

**IN THE HIGH COURT OF SINDH, KARACHI***Present:**Mr. Justice Mohammad Karim Khan Agha**Mr. Justice Arshad Hussain Khan***SPL. CR. A.T. APPEAL NO.106 OF 2021.**

Appellant: Muhammad Sohail @ Kaloo @ Fahad S/o Muhammad Siddique through Mr. Moula Bux Bhutto, Advocate.

Respondent: The State through Mr. Muhammad Iqbal Awan, Additional Prosecutor General Sindh.

Date of Hearing: 30.11.2022

Date of Announcement: 06.12.2022.

**JUDGMENT**

*Mohammad Karim Khan Agha, J:-* Appellant Muhammad Sohail @ Kaloo @ Fahad son of Muhammad Siddique was tried before the Anti-Terrorism Court No.VII, Karachi in Special Case No.15(vii) of 2021 pursuant to FIR No.179 of 2016 u/s.336-B PPC r/w Section 7 ATA, 1997 registered at PS Shah Faisal Colony, Karachi and vide judgment dated 11.08.2021 appellant was convicted and sentenced as under:

- i) Accused Muhammad Sohail @ Kaloo @ Fahad s/o Muhammad Siddique was convicted for the offence punishable under section 336-B PPC and sentenced to suffer R.I. for life with fine of rupees One Million. In case of default in payment he was ordered to suffer S.I. for six months more. The amount of said fine, if paid by the accused was ordered to be delivered to complainant, as compensation u/s.544 Cr.P.C.
- ii) Accused Muhammad Sohail @ Kaloo @ Fahad s/o Muhammad Siddique was convicted for the offence punishable under section 7(c) of Anti-Terrorism Act, 1997 and sentenced to suffer R.I. for life along with fine of Rs.50,000/- (Fifty Thousand Rupees). In case of default in payment of fine he was ordered to suffer S.I. for six months more.

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- iii) Accused Muhammad Sohail @ Kaloo @ Fahad s/o Muhammad Siddique was convicted for the offence punishable under section 337-L(2) PPC and sentenced to suffer R.I. for one (01) year.

All the sentences were ordered to run concurrently, however, the benefit of section 382-B was also extended to the accused.

2. The brief facts of the prosecution case are that complainant Ahmer Iqbal S/o. Muhammad in his statement u/s. 154 Cr.P.C. averred that he was resident of House No.A-106, Alfalah Housing Society Shah Faisal Colony, Karachi and was serving in Asian Public Grammar School as a teacher. In the same school, he met a girl Asra at his workplace, who was also teaching there. He was interested in pursuing marriage with her so he sent marriage proposal to her family to which they agreed and so did his parents. In the month of February, he along with Asra went to Imtiaz Super Market situated at Awami Markaz, Shahr-e-Faisal, where he faced Muhammad Sohail alias Kalu who restrained Ahmer Iqbal more than once to back off from marriage as he intended to marry Asra, eventually, Muhammed Sohail alais Kalu threatened him to let Asra go however Ahmer refused and returned home. It is the case of complainant that on 29.04.2016 at about 1230 am, Muhammad Sohail called him over cell phone, disclosed him that he has is outside his house with a little present for him, therefore, Ahmer went downstairs, saw that Sohail was holding a plastic mug (full of acid) and all of sudden sprinkled/threw a caustic liquid at his face, and ran off. He was left severely burned and blind and went back in his home, where his family members poured milk and water on his face and other parts of his body, he was rushed to the Hill Park Hospital by his brother in law Shaikh Sajid, who was also present there, after getting first aid he was referred to Burns Center at Civil Hospital. The attack left Ahmer hospitalized for several days, with severe burns to his face, eyes, neck and hands. ASI Israr Ahmed after getting such information reached at Civil Hospital recorded his 154 Cr. PC. statement and thereafter incorporated the same in FIR Book.

3. After completion of investigation I.O. submitted charge sheet against the arrested accused Muhammad Sohail to which he pleaded not guilty and claimed trial.



4. The prosecution in order to prove its case examined 08 witnesses and exhibited various documents and other items. The statement of accused was recorded under Section 342 Cr.P.C in which he denied all the allegations leveled against him and proclaimed his innocence. However he did not examine himself on oath and did not call any witness in support of his defence case.

5. After hearing the parties and appreciating the evidence on record, the trial court convicted the appellant and sentenced him as set out earlier in this judgment; hence, the appellant has filed this appeal against his conviction.

6. The facts of the case as well as evidence produced before the trial court find an elaborate mention in the impugned judgment dated 11.08.2021 passed by the trial court and, therefore, the same may not be reproduced here so as to avoid duplication and unnecessary repetition.

7. Learned counsel for the appellant has contended that the case does not fall within the purview of the ATA; that the appellant is innocent and has been falsely implicated in this case by the complainant in collusion with the police; that the FIR was lodged after an unexplained delay of 30 days; that the sole eye witness who saw him running away cannot be safely relied upon as he was related to the complainant; that his finger prints were not found on the mug from which the acid was allegedly thrown; that the confession of the accused before the police was inadmissible in evidence and for any or all of the above reasons he should be acquitted of the charge by being extended the benefit of the doubt. In support of his contentions, he placed reliance on the cases of **Naveed Asghar v The State** (PLD 2021 SC 600), **Saeed Ahmad v Muhammad Nawaz** (2012 SCMR 89), **Arshad Khan v The State** (2017 SCMR 564), **Mst. Rukhsana Begum** (2017 SCMR 596), **Wazir Muhammad v The State** (1992 SCMR 1134), **Tariq Pervez v The State** (1995 SCMR 1345), **Sheral alias Sher Muhammad v The State** (1999 SCMR 697), **Muhammad Saleh v Muhammad Imran** (2021 YLR Note 23), **Moin Ali v The State** (2020 YLR 1160), **Rana Shabbir Hussain v The State** (2005 P Cr.L J 1599), **Altaf Hussain v The State** (2020 P Cr. L J 1419) and **Moharram Chhutto v Qadir Bux** (2021 YLR Note 24).



8. On the other hand learned Additional Prosecutor General Sindh has fully supported the impugned judgment. He has contended that the complainant and PW 1 Ms Asra's evidence corroborates each other in all material respects and can be safely relied upon; that eye witness PW 4 Shaikh Sajid correctly identified the appellant as the person who he saw fleeing his house after throwing acid on the complainant; that the medical evidence supports the prosecution case and the prosecution had proved the motive of the appellant which was his jealousy of the complainant who was getting married to PW 1 Ms Asra who he desperately wanted to marry. In support of his contentions, he placed reliance on the cases of **Ghulam Abbas v The State** (2022 SCMR 1102), **Ijaz Ahmad v The State** (2009 SCMR 99), **Zafar Iqbal v The State** (2010 SCMR 401), **Muhammad Nadeem alis Deemi v The State** (2011 SCMR 872), **Gulzar Ahmad v The State** (2016 YLR 1955), **Muhammad Anwar v The State** (1977 P Cr. L J 398) and **Pervez alias Laddu v The State** (2020 P Cr. L J 1672).

9. We have heard the arguments of the learned counsel for the appellant and learned Additional Prosecutor General Sindh and gone through the entire evidence which has been read out by the learned counsel for the appellant, and the impugned judgment with their able assistance and have considered the relevant law including the case law cited at the bar.

10. Based on our reassessment of the evidence of the PW's especially the medical evidence and other medical reports, acid marks left at the crime scene and recovery of the mug in which the acid/corrosive substance was thrown we find that the prosecution has proved beyond a reasonable doubt that Ahmar Iqbal (the injured/complainant) had acid/corrosive substance thrown on his face which lead to the loss of his eye sight and the severe disfigurement of his face and injury to his nose and mouth on 29.04.2016 at 0300 hours outside his house bearing number A/106 Al Falah Housing Society Karachi.

11. The only question left before us therefore is whether it was the appellant who threw the acid/corrosive substance at the face of the complainant/victim which caused him severe injuries to his face as mentioned above at the said time, date and location?

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12. After our reassessment of the evidence we find that the prosecution has proved beyond a reasonable doubt the charge in respect of the PPC offences against the appellant but **not** in respect of the ATA offences for which he is acquitted keeping in view that each criminal case must be decided on its own particular facts and circumstances for the following reasons;

(a) It is true that the FIR was lodged after a delay of one month however this delay is not fatal to the prosecution case as the delay in lodging the FIR has been fully explained in that the complainant was confined in hospital with serious burn injuries to his face including his mouth which precluded him from speaking and that as soon as he was well enough he recorded his Section 154 Cr.PC statement which was converted into the FIR in this case. Thus, we find the delay in lodging the FIR not to be fatal to the prosecution case. In this respect reliance is placed on the case of **Muhammad Nadeem alias Deemi v. The State** (2011 SCMR 872).

For assistance the Section 154 Cr.PC statement of the complainant is set out below;

**"STATEMENT U/S 154 CR.P.C."**

Ahmar Iqbal S/o. Muhammad Muslim aged about 24 years resident of House No.A/106, Alfalah Housing Society Shah Faisal Colony Karachi holding CNIC No.42201-2246261-3 and Cell No.0345-3171995; on enquiry, he stated that "I reside the above address with my parents am B.S and private teacher in Asian Public Grammar School where a girl namely Asra was also teacher, I talked her for marry and sent my mother at their home for seeking her hand in marriage and they accepted marriage proposal. In the month of February, I accompanied with Asra went Imtiaz Super Store near Awami Markaz Shahrah-e-Faisal where I met with a boy namely Muhammad Sohail and Asra had also talking terms with Sohail. After that Muhammad Sohail called me on phone for about 2/3 times and asked me move back because "I want to marry with Asra." I flatly refused Sohail and told him that my marriage has been settled with Asra. On 29.04.2016 around 12:30 AM, Sohail called me on phone and asked that "Ahmar I have brought a gift for you so come down hurry." I woke up from bed, worn Qameez, went down, **opened the door and saw Sohail was standing opposite by holding a Mug in hand and he asked me "Ahmar take your gift" then he threw acid Mug upon my face and body, due to which my eyes were closed and I very hardly reached to upper home.** My family quickly applied with milk cream on my face and body and my brother-in-law Sheikh Sajid shifted me through



ambulance at PSQ Hospital Hill Park where after providing me first aid and brought at Civil Hospital Burns Center. Now, I am under treatment at Burns Center and do report against Muhammad Sohail S/o. Muhammad Siddique has thrown acid upon me with intention to kill, hurt my body parts and got me injured on my refusal to move back from Asra. Hence, action may be taken. Heard statement and admitted correct. Sd/- (In English) by Ahmad Iqbal S/o. Muhammad Muslim and Sd/- (In English) ASI Israr Ahmed posted at PS Shah Faisal Colony. (bold added)

This FIR was not materially improved upon in his evidence and is corroborated by PW 1 Asra the lady in question both of whose evidence is set out below for ease of reference;

**Evidence in chief of PW 1 Asra;**

DEPOSITION OF WITNESS PW-01 ASRA.

Offence has taken place on 29.04.2016, I was working as a teacher at Asian Grammar School as a teacher. Previously I had been teaching in Anglophone Grammar School. Ahmad Iqbal and his brother Ahmar Iqbal were also teachers in Asian Grammar School. Ahmar Iqbal proposed me and sent his proposal at my house. I and my parents were agreed and we accepted proposal and decided that we would get married after one year. Eight months before the incident my brother Shan had booked online two tablet mobile phones. After booking within 24 hours mobile phones tablets received to my brother through one salesman/rider. After 15 days of receiving of mobile phone tablets in the tablet mobile phone some technical fault occurred so, I complained to concerned company resultantly accused Sohail arrived at my house as a representative of said company. He visited my house 2 to 3 times. He also started to call me and shown that he is interested in me, I explained him that I am engaged, when he did not stop to call me I informed him that I am already engaged to one Ahmar Iqbal who is educated person. He started weeping and disclosed that he cannot leave me and he will disclose about his feeling to Ahmar Iqbal. Thereafter, once I was going to school in the way accused stopped me and broken my mobile phone and also issue threats that he would kill Ahmar Iqbal by firing. On 28.04.2016, I went to Imtiaz Super Store along with Ahmar Iqbal where accused Sohail also arrived and issued threats by saying that we should leave each other. On 29.04.2016 at about 12:00 night to 12:30 am I was making conversation with Ahmar Iqbal on mobile phone while I was talking to Ahmar Iqbal he also received call of accused on same mobile, accused said to Ahmar Iqbal to come downstairs he brought some gifts for him. I heard these words. Thereafter, I



*stopped talking within 5 to 10 minutes I received call of accused Sohail he disclosed that I threw acid on Ahmar Iqbal and if I should not ready to talk with him, he would cause fire shot on Ahmar Iqbal and would not let him to go for medical treatment and would create hurdles in providing medical treatment. Accused used to extend threats me for killing Ahmar Iqbal. Thereafter, I came to know about the incident. Police also recorded my statement. Accused present in the court is same. (bold added)*

#### **Evidence in chief of PW 2 Ahmer Iqbal.**

##### DEPOSITION OF WITNESS PW-02 AHMAR IQBAL

*I was teaching in Asian Grammar School. There Asra was also teacher, I met with her in that school I liked her so I sent my mother for asking her hand for marrying. Her mother also agreed so our marriage was decided to happen, in February 2016 I met with one person namely Sohail at Imtiaz Super Market at Shahrah-e-Faisal he extended threats to me by saying that he likes Asra and I should step back. He also extended threats of dire consequences 2/3 times on cell phone. On 29-04-2016, at 12:30 am Sohail called me on my cell phone and he said to me that he brought a gift for me and I shall come down stairs so I went down stairs and reached to my main door. I opened the door, and I saw Sohail was standing there and he was having a Mug in his hand and in that mug there was acid he threw corrosive substance/acid at my face as soon he threw corrosive substance/acid at my face my both eyes got closed. I made hue and cry and I run to upstairs. In the while my family and my neighborhood gathered and they pour water and milk at me. Thereafter, ambulance was called and I was taken to hospital and therefrom I was referred to Civil Hospital Karachi and I got treated there. Accused Sohail threw corrosive substance upon me because I wanted to get marry with Asra and he tried to kill me. Police arrived on 19-05-2016, at Civil Hospital and recorded my statement u/s.154 Cr P.C. and obtained my signature. (bold added)*

Neither PW 1 Asra and PW 2 Ahmer who is the complainant who lost his eye sight during the acid attack by the appellant were dented during lengthy cross examination. There evidence has not been significantly improved upon from there Section 161 Cr.PC statement and S.154 Cr.PC statements respectively. They have given their evidence in a straightforward and natural manner and in their evidence they are fully corroborative of each other in respect of meeting each other at school, falling in love, arranging a marriage with the consent of their parents. How the accused entered the picture who fell obsessively in love with PW 1 Asra and how he threatened PW 2 Ahmer to leave PW 1 Asra for him right up to the time when PW 2



Ahmer saw the appellant Sohail who he knew from the super market and his threatening phone calls throw acid in his face out of jealousy. Neither PW 1 Asra nor PW 2 Ahmer had any ill will or enmity with the appellant which would lead to them falsely implicating the appellant in this case. The appellant is named in the FIR with the specific role of throwing the acid/corrosive substance on the complainant Ahmer's face. We have no reason to disbelieve their evidence which we find to be reliable, trust worthy and confidence inspiring and we believe the same.

(b) PW 4 Sheikh Sajid corroborates the evidence of PW 2 Ahmer in all material respects concerning the incident. He was the eye witness who saw the accused after throwing the acid on the complainant Ahmer running away from the house. He lived at the house and was not a chance witness. Admittedly he was related to the complainant Ahmer however he had no ill will or enmity with the accused and as such his evidence can be safely relied upon. In this respect reliance is placed on the case of **Ijaz Ahmad v The State** (2009 SCMR 99). It was his identification of the accused at a tea shop which lead to the arrest of the accused within one month of the incident. He identified the accused in court and in such cases of acid throwing based on the particular facts and circumstances of this case we can believe his correct identification of the accused despite their being no identification parade especially when it is read in juxtaposition with the evidence of PW 1 Asra and PW 2 Ahmer which we have already believed and placed reliance on. In this respect reliance is placed on the case of **Ghulam Abbas** (Supra). He was not dented during a lengthy cross examination. We find his evidence to be reliable, trust worthy and confidence inspiring and believe the same which we place reliance on.

(c) That the police evidence is corroborative of each other and since there was no proven ill will or enmity between the police and the accused there evidence can be safely relied upon as they had no reason to falsely implicate the accused for example by planting the mug which was used to throw acid on the complainant. In this respect reliance is placed on the case of **Mushtaq Ahmed v. The State** (2020 SCMR 474).

(d) That the medical evidence of MLO PW 6 Dr.Ali Raza fully supports the evidence of PW 2 Ahmer and the eye-witness/prosecution evidence. It confirms that the deceased received serious burn injuries on account of acid/corrosive substance to his face which lead to the loss of his sight and disfigurement of his face.

(e) That the mug which was used to throw acid on the complainant by the deceased was recovered at the complainant's house along with his burnt shalwar Qameez which when sent for chemical analysis produced a positive chemical report.

(f) That all the PW's are consistent in their evidence and even if there are some contradictions in their evidence we consider these contradictions as minor in nature and not material and certainly



not of such materiality so as to effect the prosecution case and the conviction of the appellant. In this respect reliance is placed on the cases of **Zakir Khan v. State** (1995 SCMR 1793) and **Khadim Hussain v. The State** (PLD 2010 Supreme Court 669). The evidence of the PW's provides a believable corroborated unbroken chain of events from PW 1 and 2 falling in love whilst teaching at the same school to their parents agreeing on their marriage to the appellant becoming besotted with PW1 and threatening her and PW 2 to break off their relationship to the appellant throwing acid / corrosive substance on the face of the complainant (PW 2) to the arrest of the accused and recovery of the mug and clothes at the crime scene which lead to a positive chemical report.

(g) In cases concerning heinous crimes such as throwing acid/corrosive substances on young people which leads to permanent disfigurement and completely ruins their lives there is a need to take a **dynamic approach**. The Supreme Court in **Noor Muhammad v. State** (1999 SCMR 2722) has also adverted to this aspect of the matter and has observed as under:-

*"However, we may observe that the people are losing faith in the dispensation of criminal justice by the ordinary criminal courts for the reason that they either acquit the accused persons on technical grounds or take a lenient view in awarding sentence. It is high time that the Courts should realize that they owe duty to the legal heirs/relations of the victims and also to the society. Sentences awarded should be such which should act as a deterrent to the commission of offences. One of us (Ajmal Mian, C.J., as he then was) has highlighted this aspect, inter alia in the case of **State through the Advocate General Sindh, Karachi v. Farman Hussain and others** (PLD 1995 SC 1), relevant portion whereof at page 19 reads as follows:-*

(3) It is a matter of public knowledge that in Sindh, on account of kidnapping for ransom, commission of dacoities **and other offences**, the people are feeling unsecured. The learned trial Court has dilated upon these aspects in detail. I am inclined to subscribe to the view found favour with it. The approach of the Court in matters like the case in hand should be dynamic and if the Court is satisfied that the offence has been committed in the manner in which it has been alleged by the prosecution the technicalities should be overlooked without causing any miscarriage of justice". (bold added).

(h) Undoubtedly it is for the prosecution to prove its case against the accused beyond a reasonable doubt but we have also considered the defence case to see if it at all can cast doubt on or dent the prosecution case. The defence case is simply one of false implication simplicitor without assigning any reason. As per the appellant he was arrested from his house however he did not give evidence on oath and did not call any witness to support the fact that he was arrested from his house and thus, for the reasons



mentioned above we disbelieve the defence case as an afterthought in the face of reliable, trust worthy and confidence inspiring eye witness and other corroborative /supportive evidence against the appellant which has not at all dented the prosecution case.

13. We however do **not** find that this case falls within the purview of the ATA as defined by a larger bench of the Supreme Court in the case of **Ghulam Hussain v. State** (PLD 2020 SC 61) where in essence for their to be an act of terrorism there had to be an object, intent, purpose and design to create terror on account of such act. Whether people were terrorized as a by product of the act did not convert the act into one of terrorism nor the fact that it may have been of a particularly brutal nature. Based on the particular facts and circumstances of this case it appears that the intent of the appellant was to frighten the complainant into breaking off his marriage to Asra so that he could marry her instead which had no object, intent, purpose or design to create terror and as such the appellant is acquitted of all offences under the ATA. In this respect reliance is placed on the case of **Ghulam Abbas** (Supra).

14. Based however on the above discussion especially in the face of reliable, trustworthy and confidence inspiring eyewitness evidence and other corroborative/supportive evidence mentioned above, we have no doubt that the prosecution has proved its case against the appellant beyond a reasonable doubt for the offences for which he has been convicted under the PPC in the impugned judgment and hereby maintain such convictions in the impugned judgment.

15. With regard to sentencing although we have adopted a dynamic approach and undoubtedly the crime is a most heinous one and we have found that the prosecution has proved its case beyond a reasonable doubt on account of a few minor lapses in the prosecution case although not enough to dislodge the finding that the prosecution has proved its case beyond a reasonable doubt, for example, the failure of the prosecution to produce the mobile phones and CDR data we hereby whilst relying on the cases of **Zafar Iqbal** (Supra) and **Ghual Mohy-Ud-Din V State** (2014 SCMR 1034) hereby reduce the sentence of the appellant under S.336 (B) PPC from life imprisonment to 14 years Imprisonment and a fine of RS one million which shall be paid to the complainant by way of compensation and if the appellant fails to do so he shall further undergo

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SI for 6 months more. The appellant's conviction and sentence u/s 337-L (2) PPC are maintained.

**Summary.**

(a) The appellant is acquitted for all offences under the ATA 1997.

(b) The appellant is convicted under S.336 (B) PPC however his sentence is reduced from life imprisonment to 14 years Imprisonment and a fine of RS one million which shall be paid to the complainant by way of compensation u/s 544-A Cr.PC and if the appellant fails to do so he shall further undergo SI for 6 months more.

(c) The appellant is convicted u/s 337-L(2) PPC and his sentence in the impugned judgment in respect of this offence is upheld.

Both the sentences are ordered to run concurrently, however, benefit of section 382-B is extended to the appellant who is also entitled to any remission applicable under the law now that he has been acquitted of the ATA offences.

16. As such the appeal is dismissed except as modified above.