

(17)

IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

CRL.PETITION FOR LEAVE TO APPEAL

NO. 96 /2005.

THE STATE.

.... PETITIONER.

VS.

ABDUL KHALIQ SON OF IMAM BAKHSH, ETC.

....RESPONDENTS.

COURT APPEAL AGAINST:

PASSED BY THE LEARNED LAHORE HIGH COURT, MULTAN BENCH AGAINST ORDER/JUDGMENT DATED: 03.03.2005. IN CRL.APPEAL NO. 60/2002.

COUNSEL FOR PETITIONER:

MR.M.AFTAB IQEAL CHAUDHARY ADVOCATE -GENERAL PUNJAB, LAHORE WITH MR.AAMIR REHMAN ADDITIONAL ADVOCATE-GENERAL PUNJAB, INSTRUCTED BY RAO MUHAMMAD YUSUF KHAN GOVT.A.O.R. FOR THE PETITIONER. O/O: ADVOCATE-GENERAL PUNJAB, LAHORE.

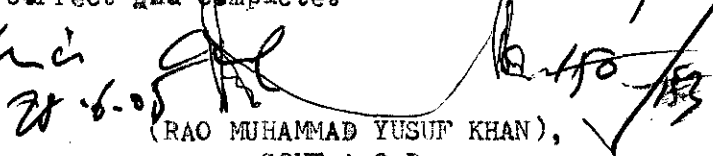
COUNSEL FOR RESPONDENT:

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Certified that the paper book is correct and complete.

At order of the
28.6.05

(RAO MUHAMMAD YUSUF KHAN),
GOVT. A.O.R.
FOR THE PETITIONERS,
O/O: THE ADVOCATE-GENERAL PUNJAB,
LAHORE.

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IN THE SUPREME COURT OF PAKISTAN.
(APPELLATE JURISDICTION)

CRIMINAL APPEAL NO. 96/05
CRIMINAL PETITION FOR LEAVE TO APPEAL
NO. L OF 2005.

THE STATE.

APPELLANT(S)/
PETITIONER (S).

VERSUS.

ABDUL KHALIQ SON OF IMAM BAKHSH, ETC.

RESPONDENT(S).

I, Hassan Wasim Afzal Secretary to Government of the Punjab, HOME DEPARTMENT, Lahore, under the order of the Governor of the Punjab, do hereby appoint RAO MUHAMMAD YUSUF KHAN, Advocate-On-Record/Attorney, to act as Government Advocate-On-Record/Government Attorney for the Petitioner (s)/Appellant(s)/Respondent(s), to commence and prosecute/defend this Appeal/Petition, on behalf of the Appellant(s)/Petitioner(s)/Respondent(s), and all proceedings that may be taken in respect of any application connected with the same including proceedings, taxation and application for review, to draw and deposit money, to file and take back documents, accept the processes of the Court, to appoint and instruct counsel, to represent the petitioner(s)/Appellant(s)/Respondent(s), in the matter and to do all things incidental to such acting for the Appellant(s)/Petitioner(s)/Respondent(s). The Punjab Government agrees to ratify all done by aforesaid Government Advocate-On-Record/Government Attorney, in pursuance of this Authority.

IN WITNESS WHEREOF, I do hereby set my hand on this _____ day of 2004.

Hassan Wasim Afzal
SECRETARY,
GOVERNMENT OF THE PUNJAB,
HOME DEPARTMENT
LAHORE

(HASSAN WASIM AFZAL)

ACCEPTED.

(Signature)
(RAO MUHAMMAD YUSUF KHAN)
GOVT. ADVOCATE-ON-RECORD
OFFICE OF THE ADVOCATE-GENERAL,
PUNJAB, LAHORE.

94-3-05
(Signature)

AOR

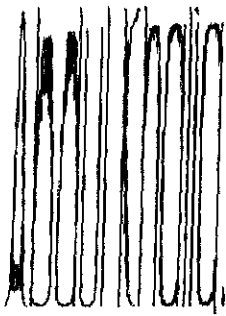
IN THE SUPREME COURT OF PAKISTAN.
(APPELLATE JURISDICTION)

CRIMINAL PETITION FOR LEAVE TO APPEAL
NO. 96 OF 2005.

The State

..PETITIONER.

VS.



..RESPONDENTS.

Name of accused.	Trial Court's decision dated:
1. Abdul Khaliq.	<u>31-08-2002.</u>
2. Ghulam Farid.	
3. Muhammad Fiaz.	Abdul Khaliq son of Imam Bakhsh,
4. Allah Ditta son of Imam Bukhsh.	Allah Ditta son of Imam Bakhsh,
5. Faiz Muhammad.	Muhammad Fiaz, Ghulam Farid,
6. Muhammad Ramzan.	Ramzan Pacher and Faiz Muhammad @ Faiza. Were convicted u.s 11,10(4) of Ordinance VII of 1979 r/w Sections 149/109 PPC u/s Section 6(1) a & b and Sub Section 2(b) of ATA, 1997 and section 149/109 PPC
7. Muhammad Aslam.	and
8. Allah Ditta son of Jan Muhammad.	Sentenced under section 7© alongwith Section 21-I ATA 1997 and Section 149/109 PPC,
9. Khalil Ahmad.	
10. Ghulam Hussain.	
11. Hazoor Bakhsh.	
12. Rasool Bakhsh.	
13. Qasim.	

of Bahadar Ali, both are Jatoi by caste and residents of Meerwala besides her father. All the accused were previously known to the complainant.



(CH. AAMIR REHMAN)
ADDITIONAL ADVOCATE-GENERAL,
PUNJAB, LAHORE.

IN THE SUPREME COURT OF PAKISTAN.

(Appellate Jurisdiction).

Filed on 19.3.2005
by Rao Muhammad Yousaf Khan
with (3) Paper Books

19.3.2005

CRL. P. L.A.NO. 96 4/2005.

The State

PETITIONER.

Versus

1. Abdul Khaliq Son of Imam Bakhsh, Caste Mastoi,
2. Allah Ditta Son of Imam Bakhsh, Caste Mastoi,

R/O Mauza Mirwala, Tehsil Jatoi, District Muzaffargarh.

3. Muhammad Fayyaz Son of Karim Bakhsh,
4. Ghulam Farid Son of Allah Bakhsh,

Both by Caste Mastoi, Residents of Village Rampur,
Tehsil Jatoi, District Muzaffargarh.

RESPONDENTS.

PETITION: Under Article 185 (3) of the Constitution of Islamic Republic of Pakistan, 1973 for the grant of Leave to Appeal against the judgment dated 3-3-2005 passed by a learned Division Bench of Lahore High Court, Multan Bench Multan in Crl. Appeal No. 60 Of 2002.

It is respectfully submitted:-

LAW POINTS.

That the following law points of general public importance and concerning interpretation of certain important provisions of the Constitution as well as of Anti Terrorism Act, 1997 and offence of Zina (Enforcement of Hudood) Ordinance, 1979 require an authoritative pronouncement by this August Court:-

1. Whether in view of the explicit provisions of Article 203-G of the Constitution, the learned High Court was justified in law in assuming and exercising appellate jurisdiction in a matter which exclusively pertained to the appellate jurisdiction of the Federal Shariat Court? And if the answer is in negative then whether the impugned judgment of the learned High Court has not been rendered illegal, without jurisdiction, void ab initio and Corum Non Judice, hence, liable to be set aside on this ground alone?
2. Whether the provisions of Section 25 of Anti Terrorism Act, 1997 regarding maintainability of an appeal against the final judgment passed by the learned Anti Terrorism Court before a Division Bench of the learned High Court could have an overriding effect so as to bypass or ignore the provisions and effect of second proviso of Section 20 of the Offence of Zina (Enforcement of Hudood) Ordinance (VII of 1979) especially if read in the perspective of the preamble of the said Ordinance as well as the provisions of Article 203-G of the Constitution?
3. Whether the provisions of the Anti Terrorism Act regarding appellate forum against the orders/judgments etc of the Anti Terrorism Court are not per se defective, lacunic and contradictory inasmuch as the same either ignore or directly clash with the relevant provisions of the Constitution as well those of Offence of Zina (Enforcement of Hadood) Ordinance (VII of 1979) as aforementioned and as the said Act does not even take care of the mandatory condition prescribed under Section 21 of Offence of Zina (Enforcement of Hadood) Ordinance (VII of 1979), which requires that the Presiding Officer of

the Trial Court as well as those of the appellate courts shall be Muslims and it also violates the law enunciated by this Hon'ble Court in the landmark case titled State Vs Zia ur Rehman PLD 1973 SC 49 which enjoins upon the law maker to unambiguously earmark the functions and areas of jurisdiction of all the fundamental constitutional organs and sub organs of the State particularly the judiciary so as to avoid, beside other contradictions and ambiguities the clash of jurisdiction of courts of different hierarchy?

4. Whether the Suo Moto jurisdiction exercised by the Hon'ble Federal Shariat Court during the interregnum between the announcement of the judgment impugned herein and the institution of the instant petition, of which notice has been issued to the Advocate General Punjab as well, is a lawful and proper exercise of the jurisdiction as envisaged by the provisions of Article 203-DD of the Constitution inasmuch as although according to the stance of the petitioner a regular appeal against the order of the learned Presiding Officer of the Anti Terrorism Court was no doubt maintainable before the Federal Shariat Court, however, since the jurisdiction had been assumed and exercised by a Division Bench of the High Court, therefore, as per the law enunciated by this Hon'ble Court in State Vs Iqbal Bibi (1993 SCMR 935), the exercise of revisional or Suo Moto jurisdiction by the learned Federal Shariat Court against the judgment/order of the High Court is patently unwarranted and without jurisdiction inasmuch as the High Court being a constitutional court established under Article 192 of the Constitution, the same

would not fall in the category of "Criminal Court" as mentioned in Article 203-DD?

5. Whether the instant case involving multiple questions of public importance and requiring interpretation of various provisions of the Constitution as well as Offence of Zina (Enforcement of Hadood) Ordinance (VII of 1979) and Anti Terrorism Act, 1997 particularly qua clash of provisions concerning the appellate jurisdiction of High Courts and the Federal Shariat Court, would not require an authoritative pronouncement by this Hon'ble Court so as to make such provisions unambiguous, un-contradictory, clear and transparent?
6. Whether the learned Division Bench of High Court while reversing the judgment/order of the learned trial court by extending undue importance to the minor contradictions and discrepancies in the prosecution's evidence after having evaluated the same on the scale of hairsplitting probe, has acted within the parameters prescribed by law and the repeated enunciations of this Hon'ble Court for safer administration and dispensation of justice in criminal cases. Ostensibly, such an exercise by the learned High Court has rendered the impugned judgment illegal and a nullity in the eye of law?
7. Whether the Honourable Division Bench of the Lahore High Court has rightly disbelieved the oral evidence of the PW-12 Altaf Hussain and PW-13 Sabir Hussain who have given the ocular evidence about the occurrence and whether their evidence could be disbelieved on the ground that they are close relatives of the victim

and secondly there are some minor discrepancies in their statements?

8. Whether the Honourable Division Bench of the Lahore High Court has rightly disbelieved the evidence of PW-10 Abdul Shakoor and PW-11 Abdul Razzaq although they have fully supported the background and motive of the occurrence?
9. Whether in the facts and circumstances of the case the bare statement of Mukhtar Mai who was gang raped in a closed room at night corroborated by the Medical evidence and the positive report of the chemical examination of semen swabs was not sufficient to prove the case of the prosecution and whether their Lordships of the Lahore High Court have rightly disbelieved such most important and unshaken evidence of the victim corroborated by the Serologist's report and circumstantial evidence as stated above?
10. Whether the evidence of the ocular statements of Altaf Hussain and Sabir Hussain to the effect of dragging the victim to the place of occurrence and also the evidence about rescuing of the victim from the room of occurrence in a naked and precarious condition was not sufficient to establish the charge u/s 354-A PPC?
11. Whether their lordships of Lahore High Court have rightly believed some so called conjectural and hypothetical propositions holding thereby that Mst. Mukhtar Mai of the complainant family and Mst. Salma alias Naseem of the accused family were given in marriage of which there is no proof on the record?

12. Whether their lordships of the Lahore High Court have rightly taken into consideration the statements recorded during various inquiries conducted by different agencies which were completely extraneous to the Code of Criminal Procedure and whether the statements recorded in those inquiries could be equated with and given a legal status of the statements under Section 161 Cr.P.C. for the purposes of confrontation of the same during cross examination of the witnesses?
13. Whether the discrepancies in the statements of the witnesses created due to extraneous statements in unlawful inquiries could be given a due weight by the learned Judges of the Lahore High Court?
14. Whether their lordships of the Lahore High Court have rightly given so much importance to the delay in lodging of the FIR specially in the circumstances of the case wherein firstly the family honour and respect was involved and in such like cases the people in our society and culture hesitate and are always reluctant to bring such cases in courts and police stations. The learned Judges have not considered this aspect of the matter and secondly as per the situation of the case there was terror and awe around. The inability of the complainant party to have an access to the police station is also not considered by the learned Division Bench and specially when the delay has been explained and these reasons have been given in the FIR?
15. Whether the proposition propounded by the Division Bench is reasonable and acceptable in as much as the Honourable Lahore High Court has treated it a case of Nikah for Nikah i.e. Nikah of

Mukhtar Mai with Abdul Khaliq and in exchange Nikah of Abdul Shakoor with Salma alias Naseem. If this proposition is accepted then there was no hurry to hand over Mukhtar Mai to Abdul Khaliq whereas the other couple was even not present there and the only conclusion which can be drawn is that Mukhtar Mai was forcibly handed over to Abdul Khaliq with the help of co-accused for committing Zina bil Jabber. All the members of the Panchayat were definitely the accused of abetment of this Zina bil Jabbar. The conclusions drawn by the Honourable Judges of the Lahore High Court are misconceived and not correct?

16. Whether the Honourable Judges of the Lahore High Court have rightly made conclusions of the medical evidence of Mukhtar Mai. The learned Judges had even disbelieved the medical evidence whereas there is the evidence of doctor coupled with the report of the chemical examiner and whether the learned judges could override the technical results of the expert evidence?
17. Whether the conclusions based on some conjectures and supposition be believed to overthrow the legal ocular and circumstantial evidence. In as much as to declare Allah Ditta innocent simply on the ground that he is real brother of Abdul Khaliq and they can not together commit Zina Bil Jabber. This proposition can only be taken into consideration in normal circumstances and here was abnormal situation to get the revenge from the complainant family and therefore the conclusions based on supposition have no legal force?

18. Whether this is a case of first impression to draw clear lines of jurisdiction between the Hadood trial court and A.T.A. court on the one hand, the Hon'ble High Court and Federal Shariat Court on the other hand and this August Court has to give an authoritative judgment to interpret all these legal propositions?

BRIEF FACTS

1. That the brief prosecution version as alleged in the FIR Ex.P1/1 is that Mukhtar Mai (complainant) was a divorcee. Her brother Abdul Shakoor was suspected of having illicit relations with one Mst. Naseem d/o Imam Bakhsh, Caste Mastoi, resident of Meerwala. To resolve the dispute a gathering (Akath) was convened on 22.06.2002, which was participated by Ghulam Nabi son of Bahadar Khan, Altaf Hussain son of Bahadar Ali apart from quite a number of other persons from the village. Muhammad Ramzan son of Kareem Bakhsh, caste Pachar, Ghulam Farid son of Mahmood, Caste Mastoi, Faiz Bakhsh Khan and Faiz Bakhsh Khan son of Khair Muhammad Caste Mastoi were appointed as Arbitrators on behalf of Abdul Khaliq. Whereas, Maulvi Abdul Razzaq son of Bahadar and Manzoor Hussain son of Noor Muhammad, Caste Mastoi both residents of Meerwala were appointed as Arbitrators on behalf of Ghulam Farid. The said Arbitrators decided that Mst. Naseem d/o Imam Bakhsh be married to Abdul Shakoor s/o Ghulam Farid and the hand of Mukhtar Mai be given to son of Imam Bakhsh in return. However, Abdul Khalid, Muhammad Ramzan and Ghulam Farid disagreed with the said decision of the Arbitrators and demanded that Ghulam Farid should hand over his daughter with them, to

whom they will commit Zina, which will bring at par the status of both the parties and thereafter they will enter into a compromise. This proposal was opposed by the members of the gathering (Akath). Maulvi Abdul Razzaq and Manzoor Hussain left the gathering. Thereafter under the pressure and coercion of the accused party, the complainant was brought to Panchayat by Sabir Hussain son of Ghulam Qadir, paternal uncle of the complainant, in accordance with the custom of Baloch tribe to seek pardon, so that the parties are brought at par and enter into a compromise. Abdul Khalid son of Imam Bakhsh, Caste Mastoi caught hold of the complainant from her arm, which she got released by force. Then Faiz Bakhsh, Caste Mastoi said that Ghulam Farid be pardoned, but Abdul Khaliq, armed with 30 bore Pistol, Allah Ditta son of Imam Bakhsh, Fayyaz Hussain son of Karim Bakhsh and Ghulam Farid son of Mahmood, all Mastoi by caste forcibly took the complainant inside the Kotha and committed Zina bil Jabbar one by one. During the course of which she kept on raising hue and cries. Thereafter, she came out nude from the Kotha and called her father Ghulam Farid. The occurrence was stated to have been witnessed by Ghulam Nabi son of Babar Khan and Altaf Hussain son of Bahadar Ali, both are Jatoi by caste and residents of Meerwala besides her father. All the accused were previously known to the complainant.

2. Initially the case was investigated by Nazir Ahmad Inspector/SHO (PW-16), who got recorded formal FIR (P1/1) and thereafter sent the complainant with Muhammad Yar Constable to the Hospital for medical examination. He also inspected the spot and prepared site

plan (Exh.PV). Muhammad Yar Constable produced three sealed phials, one sealed envelope and one unsealed envelope, which were taken into possession vide recovery Memo.(Exh.PW). He also collected the cloths of Mst. Mukhtar Mai, which were taken into possession vide recovery Memo. (Exh.PU). He also recorded the statements of the witnesses under Section 161 Cr.P.C. He arrested the accused Qasim etc. on 02.07.2002 and also got recorded their statements. Thereafter, the investigation was entrusted to Muhammad Saeed Awan, D.S.P., Jatoi (PW-15) by the order of D.I.G., Dera Ghazi Khan Range. He recorded the statements of Abdul Khaliq and Muhammad Faiz accused after their arrest. He also arrested Muhammad Fayyaz, Ghulam Farid and Muhammad Iqbal on 08.07.2002. Potency Test of the accused Abdul Khaliq, Muhammad Fayyaz and Ghulam Farid was got conducted on 09.07.2002. Thereafter, the investigation was entrusted to Shaukat Murtaza, D.S.P. City Muzzafar Garh (PW-8). He got conducted the Potency Test of Allah Ditta accused. He also recorded the statement of Malik Sultan Hanjra, Zila Nazim, Muhammad Amjad and Abdul Wahid, Councilors and Maulvi Faiz Muhammad. He further took into possession the press clipping produced by Rafique Constable vide Memo. (Exh.PH). He then sent the file to the SHO Police Station Jatoi for completion and submission of Challan to the Court of competent jurisdiction.

3. That the challan was, thereafter, submitted before the Anti-Terrorism Court, Dera Ghazi Khan, wherein Abdul Khaliq, Allah Ditta son of Imam Bakhsh, Muhammad Fayyaz, Ghulam Farid, Ramzan Pachar

and Faiz Muhammad were placed in Column No.3, whereas, Muhammad Aslam, Allah Ditta son of Jan Muhammad, Khalil Ahmad, Ghulam Hussain, Hazoor Bakhsh, Rasool Bakhsh, Qasim and Nazar Hussain were placed in Column No.2 of the challan.

The challan was submitted under Section 10, 19 Offence of Zina (Enforcement of Haddood) Ordinance (VII of 1979), Section 119, 217, 324, 354-A, 109 PPC and Section 7 of Anti-Terrorism Act, 1997. The learned Trial Court accordingly charged all the 14 accused on 5 heads to which the accused pleaded not guilty and claimed to be tried.

4. That the prosecution examined as many as 17 witnesses in order to prove their case, whereafter, the accused were examined under Section 342 Cr.P.C. Accused also produced Defence evidence in the shape of DW1 to DW-6.
5. That the learned Trial Court after taking into consideration the evidence and material brought on the record convicted and sentenced the accused as under;

U/s 7(c) read with Section 21(i), A.T.A, 1997 and 149/109 PPC	Abdul Khaliq, Allah Ditta, Muhammad Fiaz, Ghulam Farid, Ramzan Pachar and Faiz Muhammad alias Faiza were sentenced to imprisonment for life and a fine of Rs.20,000/- each, in default thereof to further undergo six months R.I.
U/s 11 of the Offence of Zina (Enforcement of Hudood) Ordinance, 1979 read with Section 149 PPC	Abdul Khaliq, Allah Ditta, Ghulam Farid and Muhammad Fiaz were sentenced to imprisonment for life plus 30 stripes each and a fine of Rs.20,000/- each in default thereof to undergo six months R.I. each.

U/s 10(4) of the Offence of Zina (Enforcement of Hudood) Ordinance 1979, read with Section 149 PPC	Abdul Khaliq, Allah Ditta, Ghulam Farid and Muhammad Fiaz were sentenced to death.
U/s 11 of the Offence of Zina (Enforcement of Hudood) Ordinance, 1979 read with section 21(i) and Sections 109/149 PPC	Ramzan Pachar and Faiz Muhammad alias Faiza were sentenced to imprisonment for life plus 30 stripes, each and a fine of Rs.20,000/- each. In default thereof to undergo six months R.I.
U/s 10(4) of the Offence of Zina (Enforcement of Hudood) Ordinance, 1979 read with Section 21(i) of the ATA, 1997, and sections 109/149 PPC.	Muhammad Ramzan Pachar and Faiz Muhammad alias Faiza were sentenced to death.

6. That the above said convicted accused preferred appeal against their sentence and conviction, whereas, the State as well as the complainant preferred appeals against the acquittal of the co-accused and also filed appeals against the acquittal of the aforesaid accused from the charge u/s 354-A PPC.
7. That all the appeals were heard by the learned Division Bench of the Honourable Lahore High Court, Multan Bench Multan. Vide consolidated Judgment dated 03.03.2005, the Honourable Division Bench accepted the appeals of Allah Ditta, Muhammad Faiz, Ghulam Farid, Ramzan Pachar and Faiz Muhammad alias Faiza and the judgment of the learned Trial Court to the extent of conviction and sentence of the said 5 accused was set aside, whereas, the appeal of accused Abdul Khaliq was partially allowed and he was acquitted of the charge under Section 11 of the Offence of Zina(Enforcement of Hadood) Ordinance (VII of 1979) and Section

7-C read with Section 21(1) of the Anti-Terrorism Act, 1997 and Section 199 and 109 of PPC. The Appeals filed by the State and the complainant were dismissed.

GROUND S:

- a. That in view of the explicit provisions of Article 203-G of the Constitution, the learned High Court was not justified in law in assuming and exercising appellate jurisdiction in a matter which exclusively pertained to the appellate jurisdiction of the Federal Shariat Court. It is by now a well settled proposition of law that in matter relating to Federal Shariat Court, no Court including High Court and Supreme Court has jurisdiction. The impugned judgment of the learned High Court is thus illegal, without jurisdiction, void ab initio and Corum Non JUDGE, hence, liable to be set aside on this ground alone.
- b. That the provisions of Section 25 of Anti Terrorism Act, 1997 regarding maintainability of an appeal against the final judgment passed by the learned Anti Terrorism Court before a Division Bench of the learned High Court have an overriding effect over the provisions and effect of second proviso of Section 20 of the Offence of Zina (Enforcement of Hudood) Ordinance (VII of 1979), and therefore, militates against the express provisions of Article 203-G of the Constitution, apart from being in direct conflict with provisions of Offence of Zina (Enforcement of Haddood) Ordinance (VII of 1979) as well as in

direct contravention of the said Ordinance, and which could not have been intended by the legislature.

- c. That the provisions of the Anti Terrorism Act regarding appellate forum against the orders/judgments etc. of the Anti-Terrorism Court are per se defective, lacunic and contradictory inasmuch as the same either ignore or directly clash with the relevant provisions of the Constitution as well those of Offence of Zina (Enforcement of Haddood) Ordinance (VII of 1979) as aforementioned and as the said Act does not even take care of the mandatory condition prescribed under Section 21 of Offence of Zina (Enforcement of Haddood) Ordinance (VII of 1979), which requires that the Presiding Officer of the Trial Court as well as those of the appellate courts shall be Muslims. It also violates the law enunciated by this Hon'ble Court in the landmark case titled State Vs Zia ur Rehman PLD 1973 SC 49, which enjoins upon the law maker to unambiguously earmark the functions and areas of jurisdiction of all the fundamental constitutional organs and sub organs of the State particularly the judiciary so as to avoid, beside other contradictions and ambiguities the clash of jurisdiction of courts of different hierarchy.
- d. That the Suo Moto jurisdiction exercised by the Hon'ble Federal Shariat Court during the interregnum between the announcement of the judgment impugned herein and the institution of instant petitioner, of which notice has been issued to the Advocate General Punjab as well, is not a lawful and

proper exercise of the jurisdiction as envisaged by the provisions of Article 203-DD of the Constitution in as much as although according to the stance of the petitioner a regular appeal against the order of the learned Presiding Officer of the Anti Terrorism Court was no doubt maintainable before the Federal Shariat Court, however, since the jurisdiction had been assumed and exercised by a Division Bench of the High Court, therefore, as per the law enunciated by this Hon'ble Court in State Vs Iqbal Bibi (1993 SCMR 935), the exercise of revisional or Suo Moto jurisdiction by the learned Federal Shariat Court against the judgment/order of the High Court is patently unwarranted and without jurisdiction inasmuch as the High Court being a constitutional court established under Article 192 of the Constitution, the same would not fall in the category of "Criminal Court" as mentioned in Article 203-DD.

- e. That the instant case involving multiple questions of public importance and requiring interpretation of various provisions of the Constitution as well as Offence of Zina (Enforcement of Haddood) Ordinance (VII of 1979) and Anti Terrorism Act, 1997 particularly qua clash of provisions concerning the appellate jurisdiction of High Courts and the Federal Shariat Court, would require an authoritative pronouncement by this Hon'ble Court so as to make such provisions unambiguous, uncontradictory, clear and transparent.
- f. That the learned Division Bench of High Court while reversing the judgment/order of the learned trial court by extending

undue importance to the minor contradictions and discrepancies in the prosecution's evidence after having evaluated the same on the scale of hair splitting probe, has not acted within the parameters prescribed by law and the repeated enunciations of this Hon'ble Court for safer administration and dispensation of justice in criminal cases. Ostensibly, such an exercise by the learned High Court has rendered the impugned judgment illegal and a nullity in the eye of law.

- g. That the Honourable Division Bench of the Lahore High Court by disbelieving the oral evidence of the PW-12 Altaf Hussain and PW-13 Sabir Hussain who have given the ocular evidence about the occurrence on the ground that they are close relatives of the victim and that there are some minor discrepancies in their statements has committed error of law. Thus, the impugned Judgment is illegal and liable to be set aside.
- h. That the Honourable Division Bench of the Lahore High Court erred in law while disbelieving the confidence inspiring and truthful evidence of PW-10 Abdul Shakoor and PW-11 Abdul Razzaq although they have fully supported the background and motive of the occurrence.
- j. That in the facts and circumstances of the case the bare statement of Mukhtar Mai, who was gang raped in a closed room at night corroborated by the Medical evidence and the positive report of the chemical examination of semen swabs

was sufficient to prove the case of the prosecution and that their Lordships of the Lahore High Court have erred in law while disbelieving such most important and unshaken evidence of the victim corroborated by the Serologist's report and circumstantial evidence as stated above.

- k. That the evidence of the ocular statements of Altaf Hussain and Sabir Hussain to the effect of dragging the victim to the place of occurrence and also the evidence about rescuing of the victim from the room of occurrence in a naked and precarious condition was sufficient to establish the charge. The impugned Judgment, thus, has been rendered in violation of the Principles laid by the Honourable Supreme Court of Pakistan for the appreciation of evidence.
- l. That the impugned Judgment of the Honourable High Court is based on conjecture and hypothetical propositions that Mst. Mukhtar Mai/complainant and Mst. Salma alias Naseem of the accused family were given in marriage of which there is no proof on the record.
- m. That the Honourable Lahore High Court has erred in law while taking into consideration the statements recorded during various inquiries conducted by different agencies, which were completely extraneous to the Code of Criminal Procedure and that the statements recorded in those inquiries could not be equated with and given a legal status of the statements under Section 161 Cr.P.C. for the purposes of confrontation of the same during cross-examination of the witnesses.

- n. That the discrepancies in the statements of the witnesses created due to extraneous statements in unlawful inquiries could not be given a due weight by the learned Judges of the Lahore High Court. By taking into consideration such statements the High Court not only acted in excess of jurisdiction, but also caused grave injustice to the Prosecution.
- o. That the Honourable Lahore High Court erred in law while giving too much importance to the delay in lodging of the FIR. It has now been judicially recognized that the delay in Hadood cases is not fatal as in such like cases the people in our society and culture hesitate and are always reluctant to bring such cases in courts and police stations, as it involves family honour and respect. Secondly the terror and awe created by the accused, which stood proved on record was sufficient to prove the inability of the complainant party to have an access to the police station, which aspect of the matter has also not been considered by the learned Division Bench.
- p. That the proposition propounded by the Division Bench that it was a case of Nikah for Nikah i.e. Nikah of Mukhtar Mai with Abdul Khaliq and in exchange Nikah of Abdul Shakoor with Salma alias Naseem is not reasonable and acceptable. If this proposition is accepted then there was no hurry to hand over Mukhtar Mai to Abdul Khaliq whereas the other couple was even not present there and the only conclusion which can be drawn is that Mukhtar Mai was forcibly handed over to Abdul Khaliq with the help of co-accused for committing Zina bil

Jabber. All the members of the Panchayat were definitely the accused of abetment of this Zina bil Jabbar. The conclusions drawn by the Honourable Judges of the Lahore High Court are misconceived and not correct.


- q. That the Honourable Judges of the Lahore High Court have not appreciated the medical evidence of Mukhtar Mai in its true perspective. The Honourable Lahore High Court illegally disbelieved the medical evidence whereas the evidence of doctor coupled with the report of the chemical examiner lends full corroboration to the ocular account furnished by the prosecutrix. The learned Judges, thus, erred in law while overriding the technical results of the expert evidence.
- r. That the conclusions based on some conjectures and supposition could not be believed to over throw the legal, ocular and circumstantial evidence, in as much as to declare Allah Ditta innocent simply on the ground that he is real brother of Abdul Khaliq and they can not together commit Zina Bil Jabber. This proposition can only be taken into consideration in normal circumstances and here was an abnormal situation to get the revenge from the complainant family and therefore the conclusions based on supposition have no legal force.
- s. That this is a case of first impression to draw clear lines of jurisdiction between the Courts conducting the trials under the Hadood laws and the Special Courts constituted under the Anti-Terrorism Act, 1997. On the one hand, the Hon'ble High


Court and Federal Shariat Court on the other hand and hence requires an authoritative pronouncement by this August Court to interpret all these legal propositions.

PRAYER:

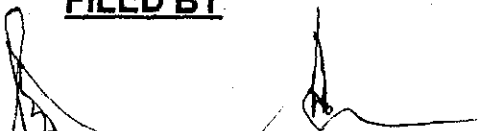
Under the circumstances, it is respectfully prayed that Special Leave to Appeal against the impugned judgment dated 03.03.2005 passed by the learned Division Bench of the Honourable Lahore High Court, Multan Bench Multan may graciously be granted and the Respondents may graciously be convicted and sentenced in accordance with law.

DRAWN BY:

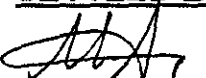

(Ch. Aamir Rehman)
 Additional Advocate General
 Punjab, Lahore.


(Fawzi Zaffar)
 Assistant Advocate General,
 Punjab, Lahore.

FILED BY


(Rao Muhammad Yusuf Khan)
 Govt. Advocate-on-Record
 O/O the Advocate General Punjab,
 Lahore.

SETTLED BY


(M. AFTAB IQBAL CH.)
 Advocate General Punjab,
 Lahore.

Dated:18.03.2005.

CERTIFICATE:

Certified as per instructions that this is the first Cr.P.S.L.A. on the subject in this august Court.


GOVT. ADVOCATE-ON-RECORD

IN THE SUPREME COURT OF PAKISTAN

(Appellate Jurisdiction)

PRESENT:

MR. JUSTICE NASIR-UL-MULK

MR. JUSTICE ZIA PERWEZ

CRIMINAL APPEALS NOS. 163 TO 171 OF 2005

AND SUO MOTU CASE NO. 5 OF 2005

Mst. Mukhtar Mai

...Appellant

VERSUS

Abdul Khaliq and others

...Respondents

For the appellant:

Nemo

For the State:

Ch. Munir Sadiq, DPG

For the respondents:

Mr. M. Saleem Malik, ASC

Date of hearing:

28.1.2009

ORDER

An application by Barrister Ch. Ehtizaz Ehsan, learned Sr. ASC for the appellant for adjournment has been moved on the ground of his other engagements. However, the learned counsel for the respondents states that notwithstanding the acquittal of the respondents more than three years ago they are still in detention on account of the pendency of the present appeals. He, therefore, requests for a firm date and for declining further adjournments.

2. The cases shall be fixed in the 2nd week of February, 2009 with a direction that in case the learned counsel for the appellant for any reason is unable to appear in these cases, the appellant shall make alternate arrangements and there shall be no other adjournment.

Islamabad:

28.1.2009

M. Sahar Mahmood



IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT

MR. JUSTICE MIAN SHAKIRULLAH JAN
MR. JUSTICE M. JAVED BUTTAR
MR. JUSTICE NASIR-UL-MULK

CRIMINAL APPEAL NOS. 163 TO 171 OF 2005
AND SMC NO.5 OF 2005

Mst. Mukhtar Mai and others

Appellants

Versus

Abdul Khaliq and others

Respondents

For the Appellants:

Ch.Munir Sadiq, DPG

For the Respondents:
(in all cases)

Malik M. Saleem, ASC

Date Hearing:

11.02.2009

ORDER

An application for adjournment has been moved on behalf of learned counsel for the appellant, the case is adjourned to a date in office.

Islamabad
February 11, 2009
Shirazi/*

IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT

MR.JUSTICE NASIR-UL-MULK

MR.JUSTICE ZIA PERWEZ

MR.JUSTICE SYED ZAWWAR HUSSAIN JAFFERY

Cr.A.NOS. 163 TO 171/2005 AND SMC NO. 5 OF 2005

Mst.Mukhtar Mai

Appellant(s)

Versus

Abdul Khaliq and others

Respondent(s)

For the State in all cases

Ch.Munir Sadiq, D.P.G.

For Appellant
(in Cr.A.Nos.167-171/05)

Malik Mehr Khan Malik, AOR

For Respondent
(in Cr.A.Nos.163,167-170/2005)

Mr. Faiz-ur-Rhman, AOR

For appellant
(in Cr.A.171/2005)

Mr.Fiaz-ur-Rehman, AOR

For Mukhtar Mai:

Nemo

Date of hearing:

4-3-2009

ORDER

In view of the application for adjournment made on behalf of Ch.Aitzaz Ahsan, Sr.ASC for the appellant and Malik Muhammad Saleem appearing on behalf of respondent the cases are adjourned. However, since it is an old matter and in case adjournment is sought for the next date of hearing the application for bail submitted on behalf of accused-respondent shall be entertained.

Islamabad

The 4th March, 2009

Ch. Munir Sadiq

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

Mr. Justice Sardar Muhammad Raza Khan
Mr. Justice Khalil-ur-Rehman Ramday
Mr. Justice Faqir Muhammad Khokhar

**Criminal Appeals No.163 to 171/05 along with Suo Motu Case
No.5/05**

The State ... Appellant in Cr.As-163 to166/05

Mst. Mukhtar Mai ... Appellant in Cr.As-167 to170/05
& in Suo Motu Case No.5/05

Abdul Khaliq ... Appellant in Cr.A.171/05

Versus

Abdul Khaliq & others ... Respondents in Cr.As.163, 167 &
170/05

Faiz Muhammad & others ... Respondents in Cr.As.164 &168/05

Muhammad Aslam & others ... Respondents in Cr.As.165 & 169/05

For the appellant: Mr. Mudassar Khalid Abbasi, A.A.G. Punjab.
(In Cr.A.163-166/05) Ch. Munir Sadiq, DPG, Punjab.

For the appellant: Ch. Aitzaz Ahsan, Sr. ASC
(In Cr.A.167-170/05)

For the respondents: Mr. Muhammad Aslam Malik, ASC
Mr. Faiz-ur-Rehman, AOR

Date of hearing: 2.4.2009

ORDER

Due to rush of work, the supplementary cause list could not
be reached. Adjourned for 27th April, 2009.

Islamabad,
2.4.2009
M.Azhar Malik

IN THE SUPREME COURT OF PAKISTAN
(APPELLATE/ORIGINAL JURISDICTION)

PRESENT:

MR. JUSTICE NASIR-UL-MULK
MR. JUSTICE JAWWAD S. KHAWAJA
MR. JUSTICE RAHMAT HUSSAIN JAFFERI

CRIMINAL APPEALS NO.163 TO 171 OF 2005 & SMC NO.5/05

The State ... Appellant in CrI.As.163 to 166 of 2005
Mst. Mukhtar Mai ... Appellant in CrI.As.167 to 170 of 2005
Abdul Khaliq ... Appellant in CrI.A. 171 of 2005
Mst. Mukhtar Mai ... Applicant in Suo Motu Case No.5/05

VERSUS

Abdul Khaliq & others ... Respondents in CrI.As-163,166,167 & 170 of 2005
Faiz Muhammad & another ... Respondents in CrI.As-164 & 168 of 2005
Muhammad Aslam & others ... Respondents in CrI.As-165 & 169 of 2005
The State ... Respondent in CrI.A. 171 of 2005

For the appellants:

In CrI.A.163-166/05 & for
Rspdts. In CrI.As.167-171/05
and for the State: Syed Ali Imran, DPG

For the appellants:

In CrI.As.167-170/05 &
for applicant in
Suo Motu Case No.5/05: Ch. Aitzaz Ahsan, Sr. ASC

For the appellant:

In CrI.A.171/05: Mr. Saleem Malik, ASC

Date of hearing: 27.4.2010

ORDER

Since this case is not likely to be concluded today, the same shall be re-listed for hearing on 10.5.2010 at serial No.1, but not before a Bench which is to reassemble after a larger Bench.

IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT:

MR. JUSTICE TASSADUQ HUSSAIN JILLANI
MR. JUSTICE NASIR-UL-MULK
MR. JUSTICE GHULAM RABBANI

CRIMINAL APPEAL NOS. 163 TO 171 OF 2005
AND SUO MOTO CASE NO. 5 OF 2005

The State and others

... Appellants

VERSUS

Abdul Khaliq and others

... Respondents

For the Appellants: Ch. Aitezaz Ahsan, Sr. ASC
(In Cr.A 163, 167, 168, 169 & 170/05)

For the Respondents: Malik M. Sabir, ASC

Date of Hearing: 13.5.2009

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ORDER

The Court time is over. Both the learned counsel request that it be adjourned to an actual date. Adjourned to 1.6.2009 as agreed.

Islamabad
13.5.2009
Khurram, P.A.

M/165

IN THE SUPREME COURT OF PAKISTAN

(Appellate Jurisdiction)

Present:

Mr. Justice Mian Shakirullah Jan

Mr. Justice Anwar Zaheer Jamali

Mr. Justice Rahmat Hussain Jafferri

Criminal Appeals No.163 to 171 of 2005 & SMC No.5 of 2005

The State, etc

Appellants

VERSUS

Abdul Khaliq, etc

Respondents

For the Appellants:

Mian Asif Mumtaz, DPG, Pb.

(in Cr.A.Nos.163 to 166/05)

Mr. Gohar Ali Khan, Advocate

Mr. Mehr Khan Malik, AOR

(in Cr.A.Nos.167 to 171/05)

For the Respondents:

Mr. Gohar Ali Khan, Advocate

(in Cr.A.Nos.163 to 166/05)

Date of Hearing:

02.03.2010.

ORDER

Learned Deputy Prosecutor General, Punjab states that since this is a lengthy matter, therefore, he needs some time to further prepare his brief. Adjourned to **16.03.2010**. To be listed at Sr.No.1 of the cause list.

ISLAMABAD, THE

2nd March, 2010.

M.Zubair*

