2008 Y L R 387

[Lahore]

Before Fazal-e-Miran Chauhan, J

MUHAMMAD SHARIF---Appellant

Versus

THE STATE---Respondent

Criminal Appeal No. 1143 of 2005, decided on 5th November, 2007.

Penal Code (XLV of 1860)---

----S.295-C---Criminal Procedure Code (V of 1898), S.196---Appreciation of evidence---F.I.R. was not lodged by a competent duly authorized person of Central or Provincial Government and Trial Court was not 'competent to take cognizance of the case in view of S.196, Cr. P. C. ---Trial conducted by Sessions Court, thus, was without lawful authority---Even otherwise, the evidence led by the prosecution did not inspire confidence---Prosecution case was based upon the evidence of a solitary interested witness whose statement was not corroborated by any quarter---Evidence of other prosecution witness was not trustworthy---Police had conducted, investigation in a hasty manner without going into the depth of the gravity of the offence---Accused was acquitted in circumstances.

Qari Muhammad Younas v. The State 2001 YLR 484 ref.

M. Saleem Akhtar for the Appellant.

Rana Iqbal Hussain, D.P.G. for the State.

Date of hearing: 19th October, 2007.

JUDGMENT

FAZAL-E-MIRAN CHAUHAN, J.---This judgment shall dispose of Criminal Appeal No.1143 of 2005 which is directed against the judgment, dated 23-6-2005 passed by the learned Additional Sessions Judge, Lahore, whereby the appellant was convicted under section 295-C P. P.C. and sentenced to life imprisonment with fine of Rs.50,000 and in default of payment of fine to undergo further imprisonment for six months S.I. Benefit of section 382-B, Cr.P.C. was also granted to him.

2. Succinctly, the prosecution story as per F.I.R. is that on 1-2-2001 some students of University informed to complainant that Muhammad Sharif appellant used derogatory remarks in respect of the Holy Prophet (P.B.U.H.) during their conversation with each other, hence the instant F I R No.64 Exh. PA dated 2-2-2001 under section 295-C, P. P. C. was recorded by P.W.3 Muhammad Yasin A.S.I. of Police Station Gujjar Pura, Lahore on the complaint Exh.PA/1 of Major Abdul Majeed Anjum, Security Officer University of Engineer and Technology Lahore. Investigation of the case was conducted and completed by P. W.5 S.I. Shabbir Gul and submitted the challan in the court.

3. After completion of investigation the appellant was found guilty and challan was submitted before the trial court. Charge was framed. The appellant pleaded not guilty and claimed trial. The prosecution produced five witnesses namely Malik Aftab Hussain P.W.1, Aamir Mahmood Shah P.W.2, Muhammad Yasin A.S.-I. P.W.3, Abdul Majeed Anjum P. W.4 and Shabbir Gul S.I. P. W.5 to prove its case. The appellant did not produce any defence evidence nor opted to be examined on oath under section 340(2), Cr.P.C.

4. Learned counsel for the appellant contends that the prosecution has failed to prove its case against the appellant. P.W.1 did not support the version of the F.I.R. He had shown his ignorance about the business of the accused in the University premises. He stated that the accused is not known to him. He also denied that any conversation took place between him and accused when derogatory remarks were used by accused vis-a-vis. Holy Prophet Hazrat Muhammad (P.B.U.H). P.W.2 Aamir Mahmood had a motive to involve the accused in this case, because accused refused to accommodate him further, because he refused to pay the cost of photo copies to the accused. P. W.4 complainant is not witness of the occurrence and he simply lodged the F.I.R in compliance of the direction of his Officer of University. Mudassar Hussain before whom the alleged confession is said to have been made did not appear as P. W before the court. The whole prosecution story, revolved around P.W.3 Aamir Mahmood and his statement cannot be relied upon without corroboration, particularly when P.W.1 denied the occurrence as alleged in the F.I.R. Further argues that since offence under section 295-A, 295-B and 295-C, P.P.C. are offences against State, therefore, under section 196, Cr.P.C. unless Central Government or Provincial Government has authorized any officer empowering in this behalf to lodge a complaint, the case cannot be proceeded and the trial court was not in a position to take cognizance of the matter. The prosecution has' failed to establish its case against the appellant without shadow of any doubt and there are correct discrepancies in the statements of the prosecution witnesses. In fact the prosecution has failed to establish its case against the appellant.

5. Conversely, learned counsel for the State has supported the judgment of the trial court. He contends that the prosecution has proved its case beyond any shadow of doubt.

6. I have heard the learned counsel for the parties at length and examined the entire evidence with the assistance of the learned counsel for the parties.

7. As per P.W.2 Aamir Mahmood, the derogatory remarks were uttered by accused in conversation with P.W.1 Malik Aftab Hussain. The P.W.1 in his statement denied the occurrence as narrated in the F.I.R. He further deposed that the accused is not known to him. He further showed ignorance about the running of photo copy shop by the complainant in the University premises. Mudassar Hussain has not been produced by the prosecution before whom the accused said to have confessed. Since there is no corroboration of the statement of P.W.2. Accused can be convicted on the statement of solitary witness if it is found to be reliable, disinterested and has no motive to falsely involve the accused. The accused in his statement recorded under section 342, Cr.P.C. stated that he has been falsely involved by the P.W.2 as he refused to accommodate him further till payment of past balance due against him. The other material witness before whom confession was said to be made was not produced. It was the responsibility of the prosecution to produce the best kind of evidence to establish guilt of the accused. In this case the prosecution has miserably failed to prove its case without shadow of any doubt. There are conspicuous contradictions in the statements of the P.W.1 and P.W.2.

8. In the instant appeal, the prosecution case is hit by section 196, Cr.P.C. as the F.I.R has been lodged by person who is not competent or duly authorized by the Central or Provincial Government as required under section 196, Cr.P.C. to lodge the F.I.R. For the just decision of the case section 196, Cr.P.C. is re-produced below:-

> "No court shall take cognizance of any offence punishable under Chapter VI or IX-A of the Pakistan Penal Code (except section 127) or punishable under section 108-A or section 153-A or section 294-A or section 295-A or section 505 of the same Code, unless upon complaint made by order of, or under authority from the Central Government, or the Provincial Government concerned, or some Officer empowered in this behalf by either of the two Governments."

9. A bare perusal of section 196, Cr.P.C. would show that the trial court could not have taken cognizance of the case unless the complaint is made by order of or under authority from the Central Govt. or the Provincial Govt. concerned, or some officer empowered in this behalf by either of the two Governments. Reliance is placed on Qari Muhammad Younas v. The State (2001 YLR 484). After scanning the record it appears that no such permission or authority has been given to any official of the Central or Provincial Government to lodge the F.I.R against the accused so the learned trial court was not competent to take cognizance and to try the case. Essential ingredients of an offence under section 295-A, B and C are that the accused must act with the intention to insult the religion of any class of persons with the knowledge that any class of persons is likely to consider such destruction, damage or defilement as insult to their religion. The question whether there was such intention to insult must emerge from the evidence of the case. From the evidence of the record, it is not proved that any derogatory word was uttered by the accused with intent to insult. There is evidence on the record that the complainant of the F.I.R and the present appellant had some criminal cases against each other, which also led doubt that the complainant with mala fide intention involved the appel lant in the instant case, thus possibility of false implication cannot be ruled out.

10. The other aspect of this case is that, now cases are being registered by Muslim against Muslim to settle their score. This is because the police readily registered such cases without checking the veracity of the facts and without taking proper guidance from any well known and unbiased Religious Scholar and proceeded against the accused. The Division Bench of this court while disposing of Criminal Appeal No.1815 (Murder Reference No.61-T-2001) directed, Inspector General Punjab, Lahore to ensure that whenever such case is registered, it be entrusted for purpose of investigation to a team consisting of at least two gazetted Investigating Officers preferably those are well conversant with Islamic Law. The direction issued does not seem to have been comply with for any reasons. However, once again copy of this judgment be sent along with copy of judgment, dated 20-8-2002 passed by Division Bench of this court in Criminal Appeal No.1815 and Murder Reference No.61-T-2001 to Inspector General Punjab, Lahore to ensure that whenever such case is registered, it must be entrusted for purposes of investigation to a team consisting' of at least two gazetted investigating officers as mentioned above in the judgment of Division Bench.

11. As discussed above, the F.I.R./ complaint was not lodged by a competent duly authorized person of Central or Provincial Govt. and the trial court was not competent to take cognizance of the case under section 196, Cr.P.C. and in such eventuality the trial conducted by the learned Additional Sessions Judge is without lawful authority. Even otherwise the evidence led by the prosecution does not inspire confidence against the appellant. The prosecution ease is based upon a solitary interested witness which does not find corroboration from any corner. The evidence of other prosecution witnesses is not trustworthy. The investigation was also conducted by the police in hasty manner without going into the depth of the gravity of the offence.

Resultantly, this appeal is allowed. The conviction and sentence of the appellant is set aside. He be released forthwith, if he is not required in any other criminal case.

N.H.Q./M-561/L Appeal accepted.

;