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IN THE FEDERAL SHARIAT COURT
(Appellate Jurisdiction)

PRESENT

MR.JUSTICE ZAFAR PASHA CHAUDHRY.

J. CRIMINAL APPEAL NO.235/I OF 2004

Kashif Ikram S/O Muhammad Ikram,
Caste Dhobbi,R/O Gali Qazi Wali
Gali Kharrayan Eminabad,
District Gujranwala. --- Appellant.

Versus

The State --- Respondent

Counsel for the --- Mr.Nadeem Mukhtar Ch:
Appellant. --- Advocate

Counsel for the --- Mr.Shafqat Munir Malik,
State --- Assistant Advocate General

F.I.R No. date & --- No.279/2,dated 27-10-2002
Police Station --- P.S City, Kamonke
District Gujranwala

Date of Order of --- 04-07-2003
Trial Court

Date of Institution --- 04-08-2004

Date of Hearing --- 25-10-2004.

Date of Decision --- 25-10-2004

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JUDGMENT

ZAFAR PASHA CHAUDHRY, J: - Kashif Ikram aged about 24 years, appellant has submitted this appeal through Central Jail Kot Lakpat, Lahore against the judgment dated 4.7.2003 passed by Mr. Parvez Ismail Joiya, Additional Sessions Judge, Gujranwala, whereby the appellant has been convicted under section 377 PPC and sentenced to undergo 10 years R.I. with a fine of Rs.25,000/-, or in default thereof to further undergo two years R.I. He is also convicted under section 12 of the Of the Offence of Zina (Enforcement of Hudood) Ordinance 1979 (hereinafter referred to as the Ordinance) and sentenced to undergo 10 years R.I with a fine of Rs.25,000/-, or in default thereof to further undergo two years R.I. Both the sentences have been ordered to run concurrently. Benefit of section 382-B, Cr.P.C has been allowed.

2. According to the prosecution, Muhammad Tariq Javed, father of victim Ali Raza aged about 10 years moved an application before the S.H.O Police Station City Kamonke stating

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therein that his son Ali Raza left the house for mosque to offer prayer as it was "Shab-e-Barat". He did not return till 12 00 (mid night). The complainant checked all the mosques but Ali Raza could not be found. At about 2.00 a.m. (mid night) Ali Raza came home very frightened and crying; he was under intense fear and severe shock and was mumbling that "he will kill me, he will murder me". On interrogation he disclosed that one Maulvi with a green turban forcibly took him from the mosque and then moved him to a deserted place. He threatened and also subjected him to torture. He committed "Ziadati" with him.

Thereafter the complainant along with others searched for the Maulvi the whole night but no clue could be found. They however, continued the search. On 27.10.2002 information was received that the Maulvi was present in Ghala Mandi. He was apprehended and handed over to police. He disclosed his name as Muhammad Kashif son of Akram.

On application a formal F.I.R No.279/02 Exh P.C was registered with Police Station City Kamonke under section 12 of

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the Ordinance read with section 377 PPC. Necessary investigation was carried out and on completion of the same Kashif Ikram, i.e. the appellant was found guilty and sent up to face trial.

3. On receipt of challan the learned Additional Sessions Judge, Gujranwala framed charge under two heads, i.e. under section 12 of the Ordinance and under section 377 PPC. The appellant pleaded not guilty and claimed trial.

4. The prosecution examined seven witnesses in support of the charge. PW.1 doctor Syed Zafar Abbas Bukhari S.M.O, T.H.Q Hospital Kamonke medically examined the accused/appellant Kashif Ikram and noted his age as 24 years. After recording the various observations made by the doctor the appellant was found to be potent.

Tariq Javed, who is father of Ali Raza victim, was examined as PW.2. He reiterated the contents of the application made by him to SHO, but at the end of his examination-in-chief he stated that the accused present in court had not committed unnatural

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offence with his son, i.e. Ali Raza. He was got declared hostile and was subjected to cross-examination by the A.D.A.

During cross-examination he admitted that in the application Exh.PC he stated that the appellant Maulvi was apprehended and produced before the police. He also admitted that on inquiry the Maulvi disclosed his name as Muhammad Kashif son of Akram, i.e. the accused present in court. He further admitted that he had stated in Exh.P.C that the accused present in court had committed sodomy with his son.

Bare perusal of the statement of this witness indicates that he was made to resile from his statement under some threat or pressure. His statement when read as a whole, he admitted to have moved the application before the police and also that the appellant was apprehended and he was the accused present in court facing trial.

Dr. Sahibzada Fareed was examined as PW.3. He medically examined Ali Raza, the victim. His age was recorded as 10 years. On anal examination he observed as under:-

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The sphincter was relaxed and admitted a finger. Anus was contused all around. No lacerations noted on P.R slight bloodstain was present on the finger.

The anal swabs were obtained and were sent to Chemical Examiner. The report of the Chemical Examiner Exh.PF was in negative because the swabs were not found to be stained with semen. The doctor opined that there is little chance of detection of semen after lapse of one day in case of sodomy. As per expert opinion given by the doctor on clinical examination the possibility of commission of sodomy could not be ruled out.

Next witness PW.4 Muhammad Tufail is a foot constable and just a formal one.

Maqsood Baig, ASI appeared as PW.5. He formally arrested the accused after he was produced by the complainant party in the police station. The accused was also got medically examined by this witness.

PW.6 Zaka Ullah, S.I and PW.7 Shaukat Ali, H.C were examined by the court. Their evidence is only formal.

The main witness in this case is the victim Ali Raza. He was examined as CW.1. He gave his age as 10 and half years.

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He stated that on the occasion of "Shab-e-Barat" he went to Haidri Masjid for prayer. The accused was present in the mosque. He asked him, i.e. Ali Raza, to accompany him for sticking of bills (Ishtihars) relating to the mosque. He, i.e. Ali Raza accompanied the accused, who took him to Railway Station where he committed unnatural offence with him. He repeated that accused committed sodomy with him. At mid-night time he brought him back and left him alone. He narrated the entire incident to his father Tariq Javed, PW.2. After a few days on receipt of information his father and other family members traced the accused and after apprehending handed him over to the police. He was medically examined by the doctor in the hospital.

The victim was subjected to fairly long cross-examination but he could not be detracted from his statement and nothing could be extracted to damage the prosecution case.

5. After close of the prosecution evidence, the appellant was examined under section 342 Cr. P. C. On a question as to

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why the case was made against him, he stated as under:-

"I have been roped in this case falsely in an un-witnessed occurrence as I have been falsely roped in this case on the pressure of the police only to blackmail me and to fulfill some ulterior motive and to complete the investigation of a blind occurrence and the alleged victim has falsely deposed against me on the pressure of the police as this fact is evident that the father of the alleged victim does not support the prosecution version"

6. The learned counsel for both the sides addressed argument in detail. The learned counsel for the appellant tried to make a good capital out of an obvious concession made by the complainant by stating that the accused had not committed the unnatural offence with his son. It is true that by the end of the examination-in-chief the complainant did state so but as to how much weight can be given to this part of the statement, the same can be assessed and determined by taking into consideration the entire evidence and the relevant circumstances. This witness was cross-examined by the prosecutor. He admitted that he had moved an application

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before the SHO and he had stated in the application that the offender is Maulvi present in court, also that the appellant has been apprehended and he gave his name as Kashif Ikram. He also admitted that in the application it had been expressly mentioned that the accused present in court, i.e. the appellant, had committed sodomy with his son.

7. To weigh and assessed an evidence the entire statement comprising of examination-in-chief and cross-examination has to be taken into account.

Mere fact that the complainant stated that the accused had not committed unnatural offence with his son, does not loose the significance or relevancy of his statement. This witness during cross-examination admitted having apprehended the accused and also that he (complainant) had complained that the accused committed sodomy with his son. The fact that the appellant was traced after search and also that he was identified as a culprit and a report in this regard was lodged to the police has been admitted by this witness. It appears that accused got

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some pressure exerted on this witness or may be he was intimidated to which he yielded timidly and consequently tried to extend concession. The concession even if intentional yet is not of any help to the accused/appellant. This witness, i.e. the complainant, is admittedly not an eye witness, therefore, his stance in court that the accused had not committed unnatural offence, cannot be regarded as damaging to the prosecution. The pressure or intimidation can be gathered from this circumstance as well, that Ali Raza, the victim was not even produced in court as witness. The learned trial Judge in order to ascertain truth very justly examined him as CW.1. This measure adopted by the learned trial Judge is really appreciable. The courts are not mere spectators rather they are expected to consider and examine all relevant and pertinent pieces of evidence in order to arrive at just conclusion. The learned trial Judge as such has fulfilled his duty as a court of justice.

8. Obviously Ali Raza is the most relevant and competent witness to depose about the incident, which occurred

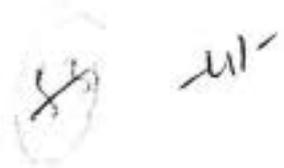
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to him. He has made consistent and coherent statement; his evidence is very convincing and fully inspires confidence. This witness or anyone from his family has no motive or any reason to falsely implicate the appellant and that too by putting the future of the victim at stake. The evidence is confidence inspiring. The prosecution story is very natural and full of truth. Had there been any malice or any ill will against the appellant, the complainant or the victim could have very conveniently nominated the appellant as a culprit in the police report. The same has not been done, it means that the prosecution has come forward with a true version.

9. The statement of the victim Ali Raza is supported by the medical evidence inasmuch as the private part has been found to be severely contused. When a finger was inserted by the doctor in the rectum, the same was stained with blood, the clinical examination therefore fully supports the statement of the victim. Mere fact that the anal swabs were not found to be stained with semen, does not in any manner militate against the

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prosecution story. The occurrence took place on 21.10.2002 whereas the medical examination was conducted on 27.10.2002, i.e. after about 6 days. The semen could not be retained inside the anal canal for such a long period. The doctor has rightly opined that detection of semen after a day or so, is very rare and the chances are very little. The non-detection of semen on the anal swabs does not in any manner belie the statement of the victim.

10. The sum and substance of the above discussion and the perusal of the prosecution evidence along with the record present on the file, leaves no doubt that the appellant has subjected Ali Raza, the victim, to unnatural offence. As noted above, mere attempted concession, which appears to be a result of intimidation, does not in any manner exonerate the appellant from the offence. Admitted the complainant was not an eye-witness of the occurrence, therefore any obliging statement by him cannot extend any benefit to the accused/appellant. The prosecution has successfully proved the charge against the



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appellant on both counts. The victim was moved from the mosque to the railway station in order to subject him to the unnatural offence, therefore, offence under section 12 of the Ordinance stands proved.

After abducting the victim he was subjected to unnatural offence, therefore charge under section 377 PPC is also fully established. The conviction of the appellant on both counts is unexceptionable; the same is therefore upheld and maintained.

11. As regards quantum of sentence, the learned counsel made a feeble attempt to argue that the appellant is a poor person and young man, therefore, a lenient view may be taken and sentence may be reduced. We do not find any force in the prayer; the appellant as stated by the witnesses being Maulvi, belongs to religious community, who is expected to maintain a higher standard of morality and piety. The appellant committed a pre-planned crime firstly by abducting the victim and thereafter subjecting him to his unnatural lust. The victim is just a child of

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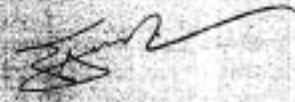


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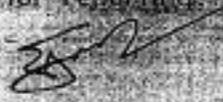
ten years. The shock and trauma suffered by the victim is not temporary but is likely to last very long. The punishment imposed on the appellant in the circumstances of the case is not excessive and fully commensurate with the gravity of the offence. His sentence as such is maintained.

12. The appeal stands dismissed.



ZAFAR PASHA CHAUDHRY
Judge

Approved for report



Islamabad 25-10-2004
I. Iqbal

