

IN THE COURT OF AJMAL SHAH, ADDL. SESSIONS JUDGE-I,

HANGU.

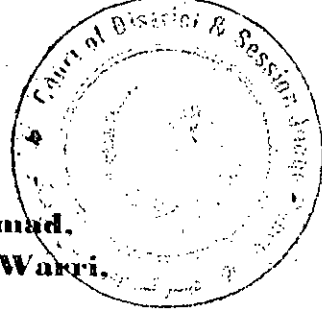
The State

VERSUS

**Imran Khan s/o Jan Muhammad,
r/o Babu Tang, presently Shna Warri,
District Hangu.**

Charged u/s 377 PPC in case FIR No.562

Dated 06.06.2017, P.S. City.



Appellan

SC No.....121 of 2017.
Date of Submission of Challan19.09.2017.
Date of Decision07.06.2018.

JUDGMENT

Accused Imran Khan faced trial before this Court on charges of having committed sodomy with one minor Muhammad Saqlain.

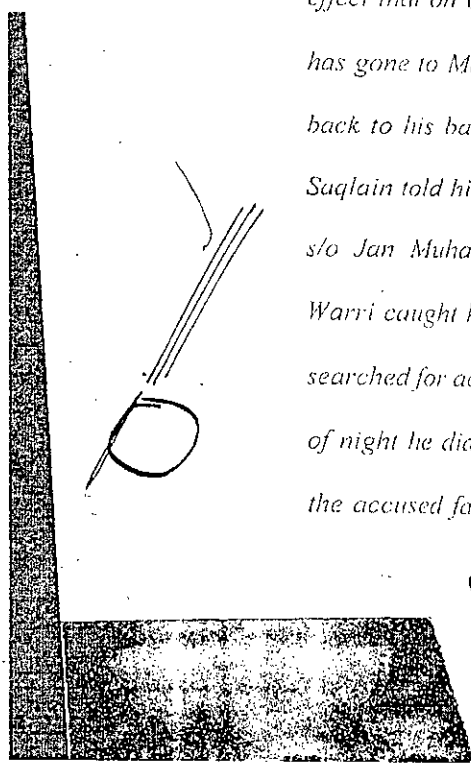
2. *Facts in brief as divulged from report of complainant Muhammad Zahoor to local police of P.S. City during gusht to the effect that on 05.06.2017, he along with other people after Iftari has gone to Masjid for performing Maghrib prayer. On returned back to his baithak at about 19:45 hrs, his brother Muhammad Saqlain told him that when they gone to Masjid, his cousin Imran s/o Jan Muhammad (accused facing trial) r/o presently Shna Warri caught him and made sodomy with him. He (complainant) searched for accused but he had succeeded in escape. Due to dark of night he did not make report. Thus he (complainant) charged the accused facing trial Imran Khan for commission of offence.*

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Murasila ExPA/1. was drafted which was got signed from complainant. Injury sheet ExPW-10/1 of victim Muhammad Saqlain was prepared which was handed over to constable Abdul Qadir for medical examination of victim at Civil Hospital Hangu while Murasila was handed over to constable Aurangzeb for taking the same to PS for registration of FIR and as such FIR ExPA was registered against the accused. Site plan is ExPB while recovery memo ExPC vide which the IO had taken into possession three bottles containing swab/semen etc taken from the body of victim and sealed in parcel No.1. One Qamees, Shalwar containing some stains of victim P-1 were also taken into possession vide recovery memo ExPW-6/2. Photographs of the place of occurrence are ExPW-6/1. House search of the accused was conducted but he was not available over there nor anything incriminating has been recovered. Three plastic bottles along with garments of victim were sent to FSL vide application ExPW-6/6, the report of which is ExPZ which shows that swabs was negative for human semen in PNO-1 while shirt and shalwar was positive for human semen in PNO-2.

3. Thereafter, on 06.06.2017 at about 13:20 hrs, accused Imran Khan voluntarily surrendered before local police and he was formally arrested vide card of arrest ExPW-10/2. He was produced before Judicial Magistrate for obtaining three days police custody vide application ExPW-6/3 but his one day police custody was granted. During said custody accused pointed out the

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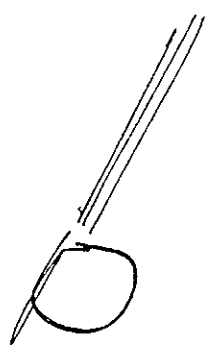
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place of occurrence vide identification memo ExPW-6/4 and was ready to record confessional statement. On expiry of police custody on 08.06.2017, he was produced before Judicial Magistrate vide application ExPW-6/5 for recording confessional statement but denying the same, he was sent to judicial lockup.

4. After completion of investigation, complete challan ExPW-7/1 against the accused was submitted for trial on 04.07.2017. He was summoned and when produced in custody in court, charge sheeted on 26.09.2017. Refusing the charge, prosecution was directed to produce its evidence. Prosecution examined ten (10) witnesses. Brief resume of prosecution evidence is as follows: -

PW-1 is Farid Khan Inspector who had submitted complete challan ExPW-1/1 against the accused.

PW-2 is Dr. Ali Hussain who has stated that on 06.06.2017 at about 09:00 hrs Muhammad Saqlain s/o Sial Khan aged about 10 years caste Orakzai Mala Khel r/o Babu Tang Hangu was brought by police official for medical ascertaining. He examined him vide his report ExPW-2/1. On examination, the child was calm and relax. On examination stain found on trouser (sample taken for laboratory examination). There was bruises on both buttocks. There was no tear in anal sphincter. Three samples taken No.1 from inside anus, No.2 from around anal region and No.3 from trouser stain for chemical/lab examination. Sample sealed, signed and handed



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over to police vide receipt ExPW-2/2. According to patient the incident occurred in the evening of 05.06.2017 i-e 13 hrs has been passed before examination. The lab report bearing No.10-5348-49-17 dated 08.06.2017 was received on 05.07.2017 in which swab taken from trouser detected human semen, indicating sodomy.

PW-3 Saqlain s/o Sial Khan is victim in the case who has stated that on the day of occurrence after Aflari time he was present in front of his baithak. Meanwhile his cousin namely Imran came there and hold him and take him to the boundary wall of the baithak where I was taken to a room situated inside the boundary wall and committed sodomy with him. Accused decamped from the spot. When his brother came from Masjid, he told him the whole incident. He searched for accused but he was not found anywhere. Due to night time they cannot lodge their report and on next day they came to the PS and lodged the report. After that he was taken to hospital where his examination was conducted by the doctor.

PW-4 Yasrab Hussain HC who is marginal witness to recovery memo ExPC vide which the IO had taken into possession three bottles containing semen brought by constable Abdul Qadir handed by the doctor which was sealed in parcel No.1 by affixing seal of MM.

PW-5 Abdul Qadir DFC who has stated that he has accompanied the victim Saqlain from PS to Civil Hospital Hangu. After examination of the victim the doctor handed over three bottles

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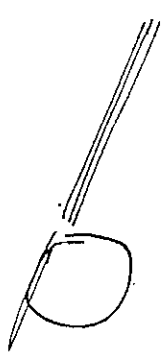
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containing semen taken from Saqlain and he further handed over the same to the IO.

PW-6 Muhammad Ayaz ASI is IO of the case who has conducted investigation of the case. He has stated that on 06.06.2017, on receipt of necessary documents, he initiated investigation in the present case. On the same day, complainant along with victim were present in the P.S. and proceeded to the spot. After discussion, he has prepared site plan ExPB on their pointation. He has taken photographs of the spot which is ExPW-6/1. He has taken into possession three bottles containing semen produced by constable Abdul Qadir through recovery memo already ExPC the same was sealed into parcel and sealed and affixed MM seal. He has recorded statement of PWs as well as the victim Saqlain on the spot. He conducted house search of the accused but nothing incriminating was recovered. During his investigation, he was come to know that accused Imran is serving in Orakzai. Levy so he approached to the political authorities. In meanwhile Muharrir of the PS informed that accused Imran has been arrested. He came to the PS where Muharrir of the PS handed over to him Qamees Shalwar Khaki in colour belongs to victim Saqlain P-1 having also stains which he took into possession vide recovery memo already ExPW-6/2 and also signed the same from marginal witnesses. He cursory interrogated the accused but he did not confess his guilt before him. He produced accused before Judicial Magistrate vide application ExPW-6/3 for six days' police custody and one day custody was

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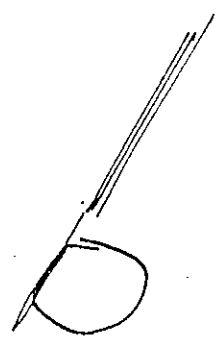
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allowed. During custody he confessed his guilt before him and accused was ready to point out the place of occurrence. He pointed out various points vide pointation memo ExPW-6/4 and got signed from marginal witnesses. Through application ExPW-6/5, he produced the accused for confessional statement before Judicial Magistrate but he refused to record confessional statement and was sent to Judicial Lockup. Through application ExPW-6/6, he has sent the case property i-e swab bottles and clothes of victim to FSL, the report of which is received and is ExPZ. He has recorded statement of all PWs u/s 161 CrPC. After completion of investigation, he handed over the case file to SHO for submission of challan.

PW-7 Farid Khan Inspector is inadvertently again examined as he was earlier examined as PW-1.

PW-8 Musharraf Khan MHC who on receipt of Murasila by constable Aurangzeb, has incorporated its contents into FIR ExPA. He has also received the case property i-e garments of the victim which he handed over to IO Ayaz ASI. He has also received the swab bottles and placed in safe custody in Malkhana. When the accused was arrested, he was handed over to him which he confined in lockup.

PW-9 Wajahat Hussain Constable was handed over the case property in instant case along with other case property to carry the same to FSL Peshawar. He has deposited all the case properties in FSL on receipt which is ExPW-8/1 placed on file bearing his signature. The receipt



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rahdari is ExPW-8/2 and handed over to Muharrir.

PW-10 Muhammad Rahim SHO is the author of Murasila. During gusht complainant Muhammad Zahoor along with the victim Muhammad Saqlain met him and reported about the occurrence, he incorporated the same in shape of Murasila ExPA/1. The same was read over to him who admitted the same and thumb impressed which is also endorsed by the victim Muhammad Saqlain. He also prepared injury sheet of the victim Muhammad Saqlain which is ExPW-10/1. The victim along with the relevant documents were sent to the hospital for medical examination through constable Abdul Qadir while the Murasila was sent to PS through constable Aurangzeb No.95 for registration of the case. Later on, the accused came to the P.S. and he arrested the accused and also issued his card of arrest which ExPW-10/2.

5. Closing its evidence, accused Imran Khan was examined u/s 342 Cr.P.C by Court. He termed the allegation false and fabricated and refused the allegation levelled against him to has committed unnatural course with the brother of complainant forcibly but he refused the same and claim innocence. When he was questioned about Murasila ExPA/1 and FIR ExPA, he replied that these are concocted and fabricated one. When he was questioned about site plan ExPB, photographs of spot ExPW-6/1 taken by IO, three bottles containing semen through recovery memo ExPC, One Shalwar Qamees ExP-1 having stains vide recovery memo

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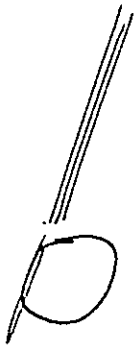
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ExPW-6/2. pointation and addition made to site plan with red ink pointation memo ExPW-6/4, he refused the same claiming that these were fabricated documents. When he was questioned about swab bottles and clothes of victim vide application ExPW-6/6 which were sent to FSL the report of which is ExpZ and in positive, he stated that he know nothing about it and does not speak about his guilt. When he was questioned about medical opinion ExPW-2/2, he replied that the doctor has given no opinion that Muhammad Saqlain has been subjected to sodomy as such does not support the prosecution version. About statement of PWs against him, he stated that all the PWs are interested witnesses who have falsely deposed against him. When he was further questioned as to why he was charged, accused claimed that he was innocent and falsely implicated. When he was offered opportunity for defence evidence, the accused did not desire to produce defence witness however he opted to record statement on oath. When his statement on oath was recorded, he simply taking oath claimed innocence and have not committed sodomy with Saqlain with further claim that he has been charged to pressurize them due to their land dispute with the complainant party. During cross examination, it is correct that no suit is pending before any court of law. It is incorrect to suggest that the father of victim was the elder of tribe. It is incorrect to suggest that father of victim is a famous and respectable person of the locality. It is correct that they have



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joint baithak/hujra for guest. He is not married. On 05.06.2017, he was present in his home situated in village Shan Warri. Today he has not produced any evidence to prove his presence in village Shna Warri. When he was produced before the Magistrate after his arrest, he had told him that he is innocent. It is incorrect to suggest that the complainant of the present case was murdered due to the dispute of the present case. It is incorrect to suggest that for the murder of Zahoor his father was not charged again stated that his father was charged for the murder of Zahoor. His elder brother was in Tableegh while his two younger brothers are serving in Dubai. It is incorrect to suggest that today he has given false statement just to save his skin.

6. In light of the aforesaid facts and evidence, pro and contra arguments were heard and case file minutely perused. Learned counsel for complainant assisted by private counsel for complainant submitted following judgments in support of arguments:

2013 PCrLJ 800 Peshawar; 2012 PCrLJ 1200 Supreme Court (AJ&K); 2007 SCMR 698 Shariat Appellate Jurisdiction.

7. In order to prove the guilt of accused facing trial, following facts have to be determined through evidence on record:

- I. Whether the occurrence as recorded and reported is proved through cogent and convincing evidence?
- II. Whether the report is promptly lodged?

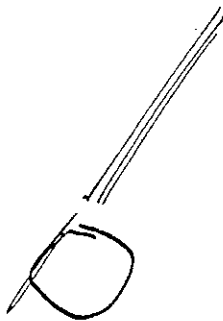
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- III. Whether the oral account is trustworthy and not effected by any bias?
- IV. Whether medicolegal report corroborate the occurrence?
- V. Whether there is any possibility of false implication and miss-identification of accused was possible?
8. The aforesaid facts are taken one by one for discussion.

I. Whether the occurrence as recorded and reported is proved through cogent and convincing evidence?

The mode of occurrence with reference to report is already discussed in the head note of judgment. Although complainant has been died but the same was repeated in the statement by victim Muhammad Saqlain examined as PW-3. He had remained consistence in his versions about the occurrence. To further appreciate the matter, relevant extracts of cross examination of victim Muhammad Saqlain (PW-3) are reproduced:



"My statement was recorded by police where the report is usually lodge at evening time on the following day of the occurrence. It was slight darkness when I was sitting outside my baithak. The accused Inran came to the spot after Maghrib prayer. There is only room inside our baithak. Our baithak is not adjacent to our house and almost at a distance of about 100 meters. There is no other house of the village people adjacent to our baithak. The accused made sodomy with me inside the room situated in our baithak. Police came to our baithak on the following day of the occurrence after lodging the report. I had pointed out the

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room inside which the sodomy was committed with me to the local police. The police came to our baithak at Zuhr vela. At the time of taking me inside the room I little bit made hue and cry. At the time of taking me inside the baithak from the road by the accused I had cried. No person came there on my cry. I was brought to the hospital by police and my brother. We had reached to the hospital at 12:00 noon and remained there for 1/2 hour. From the hospital, we returned to our home. I know one Hazra Bibi. I do not know that whether there was any dispute between us and accused party with regard to women folk. It is incorrect to suggest that I had falsely charged the accused at the instant of complainant Muhammad Zahoor who pressurized and outraged the accused party on the dispute of the selling of Mst. Hazra Bibi between the accused and we the complainant party. It is also incorrect to suggest that no sodomy was committed by the accused with me".

The next important witness is Muhammad Ayaz ASI (PW-6) who has conducted investigation in the case. He deposed about spot inspection, scribing of site plan ExPB at pointation of complainant and victim. He also prepared six photographs ExPW-6/1 showing pointation by victim in the said baithak. He also prepared recovery memo ExPC vide which he took into his possession three plastic bottles containing swab and prepared another recovery memo ExPW-6/2 vide which he took into his possession one shalwar khaki in colour containing stains belonging to victim Muhammad Saqlain.

II. Whether the report is promptly lodged?

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The occurrence has taken place at 19:45 hrs on 05.06.2018 while report is lodged at 08:40 AM on 06.06.2018 as per report ExPA/1. The report was made at about 08:40 AM while according to doctor the victim was examined in the hospital at about 09:00 AM but victim in cross examination disclosed that he was examined by the doctor in hospital at about 12:00 Noon. During the course of arguments, learned counsel for accused mainly focused on the timings of examination of victim, recorded in statement of doctor and found in cross examination of victim Muhammad Saqlain and the variation in time create doubt about version of victim regarding the offence. In order to appreciate factual aspects of the case, it is pertinent to observe that timing variation explainable through reasoning cannot be considered fatal to prosecution case on the ground that no witness while giving time actually consult watch rather give approximate time by self-assessment. So in human nature this variation of time among versions of two/three persons usually took place. In this specific case, this point becomes more irrelevant when judged in human perspective. If a child of about 10/12 years being forced for sodomy which was heinous and the victim was defamed in the society, then expecting from him to remain consistent in explanation of time etc will be something more inhuman and unnatural. It is common observation that when a person face tragedy, he loses some of his mental cavities and in some cases his position remains the same in future too when

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he is reminded the tragedy, therefore, the time variation as contended by learned defence counsel is not material contradiction to wash away the truth of report.

III. Whether the oral account is trustworthy and not effected by any bias?

The oral account of occurrence is fully elaborated first in report signed by complainant and also by victim followed by his oath statement before the court with no material differences to create doubt about veracity of his versions. Defence counsel has failed to suggest the PWs any motive which may create doubt about the version of occurrence. No ill-will is coming forth in his statement to disbelieve his oral account of the occurrence. Therefore, the oral account of occurrence found in the statement of victim did not entertain any doubt and is trustworthy and believable in all respect.

IV. Whether medicolegal report corroborate the occurrence?

The present case is lingering upon the statement of Medical Officer as he has examined the victim as he can ascertain that either the penetration has been made in the sodomy or otherwise. Dr. Ali Hassan, (PW-2) is examined in support of medical examination. He has confirmed on oath the contents of medical reports. In cross examination he has stated that:

It is correct that on my examination of the victim, no tear, bruises or any sought of abrasion or injury were found



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on the anal region of the victim however there were bruises on both buttocks".

"It is correct that of obtaining the sample inside anal canal I had not used any proctoscopy instrument in order to obtain the anal swab self-stated that I obtained swab from the anal of the victim with small straight swab instrument".

"I cannot say that whether penetration has been made out or otherwise. It is also correct that I had not suggested or advised DNA test of the victim".

"It is correct that I had examined the victim on 06.06.2017 at 09:00 AM after 14 hours of the alleged occurrence. I myself had not taken the clothes i-e trouser of the victim however I examined the trouser of the victim".

"At the time before my examination the victim had passed his stools. It is correct that without conducting DNA test semen cannot be detected that to whom the semen attributed".

Although the Medical Officer has disclosed in examination in chief that he cannot say that either penetration was made but he further disclosed that bruises were present on both the buttocks of victim, therefore, medicolegal report corroborates the occurrence.

V. Whether circumstantial evidence does support the version of victim?

So far circumstantial evidence of the case is concerned, IO of the case Mr. Muhammad Ayaz ASI has recovered Shalwar of victim having stains and bottles received from doctor containing swab recovery memo ExPC and ExPW-6/2. Marginal witness of recovery memo has been examined as PW-4 namely Mr. Yasrab Hussain HC. He has deposed about the aforesaid recoveries and preparation of

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recovery memo ExPC in his presence and that the recovery memo was signed by him as marginal witness. Site plan ExpB was also scribed at pointation of the complainant and victim showing the place of occurrence and also the places of accused. The recovered articles were forwarded to FSL and FSL report ExpZ were received showing that swab was negative for human semen while shirt and shalwar was positive for human semen. Thus the circumstantial evidence does corroborate the version of victim about the occurrence.

VI. Whether there is any possibility of false implication and miss-identification of accused was possible?

The occurrence has taken place in evening time just in near Maghrib prayer. Victim and accused are admittedly cousin inter-se known to each other. No suggestion is given to the victim about false implication of accused even otherwise there is no occasion on record to provide a scope for substitution of accused, therefore, false implication or miss-identification of accused is ruled out.

9. From aforesaid discussion, it transpired that the occurrence has taken place in the mode and manner as narrated by victim however medical and circumstantial evidence support the case of prosecution to some extent. According to medical officer that he cannot say that either penetration has been made in the case or not but through above evidence and discussions, it is established that accused

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has tried to make sodomy with the victim. Although the case is not strong enough to give capital punishment to accused but the act of the accused in the holy month of Ramazan is not ignorable and the offence with which he tried to commit is heinous, scandalous, gruesome and brutal, and acquittal of accused would give the public an impression that there was no law to restrain people from commission of such like dirty offences. Thus the prosecution has succeeded to prove its case without any reasonable doubt to the extent that accused tried his best to make sodomy with the victim. Therefore, accused facing trial Imran Khan is convicted u/s 377 PPC and awarded punishment of one year R.I. Benefit of section 382-B CrPC is extended to accused/convict. Case property be disposed off in accordance with law on expiry period of appeal/revision. Case file be consigned to Record Room after completion and compilation.

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(A. MAL SHAH)
Addl: Sessions Judge-I,
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CERTIFICATE

Certified that this judgment is consisting of sixteen (16) pages. Each page has been read over, corrected and signed wherever necessary.

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