

## Chapter 6 Part II

### Proceedings and Judgments in the Safiyatu Hussaini Case

#### Proceedings and judgment in the Upper Sharia Court Gwadabawa

Translated from the Hausa by Aliyu M. Yawuri

##### (a) Proceedings 3<sup>rd</sup> July 2001

CASE NO. USC/GW/F1/10/2001

Date: 3/7/2001

COURT:	Upper Sharia Court Gwadabawa
JUDGE:	Muhammadu Bello Sanyinnawal
COMPLAINANT:	Commissioner of Police
ACCUSED:	1. Yakubu Abubakar Tungar Tudu 2. Safiyatu Hussaini Tungar Tudu <sup>30</sup>
COMPLAINT:	Allegation of <i>zina</i>

#### STATEMENT OF COMPLAINT:

I, Police Sergeant Idrisu Abubakar No. 125816 hereby on behalf of the Commissioner of Police arraign you Yakubu Abubakar Tungar Tudu and you Safiyatu Hussaini Tungar Tudu, Gwadabawa Local Government Area, on the allegation of committing *zina* contrary to sections 128-129 Sokoto State Sharia Penal Code 2000<sup>31</sup> in that on 23/12/2000, at around 2:00 p.m., the Gwadabawa police under the office of the Area Commander received a complaint that you, Safiyatu Hussaini, committed *zina* with you, Yakubu Abubakar, as a result of which you, Safiyatu Hussaini, became pregnant when each of you is known to have once married. That the police arrested you and interrogated you and were satisfied with the allegation levelled against you. I therefore arraign you before this court so that you will be tried accordingly.

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<sup>30</sup> In some of the texts translated here and in much of the scholarly literature the ‘y’ is doubled in Safiyatu’s name. We have used the spelling used by the Sharia Court of Appeal. Tungar Tudu is the name of the village where Safiyatu lived.

<sup>31</sup> “dokar Shariar Musulunci ta Jihar Sokoto ta shekara 2000”: this seems to be a usual way of referring to the Sharia Penal Codes, as opposed to the Sharia Criminal Procedure Codes, which are usually referred to by that name. The sections of the Sokoto State Sharia Penal Code referred to here provide that: “**128.** Whoever, being a man or a woman fully responsible, has sexual intercourse through the genital of a person over whom he has no sexual rights and in circumstances in which no doubt exists as to the illegality of the act, is guilty of the offence of *zina*. **129.** Whoever commits the offence of *zina* shall be punished: (a) with caning of one hundred lashes if unmarried, and shall also be liable to imprisonment for a term of one year; or (b) if married, with stoning to death (*rajm*).”

**Court:** The court takes cognizance of this offence under Chapter III section 12(1), and section 139(b), Sharia Criminal Procedure Code 2000.<sup>32</sup> The complaint was read to the accused persons.

**Court:** 1<sup>st</sup> accused Yakubu Abubakar, do you understand the complaint made against you by the police?

**1<sup>st</sup> Accused:** I heard and understood the complaint they made against me.

**Court:** 1<sup>st</sup> accused, do you agree that you have committed this offence alleged against you?

**1<sup>st</sup> Accused:** I did not commit this offence. I did not commit *zina* with her.

**Court:** 2<sup>nd</sup> accused Safiyatu Hussaini, do you understand the complaint made against you by the police?

**2<sup>nd</sup> Accused:** I heard and understood the complaint they made against me.

**Court:** 2<sup>nd</sup> accused Safiyatu, did you commit the offence alleged against you?

**2<sup>nd</sup> Accused:** It is indeed true that Yakubu Abubakar committed *zina* with me. He impregnated me and I delivered a baby girl aged six months today.

**Court:** Prosecutor, did you hear that the 1<sup>st</sup> accused Yakubu Abubakar denied the complaint you made against him? Do you have evidence to prove this allegation?

**Prosecutor:** We have two civilian and two police witnesses. We apply for a date to open our case.

**Court:** The case is hereby adjourned to 17/7/2001 for hearing. The accused persons are hereby granted bail. The 1<sup>st</sup> accused Yakubu Abubakar is granted with Sarkin Fawa Duka Chimmola as his surety, the 2<sup>nd</sup> accused with Muhammadu Tungar Tudu as her surety.

[Signed by the judge.]

### (b) Proceedings 17<sup>th</sup> July 2001

**Court:** The court again sits today 17/7/2001 for hearing. The pleas of the accused persons have already been taken. Prosecutor have you come with your witnesses?

**Prosecutor:** I came with two people. They are Abdullahi Tungar Tudu and Attahiru Tungar Tudu, they are outside.

**Court:** Prosecution Witness 1 (PW1) Abdullahi Tungar Tudu, a Muslim, Hausa, farmer and 64 years old of T/Tudu Gwadabawa Local Government is called into the court. He swore to tell the truth in the matter.

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<sup>32</sup> The text has “karkashin Chapter III Section 139(b) 12(1) na Sharia Criminal Procedure Code Law 2000”. Section 12(1) is in Chapter III; it provides that “Subject to the other provisions of this Sharia Criminal Procedure Code, the Upper Sharia Court shall have the exclusive jurisdiction to try any or all the offences listed in ‘Appendix A’ of this Code”. This excludes the lower Sharia Courts from trying serious offences like *zina*, which is among the offences listed in Appendix A. Section 139(b) provides that: “Subject to the provisions of Chapters XIII and XIV, a court may take cognizance of any offence committed within the local limits of its jurisdiction: ... (b) upon receiving a First Information Report under section 115, or from any other court.”

**Court:** Abdullahi: Now what do you know about the 1<sup>st</sup> accused: Yakubu Abubakar?

**PW1:** I Abdullahi Tungar Tudu, what I know in this matter is that, sometime ago, two policemen came and met us at Tungar Tudu. One of them is called Ali but I do not know the name of the other. They called Safiyatu in my presence and said to her that, “we heard that you are pregnant even though you do not have a husband. Who impregnated you?” She told them that it was Yakubu Abubakar that impregnated her.

They later called the said Yakubu in my presence and said to him that Safiyatu said, “You are the one that impregnated her. Is that true?” He said, “Safiyatu, by Allah, have you not known any other person apart from me alone?” Safiyatu answered by saying that, “By Allah, I have never had intercourse with anybody apart from you alone.”

Then, the policemen asked Yakubu on how many times he had had intercourse with Safiyatu. He said, “Three times only.” From there, Safiyatu objected and said it was four times. Then they continued that exchange of words with him saying three times and her saying four times. Then the policemen said okay, three times should be considered. This is what I know and that he did it three times and not four times.

**Court:** 1<sup>st</sup> accused Yakubu Abubakar: Do you have any objection or question on this evidence?

**1<sup>st</sup> Accused:** I have heard all that he said but I do not agree with him because as at the time the policemen called me, he was not there. I did not see him.

**Court:** Prosecution Witness 1: Yakubu said you were not there when the police called him. How can you convince the court that you were there?

**PW1:** The police that called him know that I was present.

**Court:** The 1<sup>st</sup> witness is hereby discharged. Prosecution Witness 2 (PW2), namely Attahiru Tungar Tudu, Muslim, aged 45, Hausa, a farmer residing at Tungar Tudu, Gwadabawa Local Government, is called into the court. He swore to tell the truth.

**Court:** What do you know about these accused persons?

**PW2:** I, Attahiru, what I know in this matter is that one day Ali, a policeman came to Tungar Tudu together with another policeman. He asked me about the village head. I told him that the village head was not around. He asked me about the person who is acting on his behalf. I answered that I am the one. He then asked me to take him to Safiyatu’s house. On reaching there he sent for Safiyatu. He said that they had heard that she was pregnant and that she was a divorcee, and asked her, “Now who impregnated you?” She answered that it was Yakubu Abubakar who impregnated her. Yakubu was called in my presence. Ali the policeman told him that Safiyatu said he was responsible for her pregnancy, and asked, “Is that true?” He kept quiet. Ali asked him again. Yakubu then said to Safiyatu “By Allah, have you not known any other person apart from me?” Safiyatu said, “By Allah, you are the only one that I know I had sex with.” From there the police asked Yakubu how many times he had sex with Safiyatu. Safiyatu said it was four times but Yakubu maintained that it was three times. That is all that I know.

CHAPTER 6: TWO FAMOUS CASES

**Court:** Yakubu: you heard the evidence of Attahiru. Do you agree with his evidence or do you wish to impeach it or do you have any question?

**1<sup>st</sup> Accused:** I heard it but I do not agree with his evidence because Attahiru is a friend to Abdullahi who is a brother to Safiyatu. He is also her neighbour. This is my objection.

**Court:** PW2: Is it true that you are a friend to Abdullahi?

**PW2:** I am not a friend to Abdullahi but he is my in-law.

**Court:** PW1 (Abdullahi): Is it true that you are a brother to Safiyatu and that you are her neighbour?

**PW1:** I am not a brother to her but I am her neighbour. But if Yakubu knows of any relationship that I have with her he can tell the court.

**Court:** Yakubu: What is the relationship existing between Abdullahi and Safiyatu, as you earlier stated?

**1<sup>st</sup> Accused:** Their parents or their grand-parents are of the same father. The grand-parents of their parents are from the same father.

**Court:** Abdullahi is that true?

**PW1:** It is not true. We are not in any way related.

**Court:** 1<sup>st</sup> accused Yakubu do you have any witness who knows what is the relationship between their parents?

**1<sup>st</sup> Accused:** I don't have any evidence in this regard.

**Court:** Both witnesses are hereby discharged. The case is hereby adjourned to 14/8/2001. The prosecutor is hereby ordered to come with his remaining witnesses. The accused are to continue on their bail.

[Signed by the judge.]

**(c) Proceedings 14<sup>th</sup> August 2001**

Today 14/8/2001, the court sits again for continuation of hearing. The two accused persons are both present in court.

**Court:** Prosecutor, have you come with your remaining witnesses?

**Prosecutor:** I wish to inform this court that the two police officers that were supposed to come and give evidence today were sent to Sokoto by the Area Commander. I therefore apply for a date to enable me bring them to court after they have come back.

**Court:** Case is hereby adjourned to 11/9/2001 to enable the prosecutor to bring his remaining witnesses. Accused persons are to continue on their bail.

[Signed by the judge.]

**(d) Proceedings 11<sup>th</sup> September 2001**

**Court:** The court sits today 11/9/2001. Both the accused persons are in court. Prosecutor have you come with your remaining witnesses?

**Prosecutor:** I have come with them. Both of them are policemen: Corporal Aliyu Yusuf and Constable Joseph U.T.

**Court:** Prosecution Witness 3 (PW3), namely Corporal Aliyu Yusuf No. 113724 a Muslim attached to the Area Commander's Office, Gwadabawa, aged 32, Hausa, is called into the court. The witness affirmed that he would tell the truth.

**Court:** Corporal Aliyu Yusuf what do you know about these accused persons?

**PW3:** What I know between Safiyatu and Yakubu is that on 23/12/2000 we were told that one Yakubu Abubakar had impregnated one Safiyatu Hussaini out of wedlock. The incident occurred at Tungar Tudu Chimmola Gwadabawa Local Government. We informed our boss the Area Commander who instructed us to go and investigate. We went but the village head was not around. However, his representative took us to the accused persons. During our interrogation Safiyatu confessed that indeed Yakubu Abubakar committed *zina* with her on four occasions. But Yakubu Abubakar denied ever committing *zina* with her. But he said she is his cousin<sup>33</sup> and he used to joke with her. That is all that I know.

**Court:** 1<sup>st</sup> accused Yakubu Abubakar: you heard the evidence of Cpl. Aliyu. Do you agree with it or do you wish to impeach it or do you have any questions?

**1<sup>st</sup> Accused:** I heard his evidence, I accept it, I do not wish to ask him any questions.

**Court:** 2<sup>nd</sup> accused Safiyatu Hussaini: you heard the evidence of Cpl Aliyu. Do you agree with it or do you wish to ask him any question?

**2<sup>nd</sup> Accused:** Indeed, the evidence given by the Corporal affecting me is the truth. I said Yakubu did have sexual intercourse with me on four occasions, but Yakubu said he had sex with me on three occasions. Therefore the Corporal did not tell the truth with respect to Yakubu.

**Court:** Prosecution Witness 4 (PW4) is called into the court. He is Joseph U.T. He is a Christian, a policeman with No. 113600, aged 38, attached to the Area Commander's Office Gwadabawa Local Government. He affirmed to tell the truth.

**Court:** Joseph what do you know about the accused persons?

**PW4:** I Joseph U.T., what I know between Safiyatu and Yakubu is that on 23/12/2000 at about 2.00 p.m. when we were at our office we received a complaint that one Yakubu Abubakar had impregnated one Safiyatu Hussaini Tungar Tudu. We went to Tungar Tudu to investigate. We met them and we interrogated them. Safiyatu said that it was true. It was Yakubu who impregnated her. We asked Yakubu and he denied being responsible for the pregnancy. That is all that I know.

**Court:** 1<sup>st</sup> accused: you heard the evidence of Joseph. Do you agree with it or do you wish to ask questions?

**1<sup>st</sup> Accused:** I heard the evidence and I agree with it.

**Court:** 2<sup>nd</sup> accused Safiyatu: you heard the evidence of Joseph. Do you agree with it or do you wish to ask questions?

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<sup>33</sup> "He said she is his *taubashiyarsace*." A *taubashi* (m) has a special relationship with his *taubasiya* (f) in Hausa culture, permitting certain freedoms.

**2<sup>nd</sup> Accused:** I heard it. Joseph did not say the truth concerning Yakubu, but he said the truth concerning me.

**Court:** Prosecutor do you have more witnesses?

**Prosecutor:** I don't have any more witnesses.

#### **Final address**

**Court:** 1<sup>st</sup> accused Yakubu Abubakar: Do you have any other defence or any reason which you wish to state before the court passes its judgment?

**1<sup>st</sup> Accused:** My defence is that the evidence given by the police is true and correct. I never said I committed *zina* with her even once. The first witnesses were being mischievous. I don't agree with their evidence.

**Court:** 2<sup>nd</sup> accused Safiyatu Hussaini: Do you have any other defence or reason which you wish to state before the court passes its judgment?

**2<sup>nd</sup> Accused:** The police did not tell the truth. It was Yakubu who impregnated me.

**Court:** Question to the 2<sup>nd</sup> accused Safiyatu before judgment. For how long did you remain unmarried before you committed *zina* with Yakubu Abubakar who impregnated you?

**2<sup>nd</sup> Accused:** I was divorced two years ago.

**Court:** Safiyatu, did not you have a sleeping pregnancy for your former husband before you committed this *zina*?

**2<sup>nd</sup> Accused:** To my knowledge it was Yakubu who impregnated me because after my divorce I observed my menses. I became clean from the impurity before Yakubu started having sex with me.

#### **Witnesses to the confession**

**Court:** Alhaji Mode, court messenger, a Muslim aged 70 years: do you witness the confession of Safiyatu Hussaini that she had committed *zina* with Yakubu Abubakar and that as a result she conceived and gave birth to a baby girl?

**Alh. Mode:** I do witness this confession of Safiyatu made before this court.

**Court:** Sarkin Fawa, Muslim, aged 75: do you witness the confession of Safiyatu that she had committed *zina* and that she gave birth to a baby girl through *zina*?

**Sarkin Fawa:** I do witness this confession made by Safiyatu.

**Court:** This case is adjourned to 9/10/2001 for judgment. Accused are to continue on their bail.

[Signed by the judge.]

#### **(e) Proceedings 9<sup>th</sup> October 2001**

**Court:** The court sits today 9/10/2001 for judgment. Both the accused persons are present in court.

#### **Charge**

I, Muhammadu Bello Sanyinnawal, the Judge, Upper Sharia Court Gwadabawa, do hereby charge you Yakubu Abubakar and you Safiyatu Hussaini with the offence of *zina* based on the complaint made against you by the police, alleging that you committed *zina*

whereby you Safiyatu became pregnant and gave birth to a baby girl when you are not married. This is called *zina* as defined by Section 128 of the Sharia Criminal Procedure Code Law 2000 of Sokoto State [sic: Sharia Penal Code Law], which is punishable under section 129(b). Its punishment is death by stoning with moderate size stones.

**Court:** Accused persons Yakubu Abubakar and Safiyatu Hussaini, do you understand the meaning of the charge?

**Accused Persons:** We do not understand.

#### **Explanation of the charge**

**Court:** The charge means that the court is charging you with committing this offence of *zina*. If it is proved against you, you will be punished by stoning to death since you are Muslims and each one of you had once married.

**Court:** Accused persons do you understand the meaning of the charge?

**1<sup>st</sup> Accused Yakubu Abubakar:** I understand the charge very well.

**2<sup>nd</sup> Accused Safiyatu Hussaini:** I also have understood what it means.

**Court:** Since both of you have understood the punishment prescribed for this offence for which you are standing trial, do you have any defence so that the court will not find you guilty of this offence punishable by *rajm*?

**1<sup>st</sup> Accused:** My defence is that I never had sex with her. The 1<sup>st</sup> and 2<sup>nd</sup> witnesses are her relations. But the two police witnesses told this court the truth when they said that I did not say I had sex with her.

**2<sup>nd</sup> Accused:** I know I was pregnant and gave birth but I was not the one that impregnated myself. It was Yakubu Abubakar who impregnated me. He had said that before, that he was responsible and now he is denying being responsible. So I don't agree.

#### **Conviction**

I, Muhammadu Bello Sanyinnawal do hereby find you Safiyatu Hussaini guilty of the offence of *zina* since you are a Muslim and had once been married. I find you guilty of this offence based on your confession, your pregnancy and your subsequent birth of a child. The offence carries the punishment of *rajm* under section 129(b) of the Sharia Criminal Procedure Code Law 2000 of Sokoto State [sic: Sharia Penal Code].

#### **Judgment**

Considering this case No. USC/GW/CR.F1/10/2001 which was presented by Police Sergeant Idrisu Abubakar No. 122816, which was filed on 3/7/2001, where he arraigned you Yakubu Abubakar and you Safiyatu Hussaini Tungar Tudu that you be punished for the offence of *zina* under Section 129(b). After the complaint was read to them, 1<sup>st</sup> accused Yakubu Abubakar denied it, but the 2<sup>nd</sup> accused Safiyatu Hussaini confessed to the commission of the offence. Based on this the court asked the prosecutor to prove the case against the 1<sup>st</sup> accused since he had denied the allegation.

The prosecutor produced four witnesses. The first two witnesses testified that the 1<sup>st</sup> accused did confess to the offence of *zina* on three occasions with the 2<sup>nd</sup> accused. The two remaining witnesses did not confirm that this confession was made. They were the ones who interrogated him and as such are in a better position to know the statement made by the accused, since their job was to investigate the case and they took down his statement. Therefore according to Islamic law the evidence of the two witnesses to the effect that the 1<sup>st</sup> accused did confess to the offence is not sufficient proof that he committed the offence since the last two witnesses did not give similar evidence. The offence of *zina* is proved by the evidence of four witnesses or by the manifestation of pregnancy. See *Risala* p. 592 where it says:

The prescribed punishment of *zina* will only be inflicted on the one who confesses to it, or the manifestation of pregnancy or the evidence of four witnesses, who must be male, freeborn, adult and just and they must witness the commission of the offence clearly as a stick enters into a container, and they must witness the offence at the same time.

From this authority we can see that the offence has not been proved against the 1<sup>st</sup> accused Yakubu Abubakar. Even if it were proved that he made the confession he could retract it and the punishment will not be inflicted. See *Mukhtasar* vol. 2 p. 285 where it says:

The *hadd* punishment should be inflicted on the one who confesses to the commission of *zina* in all circumstances save where he later retracts such confession. Such retraction should be accepted and the *hadd* punishment would then not be inflicted.

With respect to the 2<sup>nd</sup> accused Safiyatu Hussaini, this court has found her guilty of committing *zina* based on the manifestation of pregnancy on her and the subsequent birth of a child. See *Mukhtasar* vol. 2 p. 285 where it says:

The offence of *zina* is proved against a woman, based on the manifestation of pregnancy on her, if she is not married. This is whether the woman is free-born or a slave.

Based on this authority the offence of *zina* is proved against Safiyatu Hussaini. She will be stoned to death as provided for in *As'halul Madarik* vol. 3 p. 163 where it says:

A married person who commits *zina* shall be stoned until he dies. A group of Muslims shall witness the stoning.

The book describes the part of the body to be stoned, see vol. 3 p. 163 where it says:

The part of the body of an *az-zani*<sup>34</sup> to be stoned is the back and the stomach and not the face and the chest.

She will be stoned until she dies. She will then be bathed and clothed in a shroud and the Muslim funeral rites should be observed on her, and then she shall be buried in the Muslim cemetery. The execution on Safiyatu Hussaini will be suspended until she weans her child as provided for in *As'halul Madarik* vol. 3 p. 169 where it provides:

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<sup>34</sup> *Az-zani*: person who has committed *zina*.



#### PROCEEDINGS AND JUDGMENTS IN THE SAFIYATU HUSSAINI CASE

The punishment can be suspended due to condition of extreme heat or extreme cold. It is also suspended for a nursing mother until she has weaned her child.

See *Muwatta Malik* p. 642 where it says:

Malik related to me from Ya'qub ibn Zayd ibn Talha from his father, Zayd ibn Talha, that Abdullah ibn Abi Mulayka informed him that a woman came to the messenger of Allah, may Allah bless him and grant him peace, and informed him that she had committed adultery and was pregnant. The Messenger of Allah, may Allah bless him and grant him peace, told her, "Go away until you give birth." When she had given birth she came back to him. The Messenger of Allah, may Allah bless him and grant him peace, told her "Go away until you have suckled and weaned the baby." When she had weaned the baby, she came to him. He said, "Go and entrust the baby to someone." She entrusted the baby to someone and then came to him. He gave the order and she was stoned.

Based on the above reasons I, Muhammadu Bello Sanyinnawal, the Judge, Upper Sharia Court, Gwadabawa, do hereby order that you Safiyatu Hussaini Tungar Tudu of Gwadabawa Local Government be stoned to death with stones of moderate size until you die. She will be stoned in the manner described herein. The execution shall however be suspended until she weans her child. She will then produce herself for the execution of the judgment made against her. I further order that she will not be under the supervision of anybody nor will she be under bail and she will not be remanded in prison custody. However, if she refuses to come back for execution after she has weaned her child, then the Muslim community have the right to bring her. The court did not find Yakubu Abubakar guilty and he is hereby discharged and acquitted.

#### **Right of Appeal**

There is the right of appeal to the Sharia Court of Appeal, Sokoto within 30 days from today 9/10/2001.

[Signed by judge and dated 9/10/2001.]