

HIGH COURT OF SINDH CIRCUIT COURT MIRPURKHAS

Criminal Appeal No.D-08 of 2024

Present

Mr. Justice Amjad Ali Bohio.

Mr. Justice Dr.Syed Fiaz ul Hasan Shah.

Appellants/ accused: 1. Iftikhar Ali S/o Wali Muhammad.
 2. Wahid S/o Akram.
 3. Rashid S/o Mansha.
 Through Mr. Afzal Kareem Virk, Advocate,

Respondent: The State
 Through, Mr. Ghulam Abbas Dalwani, D.P.G Sindh.

Complainant: Mst Nabeela Bibi.
 Through Mr. Zulfiqar Ali Malik

Date of hearing: 05.03.2025.

Date of Judgment: 05.03.2025.

J U D G M E N T

Dr. Syed Fiaz ul Hasan Shah, J: The Appellants *Iftikhar Ali, Wahid, Rashid* have filed present Criminal Appeal under section 410 of Criminal Procedure Code, 1898, against the Judgment of conviction dated 30.11-2023 passed by the learned Judge of Anti-Terrorism Court, Mirpurkhas in Special Case No.02/ 2023 (Re: Nabeela Bibi Vs. Iftikhar Ali & another) emanating offences under sections 341, 336-B, 34 PPC read with Sections 6/7 of Anti-Terrorism Act ,1997 on the basis of Direct Complaint, wherein the appellants were convicted as under;

“complainant has proved that on 19.10.2023 accused persons namely Iftikhar Ali having Hatchet, Wahid and Shahid having Lathis in furtherance of their common object restrained complainant Mst.Nabeela Bibi and her brother Nazeer Hussain from going to Digri Court, hence they have committed the offence punishable u/s 341 PPC and sentence each accused to suffer S.I for one month. Complainant Mst.Nabeela Bibi also proved that on the same date, time and place accused Wahid and Rashid caught hold her brother Nazeer Hussain while accused Iftikhar Ali took out bottle from his right side pocket and threw the acid on the face of complainant Mst.Nabeela Bibi with the result she sustained acid injuries on her fore head, on her left breast, on her right upper side of chest, on her right shoulder, on her both hands and on her feet, hence accused Wahid and Rashid facilitated accused Iftikhar Ali who threw acid on the complainant Nabeela Bibi as such they are equally responsible for throwing acid by accused Iftikhar Ali upon complainant Mst. Nabeela Bibi punishable under section 336-B PPC read with sub-section 2(b) of section 6 ATA, 1997, hence all the accused are convicted under section 336-B PPC read with section 7(c) ATA, 1997 and sentenced to suffer R.I. for 10 years and fine of Rs.50,000/- (Rupees Fifty Thousands only) by each accused. The fine amount will be paid to the victim /complainant Mst.Nabeela Bibi. In case of non-payment of fine amount each accused shall further suffer R.I for six months”.

2. The facts of the case are that a private complaint under section 200 Cr.P.C was filed by the complainant Mst.Nabeela Bibi against the above named Appellants stating that her husband Muzaffar Iqbal owns 7-00 acres share in ancestral agricultural land which is still in the name of his father Wali Muhammad. The Appellant No.1/Accused Iftikhar brother of her husband wants to usurp the share of 7-00 acres land of her husband and used to quarrel with her on one or the other pretext and asked her and her husband to shift from village so also handover the possession of their share to him without any consideration. Hence her husband Muzaffar Iqbal has filed Civil Suit No.79/2021 in the Court of Senior Civil Judge, Digri which is still pending. On 17.10.2022 she and her husband were present in the house at about 6-30 p.m. accused Iftikhar Ali, Wahid and Rashid armed with Hatchet and lathis entered in their house and started giving

blows to her and her husband, she and her husband entered in the room of the house and closed the door from inside. Then she contacted with Madadgar 15 Centre Mirpurkhas and narrated the incident. It was further alleged that she requested for help, but Police did not come and failed to provide protection. Thereafter, at about 9-00 p.m. Appellants went to P.S Tando Jan Muhammad and lodged false FIR No.56/2022 against her husband Muzaffar Iqbal. On the next day, the Police arrested her husband from the house. On 19.10.2022, she alongwith her elder brother Nazeer Hussain was going to Civil Court Digri when they reached at her agricultural land, the Appellants/accused Iftikhar Ali armed with Hatchet, accused Rashid and Wahid having lathis came in front of them and stopped them from going to Digri. The accused Iftikhar took out one bottle from his right side pocket and threw acid on her, she put her hands on her eyes but acid was hit on her forehead, both arms, chest and feet. On her cries, the Appellants/accused persons fled away. In the meanwhile, locality persons Saleem and Ghulam Muhammad came there and arranged Rukshaw in which she and her brother Nazeer Ahmed went to Civil Court Digri where she shown her injuries to the learned Judge who sent her to Taluka Hospital Digri for her treatment. After taking treatment on same date she alongwith her brother Nazeer Hussain went to P.S Tando Jan Muhammad to lodge the FIR against Appellants/accused Iftikhar Ali, Wahid and Rashid but Police refused to register her FIR against the Appellants/accused persons. Thereafter, she filed application u/s 22-A & B Cr.P.C before the learned District & Sessions Judge, Mirpurkhas which was declined on the false report of Police, hence she has filed this direct complaint against the above named accused persons.

3. The statement of complainant Mst.Nabeela Bibi was recorded under section 200 Cr.P.C. Thereafter, the trial Court passed order of preliminary inquiry in order to ascertain truthfulness or falsehood of

allegations. During preliminary enquiry, the complainant examined her witnesses namely Nazeer Hussain, Saleem and Lady Doctor Maida Naeem. After hearing the arguments on preliminary enquiry, the trial Court had taken cognizance against the Appellants/accused persons vide order dated 18.01.2023 and with direction to register complaint on the file of this Court. Thereafter, Bailable Warrants were issued against the above named Appellants/accused persons. On 28.01.2023 the Appellants/accused Iftikhar Ali, Wahid and Rashid voluntarily had appeared before the trial Court to face the trial and accordingly copies of complaint provided as required under section 265-C Cr.P.C were supplied to all accused persons at Exh.01.

4. On 16.02.2023, before the commencement of trial, the Presiding Officer took Oath as required by section 16 of Anti-Terrorism Act, 1997 at Exh.02. Thereafter, charge against the Appellants/accused persons for the offences punishable under sections 341, 336-B, 34 PPC read with sections 6&7 of the Anti-Terrorism Act, 1997 was framed at Exh.03. The Appellants/accused pleaded not guilty and claimed for fair trial such pleas were recorded at Exhs.04 to 06.

5. In order to prove her case complainant Mst. Nabeela Bibi has examined herself as Exh.07, she produced memo of her direct complaint, her statement recorded under section 200 Cr.P.C during the preliminary enquiry of the case, her original OPD Slip. Photostat copy of FIR No.56/2022 of P.S Tando Jan Muhammad, application dated 18.10.2022 moved by her to the learned Civil Judge and Judicial Magistrate-1 at Digri at Exh.07/A to E, two outdoor slips at Exh.7/F/1 & 2, application dated 21.10.2022 moved by complainant to DSP Digri, certified true copy of Crl.Misc. Application No.1315 of 2022, order dated 11.11.2022 at Exh.7/G, H & I, cuttings of different Newspapers at Exh.J/1 to 5 and three

Photographs of her body at Exh.7/K/1 to 3. Complainant has examined her witness No.1 Nazeer Hussain at Exhibit No.08, he produced his 202 Cr.P.C statement recorded by him during the preliminary enquiry at Exh.8/A, her witness No.2 lady Doctor Maida Naeem at Exhibit No.09, she produced medical certificate of complainant Mst. Nabeela Bibi, Photostat copies of two OPD Slips and her 202 Cr.P.C statement recorded by her during the preliminary enquiry as Exh.9/A to D respectively and her witness No.3 Saleem at Exh. 10. Thereafter complainant has filed statement at Exh.11 and closed the side of her evidence.

6. The statements of Appellants/accused have recorded under section 342 Cr.P.C at Exhs.12, 13 & 14 wherein they have denied the allegations leveled against them by the complainant and her witnesses. They stated that they have been falsely implicated in this case by the complainant due to dispute over the landed property. They are innocent and pray for justice. The Appellants/Accused persons neither examined themselves on oath under section 340(2) Cr.P.C nor led their defence witness.

7. We heard the Counsel for the Appellant and the Deputy Prosecutor General Sindh and perused the impugned Judgment and material record including evidence adduced and documents produced by the parties. It is admitted position that the parties are close relatives and they have dispute over land regarding which civil litigation is/was pending at the time of alleged incident. Additionally, the Appellant had lodged FIR No. 56/2022 against Muzaffar Iqbal who is the husband of the PW-01 Nabeela. It is also admitted position that at the time of alleged incident the husband of the PW-01 Nabeela (complainant and victim) was confined in Prison.

8. It is also admitted position that the complainant-cum-victim has initially approached the Police Station Tando Jan Mohammad and Police officials had refused to lodge FIR on the ground that the incident is false story. Subsequently, the Complainant filed application under section 22-A & B Cr.P.C before the Justice of Peace which was also dismissed vide Order dated 11.11.2022 passed by Addl Session Judge-I, Mirpur Khas in Crl. Misc Applciation No.1315/2022. As a last resort the complainant has filed a complaint which was allowed through the Judgment impugned before us.

9. The complainant has produced herself being the victim and her brother Nazeer Hussain and Saleem as eye witness. The direct evidence of the PW-1 (Complainant cum victim) regarding the incident would be relevant to examine the veracity of the Judgment impugned before us. She deposed as under:

“On 19.10.2022 at about 8.00 a.m., I alongwith my elder brother Nazeer Hussain was going to Civil Court Digri when we reached at the agricultural land of my husband situated adjacent to our house, accused Iftikhar Ali armed with Harchet, accused Rashid and Wahid having lathis came infront of us and stopped us from going to Digri. Accused Rashid and Wahid caught hold my brother Nazeer Hussain while accused Iftikhar took out one bottle from his right side pocket and threw acid on my face, I put my hands on my eyes but acid was hit on my forehead, my both arms, chest and feet. ..”

Cross-examination on this point is important. For the convenience it is referred hereunder:

“It is fact that in para No.7 of my application u/s 22 A&B Cr.P.C. I had mentioned that on 19.10.2022 I was going to attend the Court of Judicial Magistrate Digri and I have not disclosed the names of my brother Nazeer Hussain, witnesses Saleem and Ghulam Mohammad. It is fact that I have also not mentioned

that was going to the Court by feet and when I reached at my land accused Iftikhar and others attacked upon me. It is fact that I have also not mentioned that which accused was armed with which weapon”.

The PW-1 was subjected to cross-examination and during her cross examination she has admitted that she has not given the name of eye witnesses of incident when she had filed application under section 22-A & B of Cr.P.C. It is incomprehensible that complainant has not given the names of an eye-witnesses of incident, in her application under section 22-A & B Cr.P.C, when one of the eye witness is the real brother of the complainant, while her husband was behind the bar at that time. Subsequently when the PW-1 filed a direct complaint she has given the name of 03 persons as eye-witnesses including her brother Nazeer Hussain without any explanation for not mentioning the name of eye witness Nazeer Hussain before the Justice of Peace. Another aspect of the present case is that the complainant in her application under section 22 A & B Cr.P. did not mention that after the acid thrown attack she has approached the Court of Judicial Magistrate Digri. The complainant has admitted that she had not mentioned about the detail of weapon kept holding by each Appellants. However, when the complainant had subsequently filed complaint, she had given details of weapons. It is settled law that when name of an eye-witness is missing from a Statement, it can raise serious question about the reliability of statement and the witness's role in the incident potentially impacting the case. Any improvement through statement towards change of version from its previous one or a contradictory statement of a witness which does not confirm or not in the line with the testimony would cause doubt on the veracity of the evidence of the witness. The Hon'ble Supreme

Court in Farman Ahmed's case ¹ held that improvements once found to be deliberate and dishonest would cast serious doubts on veracity of such witness.

10. Another alarming thing is the admission of eye-witness PW No.2 Nazeer Hussain. During his evidence, he deposed:

"It is fact that Nek mard of our community is Ghulam Mohammad Arain who recorded his statement before police official against my sister Mst.Nabeela and her husband Muzaffar Iqbal."

11. Firstly, the complainant failed to motivate police official, then Justice of Peace was also not inclined towards the version of complainant and lastly the community elders had also not appreciated the complainant, despite the seriousness of allegations of Acid throwing attack. This aspect, alone has shattered credibility of complainant.

12. Moving on, the scanning of evidence of PW-03 Maida Naeem, Women Medical Office though she had given the details of injuries but her admission negate the incident of acid throwing attack. She deposed:

"Mst. Nabeela alone appeared before me at the time of her examination and herself came there. It is incorrect ot suggest that Mst.Nabeela Bibi herself threw acid on her body. I had not found any mark of acid on the clothes of Mst.Nabeela Bibi."

13. The last witness produced to prove the case was PW-04 Saleem son of Nabi Bux. He in his examination-in-chief had not confirmed the incident of acid throwing, although he was declared Hostile and subjected to cross examination by the complainant but

¹ Farman Ahmed v. Muhammad Inayat and others"(2007 SCMR 1825)

nothing has been shaken from his straightforward evidence which is trustworthy and confident inspiring. He deposed:

“I had not seen the accused persons pouring acid on the complainant Mst.Nabeela Bibi”

14. If the eye witness were present at the time and place of occurrence, why they had not informed the police and why the complainant has not promptly mentioned the names of eye witnesses in the application under section 22-A & B Cr.P.C filed by her? It is also unperceivable to a prudent mind that why Complainant and her brother Nazeer Hussain who is eye-witness of even, went to Court when Nabeela got serious injuries of acid thrown attack which is primarily related to severe skin burning. The evidence of the PW-1 and PW-02 is full of shadow of doubts and unnatural. The presence of the eye-witnesses PW-02 Nazeer Hussain and PW-4 Saleem at the spot at the relevant time was not proved on the contrary it negates that the Appellants are involved in the incident.

15. Reliance is placed upon the case laws of Apex Court on the failure of eyewitnesses present at the place of incident. The Hon'ble Supreme Court in Ali's case² held that to believe or disbelieve a witness, all depends upon intrinsic value of the statement deposed by witnesses. There cannot be universal principle that in every case, interested witnesses should be disbelieved or disinterested witnesses be believed. It all depends upon the rule of prudence and reasonableness to hold that a particular witness was present on scene of crime and that he is making true statement. A Person who is reported otherwise to be very honest, aboveboard and very respectable in

² Ali Vs. The State (2011 SCMR 208)

society, if gives a statement which is illogical and unbelievable, no prudent man despite his nobility would accept such statement. As a rule of criminal jurisprudence, the prosecution evidence is not tested on the basis of quantity but quality of evidence. It is not that who is giving evidence and making statement. What is relevant is, what statement has been given and it is not the person but the statement of that person which is to be evaluated and adjudge for appraisal or otherwise. In view of above, the evidence of the Complainant is not trustworthy and found under full shadows of doubt and in the line of revenge as a counterblast on the dispute over lands between the Appellants and the husband of the Complainant and agony of incarceration of her husband on the basis complaint registered by the Appellants.

16. These are the reasons for our short Order dated 05.03.2025.

JUDGE

JUDGE

Adnan Ashraf Nizaman