2019 S C M R 1994

[Supreme Court of Pakistan]

Present: Sajjad Ali Shah, Yahya Afridi and Qazi Muhammad Amin Ahmed, JJ

WAJEEH-UL-HASSAN---Appellant

Versus

The STATE---Respondent

Criminal Appeal No. 270-L of 2012, decided on 25th September, 2019.

(Against the judgment dated 29.09.2010 passed by the Lahore High Court, Lahore in Criminal Appeal No.1356/2002 and Murder Reference No. 561/2002)

(a) Penal Code (XLV of 1860)---

----Ss. 295-A, 295-C & 298-A---Blasphemy---Reappraisal of evidence---Extra-judicial confession--- Abscondence--- Effect--- Declaration of faith---Accused was alleged to have written letters to complainant carrying blasphemous contents---Accused remained absconder and had made an extrajudicial confession---Trial Court convicted the accused and sentenced him to death, which sentence was confirmed by the High Court---Validity---Contents of letters were the most grievously blasphemous, however, whether accused authored and dispatched letters and complainant received them in the manner as alleged in crime report and whether extrajudicial confession supported by expert's report constituted sufficient evidence to hand down penalty of death, were issues altogether different---Penalty of death was irreversible and warranted caution in the highest degree, before a convict was dispatched to gallows---One weak piece of evidence could not corroborate another weak piece of evidence---Absconsion could not be viewed as a proof for the crime---People stay away from law for a verity of reasons not necessarily compatible with hypothesis of guilt, to avoid impending wrath of opponents in hostile environments, more often than not compel even the innocent into recusal of safety---Declaration of faith by accused was to be preferred over divergent imputations---Citizen regardless of religion were equal before law and were entitled to equal protection thereof and it was so guaranteed under the Constitution---Criminal charge was to be essentially settled on positive proof alone and not on perceptional or optical paradigms and the same was out of the sight---Supreme Court by extending benefit of doubt, set aside conviction and sentence awarded to accused, as it was grievously unsafe to maintain the same without potential risk of error and accused was acquitted of the charge---Appeal was allowed.

(b) Criminal trial---

----Extrajudicial confession---Scope---Evidence of extra judicial confession is inherently weak and does not present a brighter picture either.

(c) Evidence---

----Handwriting Expert---Scope---Evidence of Handwriting Expert is viewed as inherently weak.

Mamtaj Ali v. The State PLD 1961 Dacca 573; Saeed Ahmed v. The State PLD 2003 SC 389; Syed Muhammad Umer Shah v. The State 2004 SCMR 1859; Mst. Saadat Sultan and others v. Muhammad Zahur Khan and others 2006 SCMR 196 and Qazi Abdul Ali and others v. Khawaja Aftab Ahmad 2015 SCMR 184 rel.

Syed Almas Haider Kazmi, Advocate Supreme Court and Sheikh Masood Akhtar, Advocate-on-Record for Appellant.

Muhammad Amjad Rafiq, Additional Prosecutor-General, Punjab for the State.

Ghulam Mustafa Ch., Advocate Supreme Court for the Complainant.

Date of hearing: 25th September, 2019.

JUDGMENT

QAZI MUHAMMAD AMIN AHMED, J.---Wajeeh-ul-Hassan, appellant, is in receipt of a guilty verdict; tried by a learned Additional Sessions Judge at Lahore, he was convicted for offences under sections 295-A, 295-C and 298-A of the Pakistan Penal Code, 1860 and returned penalty of death along with imprisonments on allied charges, vide judgment dated 27-7-2002; the High Court vide judgment dated 29.9.2010 confirmed penalty of death, vires whereof, are being challenged by leave of the Court.

2. Muhammad Ismail Qureshi (PW-6), an Advocate by profession, was dispatched letters with a penname by an anonymous mailer carrying blasphemous contents; it is alleged that he was targeted with incendiary material for his contributions towards enforcement of blasphemy laws in the country, allegedly, a source of annoyance to the minority groups; he burnt the letters and it is subsequent thereto that he received letters P-1 to P-5 in two envelopes P-6 and P-7, last purportedly written by Umar Nawaz Butt with a copy of appellant's National Identity Card P-8; it is at this point of time that the witness approached the local police for registration of case which is finally registered on the intervention of the High Court. Formal First Information Report was registered on 21-3-1999 by Attiq-ur-Rehman SI (PW-4) who commenced the investigation, in pursuance whereto, he secured photocopies of letters P-9, P-10, P-11, P-12 and P-13 purportedly attested by the complainant alongside a copy of appellant's National Identity Card P-14, however, without inventory. By this time, the prosecution had made up his mind against the appellant considering him the culprit behind the obnoxious mail; the belief is based upon the copy of National Identity Card, according to the prosecution, dispatched by no other than the appellant himself. A proclamation for appellant's arrest was issued on 28.1.2001; he was proceeded against under Section 512 of the Code of Criminal Procedure, 1898 to be finally arrested on 21.5.2001, allegedly when produced by Muhammad Wasim (PW-1) and Muhammad Naveed (PW-2), the witnesses of extrajudicial confession, and it is subsequent thereto that the complainant produced impugned five letters with two envelops and a photocopy of appellant's National Identity Card as late as on 25.5.2001. Saeed Khursheed Ahmed, Judicial Magistrate (PW-8) took specimen of appellant's handwriting, both

in English as well as Urdu on 28.5.2001 for comparison with the impugned letters, an exercise undertaken by Muhammad Bashir Qureshi (PW-9). According to his analysis, writings on the impugned letters and the specimens 'BEAR IDENTICAL CHARACTERSTICS'. It is on this strength of evidence that the appellant was sent to face trial, on conclusion whereof, besides relying upon an edict Mark 'A' issued by a Seminary at Khushab, confirming him as a faithful, he took the following plea:-

> "I and my father was working in the office of Asma Jehangir husband. After sometime I left the said office and joined Crown Steel Industries where Waseem Mughal was Manager. After serving in the said factory for sometime, I left my job to join Tablig-e-jamat for four months. During my day in the said factory Waseem Mughal PW asked me that he would introduce me with someone for a meeting. I was called by Waseem Mughal, PW on telephone 15 days prior to my arrest at his home. When I reached his home, Naveed PW, one Mustafa Advocate and another unknown person was present there apart from himself. All those persons took me to Lahore Cantt. area and tortured me. I was shown few letters by those persons and I was forced to admit that those letters were written by Asma Jehangir. Upon my refusal, those persons brought me to Allama Iqbal Town Police Station where Ismail Qureshi was already present. After making some entry the Moharar of Police Station showed my arrest. The motive was that a FIR was got registered by Asma Jehangir/Hina Jillani, her sister against Muhammad Ismail Qureshi, the complainant of this case. He had grudge against them. The complainant wanted me to involve Asma Jehangir/Hina Jillani, in this false case. The PWs have deposed against me at the instance of the complainant and the PWs were member of some youth force headed by him."

Position though vigorously taken by the appellant, nonetheless, failed to impress upon the courts below. It has once again been reiterated on appellant's behalf with considerable vehemence; it is argued that in the face of appellant's stance, evidence adduced by the prosecution being inherently flawed, weak and discrepant merited outright rejection. It is hardly sufficient to sustain ultimate irreversible corporal penalty of death, concluded the learned counsel. The learned Law Officer assisted by learned counsel for the complainant faithfully defended the impugned judgment by arguing that the complainant, a senior lawyer, had no axe to grind and it is simply unthinkable that he would fabricate impugned letters, with most repugnant contents, to hound the appellant on mere suspicion; according to them, evidence of extrajudicial confession and report of handwriting expert excluded every hypothesis of appellant's innocence; absconsion has been relied upon as independent corroboration.

3. We have gone through the letters with nauseatic difficulty; their contents are most grievously blasphemous, however, whether the appellant authored and dispatched these letters and the complainant received them in the manner as alleged in the crime report and that whether extrajudicial confession supported by expert's report constitute sufficient evidence to hand down penalty of death are the issues altogether different. Penalty of death being irreversible warrants caution in the

highest degree, before a convict is dispatched to the gallows. With these considerations, we have carefully examined each piece of prosecution evidence in juxtaposition with the appellant's position. The foremost question is the identity of the mailer; it is prosecution's own case that an anonymous writer with a penname as Murshid Masih addressed the letters; he surreptitiously concealed his identity throughout and the complainant in the crime report suspected minority groups behind the mischief; in the string of communication it is last letter P-5 with a different name accompanied by a photostate copy of appellant's National Identity Card; this is how the prosecution finally discovered mailer's identity. We have found it most intriguing as to why the appellant who consistently hid himself over a long period of time, finally dispatched a copy of National Identity Card so as to voluntarily rope himself in a case that may well cost him his neck; there appears no earthly reason for his choice; if at all, it is assumed that he was on a suicidal course, he could have simply mentioned his identity in the letters or could come forward, as according to the prosecution, he presented himself on 21-5-2001. This aspect of the prosecution case is antithetical to appellant's journey into the safety of disappearance; the dichotomy is irreconcilable and even with the most lax standard of appreciation of evidence on the touchstone of probability, the prosecution is bound to fail. Evidence of extrajudicial confession, universally regarded as inherently weak, does not present a brighter picture either; why the appellant would make his breast clean to embrace formidable consequences by abandoning his safe anonymity, in the absence of any incriminatory evidence thenceforth, is really mindboggling. According to Muhammad Waseem (PW-1), the appellant worked in his brother's factory and had long left the job, "on account of suspicious ideas" and he called the witness month before asking for a meeting "in connection with an important work". On 21-5-2001, the witness is joined per chance by Muhammad Naveed (PW-2) before whom the appellant sought the help for a patch up with the complainant as well as their assistance to appear before the police. The witness admitted that he did not know the complainant of the case and also that Muhammad Naveed (PW-2) joined him after travelling 10-kilometers to attend a Mehfil-e-Milad, scheduled at a different venue and it in this backdrop that both the witnesses took pain to bring the appellant, unscathed, all the way to Moon Market, Iqbal Town, Lahore where Shahzad Kamal SI (PW-10) was on a patrol duty, incidentally seized with the investigation of the case. Appellant's visit to Muhammad Waseem (PW-1) shortly after arrival of Muhammad Naveed (PW-2), his exhaustive and comprehensive disclosure, subsequent journey to a place other than police station and per chance encounter with the Investigating Officer on patrol duty, seized with the same case in a most populous metropolis, in a flawless sequential order, are the events that cannot be believed to have occurred, without being naively imprudent. There are other reasons to view these witnesses with suspicion on account of their own narrative that the appellant had already left the factory for his 'suspicious ideas', therefore, he could not possibly risk a visit without being out of mind; they are discrepant as well, as according to the complainant, the mailer was a converted Christian, named as Murshid Masih whereas according to the witnesses of extrajudicial confession, the appellant was a converted Ahmadi. The entire script is preposterous to say the least. Next piece of evidence is forensic report (Ex.PF) derived on the basis of comparison of handwriting specimens with letters P-1 to P-5, received by the complainant in two envelopes P-6 and P-7. It is prosecution case

that the complainant set ablaze entire mail initially received by him, however, retained the above material with him, last received on 21-10-1998. Postal envelopes P-6 and P-7 contradict the complainant as the stamp affixed thereon suggests date, month and year other than month of October; these do not accommodate the sheets of paper without having been folded with permanent marks, conspicuously missing. This material had been handed over to the police after appellant's arrest without any plausible explanation as to why the complainant retained the inflammatory material with him for a period exceeding two years; these anomalies put us on caution. Evidence of handwriting expert is judicially viewed as inherently weak. Reference is made to the cases reported as Mamtaj Ali v. The State (PLD 1961 Dacca 573), Saeed Ahmed v. The State (PLD 2003 SC 389), Syed Muhammad Umer Shah v. The State (2004 SCMR 1859), Mst. Saadat Sultan and others v. Muhammad Zahur Khan and others (2006 SCMR 196) and Qazi Abdul Ali and others v. Khawaja Aftab Ahmad (2015 SCMR 184).

It is by now well settled that a weak piece of evidence cannot corroborate another weak piece of evidence.

Absconsion cannot be viewed as a proof for the crime. People stay away from law for a variety of reasons not necessarily compatible with the hypothesis of guilt; to avoid the impending wrath of opponents in hostile environments, more often than not compel even the innocent into recusal of safety.

We cannot dismiss appellant's plea of being a faithful Muslim nor can possibly take exception, in the absence of evidence to the contrary to his acclaimed unflinching conviction in the injunctions of his faith. The Constitution of the Islamic Republic of Pakistan, 1973 guarantees freedom to an individual to hold and profess faith of his choice; in his divine pursuits, he is sovereign and there is no intermediary between his soul and its Comforter, therefore, appellant's declaration of faith is to be preferred over divergent imputations. Citizen regardless of religion are equal before law and entitled to equal protection thereof and it is so guaranteed under the Constitution. A criminal charge is to be essentially settled on positive proof alone and not on perceptional or optical paradigms; the same is required in the present case, nonetheless, hopelessly out of sight. It would be grievously unsafe to maintain the conviction without potential risk of error, therefore, by extending benefit of the doubt, Criminal Appeal is allowed; the impugned judgment is set aside; appellant is acquitted of the charges and shall be released forthwith, if not required in any other case. Office shall ensure destruction of entire derogatory material and copies thereof, at all tiers.

MH/W-5/SC Appeal allowed.

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