IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR

Criminal Appeal No.S-24 of 2021

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Present:
Mr. Justice Zulfiqar Ali Sangi.

Appellants:	Rasheed Ahmed son of Ghulam Sarwar Khakhrani Through, Mr. Ali Gul Abbasi, Advocate for appellant/accused
State through:	Syed Sardar Ali Shah, Addl. P.G
Date of hearing:	**15.12.2023**
Date of decision:	**15.12.2023**

J U D G M E N T

Zulfiqar Ali Sangi, J.– The appellant/accused named above has filed instant Crl. Appeal, whereby he has impugned the judgment dated 15.03.2021, passed by the Additional Sessions Judge-IV Khairpur, in Sessions Case No. 463 of 2018 (Re. The State Vs. Rasheed Ahmed Khakhrani) arising out of FIR No. 89/2018 offence u/s 295-B PPC registered at Police Station Ahmedpur District Khairpur, whereby he was convicted and sentenced to suffer R. I for life imprisonment with benefit of 382-B Cr. P.C.

2. Precisely, the case of prosecution as unfolded in the FIR lodged by complainant ASI Allah Dino Narejo at Police Station Ahmedpur on 04.08.2018 at 1745 hours are that on the same date he along with his subordinate staff members, left PS vide roznamcha entry No. 11 at 1530 hours for patrolling within the jurisdiction. After patrolling at different places when they reached near village Shah Muhammad Junejo, where complainant received spy information that one person after defiling the pages from the Holy Quran from Bhatiyoon Fall Masjid and packing /inserting in a bundle is going from Bhatiyoon Fall Bridge to Bhatiyoon. Complainant conveyed such information to his subordinate staff and then proceeded towards pointed place. It was about 1630 hours they reached at pointed place where they found a person holding a bundle in his hand was going along the road, while seeing the police party tried to escape, but police party with the strategy apprehended him at the distance of 15/20 paces. Complainant took the bundle in his possession. Due to non-availability of private persons, PC Shah Nawaz and PC Lal Bux were appointed as mashirs. On inquiry, arrested accused disclosed his name as Rasheed Ahmed son of Ghulam Sarwar by caste Khakhrani r/o village Wadal Khakhrani. Complainant opened the said bundle in which he found a diary and in the said diary the defiled pages of the Holy Quran were lying. On inquiry, accused further disclosed that he has defiled such pages from the Holy Quran. Then such memo of arrest and recovery was prepared at the spot with the signatures of mashirs.

Thereafter, the accused and recovered property was brought at PS where complainant lodged FIR on behalf of State against the accused.

3. On the conclusion of usual investigation, challan was submitted against the appellant/accused for offence U/S 295-B PPC.

4. After completing legal formalities, the trial Court had framed charge against accused to which he pleaded not guilty and claimed to be tried.

5. In order to prove accusation against accused, the prosecution has examined 03 witnesses, they have produced certain documents and items in support of their evidence. Thereafter, the side of the prosecution was closed.

6. The appellant/accused was examined under section 342 Cr.PC, wherein he had denied the allegations leveled against him and pleaded his innocence. After hearing the parties and assessment of the evidence against the appellant/accused, the trial Court convicted and sentenced the appellant/accused as stated above against the said conviction he preferred this appeal.

7. Learned counsel for the appellant/accused argued that accused is innocent and has falsely been implicated in this case by the police to show their efficiency; that all the PWs are police officials hence they are set-up; that there is no any eyewitness of the incident as neither the complainant nor any other PWs have witnessed the accused while de-filling the Holy Quran; that all the PWs are police officials and no independent corroboration in shape of private witness is brought on record; that prosecution story is improbable and has been concocted only to wreak the personal vengeance; that the prosecution evidence is not worthy of reliance; that there are material contradictions in the evidence of prosecution witnesses, but those have not been taken into consideration by the learned trial Court while passing the impugned judgment; that the evidence adduced by the prosecution at the trial is not properly assessed and evaluated by the trial Court which is insufficient to warrant conviction against the appellant/accused; that the judgment passed by the trial Court is perverse and liable to be set-aside; that the trial Court has failed to appreciate the factual as well as legal aspects of the case while convicting the appellant/accused; that the appellant is a true Muslim and has no history of his involvement in such type activities. Lastly, he prayed that the appellant/accused may be acquitted by extending him the benefit of doubt.

8. Conversely, learned Additional Prosecutor General Sindh, opposed the aforementioned appeal on the ground that prosecution has successfully proved its case against the appellant/accused beyond a reasonable doubt and all the witnesses have fully implicated the appellant/accused in their evidence recorded by the trial Court; that there appears no any *malafide* or ill-will on the part of police officials to falsely implicate innocent person; that during the cross-examination counsel had not shaken their evidence; that there are no major contradictions in the evidence of prosecution witnesses. Lastly, he submitted that appellant/accused was rightly convicted by the trial Court and prayed that appeal of appellant/accused may be dismissed.

9. I have heard learned Counsel for the appellant/accused, learned Addl. P.G for the State and have examined the record carefully with their able assistance.

10. In order to prove this case, prosecution has examined three witnesses in all including the Investigation Officer. On discrete analysis of evidence of witnesses, it is observed that their testimonies suffered from material contradictions on key points. Before discussing the evidence of witnesses, I would like to discuss the section under which FIR was lodged and accused were charged which is Section of FIR is 295-B PPC. For the sake of conveyance same is reproduced 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 any extract there from or uses it in any derogatory manner or for any unlawful purpose shall be punishable with imprisonment for life"*

11. From the perusal of above penal provision, it appears that it is applicable only when the offence is committed willfully, hence in the present case if the entire story of police is believed as true even then it is not established that the act of appellant was willful. The leaves of Holy Quran were alleged to recovered from the diary which was also saved in the bundle (ghatti) and as per admission of the investigation officer accused disclosed before him that he took such leaves for the reading as it was the month of Ramdan. It is further admitted by the complainant that the diary from which leaves were recovered also contains Naats which are also usually read and sing in the month of Holy Ramdan and every place even out of the Mosque. All the facts established the intention of the appellant was not that for which he was charged and convicted.

12. Further from the perusal of evidence, it appears that complainant and eye witness PC Shahnawaz have not witnessed the accused while de-

filling the wrappers from Holy Quran. The complainant and eye witnesses PC Shahnawaz have deposed that they "**had not seen accused while defiling leave of Holy Quran"** PW- PC Shah Nawaz further admitted that "**the incident of defiling of Holy Quran has not taken place in his presence"** It is admitted position on record that neither Tutor nor Pesh Imam of the Masjid or any independent person from neighborhood has been cited as witness of the incident or statements of local persons of the area have been recorded in this regard. It is settled principle of law that corroboratory evidence must come from independent source providing strength and endorsement to the extraordinary and very exceptional and rare circumstances, cannot corroborate themselves by becoming attesting witness/witnesses to the recovery articles. In other words, eye-witnesses cannot corroborate themselves but corroboratory evidence must come from independent source and shall be supported by independent witnesses other then eye-witnesses, thus the recovery(s) is/are no judicial efficacy. Complainant has admitted that "**he has not mentioned the number of torn leaves of Holy Quran in the contents of memo"** PW-3 ASI/IO Ameer Hussain in his cross examination has deposed that he has taken the Holy Quran from the Masjid on the same day of registration of FIR. He has admitted on a suggestion that **"he has not prepared the memo regarding taking of Holy Quran nor produced same before this Court.** Moreover, PW-3/IO further admitted that he has not sent the torn leaves of Holy Quran to finger print expert, he has not mentioned the serial number of torn leaves in the memo and he has not matched the same torn leaves of Holy Quran with the Holy Quran verified/secured by him. Moreover, police party admittedly has prior information about the presence of accused person and they had chance to take at least two private persons to the way to the place of incident for making them mashirs of the incident. The record does not reveal, as to whether any efforts were made to persuade any person from the locality or the public to act as witness of recovery. Though the police personnel are as good as any other witness but their evidence must have some independent corroboration and the same is to be assessed with care, keeping in view the tendency of the police and their high handedness, which is generally complained of. It is also settled law that if entire prosecution case depends upon sole evidence of police official then their evidence must require deeper, conscious consideration and scrutiny as some time the police officials became witnesses deeming it to be their official duty, but in the instant case hinges upon the evidence of police officials, which due to the reason mentioned above is not trustworthy and inspiring confidence for the conviction of accused particularly in absence of independent corroboration.

13. The rule of benefit of the doubt is essentially a rule of prudence which cannot be ignored while dispensing justice following the law. The conviction must be based on unimpeachable evidence and certainty of guilt and doubt arising in the prosecution case must be resolved in favour of the accused. The said rule is based on maxim. "**It is better that ten guilty persons be acquitted rather than one innocent be convicted"** which occupied a pivotal place in the Islamic Law and is enforced strictly because of the saying of the Holy Prophet (**PBUH)** that the "**mistake of Qazi (Judge) in releasing a criminal is better than his mistake in punishing an innocent."** It is well settled law that the prosecution is bound to prove its case against the accused beyond any shadow of reasonable doubt, but no such duty is casted upon the accused to prove his innocence. It is also been held by the Superior Courts that the conviction must be based and found on unimpeachable evidence and certainty of guilt, and any doubt arising in the prosecution case must be resolved in favour of the accused. Reliance is placed on case of **Naveed and 2 others vs. The State (PLD 2021 SC 600).** It is also a well settled principle of law that for entitlement to benefit of doubt to the accused, it is not necessary that there should be many circumstances creating doubts. Even if a simple circumstance creates reasonable doubt in a prudent mind about the guilt of the accused, then he becomes entitled to such benefit not as a matter of grace and concession but as a matter of right. In this regard, the reliance is placed on case of Muhammad Masha Vs. The State (2018 SCMR 722), wherein, Honourable Supreme Court of Pakistan, has been pleased to hold that:-

> *"Needless to mention here 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 accused, then 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 guilt persons be acquitted rather than one innocent person be convicted". Reliance in this behalf can be made upon the cases of Tariq Pervaiz Vs. The state (1995 SCMR 1345).GhulamQadir and 2 others Vs.The state (2008 SCMR 1221), Muhammad Akram Vs.The state (2009 SCMR 230) and Muhammad Zaman Vs.The state (2014 SCMR 749)".*

14. The over-all discussion arrived at conclusion that the prosecution has miserably failed to prove the guilt against present appellant beyond shadow of any reasonable doubt. Resulting upon above discussion, I am of the judicious view that the learned trial Court has not evaluated the evidence in its true perspective and thus arrived at an erroneous conclusion by holding present appellant as guilty of the offence. Thus,

the instant Criminal Appeal is allowed, the conviction and sentence recorded against the appellant by way of impugned judgment could not sustain, the same are set-aside and the appellant is acquitted of the charge.

15. These are the reasons of my short dated 15.12.2023.

J U D G E

*M. Ali/steno**