

IN THE FEDERAL SHARIAT COURT
(Appellate Jurisdiction)

PRESENT

MR. JUSTICE S. A. MANAN

Jail Criminal Appeal No. 353/I of 2004

Muhammad Shahid son of Muhammad Ayub, Caste Ansari, resident of Near Karkhana Sachianwala, Kamoke, District Gujranwala.

....	Appellant
Versus	
The State	.... Respondent

Criminal Appeal No. 29/L of 2005

Amjad alias Nanha son of Khushi Muhammad, Caste Jatt, resident of Mohaliah Muslim Ganj, Chowk Ghousia, Kamoke, Distt. Gujranwala

....	Appellant
Versus	
The State	.... Respondent

Jail Criminal Appeal No. 12/I of 2006

Abdul Sattar son of Ghulam Haider, Caste Bhullar, resident of Mohaliah Muslim Ganj, Kamoke, District Gujranwala

....	Appellant
Versus	
The State	.... Respondent
Counsel for appellants Muhammad Shahid & Abdul Sattar alias Boota	.... Mr. Saliheen Mughal, Advocate
Counsel for appellant Amjad alias Nanha	.... Syed Ahmad Hussain Shah, Advocate
Counsel for State	.... Mr. Shafqat Munir Malik, Assistant- Advocate General
FIR. No. Date & Police Station	.... 67/2003, 01-03-2003 City, Kamoke Distt. Gujranwala
Date of judgment of trial court	.... 23-11-2004
Dates of Institution	.... 21.12.2004, 01.02.2005 & 26.01.2006 respectively
Date of hearing	.... 13.02.2006
Judgment Reserved on	.... 13.02.2006
Judgment Announced on	.... 30-03-2006

JUDGMENT

S. A. MANAN, JUDGE.- This Judgment will dispose of three Criminal Appeals (1) 353/I of 2004 filed by Muhammad-Shahid, (2) 29/L of 2005 by Amjad alias Nanha and (3) J. Cr. Appeal No. 12/I of 2006 (Abdul Sattar alias Boota Versus The State) against the common judgment dated 23.11.2004 of the Additional Sessions Judge, Gujranwala. Appellant No.1, Muhammad Shahid was tried as Juvenile Offender.

2. By the impugned judgment all the three appellants were convicted and sentenced as under:-

- i. U/S.12 of Offence of Zina (Enforcement of Hudood) Ordinance for a period of seven years R.I. with a fine of Rs.20,000/- and in default to further undergo six months S.I.
- ii. U/S.337-J-PPC for a period of two years R.I. and payment of Daman of Rs. 10,000/-
- iii. U/S.377-PPC for a period of seven years R.I. with a fine of Rs. 10,000/- and in default to further undergo three months S.I.

All the sentences will run concurrently.

3. The prosecution case as disclosed by Muhammad Anwar, complainant/father of the victim in FIR. No. 67, dated 01.03.2003, Police Station, City Kamoke is that all the three accused took away his son Hamid Ali on 26.03.2003 on the pretext of kite flying and instead took him to the house of Abdul Sattar accused where the victim was subjected to sodomy one by one.

4. In order to prove the allegations, trial court recorded the evidence of several witnesses including the statement of P.W.4, Dr. Sahibzada Farid Zulfiqar, SMO, THQ Hospital, Kamoke who medically examined the victim on 01-03-2003. A packet consisting of sample of blood, urine, stomach wash and anal-swabs was sent to the Chemical Examiner whose report dated 28.03.2003 is as follows:-

“poison is not detected in the above articles. The above swabs are stained with semen. One swab is being sent to Serologist for semen grouping”.

However, no semen grouping was conducted in this case.



5. On the basis of the result report of the Chemical Examiner, the doctor was of the opinion that act of sodomy was committed but poison was not established from the report.

6. The victim aged about 15 years was examined as P.W.2 who made a detailed statement accusing all the accused to have taken him to the house of Abdul Sattar where he was subjected to sodomy. It is stated by the victim that the accused caused cigarette burns on his arm. Further stated that his clothes were taken off and thereafter accused Abdul Sattar, Shahid and Amjad alias Nanha forcibly committed sodomy with him. According to him the accused decamped from the scene after seeing his father and brothers whereafter he was taken by his father for medical treatment privately. He further stated that due to his miserable condition he was taken on 01.03.2003 at THQ Hospital, Kamoke. The victim is referring to his medical examination conducted by P.W.4, Dr.Sahibzada Farid Zulfiqar.

7. P.W.1 is Muhammad Anwar, complainant/father of the victim who categorically stated that after the commission of sodomy he took his son to a doctor for private treatment but no such evidence

has been produced in support of this plea. However, it is established that the victim was medically examined on 01-03-2003 by P.W.4, Dr. Sahibzada Farid Zulfiqar, whose report is positive. After perusing the medical opinion of P.W.4 it is established beyond doubt that the victim was subjected to sodomy.

8. However, the deposition of P.W.1/complainant is not believable. The complainant claims to have taken his two sons with him to trace the victim but both of these P.Ws have been given up, therefore, the solitary statement of the complainant cannot be believed that he saw the occurrence. Apart from this when the complainant reached the place of occurrence the house of Abdul Sattar was locked and according to the complainant he saw the occurrence through window which has not been shown in the site plan. Further it is not possible for the accused to have left the window open for public inspection when they were committing the offence. While standing outside the complainant could not witness that the victim was being administered poisonous and intoxicants material. It appears that the complainant is not making correct statement.


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9. The occurrence took place at evening time and none of the respectables of the locality have come forward to testify the complainant.

10. After having rejected the deposition of the complainant, there is a statement of the victim which is trust worthy and confidence inspiring and there is no reason why he should not be believed.

11. Although there is no evidence on record to show that the victim was examined privately but the evidence of P.W.4, Dr.Sahibzada Farid Zulfiqar is available on record who examined the victim on 01-03-2003 and gave his detailed report that the sodomy was committed with the victim. In view of above analysis the conviction can be based on the statement of the victim and not on the deposition of his father who claimed to be an eye witness in the case.

12. The victim was subjected to lengthy cross-examination but he stood the test and remained unshaken. No material discrepancy is shown in the statement of the victim. I, therefore, hold that the accused have committed the offence of sodomy qua the victim.



13.. Liaqat Ali Shah, ASI is the Investigating Officer and he conducted the investigation honestly and got the victim medically examined. He also did his best to get the eyes of the victim examined from Kamoke Hospital, District Headquarter Hospital, Gujranwala and Mayo Hospital, Lahore but unfortunately this treatment was denied on one pretext or the other.

14. According to the report of the Chemical Examiner no poison was detected from stomach wash of the victim, therefore, it is not possible to hold that the accused administered intoxicants to the victim by which he could not see the things in clear terms. The Investigating Officer took the victim to Mayo Hospital, Lahore but even there no eye treatment was available to him.

15. All the accused were examined by the trial court under section 342 Cr.P.C. and different pleas of the accused were rejected. Accused Abdul Sattar and Amjad alias Nanha pleaded that the complainant used to sell narcotics in the mohallah and his son/victim was habitual passive agent of sodomy. This plea in fact goes against the accused persons as they were not supposed to know the minute

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personal information of the victim and his family. However, I am of the view that such like plea is absurd. None of the accused has made a statement on oath under section 340(2) Cr.P.C. and additionally there is no enmity between the accused persons and the complainant party or with the police.

16. The plea of Shahid accused is slightly different but he also defames the father of the victim as to his activity of selling narcotics. I am of the firm view that this plea of Shahid is not entertainable as there being no evidence to support the same.

17. Admittedly the victim had gone with the accused for kite flying where they committed sodomy with him. In this view of the matter section 12 of offence of Zina (Enforcement of Hudood) Ordinance would not be applicable for the material reason that they had taken away the victim for the purpose of committing sodomy and not abduction. This is the settled law and if any authority is needed reliance is placed on 1986-SCMR, page533 (Muhammad Akhtar Versus Muhammad Shafique & another) holding that when the child is removed for committing sodomy, section 12 of Offence of Zina

(Enforcement of Hudood) Ordinance would not be applicable and the accused would be punished under section 377-PPC. In this view of the matter the conviction and sentence under section 12 against all the accused is set aside and the accused are acquitted of this charge.

18. Muhammad Shahid appellant is a Juvenile and is aged 15 years. He is very young, his conviction under section 377-PPC is maintained but the sentence is reduced from seven years to four years R.I. The sentence of fine of Rs.10,000/- is also reduced to Rs.2000/- and in default he will further undergo three months S.I. He was arrested on 18.03.2003 and remained confined.

19. As far as other two accused namely Amjad alias Nanha and Abdul Sattar alias Boota they are aged about 32 and 27 years respectively, it is not possible to reduce their sentence, therefore, conviction and sentences in their case are maintained. Further sentence of fine of Rs.10,000/- each against them is maintained.



20. The appeals filed by Muhammad Shahid, Juvenile Offender and Amjad alias Nanha were heard and the judgment was reserved but later it came to know from the Office that Abdul Sattar

has also filed a belated appeal. He was also, therefore, heard through his counsel.

21. Resultantly appeal of Muhammad Shahid is disposed of in terms of above modification while the two appeals filed by Amjad alias Nanha and Abdul Sattar alias Boota are dismissed.

22. Office to inform the learned counsel for the parties of the present decision.

FILE FOR REPORTING.



S. A. MANAN
Judge

Islamabad the 30th March, 2006.

UMAR DRAZ/