

IN THE FEDERAL SHARIAT COURT  
( Appellate Jurisdiction )

PRESENT

MR. JUSTICE S. A. MANAN

Jail Criminal Appeal No. 299/1 of 2002

Tasawar Ali son of Mushtaq Ahmad resident of Ashraf Colony, Street  
No.2, Bhalwal District Sargodha

.....	Appellant
Versus	
The State	..... Respondent
Counsel for appellant	..... Syed Muzahir Naqvi, Advocate
Counsel for State	..... Ch.Rafaqat Ali, Advocate
FIR.No. Date & Police Station	..... 56, 8-8-2002 Noshera Khurd, Khushab
Date of judgment of trial court	..... 18-12-2002
Date of Institution	..... 30-12-2002
Date of hearing	..... 30-1-2004
Date of Judgment	..... 30-1-2004

JUDGMENT

S. A. Manan, Judge.- Tasawar Ali appellant has filed this Jail Criminal Appeal No. 299/I of 2002 against the judgment dated 18-12-2002 of the Sessions Judge, Khushab convicting him under section 16 of offence of Zina (Enforcement of Hudood) Ordinance to three years R.I. with fine of Rs.5000/- and in default to further undergo three months S.I. He was acquitted of the charge under section 10(3) of the said Ordinance.

2. FIR. No.56, dated 8-8-2002 police station, Nowsher Khurd, District Khushab was recorded by complainant Muhammad Ijaz son of Ghous Muhammad, resident of Mustafa Abad that Mst.Nusrat Parveen his sister-in-law ( Sali) was abducted on 2-8-2002 by the appellant while grazing her goats in the hills. It is the case of the prosecution that the victim was brought back to her parents on the following day.

3. According to the statement of P.W.10 Faqeer Hussain, Investigating Officer, he was posted at police station Noshera on

8.8.2002 and arrested the accused on the following day ( 9-8-2002), got Mst.Nusrat Parveen medically examined on 10-8-2002 and after preliminary investigation found the appellant guilty and sent the challan to the court.

4. The appellant was charge-sheeted on 11-11-2002 under sections 16 and 10(3) of offence of Zina (Enforcement of Hudood) Ordinance and the appellant did not plead guilty and claimed trial. Thereafter the prosecution recorded their evidence.

5. The complainant is Muhammad Ijaz, P.W.4 who was married to the victim's sister and the appellant is his khala-zad and also khala-zad of Mst.Nusrat Parveen the alleged abductee. According to him Farooq and Muhammad Riaz, P.Ws told him that Mst.Nusrat Parveen had gone out to graze her goats in Samrrhni hills where the appellant came from Khushab side and took her to Bhalwal. This was the hear-say evidence of P.W.4. He further deposed that he went to Bhalwal alongwith one Ameer and mother of Mst.Nusrat Parveen where the alleged abductee was taken by the appellant and further

went to the house of the accused in Ashraf Colony, Bhalwal and on the second day the victim was brought back through the intervention of the respectables and in the evening they went to report the matter to the police and the case was registered on 8-8-2002. According to cross-examination of P.W.4 the appellant lived in Mustafa Abad for 2/3 months and relations between the mother of Mst.Nusrat Parveen and the accused were not strained. He further stated that the appellant was not giving any money to the mother of Mst.Nusrat Parveen and that there was no promise that Mst. Nusrat Parveen will be married to him. He reiterated that Mst.Nusrat Parveen was brought back from Bhalwal. This witness categorically stated in the cross-examination, "it is correct that I had opposed any such engagement between Mst.Nusrat Parveen and the accused. P.W.Riaz is my brother and Farooq is my khalazad". He further stated that " police delayed registration of case for 5/6 days of their own on different pretexts".

6. P.W.5 is Muhammad Farooq a khalaza-zad of both Mst.Nusrat Parveen and Tasawar Ali accused. He deposed that on

2.8.2002 he was grazing his goats at Sumrrhani hills, a flying coach came there from Khushab side and at Sumrrhani morr the appellat de-boarded from the coach. According to him the accused kept sitting with Mst.Nusrat Parveen for 10-15 minutes and then a coach came there from Nowshera side and they both went in the said coach. He deposed that at about 4/4.30 p.m. he went back and told the complainant that Mst.Nusrat Parveen left with Tasawar accused stated to be resident of Bhalwal.

7. P.W.6 Mst.Nusrat Parveen deposed that on 2-8-2002 at about 2/2.30.p.m. she was grazing her goats at Sumrrhani Morr when Tasawar accused came there from Khushab side and asked her to go with him. On refusal he gave threats to kill her and her mother and out of fear she went with the appellat to Bhalwal. It is pertinently stated by this P.W.6 that her mother, Ameer Ali and Muhammad Ijaz, complainant reached Bhalwal on the same day ( 2-8-2002) and on the following day they brought her back. She categorically stated that the accused did not commit any zina with her. However, she was engaged

and given in the nikah of Manzoor her mamoon-zad, resident of Bhalwal in her child-hood.

8. P.W.7 is Lady Dr.Kausar Parveen who examined Mst.Nusrat Parveen victim on 10-8-2002 and two vaginal swabs were sent to the Chemical Examiner on 11-8-2002 and the report is positive that " the above swabs are stained with semen".
9. The aforementioned is the total relevant evidence for the purposes of deciding this appeal.
10. The alleged abductee Mst.Nusrat Parveen in cross-examination deposed about her permanent residence of Mustafa Abad and unequivocally admitted that appellant used to live there in the house of his sister Mst.Tasleem wife of Ihsan. Said Ihsan is her Khala-zad. She further denied in her cross-examination that her mother promised to give her hand to the appellant and that her brother-in-law Muhammad Ijaz, complainant opposed. She further deposed that accused remained sitting with her for half an hour without any threats to her. In cross-examination she admitted to have gone with the

the accused in a public transport with 50/60 other passengers and without any hue and cry.

11. Tasawar Ali appellant aged 21 years was examined under section 342 Cr.P.C. and in answer to question No.7 as to why this case against you and why the P.Ws have deposed against you?, he stated "that Muhammad Ijaz complainant was having personal grudge over the engagement of Mst.Nusrat Parveen with me whereas Mst.Bakhat Bhaṛi, mother of Mst.Nusrat had promised to give the hand of Mst.Nusrat Parveen and the P.Ws have deposed against me on the instigation of the complainant".

12. Considering the entire evidence on record the learned trial court acquitted the appellant under section 10(3) of Offence of Zina (Enforcement of Hudood) Ordinance and convicted him under section 16 of the said Ordinance and sentenced to three years R.I. with fine of Rs.5000/- and in default to further undergo S.I. for three months.



13. After having gone through the entire evidence on record, I am of the view that the lower court has not applied its mind to the various aspects of the case and illegally convicted and sentenced the appellant.

14. It appears that the Investigating Officer has conducted the investigation most unfairly and arbitrarily.

15. It is clear from going through the various statements of the P.Ws that this case has been engineered by P.W.4 brother-in-law of the victim as he did not want to get the appellant married with the alleged abductee while her mother was willing to do so. He in order to strengthen his case has brought forward P.W.5 Muhammad Farooq his khalazad as well as that of Mst.Nusrat Parveen. I have no difficulty in holding that in this particular case the evidence of the relatives could not be accepted and was liable to be rejected outright when they intended to falsely implicate the appellant who was also one of the candidates for marriage with Mst.Nusrat Parveen.





complainant except that the prosecution has been blamed for the delay.

17. If the trial court had considered all these material facts there was not the slightest possibility of conviction against the appellant. The entire case has been cooked up at the instance P.W.4 Muhammad Ijaz, brother-in-law of the victim as he was not willing to get the appellant married with his sister-in-law, for reasons best known to him.

18. I am satisfied that there was some proposal regarding the marriage of Mst.Nusrat Parveen which was vehemently opposed by P.W.4 Muhammad Ijaz, brother-in-law of the victim who made all efforts to implicate the appellant falsely in the case. This P.W in cross-examination admitted, "it is correct that I had opposed any such engagement between Nusrat Parveen and the accused". This admission of this P.W. leaves no room for any doubt that he was not willing to bring the appellant into their family circle. No explanation

has been furnished as to why the mother of the victim was not the complainant in the case instead of P.W.4 Muhammad Ijaz.

19. Muhammad Riaz brother of P.W.4 was cited as an eye witness of the occurrence but not produced before the court. The eye witness Muhammad Farooq is khalazad of the victim as well as that of accused and also of the complainant P.W.4. This relationship is admitted by P.W.Muhammad Farooq.

20. While convicting the appellant, the trial court has not considered the entire evidence in its true perspective and there was no application of mind which resulted in complete failure of justice to the appellant who was subjected to hazard litigation against him.

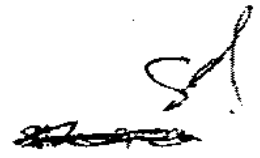
21. In these circumstances it is not possible to agree with the findings of the trial court and consequently judgment dated 18.12.2002 is set aside and the appeal is accepted.

22. The false implication of the appellant by P.W.4 Muhammad Ijaz cannot be easily lost sight of. It is high time that the litigants are not allowed to abuse the process of the court for their

ulterior motives as has been done in this case. On facts and circumstances of the case the trial court is directed to get a case registered against P.W.4 Muhammad Ijaz for perjury or any other offence which is made applicable.


23. These are the detailed reasons for my Short Order dated 30-1-2004 to release the appellant forthwith if not required in any other case.

24. Office to transmit a copy of this Judgment separately to the learned District Judge, Khushab.

  
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( S. A. Manan )  
Judge

Islamabad the 30<sup>th</sup> January, 2004

Fit for reporting

  
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( S. A. Manan )  
Judge

UMAR DRAZ/