

IN THE LAHORE HIGH COURT, LAHORE
JUDICIAL DEPARTMENT

1. Criminal Appeal No.42 of 2014
(Muhammad Asghar Vs. The State & another)

&

2. Capital Sentence Reference No. 5 of 2014
(The State Vs. Muhammad Asghar)

Date of hearing: 12.09.2017

Appellant by: M/s Abid Saqi, Nazeer Ahmad
Ranjha, Mudassar Farooq, Barrister
Sara Bilal and Sabahat Rizvi,
Advocates.

Complainant by: Nemo.

State by: Mr. Muhammad Waqas Anwar,
Deputy Prosecutor General.

QAZI MUHAMMAD AMIN AHMED, J:-. Muhammad Asghar, appellant herein, is in receipt of a guilty verdict, returned by a learned Addl. Sessions Judge at Rawalpindi vide impugned judgment dated 23-1-2014; he stands convicted under Section 295-C of the Pakistan Penal Code, 1860 and sentenced to death along with fine of Rs.10,00,000/- or to undergo six months rigorous imprisonment in the event of default. Prosecution case is structured upon application dated 22-9-2010 (Ex.PF) moved by Muhammad Hafeez Awan (PW-2) wherein it is alleged that on 8-8-2010 at 6:00 p.m, while he was present in his office along with his friends Aftab Qureshi and Muhammad Shafique (PW-3) besides other notables of the area, the appellant used derogatory words against the Prophet Muhammad (PBUH); it is alleged that as the witnesses forbade him, he aggravated in his contempt and presented before them his visiting card (P-3) and letter (Ex.PD) wherein he claimed to be an apostle; according to the complainant,

impugned material was snatched while the appellant left the scene after hurling threats and abuses.

After registration of the case, Rafaqat Hussain, ASI (PW-4) secured the objectionable material, inspected the spot to prepare site plan; on the pointing out of the complainant, the police officer arrested the accused present inside the car (P-10) and upon search, took into possession two compact disks (P-1/2) besides some cash and copy of national identity card; on the following day, the appellant was remitted into judicial custody. On 25-9-2010, Muhammad Hafeez (PW-2), produced another compact disk (P-11), which according to the Investigating Officer was prepared at the time of appellant's arrest. Muhammad Zarat Kayani, SSP (PW-5) took over the investigation on 25-10-2010; he secured same day visiting card (P-3) and letters purportedly written by the appellant as well as compact disk (P-11); surprisingly he claims to have frisked the appellant to secure a sum of Rs.71335/-, optical glass (P-5/2), copy of NIC (P-6), driving license (P-7) and wallet (P-8); he sent the appellant to face trial.

Indicted on 21-1-2011, the appellant pleaded innocence before a learned Addl. Sessions Judge, camp at Adyala Jail Rawalpindi and claimed trial, pursuant whereto, prosecution produced as many as six witnesses, of them Arif Hussain Shah, Inspector FIA (PW-6) carried out handwriting comparison on 16-1-2014. Upon conclusion of prosecution evidence, the appellant disputed each piece of evidence relied upon by the prosecution, however, surprisingly in response to a question, whether he would appear as a witness under Section 340 (2) of the Code of Criminal Procedure, 1898, he statedly admitted his guilt and again in response to another question requested for a lenient view. Question as to why he was being prosecuted by the witnesses remained unanswered. Indictment as well as his purported statement have been conspicuously thumb marked by him without there being any

signature. It is in this backdrop that the learned trial Judge proceeded vide the impugned judgment dated 23-1-2014 to convict the appellant under Section 295-C of the Pakistan Penal Code, 1860 and sentenced to death with fine of Rs.one million or to undergo six months rigorous imprisonment in the event of default, vires whereof, have been challenged through CrI. Appeal No.42 of 2014 clubbed with Capital Sentence Reference No.5 of 2014, seeking confirmation of death penalty.

2. Learned counsel for the appellant contends that the appellant, a devout Muslim, is being hounded on a trump up charge by the complainant in the backdrop of previous enmity with Muhammad Hafeez (PW-2), with an eye on his house; that there is an inordinate delay between the alleged occurrence and registration of case with no explanation whatsoever to account for the same; that compact disks, visiting card and the letter were never recovered from appellant's custody or possession and instead produced by no other than the complainant himself at different points of time subsequent to registration of the case; that a flawed investigation, seemingly dishonest, cannot be relied upon; he argued that handwriting comparison, undertaken on the direction of the learned trial Judge after four years of the occurrence merits outright rejection, as according to the prosecution itself, the appellant could not go beyond affixing his thumb mark. Learned counsel has also criticized the manner in which trial was conducted by the learned trial Court, particularly appellant's treatment under his purported examination by the Court; the bottom line is that it would be grievously unsafe to maintain the conviction. Contrarily, the learned Law Officer has singlehandedly defended the impugned judgment on the ground that witnesses had no axe to grind and thus successfully drove home the charge against the appellant whose conduct squarely invited mischief of Section 295-C of the Code *ibid*; he has

particularly drawn attention towards appellant's admission to apostasy through his repugnant claim during his examination before the Court; he concluded that as every hypothesis of appellant's innocence stood excluded, he deserved to be visited with ultimate corporal penalty.

3. Heard. Record perused.

4. It is complainant's own case in complaint (Ex.PF) that the appellant, one of his acquaintances, visited him on the eventful day i.e. 8-8-2010 while he was present along with his friends Aftab Qureshi and Muhammad Shafique (PW-3) besides other notables of the area and that it in this company, objectionable statement was made with presentation of written material; it is mindboggling that the gathering after taking serious exception to the blasphemous conduct and snatching the impugned material, let the appellant, according to charge, in his late sixties, leave the venue scot-free; the witness when examined by the Court, in his cross-examination, disclosed as under-

"I am Muslim. If some one disgrace or abuse my father or sister or any family member definitely I will become harsh and will take revenge. It is correct that when the accused person made blasphemous and posed himself prophet in my presence as well as in presence of PWs I never hold him, I never apprehend him, I never made any torture upon him, I never closed the doors from inside and informed the police to come and to arrest him. It is correct that at the time of occurrence I was a man of 42 years whereas the accused was the man of 62 years. It is correct that at the time of occurrence in my office same was the physical apparent condition of the accused but he was not lambing, whereas presently he is holding a stick in his hand and is lambing. It is correct that he cannot run or move speedily"

Imbued with his avowed convictions, it was not very difficult for the complainant to subdue a fragile 'heretic'; even more intriguing is delay to lodge the First Information Report; it takes him six

weeks to reach Police Station Sadiqabad located at a distance of three kilometers; throughout this period, the complainant comfortably keeps with him derogatory material, subsequently handed over to Rafaqat Hussain, ASI (PW-4). Complainant's past litigation and his prosecution before a Court of law cast their shadow on his credibility in no small measure; he admits as follows:-

“I have been a tenant of the present accused but currently I am not his tenant. An ejectment petition was also filed by the present accused against me after about two years of the registration of the case. I took the house belonging to the present accused on rent and I paid the regular rent to him. An agreement was also written in between us but all these things were happened after registration of the instant case and prior to the registration of instant FIR, the accused person never gave me any notice or never filed any ejectment petition before any court. Prior to the lodging of this case no any application under section 22-A was moved by the present accused against me in any court.”

Inter-se relationship has been calculatedly withheld throughout till the appellant was confronted in the witness box; he has also admitted his prosecution on the charges of forgery and fraud:-

“It is correct that case of fraud was registered against me wherefrom later on I was acquitted.”

With such a daunting past, verbal accusation by the complainant involving irreversible corporal consequences must be received with utmost caution, particularly when he is not found in line with second witness Muhammad Shafique (PW-3), an air conditioner technician, resident of Muslim Town Sadiqabad; not only he had no occasion to be present in complainant's office, he is diametrically apart in details relating to the impugned discourse. Both narratives, inherently weak cannot mutually improve upon each other.

Documentary evidence comprising of visiting cards, letter and compact disks do not much support the charge either; these have been presented to the Investigating Officer at a belated stage by no other than the complainant himself. The compact disks relied upon by the learned trial Judge sans forensic analysis/verification and thus their contents cannot be relied upon with any degree of certainty; such devices can be conveniently contrived with little skill and without much labour; it is prosecution's case that the appellant confessed his guilt before a journalist who saved the same in a compact disk; neither the journalist entered the witness box nor the one who prepared the disk and as such one would remain clueless about the genesis of this evidence; statutory authority to investigate crimes cannot be delegated to a journalist; the attempt, otherwise, is not in line with the case initially set up in the crime report. Seizure of incriminatory material by Muhammad Zarat Kayani, SSP (PW-5) is far from being confidence inspiring; he is retaking blasphemous material on 25-10-2010 while it was already lying with Rafaqat Hussain, ASI (PW-4) on 22-9-2010 and with the complainant since 8-8-2010. There appears a good deal more than what meets the eye.

Appellant's treatment in his examination under Section 342 of the Code of Criminal Procedure, 1898 by the learned trial Court cannot be received with appreciation. Examination of an accused confronting indictment is a beneficial arrangement; it ensures that an accused is not taken by surprise; it is designed to acquaint him with the evidence against him so as to possibly vindicate his position. This process has been employed by the learned trial Judge to extract admission from the appellant by overriding all the safeguards available to him under the regime of fair trial; he has not been afforded opportunity to explain as to why witnesses had jumbled up against him. Similarly, while offering the appellant to be his own witness in disproof of the charge, he is

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attributed an “*admission*” seeking lenient view. Under the Constitution and the law, there is an unqualified and unconditional protection against self-incrimination and the provisions of Section 340 (2) of the Code of Criminal Procedure, 1898 are designed merely to enable an accused to offer himself as a witness in disproof of the charge alone and not in support thereof; the exercise is to be carried out after administration of oath upon the accused with the option of cross-examination. The slipshod manner adopted by the learned trial Judge is alien to the concept of fair trial. Similarly, dispatch of handwriting/signature specimens to the handwriting expert is preposterously beside the mark, as according to the learned trial Judge himself, the appellant thumb marked both his indictment as well as statement on the conclusion of prosecution evidence and as such there was no admitted signature or handwriting to carry out comparison. Prosecution case far from evidentiary certainty is fraught with doubts and it would be perilously unsafe to maintain the conviction. Consequently, by extending benefit of doubt to the appellant, Crl. Appeal No.42 of 2014 is **allowed**; impugned judgment dated 23.01.2014 is set aside; he is acquitted from the charge and shall be released forthwith, if not required in any other case; car (P-10) be returned to its owner after due verification while the derogatory material shall be destroyed after the expiry of period of appeal, if any. **Capital Sentence Reference No.5 of 2014** is answered in the **NEGATIVE** and death sentence is **NOT CONFIRMED**.

(Sardar Ahmad Naeem)
Judge

(Qazi Muhammad Amin Ahmed)
Judge

Approved for Reporting