

IN THE FEDERAL SHARIAT COURT OF PAKISTAN
(Appellate Jurisdiction)

Present.

MR. JUSTICE SARDAR MUHAMMAD RAZA, CHIEF JUSTICE

JAIL CRIMINAL APPEAL NO.03/I OF 2014.

Muhammad Yousaf S/o Muhammad Ishaq, R/o,
Mauza Moraja Bhutta, Tehsil Jalalpur Pir Wala
District Multan. Appellant.

Versus

The State Respondent.

Counsel for the Khawaja Shahid Rasool Siddique,
Appellant. Advocate.

Counsel for Mr. Altaf Hayat Khan Langra,
Complainant. Advocate.

Counsel for the Mr. Ahmed Raza Gillani,
State. Addl; Prosecutor General,
Punjab.

Case FIR No. date FIR No.204 dated 05.10.2005,
& Police Station. Police Station Jalal Pur Pirwala,
District Multan.

Date of judgment 29.03.2011.
of trial Court.

Date of receipt of 26.12.2013
Appeal

Date of hearing 21.07.2014.

Date of decision. 05.09.2014.

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JUDGMENT

SARDAR MUHAMMAD RAZA, C.J.— This appeal is filed by Muhammad Yousaf son of Muhammad Ishaq against the judgment dated 29.3.2011 rendered by the learned Additional Sessions Judge, Jalalpur Pirwala, District Multan, whereby he was convicted under section 10 (2) of the Offence of Zina (Enforcement of Hudood) Ordinance, 1979 and sentenced to rigorous imprisonment for 10 years in addition to a fine of Rs.100,000/- in default of payment whereof he was to undergo rigorous imprisonment for six months. Benefit of section 382-B, Cr.P.C was however given.

2. The brief background of the prosecution case is that one Mst. Shabana Mai daughter of Manzoor Ahmed aged 16 years of village Noraja Bhutta (within the limits of police station Jalalpur Pir Wala), on the night between 28th and 29th September 2005 was asleep in the courtyard of her house alongwith her other family members when, at about mid-night, Muhammad Yousaf and Muhammad Younas sons of Muhammad Ishaq armed with pistols and another Muhammad Ayub son of Rasool Bux entered the house and forcibly abducted Mst. Shabana Mai. Upon her commotion one Muhammad Javed son of Bashir Ahmed and another Muhammad Riaz son of Amir Bakhsh

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alongwith people of the village got attracted to the spot and witnessed the occurrence. They attempted to rescue Mst. Shabana Mai whereupon Muhammad Yousaf and Muhammad Younas posed armed threat of life to them. She was taken to and confined in the residential room of Muhammad Ayub aforesaid.

3. Muhammad Yousaf appellant, against the will and consent of Mst. Shabana Mai, committed Zina-bil-jabr with her while Muhammad Younas and Muhammad Ayub stood as guards outside the room. The witnesses aforesaid and Manzoor Ahmed, the father of the victim alongwith other persons of the village demanded the release of Mst. Shabana Mai whereupon Muhammad Yousaf and Muhammad Ayub released the victim on the morning of 29.9.2005 on the condition that she would not initiate any legal proceeding against the culprits.

4. Motive for the occurrence is alleged to the effect that Muhammad Yousaf convict was engaged to one Mst.Hafsa Mai daughter of Zulfiqar Bhutta but the latter gave her hand to Qari Nasrullah, the uncle of Mst.Shabana Mai. The present occurrence was committed to avenge the insult.

5. The prosecution, in order to prove its case examined Mst. Shabana Mai (PW.4); Muhammad Javed (PW.5); Manzoor Ahmed the


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father of the victim (PW.6); Safarash Ali SI (PW)⁸; Alamdar Hussain retired DSP (PW.11) and lady doctor Sadia Arshad (PW.2) in addition to other witnesses in routine. I would like to appreciate and discuss the case in the light of oral as well as circumstantial evidence. Having probed the matter through judicial appreciation of facts and circumstances, I feel confronted with certain matters unavoidable.

6. It is a matter of common knowledge and observation that people in this part of the area in summer season usually sleep in the courtyards of their houses without keeping the lights switched on because it provides a comfortable view of the location and of the people sleeping therein to any apprehended miscreant. In the instant case the existence of light was never alleged either in the FIR or in the statements under section 161 Cr.P.C of the witnesses. It was brought on record during trial by clear improvement. I, therefore, observe that such improvement was made to prove the identification of the culprits at night. It is obviously an assertion after thought.

7. The next aspect of the case is that one Muhammad Javed and another Muhammad Riaz in addition to the other persons of the village got attracted to the spot due to the hue and cry of the victim and commotion on the spot. It may be clarified that no notable person of the

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village was examined. Muhammad Javed and Muhammad Riaz were cited as prosecution witnesses out of whom Muhammad Riaz was abandoned and only Muhammad Javed was examined. Mst. Shabana Mai and her father alleged that the house of Muhammad Javed is situated at a distance of 4/5 miles. Muhammad Javed himself admitted that his house was at a distance of one kilometer. I believe that the victim and her father are correct in giving the distance. Even if the distance admitted by Muhammad Javed is accepted to be correct, it is a long distance and one cannot reach the spot after hearing the commotion except the close neighbours. In the circumstances of the instant case, I believe that Muhammad Javed is a procured witness. The prosecution also sensed the weaknesses of this witness and that is why it thought appropriate to abandon Muhammad Riaz, the co-witness of the similar circumstance, in order to avoid further discrepancies.

8. The next circumstance is that Mst. Shabana Mai was abducted, kept for the whole night under wrongful confinement in the residential room of the house of Muhammad Ayub, forcible intercourse was committed with her by Muhammad Yousaf while more than 11/12 persons of the village including the witnesses aforesaid have been waiting outside the house throughout the night when Mst. Shabana Mai

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was released in the morning. If one appreciates judicially, it appears nothing beyond a cock and bull story. One witness says that while taking away Mst. Shabana Mai the accused had been holding her by arm while the other says that she was dragged up to the house of Muhammad Ayub. Both the families are related to each other and enjoy the same financial and social status. It does not appeal to reason and commonsense that the accused would keep a girl in their house and would commit zina when numerous persons of the village, all males are waiting outside. The situation becomes all the more alarming when Muhammad Ayub, an aged person of above 60 years and being the real uncle of the accused Muhammad Yousaf and Muhammad Younas, would facilitate the commission of offence of Zina in his house where his wife and four daughters are already present. The evidence produced in this behalf is highly unreasonable and far fetched.


9. Mst. Shabana Mai furnishes explanation regarding a fatal delay of 6/7 days in lodging the FIR by saying that she was released on the condition that she would not report the matter to the police. It is quite a frivolous reason for the delay involved because such agreement, if at all, was never a civil or moral contract. The moment she got released from the clutches of the accused, she and her father were free

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to lodge the FIR especially when, according to them numerous persons of the village supported them. In spite of it no FIR was lodged for 6/7 days.

10. It is admitted by the witnesses including those of police that police had reached the spot early in the morning. It is still a mystery as to how and why the police reached there; it examined the witnesses including Mst. Shabana Mai but still they did not register an FIR and that too in a heinous and cognizable offence. I have, therefore, no two opinions about the fact that the FIR in the present case lodged after 6/7 days is without reasonable explanation and is completely deliberated concoction. The occurrence has not taken place in the manner in which it is alleged and that is why the senior police investigating officers had absolved the accused.

11. Last but not the least, is the medical report of Mst. Shabana Mai which showed vaginal swabs to be semen stained. This is also subject to serious objections. The medical examination was conducted seven days after the occurrence. The vagina of the examinee admitted two fingers easily and hence an unmarried girl of sixteen years of age appears to be not of a fair virtue. Strong corroborative evidence in this behalf was required to connect the accused with the commission of zina


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especially when the whole prosecution version appears to be a cock and bull story culminating from an FIR lodged with a dishonest and unexplained delay of not one but seven days.

12. When I mention about strong corroborative evince, I visualize the DNA test which was necessary to determine the semen grouping and matching of the swabs with the sperms of the accused. No DNA test was conducted in the instant case.

13. I agree that scientific evidence like one of semen grouping through DNA test is always required as a corroborative evidence. It is not considered necessary in the presence of overwhelming and irrefutable independent evidence. Superior Courts of the country have always maintained this view and DNA test is avoided only, like in Amanullah..Vs..The State (PLD 2009 SC 542), when overwhelming independent evidence is always available. In the instant case, as already observed, no independent and reliable evidence is available in support of the charges and hence DNA test in the instant case had become absolutely necessary. No such test was conducted and hence the appellatant could not be squarely linked with the commission of the offence.

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14. As a sequel to my above discussion and findings, I hold that the prosecution has failed to bring home charge against Muhammad Yousaf appellant. He is entitled to the benefit of doubt. Consequently the appeal is accepted and the appellant Muhammad Yousaf son of Muhammad Ishaq is acquitted of the charge under section 10 (2) of the Offence of Zina (Enforcement of Hudood) Ordinance, 1979. If not required to be detained in any other cause, he is directed to be released forthwith.


Mr. Justice
Sardar Muhammad Raza,
Chief Justice.

Announced on 5th Sep: 2014
at Islamabad.


Approved for reporting.

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