a different view might as well be formed, (vi) whether reappraisal of evidence shows any manifest wrong, perversity or uncalled for conclusion from facts proved on record, (vii) whether the findings arrived at by Trial Court are wholly artificial, shocking and ridiculous, (viii) whether material evidence has been disregarded, (ix) whether material evidence has been misread blatantly to an extent that miscarriage of justice has been occasioned, (x) whether evidence has been brought on record illegally, (xi) there is, however, no bar upon the superior Courts to interfere in the acquittal judgment, but the Courts exercise extra caution while exercising jurisdiction in appeals against acquittal, (xii) the rights of accused to any benefit of doubt and (xiii) mere disregard of technicalities in a criminal trial without resulting injustice, is not enough for interference.”

15. We have considered the above mentioned principles which govern the disposal of appeals against acquittal. The reasoning adopted by the learned trial Court in acquitting the respondents in this case is not hit by any principle mentioned above. The mere assertion that the learned trial Court should have convicted the respondents has no force because the basic principle for administration of justice is that the prosecution has to stand on its own legs and prove the case beyond reasonable doubt. Benefit

of doubt is always accorded to the accused and not the complainant. The acquittal order reinforces the initial presumption of innocence of accused. The petitioner has not been able to point out any legal defect in the impugned judgment. The conclusions arrived at by the learned trial Court are neither fanciful nor arbitrary. No material piece of evidence has been left without consideration. The impugned judgment is well reasoned and does not merit interference. It is consequently upheld.

16. In view of what has been stated above we are not inclined to grant special leave to appeal. Resultantly Cr. P.S.L.A No.15/L/2007 is dismissed.

17. These are the reasons for our short order passed on 05.10.2010.


JUSTICE AGHA RAFIQ AHMED KHAN
CHIEF JUSTICE

Sauaidan
JUSTICE SYED AFZAL HAIDER


JUSTICE SHAHZADO SHAIKH

Lahore the 11th October, 2010
*Imran/**

Fit for reporting.


JUSTICE AGHA RAFIQ AHMED KHAN
CHIEF JUSTICE