IN THE HIGH COURT OF SINDH,

CIRCUIT COURT, HYDERABAD.

Cr. Appeal No.S-201 of 2017.

Appellant	:	Muhammad Yaseen S/o Imamuddin Rajput, Through Mr. Naveed Anjum, Advocate.
Respondent	:	The State through Mr. Shahzado Saleem Nahiyoon, Deputy Prosecutor General, Sindh.

Date of hearing: 12.10.2020
Date of decision: .12.2020

J U D G M E N T.

ABDUL MOBEEN LAKHO,J- Through instant appeal, the appellant has challenged the judgment dated 30.08.2017, passed by learned Additional Sessions Judge, Shahdadpur in Sessions Case No.35 of 2017 (Re: The State v. Muhammad Yaseen Rajput), arising out of Crime No.292 of 2016, registered at P.S Shahdadpur City, whereby he has been convicted under Section 295-B PPC and sentenced to imprisonment for life, however, benefit of Section 382-B Cr.P.C was extended to the appellant.

2. Concisely, the facts of the prosecution case are that on 26.12.2016 ASI Muhammad Jurial Chandio alongwith PC-Muhammad Hassan, PC-Muharram Ali and DPC-Fazal-ur-Rehman left P.S. for patrolling vide entry No.15 at 1815 hours. During patrolling at different places when they reached at Jan Painter, they stopped the mobile and went for checking. The police constables reached the street by feet and saw that one person was defiling the pages of Holy book. They apprehended him at 1930 hours and took the Holy Book into their custody and found that it was Noorani Qaida, in which the Ayaats (verses) of Holy Qur'an were written. On inquiry, he disclosed his name as Muhammad Yasin son of Imamuddin, by caste Rajput,

resident of near Jaddah Masjid, Azeem Bhatti Chowk, Shahdadpur. On further inquiry about Noorani Qaida, the accused could not satisfactorily reply. Thereafter, ASI prepared the mashirnama of arrest and recovery on the spot in presence of police mashirs due to non-availability of private witnesses. He brought the accused and case property at P.S and lodged the FIR against him under Section 295-B PPC.

3. After usual investigation, the case was challaned before the competent Court of law, where a formal charge was framed against the appellant at Ex.2, to which he pleaded not guilty and claimed to be tried vide his plea at Ex.3.

4. In order to substantiate the charge against appellant, the prosecution examined P.W-1 mashir of arrest and recovery PC Muhammad Hassan at Ex.4, he produced mashirnama of arrest and recovery at Ex 4/A, mashirnama of place of incident at Ex.4/B. Thereafter, ADPP for the State filed statement at Ex.6, whereby he gave-up PW Muharram Ali. The complainant of the case, namely ASI Muhammad Jurial was examined at Ex.6, he produced roznamcha entry at Ex. 6/A and FIR at Ex.6/B. Lastly, I.O SIP Nisar Ahmed Mughal was examined at Ex.7. Thereafter, ADPP for the State filed statement at Ex.8, whereby he closed the side of prosecution.

5. Statement of appellant under Section 342 Cr.P.C was recorded at Ex.9, wherein he denied the allegation leveled against him by the prosecution and claimed his innocence. He did not examine himself on oath but intended to lead evidence of defense witnesses, namely Khursheed Ahmed and Muhammad Ali. The DW-1 Muhammad Ali was examined at Ex.10 and DW-2 Khursheed Ahmed was examined at Ex.11. Thereafter, learned Advocate for appellant filed statement at Ex.12, whereby he closed the appellant's side.

6. After hearing the learned Counsel for the respective parties, the learned trial Court through impugned judgment dated 30.08.2017, convicted and sentenced the appellant as stated hereinabove.

7. It is contended by learned Counsel for the appellant that there are material contradictions in the evidence of prosecution witnesses; that there is violation of Section 103 Cr.P.C as no independent witness from the locality has been associated nor the I.O. made any effort to collect the independent witness of the locality to witness the incident; that the offence with which the appellant has been charged is not proved at the trial but the trial Court did not consider the same and convicted the appellant by ignoring the settled principles of law; that all the material questions as required by law are not put to the appellant while recording the statement under Section 342 Cr.P.C; that the motive of the alleged incident has also shrouded in mystery. Lastly, he has prayed for acquittal of the appellant. In support of his contentions, learned counsel has placed reliance upon the cases reported as PLD 2019 Supreme Court 527, PLD 2007 Peshawar 83, PLD 2002 Supreme Court 643, 2003 SCMR 150, 2014 P.Cr.LJ 1087 and 2014 P.Cr.LJ 744.

8. On the other hand, learned D.P.G. opposed the instant appeal and supported the impugned judgment on the ground that prosecution has fully established its case against the appellant before the trial Court and that there are minor contradictions in the evidence of prosecution witnesses which can be ignored. He; therefore, prayed for dismissal of the appeal.

9. I have heard learned Counsel for the appellant as well as learned D.P.G for the State and have gone through the material available on record.

10. Before going into the merits of the case, it would be conducive to reproduce Section 295-B PPC which reads as under:-

> **“295-B. Defiling, etc. of copy of Holy Qur`an**. Whoever willfully defiles, damages or desecrates a copy of the Holy Qur`an or of an extract therefrom or uses it in any derogatory manner or for any unlawful purpose shall be punished with imprisonment for life.”

11. From bare reading of the above, it is clear that the above provision of law strictly deals with defiling and desecrating of Holy Qur’an or extract therefrom in a derogatory manner. Now, it is

the case of the prosecution that when the police party during patrolling in the area reached at Jan Painter, the present accused was seen defiling the pages of Noorani Qaida; hence, he was arrested and challaned under Section 295-B PPC. It is to be seen whether evidence of prosecution witnesses is based upon truthfulness or otherwise. However, at this juncture, it would be necessary to discuss upon the veracity of police witnesses whether they have brought on record the chain of ocular account, which in my view seems to have not been brought so far. In this case all the prosecution witnesses are police officials, which appear to have clearly violated the Section 103 Cr.P.C, which for the sake of convenience is reproduced hereunder:-

> **103. Search to be made in presence of witness** (1) Before making a search under this Chapter, the officer or other person about to make it shall call upon two or more respectable inhabitants of the locality in which the place to be searched is situate to attend and witness the search and may issue an order in writing to them or any of them so to do.

12. Keeping in mind the above Section, the prosecution relying upon the evidence for capital punishment produced PW-1 / Muhammad Hassan (Mashir), who was examined at Ex-4. He in his evidence has stated that *"It is correct to suggest that the place of incident is situated in thickly populated area".* PW-3 SIP Nisar Ahmed (Ex-7), who is I.O of the case, has stated during cross-examination that *"It is correct to suggest that the place of incident was situated in thickly populated area of Muslim community. I tried to take private person from the locality for evidence, but no one was ready to give evidence.* The statements of both these witnesses have been contradicted by complainant PW-2 Muhammad Jurial, (Ex-6), who in his cross-examination has stated that *"It is correct to suggest that the place of incident is situated in thickly populated area. At that time no private person was available on the spot".* On one hand, PW Nisar Ahmed, who is I.O of the case, states that he tried to take private person from the locality for evidence but no one was ready to give evidence and on the other hand PW Muhammad Jurial, who is complainant of the case, deposes that at the time of incident no private person was present on

the spot. From careful examination of evidence of the above prosecution witnesses, it appears that they apprehended the appellant alongwith Noorani Qaida in a thickly populated area at about 07.30 p.m, but complainant failed to associate any person from the locality on the pretext that the people did not want to be the witness in such type of cases and also failed to disclose the name(s) of person(s) who approached him to become a witness infact the religious sentiment in our country are so strong that if anyone had actually seen the accused defiling or desecrating anything that has the slights resemblance to the Holy Qur'an then people of the locality would have taken law into their hands to punish the culprit, but here it is just the opposite and surprisingly none came forward to bear witness of such accident is a little difficult to digest especially when the incident took place in evening time i.e. at 07:30 p.m. which time is always considered to be the time when most of the people are busy running their errands and/or busy in preparing for the following day; besides the formalities of the incident continued for about 30 minutes. I am conscious of the fact that provisions of Section 103 Cr.P.C are attracted to the cases of personal search of accused in the cases where the alleged recovery is made on a road / path, which are in densely populated area. The police official is as good witness as anybody else from the public, but it was incumbent upon the police officer/investigating officer to associate some independent /private persons before charging a person for an offence, especially which carries capital punishment, therefore, their testimony being biased cannot safely be relied upon to sustain/maintain conviction against the appellant. The prime object of Section 103 Cr.P.C is to ensure transparency and fairness on the part of police during course of recovery, curb false implication and minimize the scope of foisting of fake recovery upon the accused. There is also no explanation on record as to why the independent witness(s) has / have not been associated in the recovery proceedings, though all PWs have admitted the place of occurrence to be thickly populated area. No doubt, as stated above the police witness being a good witness as other from the public and conviction could be recorded on his evidence, if his testimony is reliable, trustworthy and confidence inspiring and in case such qualities are missing then no conviction

could be recorded on the basis of his statement. Moreover, the legislatures have introduced the main object of Section 103 Cr.P.C to ensure transparency and fairness on part of the police during course of recovery in order to restrain false implication of a citizen and reduce scope of foisting fake recoveries thereupon and the complainant only relied upon his subordinate officials but did not associate private person to witness recovery proceedings. In this respect, reliance is placed upon the case of *NAZIR AHMED v. The STATE (PLD 2009 Karachi 191),* in which the honourable Supreme Court has observed that;

> "8. By excluding applicability of section 103 of Cr.P.C. in narcotic cases, the legislature has not conferred any additional or extra sanctity upon the officers of police or such other forces. It has not made them more reliable. Indeed, as it has been rightly observed by a Division Bench of this Court, in the case of Ali Hassan v. The State, reported in PLD 2001 Karachi 369, `man cannot be made moral through legislation'. The effect of section 25 of the C.N.S. Act will be that evidence of a police officer regarding recovery of a narcotic substance cannot be discarded only on the ground of non-compliance of section 103, Cr.P.C. In another case, re Pir Bux v. The State, reported in 2007 MLD 1696 (Karachi), it was observed that notwithstanding the non-applicability of section 103, Cr.P.C. in the cases of narcotics, the officers making searches, recoveries and arrests are required to associate private persons, more particularly in those cases in which their presence is admitted so as to lend credence to such actions and to restore public confidence."

13. On further perusal of the evidence, PW Muhammad Hassan has stated during examination-in-chief that *"ASI apprehended him and on his personal search recovered one Noorani Qaida whose pages were torn".* Contradicting the version of this witness, PW Muhammad Jurial has deposed that *"It is correct to suggest that the pages of Noorani Qaida were not torn. Voluntarily says the pages of Holy book removed from it or torn the meaning are same. It is correct to suggest that the words of Noorani Qaida are intact. It is correct to suggest that when we arrested the accused at that time the pages of Noorani Qaida were not lying on the land but were in the hand of*

accused". The above few lines are enough to come to a conclusion that Noorani Qaida was in perfect readable condition and it takes the crime out of the ambit of Section 295-B PPC. I have also noted the material contradictions in between the evidence of prosecution witnesses to the effect that complainant ASI Muhammad Jurial has stated in his examination-in-chief that mashirnama of arrest and recovery was prepared by him at the spot, but in his cross-examination he has admitted that it was prepared by WPC Ghulam Shabir Samejo. It is also surprising to note that neither the statement under Section 161 Cr.P.C of said WPC was recorded nor his name is mentioned in calendar of the witnesses. Moreover, complainant has also stated in his cross-examination that entry No.15 regarding their departure from Police Station was made in the Roznamcha by him, whereas mashir PC Muhammad Hassan has stated in his cross-examination that the said entry No.15 was made in the Roznamcha by WHC Mukhtiar. It is also important to mention here that PW-3 SIP Nisar Ahmed in his cross-examination has stated that he visited the place of incident within 15 minutes, whereas the mashirnama of place of incident shows that it was prepared on 26.12.2016 from 2130 to 2145 hours and the F.I.R. was registered on 26.12.2016 at 2020 hours with delay of about 1 hour and 10 minutes and it was mentioned in mashirnama of place of vardat that "we searched from the surrounding area as well as from the place of vardat, no pages etc. of Noorani Qaida in torn condition were available/present there". It is also important to note that mashirnama of arrest and recovery shows detail of property that some leaves of one Noorani Qaida in torn condition were sealed, but nothing was available on record. These material and important contradictory aspects of the case of course lead me to the conclusion that the incident did not take place in a manner as fashioned in the F.I.R. In fact, the Noorani Qaida after examination was found being in perfect condition without any physical blemish. I am also surprised that the factum of its perfect condition was ignored by the trial Court while recording conviction of imprisonment for life to the appellant; hence, it needs to be interfered by this Court.

14. Further, on legal plan, my attention was drawn by learned Counsel for the appellant to the provision of Section 295-B, PPC, who

emphatically argued that "mensrea" is the essential and integral limb of the said provision and complete absence of it would not attract the charge. The appellant was thus prosecuted and punished in disregard of Section 295-B PPC, which has been reproduced in the preceding paragraph.

15. There is no cavil that the act of willfully, defiling, damaging and desecrating of Holy Qur'an or part of it, would constitute the offence committed intentionally, knowingly, purposely and for achieving the objective but in the absence of such intention, the necessary "mensrea" would absolutely be lacking and in that eventuality the present accused for such an offence cannot be held guilty except in very rare and exceptional circumstances where the prosecution succeeds in proving the motive\intention of the person involved in the act as mention in the section referred above.

16. The prosecution has to establish the crime by adducing quality of evidence to prove all the elements constituting the crime i.e. *mensrea* etc. It is the rock bed and elementary principle of criminal justice that no one shall be construed into a crime unless his guilt is proved beyond reasonable doubt by the prosecution through reliable and confidence inspiring evidence. It is true that as a Muslim I have to defend and protect the original text of the Holy Qur'an and *Sunnah* from any type of desecration, distortion and to thwart all attempts in bringing changes in it by any quarter/person, however, I should not ignore the shocking fact that whenever a person is charged for such an offence, the accused person is cursed and abused by the society/people-at-large. So much so that even his life becomes at risk at the hands of certain segments of the society, therefore, in this background for firmly securing the ends of justice, the Court has to examine the evidence furnished by the prosecution with extra degree of care and caution so that it might not be deliberately taken to a mistaken conclusion causing the miscarriage of justice.

17. It is also settled law that the prosecution primarily is bound to establish the guilt against the accused without shadow of reasonable doubt by producing trustworthy, convincing and coherent evidence enabling the Court to draw conclusion, whether the

prosecution has succeeded in establishing accusation against the accused or otherwise, and if it comes to the conclusion that the charges so imputed against the accused has not been proved beyond reasonable doubt, then accused would become entitled for his release on getting benefit of doubt in the prosecution case. The requirement of the criminal case is that prosecution is duty bound to prove its case beyond any reasonable doubt and if any single and slightest doubt is created, benefit of the same must go to the accused and it would be sufficient to discredit to the prosecution story and entitle the accused for acquittal. If a single circumstance, which creates reasonable doubt in a prudent mind about the guilt of an accused, then the accused shall deserve to be entitled to benefit as a matter of right but not as a matter of grace or concession as has been observed in the case of "MOHAMMAD MANSHA v. THE STATE" (2018 SCMR 772), wherein the honourable Apex Court has observed as under:-

> "4. Needless to mention that while giving the benefit of doubt to an accused it is not necessary that there should be many circumstances creating doubt. If there is a circumstance which creates reasonable doubt in a prudent mind about the guilt of the accused, then the accused would be entitled to the benefit of such doubt, not as a matter of grace and concession, but as a matter of right. It is based on the maxim, "it is better that ten guilty persons be acquitted rather than one innocent person be convicted". Reliance in this behalf can be made upon the cases of Tarique Parvez v. The State (1995 SCMR 1345), Ghulam Qadir and 2 others v. The State (2008 SCMR 1221), Mohammad Akram v, The State 2009 SCMR 230) and Mohammad Zaman v. The State (2014 SCMR 749)."

18. The above principle has been repeated in recent past by the Honourable Supreme Court in the cases of ABDUL JABBAR v. The STATE (2019 SCMR 129), MUHAMMAD AZHAR HUSSAIN and another v. The STATE and another (PLD 2019 SC 595) and ABDUL HAQ and others v. The State (2020 SCMR 116).

19. In view of foregoing, the conviction recorded by the trial Court against the appellant has resulted into miscarriage of justice, which is wholly unsustainable in law, therefore, impugned judgment

dated 30.08.2017 is hereby set aside by allowing instant appeal. Consequently, the appellant is acquitted of the charge by extending him the benefit of doubt. He is in custody and shall be released forthwith if not required in any other custody case.

JUDGE

Shahid

5. I have also examined the statement of accused recorded by the trial Court under Section 342 Cr.P.C whereby no question has been put to accused regarding recovery of Holy Book / Noorani Qaida as such piece of evidence has been used against the accused, thereby all the incriminating pieces of evidence available on record were not put to accused as provided under Section 342 Cr.P.C for the explanation of accused, then legally the same cannot be used against accused. In the case of Muhammad Shah V/s. The State (2010 SCMR 1009), the Honourable Supreme Court of Pakistan has held as under:-