

IN THE HIGH COURT OF SINDH, AT KARACHI.

Crl. Spl. Appeal No. 187 of 2018

AT
Pervay alias Laddu s/o
Mushdaq, muslim, adult,
currently confined in
Central Prison, Karachi.



Appellant.

VERSUS.

The State

Respondent.

Spl. Case No. 199/2018.

FIR No. 463/2017.

u/s 336-B PPC & w

Sec 7 of ATA - 1997.

P.S. K.I.A., Karachi.

APPEAL UNDER SECTION 25 OF THE
ANTI-TERRORISM ACT, 1997 R/W SEC 410 CR.PC.

Honourable Sir,

Being aggrieved to and dissatisfied with
the impugned judgment dated 26-05-2018,
passed by Mr. Mahboob Ali Izaz, the learned
Judge Anti-Terrorism Court No. XVIII, Karachi
Division in Special Case No. 199/2018 Re. Pervay
alias Laddu s/o Mushdaq, being out come of
FIR No. 463/2017 u/s 336-B PPC & w Section 7 of ATA,
1997, P.S. K.I.A., Karachi. Whereby convicting and
sentencing the appellant and awarding him:

1. R.I. for life imprisonment u/s 336-B PPC.
and fine of one million rupees and in
default thereof shall further undergo S.I.
for 06-months;

IN THE HIGH COURT OF SINDH AT KARACHI

Spl. Criminal A.T. Jail Appeal No.187 of 2018

Present:

Mr. Justice Mohammad Karim Khan Agha
Mr. Justice Zulfiqar Ali Sangi.

Appellant: Pervez @ Laddu S/o. Mushtaq through Ms. Abida Parveen Channar, Advocate.

For State: Mr. Abrar Ali Khichi, Additional Prosecutor General.

Date of hearing: 24.10.2019

Date of announcement: 29.10.2019

J U D G M E N T

Mohammad Karim Khan Agha, J.- Appellant Pervez @ Laddu S/o. Mushtaq has preferred this Criminal Anti-Terrorism Jail Appeal against the impugned judgment dated 26.05.2018 passed by the learned Anti-Terrorism Court No.XVIII, Karachi Division in Special Case 199 of 2018, F.I.R. No.463/2017 u/s. 336-B PPC read with section 7 of ATA 1997 registered at P.S. KIA, Karachi whereby the Pervez @ Laddu S/o. Mushtaq has been convicted and sentenced as under:-

- i. The accused found guilty for committing offence u/s 336-B PPC and he was sentenced R.I. for life and also ordered to pay fine of one million rupees and in default thereof he was ordered to further undergo S.I. for 06 months more.
- ii. The accused was found guilty for committing offence u/s. 337-L(2) PPC and sentenced to R.I. for 01 year.
- iii. The accused was also found guilty for committing offence u/s. 7(1)(c) of ATA 1997 and sentenced to R.I. for life and fine of ten thousand rupees. In default thereof he was ordered to further undergo SI for 06 months more.

2. The brief facts of the prosecution case as alleged in the FIR are that on 21.06.2017 at about 1500 hours, complainant Mrs. Khalida lodged FIR at P.S. KIA stating therein that she is residing at the address given in FIR. However, the accused Pervez @ Laddu is residing in her neighborhood, who is not a man of

good character. It is alleged that the accused usually teased the complainant but she being poor person avoided to resist and remained scared. Prior to this incident accused teased her but Mohalla people intervened and resolved the dispute. She alleged that the accused could not stop his nefarious activities, therefore, on the day of incident viz. 21.06.2017, when she was coming home after purchasing house hold articles when at about 1400 hours she reached at the door of her house, she found that accused Pervez @ Laddu was sitting in a nearby parked Rickshaw. On seeing the complainant he alighted from the Rickshaw and threw acid on her face, however, the complainant in order to save her face from disfiguration raised her hand, with the result she received injuries on her forehead, cheek, neck, right hand and shoulder. Her skin was burnt, in the meanwhile Mohalla people gathered but accused managed to escape from the spot. She along with her sons Muhammad Asif and Kashif came at P.S. where she reported the matter.

3. After registration of FIR usual investigations were carried out by the police, as such, on the conclusion of investigation charge sheet under section 173 Cr.P.C. was submitted before the learned Magistrate, who forwarded the case to learned Sessions Judge, Karachi East for trial where learned VIth Additional Sessions Judge, Karachi East was seized with the matter, however, he passed order dated 28.11.2017 and returned charge sheet to I.O. after insertion of section 7-ATA 1997. The I.O. submitted the charge sheet before Administrative Judge of High Court of Sindh at Karachi who framed the charge to which the appellant plead not guilty and claimed trial.

4. The prosecution to prove its case examined 06 PW's who exhibited various documents in support of the prosecution case where after the prosecution closed its side. The appellant/accused recorded his statement under section 342 Cr.PC and under Oath whereby he claimed false implication since he was at work at the time of the incident. He did not call any witness in support of his defense case.

5. Learned Judge Anti-Terrorism Court No.XVIII, Karachi Division after hearing the learned counsel for the parties and assessment of evidence available on record, vide the impugned judgment dated 26.05.2018, convicted and sentenced the appellant as stated above, hence this appeal has been filed by the appellant against his conviction.

4

6. The facts of the case as well as evidence produced before the trial court find an elaborate mention in the impugned judgment, therefore, the same are not 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 that he has been fixed in this false case so that the complainant can grab his property which she has had an evil eye on; that there are no eye witnesses; that no private person has been called as a PW and other key PW's have not been called such as the rickshaw driver who allegedly dropped off the deceased before he threw acid over her; that the case did not fall under S.336 PPC as no corrosive substance was thrown on the complainant and that at the most it was a case under S.337 (L) PPC for which the maximum sentence was up to 7 years and that no one had ever made any complaint against the appellant in the past and thus for all or any one of the above reasons the appellant was entitled to be acquitted based on the benefit of the doubt. In support of her contentions she placed reliance on **Ghulam Sabir V The state** (YLR 2017 Note 209) and **Pir Munir V State** (2017 YLR Note 207)

8. On the other hand learned Additional Prosecutor General for the State has contended that the victim herself is the sole eye witness to the case whose evidence is reliable and is corroborated by the other PW's and by the medical evidence and that it is a case falling within S.336 (B) PPC and as such since the prosecution has proved its case against the appellant beyond a reasonable doubt the appeal should be dismissed and the conviction and sentence maintained.

9. We have heard the arguments of the learned counsel for the parties, gone through the entire evidence which has been read out by the appellant, the impugned judgment with their able assistance and have considered the relevant law.

10. In our view the complainant who is an eye witness and also the victim PW 1 Mrs Khalida gives reliable trust worthy and confidence inspiring evidence which we believe. In this respect reliance is placed on **Muhammad Ehsan v. The State** (2006 SCMR 1857). She knew the appellant who lived in an adjacent house and it was a day time incident and thus the identity of the appellant is not in issue; she had apparently argued with the appellant and restrained the appellant

through nekmards recently when he teased her and thus he had a motive to throw acid over her on account of this humiliation. The FIR was lodged promptly so there was no time for either consultation or concoction leading to false implication. Her whole story rings true in terms of the sequence of events as per the evidence on record. For example, acid was thrown on her at about 2pm; she then went to her neighbor PW 5 Mrs Rukhsana, who though not an eye witness, corroborates her arrival at her house, injuries, her telephoning her son (PW 2 Muhammed Kashif) who then took her to the JPMC before she is referred to the burns unit at the civil hospital for treatment and is thereafter referred to PW 4 Summiya Syed who is WMLO at police surgeon office. There is no evidence that she had her eye on the appellant's property so she had no reason to falsely implicate him on this account. None of the other PW's had any enmity with the appellant and had no reason to falsely implicate the appellant.

11. We have already found that PW 1 Mrs Khalida who is the complainant, eye witness and victim has given reliable trust worthy and confidence inspiring evidence which we believe and which is further corroborated by the medical evidence.

12. The provisional diagnosis of the JPMC A@E on examination of PW 1 Mrs Khalida finds it a case of "**Acid Burn**" and she is then referred to the burns unit of the civil hospital which finds **burnt regions** and the **kind of weapon to be acid**.

13. PW 4 Summiya Syed who is WMLO at police surgeon office in her examination in chief states as under:

"On 23.06.2017, I was posted as Senior WMLO at Police Surgeon office, Karachi. On that day at about 12:30 P.M. a 45 years lady Ms. Khalid wife of Bashir Ahmed, resident of Gulzar Colony, Karachi came to me as a case alleged toughing of acid on 21.06.2017. The police letter was handed over to me which I produce as Ex. 09/A is same correct and bears the receiving of my office dated 23.06.2017. The said lady produced two treatment sheets of JPMC, as well as Civil Hospital, Karachi which I produce as Ex. 09/B and 09/C. I got her consent and obtained her signature as well as RTI on the medico legal certificate and established her mark of identification as 1. Mole on left forearm, posterior aspect, 2. Round BCG Scar on left deltoid. I examined the lady on the medical assessment I found following injuries on her body:-

1. Face has several brownish black **burnt** fragrances in the forms of splashes involving forehead and right cheek.
2. Brownish black **burnt regions** on right arms, postero-lateral aspect in the form

of splashes.

3. Brownish black **burn** regions on posterior-aspects of neck and upper to mid-back. Splashes and dribbled down liquid pattern.

As per assessment by the burns ward CHK her head was **burnt** in the region of one percent, posterior trunk was **burnt** in the region of 2 percent. Right arm was **burnt** in the region of 01 percent. **Total burnt area 04 percent**

14. Significantly such a pattern of burn wounds is consistent with the complainants/victims FIR which in effect states that she put her hand up in order to prevent her face being hit by the acid thrown by the accused.

15. The MLO PW 4 Summiya Syed in the last few lines of her examination in chief she also states as under:

"After the entire examination and reports I was of opinion that it was acid burnt/Vitriolage" and in her cross examination, "It is incorrect to suggest that such kind of injuries can be caused with hot water".

16. In the concise oxford English Dictionary 12th Ed. The word "vitriol" is in effect defined as sulphuric acid. It is well known that sulphuric acid can cause severe burning on human skin

17. S.366 (B) PPC reads as under:

"Punishment for hurt by corrosive substance. Whoever causes hurt by corrosive substance shall be punished with imprisonment for life or imprisonment of either description which shall not be less than fourteen years and a minimum fine of one million rupees".

18. In our view we are not in any doubt that the acid which caused the injuries to the complainant is a corrosive substance as can be seen from the nature of her injuries as per the medical report and evidence of PW4 Summiya Syed, which is mentioned earlier, and thus would fall within the purview of S.366 (B)PPC.

19. Even if we found the injuries only to fall within S.337 (L) PPC (which we do not) in our view the offense also falls squarely within S.6 ATA in terms of S.6(2) (b) and 6 (1) (b) which is punishable u/s 7(1) (c) with imprisonment of not less than 10 years and may extend to life.

20. With regard to the appellant's defense in his S.342 statement which in effect is that he was falsely implicated in this case as the complainant wanted to grab his house and that he was at work at the time of the incident. As mentioned

earlier there is no evidence on record that the complainant wanted to grab his house and he has produced neither any witness nor document such as a signing in register to show that he was at work at the relevant time and as such we give no weight to his defense which seems to be concocted.

21. Throwing acid on the faces and other bodily parts of women (or any one for that matter) is an extremely heinous crime which not only leads to a great deal of physical and mental pain, anguish and trauma for the victim and their family but can also lead to disfigurement for life which will in most cases have negative implications on the social life of the victim in terms of marriage and going out of the house and interacting with other people and as such those found guilty of this offense deserve no leniency from the courts.

22. Based on our discussion and re assessment of the evidence mentioned above we are of the view that the prosecution has proved its case against the appellant beyond a reasonable doubt and as such the appeal is dismissed and the convictions and sentences in the impugned judgment are upheld and maintained.

23. The appeal is disposed of in the above terms.