

**IN THE HIGH COURT OF SINDH CIRCUIT COURT
HYDERABAD**

Criminal Appeal No. S-182 of 2010

Appellants: Mst. Rehana Memon through Mr. Imtiaz Ali Chanhio, Advocate.

Complainant: Ahmed Ali, present in person.

Respondent: The State through Ms. Rameshan Oad, Assistant Prosecutor General Sindh.

Date of hearing: 30.10.2023 & 02.11.2023
Date of decision: 09.11.2023

J U D G M E N T

KHADIM HUSSAIN TUNIO, J,- Through instant criminal appeal, the appellant Mst. Rehana has challenged the judgment dated 26.05.2010 (“**impugned judgment**”) passed by learned IIIrd Additional Sessions Judge, Hyderabad (“**trial Court**”), in Sessions Case No. 791 of 2000 [Re-State v. Mst. Rehana and others] emanating from Crime No. 137/2000 registered at Police Station Hala for the offence punishable under sections 324, 336 and 337PPC, whereby he has convicted and sentenced the appellant for the offence punishable under section 324 PPC and sentenced to suffer rigorous imprisonment for ten years with fine of Rs. 1,000,000/- and in case of non-payment of fine, to suffer simple imprisonment for two years more. She was also convicted for the offence punishable u/s 334 PPC and sentenced to suffer rigorous imprisonment for another ten years and ordered to pay *Arsh*. Lastly, she was convicted for the offence punishable u/s 336 PPC and sentenced to suffer rigorous imprisonment for another ten years with an order to pay *Arsh*. On occasion of non-payment of *Arsh*, she was ordered to be kept under simple imprisonment until she paid the *Arsh* in full. She was extended benefit of section 382-B Cr.P.C.

2. On 29.10.2000, at 08.00 p.m., one Kher Muhammad called Makhmoor ("**the victim**"), brother of complainant Ahmed Ali, residing in the same village. He disclosed that since they were having disagreements, they should come to his house for a resolution. At 09.00 p.m., said Kher Muhammad's son also ringed the complainant's brother. The victim along with his friend Muhammad Ayoub and Inayat Hussain drove their car to Hala at 10.00 p.m. and an hour and half later, Muhammad Ayoub informed the complainant over a phone call that Kher Muhammad and others accompanying him had thrown acid upon the victim, who had become injured and was hospitalized at Hala. The complainant rushed to the hospital and found his brother severely defaced due to the acid burns. The victim then disclosed to the complainant that it was 10.45 p.m. the same night when he entered the house of Kher Muhammad while his friends Ayoub and Inayat stayed in the car. Kher Muhammad was accompanied by Mst. Zulekhan, one Aijaz and his wife Mst. Rehana (the appellant), Khuda Bux, Shahid and Jamil. The complainant disclosed that at 11.00 p.m., they were talking to each other when Mst. Zulekhan asked the victim to request Aijaz to not bicker with his wife to which the complainant replied negatively and got up to leave. They were annoyed and followed him, abused the victim and grabbed him by his arms. Meanwhile, Aijaz, Mst. Rehana and Mst. Zulekhan threw acid at him. The victim tried escaping, but Khair Muhammad, Shahid and Jamil pushed him to the ground and beaten him while Rehana closed the door of the room. He stormed out of the door, came out and narrated the facts to Ayoub and Inayat who immediately brought him to the hospital at Hala wherefrom he was referred to LMCH Hyderabad and then he was admitted in Liaquat National Hospital, Karachi. The complainant then appeared at the police station and got the FIR lodged.

3. After the registration of the case, usual investigation followed and then the Investigating Officer ("**I.O**") submitted challan before competent Court of law against the appellant along with the others. Cognizance was taken and then charge was framed to which all

the accused including the appellant pleaded not guilty and claimed for trial. In order to substantiate the charge, prosecution examined as many as ten witnesses namely Ahmed Ali, injured/victim Rab Dino alias Makhmoor, Inayat Hussain, Muhammad Ayoub, mashir Mumtaz Ali, Medical Officers Dr. Abdul Khalique and Dr. Qadir Bukhsh, Prof. Faiz Muhammad, DSP Ahmed Khan and LNK Abdul Ghafoor (he was well conversant with the signature of late PW ASI Abul Hassan), thereafter prosecution closed its side.

4. Statement of accused u/s 342 Cr.P.C was recorded, in which she denied the case of prosecution, claimed her false implication due to a prior dispute and pleaded innocence. However, she neither examined herself on oath nor examined any witnesses in her defence.

5. After hearing the counsel for the parties, learned trial Court convicted and sentenced the appellant as stated above, hence, this appeal.

6. Learned counsel for the appellant has contended that appellant is innocent and falsely implicated in the false case by the complainant; that there is no eye witness of the incident; that on the same set of evidence co-accused namely, Khair Muhammad, Mst. Zulekhan and Khuda Bukhsh have been acquitted by the learned trial Court; that the impugned judgment rests on the testimony of interested witnesses; that the only evidence against the appellants is the statement of the complainant himself which is insufficient to maintain conviction; that there are various contradictions in the evidence of the prosecution witnesses, as such he prays for the acquittal of the appellant Mst. Rehana. In support of his contentions, he cited the cases reported as Muhammad Arif v. The State (2019 SCMR 631), Muhammad Imran v. The State (2020 SCMR 857) and Muhammad Ghayas alias Baba and another v. The State (2020 MLD 1996).

7. Conversely, learned A.P.G. for the State has supported the impugned judgment. The prosecution has established the case against the appellant by ocular, medical and circumstantial evidence coupled with positive report of the Expert, as such, learned trial Court has

rightly convicted and sentenced the appellant. She, therefore, prayed for dismissal of instant criminal appeal. In support of her arguments, learned A.P.G. has relied upon the cases reported as Syed Azhar Hussain Shah and another v. The STATE and others (2019 SCMR 537) and Hayat Muhammad v. State through Additional Advocate General, Khyber Pakhtunkhwa and another (2021 SCMR 1831).

8. I have heard the learned counsel for appellant and learned A.P.G. for the State and prudently perused the material available on the record.

9. The case of the defence is three-fold; firstly that co-accused Khair Muhammad, Mst. Zulekhan and Khuda Bux were all acquitted on the basis of the same set of evidence, secondly that the learned trial Court could not have solely relied on the evidence of the victim to convict the appellant, and lastly that it was an accident where the victim/injured had tried to throw acid at the appellant and her family, but during the commission, got himself injured. As far as the first contention is concerned, the role assigned to the convicted co-accused Aijaz who is also the husband of the present appellant Mst. Rehana is identical to her role; that of throwing acid at the victim, Makhmoor. The role assigned to Khair Muhammad and Khuda Bux is distinguishable in that they are stated to hold the victim while acid was thrown at him and this role was also originally assigned to Mst. Zulekhan which was then deemed doubtful as she was said to have also subsequently thrown acid. The case of the acquitted co-accused is therefore independent of the case of the present appellant due to the variation in their roles. Mst. Rehana has been assigned the direct role of throwing acid at the victim, defacing and permanently disfiguring him.

10. The second limb of the prosecution case is that the trial Court solely based the conviction on the testimony of the victim. The testimony of the victim plays a crucial role in the prosecution case as he is a surviving burns victim and has deposed to the effect of what he went through at the time of the incident. Attempts were made at trial to muddy the character of the victim to justify the act, however the same

holds no materiality because there are no substantial allegations against the victim to the effect that he had tried to force himself on the appellant or her family. The victim, Rab Dino alias Makhmoor testified:

“When I entered into the house of accused Kher Muhammad, I saw that Kher Muhammad was waiting for me and was standing in the house. I by entering the house asked from accused Kher Muhammad for calling me. Who told me that there is an urgent Faisla hence the family members were also waiting for me. I told him that now it is late hours of night, whether family members had slept or not who went inside the house, cae back and informed me that entire family members were awaking hence I sat Inayat and Ayob in the car, went inside the house along with accused Kher Muhammad. When I entered in house with accused Kher Muhammad that under pre-planning accused Aijaz, Mst. Rehana, Zulekhan, Khuda Buksh and Jameel, Shahid, all were available in the house. Mst. Zulekhan by seeing me coming in the house offered me to sit at credit. Mst. Zulekhan also sat in credit at other side with me. Accused Khuda Bux and others remained in veranda of the house. Mst. Zulekhan started talking with me. In the mean-time Rehana came in room 2/3 times, just for a round and went. Mst. Zulekhan told me as per their planning that accused Aijaz had married with Mst. Rehana under my advise but now they are not on good terms with each other hence I should advise accused Aijaz to behave properly with Mst. Rehana. But I replied that now odd hours of night and had become very late and I will come back on Friday and thereafter I will settle dispute. She had further told me that Aijaz was going to give divorce to Mst. Rehana. Meanwhile, I felt motion hence I went in the Bathroom of the accused persons and after that I was coming from bathroom. Accused Khuda Bux who was lying on cot in rest condition, Mst. Zulekhan and Mst. Rehana by standing were consulting with each other. As soon as I said good bye to accused that accused Khuda Bux came from the car and grapples me. Mst. Zulekhan immediately on his back came from and from my back side took me at arm. Other accused Jameel and Shahid came, in the meantime I raised cries. Mst. Rehana and Aijaz who came in front of me. Aijaz was standing at the stair case whereas Mst. Rehana was standing near by ladder and hand pump. Khuda Bux by grappling me giving kicks blows hence I resultantly came nearby the door. They accused persons in order to kill me with pre-planning accused Aijaz had thrown vessles filled with acid at my left side of head and face which had caused me severe and serious injury at left side of head and face and the entire face and resultantly face was burnt and Mst. Rehana thrown acid which was in a tin to me which was hit to me at left shoulder to which I sustained acid burn injury at left shoulder. Then the accused Aijaz and Mst. Rehana had thrown acid at a time.”

11. The above depositions appear to be straightforward. Rab Dino simply deposed that he went to the house of the appellant where he was initially greeted and sat to discuss familial matters. When he refused to handle them that given instance, he was attacked by the assailants which is when the present appellant along with her husband threw acid at him, her husband did so on the victim’s face and she

threw it at his shoulder. In the instant case, there is sufficient evidence that the appellant acquired the corrosive substance and attacked the victim at night in their home, as Dr. Qadir Bux (PW7) who had examined the appellant Mst. Rehana and her husband after their arrest, with respect to their injuries, testified that he found three scabs of blackish burns of about half cm rounded on dorsal side of middle and distal phalynx of middle finger of left hand and a scan of blackish burn of about 3 cm rounded at the dorsal side of the left foot on the accused Aijaz whereas he found one scab of blackish burn of about 2 cm rounded on the chin of appellant Rehana and another scab of blackish burn of about 1 cm, rounded, on the left cheek of appellant Rehana. Faiz Muhammad Khan (PW8), described the aftermath of the attack of the victim Makhmoor, testified:

“When the patient came he was chemical burns mainly on the upper parts of the body including the involvement of whole face viz. eyes, being involved with the chemical burns. The patient was burnt 40 percent of his body surface. The burns have been treated all with that protocol with scientific necessity. The eyes have been treated by the eye-surgeons in their opinion that he has lost his both eyes due to chemical burns. The eyes, however, has been reconstructed by me and I was lucky to save the right eye to an extent when a high powered kerotobrosthesis which is yet to be introduced in Pakistan but in some parts of the world the process was available and was applied to his right eye which I reconstructed the patient was some sorts of viction which is helping him mobility.”

12. Going back to the second contention that the trial Court solely relied on the testimony of the victim, this assertion is incorrect as the trial Court has properly assessed all the evidence including medical evidence which was available in the shape of corroborative evidence, the testimony of the victim himself, the depositions of the doctors who examined not only the victim but also the appellant Mst. Rehana and found chemical burns on her as well. Even if the trial Court had solely relied on the testimony of the victim Makhmoor, the same is straight forward to the extent that it does not on the face of it show falsehood. Such testimony could be relied on, even solely, to form the basis of conviction without demur even in the cases of capital punishment as espoused in the case of *Niaz-ud-Din and another v. The State* (2011

SCMR 725). It was also contended by the counsel for the appellant that there were various contradictions with respect to the time at which the incident took place. To that effect, it is observed that such inconsistencies are minor as the incident took place in the year 2000 and the complainant was, justifiably, in shock seeing as acid was thrown at his face and the evidence was recorded in 2002. Still, his deposition with respect to the role played by the appellant remained consistent which found full support by the medical evidence which not only found the burn injuries in places where he deposed to have acid thrown at but also the effect that the medical examiner found acid burns on the appellant's face as well which ought to have been thrown during the scuffle. Even otherwise, not every contradiction can take place of a material contradiction and therefore, minor contradictions, inconsistencies or insignificant embellishments do not affect the core of the prosecution case and should not be taken to be a ground to reject the prosecution evidence. Reliance, in this respect, is placed upon *Zakir Khan vs. The State (1995 SCMR 1793)* and *Khadim Hussain vs. The State (PLD 2010 SC 669)*. It was also contended by the counsel for the appellant that the prosecution witnesses are interested and related to the victim. Suffice it to say that despite the relationship of the complainant and PWs with the victim, their evidence after careful consideration is found trustworthy. It is a settled principle of law that mere relationship is never a ground to discard otherwise trustworthy evidence provided that there is no ill will or enmity between the witnesses and the accused which was not present in this case. Reliance in this respect is placed on the case of *Nasir Iqbal alias Nasra and another v. The State (2016 SCMR 2152)*.

13. The third and final limb of the counsel for the appellant was the defence plea; it was contended that the complainant had appeared at the house with the acid and instead got himself injured. Suffice it to say that nothing has been presented on the record to substantiate such claims. This plea was not taken by all the accused nor was it supported by the prosecution witnesses who were present there. It also appears

highly improbably that the victim burns 40% of his body from an acid attack which he planned to perpetrate. As far as whether there was an intention to commit the murder of the victim by the appellant, the intentional use of a chemical agent that Mst. Rehana knew was dangerous to disfigure a person constitutes substantial evidence that she acted with conscious disregard for life and to end the same life. The gruesome nature of the victim's injuries, the odd hours of the crime, the vulnerable and helpless state of the victim being held down, the deadly acid used to inflict such an injury, the impossibility that such an act was done by accident, and the minor burn injuries suffered by the appellant all led to a finding, beyond a reasonable doubt, that the appellant acted with malice to end the victim's life. Dumping acid in such a quantity as to burn 40% of the victim's body demonstrates the appellant's intention to cause his death. Given the heinous nature of the crime and the gravity of the offence, seeing how the victim has permanently lost vision in his left eye, is partially blind in the right eye after many surgeries to restore vision, the appellant Mst. Rehana is also not deserving of any leniency with respect to her sentence. She has remained scot free since her sentence and has spent a good decade with her child on the basis of which her sentence was suspended, as such that too is no longer a valid ground for any reduction in sentence.

14. For the foregoing reasons, prosecution had successfully proved its case against the appellant beyond a reasonable shadow of doubt. Therefore, captioned appeal is dismissed. The impugned judgment, as a corollary, is upheld. The appellant Mst. Rehana is present on bail, she is ordered to be taken into custody and is to be remanded back to the Central Prison to serve out her remaining sentence. Her bail bond stands cancelled and surety discharged.

JUDGE