

HIGH COURT OF SINDH, CIRCUIT COURT AT HYDERABAD

Cr. Appeal No.S-174 of 2017

[Meer Muhammad versus The State]

Appellant : Through Mr. Badal Gahoti advocate

Complainant : None present despite direct intimation notice to the Complainant's Counsel for today

State : Through Ms. Sana Memon A.P.G

Date of hearing : 26.06.2023

Date of Judgment : 27.06.2023

J U D G M E N T

MUHAMMAD KARIM KHAN AGHA, J. - Through captioned appeal, appellant has impugned the judgment dated 30.06.2017, passed by learned Additional Sessions Judge Hala (**Trial Court**) in Sessions Case No.07 of 2017 [**The State versus Meer Mohammad**], outcome of Crime No.169 of 2016 registered at P.S Hala New for offences punishable under Section 295-B PPC, whereby he has been convicted under Section 265-H(ii) Cr.P.C and sentenced to rigorous imprisonment for life under Section 295-B PPC; however, he has been awarded benefit of Section 382-B Cr.P.C.

2. Facts of the case are that Complainant Ghulam Raza lodged the above FIR by alleging that on 19.12.2016 he was available at Masjid Hasnain and after Asr prayer he came out of the Masjid at Masan road alongwith Faiz Muhammad and Abdul Jabbar, where they saw one person coming from Mori towards Masan road, the said person stopped his bike there and took something from his pocket and thrown it in dirty Nala, whereupon they went there and saw that same were verses of Holy Quran, one police constable Mashooque was also present there in civil dress and they apprehended the said person, meanwhile SIP Siddique Mallah also came there and the custody of apprehended person was handed over to him; the apprehended person disclosed his name as Meer Muhammad son of Soomar; SIP Mohammad Siddique took his personal search, where-after they all came at police station and lodged the FIR.

3. After registration of FIR, investigation was conducted and on its completion challan was submitted before the learned Judicial Magistrate concerned, who took the cognizance of the matter and sent up the R&Ps to learned trial Court, whereby copies were supplied to accused at **Ex.01** and formal charge was framed against him at **Ex.02**, to which he pleaded not guilty and claimed trial. In support of their case, prosecution examined eight (08) witnesses at **Ex.03 to 10**, who produced and recognized certain documents at **Ex.03/A to**

10/A, then prosecution closed its side at Ex.11. The statement of accused, as required under Section 342 Cr.P.C, was recorded at Ex.12, wherein he denied the allegations leveled against him by the prosecution witnesses. The learned trial Court finally, after hearing the learned Counsel for parties, convicted and sentenced the appellant, as mentioned supra. Hence the appellant has filed this appeal against his conviction.

4. The facts of the case as well as evidence produced before the trial Court find an elaborate mention in the impugned judgment, therefore, the same are not reproduced here so as to avoid duplication and unnecessary repetition.

5. Learned Counsel for the appellant argued that the impugned judgment is contrary to law and facts of the case and against the principles of criminal justice; that prosecution case is full of doubts and learned trial Court has failed to give benefit of said doubt to appellant; that impugned judgment is in violation of Section 367 Cr.P.C; that appellant belongs to Shia sect while complainant party belongs to Ahl-e-Hadith, therefore, there is sectarian difference between the parties, as such appellant has been falsely implicated in this case; that appellant specifically stated in his 342 Cr.P.C statement that he has been implicated in this case due to sectarian enmity; that impugned judgment is result of misreading and non-reading of the evidence; that there are material contradictions in the evidence of prosecution witnesses; that impugned judgment is in utter disregard and violation of various verdicts of law. He lastly prayed for acquittal of appellant. In supports of his arguments he has relied upon the reported cases of (i) **TARIQ PERVAIZ vs The STATE** [1992 P Cr.L.J 955], (ii) **MUHAMMAD SADIQ and another vs The STATE** [2003 YLR 2114], (iii) **MUJEEB UR REHMAN vs The STATE** [2018 YLR 389], (iv) **DOULAT vs The STATE** [PLD 2013 Sindh 223], (v) **MUHAMMAD BAKIISH vs The STATE** [PLD 1956 SC 420], (vi) **MST. ASIA BIBI vs The STATE** [PLD 2019 SC 64], (vii) **MUHAMMAD MANSHA vs The STATE** [2019 SCMR 64] and one unreported judgment dated 09.11.2020 of a learned Single Bench of this Court passed in Cr. Appeal No.184 of 2006.

6. Despite issuance of direct intimation notice on the last date of hearing in respect of today's date and time fixed matter the Complainant's Counsel was called absent without intimation despite his name appearing in the cause list. Under these circumstances since the appellant has been rotting in jail for the last 7 years and the complainant's counsel has notice of this case but preferred to remain absent in the interest of justice I have proceeded to decide this appeal as the interests of the complainant can be looked after by learned APG.

Learned APG supported the impugned judgment and argued that prosecution has proved its case beyond a reasonable doubt based on reliable eye witness evidence

and the judicial confession of the appellant and as such the appeal should be dismissed.

7. After my reassessment of the evidence I find that the prosecution has NOT proved beyond a reasonable doubt the charge against the appellant keeping in view that each criminal case must be decided on its own particular facts and circumstances for the following reasons:

(a) I find that the prosecution's case primarily rests, but not exclusively, on the evidence of the eye witnesses to the appellant throwing the verses of the Holy Quran in the muddy nalla. 4 eye witnesses are named however only two of them gave evidence namely the complainant Ghulam Raza and Abdul Jabbar. According to their evidence they saw the appellant throw the verses of the Holy Quran in a dirty nalla and then apprehended the appellant. The complainant then retrieved the verses of the Holy Quran from the dirty nalla which the appellant had thrown in the dirty Nala and gave them to the police. I do not find the evidence of these two eye witnesses to be reliable, trust worthy or confidence inspiring and disbelieve their evidence for the following reasons:

(i) That there was enmity between the appellant and these eye witnesses as disclosed through cross examination and the appellants S.342 Cr.PC statement in that the appellant belonged to one religious sect whilst the eye witnesses belonged to another religious sect who were deadly against each other.

(ii) That it does not appeal to logic, reason or commonsense that the appellant after throwing verses of the Holy Quran in the dirty nalla which is a very serious offence would wait around on his motor bike to be apprehended by the eye witnesses who saw his act from half a KM and 2 acres away respectively. Natural human conduct would have lead to him immediately leaving the crime scene.

(iii) That many persons came at the time of the arrest of the appellant but none of them were called as witnesses. In such like crimes it is usual for the angry mob to attack the culprit out of strong religious sentiment/fervor however in this instance no such attack was made which does not tie in with the usual reaction of a large crowd in such like cases.

(iv) That according to these eye witnesses and other witnesses this act of desecration of the Holy Quran had been going on for about 8 months. Once again it does not appeal to logic, reason or common sense that the witnesses would allow such conduct to go on uninterrupted for 8 months. It appears from the evidence that earlier some hindu's had been arrested for this offence however the IO did not take their statements and there is no record of what happened to them. For such like offences in Pakistan the accused especially if he is a member of a minority religious group is rarely let off.

(v) That the Quranic verses which were thrown in the dirty nalla when produced before the trial court in an unsealed condition were found to be waterless. I have examined the photo's of the wardat which were exhibited which show that the wardat was full of dirty water and as such it was impossible for the Quranic verses which were recovered from the dirty nalla to be water less. Such verses would have been covered in dirt and ruined in large part by being soaked in water. It is significant in this regard that according to his evidence the complainant on 23.12.16, four days after the incident, took fresh copies of the quranic verses to the police under seal. This is corroborated by PW 4 Mukhtiar Ali who was declared a hostile witness and PW 3 Gulab. Thus, I find that that no quranic verses were actually recovered at the scene and that such verses were handed over to the police 4 days later in water less condition and

used by the complainant and the police to falsely implicate the appellant in this case out of religious enmity.

(vi) That both these eye witnesses gave their S.161 Cr.PC statements 4 days after the incident without any explanation for such delay.

(b) Two important eye witnesses namely Faiz and PC Mashooque who was the arresting officer were given up by the prosecution without explanation and as such the inference under S.129(g) Qanoon-e-Shahadat Ordinance 1984 is that they would not have supported the prosecution case.

(c) After his arrest the appellant was not placed in the lock up of the PS but was instead placed in the quarters of SHO Daran-uddin who produced him before the judicial magistrate to give his confession one day after his arrest. SHO Daran-uddin however was not called as a witness. The appellant claims that he was pressurized by the police to confess before the judicial magistrate. The evidence of the judicial magistrate is particularly unimpressive and it appears from his evidence that most of the procedural safeguards regarding the recording of the confession were not adhered to. For example, after making his confession he was handed back to the police and not sent to judicial custody. The confession was made under oath which is impermissible in law. In this respect reliance is placed on the case of Tariq Pervaiz (*Supra*). Even the confession itself is somewhat contradictory to the prosecution evidence as in the confession the appellant states that he was arrested by a police party. There is no mention of the eye witnesses who according to their evidence grabbed hold of him and apprehended him. Thus, I have doubts as to the voluntariness of the confession and its object to state the truth and as such I place no reliance on it.

(d) Significantly, no question was put to the appellant regarding his judicial confession in his S.342 Cr.PC statement and it is well settled by now that the court can place no reliance on it under such circumstances in convicting the accused.

(e) Like wise the recovered desecrated verses of the Holy Quran which the appellant was seen throwing in the dirty nalla at the said time, date and location was not put to him for his comment during the recording of his S.342 Cr.PC statement and as mentioned above this being the case this piece of evidence namely the alleged desecrated verses of the Holy Quran cannot be used to convict him which in effect ends the prosecution case just as the absence of a chemical report would in a narcotics case as there is no evidence that the verses of the Quran were desecrated by the appellant as they were not put to him at the time of recording his S.161 Cr.PC statement.

(f) The appellant is entitled to the benefit of doubt as a matter of right and not concession and in this case there are many doubts.

8. Before parting with this appeal I would like to observe that from the speeches of the founder of this great nation Qaid-e-Azam Mohammed Ali Jinnah it can be deduced that Pakistan was created as an Islamic state but minority communities would also form an equal part of this great nation and would be respected, treated with dignity and have full rights and protections as guaranteed by the Constitution and the law. Regrettably since Pakistan's creation it appears that despite its founder's wishes and vision religious intolerance is on the rise and is often used by the majority Muslim population to persecute minority religious

783

communities or groups often by involving them in false cases of blasphemy for ulterior motives, for example, in order to grab their land. Blasphemy is undoubtedly a serious offence and genuine cases must be tried with full force however the time has come for the legislature to review the blasphemy laws and put in place greater safe guards in order to prevent the misuse and abuse of the Blasphemy law as it is a great evil which plagues society.

9. At this point it would be worth setting out Mr. Jinnah's Address of 11th August 1947 to the First Constituent Assembly in material part especially in so far as it relates to religious freedoms and the State **lest we forget or misinterpret our founder's vision for the newly created State of Pakistan;**

"Mr. President (Quaid-e-Azam Mohammad Ali Jinnah): Ladies and Gentlemen, Dealing with our first function in this Assembly, I cannot make any well-considered pronouncement at this moment, but I shall say a few things as they occur to me. The first and the foremost thing that I would like to emphasise is this - remember that you are now a Sovereign legislative body and you have got all the powers. It, therefore, places on you the gravest responsibility as to how you should take your decisions. The first observation that I would like to make is this. You will no doubt agree with me that the first duty of a Government is to maintain law and order, so that the life, property, and religious beliefs of its subjects are fully protected by the State.

The second thing that occurs to me is this. One of the biggest curses from which India is suffering - I do not say that other countries are free from it, but, I think, our condition is much worse - is bribery and corruption. (Hear, hear.) That really is a poison. We must put that down with an iron hand and I hope that you will take adequate measures as soon as it is possible for this Assembly to do so.

Black-marketing is another curse. Well, I know that black-marketers are frequently caught and punished. According to our judicial notions sentences are passed, and sometimes fines only are imposed. Now you have to tackle this monster which today is a colossal crime against society, in our distressed conditions, when we constantly face shortage of food and of the essential commodities of life. A citizen who does black-marketing commits, I think, a greater crime than the biggest and most grievous of crimes. These black-marketers are really knowing, intelligent and ordinarily responsible people, and when they indulge in black-marketing, I think they ought to be very severely punished, because they undermine the entire system of control and regulation of food-stuffs and essential commodities, and cause wholesale starvation and want and even death.

The next thing that strikes me is this. Here again is a legacy which has been passed on to us. Along with many other things good and bad, has arrived this great evil - the evil of nepotism and jobbery. This evil must be crushed relentlessly. I want to make it quite clear that I shall never tolerate any kind of jobbery, nepotism or any influence directly or indirectly brought to bear upon me. Wherever I find that such a practice is in vogue, or is continuing anywhere, low or high, I shall certainly not countenance it.

..... Now what shall we do? Now, if we want to make this great State of Pakistan happy and prosperous we should wholly and solely concentrate on the well-being of the people, and especially of the masses and the poor. If you will work in co-operation, forgetting the past, burying the hatchet, you are bound to succeed. If you change your past and work together in a spirit that every one of you, no matter to what community he belongs, no matter to what community he belongs, no matter what relations he had with you in the past, no matter what is his colour, caste or creed, is first, second and last a citizen of this State with equal rights, privileges and obligations there will be no end to the progress you will make.

5

I cannot emphasise it too much. We should begin to work in that spirit and in course of time all these angularities of the majority and minority communities — the Hindu community and the Muslim community — because even as regards Muslims you have Pathans, Punjabis, Shias, Sunnis and so on and among the Hindus you have Brahmins, Vashnavas, Khattris, also Bengalese, Madrasis and so on — will vanish. Indeed if you ask me this has been the biggest hindrance in the way of India to attain its freedom and independence and but for this we would have been free peoples long long ago. No power can hold another nation, and specially a nation of 400 millions souls in subjection; no body could have conquered you, and even if it had happened, no body could have continued its hold on you for any length of time but for this. (Applause.) Therefore we must learn a lesson from this. You are free; you are free to go to your temples, you are free to go to your mosques or to any other places of worship in this State of Pakistan. You may belong to any religion or caste or creed — that has nothing to do with the business of the State (Hear, hear). As you know, history shows that in England conditions some time ago were much worse than those prevailing in India to-day. The Roman Catholics and the Protestants persecuted each other. Even now there are some States in existence where there are discriminations made and bars imposed against a particular class. Thank God we are not starting in those days. We are starting in the days when there is no discrimination, no distinction between one community and another, no discrimination between one caste or creed and another. We are starting with this fundamental principle that we are all citizens and equal citizens of one State. (Loud applause.) The people of England in course of time had to face the realities of the situation and had to discharge the responsibilities and burdens placed upon them by the government of their country and they went through that fire step by step. Today you might say with justice that Roman Catholics and Protestants do not exist: what exists now is that every man is a citizen, an equal citizen, of Great Britain and they are all members of the nation.

Now, I think we should keep that in front of us as our ideal and you will find that in course of time Hindus would cease to be Hindus and Muslims would cease to be Muslims, not in the religious sense, because that is the personal faith of each individual, but in the political sense as citizens of the State. (bold added)

10. For the reasons mentioned above the appellant is acquitted of the charge, the impugned judgment is set aside, the appeal is allowed and the appellant shall be released provided that he is not wanted in any other custody case.