

**IN THE LAHORE HIGH COURT,
RAWALPINDI BENCH RAWALPINDI
JUDICIAL DEPARTMENT**

1. Criminal Appeal No.388 of 2014
(Amir Razzaq Vs. The State)

2. Criminal Misc.No.722-M of 2014
*(Mst. Riffat Shaheen Vs. Addl. Sessions Judge & another
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3. Criminal Revision.No.170 of 2014
(Mst. Riffat Shaheen Vs. Amir Razzaq & another)

Date of hearing: 13.2.2019

Appellant by: Malik Mushtaq Ahmad, Advocate.

Complainant by: In person.

State by: Khalid Parvez, DPG with Iftikhar, S.I.

OAZI MUHAMMAD AMIN AHMED, J:-Criminal Appeal No.388 of 2014 by Amir Razzaq, convict-appellant, Criminal Misc. No.722-M of 2014 and Crl. Revision No.170 of 2014, filed by Riffat Shaheen, prosecutrix arise out of impugned judgment dated 10-9-2014 by a learned Addl. Sessions Judge at Jand; bearing a common thread, these are being decided through this single judgment.

2. Controversy is structured upon application (Ex.PC) dated 24-5-2013 presented by the prosecutrix, a divorcee, before Muhammad Ramzan SI (PW-9); it is alleged that six months back, the appellant proposed her and during a visit in her home, sexually assaulted her, in consequence whereof, she became pregnant when finally he backed out from his commitment, leaving her with no option but to disclose the affair to the family.

Dr. Shahida Parveen (PW-7) medically examined the prosecutrix on 25-5-2013; she clinically confirmed pregnancy of 8 weeks, however, on the report of Sonologist, on the basis of

ultrasound conducted on 27-5-2013, gestational life of the fetus was estimated as 13-weeks and 6-days. Upon birth, the appellant and the prosecutrix were confirmed as biological parents of the child named Muhammad Arman through D.N.A. profile generation; forensic report is Ex.PO/1-3. Indicted on 2-1-2014, the appellant claimed trial, pursuant whereto, prosecution produced as many as 11 witnesses to drive home the charge; of them, Riffat Shaheen prosecutrix (PW-5) is the star witness; she reiterated the story, initially set up in crime report (Ex.PC), without serious contest in the witness-box. Pak Muhammad (PW-8) testified about abortive efforts by prosecutrix's family to persuade the appellant for a bond. Upon conclusion of trial, while confronting various pieces of evidence, the appellant denied paternity of the child while branding forensic report as fictitious; he blamed the prosecutrix for a false case in order to coerce him into a bond against his wishes. The learned trial Judge vide the impugned judgment proceeded to convict the appellant under section 496-B of the Pakistan Penal Code, 1860 and sentenced him to 5-years RI alongwith fine of Rs.10000/- or to undergo two months SI with benefit of section 382-B of the Code of Criminal Procedure, 1898; while holding the affair as consensual, the Station House Officer was directed to proceed against the prosecutrix for fornication, a rendition accepted by the both sides.

3. Learned counsel for the appellant contends that there was no occasion for the learned trial Judge to return a guilty verdict after himself holding the affair as consensual. Despite notice, counsel for the prosecutrix is not in attendance; he was afforded an opportunity to canvass his client's case and he has opted to stay away and thus, cannot be allowed to hold the process of law in abeyance; even otherwise, his absence does not absolve the Court from its responsibility to decide a posted case. The learned Law Officer has defended the impugned judgment.

4. Heard. Record perused.

5. Prosecutrix is a woman of age, 28 years on 25-2-2014 when she entered the witness-box; she was a divorcee and admits to have accepted appellant's proposal, subsequently revoked and it was in this backdrop that she alleged carnal assault, countenanced by her in the hope that the appellant would ultimately forge a bond with her; she kept the affair discreetly secret and only took the family into confidence after pregnancy became apparent; her long silence cannot be equated as quiescence or submission or retirement under fear or duress; on the contrary, circumstances suggest her voluntary participation pursuant to exercise of intelligence being fully cognizant of the knowledge, significance and consequences thereof while exercising a choice between resistance and assent and this can be safely assumed given her age and previous matrimonial experience. It is further confirmed by her own narrative reflecting upon attempts made as late as during May 2013 to settle the issue of marriage; she never raised allegation of assault either without consent or against her will during the interregnum. Prosecutrix cannot take a somersault in the face of appellant's betrayal so as to revoke her consent retrospectively by conveniently alleging force so late in the day. It would be hard for the prosecutrix to find a buyer for the story of an assault by the appellant, a welcome visitor, inside her home without consent or willingness. The learned trial Judge himself viewed the entire episode as being consensual and, thus, had no statutory basis to return a guilty verdict. CrI. Appeal No.388 of 2014 is **allowed**; the impugned judgment is set aside; the appellant is acquitted from the charge; he is on bail; his bond is cancelled and surety discharged. Alongside the impugned judgment, direction for prosecutrix's prosecution is also cast away; even otherwise, in the event of her transposition as an accused, she is constitutionally protected against self incrimination and, thus, cannot be exposed to corporal consequences in the face of rejection of her narrative, rendered by her in a context inconsistent with the findings recorded

by the learned trial Court. Section 203 (c) of the Code of Criminal Procedure, 1898 creates procedural impediment for the suggested prosecution. Criminal Misc. No.722-M/2014 is **disposed of**.

As a natural corollary, Criminal Revision No.170 of 2014 stands **dismissed**.

(Qazi Muhammad Amin Ahmed)
Judge

Approved for Reporting