

IN THE FEDERAL SHARIAT COURT
(Appellate Jurisdiction)

(21)

27

PRESENT

MR.JUSTICE NAZIR AHMAD BHATTI, CHIEF JUSTICE.

JAIL CRIMINAL APPEAL NO.199/I OF 1994.

Yousaf Ali Shah son
of Yaqoob Ali Shah, ... Appellant
resident of Azam Basti,
P.S.Mehmooda Abad,
Karachi.
(now confined in Central
Jail Kot Lakhpat,Lahore)

Versus

The State ... Respondent

For the appellant ... Malik Muhammad Anwar,
Advocate

For the State ... Ch.Muhammad Ibrahim,Advocate

No.& date of F.I.R ... No.58/92,dt.24.5.1992,
Police Station P.S Millat Park,Pakki Thathi, LHR.

Date of order of ... 24.4.1994.
the trial court

Date of Institution ... 28.8.1994.

Date of hearing ... 14.5.1995.

Date of decision ... 12.7.1995.

22

28

JUDGMENT

NAZIR AHMAD BHATTI, CHIEF JUSTICE.- Complainant Mst.Aalia

wife of Sheikh Rifaqat Ali was owner of business known as Aalia Beauty Parlour situated in Chowk Pakki Thathi Lahore and her husband used to work as a mason. The complainant had a minor daughter Mst.Lubna aged about 8 years whereas she had another daughter Mst.Sobiya from her previous husband Sheikh Nazir Hussain who was aged about 15 years. In the year 1992 the complainant had employed ~~wxxx~~ Yousaf Ali Shah, appellant herein, for the repair of her house. Since the complainant and her husband used to be out of the house in connection with their business, the appellant developed illicit relations with Mst.Sobiya. On 21.5.1992 when the complainant returned to her house she found her both daughters missing. She and her husband were searching for their daughters when they were informed by Sadaqat Ali and Bahadur Ali that they had seen both their daughters sitting in a Taxi alongwith the appellant. The complainant Mst.Aalia submitted a written complaint in Police Station Pakki Thathi Lahore on 24.5.1992 for registration of the case whereupon F.I.R No.58/92 was registered in the said police station on the same date.

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2. Both the girls were recovered on 17.10.1992. Mst.Sobiya recorded statement under section 164 Cr.P.C on 18.10.1992 before P.W.7 Rana Zahid Sharif Magistrate Ist Class. She was medically examined by P.W.6 Lady Dr.Noreen Rasool on 19.10.1992, according to which she had been subjected to sexual intercourse and ^{her}hymen was old torn,

23

29

tears were healed up and vagina admitted two fingers easily.

The lady doctor, took three vaginal swabs which were found stained with semen. P.W.9 Abdul Rehman Sub Inspector Police Station Millat Park Lahore arrested Yousaf Ali Shah and at his instance he recovered both the girls from Karachi. The appellant was also medically examined by P.W.8 Dr.Ehsan Elahi on 18.10.1992 and he was found potent.

3. After investigation the appellant was sent up for trial before Additional Sessions Judge Lahore who charged him under section xxxxxxxx 11 of the Offence of Zina(Enforcement of Hudood) Ordinance,1979 for abduction of Mst.Sobiya and Mst.Lubna and under section 10(3) of the Hudood Ordinance for committing zina-bil-jabr with Mst.Sobiya. The appellant pleaded not guilty to the charges and claimed trial.

4. During the trial 9 witnesses were produced by the State in proof of the prosecution case whereas the appellant made a deposition under section 342 Cr.P.C but he neither made any deposition on oath nor produced any defence evidence.

5. After the conclusion of the trial the learned Additional Sessions Judge convicted the appellant under sections 10(2) and 16 of the Hudood Ordinance. For the offence under section 10(2) of the Hudood Ordinance the appellant was sentenced to undergo rigorous imprisonment for 7 years, to suffer 15 stripes and to pay a fine of Rs.5000/-. and for the offence under section 16 thereof he was sentenced to undergo rigorous imprisonment for 5 years, to suffer 15 stripes and to pay a fine of Rs.5000/-. The learned Additional



Sessions Judge did not impose any term of imprisonment in default of payment of fine. The convict has challenged his conviction and sentence by the appeal in hand sent from jail.

6. The appeal was filed with a delay of 65 days. However, it was admitted to regular hearing subject to the point of limitation. Since no objection about limitation was taken up by the State, the appeal was heard on merit. The learned counsel had also taken me through the entire record of the case.

7. The circumstances which came to light during the trial are that Mst.Sobiya was an unmarried girl of about 15 years whereas Mst.Lubna was aged about 8 years, that both the girls were found missing from the house of their parents on 21.5.1992 and were both recovered from Karachi on 17.10.1992 at the instance of the appellant who had accompanied P.W.9 Abdul Rehman Sub Inspector to Karachi and had disclosed the house from where both the girls were recovered, that during the period the appellant and the girls lived together, Mst.Sobiya did not make any complaint to any person regarding the allegation that she had been abducted against her consent by the appellant and that he had been committing zina-bil-jabr with her, that no evidence was brought on the record to show that the other girl Mst.Lubna had also been abducted by the appellant, that on the contrary it had come to light that when Mst.Sobiya went with the appellant she took alongwith her Mst.Lubna and as such there was no attempt

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on the part of the appellant to abduct both the girls, that

Mst.Sobiya voluntarily accompanied the appellant and while going with him she also took alongwith her Mst.Lubna and that Mst.Sobiya was a consenting party to the sexual intercourse committed with her by the appellant.

8. Since Mst.Lubna was hardly aged about 8 years at the time of occurrence, I had directed the learned counsel to assist me whether it was a case of abduction of Mst.Lubna besides the elopement of Mst.Sobiya. However, after going through the entire record of the case I have come to the conclusion that Mst.Lubna was not directly abducted by the appellant but she was taken alongwith her by Mst.Sobiya when she accompanied the appellant. As such it was not a case of direct abduction of Mst.Lubna by the appellant.

9. Since Mst.Sobiya had voluntarily eloped with the appellant and she was also a consenting party to the sexual intercourse committed with her by the appellant and since there was no direct involvement of the appellant in the abduction of Mst.Lubna, hence the learned Additional Sessions Judge had appropriately convicted the appellant under sections 10(2) and 16 of the Hudood Ordinance. The sentence awarded to the appellant was also appropriate in the circumstances. There is no merit in this appeal which is dismissed. The conviction and sentence of the appellant recorded on 24.4.1994 by the learned Additional Sessions Judge Lahore are maintained. The appellant shall be entitled to the benefit under section 382-B Cr.P.C.

Fit for reporting.

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CHIEF JUSTICE

Announced on 12.7.1995.
at Islamabad.
M.Akram/

(Handwritten signature)