

IN THE HIGH COURT OF SINDH AT KARACHI

Present:

Mr. Justice Mohammad Karim Khan Agha
Mr. Justice Khadim Hussain Tunio,

SPL. CR. A.T. JAIL APPEAL NO.128 OF 2020

Appellant:	Muneer Ahmed son of Muzzafar Ali through Muhammad Ovais, Advocate
Respondent:	The State through Mr. Muhammad Iqbal Awan, Additional Prosecutor General, Sindh.
Date of Hearing:	18.04.2022
Date of Announcement:	25.04.2022

J U D G M E N T

Mohammad Karim Khan Agha, J. Appellant Muneer Ahmed son of Muzzafar Ali was charge sheeted to face his trial in Special Case No.183/2019 arising out of FIR No.27 of 2019 under sections 324/336-B/337-F(i) PPC r/w Section 7 ATA registered at PS Shah Lateef Town, Karachi; whereby he was convicted under section 336-B PPC and sentenced to suffer R.I. for 14 years with fine of Rs.10,00,000/- and in case of default of payment, he shall suffer R.I. for two years more. However, the appellant was extended benefit of section 382-B Cr.P.C.

2. Brief facts of the prosecution case as narrated in the FIR are that complainant Mst. Rafia Khatoon had registered an FIR at PS Shah Lateef Town on 10.01.2019 stating therein that on 31.12.2018 her husband quarreled with her and he became annoyed upon her and left the house. On 07.01.2019 it was 07:00 a.m. when she became ready for duty and came outside from house, when she reached in the street, meanwhile her husband shouted her name and when she turned towards all of sudden her husband threw the acid/corrosive substance upon her on which she sustained the acid injuries on her left side of face. Later on her husband made his escape good from the scene. On her cries, her brother Wajid Ali and cousin Farooq came outside from the house and they brought her in injured condition at PS Shah Lateef Town and after obtaining the letter from PS, her brother brought her to Jinnah Hospital for medical treatment, wherefrom she was shifted to civil hospital and after some recovery the complainant had appeared at PS and registered the instant FIR.

Wherein she requested that action be taken against the above named accused, who quarreled with her and threw acid/corrosive substance upon her with intention to commit her Qatl-e-Amd due to which she sustained the acid injuries on her body.

3. After usual investigation the matter was challaned and the appellant was sent up to face trial. He pleaded not guilty to the charge and claimed trial.

4. The prosecution in order to prove its case examined 07 PWs and exhibited various documents and other items. The statement of the accused was recorded under Section 342 Cr.P.C in which he denied all the allegations leveled against him. The accused however neither examined himself on oath nor produced any DW in support of his defence.

5. After hearing both the parties and appreciating the evidence on record the trial court convicted the appellant and sentenced him as set out earlier in this judgment. Hence, the appellant has filed this appeal against his conviction.

6. The facts of the case as well as evidence produced before the trial court find an elaborate mention in the impugned judgment dated 07.08.2020 passed by the trial court and, therefore, the same may not be reproduced here so as to avoid duplication and unnecessary repetition.

7. Learned counsel for the appellant has contended that the appellant is completely innocent and has been falsely implicated in this case by the complainant party and hence the 3 day unexplained delay in lodging the FIR which gave the complainant party time to cook up a false case against the accused in league with the police; that the clothes of the victim were not produced on the day of the alleged acid attack but after a delay of 3 days and thus any chemical report in respect of them could not be safely relied upon; that the so called eye witnesses were not only chance witnesses but were also related to the victim and as such their evidence could not be safely relied upon; that there were major contradictions in the evidence of the prosecution witnesses which also rendered such evidence as unreliable and as such for any or all of the above reasons the accused should be acquitted of the charge by extending him the benefit of the doubt. In support of his contentions, he placed reliance on the cases of *Tariq Pervez vs. The State* (1995 SCMR 1345), *Muhammad Nadeem Arif and others vs. Inspector General of Police, Punjab Lahore* (2011 SCMR 408), *Nazeer Ahmad vs. Gehne Khan and others* (2011 SCMR 1473), *Muhammad Ashraf vs. The State* (2012 SCMR 419),

Muhammad Rafique vs. The State (2014 SCMR 1698), Qadan alias Qadir Bux and another vs. The State (PLD 2015 Sindh 426), Dhani Bux Jagirani vs. Manzoor Kalhor and 8 others (2021 YLR 684), Mst. Fareeda and another vs. The State (2021 YLR 1828) and Muhammad Idrees and another vs. The State and others (2021 SCMR 612).

8. On the other hand learned APG fully supported the impugned judgment. In particular he has contended that the incident was reported to the police at the earliest and any delay in lodging the FIR has been fully explained; that the victim's evidence fully implicates the accused as do two eye witnesses whose evidence can be safely relied upon; that the medical evidence fully supports the prosecution case and thus the prosecution had proved its case beyond a reasonable doubt and the appeal should be dismissed. In support of his contentions, he placed reliance on the cases of **Amjad Ali and others vs. The State** (PLD 2017 Supreme Court 661), **Muhammad Mansha vs. The State** (2001 SCMR 199), **Amal Sherin and another vs. The State through A.G. N.W.F.P** (PLD 2004 Supreme Court 371) and **Ijaz Ahmad vs. The State** (2009 SCMR 99).

9. We have heard the arguments of the learned counsel for the appellant as well as learned APG and gone through the entire evidence which has been read out by the learned counsel for the appellant, and the impugned judgment with the able assistance of counsel and have considered the relevant law including the case law cited at the bar.

10. After our reassessment of the evidence **we find that the prosecution has proved beyond a reasonable doubt** that on 07.01.2019 in the street outside the appellant's house situated in Kachi Abadi, Dawood Shoro Goth Karachi at 0700hrs the appellant with intention to commit the murder of his wife Ms Rafiya threw acid/corrosive substance on her and as a result she received grievous injuries on different parts of her body and thereby committed offences u/s 324 and 336-B PPC for the reasons set out below keeping in view that each criminal case must be judged on its own particular facts and circumstances;

- (a) We do not find the delay in lodging the FIR to be fatal in this case based on the particular facts and circumstances of this case. The incident according to the evidence on the victim Mrs Rafia who was the complainant and also appeared as PW 1 occurred on 07.1.2019 whereafter she reported the incident to the police before seeking hospital treatment as corroborated by PW 2 Abdul Wajid and PW 3 Farooq Ahmed. This is borne out by a letter from **SIP Ali Gohar of Shah Latif Town Malir PS** dated 07.01.2019 which was exhibited and states

complainant/victim became injured with acid thrown by her husband and she is being sent to MLO JPMC for treatment. On account of her injuries the complainant did not immediately lodge the FIR but it is apparent that the complainant reported the incident to the police within hours of the incident specifically naming the accused as the person who threw acid on her. Hence there was no time for her to consult with the police and cook up a false story against her husband prior to filing the FIR as she had accused her husband immediately after the incident. The delay in lodging the FIR has been explained by her getting better after treatment and then becoming well enough to lodge the FIR. Even otherwise the prosecution has not received any benefit in the slight delay in lodging the FIR, which delay we find entirely reasonable based on the particular facts and circumstances of the case, and no prejudice has been caused to the accused by this slight delay. In this respect reliance is placed on the cases of **Muhammad Nadeem alias Deemi Versus The State** (2011 SCMR 872) and **Qadan** (Supra).

- (b) We find that the prosecution's case primarily rests on the eye witnesses to the incident and whether we believe their evidence whose evidence we will discuss in detail below;

(i) **Eye witness PW 1 Mrs Rafia is the most important eye witness in this case. She was the wife of the accused and also the victim.** According to her evidence the accused (husband), her mother, her brother Abdul Wajid (PW 2) and cousin Farooq Ahmed (PW 3) were all living in the same house. That on 31.12.2018 she had a quarrel with her husband who became annoyed and left for his native village. When she left her house on 07.01.2019 at 7am for work after breakfast her husband called to her from the street outside her house from a distance of 4 to 5 paces and when she turned towards him the accused threw acid in her face where she sustained acid injury on left side of her body. She fell to the ground raising hue and cry which lead to PW 2 Abdul Wajid and PW 3 Farooq Ahmed coming from her house and helping her. They took her home where her mother changed her clothes and thereafter was taken to PS Shah Latif Town where she met duty officer Gohar Aziz where she was referred to JPMC for medical treatment.

The accused was her husband and it was a day light incident which occurred from a close distance of 4 to 5 paces and as such there is no case of misidentification. The occurrence naming her husband as the culprit was recorded at the PS for medical purposes almost immediately after the occurrence by SIP Ali Gohar of Shah Latif Town Malir as mentioned above. She had no reason to falsely implicate her husband in this case. There were no material improvements made in her FIR and the evidence which she gave before the court. She gave evidence in a straightforward and natural manner and was not at all dented in cross examination and thus we find her evidence to be trust worthy, reliable and confidence inspiring and we believe her evidence.

(ii) **Eye witness PW 2 Abdul Wajid.** He is the brother of the complainant/victim. According to his evidence on 31.12.2018 the accused quarreled with the complainant and returned to his native village and then returned in the street on 07.01.2019. On the same day at 7am after breakfast the complainant left the house for work. He heard the hue and cries of the complainant

and went out of the house with his cousin PW 3 Farooq Ahmed where he saw his sister lying on the ground having been subject to an acid attack. He saw the accused running away with a jug in his hand. He then took the complainant home where his mother changed her clothes and then went to PS Shah Latif Town for a letter for medical treatment.

It is alleged that he was a chance witness as he came from Ghotki and did not work in Karachi. However it is notable that the whole family originally hailed from Ghotki and were living in the same house including the accused and as such this does not mean that he was not living and working in Karachi as claimed by him. No evidence came on record that he did not have a job in Karachi or that he was not living in the same house as the complainant who was his sister and her husband who is the accused and as such we do not consider him as a chance witness but a natural witness. In this respect, reliance is placed on the case of **Amjad Ali** (Supra).

He knew the accused very well through family relations and the fact that they lived together. It was a day light incident and he saw the accused from a short distance and as such the question of misidentification does not arise. **Importantly** he did not embellish his evidence to say that he actually saw the accused throwing the acid on the complainant which he could easily have done but simply says that he saw the accused running away with the jug after the incident. He did not chase the accused as his main priority was to attend to his injured sister. He gave evidence in a straightforward and natural manner and was not at all dented in cross examination. No enmity has been proven against him or any reason to falsely implicate the accused and it is well settled by now that in such cases we can rely on the evidence of related witnesses. In this respect reliance is placed on the cases of **Ijaz Ahmad** (Supra) and **Amal Sherin** (Supra). He corroborates the complainant in all material respects except in seeing the accused actually throw the acid on her and thus we find his evidence to be trust worthy, reliable and confidence inspiring and we believe the same.

(iii) **Eye witness PW 3 Farooq Ahmed.** He is the cousin of the complainant and gives the same evidence as PW 2 Abdul Wajid and corroborates him in all materially respects. The same considerations apply to him as for PW 2 Abdul Wajid and we believe his evidence.

Thus, for the reasons mentioned above, we find the evidence of the eyewitnesses to be reliable, trustworthy and confidence inspiring and we believe the same especially with regard to the correct identification of the appellant as the person who threw acid on the complainant and can convict on this evidence provided that there is some corroborative/ supportive evidence. In this respect reliance is placed on the case of **Muhammad Ehsan v. The State** (2006 SCMR 1857). As also found in the cases of **Farooq Khan v. The State** (2008 SCMR 917), **Niaz-ud-Din and another v. The State** and **another** (2011 SCMR 725) and **Muhammad Mansha** (Supra). That what is of significance is the quality of the evidence and not its quantity and in this case we

find the evidence of these eyewitnesses to be of good quality.

Thus, based on our believing the evidence of the PW eyewitnesses what other supportive/corroborative material is there against the appellant? It being noted that corroboration is only a rule of caution and not a rule of law. In this respect reliance is placed on the case of **Muhammad Waris v The State** (2008 SCMR 784).

- (a) As discussed above the offence and the name of the accused was reported immediately to PS Gohar at Shah Latif Town PS in connection with the complainant receiving an examination by an MLO.
- (b) PW 6 Dr. Noor Nisa who was the MLO at JPMC who examined the complainant found two burn wounds all on the left side of the complainant and serious injury to the eye and that the acid smell was coming from her breath and wounds. The kind of weapon was declared as acid burns. The Oral evidence in respect of the complainant is therefore also corroborated/supported by the medical evidence.
- (c) PW 7 Dr. Predeep Kumar also medically examined the accused as conceded by the accused in his S.342 Cr.PC statement who found superficial healed burn marks on the accused which corroborates/supports the complainants evidence that he was in contact with acid which most likely splashed on him either when he filled the jug or when he threw the acid from the jug at the accused.
- (d) It is true that the clothes which the complainant was wearing at the time of the acid attack were not immediately handed over to the police shortly after the incident was initially reported to the police for medical legal purposes nor to PW 6 Dr. Noor Nisa who was the MLO at JPMC who examined the complainant and found burn wounds but this is easily explainable. Namely the attack happened a few paces away from the complainant's house and as per her own evidence and that of PW 2 and 3 she was taken back to her house where quite naturally her clothes were changed by her mother seeing her daughter in such an agonized state before going to the police. That once the FIR was lodged and the accused arrested the clothes which were worn by the complainant when she was attacked with acid were recovered from her house and sent for chemical examination. Hence this slight delay in obtaining the acid covered clothes was natural and very much explainable based on the particular facts and circumstances of the case. The clothes which the complainant was wearing at the time of the attack as per report of the chemical examiner were found to be smothered in acid.
- (e) That the accused was arrested by the police based on spy information. The police recovered the clothes from the house of the complainant and sent the same for chemical examination which lead to a positive chemical report. It is well settled by now that the evidence of a police witness is as reliable as any other witness provided that no enmity exists between them and the accused and in this case no enmity has been suggested

against any of the police PW's and as such the police had no reason to falsely implicate the appellant in a false case for instance by pouring acid over the clothes which the complainant was wearing at the time of the attack and which they recovered from her house. Thus we believe the police evidence which corroborates the prosecution case. In this respect reliance is placed on the case of **Mustaq Ahmed V The State** (2020 SCMR 474).

- (f) That there are no major contradictions in the evidence of the PW's and it is well settled by now that minor contradictions which do not effect the materiality of the evidence can be ignored. In this respect reliance is placed on **Zakir Khan V State** (1995 SCMR 1793) and **Qadan** (Supra). In fact the evidence of the prosecution provides a corroborated chain of events from the complainant quarreling with her husband who left the house annoyed to the husband coming back a week later and knowing the time the complainant left for work laying in wait for her in the street out side her house to him throwing acid on her to the complainant reporting the matter to the police to the medical evidence in respect of both the complainant and the accused to the positive chemical report on the clothes which were worn by the complainant at the time when the acid was thrown on her by the accused.
- (g) No doubt it is for the prosecution to prove its case against the accused beyond a reasonable doubt but we have also considered the defense case which is one of false implication based on the brother in law of the complainant wanting his land an issue which was not put to any PW and was only raised at the end of the trial in his S.342 Cr.PC statement which we consider to be an after thought produced by him at the last moment in order to save his skin and as such in the face of reliable, trust worthy and confidence inspiring prosecution evidence we disbelieve the defence case especially as no PW has any proven reason to falsely implicate the appellant.

11. For the reasons mentioned above we find that the prosecution has proved its case against the appellant beyond a reasonable doubt and as such the appeal is dismissed.