

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
(JUDICIAL DEPARTMENT)

Criminal Appeal No. 333 of 2019

Muhammad Sajjad
Vs.
The State and another

Appellant by:	Mrs. Shehnaz Zafar, Advocate.
Respondent No.1 by:	Mr. Mansoor Malik Advocate,
State By:	Ch. Abdul Jabbar, Assistant Attorney General along with Humaira Aslam, Sub- Inspector/IO/ FIA.
Date of Hearing:	02.03.2020.

GHULAM AZAM QAMBRANI, J.:- Through the instant

appeal, the appellant/ convict (Muhammad Sajjad) has assailed the judgment dated 11.10.2019, passed by the learned Sessions Judge, Islamabad, in case F.I.R No.09 dated 03.12.2018, under Sections 20/ 21 & 24 Prevention of Electronic Crimes Act, 2016, read with Section 509 of Pakistan Penal Code, 1860 (hereinafter be referred as the “PPC”), registered at Police Station F.I.A/Cyber Crime Circle, Islamabad, whereby the appellant was convicted under Section 20 of PECA, 2016 and sentenced to 03 years RI & fine Rs.200,000/- in default whereof to further undergo S.I. for six months and under Section 21 of PECA, 2016 for 05 years RI & fine Rs.300,000/- in default whereof to further undergo S.I. for six months. All the sentences were to run concurrently and benefit of Section 382(B), Cr.P.C. was also extended to the appellant/ convict.

2. Briefly stated the allegation against the appellant/ convict is that he with malafide intentions and ulterior motives, illegally and unauthorizedly created a Facebook Profile having URL <https://www.facebook.com/hafiz.sajjad.752>, in the name of Muhammad Sajjad and uploaded, generated, posted personal and sexually explicit pictures of the complainant/ respondent No.2, that damaged her reputation as well as destroyed her honour and modesty among her family, community and further sent those naked pictures and chat to her husband namely Azhar Mehmood on his Facebook Account, consequently, her marriage was broken.

3. After registration of the F.I.R and usual investigation, challan under Section 173 Cr.P.C was submitted before the learned trial Court. After fulfilling codal formalities by the learned trial Court, charge was framed against the accused to which he pleaded not guilty and claimed trial.

4. In order to prove its case, the prosecution examined the following witnesses:-

- i. PW-1, Sumaira Bibi, Complainant,
- ii. PW-2 Muhammad Abbas, grandfather of complainant,
- iii. PW-3 Azhar Mehmood, Ex-husband of complainant,
- iv. PW-4 Haider Ali, Constable FIA,
- v. PW-5 Masud Ali, Deputy Director Forensic, FIA
- vi. PW-6 Humaira Aslam, SI/Investigation Officer, FIA.

After closure of the prosecution evidence, the statement of appellant under Section 342 Cr.P.C was recorded wherein he has denied veracity of prosecution version and did not produce any defence evidence. The learned Trial Court after hearing the arguments of the learned counsel for the parties announced the judgment dated

17.03.2015 (hereinafter be called as "***impugned judgment***") by awarding above mentioned sentence to the appellant hence, the instant appeal.

5. Learned counsel for the appellant contended that the impugned judgment is against the law and facts of the case; that the prosecution failed to prove the case against the appellant; that there are material contradictions in the statements of the prosecution witnesses but the same have not been considered by the learned Trial Court while passing the impugned judgment; further contended that the learned trial Court has not appreciated the evidence properly and erred in convicting the appellant /convict. Also contended that there is a delay of about two months in lodging of the F.I.R. Lastly, contended that impugned judgment be set-aside and the appellant be acquitted of the charge.

6. On the other hand, learned Assistant Attorney General supported the judgment of the learned trial Court contending that the appellant is specifically nominated in the F.I.R; that the forensic report confirmed the display of nude picture and messages sent by the appellant /convict; that the appellant has committed a heinous offence and that PW-3 Azhar Mehmood, Ex-husband of the victim/ respondent No.1 confirmed and endorsed the charges leveled against the appellant with regard to sending of nude picture of the complainant by the accused/appellant to his cell phone number.

7. Heard arguments of the learned counsel for the parties and perused the available record.

8. Minute perusal of the record reveals that the complainant submitted an application to the Deputy Director Cyber Cell, Islamabad, on 18.10.2018 but the instant F.I.R was lodged on 03.12.2018 after a delay of about one and a half month. PW-1 Sumaira Bibi stated in her examination in chief that:-

"My engagement was solemnized with Hafiz M. Sajjad prior to two year ago. Due to close relative he used to contact me through mobile phone No.0315-5744314 on my mobile No.0344-5712935"

whereas in her cross-examination she stated that:-

"It is incorrect to suggest that accused M. Sajjad is my close relative and I am concealing this fact from the Court."

She further admitted that :-

"I have not attached any message of the accused with my complaint Ex.PA in which he threatened me and called me in his house."

She further stated that :-

"At the time of committing of Zina I shouted. I neither told to my parents about zina nor did I get medical for this purpose."

She further stated that :-

"It is correct that we have a property dispute over our joint property. It is incorrect to suggest that accused is a convicted person".

She further stated that :-

"It is correct that I have not attached any data of my own mobile having No.0344-5712935 with my complaint Ex.PA".

She further admitted that :-

"It is correct that it is mentioned in the divorce deed that Azhar divorced me on my demand and my parents demand."

She further admitted that

"I have given the alleged pictures to the FIA. It is correct that in those pictures I was wearing full clothes."

She further admitted that :-

"Accused sent the pictures on facebook of my five maternal uncle and other relatives. It is correct that I have not given their mobiles at the time of investigation to the FIA."

9. PW-2, Muhammad Abbas (grandfather of the complainant), during his cross-examination stated that :-

"I have stated in examination-in-chief that accused uploaded the photo of my granddaughter which fact was not mentioned in the statement under section 161 Cr.P.C."

He further admitted that :-

"The accused uploaded the pictures to Azhar Chohan on 28.08.2018. Some nude pictures were thrown in my house and some of were thrown in the houses of Malik Hussain and Tariq Mehmood. It is correct that they are not witnesses in the instant case."

He further stated that :-

"I have not seen him at the time of throwing pictures again stated that I have seen him. It was evening when he thrown the pictures. The distance between the house of accused M. Sajjad and my house is about one kilometer."

He further stated that :-

"It is correct that F.I.R No. 283/18 in police station Jatoli is also lodged against him. It is correct that so many other criminal cases are also registered against him."

10. Azhar Mehmood PW-.3 during his cross-examination stated that :-

"It was in my knowledge that Hafiz Sajjad was arranged an engagement with complainant seven years ago, but later on the engagement was broken."

He further admitted that :-

"Hafiz Sajjad sent me the pictures of complainant on 27th August, 2018. The accused send me 10 pictures of complainant Sumaira Bibi. It is correct that in 10 pictures, the complainant was dressed."

11. PW-4, Haider Ali, F.C, FIA Cyber Crime Circle, Islamabad,

while appearing as PW-4 in his examination-in-chief stated that :-

"Mr.Azhar Mehmood s/o Arshad Mehmood Gujar Khan District Rawalpindi joined the office and presented the cell phone Samsung Grand Prime dated 24.10.2018. I took into possession the said mobile through seizure memo Ex.PW.4/1 which is signed by me Ex.PW.4/2."

Whereas during cross-examination he stated that :-

"Azhar handed over mobile to the I.O in front of me on 24.10.2018. Mobile phone was not in my custody."

12. PW-5, Masud Ali, Deputy Director Forensic, F.I.A, Islamabad,

in his examination-in-chief stated that:-

"The data extracted from mobile phone bearing IMEI No. 354466073884137 Samsung SM-G531F. During the analysis the keywords Hafiz Sajjad Sumaira and facebook profile ID 10006550217172 could not be retrieved or found."

During his cross-examination he stated that :-

"I do not remember the date when the cell phone was handed over to me. The cell phone was in position of seal. I recorded my statement before the I.O regarding Forensic Report. I handed over the Forensic containing 08 pages alongwith DVD. It is correct that 04 pictures are attached with my report. In all pictures the girl has wearing clothes. Beside these picture in all other pictures girl was wearing clothes. There was no nude pictures."

13. Humaira Aslam S.I (I.O) FIA Cyber Crime Circle

Rawalpindi/Islamabad, in her cross-examination stated that:-

"I am aware of the fact that at the time of submission of challan under section 173 Cr.P.C all the relevant material are attached with it. It is correct that I have not mentioned the record of DVD with the challan."

She further admitted that

"I sent to her to Doctor for medical examination, but I have not attached the medical report of the complainant with the record."

She further admitted that

"It is correct that I have put on record all those nude pictures which were thrown by the accused in different houses of the relatives of the complainant. It is correct that I have not placed the said pictures at the time of challan."

She further admitted that

"I have not recorded any witness in whose presence the accused has thrown the nude pictures in the houses."

She further admitted that

"It is correct that at the time of submission of challan the 18 pictures which are Ex.PW-06/1-18 were not attached."

She further admitted that

"I do not have collected the mobile data of complainant."

She further admitted that

"It is correct that the mobile data produced by Azhar was of May, 2018. Self stated that the complaint was registered in the month of September."

She further admitted that

"It is correct that I have not attached any record of verification of ID of Sajjad accused."

14. The appellant /convict, Muhammad Sajjad, while recording statement under section 342 Cr.P.C, replied the question No.3, as under:-

"It is incorrect. I have not called the complainant in my House. She was engaged with me for last seven years and without permission of her parents she contracted Nikah with me by Qari Saeed, who due to the fear of her parents did not disclose and gave me Nikah Nama. The complainant herself come to my house and ask me to declare Nikah to her parents, which I refused. There is no evidence of uploading a picture blackmailing and threatening. That the complainant's parents contracted Nikah with other person Azhar Mehmood but the complainant herself was not willing to marry with Azhar Mehmood, therefore, before Rukhsati she executed an affidavit and demanded divorce from the Azhar Mehmood. Talak Nama of the complainant marked in her evidence as Mark-A."

In reply to Q.No.5, he replied that:-

"I have not sent text messages to Azhar Mehmood on 07.05.2018. Neither I sent nude pictures of the complainant Sumaira which is also proved by evidence of Forensic Expert PW-05."

In reply to Q. No.6, he stated that:-

"It is incorrect. DVD is not exhibited by the Forensic Expert. Neither any mobile phone is produced before the Court. The DVD produced by the I.O. PW-06 must be tempered because Masud Ali, Deputy Director stated in his evidence that no nude pictures were extracted from the mobile phone."

In reply to question No. 07, he replied that:-

"It is incorrect. I.O has not taken my mobile in her possession. Neither sent for forensic analysis. I.O produced fake pictures neither any witness stated about 136 pictures. I.O only involved me in criminal case collected pictures from complainant and exhibited in the Court to strengthen the case but inspite of that prosecution badly failed to prove its case."

Q.No.9. *"Why this case was registered against you and why PWs deposed against you. What do you say about it?"*

Ans. *Complainant was engaged with me from last seven years. Due to family and property disputes parents of the*

complainant refused to contract our marriage during this period. The complainant contracted Nikah with me but Qari Saeed did not given Nikah Nama, therefore, during investigation my parents filed an application and asked to the I.O to summon Qari Saeed and investigate the matter but I.O did not accept my request, therefore, when complainant herself refused Rukhsati with Azhar Mehmood PW-3 and demanded divorced, the parents of the complainant to take revenge from me instigated the complainant to file false and frivolous application against me and involved me in a false case."

15. Record further shows that the complainant is permanent resident of Ranjaani Tehsil Gujar Khan, District Rawalpindi, but with malafide intention, she lodged the complaint at the Deputy Director Cyber Cell, Islamabad, stating therein that she is resident of Golra-More, Islamabad. Further, the grandfather of the complainant is involved in criminal cases which fact has been admitted by him during his cross-examination that:-

"It is correct that F.I.R No. 283/18 in police station Jatoli is also lodged against me. It is correct that so many other criminal cases are also registered against me.

The prosecution failed to produce the independent witnesses to prove the charge against the appellant before whose houses the appellant allegedly thrown nude pictures of the complainant. Further Deputy Director Forensic FIA deposed in his statement that the data was extracted from mobile phone bearing IMEI No.354466073884137 Samsung SM-G531F, but during the analysis, the keywords Hafiz Sajjad Sumaira and facebook profile ID

10006550217172 could not be retrieved or found. In his cross-examination, PW.5 stated that:-

"I do not remember the date when the cell phone was handed over to me. The cell phone was in position of seal. I recorded my statement before the I.O regarding Forensic Report. I handed over the Forensic Report Humaira Aslam, S.I (I.O). I handed over over my Forensic Report containing 08 pages alongwith DVD. It is correct that we mention all material which we extract from mobile phone. It is correct that 04 pictures are attached with my report. In all pictures the girl has wearing clothes. Besides these picture in all other pictures girl was wearing clothes. There were no nude pictures".

16. All these facts and circumstances makes the case of the prosecution highly doubtful. The complainant engaged with the accused for last seven years and without the permission of her parents, she contracted nikkah with the accused by Qari Saeed, and due to fear of her parents, she could not disclose and gave copy of Nikahnama to the accused. The parents of the complainant forced her to enter into Nikha with Azhar Mehmood against her wishes that is why the complainant was not willing to marry with Azhar Mehmood, and got divorce from Azhar Mehmood, vide "Mark-A". Further, no photograph were got exhibited during the course of evidence by any of the prosecution witnesses. When the F.I.R No.09/2018 was lodged against the appellant /convict, father of the appellant moved an application (Mark-A/1) to the Deputy Superintendent of Police Wah Cantt stating therein that Qari Saeed who has conducted the Nikah of his son Muhammad Sajjad with Mst.Sumaira Bibi in the presence of Hafiz Sarwar according to law and sharia and after one year of the said Nikah, when the parents of

said Sumaria Bibi refused to give "rishta" due to a family dispute, the accused /appellant informed about the said Nikah, thereafter the said application was moved with the prayer that legal action against Nikah Registrar (Qari Saeed) may be taken up. The I.O did not record the statement of said witness namely Qari Saeed. There is inordinate delay in lodging of the F.I.R. No independent witnesses were produced by the prosecution who could confirm the sending of picture by the accused to any of the prosecution witnesses.

17. All these facts and circumstances leads to the conclusion that the prosecution has failed to drive home the charge and to prove guilt of the appellant beyond shadow of doubt by producing convincing and confidence inspiring evidence.

18. In view of the above, this appeal is accepted, the impugned judgment recording conviction and awarding sentence to the appellant is set-aside. The appellant is acquitted of the charge. He be released forthwith, if not required in any other case.

~~(GHULAM AZAM QAMBRANI)~~
JUDGE

Announced In Open Court, On 14 day of March, 2020.

~~(JUDGE)~~

"Rana.M.Ift."