

IN THE HIGH COURT OF SINDH AT KARACHI

Present:

**Mr. Justice Mohammad Karim Khan Agha
Mr. Justice Amjad Ali Bohio**

Spl. Criminal A .T. Appeal No.144 of 2022

Appellant : Shahid Wilayat son of Wilayat Masih
Through Mr.Azhar Hussain, Advocate.

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

Spl. Criminal A .T. Appeal No.145 of 2022

Appellant : Kashif Wilayat son of Wilayat Masih
Through Mr. Kamran Iqbal, Advocate.

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

Date of Hearing : 20.09.2023

Date of Judgment: 26.09.2023

J U D G M E N T

AMJAD ALI BOHIO, J: Appellants Shahid Wilayat and Kashif Masih, both sons of Wilayat Masih, being aggrieved of conviction and sentences recorded through impugned judgment dated July 19, 2022, passed by the learned Anti-Terrorism Court No. IV in Karachi, in Special Case No. 65/2020, have challenged its legality through above appeals. This case was registered on the basis of FIR No. 37/2020 under Sections 336-B, 468, 471, 109, and 34 of the Pakistan Penal Code (PPC) read with Section 7 of the Anti-Terrorism Act, 1997. They were convicted and sentenced as follows:

(a) Accused Shahid Wilayat S/o Wilayat Masih and Kashif S/o Wilayat Masih, found guilty for the charge of the offence of hurt by corrosive substance, are convicted u/s 336-B/109/34-PPC and sentence them to the imprisonment of fourteen years each and fine of Rs.1000000/- (Rupees one million) each, in default of the fine they will undergo simple imprisonment for six months.

(b) Accused Shahid Wilyat S/o Wilayat Masih and Kashif S/o Wilayat Masih, are also found guilty for committing offence under section 7(1)(c) of ATA 1997 and sentence them to the imprisonment for the term of ten years each, and to pay Rs.10,000/- (Rupees ten thousand) as fine and in case of default in payment of fine, they shall further suffer for simple imprisonment of two months.

2. The incident was reported by complainant Mst. Mishal, on February 18, 2020, at 5:00 PM. In her statement, she stated that she was employed at Jannat Medical Care Old Home. On February 16, 2020, at 2:00 PM, she received a phone call from the accused Kashif asking her to come to the office for a work-related meeting. She accompanied with her sister Tareeza aged 16 years old arrived at the 'Old Age Home' Centre located at House No. B-111/7, Khokrapar No.4, Karachi at about 3:30 PM. The brother of accused Kashif namely Shahid Masih, was also present there and on enquiry about purpose of meeting, they were asked to come inside the office. Thereafter accused Shahid started irrelevant conversation as such complainant suspected ill intents and wanted to leave but accused Shahid showed her fake *Nikahnama* (marriage certificate) of the complainant and insisted that she couldn't leave. Thereafter accused Shahid poured acid from a bottle on her resulting in severe burns on her face and hands. Her sister attempted to intervene and protect her, but the accused also threw acid on her sister, causing serious burns on her hands. Both sisters cried for help, prompting the accused to call his brother on the phone. In the meanwhile, people including the wife of the house owner gathered at the scene and she poured water on the victims and helped them change their clothes. Accused Kashif also arrived at the place of incident and took them to the hospital. He instructed them not to disclose the incident to anyone and subjected them to harassment. The accused further threatened the complainant and her sister, compelling them to remain silent. Subsequently, on the suggestions of elders, the complainant lodged this FIR.

3. During the course of investigation, the Investigating Officer inspected the place of incident and prepared such memo. Burnt clothing items were also seized during such inspection including a black *Abaya*, a skin-colored scarf, one maroon Kameez/shirt and one black Kameez. Victims were examined by WMLO Dr. Nadia Noor

with regard burns injuries sustained by them and the burns injuries sustained by the accused Shahid were inspected by Medical Legal Officer (MLO) at the hospital. Seized burnt clothes were sent to Chemical Laboratory for chemical analysis. The examiner's report indicated the presence of Sulphuric Acid (H₂SO₄) on the items submitted for chemical analysis.

4. Upon the completion of the investigation, the Investigating Officer submitted report under Section 173 of the Criminal Procedure Code against the appellants. The trial then commenced with framing of charge against appellants on 07-09-2020, to which they pleaded not guilty and opted for trial.

5. In order to prove its case, the prosecution examined complainant/victim Mishal Liaquat (PW-1), victim Treeza Liaquat (PW-2), Muhammad Naeem (PW-3), Gul Naz Naeem (PW-4), Liaquat Masih (PW-5), WMLO Dr. Afshan Nazli(PW-6), HC Manthar Ali (PW-7), Judicial Magistrate Benazir Ashraf (PW-8), SIP/I.O Subhan Ali (PW-9),M.O/Dr. Abdul Jabbar (PW-10), Church Secretary Sajid Romeez (PW-11), SIP/I.O Rao Tasleem (PW-12) and Inspector/I.O Liaquat Ali (PW-13). Thereafter the prosecution, closed their side of evidence on 18.05.2022 vide Exh-22.

6. Appellants, in their statements recorded under Section 342 of the Criminal Procedure Code, professed their innocence and agitated false implication in this case. They did not volunteer to give statement on oath under Section 340(2) Cr.P.C. in their defence so also did not opt for production of evidence.

7. On conclusion of the trial, after considering arguments from both parties and thoroughly examining the evidence, the trial court convicted and sentenced the appellants as stated in paragraph No.1 of this judgment. Consequently, the appellants have filed the aforementioned appeals to challenge their convictions.

8. The comprehensive details of the case and the evidence presented in front of the trial court have been thoroughly outlined in the judgment dated July 19, 2022. Therefore, there is no need for reproduction to avoid redundancy and unnecessary repetition.

9. We have heard, the appellants' counsels who contend that the appellants are innocent and have been falsely implicated by the

complainant. They emphasized that there is delay of two days in registering the FIR without satisfactory explanation, suggesting collusion between the complainant and the police to fabricate a false story against the appellants. The defense counsels assert that conviction cannot be solely based on the statement of the victims and that it requires corroborative evidence, which is lacking in this case. They have urged that the independent witnesses are not produced and there are significant contradictions in the testimony of the prosecution witnesses, which make their evidence unreliable, as there was apparent biasedness in their evidence. It is argued that there is no evidence to prove the telephone call made by appellant Kashif to the complainant and based on this lack of evidence, the defense asserts that the accused are entitled to be acquitted by extending the benefit of doubt.

10. Conversely, the learned Additional Prosecutor General has supported the judgment. He has argued that delay of two days in registering the FIR has been properly explained. He asserts that the victims' testimony fully implicates the appellants, and such implication is further substantiated by the testimony of independent and credible witnesses namely Gul Naz and Naeem, the owners of the building where the incident occurred. He further contends that the medical evidence aligns with the prosecution's version of events. The prosecution emphasizes that the victims would not have falsely involved the appellants in such a grave case of an acid attack on women, leaving out the real culprit. The prosecution asserts that they have established their case beyond reasonable doubt and therefore the appeals are liable to be dismissed. In support of these arguments, the learned Additional P.G. has cited legal precedents including cases of Amjad Ali and others v. The State (PLD 2017 Supreme Court 661) Muhammad Mansha v. The State (2001 SCMR 199), Ammal Shireen and another v. The State through A.G. N.W.F.P (PLD 2004 Supreme Court 371), and Ijaz Ahmed v. The State (2009 SCMR 99).

11. We have carefully considered the arguments of both sides. We have also conducted thorough review of the evidence including the details presented by the appellants' counsel and the contents of the judgment under challenge. Additionally, we have taken into account

the applicable legal principles and precedents cited during the proceedings.

12. The incident in this case occurred on February 16, 2020, at 15:30 hours but was not reported to the police until February 18, 2020, at 17:00 hours, resulting in delay of two days, which delay is explained by the specific circumstances of the case. Both ladies being sisters and direct victims of the acid attack were initially taken to Mother Care Hospital and Al-Mustafa Hospitals where it was informed by the accused that the victims had suffered acid burns due to kitchen accident but these hospitals refused to provide medical treatment. Subsequently, the victims were transported to Civil Hospital for treatment. Meanwhile, the accused Kashif, instructed the complainant party not to disclose the incident, assuring them that they would resolve the matter. Therefore, the delay in reporting the incident to the police is reasonably justified by surrounding circumstances.

13. The prosecution's case mainly revolves on the testimonies of both victims, who were eye witnesses to the incident. Let us break down the account of the first eyewitness who is also the complainant of the case i.e. PW-1 Mishal Liaqat, in detail:

- i) Background Information:** Mishal Liaqat is not only the complainant in the case but also one of the victims. She testified that she received a phone call from the appellant Kashif, who informed her that Zafar Siddiqui would come to the 'Old Age Home' (where she used to work) for a meeting. She was instructed to reach at the workplace.
- ii) Arrival at the Scene:** Mishal, accompanied by her sister Treeza, arrived at the 'Old Age Home' at approximately 15:00 hours. They were dropped off by their brother, who then left. When they arrived, they found the accused Shahid already present at the location.
- iii) Forced Presentation of Nikahnama:** Shahid presented a document claiming it was his Nikahnama (marriage certificate) with Mishal and demanded that she should attend the office, threatening to defame her if she refused. Mishal became suspicious of the document, believing it to be forged, and

attempted to leave the office. Shahid prevented Mishal from leaving by locking the office door.

- iv) Acid Attack:** Shahid then opened a bottle containing acid and threw it on Mishal. She attempted to shield herself, resulting in severe burns on her arms, back, ear, shoulder, and face. Her clothing, including her shirt and Abaya, were also burnt in the attack. Her sister, Treeza, tried to intervene and protect her, but she, too, suffered burns on her arms, legs, and clothing.
- v) Cries for Help:** The victims cried for help and a crowd gathered outside the office. Mishal testified that she washed her face and arms with water. The landlord of the office and his wife came down to assist her as her clothing was burnt. She was wrapped in a bed-sheet (Chadar) and brought to the upper floor of the building, where she changed clothes.
- vi) Seeking Medical Assistance:** The owner of the office, PW Naeem tried to call Mishal's father, but his mobile phone was with Mishal. Kashif, the brother of the accused Shahid suggested providing first aid. Mishal's father eventually arrived, and she sat with him on his motorcycle. Treeza, her younger sister, was transported on Kashif's motorcycle. They both were taken to Mother Care Hospital and Al-Mustafa Hospital, where they were denied treatment despite Kashif's attempt to deceive the staff by claiming they had been injured in a kitchen accident.
- vii) Treatment at Civil Hospital:** The victims were eventually treated at Civil Hospital after being denied care at the previous hospitals. Following medical treatment, they returned home.
- viii) Attempts to Suppress Reporting:** Mishal testified that Kashif directed her father not to report the incident to the police, promising to settle the matter amicably. Additionally, Kashif requested Mishal's mother not to file a complaint and even threatened her.

14. This detailed testimony from the first eyewitness provides a comprehensive account of the events leading to commission of

offence of throwing acid including the subsequent actions of the accused and the efforts to suppress the reporting of the incident.

15. The account provided by Eye-witness PW-2 Treeza Liaqat, who is also a victim of the incident, adds further details to the sequence of events:

- i) Accompanying Her Sister:** Treeza Liaqat testified that she accompanied her sister, Mishal, on February 16, 2020, in response to a call from appellant Kashif, who had summoned them to Jannat 'Old Age Home' for a meeting.
- ii) Arrival at the Scene:** They were dropped off by their brother at the 'Old Age Home', where they encountered accused Shahid. He inquired why Mishal had not been attending the office, to which she explained that she wanted to continue her studies.
- iii) Presentation of Nikahnama:** Shahid placed documents on the table, claiming it was a Nikahnama (marriage certificate). Mishal denied its authenticity, and both sisters attempted to leave the room.
- iv) The Acid Attack:** Shahid then took out a bottle from his shopper bag and sprinkled acid from it onto Mishal, resulting in severe burns to her face, arm and ear, as well as damage to her scarf, abaya, and shirt. Treeza attempted to rescue her sister but also suffered burns on her hands and legs.
- v) Cries for Help:** The victims cried out for help, which drew the attention of the owner of the office, PW Muhammad Naeem, and his wife, Gul Naz Naeem, who came to their aid.
- vi) Suspect Behavior of Shahid:** Treeza also noted that she observed Shahid putting his finger on the empty acid bottle and smearing something on his lips.
- vii) Initial First Aid:** The victims tried to wash their wounds with water, while Shahid fled from the scene. The owner's wife then moved them to the upper floor, where they changed their clothes and applied some form of healing substance to their wounds.

- viii) Attempts to Conceal the Incident:** Treeza mentioned that co-accused Kashif advised them not to disclose the true facts of the incident to anyone, assuring them that they would resolve the matter.
- ix) Transport to the Hospital:** Later, Treeza's father and Kashif transported them to Civil Hospital, where Kashif falsely claimed that their injuries resulted from slipping in the kitchen, concealing the actual facts.
- x) Directive to Keep Quiet:** After receiving medical treatment, Kashif dropped them off at their residence and instructed them not to reveal the incident to anyone, as they intended to settle the matter amicably.

16. Treeza Liaquat's testimony corroborates and provides additional details regarding the acid attack. It strengthens the case against the accused by offering a consistent account of the incident. Additionally, it is also deposed that Liaquat Masih (victims' father) was informed by PW Muhammad Naeem about the incident who then along with accused Kashif transported both daughters to the hospital.

17. SIP/I.O Subhan Ali, who registered the FIR (First Information Report), stated that he recorded the statement of the complainant/victim, Mishal, verbatim under Section 154 of the Cr.P.C. He confirmed the arrest of accused Kashif.

18. The evidence of complainant Mishal Liaquat and Treeza Liaquat proves that both appellants were present at the 'Old Age Home' during the incident. The complainant had previously worked at the 'Old Age Home' but left her job a few months before this incident to pursue her studies. On the day in question, when the complainant arrived at the 'Old Age Home' with her sister, accused Shahid was already present at the scene. Complainant Mishal and her sister Treeza Liaquat had no reason to falsely implicate accused Shahid by exonerating the actual culprit. There was no material inconsistency in FIR and evidence recorded before trial court. Both sisters provided straightforward and consistent evidence and their evidence could not be shaken during cross-examination. We find their testimony as reliable and confidence-inspiring especially when appellant Shahid did not deny his presence at the time and place of

the incident. Reliance in this regard was rightly placed on the case of Muhammad Mansha (Supra).

19. Witnesses Muhammad Naeem and his wife Gul Naz Naeem saw the accused at the scene of the incident. Witness Muhammad Naeem also testified that he saw the accused Shahid, holding a bottle. Witness Gul Naz Naeem mentioned that they witnessed Shahid fleeing the scene while his brother, Kashif, arrived after being called by her husband, Muhammad Naeem. Both witnesses, Muhammad Naeem and Gul Naz Naeem are the building owners and took both sisters victims of offence to upper floor in the same building to change their clothes before transporting them to the hospital with their father Liaquat Masih and appellant/accused Kashif. These witnesses are not considered chance witnesses but rather are natural ones, as established in the case of Amjad Ali (Supra). Importantly, both witnesses did not claim to have seen the accused actually throwing acid on the complainant but testified to have seen the bottle in Shahid's hand as he fled the scene upon their arrival. Their testimony remained consistent throughout and their credibility was not undermined during cross-examination. Their evidence, particularly the presence of accused Shahid, is not disputed.

20. Witness PW SIP/I.O Rao Tasleem testified that he arrested accused Shahid Wilayat on February 18, 2020, in the presence of the complainant and PW Liaquat. During the arrest, a mobile phone was recovered from Shahid's possession and burnt clothes provided by the complainant Mst. Mishal, were also seized.

21. PW Inspector/I.O Liaquat Ali played a significant role in the investigation. He sent the burnt clothes to the Chemical Examiner, obtaining permission from the SSP. The Chemical Analyst's report (Exh-21/F) confirmed the presence of Sulphuric Acid (H₂SO₄) on the items, strongly supporting the use of acid in the attack. Additionally, he produced both victims before the Magistrate on February 26, 2020, and the Magistrate recorded their statements under Section 164 of the Criminal Procedure Code. During the investigation, he inquired at the Church to verify the authenticity of the marriage certificate presented by accused Shahid but found it to be fake as it was not recorded in the church's records.

22. In the case of the acid attack on both victims, the allegations are against accused Shahid Wilayat. WMLO Dr. Nadia Noor initially examined both victims but as she was abroad on Ex-Pakistan leave as such Dr. Afshan Nazli, who was familiar with her handwriting and signature was examined to verify her signature on the report. Dr. Afshan Nazli provided a detailed account of the examination of victim Mishal, who was brought to the hospital on February 19, 2020, at 12:15 P.M., with a history of acid being thrown on her and following injuries were noted:

1. *Reddish zone over both cheeks involving left ear with brownish stain over forehead, tenderness positive, swelling over right eye positive.*
2. *Reddish brown multiple zone over anterolateral aspect of left deltoid region, left forearm, left hand, dorsum, tenderness positive.*
3. *Reddish brown multiple zone over dorsum of right hand and anterolateral aspect of forearm.*
4. *Reddish brown zones over left heel posterior aspect.*

She further testified about the examination of Mst. Treeza, conducted by Dr. Nadia, which revealed the following injuries.

1. *Multiple reddish zones over dorsum aspect of both hands, swelling and tenderness positive, reddish zones entered to wrist on both arms.*

23. After examination, both patients were sent to the Burns Ward for treatment due to their history of acid throwing, as confirmed by WMLO Dr. Nadia Noor. WMLO Dr. Afshan Nazli produced provisional and final medical certificates issued by WMLO Dr. Nadia Noor which revealed that the victims had received 10% and 5% burn injuries respectively.

24. Additionally M.L.O/Dr. Abdul Jabbar examined accused Shahid on February 19, 2020, at 04:06 P.M. and found a 2% acid burn on his right arm. This injury was determined to be 2-3 days old.

25. The statements provided by the doctors fully support the complainant's initial report and her testimony during her examination. This consistency in their accounts was further corroborated by the evidence presented by PW Treeza, the complainant's sister. Both victims/eyewitnesses and WMLO

explained the time between the occurrence and the medical examination. Despite cross-examination, the defense could not extract anything adverse to the prosecution's case that could refute the medical evidence. The circumstances established that the medical evidence was consistent with the eyewitness accounts. In summary, the testimonies of the complainant, PW Treeza and the WMLO along with the medical report, align and strengthen the evidence of the incident, the injuries sustained and the involvement of the appellant, Shahid. This consistency among the statements and findings supports the overall case against the appellant Shahid.

26. The appellant, Shahid took inconsistent pleas during the evidence of both victims. Initially, he claimed that the complainant intended to marry him and on his refusal, attempted to sprinkle acid on herself. However, in his statement under Section 342 Cr.P.C., he claimed to have married complainant Mishal in the Church and their Nikahnama was executed, but she refused to live with him and torn the Nikahnama. This inconsistency raised doubts about Shahid's credibility and further supported the charges against him. We have observed that multiple burn injuries, extensive in nature, involving different parts of body rule out the possibility of an accident or self- infliction as held in the case of Ghulam Abbas v. The State wherein the conviction to the extent of section 7(c) of the Anti-Terrorism Act, 1997 was set aside and likewise we also find that there was no "design" or "object" to create terror as contemplated by section 6 of the Anti-Terrorism Act, 1997 involved in the case in hand.

27. Additionally, the prosecution also called Church Secretary PW Sajid Romeez as a witness regarding the marriage certificate or Nikahnama between Mishal and accused Shahid. He testified that, according to the church's registration records, no such marriage certificate between Mishal and Shahid was registered at the church, deeming the document in question as fake.

28. As regards the allegations against co-accused Kashif, it is alleged that the offense was committed in furtherance of their common intention. The complainant stated in her FIR and testimony that she received a call from accused Kashif about her meeting with someone at the 'Old Age Home'. However, the investigating officer did not collect the call data recording (CDR) of accused Kashif's

phone or the mobile phones of the complainant and her sister, Treeza. It is important to mention that it has not been brought on record if the accused Kashif was present at the 'Old Age Home' when the complainant and her sister arrived. However it has only come on record that after the incident, he was called by the building owner Muhammad Naeem, to assist with transporting the victims for medical treatment. The victims willingly sat with Kashif on his motorcycle and their father accompanied them on another motorcycle for treatment. This indicates that there was no ill intention or sharing of common intention as against appellant Kashif to facilitate the commission of offence.

29. Regarding the allegations of threats against Kashif, the complainant mentioned that he threatened her mother. However, her mother's statement was not recorded, and she was not associated as a witness to corroborate these claims. It has also been brought during evidence that accused Kashif washed the place of incident after the occurrence as deposed by PW Muhammad Naeem and learned APG has contended that accused Kashif thereby attempted to destroy the evidence. It is observed that no such allegations were leveled against accused Kashif at the time of lodging FIR by the complainant. Even no such question was asked from accused Kashif during his statement under section 342 Cr.P.C by the trial court , therefore such piece of evidence could not be used against him for maintaining conviction and sentence as held in the case of Muhammad Nawaz and others v. The State and others (2016 SCMR 267), wherein it was observed as under:

“While examining appellants under section 342 Criminal Procedure Code, the medical evidence was not put to them. It is well settled by now that a piece of evidence not put to an accused during his/her examination under section 342 Criminal Procedure Code, could not be used against him/her for maintaining conviction and sentence.”

30. Apart from this PW Muhammad Naeem who is alleged to have seen accused Kashif while washing the floor after the incident has deposed during his cross examination that he washed the same to protect others from the acid drops, thus such act was not to aid destruction of evidence. These actions and his sympathetic attitude do not suggest common intention. In conclusion, we have found that the prosecution failed to establish the common intention and common object of accused Kashif in committing the offense,

especially when victim Treeza sat with him on his motorcycle, and he assisted in providing medical treatment. The manner these injuries were sustained by the victims also does not support such intent. This view aligns with the case of Muhammad Iqbal and another v. The State and others (2023 SCMR 750) and the case of Ijaz Ahmed (Supra). As such appellant Kashif's case is on a completely different footing to that of Shahid who was the person who actually threw the acid on the victims.

31. It may not be out of place to observe that acid attacks have devastating consequences, particularly for women. These attacks result in severe pain, permanent disfigurement, infections, blindness, psychological and economic hardships. It is only the survivor specially lady who face such like incidents. In Shahid's case, his claim of a marriage with the complainant was contradicted by her and the Church Secretary confirmed that no such marriage was registered. Additionally, Shahid's defense, stating that he attempted to save the complainant when she allegedly sprinkled acid on herself, was refuted by the testimony of PW victim Treeza, who stated that he left the scene and fled. This raises suspicion regarding the defence taken by him for his presence at the time of incident. Furthermore, it is important to note that entire eye witness account as brought on record was not controverted during cross-examination of the victims, further strengthening their evidence.

32. There are no major contradictions in the evidence of the prosecution witnesses and it is established principle of law that minor contradictions that do not affect the materiality of the evidence have to be ignored. This principle is supported by cases such as Zakir Khan v. The State (1995 SCMR 1793) and Qaden alias Qadir Bux and another v. The State (PLD 2015 Sindh 426).

33. The prosecution has therefore successfully demonstrated that appellant Shahid threw acid on the complainant and in the process of rescuing her sister Treeza, she also received burn injuries. This matter was reported to the police with well explained delay and is corroborated by medical evidence as well as positive chemical report proving that the clothes worn by the victims at the time contained the signs of acid on them.

34. We have also reviewed the defence version in juxtaposition to prosecution case and have found that prosecution case is proved to the hilt beyond reasonable shadow of doubt and the allegations leveled as against the appellant Shahid for committing the offense have been proved. However, the prosecution could not prove the common intention and object against accused Kashif for committing the offence.

35. In light of the reasons discussed above, by extending the benefit of doubt, appellant Kashif Wilayat S/o Wilayat Masih is acquitted of the charge. The impugned judgment to the extent of conviction and sentence of appellant Kashif Wilayat is set aside, and Spl. Cr. A.T. Appeal No.145/2022 is allowed. However, Spl. Cr. A.T. Appeal No.144/2022 filed by appellant Shahid Wilayat S/o Wilayat Masih, is partly allowed and his conviction and sentence under section 7 (1) (c) of Anti-Terrorism Act, 1997 is set aside but as regards the remaining convictions and sentences of appellant Shahid Wilayat s/o Wilayat Maseeh, the same are upheld and maintained and this appeal is dismissed to that extent.

JUDGE

JUDGE