IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Cr. Appeal No. S – 11 of 2022

(Notan Mal………. **vs**…….. The State)

Dates of hearing : **11.12.2023, 15.01.2024 & 22.01.2024.**
Date of announcement : **01.03.2024.**

Mr. Muhammad Yousuf Laghari, Advocate for appellant.
M/s Ubedullah Ghoto and Naeemuddin Chachar, Advocates for complainant.
Mr. Aftab Ahmed Shar, Additional Prosecutor General.

J U D G M E N T

Muhammad Iqbal Kalhoro, J. – Appellant, charged for committing an offence u/s 295-C PPC: speaking blasphemous words/remarks against the Holy Prophet (SAWW) and inciting religious hatred inside a classroom at Sindh Public School, Ghotki on 14/09/2019 at 12:30 pm, has been tried by learned Additional Sessions Judge-V, Sukkur in Sessions Case No.25 of 2019, and vide impugned judgment dated 07/02/2022, has been convicted and sentenced to suffer RI for life and to pay fine of Rs.50,000/-, in default, to suffer SI for four months more with benefit of Section 382-B CrPC.

2. In FIR, lodged on 14/09/2019 at 2230 hours, complainant Abdul Aziz Khan has alleged that his son Muhammad Ibtisam is a student of Eleven Class in Sindh Public School, Ghotki. On the said date, after attending school, his son returned home in the late evening, when he along with his neighbors Muhammad Naveed and Waqas was present in the street outside his house. His son looked upset, hence they asked him of reason, he disclosed that at 12:30 pm when he was present with other students, owner of the school, appellant Notal Lal, entered the classroom in the course of a lecture, and in their presence made sacrilegious remarks against Nabi Kareem (SAWW) and then left. The staff of school tried to win him over to gloss over the incident but he refused. Complaint on hearing such incident approached the Police Station and lodged the case.

3. When the appellant came to know of investigation in the case being held under supervision of the SSP Dadu, he surrendered and was formally arrested at police station ‘A’ Section, Dadu on 01/10/2019. Culmination of the investigation saw filing of the Challan in the court leading to framing of a formal charge against the appellant. He pled not guilty and claimed trial. The prosecution proceeded to examine as many as fourteen (14) witnesses, who have produced all relevant documents to prove the charge against appellant. His statement u/s

342 CrPC was recorded thereafter in which he denied the allegations leveled against him. He also examined himself on oath and produced two witnesses in his defense. Learned trial Court, at the end, vide impugned judgment, has convicted and sentenced him in the terms as detailed in Para No.1.

4. Learned Counsel has argued in defense that appellant has been falsely implicated in this case, he has not committed the alleged offence; the story has been contrived by the complainant to take revenge form him for not giving him a job in the school and demanding outstanding fee of his son from him; further he was encouraged and exploited by local orthodox clerics in registering the case against the appellant who is a non-Muslim; no proper investigation was conducted in the case and the SSP Dadu, the IO, simply in one day wound up entire investigation by sitting in the office of DSP Ghotiki; there are material contradictions in the evidence of witnesses, there is unexplained delay of 15 days in recording statements of witnesses u/s 161 CrPC; the material witnesses in the case have been introduced later on as their names do not transpire in the FIR.

5. Learned counsel for the complainant and Addl. PG have supported the impugned judgment and further contended that there is sufficient evidence against the appellant to uphold conviction against him.

6. I have considered arguments of the parties and perused the available record. The first witness, examined by the prosecution to support the charge is complainant namely Abdul Aziz. In evidence, he has reiterated the story of the FIR, but this time has quoted with precision the actual profane words uttered by the appellant against the Holy Prophet (peace be upon him). The second witness is Muhammad Naveed. He is the same person who was present along with complainant and Waqas Ahmed (given-up) outside his house, when the complainant spotting his son upset on return from the school had asked him its cause. He too in his evidence has revealed alleged profane words spoken by the appellant against the Holy Prophet (peace be upon him) on the day of occurrence. His statement dated 15/09/2019, recorded by SIP Ali Nawaz Dayo, without requisite authority albeit, on the contrary is wholly devoid of any specific words allegedly spoken by the appellant and contains only a generic reference to them. Intriguingly, again in his statement u/s 161 CrPC finally recorded on 29.09.2019, after 15 days of the FIR, he palpably failed to cite a single profane word attributed to the appellant barring making a general statement alleging that the appellant had used sacrilegious remarks against the Holy Prophet (peace be upon him).

7. PW-3 is Muhammad Ibtisam, the informant. He has deposed that when he was present in the classroom on the fateful day, the appellant came in and told Gurdas Mal, the teacher, that he was not properly teaching the students, and then started doing so himself. He asked Muhammad Hanif, another student, PW-4, to read lesson no.2 that was about the Holy Prophet (peace be upon him). He did not let Hanif finish the lesson and started delivering the lecture himself, in the course of which he uttered blasphemous words against the Holy Prophet (peace be upon him) and left the classroom. He and some other students reported the matter to Muhammad Shareef, PW-6, the other teacher. Then they went to the office of the Principal of the school where they confronted the appellant with the incident who admitted his guilt and sought their apology. After school time, the staff of the school tried to force him to not reveal the incident to anyone but, on return from the school, he informed his father, Waqas and Naveed about it who then went to PS and registered the FIR.

8. Muhammad Hanif ,PW-4, was the student who allegedly was asked by the appellant to read the lesson from the Urdu-Book, but then before he could complete it the appellant intervened and used derogatory words/remarks against the Holy Prophet (peace be upon him). He has narrated the incident almost in the same lines as alleged by PW-3, his classmate. PW-5 is Gurdass Mal, who was lecturing the students on the day when the appellant came in the classroom and took podium from him in order to guide him the right way of teaching, in the course of which the incident happened. He has also stated that the appellant had used heretical words against the Holy Prophet (peace be upon him). Muhammad Sharif, PW-6, a teacher in the same school, is not the eyewitness, and his evidence relates to narration of events unfolding on the heels of alleged occurrence. He states that some students had approached him and informed of the incident. He along with other teachers and students confronted the appellant in the office about unedifying event and sought his explanation. He admitted his mistake and sought their apology, which they refused to give him and left. In the evening, a (video) clip of the incident went viral on social media and ultimately the FIR was registered.

9. At exb12, the prosecution has examined PW-7, Abdul Razaque. He is a clerk in the school. Per him, after school hours, on the day of incident, Muhammad Sharif, the teacher, Ibtisam and Hanif, the students, came to him and asked to see the appellant for using derogatory remarks against the Holy Prophet (peace be upon him). Then, they all stormed into his office where the students demanded to issue them school leaving certificate. On enquiry, they told him the reason: he had used derogatory remarks against the Holy Prophet (peace be upon him). He denied to have done so, but when they persisted, he

sought their pardon saying that if he had committed such mistake, they should excuse him. PW-8, Muhammad Ashraf, is a witness of site inspection, carried out on 15/09/2019, which he has endorsed in his evidence besides producing its memo. At exb-14 is evidence of duty officer, ASI Huzoor Bux, who had registered the FIR as per verbatim of the complainant and has verified such fact in his deposition. City Surveyor Sabir Ali, PW-10, has talked, in his evidence, about preparing the sketch/site plan of the incident under the direction of Muktiarkar Ghotiki and on pointation/disclosure of Abdul Razzaq, PW-7.

10. SIP Ali Nawaz, PW-11, the professed first IO, has deposed the facts relating to his visiting the place of incident, drawing its memo and taking some shots thereof and recording statements of the witnesses. He has further stated that on 17/09/2019, he had recorded statements of witnesses (all duly named by him in evidence), and on 24/09/2019, he had recorded statement of PW Muhammad Hanif. Curiously, he does not claim in evidence that those statements were recorded u/161 CrPC, and does not disclose either that under what law and authority he had recorded those statements. PW-12, was posted as SHO at PS A-Section Dadu. He had taken the appellant in custody on 01/10/2019, when the latter had surrendered, and prepared such memo. He has deposed about these facts only and produced the memo. DSP Pir Bux, PW-13, in his evidence has stated that he and Inspector Muhammad Yosif were directed by the SSP Dadu vide letter dated 26/09/2019 to carry on further investigation in the case. On 29/09/2019, he and the SSP Dadu, along with a team of police personnel, proceeded to Ghotiki where they camped in the office of DSP Ghotki. Then, he carried out some investigation i.e. visiting place of incident, preparing its memo, collecting record of students, teachers, staff, CCTV footage, a copy of Urdu Salees Book, etc. from school management. He then in company of the SSP Dadu and team members visited the school and completed the formalities. Lastly, he confirms, in his evidence, arrest of the appellant, on his voluntary surrender, at police station Dadu on 01/10/2019.

11. In the end, prosecution has examined the SSP Dadu as PW14. According to him, after being designated as IO of the case on 24/09/2014, he went to Ghotiki along with his team on 29/09/2019 and in the office of DSP Ghotki recorded statements of witnesses u/s 161 CrPC, had visited the place of incident, and completed certain formalities there. He also verifies arrest of the appellant at PS Dadu on 01/10/2019.

12. On the closure of prosecution evidence, 342 CrPC statement of the appellant was recorded in which he has denied the charge. He has examined himself on oath in terms of section 340(2) CrPC He has also led evidence of

his wife Meena Kumari, the principal of the school, and one student namely Sahil who was present on the day in the classroom, in defense. DW Sahil has completely cast off the fact of appellant coming in the classroom on the given day and giving a lecture or using derogatory remarks against the Holy Prophet (peace be upon him). Whereas, his wife Meena Kumari's proposition in defense of her husband, also voiced by the appellant in his examination under oath, is that because of demand of outstanding school fee of four months of his son from the complaint and refusal to give him a job in the school on his demand, he has contrived this story to settle score with them.

13. The above is the gist of the prosecution case against the appellant. FIR was registered at 2230 hours on 14/9./019 depicting an incident that had occurred on the same day at 1230 hours. After which, usual investigation commenced and the relevant police official started recording the developments thereof in the Police Diaries. In the first police diary dated 15/09/2019, the fact of registration of FIR, a reference to a visit of the school on the same day by SIP Ali Nawaz Dayo with his team, and preparation of such memo by him is duly recorded. The said diary also reflects that the said police officer and his team had then proceeded to residence of PWs Waqas and Naveed where they had recorded their statement u/s 161 CrPC before recording statement of Ibtisam, son of the complainant, at his residence. It was for the first time, one day after the FIR, the actual profane words allegedly uttered by the appellant, were revealed by PW Ibtisam on record. The FIR and 161 CrPC statements of PWs Waqas and Naveed are otherwise completely silent of any detail to precise sacrilegious words, or name of any other witness who was familiar with the incident as an eyewitness.

14. In police diary of next day i.e. 16/09/2019, the fact of sending a letter (a copy available in police papers) to SSP Ghotki by the said police officer, referring to section 156-A CrPC, and the scheme thereunder that the case u/s 295-C PPC can only be investigated by an officer of the SSP rank, is recorded. This means that the said police officer namely SIP Ali Nawaz Dayo, the purported IO of the case was fully aware of the legal position that he was not authorized to investigate the case, and his foray in this respect was devoid of sanctity of law and illegal. Yet, the police diary dated 17/09/2019 reflects that he with his team had proceeded to the school and indulged in some investigation: recording statements of at least 11 purported witnesses of the occurrence. The point worth noting is that names of these witnesses are neither mentioned in the FIR, nor revealed by PWs Waqas and Naveed in their statements. It is not clear therefore that how and why SIP Ali Nawaz Dayo chose to approach these 11 persons for recording their statements out of entire agency — teachers,

students and staff -- available in the school; who was assisting him in this respect; and why.

15. It may further be marked that these statements were not recorded by him u/s 161CrPC which should be the usual course in any given investigation. Each statement is signed by its professed maker that is in violation of section 162 CrPC, and simply starts with the word “statement” and not with “statement u/s 161CrPC”. Except Muhammad Sharif and Gurdas Mul, who was taking the class when appellant allegedly intervened and passed derogatory remarks against the Holy Prophet (peace be upon him), produced as witnesses, none else from among 11, for the reasons not revealed by the prosecution, was examined as a witness in the trial. Some of the students such as Sahil Kumar (examined as DW), Kiran Kumar, Sudhesh Kumar, Ghotam Das, Wakash Kumar, and Dheraj, all Hindu, who were present on the fateful day, although have confirmed in the statements arrival of the appellant in the classroom in the middle of a lecture, but their part of the story is quite different. Per them, the appellant in fact (on realization that Gurdas was not lecturing adequately) had tried to guide him how to deliver the lecture to the students. And that, indeed, he had talked about the Holy Prophet (peace be upon him), as his lesson was being read at the time, however, not in derogatory manner but in the broader sense discussing his personality, etc. Aside from above inconsistencies in-between the statements of examined witnesses and the ones not examined in the trial, it is noted that handwriting on statements of at least 3 witnesses is different to the one available on reaming statements implying they were not recorded in one sitting as is claimed in police diary dated 17/09/2019.

16. Police diaries dated 19/09/2019 and 21/09/2014 show usual efforts by the said police officer to arrest the appellant and conduct investigation. However, it has not been explained by him that why, in spite of being not authorized in law, he was still doing so. Then, on 24/09/2019, after 10 days of the FIR, as per diary of the said date, he recorded statement of Muhammad Hanif, produced in the trial as the main witness. He in such statement claims to be the one reading the lesson when the appellant interrupted and uttered profane remarks against the Holy Prophet (peace be upon him). He is the main witness, but his name has neither been quoted by the complainant in the FIR, nor by other two witnesses examined first by the said policer officer immediately after the FIR. It is strange that for the first time, after a delay of 10 days, version of the main witness was recorded. Apart from the fact that there is no explanation for such delay, the very investigation done by the unauthorized police officer in terms of section 156-A CrPC was illegal and void. The scheme u/s 156-A CrPC, starting with *non obstante* clause, is mandatory. It excludes

entirely what is otherwise provided in Criminal Procedure Code qua power of a police officer to conduct investigation in other offences. It, in no ambiguous words, emphasizes that no police officer below the rank of superintendent of police shall investigate the offence u/s 295-C PPC. The investigation thus conducted by SIP Ali Nawaz Dayo was not only illegal from the onset but smacks – due to his knowledge of such legal position reflected in his letter to the SSP Ghotiki on 16/09/2019 -- of his interest that cannot be at least termed *bona fide*.

17. The record further reveals that finally on 24/09/2019 on the orders of DIGP, Sindh, Karachi, the investigation was entrusted to the SSP Dadu. He did not involve himself in the case immediately as shall be required in such cases. He rather waited for 5 days till 29/09/2019, when for the first and only time he went to Gotki along with his team and camped in the office of DSP Ghotki, where 15 witnesses: son of the complainant Ibtisam, Muhammad Hanif Ghoto, and others called already were present and their statements u/s 161CrPC were recorded. PW Gurdas produced 'Urdu Salees Book' from which the lesson about the Holy Prophet (pace be upon him) was being read on the fateful day. The SSP then proceeded to visit the place of incident and meanwhile directed his assistant DSP Pir Bux Chandio for completing the formalities such as preparation of sketch/site plan etc. It is obvious from such record that legally the investigation of the case started only after 15 days of the FIR and on 5th day of the same having been entrusted to the SSP Dadu. Nowhere, in the entire case, even an attempt to explain such delay has been made. The record is completely silent in evincing any reason of indecisiveness of the IO for five long days to undertake an effort to investigate such a serious and sensitive allegation.

18. The point which requires extra attention here is that although in terms of section 156-A CrPC, only an officer of SPP rank is competent to carry out investigation in the case in hand. However, the SSP Dadu, on being nominated as the IO, further transmitted it, as is reflected in police diary dated 28/09/2019, to a team comprising DSP Pir Bux and Police Inspector Muhammd Yosif Abro of Dadu District. Although, when confronted with such legal position in cross-examination, DSP Pir Bux, appearing as PW-13, has tried to dispel such impression by elucidating that he and the Inspector were only the members of the team, headed by the SSP Dadu, investigating the case. Nonetheless, the material on record negates his stance. All the memos viz. site inspection, recovery of book, arrest of the appellant, and the letters to different govt. officials for collecting material etc. in investigation were prepared and signed by him and not by the SSP Dadu who was the one authorized in law to do so.

19. There is not a single document in the entire case barring 161 CrPC statements of the witnesses dated 29.9.2019 and few police diaries that pertain to district Gotki, which has been signed by the SSP Dadu to indicate that investigation in its true sense was conducted by him. All the statements of witnesses, recorded u/s 161 CrPC, are computer generated, the memos are singed by DSP Pir Bux and 173 CrPC report, containing entire record of investigation, has been signed by SHO PS A-Section Ghotiki. Although, the SSP Dadu and DSP Pir Bux both in their evidence have claimed that on 29/09/2019 they had gone to Ghotki for investigation purpose and had camped in the office of DSP Ghotki where statements of all witnesses were recorded. But the documents presented in the trial, or the police papers, are completely silent on any movement by the SSP Dadu from Dadu district to Ghotki district on 29/09/2019. Even the DSP Ghotki whose office was used by the SSP Dadu for recording statements of witnesses u/s 161 CrPC has not been made either a witness in the case, nor examined in the trial to vouch for this fact: the visit of Ghotike by the SSP Dadu for investigation purpose. In police diary dated 29/09/2019, the SSP Dadu has mentioned that he had already informed the relevant police officers of the area about his arrival on that day and they had already bound down the witnesses to come there, who in fact were already present when he reached there. However, no documentary proof is available to reflect that who he had communicated with and through what medium to give information of his visit of district Ghotki to the witnesses for investigation. There is not a single copy of any instrument/notice to show either how the witnesses were intimated and bound down to appear in the office DSP Ghotki on that particular day for recording their statements.

20. On the above point, it may further be noted, the complainant in his evidence has not even hinted to any investigation conducted by the SPP Dadu and recording of a statement of any witness in the office of DSP Ghotki on 29/09/2019 in the course of which. He has only revealed, in evidence, that IO Ali Nawaz had recorded statements of PW Naweed and Liqat besides examining his own son Ibtisam u/s 161 CrPC. On the contrary, Ibtisam has said in evidence that in the office of DSP Ghotiki his statement was recorded by DSP Dadu on 29/09/2019. He has albeit alluded to presence of the SSP there but the conspicuous emphasis of his statement is on the fact that it was DSP (and not the SSP) who carried out the investigation. PW Gurdas, in his evidence, has said that on 29/09/2019 DSP Dadu recorded his statement u/s 161 CrPC and he handed him over ‘Urdu Salees Book’. He does not even posit to presence of the SSP (Dadu) there on that particular day. Therefore, even the

fact of the SSP Dadu visiting district Ghotiki for investigating the alleged offence has become questionable and not free from a doubt.

21. As already stated above that section 156-A CrPC, starts with *non obstante* clause and scheme thereunder is mandatory. It does not allow a DSP to conduct investigation on behalf of an SSP, nor permit the SSP to transmit investigation to an officer below his rank. The SSP taking logistical assistance from his assistants while carrying out investigation that may literally include preparation of necessary documents is quite distinguishable to entrusting entire investigation by him to his subordinates, as has happened in this case where whole official correspondence: preparation of documents including all memos (the integral part of the case), recording statements of witnesses u/s 161 CrPC, has been done and signed by a DSP and not by the SSP as required in law. No valid reason for such aberration has been put forth by the prosecution to sanctify validity of investigation and uphold its legality in the given circumstances.

22. Further, irrespective of the fact that investigation, in essence, was done by one DSP and not by the SSP as required in law, it was done in hasty manner. In just a single day entire investigation was wrapped up which contained many features: examining 15 witnesses, recording their statements, visiting place of incident, preparing relevant memos, etc. The entire record including evidence of the SSP (if he is to be believed at all) testify to only one visit of Ghotki by him and his team for this purpose. It is mind boggling that in just one visit, he concluded that appellant was culpable and referred him through the Challan to the court for a trial. His feat is utterly odd, given the fact, out of 15 witnesses examined by him u/s 161 CrPC, at least five have not supported the allegations against the appellant, and four others account is based on heresy. The remaining witnesses who have supported the charge, their statements in most cases look like a ditto copy of each other – a sufficient proof that entire exercise of examining the witnesses was more mechanical than real/natural and was done with a predetermined mind about guilt of the appellant. Keeping in view the seriousness and sensitivity of the charge, it was incumbent on the SSP to assign more time and effort to investigation of the case than just a day. He was required to pay keen attention to every aspect of the case including but not limited to the account of those witnesses who had not supported the allegation against the appellant, defense version of the appellant, if any, credibility of those who had supported the case, their previous history qua their dealings with the appellant, etc. and only then to form an informed opinion as to whether or not there was sufficient material to justify the trial against the appellant. It was his obligation to try to find out the truth hidden in

the account put forward by the all witnesses and not by few among them, determine the circumstances leading to the occurrence, and ponder over all the concomitant facts before letting himself overwhelmed by the sensitivity of the charge, and making an inference about guilt of the appellant. His haste beggars belief, and it makes abundantly clear that he had approached the case with a preset view and had decided in advance what he was going to make out of the case. It is but a prime example of a police officer shirking responsibility of digging deep to ferret out relevant facts for the court to try on the appellant and reach a just conclusion. Nevertheless, even if somehow he was sure about the charge being true against the appellant, he should have at least proceeded to trace out his mental history and get him examined by a relevant doctor to determine whether he was suffering from any psychological sickness. Or was he taking any anti-depressant drugs or any other drug for that matter, or was he suffering from any other problem, which might have been a cause directing him to a sphere worse enough to impair his judgment and induce him to do what otherwise in normal course he would not have done.

23. It was his liability as IO of the case to find out why a sane person like the appellant, aged about 60 years working as Associate Professor in a local college with no history of indulging ever in any anti-social activities, not to mention inciting religious hatred or uttering any profane words ever against any of the holy personalities of Islam would one fine morning lose his mind, for no apparent reason, and start speaking blasphemous words against the Holiest personality of Islam in a classroom full of Muslim students, knowing well that it was an offence carrying capital punishment of death. The lackadaisical character of investigation devoid of any targeted effort to find answers to all the relevant questions has left many gapes wide open that otherwise would have helped the court determine all pertinent facts and circumstances surrounding the incident. The record reflects (evidence of PW-6 Muhammad Sharif) that son of the complainant, PW Ibtisam, on the very day by uploading unconfirmed and uninvestigated details of the occurrence on social media had made it viral, thus influencing outcome of the investigation even before it had started. That seems to be the only possible explanation marking the haste with which the IO finished the entire investigation in just a day.

24. Now to the actual trial, the charge against the appellant for committing the offence u/s 295-C was framed on 07/12/2020. The charge however does not depict the exact profane words allegedly uttered by the appellant. It was not made clear to him to understand adequately the words he was alleged to have spoken against the Holy Prophet (peace be upon him) that had constituted such an offence, and prepare his defense, if any, accordingly. The charge simply

notifies him that he had intentionally and deliberately spoken blasphemous words and used derogatory remarks in respect of the Holy Prophet (peace be upon him) in presence of teachers and students and thereby had incited hatred among them on religious (grounds). The complainant in his evidence has mentioned the blasphemous words allegedly stated by the appellant. But, notably, as highlighted above, neither he in the FIR, nor PWs Waqas and Naweed who had met PW Ibtisam, his son, on the very first day when they found him upset on return from the school and had asked him of its reason, have disclosed these exact profane words in their statements u/s 161 CrPC. There is not even a hint either in the FIR or in their statements that PW Ibtisam had in fact while narrating the incident had quoted the actual words, allegedly expressed by the appellant, before them. In cross-examination, the complainant admits this fact but then tries to warrant it by declaring that out of respect of the Holy Prophet (peace be upon him), he did not report the spoken words in the FIR. His late explanation, that too in cross-examination, for such stark omission would hardly leave a prudent mind satisfied without first questioning wisdom behind it.

25. The act of registering the FIR in a serious and heinous offence, the one in hand, by the police without being reported the actual blasphemous or derogatory words/remakes spoken by an accused against the Holy Prophet (peace be upon him) should be seen as a serious dereliction of duty on their part. A person turning up at police station and reporting, vaguely, uttering of profane words by some accused against the Holy Prophet (peace be upon him) without letting the police know nature of such words/remarks to determine whether section 295-C PPC is attracted would not imply that he is conveying information of commission of such an offence entailing registration of the FIR. The law would be set on motion only when the alleged sacrilegious words, either spoken, written or printed by the accused are notified to the police in clear terms to indicate *prima facie* constitution of the offence. To deter a provocateur from registering the FIR in the cases like the one in hand sans necessary detail is the fiduciary duty of the police. The police have to apply its mind carefully to the facts before actually registering the FIR in such like cases. For it is the duty of the police to nib in the bud every motivated effort of the informer who actually seeks to stoke unrest/anarchy in the society, or who wishes to settle a personal score with the accused under the garb of hurling such allegations against him. The recent history of this country is replete with such precedents when only later on it transpired that motive of the complainant in reporting such matter was personal rather than religious.

26. But if somehow the FIR is registered sans the actual profane words depicted therein and contains only vague reference to them, it shall have adverse consequences as to credibility of the story. Attempting to rectify such lacuna, later on, in evidence by the complainant will not bolster his credibility or the case against the accused without a demur. Authenticity of a version evinced imprecisely in the FIR, lacking the necessary details constituting the offence u/s 295-C PPC, shall always remain obscured. It will not be safe to rely upon the complainant (or a witness), who in the FIR (or 161 CrPC statement) had failed to put up his case accordingly but does so in evidence subsequently. It would be deemed but an insincere effort on his part to bolster his case having debilitating implications to the merits of the case.

27. Therefore, when ultimately, in order to prove the charge, the complainant had to specify in evidence the actual sacrilegious words allegedly spoken by the appellant, the logic articulated by him that he did not do so at the time of FIR out of respect is highly questionable. Because, this excuse was equally available and applicable at the time of his evidence but he did not hold back and uttered those words. Hence, it was incumbent upon him to report the matter to the police in the same manner and not keep back, on any ground, a single blasphemous word if it was told to him by his son to have been spoken by the appellant. His failing in this respect strongly posits that neither he was aware of the exact words, allegedly spoken by the appellant, at the time of the FIR, nor his son had informed him of those words while narrating the incident. This view is further confirmed from his admission in the cross-examination that his son had not disclosed him name of any other student present at that time. Meaning thereby that any detail of alleged occurrence was not shared by his son with him including any profane word allegedly spoken by the appellant. Specifying then exact profane words by him or by PW-2.Naweed afterwards in evidence seems to be an abortive endeavor on their part to cover the inherent lacuna set in the case from very inception: failure to report the offence as it later was claimed by them to have been committed; and a futile exercise to improve the case.

28. There are essentially only three persons in the case who claim to have witnessed the incident, Muhammad Ibtisam, PW-3, Muhammad Hanif, PW-4, and Gurdas, PW-5. The first two are students and the third one is the teacher, who allegedly were present in the classroom at the relevant time. They have deposed against the appellant stating that he had committed the alleged offence. Out of them, statement of only Muhammad Ibtisam, PW-3 was recorded next day on 15/09/2019. While a purported statement of PW Gurdas was recorded on 17/09/2019, after three days of the FIR. But his 161 CrPC

statement was recorded only on 29/09/2019, after 15 days of the incident. His first statement on 17/09/2019, has no value in law on two grounds. First, it was not a statement u/s 161 CrPC, and hence is not a part of the prosecution case, and, second after referring the matter to the SSP Ghotki through a letter dated 16/09/2019 that investigation of an offence u/s 295-C can only be conducted by an officer of the SSP rank in terms of section 156-A CrPC, SIP Ali Nawaz had no authority or jurisdiction to proceed further and record statement of any purported witness. His actual 161 CrPC statement recorded after 15 days of the incident, and his evidence based on it, cannot be looked into without a streak of suspicion either. For such a long time, for which there is palpably no explanation, virtually there was an eerie silence by this witness qua any detail about the incident and his own involvement in it as a witness.

29. First statement of PW Muhammad Hanif, the star witness, the one who allegedly was reading the lesson when the appellant interjected and committed the offence, was recorded on 24/09/2019, after 10 days of the incident. This statement too for the reasons -- it is not a statement u/s 161 CrPC and has nothing to do with the prosecution case hence, and second SIP Ali Nawaz had no jurisdiction in terms of section 156-A CrPC to record it -- has no value in law either. His actual statement u/s 161 CrPC was recorded on 29.09.2019, after 15 days of the incident. There is absolutely no justification for such a delay in examining this star witness or the other witnesses for that matter. It is well-settled that delay in recording statement of a witness u/s 161 CrPC renders the testimony of such witness unacceptable. That unexplained delay in recording statement of an eyewitness u/s 161 CrPC is bound to create doubt over accuracy and credibility of the witness. And that reliability of a witness becomes highly suspicious, if his statement is recorded with delay without offering any plausible explanation. These golden principles have been laid down in a number of pronouncements but for a ready reference the case law reported as 1996 SCMR 1553 and 2020 SCMR 1049 can be cited.

30. Further, in the evidence of all three witnesses, there is a marked difference over the alleged profane words or remarks spoken by the appellant at the time of incident. As per evidence of Muhammad Ibtisam, PW-3, the appellant uttered four blasphemous words [*Kafir* (pagan), *kuto* (dog), *Loafer, Kamino* (rascal)] and one derogatory remark [*Kathe Mueo* {where (he) died}] defiling the honour of the Holy Prophet (peace be upon him) before leaving the classroom. PW Muhammad Hanif has, in his deposition, attributed only two profane words [*Loafer*, *Kafir*] and two purported derogatory remarks [*Kathe Mueo and Kathe Jaio* {where (he was) born}] to the appellant. While Gurdas, PW-5, in his evidence, has referred to only one such word [*Kamino*] and one

such remark [*Khamyoon* {(His) shortcomings)}] spoken by the appellant against the Holy Prophet (peace be upon him). The only profane word assigned by him to the appellant is palpably dissimilar to the alleged two words imputed by PW Muhammad Hanif against him. His context in describing the derogatory remarks uttered by the appellant too is quite distinguishable to what the other two witnesses have insinuated. He discernably appears to posit that the appellant wanted to discuss broadly the personality of the Holy Prophet (peace be upon him) but then could not control his tongue and went awry. Whereas, the other two witnesses, the students, seem to suggest that the appellant while delivering the lecture deliberately passed derogatory remarks/ words to injure the honor and respect of the Holy Prophet (peace be upon him).

31. In describing the incident in evidence, Muhammad Ibtisam, PW-3, who is son of the complainant, has gone too far and is not supported to that extent by the remaining two witnesses. In his 161 CrPC statement also, recorded on 29/09/2019, after 15 days of the FIR, he has referred to only one swear word [*Kamino*] and one derogatory remark [*Kathe Mueo*] that were allegedly uttered by the appellant in the honor of the Holy Prophet (peace be upon him). His statement is not just different to his evidence qua number of profane words allegedly used by the appellant but also is a damp squib (less intensive) context-wise. PW Muhammad Hanif has pointed out to, in his evidence, uttering of words [*Loafer*, and *Kafir*] by the appellant against the Holy Prophet (peace be upon him). But in his statement u/s 161 CrPC he has not referred to word [*Loafer*]. It is rather [*Kamino*] and there is a further addition of a word [kharab (bad)] that (he was) *kharab* and that he had asked (from the students) about the number of battles fought by the Holy Prophet (peace be upon him) which renders support to the context described by PW Ghurdas Mul that the appellant, while discussing widely the personality of the Holy Prophet (peace be upon him), miscarried himself and used the sacrilegious words against the Holy Prophet (peace be upon him).

32. Next point which needs careful attention is the unanswered question of why the prosecution decided to lead evidence of only those witnesses who in their statements u/s 161 CrPC had implicated the appellant, and disregarded those who did not. There is a much talked about principle highlighting prosecution’s prerogative to examine any of the witnesses or as many witnesses as it likes. It is however attracted only when they are more than one witness on a particular point and prosecution intends to prove it. It is then its right to choose any one of them (or all of them) and lead his evidence to establish that point and give up the rest. For instance, if there are three eyewitnesses, prosecution’s option to choose from among them and lead their

evidence to prove eye-account of the incident is absolute. But should the prosecution decide to miss them all and examine only marginal witnesses or *mahirs* or investigation officer or medical officer etc. or vice versa by making a claim to its right to examine witnesses of choice, it would undeniably scuttle any chance of success. Likewise, in the cases where the investigation identifies two sets of witnesses familiar with the incident being present there and they both give its version that is materially distinct from each other. Then it would be duty of the prosecution to examine witnesses from both sides of the fence to assist the court in reaching the right decision. However, when the prosecution decide to bring in the trial only those who support the charge and leave the others who do not. It would not just fail in its duty to the court by presenting only lopsided insight in the occurrence adverse to the compatibility of a fair trial guaranteed under the Constitution but would also jeopardize prospect of dispensation of justice in its pristine form to which both the vying parties are equally entitled. It is the duty of the court to undertake a rigorous exercise to sift grain from the chaff and hand out justice to both parties. This object would remain elusive to the detriment of public interest, if the prosecution fails to bring on record all the competing facts and leave the court in limbo to decide the case by looking at a particular version. The decision of the prosecution therefore to withhold evidence of those witnesses, examined in investigation and duly mentioned in the Challan, not supporting the charge against the appellant in their statements has resulted in faulty approach to the case undermining prosecution's intention and thus very credibility of the trial.

33. From the above detailed discussion encompassing the manner in which the FIR was registered missing name of the relevant witnesses and any precise specification about actual profane words allegedly spoken by the appellant defiling the honor of the Holy Prophet (peace be upon him). An unauthorized intrusion in investigation by SIP Ali Nawaz Dayo despite due knowledge that such an offence can only be investigated by the SSP rank officer in terms of section 156-A CrPC. Late investigation by 15 days by the SSP Dadu, his half-hearted style wrapping up investigating in just a day, his lackluster modus operandi and failure to apply his mind assiduously to the facts and circumstances of the case for forming an opinion to refer the appellant to the court for a trial. Lack of compelling material pointing out to his visit of District Ghotiki for investigation purpose. On the contrary, convincing evidence alluding to the fact of investigation having been actually conducted by one DSP namely Pir Bux, who has singed all the relevant memos, in violation of above provision of law. Late introduction of witnesses and recording of their statements u/s 161 CrPc by 15 days without a plausible explanation. Anomalies, contradictions and

discrepancies, as identified above, between the evidence of eyewitnesses over the number of and precision of sacrilegious words allegedly used by the appellant on the fateful day. And, among others, inconsistencies and incongruities in the statements u/s 161 CrPC of the witnesses and their evidence in describing the actual profane words uttered by the appellant and the context he used them in, examining only a particular set of the witnesses imputing the appellant and suppressing the evidence of those who had a different story of the incident to tell, the prosecution cannot be said to have established the charge against the appellant beyond a reasonable doubt. It is a cardinal principle of law that when the prosecution fails to establish the case against the accused beyond a reasonable doubt and there are facts and circumstances leading to an inference other than guilt of the accused, its benefit has to go to him not as a matter of grace but as his right. Following this golden rule, of course, induced by the above discussion fostering, on the benefit of a doubt, a conclusion of innocence of the appellant, I **allow** this appeal and acquit the appellant of the charge. He shall be released from the jail forthwith if not required in any other case warranting his custody.

The appeal is accordingly **disposed of** in above terms.

J U D G E

Abdul Basit