

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Spl. Anti-Terrorism Appeal No. D – 74 of 2022

(*Faheem Solangi & others versus The State*)

Present:

Mr. Muhammad Iqbal Kalhoro, J.

Mr. Arbab Ali Hakro, J.

Date of hearing : **31.10.2023**

Date of decision : **31.10.2023**

Mr. Deewan Dhanraj, Advocate for appellants.

Syed Sardar Ali Shah Rizvi, Additional Prosecutor General.

J U D G M E N T

Muhammad Iqbal Kalhoro, J. – Appellants were charged for having committed offences U/S 295-A, 298, 298-A PPC read with Sections 6(1)(f), 8(g) & 9 of Anti-Terrorism Act, 1997 for uttering derogatory/insulting remarks, in prosecution of their common object, against Almighty Allah and Sahaba-e-Ikram (four righteous Caliphs) on purpose and with malicious intentions to outrage religious feelings of others on 04.05.2021 at 09:30 p.m. at Dargah Inayat Shah situated in front of Taj Masjid within limits of Police Station Tharu Shah. Against such charge, they were tried by learned Anti-Terrorism Court, Naushahro Feroze in Special Case No.30 of 2021, and vide impugned judgment dated 16.05.2022, they have been convicted and sentenced as under:

- For the offence punishable u/S 295-A read with Section 149 PPC and sentenced them to suffer R.I for (10) ten years and to pay fine of Rs.1,00,000/- (each). In case of default in payment of fine, they shall suffer S.I for three months more.
- For the offence punishable u/S 298-A read with Section 149 PPC and sentenced them to suffer R.I for two years and to pay fine of Rs.50,000/- (each). In case of default in payment of fine, they shall suffer S.I for three months more.
- For the offence punishable u/S 9 read with Section 8 of Anti-Terrorism Act, 1997 and sentenced them to suffer R.I for four years and to pay fine of Rs.1,00,000/- (each). In case of default in payment of fine, they shall suffer S.I for three months more.
- All the sentences awarded to all accused shall run concurrently giving them benefit of Section 382-B CrPC.

2. As per brief facts in FIR, complainant was offering Isha (night) prayer in the Masjid of Dargah Inayat Shah on 04.05.2021, when a mourning rally entered Dargah Inayat Shah. At about 09:30 p.m., the speakers in the rally started making speeches and spoke derogatory words that strength of Allah Almighty is under the dust of chappals of Hazrat Bibi Fatima-tu-Zahra (R.A) and Hazrat Ali (R.A) himself is empowered to create more than one God. Hearing such words as well as the words against Sahaba-e-Ikram, he went to the relevant place and saw appellants Faheem and Sajjad making such speeches, turn by turn, and remaining appellants were endorsing their words by uttering *Wah Wah*. He tried to intervene and stop the appellants from doing so, but to no avail. Finally, on 09.05.2021, he appeared at Police Station and registered FIR against them.

3. After FIR, appellant Faheem was arrested on 10.05.2021, whereas, remaining appellants were taken into custody on 19.05.2021 on dismissal of their pre-arrest bail application(s). The Challan against them was filed, leading to framing of a formal charge, to which appellants pled not guilty. Then the prosecution examined as many as six (06) witnesses, who have produced relevant documents to support the charge against the appellants. Statements of appellants U/S 342 CrPC were recorded after prosecution's evidence, they have denied the allegations. However, they have not examined any witness in their defence. Learned trial Court at the end of trial, vide impugned judgment dated 16.05.2022, has convicted and sentenced the appellants in the terms as above.

4. Learned Counsel in defence has argued that appellants are innocent, have been falsely implicated in this case; that there is no confidence inspiring evidence against them; that the presence of complainant and other eyewitness at the spot is doubtful; that they have contradicted each other on material aspects of the case; that the evidence in shape of USB as well as mobile phone of the complainant is not without a suspicion; that there is a delay of five (05) days in registration of FIR, which creates doubt in the prosecution case; that the appellants are the neighbours of the complainant, who, in order to settle personal score with them, has implicated them in this false case. Learned Additional Prosecutor General has, however, supported the impugned judgment.

5. We have gone through evidence of witnesses and heard the arguments of the parties. Prosecution has examined two eyewitnesses: PW-1 Tika Khan, the complainant, who has produced FIR and PW-2 Waleed Raza. PW-3 Rizwan Ahmed is the *mashir* in whose presence the place of incident was visited by the police after FIR, and he has produced such memo in his evidence as well as memos of arrest of appellants Faheem, deposit of mobile phone and USB by the complainant for examination, all dated 10.05.2021. He has also produced photographs of appellants taken from the mobile phone of complainant, memos of arrest of remaining appellants dated 19.05.2021. At Ex.12, prosecution has examined ASI Muhib Ali, who had recorded FIR as per verbatim of complainant. He has reiterated such facts in his evidence. At Ex.13, prosecution has examined Investigating Officer, who has simply narrated the details of investigation in his evidence, which mainly cover arrest of appellant Faheem on 10.05.2021, visiting place of incident, preparing relevant memos, collecting mobile phone from complainant and securing a USB of video clips purportedly demonstrating derogatory words uttered by the accused and recording 161 CrPC statements of the witnesses. He has produced the relevant documents in his evidence. At Ex.14, prosecution has examined Inspector Fida Hussain, he is the second IO and he had sent the mobile phone to Punjab Forensic Science Agency for examination and report. After his evidence, the statements of the appellants U/S 342 CrPC were recorded.

6. Entire prosecution's case against the appellants is based on evidence of complainant, PW Waleed Raza, and production of a mobile phone and a USB by the complainant with saved video clips demonstrating appellants Faheem and Sajjad uttering derogatory words in the speeches and remaining appellants endorsing the same. In the evidence of two witnesses, we have found certain lacunas enumerated herein under. Further, in FIR and evidence, the complainant has not revealed the fact of recording video clips of the incident, but surprisingly, one day after registration of FIR on 10.05.2021, he produced his mobile phone and USB, and claimed to have recorded the incident. In his evidence, he says that he along with PWs Waleed Raza and Javed Memon had gone to Dargah Shah Inayat, suggesting that both PWs are his friends and were with him. Whereas, PW Waleed Raza, in his cross-examination, has disclosed that complainant is not his friend and he: the complainant had reached after him. Then, strangely the complainant was able to identify the appellants, his neighbours, out

of the crowd of at least 20 persons available and none else, and has not named anyone as accused.

7. The record further shows that the USB, having video clips, was played in the trial Court and was seen by the Presiding Officer. And that the Presiding Officer, without appreciating the evidentially value of such evidence and related aspects, based on his observation of the video clips, has formed an opinion about the guilt of the appellants and convicted them. Not realizing that in the Audio Visual Analysis Report, furnished by Punjab Forensic Science Agency, it has been clearly stressed that no opinion could be made about audio contents of above mentioned two video clips due to unavailability of intended forensic tools. This conclusion shows that insofar as identity of the sound in the video clips, resounding derogatory words to outrage religious feelings of Muslims, which is the charge against appellants, is concerned, no expert's opinion was available before the Court to determine positively about guilt of the appellants. In absence thereof, a conclusion that the voices in the video clips were uttered by the appellants is but a hypothesis at the best, and therefore cannot be relied upon for recording conviction.

8. No expert report is available either that the persons visible in video clips are in fact the appellants. No sample or material to compare the identity of the appellants with those visible in the video clips was forwarded to the lab for this purpose, nor even in the evidence, this aspect has been attended by the Investigating Officer to confirm identity of the persons in the video clips to be appellants. He has simply, on a word of the complainant that the persons visible in the video clips are the accused/appellants, rounded them up and sent them up for a trial. So, except the evidences of the complainant and PW Waleed, which are not found satisfactory, due to above highlighted contradictions, no reliable evidence or expert opinion marking off the appellants as the accused is available to infer that they are guilty of the charged offence.

9. More so, complainant and PW Waleed Raza, in their evidence, have not clarified as to what words were uttered by appellants Faheem and Sajjad against Sahaba-e-Ikram (four righteous Caliphs), which they found derogatory and injurious to their religious feelings. In the evidence, it has also come that in the Masjid, at least 30 persons were available and the speeches by the appellants were being made on loud speakers. But, strangely except complainant and PW Waleed Raza, no

one took notice of it and felt having been religiously outraged, and came forward to give evidence against the appellants.

10. Insofar as punishment U/S 298-A, regarding derogatory remarks against the righteous Caliphs or companions of the Holy Prophet is concerned, we have already noted above that evidence of the witnesses on this aspect is sketchy and does not clarify as to against whom, four righteous Caliphs, the derogatory remarks were made by the appellants and of which nature. The probative value of the evidence of complainant and PW Waleed Raza on this aspect of the case is not above the mark.

11. Life and liberty of a person is precious not only in our religion but also in the constitutional scheme of things and it cannot be taken away save in accordance with law. The charge against the appellants of committing derogatory remarks outraging religious feelings of others has not been established by the prosecution beyond a reasonable doubt, as is indicated above. On such weak type of evidence, appellants cannot be sent to jail for 10 years. We, therefore, in consideration of above discussion, are of the view that there are multiple circumstances, which have created doubt in the case of prosecution. There are contradictions in the evidence of complainant and PW Waleed Raza. The lab report in respect of video clips retrieved from mobile phone of complainant and USB is inadequate and does not identify the sounds therein to have been uttered by the appellants. Appellants' identity in video clips has not been established beyond a reasonable doubt either and no evidence in this aspect has either been collected by the Investigating Officer, nor presented in the Court.

12. We, therefore, are of the view that appellants are entitled to benefit of a doubt. Consequently, this appeal is **allowed**. Conviction and sentence awarded to all appellants vide impugned judgment dated 16.05.2022 are **set aside**. As a result, the appellants are **acquitted** of the charge and shall be released forthwith by jail authorities, if they are not required in any other custody case. These are the reasons of our short order dated 31.10.2023.

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