

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT: Mr. Justice Dost Muhammad Khan
Mr. Justice Qazi Faez Isa

Criminal Appeal No. 617/2017 out of
Jail Petition No. 403/2014

(On appeal against the judgment dated 6.11.2014
passed by the Lahore High Court, Bahawalpur
Bench, Bahawalpur in CrI. A. No. 250-J/2009)

Muhammad Mansha

Petitioner(s)

Versus

The State.

Respondent(s)

For the Petitioner(s):

Mr. Rizwan Ejaz, ASC

For the State:

Ch. Muhammad Waheed Khan,
Addl. PG, Punjab

Date of Hearing:

December 29, 2017

JUDGMENT

Qazi Faez Isa, J. We had converted this petition into an appeal, allowed it and acquitted Muhammad Mansha, the appellant, of the offence under section 295-B of the Pakistan Penal Code ("**PPC**") vide our order dated December 29, 2017 and these are the reasons for doing so.

2. The appellant was alleged to have desecrated the Holy Quran on September 29, 2008 and the matter was reported to the police five days after the incident and FIR No. 251 was lodged at police station Mandi Sadaq Gang, district Bahawalnagar on October 3, 2008 under section 295-B of PPC. It was alleged that the appellant masturbated in the centre of a mosque and then smeared his semen on the Holy Quran on September 29, 2008 which was seen by Muhammad Akhtar (PW-5), who, as per the report, "*is deaf and dumb*".

3. The Additional Sessions Judge, Bahawalnagar, tried the case and before recording the testimony of Muhammad Akhtar observed:

"Muhammad Akhtar PW is deaf and dumb. He is R/O Jand Wala. PW Muhammad Munir is well versed with his language of signals therefore he is summoned by this court to translate his language of signals into the words to this court."

Article 3 of the Qanun-e-Shahdat Order, 1984 ("**the Qanun-e-Shahadat**") stipulates that, "*all persons are competent to testify provided they can comprehend the questions*". A deaf and dumb person is the solitary eyewitness in this case, however, the trial Court did not determine the level of his comprehension. There is also nothing on record to show how the Court concluded that Muhammad Munir was "well versed with his language of signals." It is also not clear in what capacity Muhammad Munir interpreted the sign language of the deaf and dumb witness, whether he did so as a translator or as an expert in terms of Article 59 of the Qanun-e-Shahadat. The trial Court should also have administered an oath to Muhammad Munir, but did not do so. Section 543 of the Code of Criminal Procedure ("**the Code**") requires that an interpreter "*shall be bound to state the true interpretation of such evidence or statement*".

4. Muhammad Munir, who translated Muhammad Akhtar's signals, was also a witness (PW-4) against the appellant, therefore, the choice of Muhammad Munir as an interpreter/expert was completely inappropriate because being a prosecution witness it is reasonable to presume that he would be inimical towards the appellant. The case of the prosecution is that the deaf and dumb Muhammad Akhtar informed Muhammad Munir about the offence. Muhammad Munir testified that:

"After 2/3 days of receiving the above said information I told the above said occurrence to Liaquat Ali, Allah Ditta (complainant). There after Muhammad Mansha accused was summoned at the dera of Saleem Khan Wattoo

Zamindar. Muhammad Mansha stated before that Panchayat that due to mental disorder he lost his control over his body. He confessed his guilty. Thereafter, he was beaten by the public gathered there. I had examined the Holy Quran. I had noticed the presence of semen over there but I do not remember the pages of Holy Quran. The above said Holy Quran was handed over to police of P.S. Mandi Sadaq Ganj which was taken into possession vide recovery memo Exh.PC. Police had recorded my statement and obtained my signatures on blank papers."

However, Muhammad Munir does not state when and where he was informed about the offence. He also does not explain why he sat on this information for 2 to 3 days. The complainant of the case Allah Ditta (PW-2) testified that he was informed by Muhammad Akhtar about the offence when, *"he thrice came to him and gave the above information"*. This *"thrice"* coming to him is inexplicable. Did he not believe Muhammad Akhtar the first two times? According to Allah Ditta the appellant had confessed the crime but does not disclose the date or time of this confession. But he does mention that the occurrence took place *"during the night between 28 and 29 of Ramzan Sharif"*, even though admittedly he did not witness it. He is however contradicted by Muhammad Munir who states that the occurrence took place *"during the mid-night of 26/27 Ramzan Sharif"*. The other witness of the purported confession Liaqat Ali (PW-3) also does not disclose the date or time of the alleged confession. Both Allah Ditta and Liaqat Ali testify that the appellant was beaten. Muhammad Akhtar the deaf and dumb solitary eyewitness states that the mosque was in darkness when the said offence was committed:

"At that time, the light in the room of Masjid was off and it was darkness."

5. The only other material relied upon by the prosecution is the Chemical Examiner's report (Exhibit PE) which is in respect of the *"One sealed Parcel QURAN-E-PAK.....Pages No. 680 to 690"*. There is no

explanation why these eleven pages were removed from the Holy Quran. The Chemical Examiner's report simply states that the said pages are "*stained with semen*", but it does not state that it was the appellant's semen. The Site Plan of the place of incident (Exhibit PD) shows that the offence was committed in the centre of the mosque. The Recovery Memo (Exhibit PC) states that the defiled Holy Quran was presented to the police by the complainant Allah Ditta on October 3, 2008, but there is no explanation how the complainant got it.

The cumulative effect of the following inconsistencies and deficiencies makes the prosecution case untenable:

- (i) The FIR was lodged with an inexplicable delay of five days;
- (ii) The FIR was not lodged by the police nor by Muhammad Akhtar the alleged eyewitness, nor even by Muhammad Munir the *Imam* of the mosque;
- (iii) The solitary eyewitness Muhammad Akhtar (PW-5) was deaf and dumb but no effort was made by the trial Court to ascertain his level of comprehension before recording his testimony;
- (iv) Muhammad Akhtar testified through signs interpreted by Muhammad Munir, however, the trial Court did not ascertain whether Muhammad Munir could understand the sign language of the deaf and dumb Muhammad Akhtar;
- (v) Muhammad Munir was not administered oath that he would truthfully translate the sign language of Muhammad Akhtar;
- (vi) Muhammad Munir was a prosecution witness whose testimony incriminated the appellant and therefore was not an independent interpreter;
- (vii) The defiled Holy Quran was given to the police by Allah Ditta who did not disclose how he got it;

- (viii) Eleven pages were removed from the defiled Holy Quran, and only these eleven pages were sent to the Chemical Examiner;
- (ix) The alleged offence took place in the middle of a mosque in the last week (*ashra*) of *Ramadan* when mosques are known to be full with worshipers which was also admitted by Muhammad Munir, the Imam of the said mosque, who testified that the alleged offence took place in "Ramzan [which] is one of the (TAAQ) Raat" when "people remained busy in their prayers till late in night in the Masjid";
- (x) Muhammad Munir states that the occurrence took place between the 26th and 27th night of the month of *Ramadan* but Allah Ditta states that it occurred between the 28th and 29th night of the month of *Ramadan*;
- (xi) Muhammad Akhtar the purported eyewitness does not disclose the date or the time of the offence;
- (xii) Muhammad Akhtar saw the alleged offence when admittedly the mosque was in darkness;
- (xiii) Muhammad Akhtar offers no explanation about his presence in the mosque at the time when he witnessed the offence;
- (xiv) Muhammad Akram (PW-8), the investigation officer ("**IO**") of the case, testified that the appellant was handed over by the complainant together with ready application for the registration of the case;
- (xv) The appellant was kept in the custody by the complainant and his companions for five days, when he was beaten and when he allegedly confessed to them;
- (xvi) The IO testified that the mosque had electricity but did not investigate the absence of light at the time of the alleged offence; and
- (xvii) The IO testified that only the stained pages of the Holy Quran were sent for chemical examination but that he "had not made any effort for DNA test or semen matches".

6. There is only one punishment prescribed for an offence under section 295-B PPC which is imprisonment for life, therefore, it was all the more necessary that the prosecution and the trial Court had proceeded with caution. Unfortunately, in this case even the basic parameters of proof required in a criminal case were completely disregarded.

7. The prosecution failed to act independently and fairly, instead virtually acted as the handmaiden of the complainant. The prosecution also disregarded the fact that the case was only reported to the police after the appellant was beaten up by the complainant and his companions. Neither the trial Court nor the High Court attended to any of the matters mentioned above. In the absence of any tangible evidence, the innumerable contradictions in the prosecution case, the abject failure of the prosecution to act independently and the violation of criminal procedural laws the conviction and sentence of the appellant cannot be sustained and are accordingly set aside.

Judge

Judge

Bench-I
ISLAMABAD
 January 15, 2018
 (Farrukh)

Approved for Reporting