

THE HIGH COURT OF SINDH, BENCH AT SUKKUR

CrI. Appeal No.S-35 of 2022
(Muhammad Akram Jatoi v. The State)

Date of hearing(s): **30-04-2024**

Date of decision: **30-04-2024**

Mr. Achar Khan Gabol, Advocate for the pauper appellant.
Mr. Shafi Muhammad Mahar, Deputy P.G for the State.

J U D G M E N T

MUHAMMAD IQBAL KALHORO, J:- Appellant was charged for committing an offence under section 295-B PPC by defiling and desecrating the leaves of Holy Quran by dipping them in water at the time of taking shower in a washroom near a mosque at New Mashallah Petrol Pump, Baiji Sharif on 16.09.2014 at about 1200 hours. He was tried against the said charge by learned Additional Sessions Judge-V, Sukkur and vide judgment dated 05.04.2022 has been convicted and sentenced to suffer imprisonment for life under section 295-B PPC with benefit of section 382-B CrPC, duly extended to him.

2. FIR of the case was registered by a Mechanic whose shop was situated at the same petrol pump on the very day of incident. According to his version of events, there was a washroom built near a mosque constructed on the land of said petrol pump, where they had found some torn leaves of Holy Quran. Hence, he kept a vigil/watchful eye over the people using the same washroom to find out the culprit. On the day of incident, he saw appellant entering the washroom and taking longer than usual time using the same. He got suspicious and peeped in through a ventilator and found the appellant having leaves of Holy Quran in his hand which he was dipping in water, defiling and desecrating the same. He called the people standing nearby who came running. He narrated them the story and along with said persons broke open door of washroom and apprehended the appellant with so many leaves/pages of Holy Quran in his hand. Thereafter, they called the police which came, arrested

the appellant, prepared such memo and brought him at P.S, where FIR was registered.

3. Usual investigation saw filing of Challan against the appellant and his pleading not guilty to a formal charge. In the trial, the prosecution has examined complainant as PW-1, Abdul Khalique as PW-2, Lutufullah as PW-3, Ghulam Hussain as PW-4, who is a Mashir, Inspector Qurban Ali, SHO,P.S, Baiji Sharif as PW-5, who had arrested and recovered alleged torn leaves of Holy Quran from possession of appellant and Traffic Sergeant Noor Muhammad, I.O of the case as PW-6. After their evidence, statement of appellant was recorded. He has denied the charge against him and stated that he is innocent.

4. I have heard learned counsel for parties and perused material available on record. The charge framed against the appellant is quite different to what has been alleged against him in the FIR. In FIR, it is alleged that appellant was taking a shower inside a washroom with leaves of Holy Quran in his hand, which he was dipping in the water, desecrating them thus. Although in FIR, nothing specifying how and in what manner appellant was using leaves of Holy Quran during his bath has been disclosed, but the charge is completely silent of even a mention of appellant taking bath inside the washroom and using leaves of Holy Quran in some defiling manner. The charge simply states that near a washroom at a mosque, appellant was found willfully defiling and desecrating papers of Holy Quran by dipping them in water.

5. Further, complainant in his evidence has alleged that he saw the appellant from a ventilator of the washroom and found him taking a bath and using torn pages of Holy Quran upon his body. This is not what is alleged in FIR. In FIR, he states that he saw the appellant taking a bath with torn leaves of Holy Quran in his hand, which he was dipping in water. In his evidence, he further states that he and other witnesses had seen the appellant using pages of Holy Quran after tearing them. This implies that as if the Holy Quran was with him and he was tearing leaves apart from it, which is not even the case of the prosecution. He further states in his evidence that police recovered ten big pages, seven medium size pages and three small size pages of Holy Quran from possession of appellant.

6. The number of such pages of Holy Quran and the manner they were found in alleged possession of appellant has been differently described by the SHO Qurban Ali in his evidence. He states that from search of appellant, he secured torn pages of Holy Quran in his right hand, 10 pages from his front pocket and two torn pages in the wallet found inside his pocket. In his cross-examination, complainant has admitted that he can only read in Urdu but strangely FIR is found written in Sindhi, which he has admitted that he cannot read. He has further revealed in cross-examination that he had taken pages of Holy Quran from washroom in presence of Chowkidar. He has admitted that the police had not taken pages of Holy Quran from washroom. He has admitted that it is not alleged in FIR that appellant had gone to washroom with the Holy Quran.

7. He has further admitted that after taking pages of Holy Quran, he had kept the same in washroom. This admission runs contrary to the prosecution case, which says that these alleged torn pieces of Holy Quran were recovered from possession of appellant. The complainant in fact is saying that torn pages of Holy Quran found in the washroom were kept by him there, meaning thereby that they were not recovered from possession of appellant, as alleged. He has further revealed in cross-examination that torn Holy Quran was already lying in the mosque implying clearly that it was not recovered from the appellant.

8. From evidence of prosecution witnesses, it is clear that no one had seen the appellant either tearing apart pages of Holy Quran and taking the same to the washroom for the purpose, as alleged against him. When the police came, he was not found inside the washroom or defiling and desecrating the pages of Holy Quran in any manner, but outside, and already apprehended by the people available there. In examination-in-chief, the complainant has claimed that police had recovered all those torn pages from possession of appellant, but in cross-examination, he has revealed voluntarily in reply to a question that he had handed over all torn pages of Holy Quran to police. Explaining the same, he submits that firstly he handed over seven big size pages, ten medium size and three small size of the Holy Quran to the police. He has further revealed that recovered pages of Holy Quran were sealed in a cloth.

9. This admission of complainant that it was he who had handed over torn pages of Holy Quran to police has scuttled the very authenticity of the prosecution case and has damaged it beyond a repair. The entire charge on the basis of which the appellant has been convicted and sentenced is based on assertion that the police and witnesses had found torn pages of Holy Quran in possession of appellant in a manner showing his willful intention to desecrate and defile the same. But the complainant here states that it was he who had handed over torn pages to the police, meaning thereby that they were not recovered from the appellant, as alleged by him in examination-in-chief. His claim that all those torn pages of Holy Quran were sealed in a cloth has also gone unsubstantiated as at the time of producing such pages in the Court, the same were not found in sealed condition.

10. Evidence of second witness namely Abdul Khalique is found equally unreliable. He claims to be a hotel owner situated near to the said petrol pump. Per his evidence, he heard noise of commotion on the day of incident coming from near the mosque. When he went to enquire about it, he saw the appellant already apprehended by the people there with torn pages of Holy Quran in his hand. The police came and took him away. He does not say that he along with complainant had seen the appellant taking shower in the washroom and defiling pages of Holy Quran by dipping them in water as alleged by the complainant. He also claims that before him, no memo was prepared by the police or that it was the complainant who in fact had handed over torn pages of Holy Quran to the police after allegedly recovering them from the appellant. His evidence is casual in manner, lacking all necessary details which the complainant has alleged in the FIR against the appellant. In cross-examination, he has admitted that nothing was prepared by police at the time of arrest of appellant undermining evidence of SHO, who claims that he had prepared memo of arrest and recovery at the place of incident on the very day of arrest of appellant. He in cross-examination has revealed that some torn pages of Holy Quran were in the hand of appellant and the same were collected by the complainant from the washroom. This is not what the complainant has stated in his evidence. He states that it was he who had kept the pages of Holy Quran in the washroom after collecting the same from the appellant. This act of

the complainant appeared to be aimed at creating evidence against the appellant which due to his admission to the contrary has lost whatever evidentiary value it had.

11. Evidence of third eyewitness namely Lutufullah, who was Pesh Imam of the mosque does not inspire confidence either. He has stated that at the instance of complainant, he saw inside the washroom and found appellant using pages of Holy Quran on his body at the time of taking bath. They opened the door and apprehended the appellant with pages of Holy Quran. He further states that SHO, P.S, Baiji Sharif had arrested him and recovered seven torn pages of Holy Quran and then prepared Mashirnama of arrest and recovery in their presence. It is not what complainant and the other witnesses have stated. He has contradicted them over number of pages found in possession of appellant or recovered from him. His evidence also runs against evidence of complainant who states that those pages of Holy Quran were kept by him in the washroom and subsequently handed over by him to the police. Evidence of other witnesses is formal in nature and does not improve the case of prosecution either from any angle.

12. The above highlighted contradictions made by the complainant and other witnesses over salient features of the case have made the entire prosecution case doubtful and unworthy of reliance. There are so many inconsistencies in the evidence of witnesses over the allegation of appellant using the washroom and taking bath therein with pages of Holy Quran on his body, their suspicion over him and recovery of pages of Holy Quran that the maintenance of conviction and sentence against him would be against natural norms of justice. The investigation conducted by the I.O too is very poor and formal and does not go beyond recording statements of witnesses under section 161 CrPC, that too on 24.10.2014 after more than one month of the incident, as admitted by him. The probative value of such evidence with so many contradictions is not without a question either. Further, the I.O did not take pains to even subject the appellant to a medical test to determine his mental condition or reasons, if any, leading him to think of committing such an offence. It is otherwise unthinkable that a person of sound mind for no reason would proceed to commit an offence carrying capital punishment of

death in a public place giving an opportunity to the persons available there to witness him doing so. Therefore, not only because of poor investigation, but on account of untrustworthy ocular account, the case against the appellant is weak and not free from a doubt.

13. All these factors disclosed above show that the prosecution has not been able to establish the charge against the appellant beyond a reasonable doubt. It is settled that once a doubt sets in the prosecution case, its benefit has to go to the accused not as a matter of grace but as a matter of right. Consequently, the appeal is **allowed** and the appellant is acquitted. By means of a short order dated 30.04.2024, the appeal was allowed and the appellant was acquitted of the charge. He was ordered to be released from the jail forthwith, if not required in any other custody case. The above are the reasons of the same.

The appeal is accordingly **disposed of**.

J U D G E

Ahmad