2019 Y L R 2540

[Balochistan]

Before Muhammad Hashim Khan Kakar and Abdullah Baloch, JJ

VIJAY PERVAIZ---Appellant

Versus

The STATE---Respondent

Criminal Appeal No. 378 of 2017, decided on 23rd July, 2019.

Penal Code (XLV of 1860)---

----S. 336-B---Anti-Terrorism Act (XXVII of 1997), S. 7---Hurt by corrosive substance---Appreciation of evidence---Substitution of culprit, plea of---Complainant was father and father-in-law of victims and lodged FIR against accused for throwing acid on them---Both victims correctly identified accused in Trial Court as culprit who threw acid upon them and correctly stated date, time, place of occurrence and manner in which accused arrived at the place of occurrence and committed crime---Victims were cross-examined at sufficient length but they remained firm in their depositions and defense had failed to shake their testimonies---Since both the victims were not only victims/injured but also eye-witnesses of occurrence thus without looking for any other incriminating evidence, sole statements of the victims were enough to award conviction to accused---Accused, complainant and eye-witnesses of occurrence were known to each to other prior to commission of crime, hence no question for false implication, mistaken identification or substitution of real culprit with accused arose---Prosecution successfully proved charge against accused beyond any shadow of reasonable doubt---All victims remained firm in their depositions and fully supported case of prosecution---Defense failed to cause any dent in case of prosecution and Trial Court after proper appraisal of evidence available on record had rightly awarded conviction and sentence to accused---Accused failed to point out any mala fide on part of complainant for his implication---High Court declined to interfere in conviction and sentence awarded to accused by Trial Court as accused had failed to point out any material contradiction and discrepancy which benefitted defense version and there was no error of law, misreading or non-reading of evidence---Appeal was dismissed in circumstances.

Syed Saleem Akhtar for Appellant.

Habibullah Gul, Additional Prosecutor General for the State.

Date of hearing: 16th July, 2019.

JUDGMENT

ABDULLAH BALOCH, J.---This judgment disposes of Criminal Appeal No.378 of 2017 filed by the appellant Vijay Pervaiz Son of Pervaiz Bhatti, against the Order dated 30th October 2017 (hereinafter referred as, "the impugned judgement") passed by learned Special Judge, Anti Terrorism Court-I Quetta,

(hereinafter referred as, "the trial Court"), whereby he was convicted under Section 336(B), P.P.C. read with Section 07 of ATA, 1997, and sentenced to suffer Fourteen (14) years R.I. with fine of Rs.10,00,000/- (Rupees Ten Lac) or in default thereof to further undergo three months S.I., besides the whole property of the appellant was directed to be confiscated in favour of State with benefit of Section 382(B), Cr.P.C.

2. Facts of the case are that on 15th May 2015, the complainant Samuel Masih lodged FIR No.93 of 2015 at Police Station City Quetta under Sections 336-B, 34, P.P.C. read with Section 07 of ATA, 1997, stating therein that on the day of occurrence he gave money to his daughter Hina Samuel and daughter-in-law Rimsha Samuel to purchase vegetables and sandals, therefore, both of them went to Bazar for the purpose. However, subsequently he was informed by his daughter-in-law that at about 11.15 a.m. when both of them reached in the street of Diffrin Hospital Quetta, where found two boys boarded on motorcycle emerged from front side and one of them was holding bottle in his hand, while the other was riding the motorcycle, who poured/ thrown acid on both of them, due to which both of them were miserably burnt, whereafter the police reached at the spot and shifted the injured to Civil Hospital Quetta for treatment and subsequently they were referred to BMC Hospital Quetta. According to the complainant the appellant Vijay Pervaiz poured/thrown acid upon his daughter and daughter-in-law.

3. On completion of investigation, the appellant was challaned in the trial Court, which indicated the charge and after denial, the prosecution examined nine (09) witnesses. The appellant was examined under Section 342, Cr.P.C. He also recorded his statement on oath under Section 340(2), Cr.P.C. and produced a witness in his defence. On conclusion of trial and after hearing arguments, the appellant was convicted and sentenced as mentioned above in para No.1, whereafter the instant appeal has been filed.

4. Heard the learned counsel and perused the available record. Perusal of record reveals that the prosecution in order to establish the charge has produced evidence of nine witnesses, minute scrutiny of the same justifies the impugned judgement delivered by the trial Court. The prosecution has produced direct natural evidence of the victims, circumstantial and medical evidence. The medical evidence has been produced through PW-3 Dr. Aisha Faiz, Lady Police Surgeon, Sandman Provincial Hospital Quetta, who examined both the injured/victims namely PW-6 Hina Samuel and PW-7 Rimsha and accordingly issued Medical Certificates Ex.P/3-A and Ex.P/3-B. Perusal of both the Medical Certificates would establish the fact that the face and the neck of the injured Hina was burnt from left and right sides. Besides, she also received burning injuries on/her right side arm, shoulder and upper chest. While, both the hands and forearm on both sides of injured Rimsha were burnt, besides there were 3.2 cm burnt marks on left side of face and head (dorsal) as well as burnt marks were observed on left foot, back of neck, front of chest. The medical evidence has established that both the injured were chemically burnt through acid.

5. Adverting to direct and natural evidence produced through the injured PW-6 Hina Samuel and PW-7 Rimsha. Both the witnesses have narrated the whole story with regard to their departure to Bazar from their house for purchase of articles and the arrival of the appellant having bottle of acid in his hand and throwing/pouring

the same upon them. Both the witnesses have correctly identified the appellant in the trial Court as the culprit, who threw acid upon them. Both the witnesses have correctly stated the date, time, place of occurrence and the manner in which the appellant arrived at the place of occurrence and committed the crime. Both the witnesses were cross-examined at sufficient length, but it appears that the witnesses remained firm in their depositions and the defence has failed to shake their testimonies. Since, both the PWs are not only the victims/ injured, but also the eye-witnesses of the occurrence, thus without looking for any other incriminating evidence, the sole statements of both the witnesses are enough to award conviction to the appellant. Even otherwise, due to act of the appellant, both the witnesses being ladies have been permanently disfigured/ defaced for whole of their lives and after commission of crime both of them were remained under treatment in hospitals for considerable long period, undergone several surgeries and faced severe pain, agony and hardship due to such incident, thus it does not appeal to the logic that both the victims may let free the real culprit, who had defaced and disfigured both the ladies for whole of their lives and instead falsely implicate the appellant. Thy acid burns caused by the appellant to both the victims covered their faces, hands, feet, shoulders and neck. Thus, their disfigured faces and bodies would remain a living testimony to the appellant's criminality for the rest of their lives. Even otherwise, the acid attack is a bigger crime than murder. The long term consequences of this crime have also caused permanent scarring on the faces and bodies of both ladies having permanent social and psychological effects. The evidence of both the witnesses appears to be natural, trust worthy, reliable, confidence inspiring and free from any prejudice or mala fides. There is no reason to disbelieve or discard the statement of both the victims.

6. Now adverting to circumstantial evidence, suffice to observe here that the case of prosecution has further been strengthened from the disclosure of the appellant (Ex.P/4-B) whilst recorded in police custody in presence of PW-4 Shahid Khan, wherein the appellant has brought on record his past friendship relations with the victim PW-6 Hina, but thereafter the victim started ignoring him and refused to continue friendship, due to which the appellant became senseless, purchased acid and thrown the same upon the victim Hina and her sister-in-law Rimsha. The disclosure of the appellant and suggestions put to the PWs by the counsel for the appellant has brought on record the motive behind the occurrence. The prosecution has produced PW-2 Sanaullah, owner of shop with the name and style of 'Haji Muhammad and Brothers', who on the day of occurrence sold acid to the appellant. This witness has also identified the appellant in the trial Court. Besides, the burnt articles i.e. ladies chaddar affected from acid, the recovery of acid bottle have also been established through record.

7. As far as the plea of the appellant with regard to his false implication is concerned, no material is available on record which would indicate substitution of appellant in the case with the real culprits. The appellant, the complainant (PW-l) as well as the eye-witnesses of the occurrence i.e. PW-6 and PW-7 were known to each other prior to commission of crime, hence no question for false implication, mistaken identification or substitution of the real culprit with the appellant arises at all. The appellant has simply denied the allegations and has not taken any special

plea. Hence, the confidence inspiring evidence produced by the prosecution cannot be thrown aside merely on the basis of simple denial of the appellant. As discussed above, the victims were defaced by the appellant for whole of their lives, thus a prudent mind does not appeal to the logic of substitution.

8. On reappraisal of the evidence available on record it is concluded that the prosecution has successfully proved the charge against the appellant beyond any shadow of reasonable doubt; that all the witnesses remained firm in their deposition; that they fully supported the prosecution version and the defence has failed to cause any dent in the same; that the trial Court after proper appraisal of evidence available on record has rightly awarded conviction and sentence to the appellant; that the appellant has failed to point out any mala fide on the part of the complainant party for his implication; that the appellant has failed to point out any material contradiction and discrepancy which could benefit the defence version; that there is no error of law, misreading or non-reading of evidence in judgment passed by the trial Court calling for interference by this Court.

For the above reasons, the appeal being devoid of merits, is dismissed.

MH/69/Bal. Appeal dismissed.

;