

**JUDGMENT SHEET
IN THE HIGH COURT OF SINDH, KARACHI
Cr. Appeal No.457 of 2024**

Date	Order .with signature of Judge
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Appellant: Zaeem Imran through Mr. Atif Hanif Kashmiri, advocate.

Respondent: State through Ms. Seema Zaidi, DPG.

Date of hearing : 05.11.2024

Date of decision: 05.11.2024.

J U D G M E N T

MUHAMMAD IQBAL KALHORO J: Appellant was charged u/s 295-B PPC for setting on fire, defiling, damaging and destroying the original text of Holy Quran inside House No.R-728 Sector 15-A/3, Buffer zone, North Karachi on 20.02.2022 between 2100 and 2200 hours and has been returned guilty verdict vide impugned judgment dated 18.05.2024 by the court of IInd Additional Sessions Judge, Karachi Central in the terms whereby he has been convicted under the same offence and sentenced to suffer R.I. for life with benefit u/s 382-B Cr.P.C duly extended to him.

2. As per brief facts, the alleged incident took place on 20.02.2022 and the FIR was registered on next day on 21.02.2022 at 1830 hours. Complainant is a wife of accused and she has revealed in FIR that she married to accused one year back. On the night of incident viz. 20.02.2022 her husband fought with her on the issue of using mobile phone by her, took out Holy Quran from cupboard/ Almirah, threw it on her, spread perfume on it and set it on fire, and then she proceeded to extinguish the fire. On next day, she got a chance to call police on 15 police helpline. In response, police arrived at her house, apprehended her husband and seen burnt pages of Holy Quran. She appeared at P.S. alongwith accused duly arrested and registered FIR.

3. After due investigation, the Challan was submitted. In the due course, charge was framed against the appellant, he pleaded not guilty and hence prosecution examined in all 04 witnesses, who produced all necessary documents including FIR, burnt pages of Holy Quran etc. Thereafter statement of appellant u/s 342 Cr.P.C. was recorded in which he denied the story and

has claimed to have been falsely implicated by his ex-wife. He did not examine himself on oath but examined one DW Muhammad Imran in his favour.

4. After hearing the parties, learned trial court rendered the impugned judgment against the appellant in the terms as above. Hence this appeal.

5. I have heard learned defence counsel, who has argued that there is no evidence against the appellant except evidence of his ex-wife, who was not on good terms with him; they had quarreled with each other on the day of incident, hence the story was contrived by her and she falsely implicated the appellant in the case; there is no eyewitness of the incident except ex-wife of appellant and her evidence is not confidence inspiring for want of corroborative evidence.

6. Learned DPG has not supported the impugned judgment, she has submitted that evidence against appellant is shaky and sketchy, consists of only his ex-wife with whom, he had strained relationships.

7. I have considered submissions of the parties and perused material available on record. As a first witness, the prosecution has examined ASI Muhammad Pervez. His evidence is to the effect that on 21.02.2020 he was present at P.S when PC Faisal working in 15 police helpline and other persons including complainant Mst. Eman Shaikh brought appellant alongwith burnt pages of Holy Quran. Mst. Eman disclosed the incident and hence he arrested the appellant, prepared such memo and sealed the burnt pages of Holy Quran and lodged FIR against him. He has produced FIR and other documents in his evidence. Mst. Eman, complainant was examined by the prosecution as P.W.2 Ex.5. She has reiterated the story of FIR in her evidence. After her, the prosecution has examined ASI Muhammad Pervez at the place of I.O. who meanwhile had expired. He has identified signatures of I.O. to be the same on all relevant papers viz. memo of seizure of CD, USB, Vivo mobile, DD entry etc. He has also produced photographs of place of incident, burnt pages of Holy Quran and forensic report of mobile phone. Prosecution has also examined Muhammad Faisal as P.W.4. He was posted as PC at 15 police helpline. His evidence is that he was on duty alongwith PC Babar Ali and PC Ashique when he received information that appellant, husband of complainant was beating and blackmailing her. On such information, they arrived at pointed place. Upon ringing the doorbell, a lady came out and informed that complainant was inside the house. They entered the house

where complainant disclosed that appellant sleeping in the room was her husband, and he used to beat and blackmail her. She handed over a shopper with burnt pages of Holy Quran to him. She further informed that accused had burnt the pages of Holy Quran last night. She also pointed out the place where appellant had burnt the pages of Holy Quran, which was adjacent to the bedroom. This witness made a video and took photographs of the said place. After his evidence, statement of appellant u/s 342 Cr.P.C was recorded in which he denied the story of FIR and has further disclosed that complainant was in relationships with somebody else and when he found it and confronted her; she implicated him in the case.

8. The entire prosecution case is based on evidence of four witnesses. Complainant, who is ex-wife of appellant, is the only eyewitness. According to her story, on the day of incident a quarrel took place between her and appellant on her using mobile phone in his absence. In the course of quarrel appellant asked the complainant to take oath of her innocence on Holy Quran and when she took the oath, and denied the accusation, he lost his temper and tried to burn the Holy Quran with gas lighter but the Holy Quran did not catch fire, hence he sprinkled perfume on the Holy Quran and set it alight. Then, he also broke her mobile phone and went outside to see his friends. In the afternoon, when he came and went to sleep, she called 15 police helpline, upon which the police party came to whom she narrated the entire incident. The police party collected mobile phone from her and she also handed over burnt pages of Holy Quran to it. Thereafter, the accused was arrested and brought at P.S, where he admitted his guilt. The place of incident was inspected and photographs were also taken. On the relevant papers, signature of her maternal uncle and her mother as mashir were taken. Except the complainant, no one from her house has been examined in the trial to support the prosecution story.

9. On the one hand, she has claimed in her evidence that appellant had broken her mobile phone and on the other she has made a revelation that she had handed over her mobile phone to the police. The evidence of P.C Muhammad Faisal, who as a member of police party which had reached first in the house of complainant, has deposed in his evidence that when they reached the house, in response to doorbell, one lady had come out, which means that not only the complainant but other inmates were also present in the house. Strangely, except complainant, no one came forward to verify story

narrated by the complainant. It is an admitted position that complainant was not in good terms with her husband. As per her own revelation, appellant used to beat and blackmail her and was suspicious of her character. In such backdrop, the allegations leveled by complainant against her husband, are required to be looked into with extra care and caution. It would be highly risky to completely rely upon evidence of a person who was inimical to and had a motive to falsely implicate the appellant without looking for supporting evidence for recording conviction against him.

10. Although the complainant has stated in evidence that when relevant documents were prepared including memo of inspection of place of incident, her maternal uncle and her mother had signed those documents in the capacity of mashir but none of them has been examined in the evidence to support her. Besides, there are certain improvements in the evidence of complainant as well. In her evidence while narrating the incident she has stated that appellant initially tried to burn Holy Quran with a gas lighter, then spread perfume and set it alight, thereafter he broke her mobile phone and left the house. The FIR does not show that appellant tried to burn Holy Quran with a gas lighter initially and thereafter he spread perfume on it or that after the incident, he had left the house after breaking mobile phone of the complainant. It is also strange that complainant did not inform the police immediately after the incident when according to her own version, the accused had left the house. In the given facts delay in narrating such incident by the complainant causes suspicion over veracity of the story.

11. More so, complainant did not leave the place of incident untouched for the police to come and inspect it and retrieve the burnt pages of Holy Quran. On the contrary, evidence of P.C Muhammad Faisal, a member of police party which first reached the house of complainant, shows that burnt pages of Holy Quran were produced by the complainant in a shopper. The police party had not seen the appellant either present over the spot or fighting with complainant or the burnt pages scattered over there to give credence to the story narrated by the complainant. According to evidence of PC Muhammad Faisal, it was the complainant, who had handed over a shopper containing burnt pages of Holy Quran and it was she who had pointed out a particular spot to be the place of incident. Appellant was found sleeping in the house and doing nothing. The conduct of the complainant calling police after one day of the incident and handing over burnt pages of Holy Quran on her own

in a shopper is itself suspicious and creates doubt over authenticity of her story. On the other hand, conduct of the appellant, found sleeping, does not cause alarm and indicate that he had not committed the alleged offence. No evidence of the incident was found by the police either except the version of complainant that appellant had committed the alleged offence. Further, complainant in her evidence has claimed that appellant had confessed his guilt at P.S. hence FIR was registered against him and he was arrested, however, this part of her evidence is not supported by P.W.1 ASI Muhammad Pervez, who had arrested the appellant at P.S. on being informed about the incident.

12. On the basis of such shaky and sketchy evidence produced by the prosecution, which does not directly point out to the role of the appellant in the incident, sending him to jail for life appears to be harsh and unjustified. Complainant was not on good terms with her husband/appellant at the time when the incident took place is a sufficient circumstance to doubt her motive to implicate her ex-husband in the case, as meanwhile reportedly she has separated her way from the appellant.

13. It is settled proposition of law that if there is a single circumstance creating doubt in the prosecution case, benefit of which is to be extended to the accused not as a matter of grace but as a matter of right. Here the entire prosecution case is simply based on the evidence of a person who admittedly is not independent and had a motive to implicate the appellant in the case. Except complainant, there is no evidence, independent or otherwise, to pin point involvement of the appellant in the case. I, therefore, find the case full of improvements made in the actual story and the facts and circumstances creating doubt. I, therefore, extend a benefit of doubt to the appellant and acquit him of the charge. He shall be released forthwith if not required in any other case.

The Appeal stands allowed in the above terms.

These are the reasons of my short order passed on 05.11.2024, whereby this appeal was allowed.

JUDGE