

H C J D A 38

JUDGMENT SHEET
IN THE LAHORE HIGH COURT
RAWALPINDI BENCH RAWALPINDI
JUDICIAL DEPARTMENT

Criminal Appeal No. 29 of 2013.
 (Ghulam Ali Asghar vs. The State & another)

J U D G M E N T

Date of hearing.	9th of December, 2015.
Appellant by	Malik Nadeem Iqbal, Advocate.
Respondent No.1 (State) by	Mr. Mohammad Waqas Anwar, Deputy Prosecutor-General.
Respondent No.2 (complainant) by	Malik Waheed Anjum, Advocate.

IBAD-UR-REHMAN LODHI J.:- The appellant, in this matter, was charged on 25.07.2012, under Sections, 295-A, 295-C and 298-A PPC, in a case, wherein allegedly he uttered derogatory words on 02.11.2011 in respect of Hazrat Mohammad (Peace Be Upon Him), which matter was formally reported to police on 12.11.2011 through FIR No.359 of 2011, at Police Station, Sadar Talagang, District Chakwal, by a person i.e. Naseer Ahmad, who, in fact, was not a direct witness of what allegedly was uttered by the appellant.

2. Mohammad Ahsan-PW.2 and Mohammad Akram-PW.3 are the star witnesses of the prosecution, who stated to be present in the sitting, when the appellant allegedly used filthy language and disgraceful remarks in respect of Hazrat Mohammad (Peace Be Upon Him) and when said two persons, out of whom, one is a professional Driver and the other one too has no basic knowledge of religious teachings, allegedly disclosed such incident to the complainant, he formally lodged the FIR and a Police Officer of Inspector level started investigation, who statedly after consultation of some *Ulema*,

gave final verdict as to the guilt of present appellant. Neither any of the religious Scholar, who was consulted by the police has been named nor naturally any one was produced as a witness. Even any opinion of any religious Scholar has not been made part of the record.

PW.2-Mohammad Ahsan, when appeared in the witness-box, deposed as under:-

“ He never uttered even a single word against the faith of others. He did not dare to insult/injure the feelings of others during the last 30 years. Even he did not interfere in the religious matters of any other school of thought. He never indulged himself in any religious debate in his prime age.

Ghulam Ali Asghar accused remained with us for about 30 or 45 minutes and joined the conversation. During this period, he did not utter a single insulting word. The personality of Hazrat Ayesha Siddiqa (Razi Allah Ta’Aala Anha) was not discussed during that period.

We did not have any conflict with the accused on the verse of the Holy Quran and the Hadiths. Neither I nor the accused had any bad intention to injure the feelings of each other. Again said, the accused might had bad intention. It is incorrect to suggest that volunteered portion of my statement is false and based on presumption. We offered the accused for Kaffara. I did not narrate this part of discussion to any one. I joined the police investigation and the I.O recorded my statement u/s 161 Cr.P.C. On 04.11.2011, I, Akram and Tanvir summoned the accused in a hotel situated near to my petrol pump and remained there till 2.00 a.m. night. I, Akram and Tanvir forced him for “Towba” and “Kaffara” but in vain. I joined investigation before the DSP, Talagang who recorded my statement in his office on 10.11.2011. We went to the office of DSP on the asking of Thanedar at P.S Sadar, Talagang. We were six in numbers. Their names are Dr. Ghaffar, Mian Abdul Aziz, Ahsan Rasheed, Malik Naseer, Akram, Asghar accused and myself. DSP insulted me in his office by saying that I was murderer of my father and how could I speak the truth. He also insulted Akram PW by saying

that he was a driver and vagabond. It was the version of Naseer PW that the accused had insulted Hazrat Muhammad (PBUH) by using filthy language whereas as being illiterate, it was not my version and version of Muhammad Akram PW.”

The other star witness, namely, Mohammad Akram-PW.3 has deposed as under:-

“Our feelings were not injured by quoting the Hadith by the accused but his way of presentation injured our feelings and belief.”

PW.5-Yahya Hassan Virk, is the Investigating Officer of this case and deposed as under:-

“It was also observed by the S.S.P. Special Branch that feelings of common man was injured due to Hadees narrated by accused and any undue incident can be occurred in the area and create of fuss in two sects.

It is correct that I have gone through the contents of said Hadees and also consulted the “Olmaye-i-Karaams” of different sects especially from “Shia” sect for interpretation of Hadees No.293”.

From the joint reading of above depositions, no other view is possible than to conclude that the offence under Section 295-A PPC was not constituted even in view of the statements of the prosecution witnesses and that the persons, who were comparatively having better academic background also stated to have been initially associated with the investigation, but neither their any deposition was brought on record nor either of them was produced in witness-box.

3. By means of final impugned judgment dated 08.01.2013, the appellant was acquitted from the charges under Sections, 295-C and 298-A PPC, whereas, he has been convicted and sentenced only under Section 295-A PPC. It is relevant to note here that the derogatory words, allegedly uttered by the appellant, were confronted in charge framed under Section 298-A

PPC, whereas, such words with reference to charge under Section 295-A PPC was never confronted to the appellant. It is also a fact relevant to note that, the prosecution witnesses, who appeared in witness-box, have never deposed that from any act of the appellant, their religious feelings were hurt. No class of persons has been notified by the prosecution, whose religious feelings were hurt on account of any act of the appellant and similarly no person representing such class appeared in witness-box.

4. In statement under Section 342 Cr.P.C., in response to Question No.7, the appellant had come forward with a plea that he believed in Hazrat Mohammad (Peace Be Upon Him) and he never uttered the alleged words, rather he will prefer death than to even think over to use such words.

5. The appellant was summoned from the Jail to appear in person and he was produced before the Court on 09.12.2015. He again, before this Court on oath has reiterated his stance, as was taken at the time, when his statement under Section 342 Cr.P.C was recorded.

6. A learned Division Bench of this Court, in similar circumstances, in case of Muhammad Mahboob alias Booba vs. The State (PLD 2002 Lahore 587) has dealt with the question of blasphemy. I have been benefited of the research work, conducted by my learned Brothers (as they then were) in said reported matter. Some relevant portions, which are not only relevant, but also beneficial in order to understand the question involved in such like matters, are reproduced herein-below:-

“Such quality of evidence could not be relied in a case as serious as the present one and reflected inefficiency, inaptitude, apathy and perfunctory working on the part of Police Officials and the way they collect evidence. If the case of the prosecution was per se infirm, then going into a debate pertaining to Fiqah at the end of the Trial by Court was totally unnecessary, particularly when the Trial Court had taken no help from any juris consult or any Islamic Scholar having known credentials. Nature of the accusations overwhelmed the Trial Court to such an

extent that the Court became oblivious of the fact that the standard of proof for establishing such accusation and as required, was missing.

Mere accusation should not have created a prejudice or a bias and the duty of the Court as ordained by the Holy Prophet was to ascertain the facts and the circumstances and look for the truth with all the perseverance at its command. Accused had not confessed and had stated that he had not committed any offence and through his affidavit he had expressed his profound respect for the Holy Prophet in his own words.

Increase in the number of registration of blasphemy cases and element of mischief involved therein calls for extra care at the end of the Prosecuting Officers. Failure, inefficiency and incompetence of the Investigation in handling the case of blasphemy. Directions by High Court with regard to investigation and trial of cases of blasphemy.

High Court, in circumstances, directed the Inspector-General of Police of the Province to ensure that whenever such a case is registered, the same may be entrusted for purposes of investigation to a team of at least two Gazetted Investigating Officers preferably those conversant with the Islamic Jurisprudence and in case they themselves are not conversant with Islamic law, a scholar of known reputation and integrity may be added to the team and the team should then investigate as to whether an offence is committed or not and if the team comes to the conclusion that the offence is committed, the police may only then proceed further in the matter. Trial in such a case be held by a Court presided over by a Judicial Officer who himself is not less than the rank of District and Sessions Judge.

Ever since the law became more stringent, there has been an increase in the number of registration of the blasphemy cases. A report from a leading newspaper of Pakistan says that between 1948 and 1979, 11 cases of blasphemy were registered. Three cases were reported between the period 1979 to 1986. Forty four cases were registered between 1987 to 1999. In 2000, fifty two cases were registered and strangely 43 cases had been registered against the Muslims while 9 cases were registered against the non-Muslims. The report further

states that this shows that the law was being abused more blatantly by Muslims against the Muslims to settle their scores. This was because the police would readily register such a case without checking the veracity of the facts and without taking proper guidance from any well-known and unbiased religious scholar, would proceed to arrest an accused. That an Assistant Sub-Inspector or a Moharrir was academically not competent to adjudge whether or not the circumstances constitute an act of blasphemy.

The subject blasphemy is under a lot of focus and people are expressing their opinions on the subject particularly with respect to the accusations which can readily be made and the sentence which is prescribed in the offence. In another of its articles published in the said daily on the subject of blasphemy, the following are the remarks of the correspondent and are relevant:-

“ The trouble is that over the years bigotry and intolerance have made such deep inroads into our society that all three parties in the blasphemy cycle—complainant, police officer, Judge—think that they are doing the right thing and also earning divine favour into the bargain, when they are pressing charges under this law. This is zeal sanctioned by law and clothed in self-righteousness.”

“But coming back to blasphemy, to seek it in acts of obvious insanity is to devalue both Islam and the notion of blasphemy.”

The greatest blasphemy of all is a child going hungry, a child condemned to the slow death of starvation. The miscarriage of justice is blasphemy. Misgovernment is blasphemy. An unconscionable gap between rich and poor is blasphemy. Denial of treatment to the sick, denial of education to the child, are alike examples of blasphemy.”

Such directions were passed by this Court in the year, 2002, but it has been noted, with great pain, that in a case registered in 2011, the investigating agency has not bothered to take any guidance from such principles laid down by this Court in 2002 and for that reason, the investigation in this case, was not conducted in efficient and perfect manner. At the cost of repetition,

it is again observed that, increase in the number of registration of blasphemy cases and element of mischief involved therein calls for extra care at the end of the Prosecuting Officers. Registration of such like cases cannot be allowed in a very free and careless manner and a class of citizens, who have not much knowledge of religion, must not be allowed to use the law in question to settle their score. This reminded me a couplet of Hakeem Mehmood Ahmad Sarv Saharanpuri:-

”رُشد و وعظ کی سوغات بٹ رہی ہے گلیوں میں
مقتدی کہاں سے آئیں سب یہاں پیہر ہیں“

7. The figures, so arrived at by this Court in 2002, were advanced with the passage of time, and the Hon'ble Supreme Court of Pakistan in Criminal Appeals No.210 and 211 of 2015 titled “Malik Muhammad Mumtaz Qadri *vs.* The State”, decided on 07.10.2015, has further elaborated the position of blasphemy cases in Pakistan. By reproducing some extracts from the Judicial Training Toolkits prepared by the Legal Aid society, Karachi, the following statistics have been recorded:-

“The known blasphemy cases in Pakistan show that from 1953 to July 2012, there were 434 offenders of blasphemy laws in Pakistan and among them were, 258 Muslims (Sunni/Shia), 114 Christians, 57 Ahmadis, and 4 Hindus. Since 1990, 52 people have been extra-judicially murdered, for being implicated in blasphemy charges. Among these were 25 Muslims, 15 Christians, 5 Ahmadis, 1 Buddhist and a Hindu.

During 2013, 34 new cases were registered under the blasphemy laws. While at least one death sentence for blasphemy was overturned during the year, at least another 17 people were awaiting execution for blasphemy and at least 20 others were serving life sentences. Although the government has never carried out a death sentence for blasphemy, NGOs reported that at least five persons accused of blasphemy had died in police custody in recent years.

The majority of blasphemy cases are based on false accusations stemming from property issues or other personal or family vendettas rather than genuine instances of blasphemy

and they inevitably lead to mob violence against the entire community.”

8. The prosecution has miserably failed to bring home guilt with the appellant on the charge levelled against him and it seems that the learned trial court was under much pressure that it while ignoring the fact that, even derogatory words were not confronted in the charge framed under Section 295-A PPC, convicted the appellant in such offence without there being any corroborative and confidence inspiring evidence available on record.

9. Result of above discussion is that conviction and sentence recorded by the learned trial court against the appellant under Section 295-A PPC, on 08.01.2013, is not sustainable; the same is set-aside. The appellant is ordered to be set at liberty, if not required in any other criminal case.

JUDGE

Announced in open Court on 18.12.2015.

JUDGE

Approved for reporting.

JUDGE

M.AYYUB