

IN THE FEDERAL SHARIAT COURT
(Appellate Jurisdiction)

PRESENT

MR. JUSTICE MUHAMMAD ZAFAR YASIN

Jail Criminal Appeal No. 35/I of 2007

Maqsood Ahmed son of Muhammad, Caste Bhatti, resident of Alikay,
Tehsil Depalpur, District Okara

.... Appellant

Versus

The State Respondent

Counsel for appellant Mr. Saliheen Mughal,
Advocate

Counsel for State Syed Ali Imran,
DPG, Punjab

FIR. No. Date & 267/2004, 23-07-2004
Police Station Haveli Lakha, Distt. Okara

Date of Judgment of 14-04-2006
trial court

Date of Institution 27-01-2007

Date of hearing & 09-05-2007
Judgment

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JUDGMENT

MUHAMMAD ZAFAR YASIN, JUDGE.- This Jail

Criminal Appeal is directed against judgment dated 14-04-2006 passed by learned Additional Sessions Judge, Depalpur District Okara, whereby the appellant Maqsood Ahmed has been convicted under section 10(3) of Offence of Zina (Enforcement of Hudood) Ordinance, 1979 and sentenced to four years R.I. and to pay a sum of Rs. 10,000/- as compensation to the victim and in default of payment to further undergo two months S.I. The appellant has also been extended the benefit of section 382-B, Cr.P.C.

Mr. Z. Yasin

2. Brief facts of the case as given in the FIR. No.267 dated 23.07.2004 registered with Police Station, Haveli Lakha, District Okara at the instance of Muhammad Yasin, father of the victim Mst. Sajida Parveen, are that complainant is resident of Amlikay Suhag and is labourer by profession. On 17-07-2004 at 1.00.p.m. the complainant alongwith his inmates was away on account of labour, his wife Mst. Halima and his daughter Mst. Sajida Parveen (victim) who was

married with Talib son of Shehbaz one month prior to the occurrence was alone in the house as Mst. Halima, his wife had gone in the neighbourhood, when she came back, she did not find Mst. Sajida Parveen. After search when she was not found, the complainant was informed about the missing of Sajida Parveen by his wife. The complainant during search was told by Arif son of Shehbaz and Iqbal son of Rehmat Ali that they had seen accused Maqsood Ahmed armed with 30 bore pistol and Alamgir, taking forcibly Mst. Sajida Parveen on a motorcycle going towards Basir Pur. As the complainant did not succeed to trace her daughter, then reported to the police that the accused have abducted his daughter for the purpose of zina haraam and action be taken against them and his daughter be got recovered.

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3. The case was investigated and during investigation Mst. Sajida Parveen was produced before the Investigating Officer by the complainant on 29.7.2004. She was got medically examined by the police and her statement under section 161 was recorded wherein Mst Sajida Parveen leveled allegation of her abduction and thereafter

zina-bil-jabr by both the accused named in the FIR. After cancellation of pre-arrest bail, Alamgir accused was arrested on 8.9.2004 while Maqsood accused was arrested on 9.6.2005 and thereafter complete challan was submitted against both the accused. The trial court charge-sheeted both the accused and they did not plead guilty and claimed trial.

4. The prosecution produced as many as 10 witnesses and also tendered in evidence medical report of victim, positive report of Chemical Examiner wherein the swabs taken, were found stained with semen and also the report regarding potency of accused Maqsood Ahmad. After close of the prosecution evidence the statement of both the accused was recorded under section 342 Cr.P.C. wherein they took the plea that no independent witness has come forward and the P.Ws produced by the prosecution are interse related. Further stated that they have been implicated falsely otherwise they are innocent. Both of them neither chose to make statement on oath under section 340(2) Cr.P.C. nor cited any D.W. in their defense. After close of the prosecution

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evidence, the trial court was pleased to acquit both the accused from charge under section 16 of offence of Zina (Enforcement of Hudood) Ordinance, 1979 while Maqsood Ahmad accused alone was found guilty of charge under section 10(3) of offence of Zina (Enforcement of Hudood) Ordinance, 1979 and thus convicted and sentenced as noted above. However co-accused Alamgir was acquitted from all the charges. Hence this Jail Criminal Appeal by Maqsood Ahmad against his conviction and sentence.

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5. Learned counsel for the appellant has argued that the trial court has been pleased to acquit co-accused Alamgir on the same set of witnesses i.e. complainant Muhammad Yasin, P.W.1, P.W.2, Muhammad Arif, P.W.3 Mst. Sajida Parveen, the victim as well as the medical evidence, while Maqsood Ahmad has been convicted for commission of zina-bil-jabr with Mst. Sajida Parveen without any further independent corroborative evidence, hence conviction of the appellant is illegal. Further argued that both the accused were charged by all the witnesses regarding commission of offence under section 16 of

Offence of Zina (Enforcement of Hudood) Ordinance while all the witnesses have been disbelieved to this extent. Hence without any further corroborative independent evidence, the conviction and sentence awarded to appellant Maqsood Ahmad on the charge under section 10(3) of the said Ordinance is also illegal and unwarranted by law. Further argued by the learned counsel that Mst. Sajida Parveen was admittedly a married lady and positive result of the Chemical Examiner could not be made basis for conviction of the appellant for commission of zina. Lastly

it has been argued that assuming without conceding Mst. Sajida Parveen

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had left the house of her parents with her own free will and remained with the appellant for 10/11 days and herself had come back, therefore, it is evident that she was a consenting party and no one had committed zina-bil-jabr with her, therefore, conviction of the appellant under section 10(3) is not maintainable.

7. On the other hand learned DPG, Punjab has argued that the prosecution has fully proved the offence of commission of zina with Mst. Sajida Parveen, P.W.3 by Maqsood Ahmed, however, in this

respect he has referred the medical evidence, positive report of the Chemical Examiner and further the evidence of the victim Mst. Sajida Parveen. However, the learned DPG has candidly conceded that in the circumstances of the case it appears that Mst. Sajida Parveen was a consenting party, thus the conviction may be altered from section 10(3) to section 10(2) of Offence of Zina (Enforcement of Hudood) Ordinance, 1979.

8. Heard. Record perused.

9. The trial court has come to a conclusion that no offence under section 16 of the Ordinance has been made out against any of the accused, hence both the accused have been acquitted. Further more against the said acquittal neither by the State nor by the complainant any appeal has been filed against their acquittal from the charge under section 16 of the said Ordinance. Thus it is evident that Mst. Sajida Parveen being the first cousin of accused Maqsood had easy excess to him and thus no offence U/S. 16 of the said Ordinance has been committed by any of the accused.

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10. As regards the conviction of the appellant Maqsood Ahmad under section 10(3) of the said Ordinance. I am of the view that if she had with her own free will went to Maqsood Ahmad with whom she wanted to marry and lived with him for 10/11 days and during this period neither she resisted nor raised any hue and cry, rather she had been enjoying the sexual intercourse by the said accused and thereafter, came back on her own, therefore it cannot be said that she was subjected to zina-bil-jabr. Neither she ever resisted nor tried to make hue and cry. Further more when she was medically examined by the lady doctor on 29.07.2004 there was nothing to suggest that she was forcibly subjected to zina-bil-jabr as there was no mark of violence. Therefore, it can safely be concluded that she was a consenting party for commission of zina, therefore, conviction of the appellant under section 10(3) of Offence of Zina (Enforcement of Hudood) Ordinance is not maintainable. However, it has been proved from the evidence of the lady doctor that zina has been committed with the victim during the period she remained with the accused Maqsood Ahmed .Therefore from the prosecution evidence

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commission of offence under section 10(2) of offence of Zina (Enforcement of Hudood) Ordinance, 1979 has been proved against Maqsood Ahmad accused on the basis of prosecution evidence beyond shadow of doubt.

11. In view of what has been stated above the conviction and sentence awarded to the appellant under section 10(3) is set aside:

However, as the commission of offence under section 10(2) of the said Ordinance has been proved through credible evidence, therefore, Maqsood Ahmed accused is hereby convicted under section 10(2) of Offence of Zina (Enforcement of Hudood) Ordinance and sentenced to two years R.I. He shall also pay a fine of Rs. 10,000/- in default whereof to further undergo three months S.I. with benefit of section 382-B, Cr.P.C.

12. With the above modification in the conviction and sentence the appeal is disposed of.

M. Z. Yasin

JUSTICE MUHAMMAD ZAFAR YASIN