

In the name of Allah, The Beneficent, The Merciful

The Appeal Criminal Court

Honorable Judges,

H. E/ Mohammed Al Mutasim Ibraheem President

H. E/ Taj Alsir Said Ahmed Member

H. E/ Mohammed Ali Al Hadi Al Jamri President

Number: M. A./ A. S. J/ 121/1996

Trial of: Jameel Riyadh and Others

The Memorandum:

First Opinion:

On 16/1/1996 Khartoum (2) Criminal Court ruled against the accused under articles 78, 154 and 155 of the Criminal Code. Detailing the penalty, the court's judgment on the first accused was imprisonment for a period of three years for violating articles 154 and 155 of the Criminal Code (the court should have specified the penalties for each crime, and it could rule in succession of the penalty or apply the most severe penalty if it considers it appropriate, and believed that the criminal act is one and the same.)

The Court also passed the following judgment on the second accused: 40 lashes for violating article 78 and imprisonment for a period of two years for violating article 154; and it also passed the following judgment on the third accused: imprisonment for a period of two years for violating article 154 also.

The details in the judgments show that the penalties are; article 78 violated by the second accused only and not all accused, therefore, the second and third accused did not commit a crime under article 155 as understood from the decision.

Mr. Izz Al Dean Al Tahir and Mr. Abdul Sameeh Khidhir presented an appeal to defend the accused and both applications are accepted in form.

What is established from the statements of the witnesses is that the second and [female] third accused are not bound with any Sharia legal matrimonial ties; and that [the second accused] arrived intoxicated at the house of the first accused, knowing that she is single.

There is no other explanation consistent with the circumstances described other than [the intention to] perform sex, whatever the form it took.

First: The witnesses testify that the second and third accused came at ten o'clock at night to a house occupied by the first accused; the witnesses were watching in front of the house as she got off the car with her head bowed in fear of being recognized. Although this statement is a hypothetical assumption, it is a reasonable assumption.

There is no relationship between the second and the third accused, as it is clear from the differences in their testimonies. He claims that he found her in the street, and she joined him in the car, and that they

had no relation, nor prior acquaintance of each other, nor they had a legitimate relationship. [He claims] she joined him because she wanted a ride – yet he failed to mention the destination.

The third accused however, states that she does not know the first accused, but she has a relationship with the wife of the second accused, and that she went to his house because he owned her “ money.” She claims afterwards that she offered to give him a ride with the accused to a house [somewhere] and I failed to understand [the following:] whether she meant the house of the first accused, whom she claimed that she did not know the name of – his name is Jameel Riyadh and not Ali – or whether she did not know the name of the second accused and failed to distinguish between them, due to the absence of a relationship between her and any of the accused, and that things just happened that way.....[sic]

The accused entered the house with her head down (bowed) and she was wearing a [traditional] Toab garment, but when she left she was wearing modern clothes, meaning that she took off her Toab. A strange woman, with strange men at night, and in a bachelor’s home, where his friend the second accused is visiting him in state of intoxication, as the prosecuting witnesses have testified – what conclusion could be drawn from this?

Article 154/2 defines a place of prostitution as: any place prepared for the meeting of men and women, or men and women who do not share a marital relationship or family ties, and in circumstances that are likely to encourage sexual acts.

The house occupied by the first accused is frequented by visiting girls, to the point, as the witnesses have testified, that the accused was [ordered] to sign a Pledge with the local Public committee [in the neighborhood]. And regardless of the legal value of such Pledge, it is clear that the occupants of the neighborhood have had enough of the acts performed inside the house, which is situated in the middle of a neighborhood, occupied by dignified families, meaning that there were suspicious activities taking place inside the house in the neighborhood.

The manner in which the third accused has entered the house and remained inside it after taking off her Toab, staying with the bachelors in that state, could only be explained as an act of sexual behavior, no matter how little that performed sexual act was.

The behavior of the first accused who could only be described as facilitating immoral acts in the least, and that it endangers the community and destroys its moral values. As such, an accused could not be allowed such behavior, under the pretext that he was entertaining and hosting his guests which is on the face of it is a good word, because it implies generosity, but in the essence of it, is the intention of wrongdoing and evil.

Therefore, I am of the opinion of indicting the first accused under article 155/1 of the criminal act and that he should be penalized with 50 whip lashes, and imprisonment for a period of three months, instead of three years. Also, to cancel convicting him under article 154 of the criminal code, and to uphold the judgment of the court of the first instance that indicted the second and third accused; their penalty shall be under article 154, to be subjected to 50 whip lashes each, and to reject the judgment of imprisonment of the third accused, while supporting the [Islamic] *Hadd* Penalty for the second accused.

31/1/1991

Taj Alsir Said Ahmed

Judge of the Appeal Court and member of the bench

Second Opinion:

With all due respect to my colleague Mr. Al Sir, but I am of the opinion that the elements of convictions were not present in the case at hand. [This is] because there is no one single evidence testifies that the house in question, is a place of prostitution as it is stipulated in article 154(2) of the criminal act for the year 1991. The absence of this one single element constitutes sufficient grounds to reject the accusation and the penalty pursuant to article 155 and 154. Therefore, I am of the opinion to reject the accusation and the penalty under these two articles and to acquit the accused, while upholding the conviction of the second accused under article 78 of the criminal code for the year 1991.

(signature)

Mohammed Ali Al Hadi Al jamri
Judge of the Appeal Court
Member of the bench

Third Opinion:

I agree with the opinion of my honorable colleague of the Second opinion to some extent and in its conclusion.

(signature)

Mohammed Al Motasim Ibraheem
Supreme Court Judge
Head of the Bench
15/2/1996

Final Verdict:

1. Conviction and punishment under articles 154 and 155 of the criminal code for the year 1991 shall be revoked, and we order that the accused be set free immediately.
2. Uphold the conviction of the second accused under article 78 of the criminal code and the penalty of 40 whip lashes [Islamic] *Hadd*.

(signature)

Mohammed Al Motasim Ibraheem
Supreme Court Judge
Head of the Bench
15/2/1996