

## IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Jail Appeal No. 500 of 2022

Appellant : Ms. Uzma Jameel  
through Ms. Amna Usman, Advocate.

Respondent : The State  
through Mr. Talib Ali Memon, APG.

Complainant : In person

**Date of hearing** : **2<sup>nd</sup> March, 2023**

### **JUDGMENT**

**Omar Sial, J.**: Syed Shujaat Ali alleged in a section 154 Cr.P.C. statement that on 06.04.2013 he married Uzma Jameel (the appellant), who then worked as his secretary. Approximately 5 years into the marriage, a friend of Uzma's named Shumaila came from Canada to visit her. The 2 women had gone for a tourist trip within Pakistan but when they returned from the trip, Uzma told Shujaat that her friend had arranged a Canadian visa for her and that she would be leaving for Canada to work there. Shujaat prohibited her from going to Canada; however, alleged that Uzma left nonetheless while taking cash and gold from the house. On 20.12.2018, Shujaat was informed by Uzma over the telephone that she had married a man by the name of Asif. Shujaat alleged that Uzma had married another man without taking divorce from him. F.I.R. No. 2 of 2019 was registered on 02.01.2019 under sections 376 and 494 P.P.C. at the Yousuf Plaza police station against Uzma and 3 of her brothers.

2. The charge in the case was framed on 08.03.2019 by the learned 6<sup>th</sup> Additional Session Judge, Karachi Central against only Uzma. She was charged for having committed offences under sections 420, 494 and 495 P.P.C., to which she pleaded not guilty and claimed trial.

3. At trial **Syed Shujaat Ali**, the complainant, was examined as **PW-1**; **Syed Usman Ali**, brother of the complainant, was examined as **PW-2**; **S.I. Jan Mohammad**, the scribe of the F.I.R. as **PW-3**; **Mohammad Kashif**, brother of Uzma's husband Asif, as **PW-4**; **Mohammad Arif**, another brother of Uzma's husband Asif, as **PW-5**; **Abdul Saboor Khan**, the molvi who read the nikah between Shujaat and Uzma, as **PW-6**; **Mohammad Asif**, Uzma's husband, as **PW-7**; **S.I. Abdul Jabbar**, the investigating officer, as **PW-8**.

4. In her section 342 Cr.P.C. statement, Uzma denied all wrong doing and stated that she had never married Shujaat and that she was married to Asif. She produced her *nikahnama* and further stated that Shujaat had filed this case solely with the motive of blackmailing her.

5. At the end of the trial, the learned Sessions Judge, Karachi Central on 10-08-20222 announced its judgment in terms of which convicted and sentenced the accused as follows:

- (i) for an offence under section 494 P.P.C. to 7 years in prison. She was also directed to pay a fine of Rs. 50,000 or stay a further period of 6 months in prison.
- (ii) for an offence under section 495 P.P.C. to 10 years in prison. She was also directed to pay a fine of Rs. 50,000 or stay a further period of 6 months in prison.

6. I have heard the learned counsel for the appellant as well as the learned APG. Learned counsel for the complainant, half way in his arguments, withdrew his representation of the complainant on the ground that his ethics did not permit him from following certain instructions which were given to him by the complainant. The complainant, who was present, was then given an opportunity to engage another counsel and the hearing adjourned twice for that reason, however, no counsel appeared on his behalf thereafter. The individual arguments of the learned counsels are not being reproduced for the sake of brevity but are reflected in my observations and findings below.

7. I have looked closely at the evidence regarding the alleged marriage of Shujaat Ali Khan and Uzma. I find the evidence to be of such a nature where *malafide* on the part of Shujaat cannot conclusively be ruled out. My reasons for so concluding are:

(i) Conspicuous by her absence at trial was Saira, the wife of Shujaat, from whom he has 3 children. While Shujaat claimed in his examination-in-chief that Uzma lived in the same house as his wife Saira and 3 children, neither Saira nor the children nor any person from the neighborhood testified at trial that what Shujaat claimed was indeed correct. Shujaat claimed that he married Uzma in 2013 and it was 2018 when she left him, yet the fact that he could not even produce one witness from the locality to say that they had seen Uzma living in the same house as that of Shujaat for nearly 5 years raises doubts on the genuineness of his assertion. Neither did, at the very least, Shujaat produce at trial the permission he had obtained to marry Uzma, as is mandated by section 6 of the Muslim Family Law Ordinance, 1961, which provides that: “No man, during the subsistence of an existing marriage, shall except with the previous permission in writing of the Arbitration Council, contract another marriage, nor shall any such marriage contracted without such permission be registered under this Ordinance.” The memo of inspection of the place of incident prepared on 02.01.2019 ostensibly in Shujaat’s house also does not contain even an oblique reference to any belongings or traces of Uzma’s personal belongings which were seen in the house.

(ii) Shujaat has not been clear in identifying the place where his marriage with Uzma took place. To create further doubt in his allegation, the purported Marriage Registration Certificate, that he produced at trial shows that the marriage was registered in the office of the Secretary, Union Council No. 29 in District Central, Karachi, whereas Gulshan-e-Iqbal, which he identified as the place where he married Uzma, is situated in District East of Karachi. He did not explain as to what would take him to an area, which had no connection with the place he said he got married, to register his marriage. The Marriage Registration Certificate produced by Shujaat

was also not free of doubt. I find it strange that even though Shujaat claimed that he had been married to Uzma for 5 years till 2018, he only deemed it necessary to register the marriage in the year 2019 i.e. well after his differences with Uzma emerged. No reason for such a delay was given. Further, the Certificate contains dates in an extremely odd and unusual manner which raises further doubts of its authenticity. It would have been appropriate if an authorized officer of the Union Council 29 would have come to trial and confirmed the authenticity of the said Certificate. This was not done, and as a consequence the door of doubt further opened. In order to give Shujaat a reasonable chance, this Court checked the QR Code on the Certificate, however, the same also returned no result. Shujaat admitted at trial that he had not told the police in his section 161 Cr.P.C. statement as to who the witnesses to his nikah were. The 2 persons named as witnesses in the Nikahnama produced by PW-6 Abdul Saboor Khan were not examined at trial and no cogent reason for their absence given. The Certificate produced at trial by Shujaat reflects Shujaat's address as A-1/118, Block 16, F.B. Area, Karachi; his own brother PW-2 Syed Usman Ali, however testified to the contrary by stating that it was a fact that his brother never resided at the said address between 2013 to date.

(iii) Shujaat attempted to prove that he was married to Uzma by bringing to trial PW-6 Abdul Saboor Khan who claimed to be the nikah registrar who had solemnized the marriage between him and Uzma. I do not find this witness reliable because of the following reasons. To start off with, he created a contradiction to the date of marriage by saying that he was nikah registrar on 15.04.2013 whereas according to Shujaat himself, he entered into nikah with Uzma on 06.04.2013. The original nikah register was not produced at trial and a photocopy of an extract was produced. The extract shows the date of marriage as being 05.04.2013, which was neither 06.04.2013 (when Shujaat says he married) nor 15.04.2013 (when Saboor said that he was nikah registrar). In his cross examination Saboor however stated that Shujaat and Uzma married on 05.04.2013, which once again was not in line with the prosecution case as well as prior in time of Saboor

being a nikah registrar. As far as the contradiction of 15.04.2013 and the date of marriage i.e. 5 or 6 of April, 2013 is concerned, I have given Shujaat the benefit of doubt on the ground that the date stated by Saboor when he was a registrar may have been a typographical error in the recording of the testimony. Further doubt however was cast on this witness when he admitted at trial that "*in the year 2013 round seal of U.C. 11 was being used by me.*" This statement recorded by him further put in doubt the Marriage Certificate produced at trial by Shujaat as that Certificate shows that the marriage took place in UC 29. Why was a nikah ostensibly read in UC 11, registered in UC 29 was not explained at trial. Further suspicion is cast on Abdul Saboor when the record reflects that he was not even included as a witness in the case until 2 years after the F.I.R. i.e. on 30.11.2021 when an application under section 540 Cr.P.C. was made by Shujaat's counsel seeking to call him as a witness by referring to him as the star witness. No explanation was provided as to why this so called star witness was not a witness to start off with. Yet another odd thing is that according to the prosecution the nikah was solemnized in UC-11 however, the certification of it being a genuine *nikahnama* was obtained from the Chairman of UC-16. The person who issued the certificate of the nikahnama being genuine was not examined at trial. Simultaneously, it seems that the Secretary of U.C. 29 also issued certification saying that the marriage between Uzma and Shujaat was registered in his UC. This unnamed Secretary who ostensibly issued the certification was also not examined at trial, leading to the presumption under Article 129 illustration g that had these 2 witnesses been examined they would have not supported the prosecution case, or owned up to the confirmation attributed to them.

(iv) Malafide of Shujaat Ali is evident from the fact that he had lodged the F.I.R. against Uzma as well as her three brothers. The brothers had nothing to do with the supposed marriage nor of Uzma ostensibly leaving Shujaat. Such conduct reflects spite on the part of Shujaat which does not bear well for his bonafide.

(v) Shujaat, at trial could provide no evidence that Uzma was working as his secretary for the period he claimed that she did except for the testimony of his own brother. In his cross examination Shujaat admitted that *"I have no proof that Mst. Uzma was employed by me and I have been paying her monthly salary."* PW-2 Syed Usman Ali was the only person who stated at trial that Uzma was working in his brother's office along with 3 to 4 other persons. None of these 3 to 4 other people were examined at trial nor was any other person from the office building examined to determine the truth of Shujaat's allegations. Usman acknowledged at trial however that he was not the witness to the nikah of Shujaat with Uzma nor could he recollect who the witnesses were seems rather unnatural keeping our society traditions in mind.

(vi) PW-4 Mohammad Kashif (the brother of Uzma's husband Asif) was of not much use at trial as he admitted that he was not a witness to Uzma's alleged nikah with Shujaat nor did he know him previously. Neither did PW-5 Mohammad Arif (another brother of Asif's) add any value to the prosecution case as he too was not present at the alleged nikah of Uzma with Shujaat. It appears that these 2 witnesses were brought in solely with the purpose of throwing dirt on the character of a woman and claiming that their brother Asif had divorced Uzma because of her bad character. Malafide, once again, on the part of Shujaat is evident from such a move as Asif himself was examined as a witness (through video link) and confirmed at trial that, contrary to what his brothers had testified, he was still married to Uzma. He further testified that all the documents produced by Shujaat at trial were fake documents. He also disclosed that the reason he had agreed to testify was because he was apprehensive that his brothers would testify maliciously as they did not get along with him.

(vii) The learned trial judge formed an incorrect point for determination. What the learned judge formed was whether Uzma had contracted a second marriage with Asif or not. The point for determination should have been whether Uzma was married to Shujaat and whether she entered into a second marriage without being divorced from Shujaat. I also notice that

Uzma had all along denied that she was married to Shujaat and that the documents produced by him were fake documents. It perhaps would have been appropriate that the learned trial court would have sent the disputed documents to verify whether the signatures on the same were those of Uzma or not. This was not done nor did the learned trial court give a finding on this issue.

8. After going through the evidence, it appears to me that this is a classic case of a secret office romance between an already married and much older man, with a much younger woman. When the woman wanted an out from the relationship, to explore greener pastures, it bruised the male ego of the man who retaliated with spite. It must not be lost sight of that Uzma was from a very low income strata of society and was in an extremely vulnerable position. I have no doubt in my mind that her vulnerability was taken advantage of by Shujaat and it is not impossible that he made her sign documents through coercion, duress and undue influence. His first wife did not know anything about the said marriage. None came as an independent witness to confirm his marriage to Uzma. The witnesses to the nikah were not examined nor were the persons belonging to the various union committees who ostensibly conformed the registration of the nikah. Malafide on Shujaat's part is evident from the fact that he brought to testify the estranged brothers of Asif to wrongly confirm that Asif had divorced her and that she was a woman of doubtful character. Gender bias is apparent. Shujaat's different addresses given at different places coupled with what seems to be hectic efforts taken by him after the deed was done to show that he was married to Uzma by collecting documentation from various union committees, which had little to do with where he claimed his nikah was read, are all aspects of the case which create doubt in the prosecution case. The only witness who spoke in Shujaat's favour was the Molvi Abdul Saboor, who too could not produce the original register of his in which he recorded marriages and instead produced a photocopy. This in itself was strange as while he could not produce the original register, he did produce the original receipt of the fees

he had deposited in the account of UC 11 for the registration of several nikahs he had read. No proceedings to admit secondary evidence took place thus the admissibility of the extract of the register was also doubtful. It is also pertinent to mention that once Uzma found out of Shujaat's claim that he was claiming that he had married Uzma, she filed a suit before the learned 8<sup>th</sup> Family Judge, Karachi East in Family Suit No. 1117 of 2019 where she has challenged the genuineness of the *nikahnama* on which Shujaat basis his entire case on. That suit is pending and no declaration either way has been made as yet.

9. From what is stated above I am of the view that there was doubt in the prosecution case. Doubt is magnified because of Shujaat's malafide floating on the surface of the record. The appeal is allowed and the appellant acquitted of the charge. She is on bail. Her bail bonds stand cancelled and surety discharged.

**JUDGE**



