IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:
MR. JUSTICE MANZOOR AHMAD MALIK
MR. JUSTICE YAHYA AFRIDI

CRIMINAL APPEAL NO. 597 OF 2018
(On appeal against the judgment dated 29.02.2016 passed by the Lahore High Court, Rawalpindi Bench, Rawalpindi in Criminal Appeal No. 27-J of 2013)

Muhammad Zafran …Appellant

versus

The State …Respondent

For the Petitioner: Mr. Saghir Ahmed Qadri, ASC

For the State: Ch. Muhammad Sarwar Sidhu, Addl. PG

Date of Hearing: 03.04.2019

JUDGMENT

YAHYA AFRIDI, J. – After a regular trial, the appellant, Muhammad Zafran, was convicted by the learned Additional Sessions Judge, Jhelum, under section 295-B of the Pakistan Penal Code, 1860 (**PPC**) and was sentenced to imprisonment for life. The criminal appeal (Criminal Appeal No. 27-J of 2013), filed by the appellant, was dismissed by the learned Lahore High Court, Rawalpindi Bench, Rawalpindi through the impugned judgment dated 29.02.2016. Aggrieved of the impugned judgment, the appellant preferred a Jail Petition through the Superintendent, Central Jail, Mianwali, wherein leave to appeal was granted by this Court *vide* order dated 22.11.2018, in the following terms:

> *"We have heard the learned counsel for the petitioner and examined the available record.*

> *2. It is contended by the learned counsel for the petitioner that there is not sufficient evidence on record to bring home the guilt of the petitioner and to sustain the conviction, more particularly, the desecrated piece of the Holy Quran was not produced in the evidence.*
>
> *3. Leave to appeal is granted, inter alia, to reappraise the entire evidence for safe administration of criminal justice."*

2. In this case, the machinery of law is set in motion by a written complaint of Afzal Ahmad (PW2), which was received by Attaullah, S.I. (PW4), who had, on receiving the information of the crime, reached the place of occurrence, where he received and treated the said complaint as a *murasla*, wherein it was alleged that at 10.30 a.m., an unknown man, later identified as Muhammad Zafran, was found sitting in the graveyard, burning verses of the Holy Qur'an in a frying pan on a gas cylinder. It was also mentioned in the said *murasla* that Muhammad Tufail and Rizwan Aziz, who were attracted to the place of crime, also witnessed the incident. Attaullah S.I. is stated to have affected recoveries of the verses of the Holy Qur'an, the gas cylinder, the pan, as well as the matches from the place of occurrence.

3. We have heard the learned counsel for the petitioner as well as the learned Additional Prosecutor General and have gone through the record with their able assistance.

4. Before we delve into the merits of the present case, it would be pertinent to keep in mind the true import of the offence for which the appellant has been accused, tried and convicted against. In essence, the offence relates to the desecration of the Holy Qur'an provided under section 295-B of the PPC, which reads:

> *"295-B. Defiling, etc. of copy of Holy Qur'án.*
> *Whoever willfully defiles, damages or desecrates a copy of the Holy Qur'an or of an extract therefrom or uses it in any*

> *derogatory manner or for any unlawful purpose shall be punishable with imprisonment for life."*

5. A careful review of the above-stated provision reveals that the legislature has envisaged for two distinct scenarios therein: firstly, when a person willfully defiles, damages or desecrates a copy of the Holy Qur'an or an extract therefrom; and secondly, when a person willfully uses a copy of the Holy Qur'an or an extract therefrom in a derogatory manner or for unlawful purposes. The punishment prescribed for any one of the acts stated therein is life imprisonment. The case in hand relates to the former scenario, wherein two essential ingredients are to be fulfilled for the offence to stand as having been constituted: first, a person needs to act out of his own will; and secondly, he must defile, damage or desecrate a copy of the Holy Qur'an or an extract therefrom.

6. It is noted with great concern that the present case was not attended to with the attention it deserved. In the first place, there are serious lapses on the part of the investigating officer; for instance, the "*machis"* or matchbox has been introduced at a later stage, which appears to have been done to strengthen the prosecution's case. Strikingly, neither the initial written complaint of Ifzal Ahmad (PW2), nor the proceedings recorded by the Khudadad S.I. (PW4) on the written complaint (Ex.PB) mention the "*machis"* or matchbox. Similarly, the body of the recovery memo (Ex.PC), which was stated to have been prepared at the spot, does not mention the "*machis"* or a matchbox. In fact, the word "*machis"* appears to have been inserted at a later stage, and that too, only on the heading of the recovery memo, and not in the body thereof, while other recovered items have clearly been mentioned

therein. Furthermore, on closer examination of the said recovery memo, it was noted that the word *"machis"* has been written with a different pen. To compound the above investigational transgressions, Ifzal Ahmad (PW2), the complainant, has, in his evidence, not mentioned the recovery of the "*machis"* or matchbox from the present appellant at the place of the crime. This being so, the prosecution has not been able to prove: firstly, the willful act of the appellant; and secondly, that he was burning the verses of the Holy Qur'an at the time of his arrest.

7. What is truly disturbing is the mode and manner of the recovery of the verses of the Holy Qur'an. Most importantly, no specific description of the verses of the Holy Qur'an has been made at any stage of the proceedings. The complainant in his written complaint, recovery witnesses in their statements recorded under Section 161 of the Cr.P.C., the recovery memo (Ex.PC), and even all of the prosecution witnesses remained silent about the description of the recovered verses of the Holy Qur'an. It is pertinent to note that the verses of the Holy Qur'an were, in fact, the most important piece of evidence, which, as per prosecution, had been recovered from the crime scene. Now, when we review the testimony of the prosecution witnesses, it is noted that they all refer to the recovered verses of the Holy Qur'an (ExP.3) as *"some of which were burnt and some were of exact condition"*. The said recovered articles were clearly relevant to the fact in issue i.e. the charge to be proved by the prosecution upon the present appellant.

8. In this regard, the verses of the Holy Qur'an, which, as per prosecution, were alleged to have been recovered at the place of occurrence, should have had an identifiable description to a degree

of certainty dispelling any doubt. It is a universal truth that the Holy Qur'an has an identifiable description in the form of any of its 30 P*araas*, 114 *Surahs* and 6666 *Ayats*. The lack of description of the recovered verses of the Holy Qur'an raises serious doubts about what was actually recovered from the place of occurrence, and thereby renders its very admissibility in legal peril. The time-tested principle regarding admissibility of "recovered article" is that it must contain an identifiable description in the recovery memo, the same is based on the rationale to ensure the preservation of evidence and transparency of investigation.

9. This brings us to the recovery memo (Ex.PC), which records the recovery of the verses of the Holy Qur'an without any identifiable description thereof. This being so, the production of the recovery as Ex.P-3 by Khudadad (PW-4), without any protest to its admissibility by the counsel for the parties, or inaction on the part of presiding officer, cannot be ignored. This Court, half a century ago, in the case of **Zulifqar and another v. The State (1970 P Cr. L. J 47)**, refused to accept "recovered articles" in evidence against the accused where there was no identifiable description in the recovery memo. More recently, this Court, in the case of **Hayatullh v. State (2018 SCMR 2092)**, has reiterated the role of the trial judge to ensure that:

> "*If any party tender such evidence during the trial the other party should immediately raise objection to the admissibility of such evidence and the court should decide the same then and there before proceeding further and prevent it from coming on the record if it is found to be inadmissible in evidence. It is the duty of the trial judge to check such evidence without waiting for any such objection from either side because the judge is required to be vigilant and to play an active role while recording the evidence of witnesses … It is the duty of the court to stop the witness at the moment he utters inadmissible*

> *evidence and should not allow to bring on record such inadmissible evidence.*"

10. These crucial lapses on the part of the prosecution render serious doubts in the very intention of charging the appellant in the present case, who, in his stance under section 342 of the Cr.P.C., categorically professed his innocence, and that he has been falsely accused in the case on the instigation of one Ashraf and Gul Zaman, and finally that he is *"a true Muslim and never even think about desecrate or derogate Holy Quran".*

11. We are astonished to note that for such a serious offence the investigation was not at par with what was required keeping in view the nature of the offence, and the severity of the punishment prescribed therefor. Needless to mention, the aforementioned crucial issues escaped the attention of the trial and the High Court while rendering the impugned decision which warrants immediate positive correction.

12. Thus, above are the detailed reasons for our short order of even date, whereof this appeal was allowed, which reads as under:

> *"For reasons to be recorded later, this appeal is allowed. The conviction and sentence of appellant Muhammad Zafran are set aside. He is acquitted of the charge framed against him. He shall be released forthwith, if not required to be detained in connection with any other case."*

Judge

Judge

ISLAMABAD
3rd April 2019

"Not approved for reporting"