

IN THE FEDERAL SHARIAT COURT
(Appellate Jurisdiction)

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PRESENT

HON: MR. JUSTICE B.G.N.KAZI

CRIMINAL APPEAL NO.163/I OF 1983

Mst. Razaqat Bibi	---	Appellant
	Versus	
The State	---	Respondent
For the appellant	---	Mr. Asif Hussain Siddiqi, Advocate.
For the State	---	Mr. Muhammad Jamil Khan, Advocate.
Date of hearing	---	<u>11-1-1984</u>
Date of decision	---	<u>17-1-1984</u>

JUDGMENT

B.G.N.KAZI, J.

The appellant Mst. Razaqat Bibi alongwith Muhammad Suleman was charged with committing zina by the learned Additional Sessions Judge, Abbottabad at Haripur, who also charged co-accused Mst. Farooq Jan, Mst. Shakeela Bibi, Haider Zaman and Shafiq-ur-Rehman for abetment of the aforesaid offence. Whereas all the other accused including Muhammad Suleman were acquitted, Mst. Razaqat Bibi was convicted under section 10(2) of the Offence of Zina (Enforcement of Hudood) Ordinance, 1979 (here-in-after referred to as the Ordinance) and sentenced to five years' R.I., five stripes and a fine of Rs.500/- or in default to undergo further R.I. for three months. The appellant has filed the instant appeal against her aforesaid conviction and sentence.


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2. At the very outset it may be stated that there was no other evidence with regard to the alleged commission of offence of zina by the appellant except her confessional statements in which, however, she had clearly stated that Muhammad Suleman, the acquitted accused, had committed zina-bil-jabr with her. It may also be stated here that Muhammad Jamil Khan the learned counsel for the State has not supported the conviction of the appellant.

3. There was the evidence of Dr. Mrs. Mumtaz Khattak who had examined the appellant on 17-12-1982 that the appellant had 8 months pregnancy at the time of her examination. However, the aforesaid evidence cannot be considered sufficient to convict the appellant for commission of offence of zina which has been defined in section 4 of the Ordinance, and inter alia involves wil-fully having sexual intercourse. In the instant case according to the appellant there was no wilful participation in the sexual intercourse by her as Muhammad Suleman committed zina-bil-jabr with her. This statement of the appellant is also supported by the fact that it was she who had complained by addressing an application to the Sub-Martial Law Administrator, Abbottabad which ultimately came to be registered as FIR, wherein she had expressly stated that she had been made to submit forcibly to sexual intercourse by Muhammad Suleman. Mr. Asif Hussain Siddiqi, the learned counsel for the appellant has referred to the decision of this Court (Criminal Appeal No.119/I of 1983) in the case of Mst. Shanaz Bibi



wherein it had been held "that confession must be read as a whole and that exculpatory portions cannot be ignored unless there is evidence on record to prove their incorrectness". In that decision reliance was also placed on the decision of Supreme Court in Najib Raza Rahmani Vs. The State (reported in PLD 1978 S.C. 200).

4. The learned counsel for the appellant has also referred to the decision of this Court in Criminal Appeal No.123/I of 1983, namely Mst. Safia Bibi Vs. The State. In that case there was no evidence against the appellant and conviction was based on the fact of her pregnancy and motherhood which the trial court had considered as evidence of culpability. In that case it was observed as under:-

"Confession should be read as a whole and exculpatory portions therein cannot be excluded from consideration unless there is evidence on record to prove those portions in-correct."

It was, therefore, held that ⁱⁿ absence of any evidence to establish sentimental attachment for co-accused it could not be said that sexual inter-course was indulged into wilfully.

5. Since in this case the confessional statement is being made the basis of the conviction it is to be read in its entirety and exculpatory part cannot be separated out and mere conjectures cannot be considered as evidence of consent. The appeal is, therefore, allowed, the conviction ^{and} sentence set aside and the appellant acquitted. She is on bail and her bail bond stands cancelled.

Raza Razi
JUDGE-II

Islamabad, the
17/1 January, 1984.
M. Faridun

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