

# IN THE FEDERAL SHARIAT COURT

( Appellate Jurisdiction )

PRESENT.

**MR. JUSTICE ZAFAR PASHA CHAUDHRY, JUDGE.**  
**MR. JUSTICE S. A. RABBANI, JUDGE**

JAIL CRIMINAL APPEAL NO.109/I OF 2002

1. Farooq Hussain son of Khair  
Hussain alias Muhammad Miskeen  
Resident of Dhoke Himat,  
Tehsil & District Rawalpindi
  2. Ejaz Ahmed son of Muhammad  
Yousaf resident of Mailam,  
District Rawalpindi
- Appellants.

VERSUS

The State	...	Respondent.
Counsel for the Appellants.	...	Doctor.Babar Awan Advocate.
Counsel for the State	...	Mr. Muhammad Sharif Janjua, Advocate.
Case FIR No, date & Police Station.	...	FIR No.231, 6.11.1999 P.S.Rewat. Distt: Rawalpindi
Date of Judgment of Trial Court.	...	16.03.2002.
Date of Institution	...	18.05.2002.
Date of hearing	...	09.06.2003.
Date of decision	...	09.06.2003.

JUDGMENT

ZAFAR IOBAL PASHA CHAUDHRY. J. This appeal is directed against the judgment dated 16.3.2002 passed by Muhammad Sawar Sidhu, Additional Sessions Judge, Rawalpindi, whereby he convicted Farooq Hussain and Ejaz Ahmed, the appellants, in case FIR No.231 dated 6.11.1999 registered with Police Station Rewat under sections 377 Pakistan Penal Code and sentenced both of them to imprisonment for life. A fine of Rs.50, 000/- each was also imposed, in default whereof they were to undergo six months simple imprisonment. Conviction was also recorded against both the appellants of the Offence of Zina (Enforcement of Hudood) Ordinance, 1979 and both were sentenced to suffer life imprisonment and a fine of Rs.50, 000/- each was also imposed, in default whereof they were to undergo six months simple imprisonment. The benefit of section 382-B. Criminal Procedure Code was extended to both of them.

According to the learned trial Judge, lenient view qua the sentence was taken on account of compromise, which had been affected in between the complainant and the accused persons.

2. The prosecution version as revealed from the application by Muhammad Shafique, victim (PW.4), is that on 24.10.1999 he was present in his house at about 2.00 p.m. when Farooq Hussain and Ejaz Ahmed, appellants came to his house and they took him away to have some gossip. Both the appellants took the



complainant towards an open place known as "Mohri". The complainant however resisted on which both the said persons (the appellants) threatened that he will have to accompany him. When they reached a deserted place Farooq, appellant took out a pistol and asked Shafique to remove his clothes, on refusal he was man handled and his trouser string was forcibly opened. Farooq, accused/appellant in the first instance and Ejaz accused/appellant thereafter committed unnatural offence with Muhammad Shafique complainant. On alarm raised by the victim Saghir Hussain and Molvi Irshad, PW.5 and PW.6 were attracted towards the place of occurrence. On seeing them Farooq and Ejaz, both the accused/appellants fled away. Thereafter the accused persons kept on entreating the victim to effect compromise but it was not acceded to. FIR was lodged on 6.11.1999 at 4.20 p. m, after about 12 days of the occurrence. After necessary investigation carried out by Aqeel Abbas, (PW.8) both the accused/appellants were challaned and sent up to face trial in the Court of Mr. Muhammad Sarwar Sidhu. Both the accused/appellants were charge sheeted under section 12 of the Offence of Zina (Enforcement of Hudood) Ordinance, 1979 and under section 377/34 Pakistan Penal Code. They pleaded not guilty to the charge and claimed trial.

3. The prosecution in support of its case examined nine witnesses. The main witness is Muhammad Shafique, (PW.4). He was aged about 21/22 years at the time of occurrence. He reiterated the statement already made by him before the



police in Ex.PA. Saghir Hussain and Molvi Irshad, PW.5 and PW.6 were examined as supporting witnesses. According to Saghir Hussain when he reached the spot he saw accused Farooq standing holding a pistol in his hand and Ejaz accused was committing sodomy with complainant Muhammad Shafique. According to Molvi Irshad who according to him reached the place of occurrence alongwith Saghir Hussain, he saw that Farooq and Ejaz were committing sodomy with Muhammad Shafique. Both the witnesses were cross-examined mainly with regard to their reaching the place of occurrence and having witnessed the commission of the crime. Various discrepancies in between their statements were also pointed out in order to belie their testimony.

Bare perusal of the statements made by these witnesses, indicate that their reaching and witnessing the occurrence appears to be unacceptable. According to Muhammad Shafique, the victim when he was forced to accompany the accused/ appellants in spite of his refusal, he would have naturally raised alarm and offered resistance. Had the witnesses heard the alarm they would have rushed to the spot, the accused/appellants thereafter would not be in a position to commit sodomy in front of them. According to Muhammad Shafique, the offence was committed one after the other, which would have consumed considerable time. Their version of witnessing the scene as stated by PWs Saghir Hussain and Molvi Irshad, appears to be exaggerated; we are therefore unable to rely upon their testimony.



4. After discarding the evidence of the two alleged eye-witnesses we have been left with the solitary statement of Muhammad Shafique, the victim. Although Muhammad Shafique, the victim, has supported his earlier version yet the same cannot be accepted or relied upon unless corroborated or supported by some other credible piece of evidence. To begin with the FIR is belated and the explanation tendered in this behalf that attempts for conciliation or compromise were made, does not appear to be convincing. In a case of this nature, i.e. of sodomy or rape etc, medical evidence or report of chemical examiner is of vital importance. Ex.PJ is the medico legal report of Muhammad Shafique, according to which no marks of injury was found at perineum and peri anal area and no bleeding from the anus. The doctor reserved his opinion to await the report of Chemical Examiner. Chemical Examiner report is Ex. PM. According to the report the swabs have not been found stained with semen. The statement of Muhammad Shafique does not find support, both from medical evidence as well as Chemical Examiner's report. Rule of prudence as well as safe administration of justice demands, to base a conviction on a solitary statement, it should be unimpeachable. In the present case the statement of victim who is quite a mature person aged about 21/22 years is not supported by any evidence coming from independent source. The prosecution has brought on record the evidence of recovery of pistol from Farooq accused but the mere recovery of pistol, which was not fired during the occurrence, would rather be inconsequential.



5. By taking stock of all the facts and evidence in this case, we are of the view that the prosecution has not been able to prove its case beyond doubt. The doubt invariably is to be extended to the accused person. We, therefore, allow this appeal, set-aside the conviction and sentence of the appellants as recorded against them. The appellants namely Farooq Hussain son of Khair Hussain alias Muhammad Miskeen and Ejaz Ahmed son of Muhammad Yousaf shall be released forthwith from jail, if not required in any other case.

  
(ZAFAR PASHA CHAUDHRY)  
Judge.

Approved for reporting.

  
( S. A. RABBANI )  
Judge

Islamabad the  
June 9, 2003.

F.Taj/\*