

IN THE FEDERAL SHARIAT COURT

(Appellate Jurisdiction)

PRESENT

MR.JUSTICE AGHA RAFIQ AHMAD KHAN
CHIEF JUSTICE

CRIMINAL APPEAL NO.03/K OF 2009.

Muhammad Anwar Hussain
S/o Shaikh Ahmed Hussain
R/o House No.11, Sector-B,
Korangi Crossing, Karachi.... Appellant.

Versus

The State.		Respondent.
Counsel for the Appellant.	Mr.Khaleeq Ahmed, Advocate.
Counsel for the State	Mr.Abdullah Rajput, A.P.G, Sindh.
FIR No, date & P.S.	...	No.143,dated 30.10.2002, P.S. Ibrahim Haidery, Karachi.
Date of judgment of trial court.	...	29.01.2009.
Date of Institution	...	16.03.2009.
Date of hearing.	...	02.03.2010.
Date of decision	...	12.03.2010.

JUDGMENT

AGHA RAFIQ AHMAD KHAN, C.J.— This criminal appeal is directed against the judgment dated 29.01.2009 passed by the learned IInd. Additional Sessions Judge Malir Karachi whereby the appellant Muhammad Anwar Hussain has been found guilty for offence punishable under section 10 (2) of the offence of Zina (Enforcement of Hudood) Ordinance, 1979, and sentenced to five years' rigorous imprisonment and fine of Rs.50,000/-, or three months' simple imprisonment in default of payment of fine. Benefit of section 382-B, Cr.P.C was extended to the appellant.

2. The prosecution story as narrated by the complainant Mst. Fareeda (PW.2) in FIR No.143 dated 30.10.2002 lodged at Police Station Ibrahim Hydery is that her husband had divorced here four years back. She had married off her daughter Haseena to Anwar Hussain (appellant). Her second daughter namely Rubina aged about 13/14 years was also staying with Mst. Haseena in the house of appellant for helping her in housework as she was ailing. It is further alleged by the complainant that the appellant used to commit zina-bil-jabr with her daughter Mst.Rubina in his house and deceitfully obtained her signatures on documents including Nikahnama. After coming to know the above facts she went to police station where she lodged the FIR.

3. During the course of investigation, the appellant was arrested on 31.10.2002 and sent up for trial before the learned IInd.Additional Sessions Judge Malir, Karachi, who on 05.08.2003 framed charge

against him under section 10 (3)/10 (2) of Zina (Enforcement of Hudood) Ordinance 1979 read with section 420/506 PPC.

4. In support of its case the prosecution examined PW.1 Rubina (victim); PW.2 complainant Mst. Fareeda (mother of the victim); PW.3 Habib-ur-Rehman, Mushir of the arrest of appellant; PW.4 SIP Ali Gohar; PW.5 Dr.Kaleem who examined the appellant regarding potency; PW.6 SI Sabir Hussain Investigating Officer of this case, and PW.7 Fareed Anwar Qazi Judicial Magistrate who recorded the statement of victim Rubina under section 164 Cr.P.C.

5. On conclusion of the prosecution evidence, statement of the appellant under section 342 Cr.P.C was recorded by the learned trial court in which he denied the charges and claimed that Mst. Rubina (victim) was his wedded wife. Neither he recorded his statement on oath as provided under section 340 (2) Cr.P.C nor produce any evidence in his defence.

6. The learned IInd. Additional Sessions Judge Malir Karachi after hearing arguments of both parties and on appraisal of evidence convicted and sentenced the appellant as stated above.

7. This Court while hearing the appeal on 5.10.2009 remanded the matter to the trial court with the direction to examine lady doctor Asia and also to examine PW.6 S.I Sabir Hussain. Accordingly the trial court examined PW.8 Exh-18 lady doctor Asia and also recalled PW.6 S.I Sabir Hussain, the Investigating Officer, and examined him. The Investigating Officer produced the Chemical Examiner Report Exh.9/A and also explained the position regarding the medico-legal

certificate No.52/2002. According to him, he had referred about this certificate on the basis of Photostat copy.

8. I have heard learned counsel for the appellant as well as the learned Assistant Prosecutor General Sindh for the State and have gone through the material available on record.

9. Lady Doctor Asia has produced age certificate of victim Mst.Rubina as Exh-20. As per this certificate the age of Mst.Rubina is 20 years or more, it is therefore crystal clear that she was major at the time of alleged incident. The FIR shows that the alleged incident had taken place on 3.8.2002 however the FIR was lodged on 30.10.2002. Investigating Officer S.I Sabir Hussain in his cross-examination has admitted that the FIR was registered about three months of the incident and that no reason of delay was shown in the same. The appellant was admittedly husband of Mst. Haseena, who is elder sister of Mst.Rubina, and Mst. Rubina had come to the house of her sister Haseena where the incident had taken place. It is very strange to note that Mst.Rubina for several months did not disclose about the rape either to her mother or anybody else. She has admitted that her mother had visited the house of her sister but she did not disclose anything to her. The house of the appellant, as per victim, is situated in a thickly populated area but nobody from the neighbourhood was ever informed about the incident. Even Mst.Haseena elder sister of the alleged victim who was also wife of appellant, has not been examined in this case. Even the deposition of Mst.Rubina is shaky. She admitted to have signed the Nikahnama and the affidavit but according to her it



was taken forcibly. She is also not sure whether the appellant had divorced her sister Mst.Haseena or not. Complainant Mst.Fareeda, mother of the victim during cross examination had admitted that the appellant divorced her elder daughter and that presently she intends to get Talaq of Mst.Rubina from the appellant.

10. From the evidence above discussed, it is quite clear that the appellant had divorced his wife Mst. Haseena and had contracted marriage with Mst.Rubina. There is no evidence available on record to connect the appellant to the offence of Zina-bil-jabr except the oral words of Mst. Rubina which are also contradictory to her statement given during cross-examination.

11. In view of the above discussion, I have come to the irresistible conclusion that the prosecution has failed to prove the charge against the appellant/accused beyond any reasonable doubt, therefore, by giving him the benefit of doubt, the appellant was acquitted from the charge and the appeal was accepted, vide short order dated 12.3.2010. These are the reasons for the short order.

Sd/-


JUSTICE AGHA RAFIQ AHMED KHAN
Chief Justice

Karachi the
March 12, 2010.
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