

IN THE FEDERAL SHARIAT COURT  
( APPELLATE JURISDICTION )

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PRESENT

Mr. Justice Aftab Hussain Member  
Mr. Justice Zahoorul Haq Member  
Mr. Justice Ch.Mohammad Siddiq Member

CRIMINAL APPEAL NO.27/L OF 1981

Shaukat Masih ..... Appellant  
Vs  
The State ..... Respondent  
For the appellant ..... Ch.Ghulam Murtaza Khan,  
Advocate.  
For the respondent ..... Mr.S.D.Qureshi on behalf  
of A.G.Funjab.  
Date of hearing ..... 14.10.1981

JUDGMENT

AFTAB HUSSAIN, CHAIRMAN:

The appellant

was convicted by the Additional Sessions Judge, Sheikhpora on the 1st July, 1981 under Section 10(3) of the Zina (Enforcement of Hūdood) Ordinance, 1979 and was sentenced to 10 years R.I., 20 stripes and a fine of Rs 2,000/-.

2. Hence this appeal.

3. The prosecution case is that on the 15th of September, 1979 at about Peshi wela Mst.Asmat Bibi, P.W.2 wife of Khalid went to ease herself in the barley field near Abadi of village Ammoke, Police Station Saddar, Sheikhpora. After she had eased herself the appellant caught her and committed Zina bil Jabr with her on the point of a Pistol. After the event Mst.Asmat Bibi came out of the field and seeing Amanat Ali, P.W.3 and Mehboob, P.W.4 coming at a distance of few Karams from the field, she raised a hue and cry and started weeping. When these persons came to know about

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the occurrence they tried to persue the appellant but the later escaped, after threatening them with the Pistol.

4. The victim informed her mother about the occurrence and since her husband Khalid and brother Jaffer Amir had gone to Gujranwala district, her mother went there to fetch them. All of them returned next day at about 10.00 A.M. They started for the Police Station which is at a distance of 8 miles but in the way they met Atta Mohammad, A.S.I., P.W.7 who wrote the statement of Mst.Asmat Bibi Ex.P.A., on the basis of which Mohammad Yaqub, A.S.I.,P.W.1 recorded the First Information Report Ex.P.A./1.

5. Mst.Asmat Bibi was sent to the hospital at Sheikhpura for medical examination but since the lady doctor was not there she had to be taken to Lady Atchison Hospital at Lahore where she was examined by lady doctor Mrs.Surrya Idrees, P.W.8. She found no external injury over her breasts or internal parts of the body. Libia Minora and Libia Majora were normal. There was slight redness about 1/2" inside libia minora. The hymen had old healed tears. She took two Vaginal Swabs and sent them for the Chemical Examination for detection of semen. However the Chemical Examiner's report has not been produced in evidence. The lady doctor took the Shalwar of Asmat Bibi and sent it also for the Chemical Examination. The Chemical Examiner's report on this Shalwar is positive since it was found stained with semen.

6. After hearing the learned counsel for the appellant at length, we find no ground to differ from the findings of the learned Additional Sessions Judge that Asmat Bibi, P.W.2 was subjected to Zina bil Jabr by Shaukat Masih appellant in the manner stated in her evidence. There is no enmity between Asmat Bibi or her family on the one hand and the appellant on the other.

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Similarly Amanat Ali and Mehboob also are independent witnesses. The only suggestion on behalf of the appellant is that he was in the service of Mehboob for some time but he was not paid his remuneration on which there was some quarrel. We are not prepared to believe that if Shaukat Masih had worked in the fields of Mehboob, he might has not been paid his remuneration. However there is no evidence in support of this plea of the defence. The statements of the three witnesses are also straight forward and free of any blemishes and no benefit can be given on merits to the appellant.

7. The learned counsel for the appellant laid much stress that the delay in lodging the First Information Report was fatal, the evidence of penetration was missing in view of the absence from the record of the report of the Chemical Examiner on the Vaginal Swabs and there was complete lack of corroboration of the evidence of Mst. Asmat Bibi.

8. These arguments have not impresses us. The delay in lodging the First Information Report has been explained satisfactorily as stated above. Similarly in the circumstances of the case the evidence of Amanat and Mehboob provided sufficient corroboration, if any corroboration of the statement of Mst. Asmat Bibi be considered legally necessary. It is, however, not necessary that the evidence of penetration must be in the form of the report of the Chemical Examiner. The evidence of Mst. Asmat Bibi about the penetration is very clear and we have no reason to disbelieve her on that score.

9. The learned counsel ultimately argued that the appellant was less than 18 years of age on the day of occurrence and there is absolutely no evidence to prove that he was otherwise an adult. We have considered this aspect of the case in the light

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of the definition of adult under Section 2(a) of the Ordinance. It means a person who has attained the age of eighteen years or has attained puberty. It appears from the only circumstance on the record that the age of the appellant as recorded in his statement under Section 342 Cr.P.C. was 18 years on the date of his examination. On the 15th of September, 1979 he could have been only between 16/17 years of age. The prosecution has not proved by medical evidence that he had attained puberty. This could have been proved by the Chemical Examiner's report on the swabs, if it had been positive. But that evidence is also not forth-coming. The only evidence which has been pointed out to us by the learned counsel for the State is the evidence of the Shalwar being stained with semen as a result of the Zina bil Jabr committed by the appellant. The prosecu~~tor~~ is a married lady. May be the shalwar might have been stained with semen consequent on intercourse with her husband. In these circumstances the benefit of Section 7 of the Ordinance shall have to be given to the appellant.

10. Section 7 provides as follow:-

"A person guilty of Zina or Zina bil Jabr shall, if he is not an adult, be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both, and may also be awarded the punishment of whipping not exceeding thirty stripes:

Provided that, in the case of Zina bil Jabr, if the offender is not under the age of fifteen years, the punishment of whipping shall be awarded with or without any other punishment."

11. We therefore, allow this appeal and convert the sentence of the appellant to one Section 7 of the Ordinance <sup>under</sup> and <sup>reduced the</sup> sentence <sup>of imprisonment</sup> ~~to~~ to 5 years R.I. The punishment of stripes and fine shall remain but we direct that the fine if recovered shall be paid to Mst. Asmat Bibi, complainant.

*File for Reporting*

*Aftab Khan*

*Aftab Khan*  
CHAIRMAN

*Zahoorul Haq*  
MEMBER - I

*M. Sadiq*  
MEMBER - III