P L D 2019 Supreme Court 64

Present: Mian Saqib Nisar, C.J., Asif Saeed Khan Khosa and Mazhar Alam Khan Miankhel, JJ

Mst. ASIA BIBI---Appellant

Versus

The STATE and others---Respondents

Criminal Appeal No.39-L of 2015, decided on 8th October, 2018.

(Against the judgment dated 16-10-2014 of the Lahore High Court, Lahore passed in Criminal Appeal No.2509 of 2010 and M.R.No.614 of 2010).

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

----S. 295-C---Blasphemy---Conviction---Scope---Individuals or a gathering (mob) could not be allowed to decide as to whether any act falling within the purview of S. 295-C, P.P.C. had been committed or not, because, it was the mandate of the Court to make such decision after conducting a fully qualified trial and on the basis of credible evidence brought before it---No such parallel authority could in any circumstances be bestowed upon any individual or a group of persons.

Malik Muhammad Mumtaz Qadri v. The State PLD 2016 SC 17 ref.

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

----S. 295-C---Blasphemy---Appeal, filing of---Limitation---Condonation of delay---Appeal filed before the Supreme Court against award of death sentence was barred by 11 days---When the present appeal was filed, the appellant was in jail and confined to death cell---Appellant had been sentenced to death, thus, it was appropriate to reappraise the evidence to ensure that the conviction and sentence recorded against her had been validly recorded---Besides, the matter of life and death of a lady was involved, therefore, the appeal should not be dismissed on mere technicalities---Delay in the filing of the appeal was condoned in circumstances.

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

----S. 295-C---Use of derogatory remarks in respect of Prophet Muhammad (pbuh) Blasphemy---Reappraisal of evidence---Benefit of doubt---Accused, who was a Christian lady, was alleged to have uttered derogatory remarks against the Holy Prophet (pbuh) in front of several women---Two of these women (prosecution witnesses) narrated the matter to the local cleric/complainant, who called the accused in a public meeting and inquired about the occurrence, where the accused allegedly confessed her guilt---Trial Court awarded death sentence to the accused, which sentence was confirmed by the High Court---[Per Mian Saqib Nisar, CJ: Factum of quarrel between the accused and other women (prosecution witnesses) prior to the allegation of blasphemy was proved from the record---First Information Report (FIR) was registered with a delay of 5 days---Admittedly, there were 25-30 ladies present at the spot when the accused allegedly passed blasphemous remarks against the Prophet Muhammad ( ), however, none of the other ladies except two,

who were also prosecution witnesses, reported the matter to anyone---Many inconsistencies/discrepancies were found in the statements of the two women who were introduced as prosecution witnesses inasmuch as variations were made by them from their earlier statements recorded under S.161, Cr.P.C---Further there were also discrepancies between the examination-in-chief of the complainant and the complaint lodged by him---Such material contradictions and inconsistent statements of the witnesses and complainant cast further doubts on the coherence of the evidence pertaining to the questions as to who informed the complainant about the occurrence; who was present at the time of disclosure regarding the allegation made against the accused; how many people were present at the time of the public gathering; where did the public gathering take place; what was the time and duration of the public gathering; what was the distance between the place of the public gathering and the house of the accused and how and who brought the accused to the public gathering---Certain contradictions were also present in the examination-in-chief and cross-examination of a police officer/prosecution witness regarding the place and time of arrest of accused---Prosecution had categorically failed to prove its case beyond reasonable doubt---Conviction and sentence of death awarded to the accused was set aside in circumstances and she was acquitted of the charge---Appeal was allowed accordingly]---[Per Asif Saeed Khan Khosa, J, agreeing: Original FIR was in the shape of a written application which had statedly been drafted by an Advocate, however the complainant, the initiator of the present criminal case, did not remember who had drafted the application for the purpose of lodging the FIR and he did not even know where and before whom the said application had been presented by him for the purpose of getting an FIR registered---Apparently something else was happening behind the scene and the actual movers of the present criminal case were some others who had never come to the fore---Prosecution witnesses before whom the alleged remarks were made were young girls and sisters inter se and were semi-literate who had statedly received some elementary religious education from the wife of the complainant/ local cleric---Said prosecution witnesses had never stated as to who was addressed by the accused at the time of uttering the derogatory remarks, and they had never disclosed in whose field the alleged incident had taken place and they had not themselves lodged any report about the same with the local police---According to the prosecution itself, the accused had allegedly uttered the derogatory words after the accused's religion (Christianity) was insulted and her religious sensibilities had been injured by her Muslim co-worker ladies (prosecution witnesses)---Owner of the field where the alleged incident took place and before whom the accused allegedly confessed and sought pardon, was introduced in the present case at some later stage by way of an afterthought---Belated surfacing of the said witness was quite suspicious and in all likelihood he had been planted in the present case at some subsequent stage---Evidence brought on record to establish the time and date when the local cleric/complainant was informed about the alleged remarks was not free from doubt---Matter was reported to the police after a delay of five days with the explanation that the complainant and villagers personally investigated and looked into the matter and wanted to be satisfied before reporting the matter---No detail of any such investigation or consultation by the complainant party or of verification by the complainant had been divulged before the Trial Court nor any evidence had been produced in such regard---In the FIR lodged no mention whatsoever had been

made of any public gathering where the accused allegedly confessed her guilt and sought pardon---Statements made by the complainant and prosecution witnesses before the court with respect to the date and time of the public gathering were mutually contradictory---Evidence produced by the prosecution about where the public gathering had been held, how many people had participated in that gathering, who had brought the accused to the gathering, how the accused was brought to the gathering and the time consumed in the meeting was replete with glaring contradictions exposing complete falsity of the prosecution's story---Record of the case showed that the accused and her forefathers had been living in the same village since before the year 1947 and during all this while no such incident or quarrel over religions of the parties had ever taken place---Prosecution had failed to prove its case against the accused beyond reasonable doubt---Conviction and death sentence of the accused recorded and upheld by the courts below were set aside and she was acquitted of the charge by extending the benefit of doubt to her.

(d) Criminal Procedure Code (V of 1898)---

----S. 154---Delay in lodging First Information Report (FIR)---Effect---In absence of any plausible explanation, the Supreme Court had always considered the delay in lodging of FIR to be fatal and it casted a suspicion on the prosecution story, extending the benefit of doubt to the accused---If there was any delay in lodging of FIR and commencement of investigation, it gave rise to a doubt, which, could not be extended to anyone else except to the accused.

Zeeshan @ Shani v. The State 2012 SCMR 428; Noor Muhammad v. The State 2010 SCMR 97 and Muhammad Faiz Khan v. Ajmer Khan 2010 SCMR 105 ref.

(e) Criminal Procedure Code (V of 1898)---

----S. 154---First Information Report (FIR) lodged after conducting an inquiry---Such FIR lost its evidentiary value.

Iftikhar Hussain and others v. The State 2004 SCMR 1185 ref.

(f) Criminal trial ---

----Benefit of doubt---Scope---For the accused to be afforded the right of benefit of the doubt, it was not necessary that there should be many circumstances creating uncertainty---If a single circumstance created reasonable doubt in a prudent mind about the apprehension of guilt of an accused, then he/she shall be entitled to such benefit not as a matter of grace and concession, but as a right.

Tariq Pervaiz v. The State 1995 SCMR 1345 and Ayub Masih v. The State PLD 2002 SC 1048 ref.

(g) Criminal trial--

----Extra-judicial confession---Scope and reliance---Evidence of extra-judicial confession was a fragile piece of evidence and utmost care and caution had to be exercised in placing reliance on such a confession---Such confession was always looked at with doubt and suspicion due to the ease with which it may be concocted---Legal worth of the extra judicial confession was almost equal to naught, keeping

in view the natural course of events, human behaviour, conduct and probabilities in ordinary course---Extra-judicial confession could be taken as corroborative of the charge if it, in the first instance, rang true and then found support from other evidence of unimpeachable character---If the other evidence lacked such attribute, it had to be excluded from consideration.

Nasir Javaid v. State 2016 SCMR 1144; Azeem Khan and another v. Mujahid Khan and others 2016 SCMR 274; Imran alias Dully v. The State 2015 SCMR 155; Hamid Nadeem v. The State 2011 SCMR 1233; Muhammad Aslam v. Sabir Hussain 2009 SCMR 985; Sajid Mumtaz and others v. Basharat and others 2005 SCMR 231; Ziaul Rehman v. The State 2000 SCMR 528 and Sarfraz Khan v. The State and 2 others 1996 SCMR 188 ref.

(h) Penal Code (XLV of 1860)-

----S. 295-C---Use of derogatory remarks in respect of Prophet Muhammad (pbuh)---Blasphemy---Reappraisal of evidence---Extra-judicial confession---Accused, who was a Christian lady, was alleged to have uttered derogatory remarks against the Holy Prophet (pbuh) and she allegedly confessed her guilt in a public gathering---Trial Court awarded death sentence to the accused, which sentence was confirmed by the High Court---Held, that accused was brought to a gathering of potentially hundreds of people, where she was alone at the time, tensions were running high, and it was an intimidating environment---Accused may well have felt threatened and vulnerable, thus, the alleged extra-judicial confession made by her, even if presumed to have been made before the public gathering, could not be termed as a voluntary action nor could it be relied upon to form the basis of a conviction, especially for capital punishment---Conviction and sentence of death awarded to the accused was set aside in circumstances and she was acquitted of the charge---Appeal was allowed accordingly.

(i) Criminal trial--

----Cross-examination---Defence failing to cross-examine prosecution witnesses qua certain aspects of the case---Principle that 'part of statement which remained un-rebutted amounted to admission' was not applicable to criminal cases---In

criminal cases, the burden to prove the guilt of the accused rested heavily upon the prosecution, which had to prove its case beyond any shadow of doubt.

Nadeem Ramzan v. The State 2018 SCMR 249; S. Mahmood Aslam Shah v. The State PLD 1987 SC 250 and State v. Rab Nawaz and another PLD 1974 SC 87 ref.

(j) Criminal trial---

----Presumption of innocence---Scope---Such presumption remained throughout the case until such time the prosecution on the evidence satisfied the Court beyond reasonable doubt that the accused was guilty of the offence alleged against him.

(k) Criminal trial---

----Standard of proof---Scope---Suspicion howsoever grave or strong could never be a proper substitute for the standard of proof required in a criminal case, i.e. beyond reasonable doubt.

(l) Criminal trial ---

----Standard of proof---Scope---Cases where there was enmity between the accused and the complainant or prosecution witnesses usually a strict standard of proof was applied for determining the innocence or guilt of the accused.

Per Asif Saeed Khan Khosa, J; agreeing with Mian Saqib Nisar, J

(m) Criminal Procedure Code (V of 1898)---

----S. 154---First Information Report (FIR) lodged with a noticeable delay and after consultations and deliberations---Such FIR lost its credibility.

Saif-ul-Malook, Advocate Supreme Court for Appellant.

Zubair Ahmed Farooq, Addl. P.G. for the State.

Ghulam Mustafa Chaudhry, Advocate Supreme Court for the Complainant.

Date of hearing: 8th October, 2018

JUDGMENT

MIAN SAQIB NISAR, CJ. -

> "I bear witness that there is no God worthy to be worshiped but Allah, the One alone, without partner, and I bear witness that Muhammad ( ) is his Servant and Messenger"

The Qalimah-e-Shahadat as shown above, is deemed to be the essence of Islam and the recitation of which makes us Muslims, is self explanatory and testifies that there is no God but Allah and our Prophet Muhammad is the Last Messenger of Allah. It is our declaration of faith in the unseen and belief, to bow down our heads before our Lord Allah, admitting the fact that there is none like Him.

2. The sanctity of our Prophet Muhammad is further evident from the Qalimah-e-Shahadat, as His name is being read together with Allah, thus ultimate care and

great importance should be drawn while taking this Holy name. Tolerance is the basic principle of Islam. It is a religious and a moral duty and further relates to the dignity of human beings, the equality amongst all creations of Allah and also to the fundamental freedom of thought, conscience and belief. It does not mean compromise, lack of principles or lack of seriousness about one's principles rather it means accepting the fact that human beings, naturally distinct in their appearance, situation, speech, behavior, and values, have the right to live in peace and to be as they are. Islam may tolerate anything but it teaches zero tolerance for injustice, oppression, and violation of the rights of other human beings the Quran speaks about, from the very beginning. Freedom of religion has been guaranteed by Islam. It prohibits coercion in matters of faith and belief.

> "There should be no compulsion in religion. Surely, the right way has become distinct from error." [Al-Baqara (2:256)]

Thus, as Muslims we are bound by this authoritative order and should act within the purview of such.

3. As it is enunciated in the above verse of Allama Muhammad Iqbal, a well renowned activist and the 'Spiritual Father of Pakistan', from his poem Jawab-e-Shikwa, the veneration and adulation of Our Beloved Holy Prophet is evident and is reckoned as the foundational principle on which the religion - Islam is based. There is no denial whatsoever of the fact that Prophet Muhammad holds the utmost respect, prestige and dignity amongst the Muslim Ummah and possesses the highest rank and status compared to all Creatures shaped by Allah Almighty, even the Messengers of Allah who came before him. His outstanding demonstration of extremely lofty moral values and personal highest exemplary role model bearing an overwhelming effect on the course of history, as acknowledged by foe and friend alike, rightly deserve and demand utmost respect and honour. His teachings have undoubtedly brought about the greatest effect in changing the minds, deeds and conducts of individuals and nations. His exceptional achievements have surpassed all predecessors in all respects.

4. The unlimited and unparalleled love with Allah's Messenger , is an integral part of a Muslim's faith. In this connection the following Verses and Ahadith are very clear:-

> "Say, [O Muhammad], "If your fathers, your sons, your brothers, your wives, your relatives, wealth which you have obtained, commerce wherein you fear decline, and dwellings with which you are pleased are more beloved to you than Allah and His Messenger and jihad in His cause, then wait until Allah

executes His command. And Allah does not guide the defiantly disobedient people"." [At-Towbah (9:24)]

By the star when it descends, Your companion [Muhammad] has not strayed, nor has he erred, Nor does he speak from [his own] inclination. It is not but a revelation revealed, [An-Najm (53:1-4)]

Narrated Abu Hurairah (R.A): "Allah's Apostle said, "By Him in Whose Hands my life is, none of you will have faith till he loves me more than his father and his children."

Narrated Anas (RA): The Prophet said "None of you will have faith till he loves me more than his father, his children and all mankind".

5. This love has to manifest itself in complete unconditional obedience to follow the footsteps of the Holy Prophet as is manifested from the following Verses:

"Say, [O Muhammad], "If you should love Allah, then follow me, [so] Allah will love you and forgive you your sins. And Allah is Forgiving and Merciful"." [Al-i-Imran (3:31)]

But no, by your Lord, they will not [truly] believe until they make you, [O Muhammad], judge concerning that over which they dispute among themselves and then find within themselves no discomfort from what you have judged and submit in [full, willing] submission. [An-Nisa (4:65)].

` It is not for a believing man or a believing woman, when Allah and His Messenger have decided a matter, that they should [thereafter] have any choice about their affair. And whoever disobeys Allah and His Messenger has certainly strayed into clear error. [Al-Ahzab (33:36)]

6. The commendable charisma and personality of our Holy Prophet serves as a role model for all Muslims, in clear terms, as mentioned in the following Verses:

"Certainly, you have in Allah's Messenger an excellent example (role-model) to follow, for whoever looks forward to Allah and the last day and remembers Allah abundantly." [Al-Ahzab (33:21)]

And when you, [O Muhammad], do not bring them a sign, they say, "Why have you not contrived it?" Say, "I only follow what is revealed to me from my Lord. This [Qur'an] is enlightenment from your Lord and guidance and mercy for a people who believe." [Al-A'raf (7:203)].

And indeed, for you is a reward uninterrupted. And indeed, you are of a great moral character. [Al-Qalam (68:3-4)]

And We have not sent you, [O Muhammad], except as a mercy to the worlds. [Al-Anbya (21:107)]

7. The Holy Qur'an has unequivocally described the glorification and exaltation of Holy Prophet and has ordered Muslims to strictly observe maximum respect and be extremely careful in this regard, to the extent of using most appropriate words

and even lowering their voices, failing to do will render all their good deeds in vain, as mentioned in the following Verse.

> Among the Jews are those who distort words from their [proper] usages and say, "We hear and disobey" and "Hear but be not heard" and "Ra'ina" (راعنا) twisting their tongues and defaming the religion. And if they had said [instead], "We hear and obey" and "Wait for us [to understand]," it would have been better for them and more suitable. But Allah has cursed them for their disbelief, so they believe not, except for a few. [An-Nisa (4:46)]

> "O ye who believe! raise not your voices above the voice of the Prophet , nor shout when speaking to him as you shout one to another, lest your deeds be rendered vain while you perceive not." [Al-Hujurat (4:46)]

Ibn Tamiyyah, while explaining this verse writes, "In this Verse the believers have been prohibited from raising their voices over the voice of the Prophet so that their loud voice before the Prophet may render their good deeds as vain while they will not understand it".

Allah Almighty declared the enemy of Prophet Muhammad as the enemy of Allah and ordained that, in this temporary world and also in the eternal life hereinafter, there is a punishment of highest degree for those who disbelieves or disrespects him. For reference, some of the Verses are mentioned hereinbelow:

> "Ask forgiveness for them, [O Muhammad], or do not ask forgiveness for them. If you should ask forgiveness for them seventy times - never will Allah forgive them. That is because they disbelieved in Allah and His Messenger, and Allah does not guide the defiantly disobedient people". [At-Tawbah (9:80)]

> "And thus, have We made for every prophet an enemy from among the criminals. But sufficient is your Lord as a guide and a helper". [Al-Furqan (25:31)]

> "Have you not considered those who were forbidden from private conversation, then they return to that which they were forbidden and converse among themselves about sin and aggression and disobedience to the Messenger? And when they come to you, they greet you with that [word] by which Allah does not greet you and say among themselves, "Why does Allah not punish us for what we say?" Sufficient for them is Hell, which they will [enter to] burn, and wretched is the destination." [Al-Mujadila (58:8)]

> "May the hands of Abu Lahab be ruined, and ruined is he. His wealth will not avail him or that which he gained. He will [enter to] burn in a Fire of [blazing] flame. And his wife [as well] - the carrier of firewood. Around her neck is a rope of [twisted] fiber." [Al-Masad (111:1-5)]

> "How wretched is that for which they sold themselves - that they would disbelieve in what Allah has revealed through [their] outrage that Allah would send down His favor upon whom He wills from among His servants.

So, they returned having [earned] wrath upon wrath. And for the disbelievers is a humiliating punishment." [Al-Baqarah (2:90)]

"Indeed, those who disbelieve in Allah and His messengers and wish to discriminate between Allah and His messengers and say, "We believe in some and disbelieve in others," and wish to adopt a way in between - Those are the disbelievers, truly. And We have prepared for the disbelievers a humiliating punishment." [An-Nisa (4:150-151)]

"Lo! Those who malign Allah and his Messenger, Allah hath cursed them in the world and the Hereafter, and hath prepared for them the doom of the disdained". [Al-Ahzab (33:57)]

Explaining this Verse Allama Qurtubi writes:

"Everything which becomes a means of malignity ( ) of the Holy Prophet whether by quoting words bearing different meanings or similar actions comes under his malignity. ( ) Quran, Vol.XIV, page 238)."

Allama Ismail Haqqi while explaining this Verse writes:

" ..the malignity of Allah and his Prophet is meant only the malignity of the Prophet in fact, and mention of Allah (SWT) is only for glorification and exaltation to disclose that the malignity of the Prophet is indeed the malignity of Allah (SWT)."

The other Verses read as follow: -

"And of them are those who vex the Prophet and say: He is only a hearer. Say: A hearer of good for your, who believeth in Allah (SWT) and is true to the

believers, and a mercy for such of you as believe. Those who vex the Messenger of Allah, for them there is a painful doom."

"They swear by Allah to you (Muslims) to please you, but Allah, with His Messenger, hath more right that they should please him if they are believers." [At-Tawbah (9:61-62)].

Ibn Taimiyyah while explaining these Verses writes: "Verse No. 62 denotes that the malignity of the Prophet is the opposition of Allah and His Prophet". ( ), pages 20, 21).

These Verses are linked with Verse 20 of Sura Al-Mujadila which is as under: -

"Lo! those who oppose Allah and His messenger, they will be among the lowest." [Al-Mujadila (58:20)].

Thus, all of these Verses of the Holy Qur'an, mention in clear terms, that these abusers and contemners of the Prophet are actually the opponents of Allah and His Prophet about whom the Qur'an says:

"When thy Lord inspired the angels, (saying) I am with you. So, make those who believe stand firm. I will throw fear into the hearts of those who disbelieve. Then smite their necks and smite of them each finger." [Al-Anfal (8:12)]

"That is because they opposed Allah and His messenger. Whoso Opposeth Allah and His messenger, (for him) Lo! Allah is severe in punishment." [Al-Anfal (8:13)]

"And if Allah had not decreed migration for them. He verily would have punished them in this world, and theirs in the Hereafter is the punishment of the Fire." [Al-Hashar (59:3)]

"That is because they were opposed to Allah and His messenger; and whoso is opposed to Allah (for him) verily Allah is stern in reprisal." [Al-Hashar (59:4)]

8. These Verses clearly prescribe the severe punishment of death for the opponents of Allah and his Prophet , who include contemners of the Prophet . Thus, no one by words - either spoken or written - directly or indirectly, is allowed to disobey, disregard and rebel against the Holy name of Prophet Muhammad and if found guilty of disrespecting the name they are liable to be punished. History has remained a witness itself to the incidents pertaining to any attempts of defiance made in the name of our Beloved Holy Prophet . The Muslim communities that exist around the globe have always acted against any such act of contempt and have openly reacted to such, followed by serious repercussions. That is why anything which in any way attacks any aspect of his sacred life, infuriates Muslims to an intolerable limit, resulting in extremely serious law and order situation, with grievous, disastrous consequences. That is why Section 295-C had to be enacted to bring such contemners before the Court of Law.

9. Reference may be made to an incident which occurred in 1923, when one said person, Rajpal, published a pamphlet/book containing derogatory remarks against

Prophet Muhammad . A movement was launched by the Muslims of the sub-continent demanding a ban on the book. As a result, in 1927 the British Government was forced to enact a law prohibiting insults aimed at founders and leaders of religious communities, as such, section 295-A was inserted in the Pakistan Penal Code in the year 1927. However, the Muslims were not satisfied with it and one Ghazi Ilm-ud-Din Shaheed succeeded in murdering Rajpal. After the trial, Ilm-ud-Din was convicted and was given death penalty. He is considered by the Muslims to be a great lover of the Prophet (PBUH).

10. After the independence, to ensure that no attempt could be made to defy the Prophet Muhammad , a new provision was introduced in Pakistan Penal Code, 1860 (P.P.C.), which reads as under:-

> "295-C. Use of derogatory remarks, etc., in respect of the Holy Prophet: Whoever by words, either spoken or written, or by visible representation or by any imputation, innuendo, or insinuation, directly or indirectly, defiles the sacred name of the Holy Prophet Muhammad (peace be upon him) shall be punished with death, or imprisonment for life, and shall also be liable to fine."

As per this provision, the act of blasphemy was made culpable and the sentence provided was either death or imprisonment for life along with a fine. The validity of this provision was considered by the Federal Shariat Court in the case titled as Muhammad Ismail Qureshi v. Pakistan through Secretary, Law and Parliamentary Affairs (PLD 1991 FSC 10) wherein the Court ruled that Section 295-C of PPC was repugnant to the fundamental principles of Islam to the extent that it provided for the punishment of life imprisonment which acted as an alternative to a death sentence. It was held that the penalty for contempt of the Holy Prophet is death. It was further held that if the President of the Islamic Republic of Pakistan did not take any action to amend the law before 30th April, 1991, then Section 295-C would stand amended by the said ruling. An appeal was filed before the Shariat Appellate Bench of this Court, which was dismissed for want of prosecution.

11. As mentioned above, Muslims all over the world have immense love, admiration and affection for Prophet Muhammad more than their own lives or the lives of their parents and children. No one could be allowed to defy the name of the Holy Prophet Muhammad nor could a person guilty of disrespecting the Holy Prophet be let off scot-free. Even the Government has always made efforts at the national and international level to eliminate instances of blasphemy of the Holy Prophet . For instance, in March 2009, our government presented a resolution to the United Nations Human Rights Council in Geneva condemning "defamation of religion" as a human rights violation, which called upon the world to formulate laws against the defamation of religion. The resolution was adopted on 26.3.2009 despite wide concerns that it could be used to justify restrictions on free speech in Muslim countries. The efforts of our government succeeded in imposing global limitations against any attempt to defy a religion or belief, on the basis of freedom of expression. The social media website "Facebook" was blocked as it promoted and hosted a page called as "Everybody draw Muhammad Day". This was another attempt made by the authorities to stop these malicious and vexatious attempts to

sabotage the Holy name. The ban was lifted when Facebook prevented access to the said page. In June 2010, seventeen websites were banned for hosting content which were offensive and demeaning to Muslims. Since then the authorities have been monitoring the content of various websites including Google, Yahoo, YouTube, Amazon, MSN, Hotmail and Bing and all social media websites which are used globally and have a direct impact on people.

12. As noted above, no one could be allowed to defy the name of the Holy Prophet Muhammad and be left unpunished, but there is another aspect of the matter; sometimes, to fulfill nefarious designs the law is misused by individuals levelling false allegations of blasphemy. Stately, since 1990, 62 people have been murdered as a result of blasphemy allegations, even before their trial could be conducted in accordance with law. Even prominent figures, who stressed the fact that the blasphemy laws have been misused by some individuals, met with serious repercussions. A latest example of misuse of this law was the murder of Mashal Khan, a student of Abdul Wali Khan University, Mardan, who in April 2017 was killed by a mob in the premises of the university merely due to an allegation that he posted blasphemous content online.

13. Reference may also be made to the case of one Ayub Masih, who was accused of blasphemy by his neighbour Muhammad Akram. The alleged occurrence took place on 14th October 1996, the accused was arrested, but despite the arrest, houses of Christians were set ablaze and the entire Christian population of the village (fourteen families) were forced to leave the village. Ayub was shot and injured in the Sessions Court and was also further attacked in jail. After the trial was concluded, Ayub was convicted and sentenced to death, which was upheld by the High Court. However, in an appeal before this Court, it was observed that the complainant wanted to grab the plot on which Ayub Masih and his father were residing and after implicating him in the said case, he managed to grab the seven-marla plot. The appeal was accepted by this Court and the conviction was set aside.

14. At this jucture, it is to be noted that Islam as stipulated in Holy Book "Quran" teaches us, amongst many other virtues, to live in peace and harmony, with compassion and love to our other fellow human beings. It is the masterpiece of guidance and knowledge bestowed upon us by the Allah Almighty, which cannot be modified in any way whatsoever, thus being the final book. The commandments of Allah are entrenched in the Quran which provides for a complete way of life and teaches us the concept of tolerance. It is however to be kept in mind that unless proven guilty, through a fair trial, as provided for in the Constitution and the law, every person is considered innocent, irrespective of their creed, caste and colour. The Holy Quran has mentioned in clear terms that:-

> " .. he who slays a soul unless it be (in punishment) for murder or for spreading mischief on earth shall be as if he had slain all mankind; and he who saves a life shall be as if he had given life to all mankind. ". [Al-Ma'idah (5:32)]

Moreover, it is also pertinent to mention that awarding a sentence is the duty of the State and no one else has the authority to take law into his hands and punish anyone on his own. After allegations regarding contempt etc., a fair opportunity for offering defence before a competent court, has to be provided so that proper justice

is done. This will eliminate the chances of false allegations prompted by ulterior motives, as has been done in several cases in the past.

15. It is worth mentioning that it is a matter of great pride and satisfaction that we are governed by a written Constitution and Statutory Laws. The Constitution, as per Article 4 thereof mandates that "to enjoy the protection of law and to be treated in accordance with the law is an inalienable right of every citizen, wherever he may be, and of every other person for the time being within Pakistan. In particular (a) no action detrimental to the life, liberty, body, reputation or property of any person shall be taken except in accordance with law (b) no person shall be prevented from or be hindered in doing that which is not prohibited by law; and no person shall be compelled to do that which the law does not require him to do". As per Article 37 of the Constitution, it is the duty of the State to ensure that justice is dispensed inexpensively and expeditiously to the People of Pakistan. As per Article 175(2) of the Constitution, "no court shall have any jurisdiction save as is or may be conferred on it by the Constitution or by or under any law". Section 28 of the Criminal Procedure Code, 1898 (Cr.P.C.) provides that subject to the other provisions of the said Code, any offence under the Pakistan Penal Code may be tried (a) by the High Court, or (b) by the Court of Session, or (c) by any other Court by which such offence is shown in the eighth column of the Second Schedule to be triable. Thus, under the authority and command of the Constitution and the Law, it is the duty of the State to ensure that no incident of blasphemy shall take place in the country. In case of the commission of such crime, only the State has the authority to bring the machinery of law into operation, bringing the accused before a Court of competent jurisdiction for trial in accordance with law. However, it is not for the individuals, or a gathering (mob), to decide as to whether any act falling within the purview of Section 295-C has been committed or not, because as stated earlier, it is the mandate of the Court to make such decision after conducting a fully qualified trial and on the basis of credible evidence brought before it. No such parallel authority could in any circumstances be bestowed upon any individual or a group of persons. For this reason, this Court has held that the "Commission of blasphemy is abhorrent and immoral besides being a manifestation of intolerance but at the same time a false allegation regarding commission of such an offence is equally detestable besides being culpable. If our religion of Islam comes down heavily upon commission of blasphemy then Islam is also very tough against those who level false allegations of a crime. It is, therefore, for the State of the Islamic Republic of Pakistan to ensure that no innocent person is compelled or constrained to face an investigation or a trial on the basis of false or trumped up allegations regarding commission of such an offence." [see: Malik Muhammad Mumtaz Qadri v. The State (PLD 2016 SC 17)]

16. In this backdrop, we shall now consider the facts of the instant case. This matter has genesis in a criminal case, which has emanated from FIR No.326 dated 19.06.2009 under Section 295-C P.P.C., registered at Police Station Sadar Nankana Sahib, by one Qari Muhammad Salaam (PW.1) stating therein that on 14.6.2009, the appellant Mst. Asia Bibi, belonging to Christian community of the village, along with other Muslim ladies, including Mafia Bibi (PW.2), Asma Bibi (PW.3) and Yasmin Bibi (given up PW), was plucking Falsa (Grewia/purple berry), in the

field belonging to one Muhammad Idrees (CW.1) where the appellant uttered derogatory remarks against the Holy Prophet Hazrat Muhamma. The said PWs narrated the matter to the complainant/Qari Muhammad Salaam, who on 19.6.2009, called the appellant in a public meeting and inquired about the occurrence, where the appellant confessed her guilt. Thereafter, Qari Muhammad Salaam lodged the complaint before police and consequently the FIR was registered.

17. Before proceeding further, it may be pertinent to signify that the alleged incident, being a heinous crime and involving religious sentiments, attracted the media, both electronic and print, and generated both grief and rage in the public at large.

18. On account of the investigation, the appellant was indicted in the matter; she was arrested and challaned by the police and charged by the learned Addl. Sessions Judge, Nankana Sahib with the offence under Section 295-C of P.P.C..

19. During the course of the trial the prosecution examined as many as seven witnesses, including Qari Muhammad Salaam/complainant (PW.1), two eye-witnesses of the occurrence i.e. Mafia Bibi (PW.2) and Asma Bibi (PW.3), a witness of extra judicial confession Muhammad Afzal (PW.4) and three police witnesses (PW.5 to 7). Whereas, (PW's) Yasmin Bibi and Mukhtar Ahmad were given up and the prosecution evidence was closed. However, Muhammad Idrees, the owner of the fields was examined as Court witness (CW-l).

20. The appellant had her statement recorded under Section 342 Cr.P.C. wherein she categorically denied the allegations made against her. Further to that, it was also stated that her involvement in this case is being maliciously framed by the eye-witnesses due to a quarrel arising out of the fetching of water which escalated the situation and led to the exchange of heated words between her and the said ladies. However, neither the appellant appeared as her own witness to record statement on oath under Section 340(2) Cr.P.C. nor did she opt to lead any defence evidence.

21. After the conclusion of the trial, the learned trial Court vide impugned judgment dated 08.11.2010, convicted the appellant under Section 295-C and sentenced her to death with a fine of Rs.100,000/- and in default whereof, to further undergo six months' SI. The Capital Sentence Reference No.614 of 2010 (wrongly mentioned as Murder Reference) was forwarded under Section 374 Cr.P.C. by the trial Court to the learned High Court for confirmation or otherwise of the sentence of death, whereas, the appellant challenged her conviction/sentence through Criminal Appeal No.2509 of 2010.

22. The learned High Court heard the appeal as well as the reference and vide the impugned judgment, dismissed the appeal of the appellant and answered the Reference in the affirmative, consequently the death sentence awarded to the appellant Mst. Asia Bibi was confirmed. Being aggrieved, the appellant has filed this appeal with the leave of the Court granted vide order dated 22.7.2015, inter alia, to consider and appreciate the evidence on the record.

23. At the outset it was pointed out by the learned counsel for the complainant that at the time the instant appeal is barred by 11 days, as such, liable to be dismissed on this score alone. In this regard it is to be noted that when the instant

appeal (petition) was filed, the appellant was in jail and confined to death cell. In the instant case, as the appellant has been sentenced to death, we deem it appropriate to reappraise the evidence to ensure that the conviction and sentence recorded against her had been validly recorded. Besides, the matter of life and death of a lady is involved, therefore, the appeal should not be dismissed on mere technicalities. In this view of the matter, the delay in the filing of the appeal is condoned.

24. It is the case of the appellant that on the fateful day an altercation took place between the appellant and both the eye witnesses, namely Mafia Bibi (PW.2) and Asma Bibi (PW.3) in the vicinity of the field owned by Muhammad Idrees (CW.1), over the fetching of water which was offered by the appellant. However, the offer was refused, and it was said that because she is a Christian they would never take water from her hand. Over this, a heated argument took place with the exchange of some bitter words between them and as a result of this disagreement, those ladies, in connivance with the complainant, Qari Muhammad Salaam, ignited the situation and wrongly implicated her (the appellant) in this case. Furthermore, the alleged extra-judicial confession was not voluntary but rather resulted out of coercion and undue pressure as the appellant was forcibly brought before the complainant in presence of a gathering, who were threatening to kill her; as such, it cannot be made the basis of a conviction. There is an inordinate delay of about five days in lodging of the FIR which casts a serious doubt and shadow about the probity of the witnesses, and in fact, after the deliberations, a false story was concocted by the witnesses and reported to the police. Even otherwise, the complaint submitted to the police was drafted by an Advocate. The appellant, in her statement recorded under section 342 Cr.P.C., expressed her full respect to the Holy Prophet and the Holy Quran and she offered to take an oath on the Bible to the Investigation Officer (IO) to prove her innocence which was refused by the I.O. Therefore, the appellant being innocent deserves acquittal. Further, no prior permission of the Central/Provincial Government was obtained before the registration of the FIR.

25. First of all, we shall consider the validity of the proceedings in absence of a permission from the concerned Government. In this regard it is to be noted that under Section 196 of the Cr.P.C., no Court could take cognizance of any offence punishable under Section 295-A, P.P.C. unless the complaint was made by the order of or under authority from Central or Provincial Government or some officer empowered in that behalf by either of the two governments, but there was no requirement under the said Section for taking cognizance of the offence under Section 295-C of P.P.C.. Besides, it was contended by the learned counsel for the petitioner that as per Section 156-A of Cr.P.C., in a case involving the commission of offence under Section 295-C P.P.C., no officer below the rank of a Superintendent of Police is authorized to investigate in to the matter. In the instant case, as is evident from its statement, the investigation was entrusted to Muhammad Arshad, S.I. (PW-7), who recorded the statement of witnesses under Section 161 of Cr.P.C., prepared the site plan and also arrested the accused. Therefore, a violation of Section 156-A of Cr.P.C had been committed. In this regard it is to be noted that though initially the investigation was assigned to a Sub-Inspector, but later on vide letter dated 26.6.2009 the same (investigation) was transferred to one Muhammad

Amin Bukhari, SP (Investigation), Sheikupura who completed the same, therefore, the defect, if any, stood cured.

26. It has been advocated by the respondent's side that the appellant has committed a heinous offence which has offended the feelings of Muslims; therefore, she does not deserve any leniency by this Court. The explanation given to the court pertaining to the delay of 5 days in lodging of the FIR was said to be based on the significance and the gravity of the situation. The allegations made were of serious nature which required a proper scrutiny and had to be first verified by the complainant himself after which the matter was reported to the Police. Both the eye-witnesses, in whose presence the derogatory remarks were passed by the appellant, have not been cross-examined on the decisive and pivotal aspect of the case i.e. blasphemy. Therefore, the learned trial court has rightly convicted and sentenced the appellant.

27. Heard the learned counsel for the appellant, the learned Additional Prosecutor General as well as the learned counsel for the complainant and the record has been perused with their able assistance.

28. The entirety of the prosecution case revolved around the statement of two ladies, namely, Mafia Bibi (PW.2) and Asma Bibi (PW.3) and the extra-judicial confession of appellant. The said (PW's) stated that the appellant, in the presence of other Muslim ladies, passed derogatory remarks against the Prophet Muhammad . It is pertinent to mention here that admittedly, as is evident from the contents of the FIR and also the statements of the witnesses, there were 25-30 ladies present at the spot when the appellant allegedly passed blasphemous remarks against the Prophet Muhammad , however, none of the other ladies except Mafia Bibi (PW.2) and Asma Bibi (PW.3) reported the matter to anyone. At this stage, it is to be noted that the said ladies did not appear before the Court to support the prosecution case. One of the other ladies, i.e. Yasmin Bibi (given up PW), though was initially included in the list of witnesses, yet was not produced in the witness box and was given up. This creates doubt regarding the prosecution story, however, a thorough analysis of the statements of all the essential witnesses is required in order to reach towards a just and proper conclusion, which shall be made at the later stage. Whereas, as is apparent from the statement of the appellant recorded under Section 342 Cr.P.C., she negated the allegations in the following terms: -

> "I am a married woman having two daughters. My husband is a poor labourer. I used to pluck Falsa from the fields of Muhammad Idrees along with a number of other ladies on the basis of daily wages. On the alleged day of occurrence, I along with number of ladies were working in the fields. Both the ladies Mst. Mafia Bibi and Mst. Asma Bibi PWs quarreled with me over fetching water which was offered by me to bring for them, but they refused saying that since I am Christian, they will never take water from my hand. Over this the quarrel ensued and some hot words were exchanged between me and the PWs ladies. The PWs then approached Qari Saalam complainant through his wife who remained teaching the both ladies, hence, the PWs were conspiring with Qari Saalam got a false, fabricated and fictitious case against me. I offered my oath to police on Bible that I had never passed such

derogatory and shameful remarks against the Holy Prophet (PBUH) and the Holy Quran. I have great respect and honour to the Holy Prophet (PBUH) as well as Holy Quran and since police had conspired with the complainant, so, the police have falsely booked me in this case. The PWs are real sisters and interested to unfaithfully involve me in this case as they both felt disgrace and dishonour on the basis of altercation and hard words extended to them. Qari Saalam, the complainant is also an interested person and both the ladies remained teaching Holy Quran from his wife. My forefathers are living in this village since the creation of Pakistan. I am also about 40 years old and since the alleged occurrence, no complaint of such nature has ever accrued. I am a Christian and I live in the village, so, being ignorant of any Islamic thought, how can I use such clumsy and derogatory remarks against the beloved Prophet (PBUH) of Allah and the Divine book viz. Holy Quran. (PW) Idrees is also an interested witness who has close family links with their above said ladies."

29. There is no denial of the fact that the FIR was registered with a delay of 5 days. The only explanation given by the complainant for such an inordinate delay is that the occurrence took place on 14.6.2009 but the same was brought to his knowledge by Mafia Bibi (PW.2), Asma Bibi (PW.3) and Yasmin Bibi (given up PW) on 16.6.2009; during the period from 16.6.2009 to 19.6.2009 he as well as other people of the area kept on investigating the matter and after being satisfied that the occurrence had taken place, they reported the matter to the police for registration of the FIR. In this regard reference has been made by the learned counsel for the complainant on the judgments of this Court reported as Zar Bahadar v. The State (1978 SCMR 136) and Sheraz Asghar v. The State (1995 SCMR 1365) to contend that the delay in registration of a FIR is not per se fatal in all the cases as it never washes away nor torpedoes trustworthy and reliable ocular and circumstantial evidence. There is no cavil to the proposition, however, it is to be noted that in absence of any plausible explanation, this Court has always considered the delay in lodging of FIR to be fatal and castes a suspicion on the prosecution story, extending the benefit of doubt to the accused. It has been held by this Court that a FIR is always treated as a cornerstone of the prosecution case to establish guilt against those involved in a crime; thus, it has a significant role to play. If there is any delay in lodging of a FIR and commencement of investigation, it gives rise to a doubt, which, of course, cannot be extended to anyone else except to the accused. Furthermore, FIR lodged after conducting an inquiry loses its evidentiary value. [see: Iftikhar Hussain and others v. The State (2004 SCMR 1185)]. Reliance in this behalf may also be made to the case titled as Zeeshan @ Shani v. The State (2012 SCMR 428) wherein it was held that delay of more than one hour in lodging the FIR give rise to the inference that occurrence did not take place in the manner projected by prosecution and time was consumed in making effort to give a coherent attire to prosecution case, which hardly proved successful. Such a delay is even more fatal when the police station, besides being connected with the scene of occurrence through a metaled road, was at a distance of 11 kilometers from the latter. In the case titled as Noor Muhammad v. The State (2010 SCMR 97) it was held that when the prosecution could not furnish any plausible explanation for the delay of twelve hours in lodging the FIR, which time appeared

to have been spent in consultation and preparation of the case, the same was fatal to the prosecution case. In the case titled as Muhammad Fiaz Khan v. Ajmer Khan (2010 SCMR 105) it was held that when complaint is filed after a considerable delay, which was not explained by complainant then in such situation it raises suspicion as to its truthfulness. Thus, we are of the view that in the facts and circumstances of the case, the explanation given by the prosecution is not plausible. Another important aspect of the matter is that the complainant (PW-1) in his statement admitted that the application for registration of FIR was drafted by an Advocate; however, he could not mention his name. This also cast doubt on the truthfulness of the story narrated in the FIR.

30. Further to that, there were many discrepancies/inconsistencies in the statements of the PWs; inasmuch as, the variations made by Mafia Bibi (PW.2) from her earlier statement recorded under Section 161 Cr.P.C. and when got confronted to her are: firstly, during her cross-examination she stated that there were more than 1000 people at the time of public gathering but this was not mentioned in her previous statement, secondly, during her cross-examination she stated that the public gathering took place at the house of her father but it was not mentioned in her previous statement, thirdly, during her cross-examination she stated that many Ulemas were present at the public gathering but this was not mentioned in her previous statement. Likewise, Asma Bibi (PW.3) also deviated from her earlier statement recorded under Section 161 Cr.P.C. which are: firstly, during her cross-examination she stated that the public gathering took place at the house of her neighbour Rana Razzaq, but this was not mentioned in her previous statement, secondly, during her cross-examination she stated that there were more than 2000 people at the time of public gathering but this was not mentioned in her previous statement. Muhammad Afzal (PW.4) also made deviations from his earlier statement recorded under Section 161 Cr.P.C. which were confronted to him are: firstly, in his examination-in-chief he stated that he was present in his house when PW ladies along with the complainant and Mukhtar Ahmed came there and narrated the whole occurrence to him, but it was not mentioned previously; secondly, during his examination-in-chief he stated that the public gathering took place at the house of Mukhtar Ahmed, but this was not mentioned in his previous statement; thirdly, during his examination-in-chief he stated that the appellant was brought to the public gathering, but it was not mentioned in his previous statement. Qari Muhammad Salaam (complainant/PW.1) also transformed his earlier complaint submitted before the police for the registration of the FIR: firstly, during his examination-in-chief he stated that he was present in the village when Mafia Bibi (PW.2), Asma Bibi (PW.3) and Yasmin Bibi (given up PW) came to him and informed him of the occurrence, at that time Muhammad Afzal and Muhammad Mukhtar were also present there, however, in his complaint he stated that Mafia Bibi (PW.2), Asma Bibi (PW.3) and Yasmin Bibi (given up PW) and others informed him of the occurrence as well as informing the other people of the village; secondly, he further stated that the public gathering took place at the house of Mukhtar Ahmed, but this was not mentioned in his complaint; thirdly, he stated that the appellant was brought to the public gathering, but it was not mentioned in his

complaint. Thus, such inconsistent statements undermine the evidence of the prosecution.

31. These material contradictions and inconsistent statements of the witnesses are tantamount to cast further doubts on the coherence of the evidence pertaining to the questions set out below; -

a) Who informed the complainant about the occurrence of such;

b) Who was present at the time of disclosure regarding the allegation made against the appellant;

c) How many people were present at the time of the public gathering;

d) Where did the public gathering took place;

e) What was the distance between the place of the public gathering and the house of the appellant; and

f) How and who brought the appellant to the public gathering;

32. With regards to the first two issues, i.e. who informed the complainant about the occurrence and who was present at the time of such disclosure, it is to be noted that in the FIR, it has been vaguely mentioned that Asma Bibi (PW.3), Mafia Bibi (PW.2) and Yasmin Bibi (given up PW) brought the alleged occurrence to the notice of the complainant and other villagers. Whereas, Mafia Bibi (PW.2) in her examination-in-chief stated that she narrated the whole story to Qari Muhammad Salaam (complainant/PW.1) and others, however, during her cross-examination, she categorically mentioned that the matter was reported to Qari Muhammad Salaam (complainant/PW.1) by her sister Asma Bibi (PW.3) who was a student of complainant's wife on the evening of the same day i.e. 14.6.2009. Asma Bibi (PW.3) in her examination-in-chief stated that she along with other PWs informed Qari Muhammad Salaam (complainant/PW.1) of the matter, and Muhammad Afzal and Mukhtar were also present there. Muhammad Afzal (PW.4) in his examination-in-chief stated that he was present in his house when Mafia Bibi (PW.2), Asma Bibi (PW.3) and Yasmin Bibi (given up PW) along with Qari Muhammad Salaam (complainant) and Mukhtar Ahmed came there and narrated the whole occurrence to him. Qari Muhammad Salaam (complainant/PW.1) in his examination-in-chief stated that he was present in his village when Asma Bibi (PW.3), Mafia Bibi (PW.2) and Yasmin Bibi (given up PW) came to him and informed him about the incident; at that time Muhammad Afzal and Muhammad Mukhtar were also present there along with other villagers. Thus, the witnesses while giving their statements were not consistent in this regard.

33. Dealing with the question, as to how many persons were present at the time of the public gathering, it is to be noted that PW-1 stated that the public gathering was held in a house consisting of 5 Marla and about 100 people were present there; however, PW.2 stated that more than 1000 people were present in the public gathering; whereas, PW.3 stated that more than 2000 people were present; yet,

PW.4 narrated that there may be more than 200-250 persons were present in the public gathering. Thus, the witnesses are also not consistent in this regard.

34. Pertaining to the question as to where the public gathering took place, it is to be noted that the complainant (PW.1) stated in his cross-examination that the public gathering was held at Mukhtar Ahmed's house, while PW.2 stated in her cross-examination that the public gathering was held at her father's, Abdul Sattar's house, whereas, PW.3 stated in her cross-examination that the public gathering was held at Rana Razzaq's house, however, PW.4 stated in his examination-in-chief that the public gathering was held at Mukhtar Ahmed's house. Yet another name was put forth in this regard by CW-1, who in his cross-examination stated that the public gathering was held at the Dera of Haji Ali Ahmed. Thus, on this issue too, there are material contradictions between the statements given by the witnesses.

35. Regarding the issue of the distance between the place of the public gathering and the house of the appellant, it is to be noted that PW.2 did not mention anything in this regard, whereas, PW.3 stated in her cross-examination that the house of the appellant was three houses away from the place of the public gathering. However, PW.4 stated in his cross-examination that the house of the appellant was at a distance of 200/250 yards from the place of the public gathering, while the complainant (PW.1) did not disclose the distance between the house of the appellant and the place of public gathering, nevertheless, according to CW-1 the house of the appellant was in front of the Dera where the public gathering took place. Thus, there are material contradictions between the witnesses on this issue as well.

36. With regard to the issues that who had brought the appellant to the public gathering and how did she got there, it is to be noted that PW.2 stated that she did not remember who brought the appellant to the public gathering but it was a resident of her village, whereas, PW.3 stated that the appellant was called to the public gathering by the people of the village and was brought on foot and the people who called her were also on foot. However, PW.4 stated that Mushtaq Ahmed brought the appellant to the public gathering, while the complainant (PW.1) stated that the people of the village went to the house of the appellant and took her from there to the public gathering on two motorcycles, Mudassar was one of those people. Thus, on this issue too there are material contradictions between the witnesses.

37. The witnesses were also not in consonance regarding the time and duration of the public gathering. PW-2 stated that it took place on Friday at 12 noon and lasted for 15/20 minutes; PW-3 stated that the public gathering took place at 12 noon and lasted for 15 minutes; PW-4 stated that the public gathering took place at 11/12 noon and lasted for 2/ 2 hours; whereas, complainant (PW-1) did not mention the time and duration of the gathering. Thus, there are further material contradiction between the witnesses.

38. A further conflict also prevails between the other PWs and the complainant. Other PWs stated that the matter was brought to the notice of complainant on the

same day i.e. 14.6.2009; however, the complainant during his cross-examination stated that he was informed of the occurrence on 16.6.2009.

39. There is yet another material contradiction regarding the submission of the application to the police and registration of the FIR. At the bottom of the FIR the place of registration of the FIR has been mentioned that the FIR was registered by Mehdi Hassan, SI at "bridge canal Chandar Cot" and the time of registration is given as "5:45 pm". Conversely, the complainant (PW-1) in his statement has mentioned that the FIR was registered by delivering the application to the SHO concerned. However, Muhammad Rizwan, SI (PW-5) stated that the complainant presented before him the complaint (Exh.PA) upon which he formally registered the FIR (Exh.PA/1).

40. With regard to the arrest of the accused, further contradictions exist in the statement of Muhammad Arshad, SI (PW-7); inasmuch as, he (PW-7) stated in his examination-in-chief that the accused was arrested by him with the help of two lady constables, presented to the Judicial Magistrate and sent to judicial lockup. It was then stated in the cross-examination that the accused was arrested by him on 19.6.2009 from her house situated at Village Ittanwali at about 4/5 p.m., however, at a subsequent point of time it was stated by him that he reached the Village Ittanwali at about 7 p.m. and remained there for one hour. Furthermore, PW-2 and PW-3 in their statements, categorically denied the fact that an altercation/quarrel took place between the appellant and them on the fetching of water immediately before the passing of the alleged blasphemous remarks by the appellant. Whereas, PW-6 and as well as CW-1 admitted in their statements that an altercation/quarrel took place between them, thus the factum of quarrel is proved from the record. The prosecution did not declare PW-6 as a hostile witness. In this eventuality, the said PWs could not be termed as truthful witnesses and the death sentence could not be inflicted on the testimony of such eye-witnesses, which even otherwise are interested witnesses.

41. All these contradictions are sufficient to cast a shadow of doubt on the prosecution's version of facts, which itself entitles the appellant to the right of benefit of the doubt. It is a well settled principle of law that for the accused to be afforded this right of the benefit of the doubt, it is not necessary that there should be many circumstances creating uncertainty. If a single circumstance creates reasonable doubt in a prudent mind about the apprehension of guilt of an accused, then he/she shall be entitled to such benefit not as a matter of grace and concession, but as of right. Reference in this regard may be made to the cases of Tariq Pervaiz v. The State (1995 SCMR 1345) and Ayub Masih v. The State (PLD 2002 SC 1048). Thus, it is held that the appellant is entitled to the benefit of the doubt as a right.

42. There is also an another facet pertaining to this matter. The learned Trial Court had relied upon the evidence of the witnesses regarding the extra-judicial confession to convict the appellant. The learned High Court has disregarded the extra-judicial confession for the reason that the evidence of extra-judicial confession furnished by the witnesses, i.e. Qari Muhammad Salaam (PW.1), Muhammad Afzal (PW.4) as well as Muhammad Idrees (CW.1), to the extent of confessing the guilt in a public gathering, cannot be termed as an extra-judicial

confession because no time, date and manner of commission of offence was given and further, no circumstances under which the appellant had allegedly committed the offence, have been narrated in the alleged confessional statement. In this regard it is to be noted that this Court has repeatedly held that evidence of extra-judicial confession is a fragile piece of evidence and utmost care and caution has to be exercised in placing reliance on such a confession. It is always looked at with doubt and suspicion due to the ease with which it may be concocted. The legal worth of the extra judicial confession is almost equal to naught, keeping in view the natural course of events, human behaviour, conduct and probabilities, in ordinary course. It could be taken as corroborative of the charge if it, in the first instance, rings true and then finds support from other evidence of unimpeachable character. If the other evidence lacks such attribute, it has to be excluded from consideration. Reliance in this behalf may be made to the cases of Nasir Javaid v. State (2016 SCMR 1144), Azeem Khan and another v. Mujahid Khan and others (2016 SCMR 274), Imran alias Dully v. The State (2015 SCMR 155), Hamid Nadeem v. The State (2011 SCMR 1233), Muhammad Aslam v. Sabir Hussain (2009 SCMR 985), Sajid Mumtaz and others v. Basharat and others (2006 SCMR 231), Ziaul Rehman v. The State (2000 SCMR 528) and Sarfraz Khan v. The State and 2 others (1996 SCMR 188).

43. Furthermore, as per Article 37 of the Qanun-e-Shahadat Order, 1984, "A confession made by an accused person is irrelevant in a criminal proceeding, if the making of the confession appears to the Court that it has been caused by any inducement, threat or promise having reference to the charge against the accused person, proceeding from a person in authority and sufficient, in the opinion of the Court, to give the accused person grounds which would appear to him reasonable, for supposing that by making it he would gain any advantage or avoid any evil of a temporal nature in reference to the proceedings against him".

44. In this very instant case, the appellant was brought to a gathering of potentially hundreds of people, she was alone at the time, tensions were running high, and it was an intimidating environment, the appellant may well have felt threatened and vulnerable; thus, the alleged extra-judicial confession made by the appellant, even if presumed to have been made by her before such public gathering, cannot be termed as a voluntary action and nor it can be relied upon to form the basis of a conviction, especially for capital punishment.

45. Learned High Court while maintaining the conviction of the appellant has relied upon the testimony of the witness for the reasons that (a) the presence of the eye-witnesses and the appellant at the relevant time in the field of 'Falsa' is not denied (b) the witnesses have not been cross-examined by the defence qua the offence of blasphemy alleged against the appellant and (c) the defence could not point out or even suggest any previous enmity, ill will or ulterior motive of the eye-witnesses against the appellant to falsely implicate her in the case of such a heinous nature and (d) the testimony of (CW.l), Muhammad Idrees, who was also present in

the field at the relevant time, provides strong corroboration to the evidence furnished by the eye-witnesses.

46. In this regard it is important to note that this Court has held that the principle, namely, the part of the statement which remains un-rebutted amounts to admission, does not attract in criminal cases. In criminal cases, the burden to prove the guilt of the accused rests heavily upon the prosecution, who has to prove its case beyond any shadow of doubt. Reliance in this behalf may be made to judgments of this Court reported as Nadeem Ramzan v. the State (2018 SCMR 149), S. Mahmood Aslam Shah v. the State (PLD 1987 SC 250) and State v. Rab Nawaz and another (PLD 1974 SC 87). Thus, the learned High Court has erred in law while deciding this aspect of the matter.

47. Besides, both the eye-witnesses were specifically cross-examined with regards to the altercation which took place in the said field; inasmuch as, when a specific question was put to Mafia Bibi (PW.2), in her reply she stated that "It is incorrect to suggest that I recorded my statement against the accused Asia Bibi due to the quarrel which took place between me and Asia Bibi during the plucking of Falsa on the same day". The allegation of blasphemy was also rebutted by the defence which is evident from the answer given by her (PW.2) namely, "It is further incorrect to suggest that I have deposed falsely today and listened nothing". Likewise, a similar suggestion was also put to Asma Bibi (PW.3) who in response whereof stated that "It is incorrect to suggest that on the day of occurrence, a quarrel took place between me and the accused Mst. Asia Bibi in the said garden on the issue of drinking water. It is also incorrect to suggest that I am deposing falsely today due to the grudge of the quarrel which took place between me and the accused Mst. Asia Bibi." With regard to the allegation of blasphemy, a question was put to the said witness (PW.3) who replied that "It is further incorrect to suggest that I am deposing falsely, and nothing has been heard directly by the mouth of the accused Mst. Asia Bibi". However, Muhammad Idrees (CW.l) in his examination-in-chief admitted the factum of a quarrel between the appellant and the eye-witnesses as is evident from his statement which states "This led to a quarrel between them. I was also intimated about this quarrel." In his cross-examination, he admitted that "I was at a distance of 2/3 Killa away when I came to know about the occurrence. I confirmed about the facts. when I came at the spot, I only came to know that there has been a disagreement between the accused and PWs which has resulted due to the fetching of water." Thus, there is no denial about the factum of the argument over the fetching of water between the appellant and eye-witnesses before the alleged commission of crime. The mere presence of the appellant as well as the witnesses at the place of alleged occurrence alone is not sufficient to prove the occurrence of the offence. The defence has not contested the matter on the basis that the appellant was not present in the field, rather it has taken the plea that the appellant and witnesses were present in the field in question when the altercation took place between them, and in that resentment the witnesses had falsely implicated her (the appellant) with the help and support of the complainant. Astonishingly, 25-30 ladies were present at the spot but none of them except Yasmin Bibi (given up PW) supported the prosecution version before the complainant, and she too did not opt to appear in the witness-box to depose against

the appellant. Even CW.1 has not heard the words constituting the crime of blasphemy. All this creates doubt regarding the prosecution story. Moreover, the factum of inordinate delay of 5 days in the registration of FIR further casts a serious dent on the prosecution story.

48. It is a well settled principle of law that one who makes an assertion has to prove it. Thus, the onus rests on the prosecution to prove guilt of the accused beyond reasonable doubt throughout the trial. Presumption of innocence remains throughout the case until such time the prosecution on the evidence satisfies the Court beyond reasonable doubt that the accused is guilty of the offence alleged against him. There cannot be a fair trial, which is itself the primary purpose of criminal jurisprudence, if the judges have not been able to clearly elucidate the rudimentary concept of standard of proof that prosecution must meet in order to obtain a conviction. Two concepts i.e., "proof beyond reasonable doubt" and "presumption of innocence" are so closely linked together that the same must be presented as one unit. If the presumption of innocence is a golden thread to criminal jurisprudence, then proof beyond reasonable doubt is silver, and these two threads are forever intertwined in the fabric of criminal justice system. As such, the expression "proof beyond reasonable doubt" is of fundamental importance to the criminal justice: it is one of the principles which seeks to ensure that no innocent person is convicted. Where there is any doubt in the prosecution story, benefit should be given to the accused, which is quite consistent with the safe administration of criminal justice. Further, suspicion howsoever grave or strong can never be a proper substitute for the standard of proof required in a criminal case, i.e. beyond reasonable doubt. In the presence of enmity between the accused and the complainant/witnesses, usually a strict standard of proof is applied for determining the innocence or guilt of the accused. If the PWs are found inimical towards the accused, she deserves acquittal on the principle of the benefit of the doubt. Keeping in mind the evidence produced by the prosecution against the alleged blasphemy committed by the appellant, the prosecution has categorically failed to prove its case beyond reasonable doubt. Reliance in this behalf may be made to the cases reported as Muhammad Ashraf v. The State (2016 SCMR 1617), Muhammad Jamshaid v. The State (2016 SCMR 1019), Muhammad Asghar alias Nannah v. The State (2010 SCMR 1706), Noor Muhammad alias Noora v. The State (1992 SCMR 2079) and Ayub Masih v. The State (PLD 2002 SC 1048).

49. I will end this Judgement on a Hadith of our beloved Prophet Muhammad .

> "Beware! Whoever is cruel and hard on a non-Muslim minority, or curtails their rights, or burdens them with more than they can bear, or takes anything from them against their free will; I (Prophet Muhammad) will complain against the person on the Day of Judgment." (Abu Dawud)

50. For the foregoing reasons, this appeal is allowed. The judgments of the High Court as well as the Trial Court are reversed. Consequently, the conviction as also the sentence of death awarded to the appellant is set aside and she is acquitted of

the charge. She be released from jail forthwith, if not required in any other criminal case.

(Sd)
MIAN SAQIB NISAR,
CHIEF JUSTICE

I agree and have appended a separate concurring opinion.
(Sd)
ASIF SAEED KHAN KHOSA
JUDGE

(Sd)
MAZHAR ALAM KHAN MIANKHEL,
JUDGE

ASIF SAEED KHAN KHOSA, J.---I have had the privilege of perusing the proposed judgment authored by my lord the Hon'ble Chief Justice and I agree with the reasons recorded and the conclusions reached therein. However, because of some important legal and factual issues involved in the case I have decided to record this separate concurring opinion.

2. Mst. Asia Bibi appellant had allegedly made some derogatory remarks against the Holy Prophet Muhammad (Peace Be Upon Him) and the Holy Qur'an on 14.06.2009 in the presence of some of her Muslim female co-workers while plucking Falsa (a kind of berry also known as grewia asiatica) in the field of one Muhammad Idrees in village Ittanwali in the area of Police Station Sadar, Nankana Sahib and for that alleged commission of the offence of blasphemy under section 295-C of the Pakistan Penal Code, 1860 (P.P.C.) she was booked in case FIR No. 326 registered at the said Police Station on 19.06.2009 at the instance of Qari Muhammad Salaam complainant, an Imam of the local mosque. It was alleged that the appellant had stated something to the effect that the Holy Prophet Muhammad (Peace Be Upon Him) had fallen ill and was bedridden for one month before his death, insects had emerged from his mouth and ear, he had got married to Hazrat Khadija (May Almighty Allah Be Pleased With Her) with the intention to loot her wealth and after looting her wealth he had discarded her. It was also alleged that on the same occasion the appellant had also uttered words to the effect that the Holy Qur'an was not a book of God and it was not a divine book but a self-made book. The appellant was arrested by the local police on 19.06.2009 soon after registration of the FIR and upon completion of the investigation a Challan was submitted before the trial court recommending her trial. The trial court framed a Charge against the appellant for an offence under section 295-C, P.P.C. to which she pleaded not guilty and claimed a trial. During the trial the prosecution produced seven witnesses in support of its case against the appellant and produced some documents and statement of a Court Witness was also recorded by the trial court. In her statement recorded under section 342 of the Code of Criminal Procedure, 1898 (Cr.P.C.) the appellant denied and controverted all the allegations of fact levelled against her by the prosecution and professed her innocence. She opted not to make a statement on oath under section 340(2), Cr.P.C. and did not produce any evidence in her defence. Upon completion of the trial and after hearing of arguments of the learned counsel for the parties the learned Additional Sessions Judge, Nankana Sahib trying the

case convicted the appellant for the offence under section 295-C, P.P.C. vide judgment dated 08.11.2010 and sentenced her to death and to pay a fine of Rs.1,00,000/- or in default of payment thereof to undergo simple imprisonment for a period of six months. The appellant challenged her conviction and sentence before the Lahore High Court, Lahore through Criminal Appeal No.2509 of 2010 which was heard by a learned Division Bench of the said Court along with Murder Reference No.614 of 2010 seeking confirmation of the sentence of death passed by the trial court against the appellant and vide judgment dated 16.10.2014 the appellant's appeal was dismissed, her conviction and sentence recorded by the trial court were upheld and confirmed and the Murder Reference was answered in the affirmative. Hence, the present appeal by leave of this Court granted on 22.07.2015.

3. Leave to appeal had been granted by this Court in order to reappraise the evidence and we have undertaken that exercise by perusing the record of the case from cover to cover with the assistance of the learned counsel for the parties. We have also carefully heard and considered the arguments advanced by the learned counsel for the parties.

4. It has been argued by the learned counsel for the appellant that an FIR in respect of the alleged occurrence had been lodged by Qari Muhammad Salaam complainant (PW1) with a delay of five days and it had been admitted by the complainant before the trial court that before lodging of the FIR deliberations had taken place amongst the members of the complainant party which delay and deliberations had denuded the FIR of its evidentiary value, as held by this Court in the case of Iftikhar Hussain and others v.The State (2004 SCMR 1185). He has also argued that the prosecution witnesses had differed with each other over the place where the FIR had been lodged and the Advocate who had drafted the application for registration of the FIR had never been named. He has further argued that two independent prosecution witnesses had confirmed that a quarrel had taken place between the appellant and the ladies belonging to the complainant party before the offending words had allegedly been uttered by the appellant but the prosecution witnesses belonging to the interested complainant party had completely suppressed such an important fact. It has also been argued by him that no independent corroboration was available confirming the allegations levelled against the appellant by the crucial prosecution witnesses appearing before the trial court, i.e. Mafia Bibi (PW2) and Asma Bibi PW3). According to him the investigation of this case was conducted by an officer who was not competent to investigate this case as required by section 156-A, Cr.P.C. and in support of this contention he has relied upon the cases of Shaukat Ali v.The State and others (2008 SCMR 553), Amjad Farooq and another v. The State (2007 P.CrLJ 238) and Malik Muhammad Mumtaz Qadri v. The State and others (PLD 2016 SC 17). He has also submitted that it was alleged in the FIR that the appellant was a preacher of Christian faith which formed the motive in this case but no such assertion was made before the trial court by any prosecution witness during the trial. He has pointed out that none of the other female co-workers of the appellant working in the same field of Falsa was produced by the prosecution in support of its case against the appellant and, thus, the best evidence had been withheld by the prosecution and on account of such failure of the prosecution an adverse inference is to be drawn against it. With these arguments

the learned counsel for the appellant has maintained that the case of the prosecution against the appellant was full of serious doubts and the benefit of such doubts ought to be extended to her.

5. As against that the learned Additional Prosecutor-General, Punjab appearing for the State has maintained that investigation of a case by a police officer not competent to investigate such case does not vitiate the investigation and in support of this argument he has referred to the provisions of section 156(2), Cr.P.C. He has submitted that the statements made before the trial court by Mafia Bibi (PW2) and Asma Bibi (PW3) were quite consistent and their statements had found sufficient support from the statements made by Muhammad Idrees (CW1) and Muhammad Amin Bukhari, SP (Investigation) (PW6). It has, thus, been maintained by him that the prosecution had succeeded in proving its case against the appellant beyond reasonable doubt.

6. While opposing this appeal and supporting the appellant's conviction and sentence recorded and upheld by the courts below the learned counsel for the complainant has argued that delay in lodging of an FIR is not always fatal to a criminal case and in the present case the delay stood sufficiently explained by the prosecution. He has relied in this regard upon the cases of Zar Bahadar v.The State (1978 SCMR 136) and Sheraz Asghar v. The State (1995 SCMR 1365). He has also argued that both the courts below had concurred in their findings and had found the appellant guilty as charged and such concurrent findings of the courts below are not be interfered with lightly. He has pointed out that in her statement recorded under section 342, Cr.P.C. the appellant had not disputed her presence in the relevant field of Falsa at the date and time of occurrence and she had also admitted having some verbal interaction with her female co-workers, including Mafia Bibi (PW2) and Asma Bibi (PW3), on that occasion and no suggestion was made to those witnesses during their cross-examination that the allegations levelled by them regarding commission of blasphemy by the appellant were incorrect. According to the learned counsel for the complainant an assertion of fact by a witness is deemed to have been admitted by the opposite party if the witness is not controverted regarding such assertion through a suggestion during his cross-examination. He has also submitted that the appellant had made multiple extra-judicial confessions about her guilt before different prosecution witnesses who had consistently deposed about the same before the trial court. In the end he has argued that the prosecution witnesses had no ostensible reason to falsely implicate the appellant in a case of this nature, their consistent statements had inspired confidence of the courts below and, therefore, the appellant's conviction and sentence recorded and upheld by the courts below do not warrant any interference by this Court.

7. After hearing the learned counsel for the parties and going through the record of the case with their assistance I have observed that the prosecution had produced seven witnesses in support of its case agaist the appellant. Qari Muhammad Salaam complainant had appeared before the trial court as PW1 and had deposed about having been informed about the incident by three ladies, holding of a public gathering on 19.06.2009 wherein the appellant had allegedly confessed her guilt and had asked for forgiveness and lodging of the FIR by him on 19.06.2009. Mafia Bibi (PW2) had deposed about the incident taking place in the field of Falsa on

14.06.2009, informing the complainant about that incident and holding of a public gathering on 19.06.2009 wherein the appellant had allegedly made a confession and had sought pardon. Asma Bibi (PW3) had also made a statement regarding the same events which were stated by Mafia Bibi (PW2). Muhammad Afzal (PW4) had stated about having been informed by Qari Muhammad Salaam complainant (PW1), Mafia Bibi (PW2) and Asma Bibi (PW3) about the blasphemy allegedly committed by the appellant and holding of a public gathering on 19.06.2009 wherein the appellant had allegedly admitted her guilt and had sought forgiveness. Muhammad Rizwan, SI (PW5) had recorded the formal FIR at the Police Station. Muhammad Amin Bukhari, SP (Investigation) had appeared as PW6 and had stated about the investigation of this case conducted by him. Muhammad Arshad, SI (PW7) was the initial investigating officer of this case and he had stated about inspecting the place of occurrence on 19.06.2009, recording of statements of witnesses, arresting the appellant, obtaining her judicial remand from a Magistrate and sending her to the judicial lock-up. Some documents were also produced by the prosecution before the trial court in support of its case. The trial court summoned and recorded the statement of Muhammad Idrees as CW1 who claimed to be the owner of the Falsa field wherein the occurrence had allegedly taken place and he also stated about the appellant confessing her guilt before him on 14.06.2009, the complainant being informed about the incident, holding of a public gathering on 19.06.2009 and the appellant allegedly confessing her guilt before that gathering and also before the investigating officer on that day. In her statement recorded under section 342, Cr.P.C. while answering a question as to why the present case was registered against her and as to why the prosecution witnesses had deposed against her the appellant had stated as follows:

> I am married woman having two daughters. My husband is a poor labourer. I used to pluck Falsa from the plants of Muhammad Idrees along with number of ladies on the daily wages basis. On the alleged day of occurrence, I along with number of ladies were working in the fields. Both the ladies Mst. Mafia Bibi and Mst. Asma Bibi PWs quarreled with me over fetching water which was offered by me to bring for them but they refused saying that since I am Christian, so, they never took water from the hand of Christian. Over this, quarrel was insued and some hot words were exchanged between myself and the PWs ladies. The PWs then approached Qari Salaam complainant through his wife who remained teaching the both ladies, hence, the PWs were conspiring with Qari Salaam got a false, fabricated and fictitious case against me. I offered my oath to police on Bible that I had never passed such derogatory and shameful remarks against the Holy Prophet (PBUH) and the Holy Quran. I have great respect and honour to the Holy Prophet (PBUH) as well Holy Quran and since police had conspired with the complainant, so, the police has falsely booked me in this case. The PWs are real sisters and interested to falsely involve me in this case as they felt disgrace and dishonor on the basis of altercation and hard words extended to them. Qari Salaam complainant is also interested person and both the ladies remained teaching Holy Quran from his wife. My forefathers are living in this village since creation of Pakistan. I am also about 40 years old and since the alleged occurrence, no complaint likewise this never exist against me. I am

uneducated and no priest of Christian. So much so there is no church of the Christian in the village, so, being ignorant of any Islamic thought, how can I use such clumsy and derogatory remarks against the beloved Prophet (PBUH) of Allah and the Divine book viz Holy Quran. PW Idrees is also a interested witness who has close family links with their above said ladies."

The appellant had opted not to make a statement on oath under section 340(2), Cr.P.C. and had not produced any evidence in her defence.

8. I now proceed to evaluate every piece of evidence produced by the prosecution in the sequence of events statedly unfolding in this case.

9. Mafia Bibi (PW2) and Asma Bibi (PW3) were produced by the prosecution as witnesses of the incident allegedly taking place in the field of Falsa on 14.06.2009. The said ladies were young girls and sisters inter se and were semi-literate who had statedly received some elementary religious education in their village from the wife of Qari Muhammad Salaam complainant (PW1). Those ladies had never stated as to who was addressed by the appellant at the time of uttering the derogatory remarks, they had never disclosed in whose field of Falsa the alleged incident had taken place and they had not themselves lodged any report about the same with the local police. It is of critical importance to mention here that the senior investigating officer of this case namely Muhammad Amin Bukhari, SP (Investigation) (PW6) as well as the owner of the relevant field of Falsa namely Muhammad Idrees (CW1) had categorically stated before the trial court that the derogatory words were uttered by the appellant when there was a religious discussion between the appellant and her Muslim co-workers in the field of Falsa after Mafia Bibi (PW2), Asma Bibi (PW3) and other Muslim co-workers had stated that they would not drink water from the hands of the appellant who was a Christian by faith. According to the said witnesses it was on the basis of the said stance of the appellant's Muslim co-workers that a "quarrel" had taken place and during the said quarrel the appellant had uttered the derogatory words against the Holy Prophet Muhammad (Peace Be Upon Him) and the Holy Qur'an. This shows that, according to the prosecution itself, the appellant had uttered the derogatory words attributed to her after the appellant's religion was insulted and her religious sensibilities had been injured by her Muslim co-workers including Mafia Bibi (PW2) and Asma Bibi (PW3). It is unfortunate that in the FIR lodged by Qari Muhammad Salaam complainant (PW1) and in their statements made before the police under section 161, Cr.P.C. no mention was made by Qari Muhammad Salaam complainant (PW1), Mafia Bibi (PW2) and Asma Bibi (PW3) regarding any such verbal exchange or quarrel. It is also disturbing to note that both Mafia Bibi (PW2) and Asma Bibi (PW3) had completely suppressed this factual aspect of the case in their examinations-in-chief before the trial court and when it was suggested to them by the defence during their cross-examination they simply denied any such verbal exchange and the ensuing quarrel. It is, thus, obvious that both Mafia Bibi (PW2) and Asma Bibi (PW3) had no regard for the truth and they were capable of deposing falsely and also that the said semi-literate young sisters had a reason to level allegations against the appellant which could be untrue. I propose to comment

on this aspect of the case from another angle as well in the later part of this opinion.

10. Muhammad Idrees had appeared before the trial court as CW1 and he had not been produced by the prosecution but was summoned by the trial court as a Court Witness. He claimed that he was the owner of the relevant field of Falsa, he had gone to his field of Falsa on 14.06.2009 and he was informed by Mafia Bibi (PW2) and Asma Bibi (PW3) at the spot about an altercation taking place between those ladies and the appellant whereafter the appellant had made a confession before him and had sought pardon. Muhammad Arshad, SI (PW7) had stated that the place of occurrence was the field of Falsa belonging to Muhammad Idrees (CW1) and Muhammad Amin Bukhari, S.P. (Investigation) (PW6) had stated that Muhammad Idrees (CW1) was attracted to the field and the ladies had narrated the matter to him whereafter he inquired from the appellant who confessed before him. I have, however, found that the story about Muhammad Idrees (CW1) being attracted to the spot, being apprised of the incident by Mafia Bibi (PW2) and Asma Bibi (PW3) and the appellant confessing before him and seeking pardon was a story which was completely new and in their depositions Mafia Bibi (PW2), Asma Bibi (PW3), Qari Muhammad Salaam complainant (PW1) and Muhammad Afzal (PW4) had not stated anything at all about Muhammad Idrees (CW1) coming to the spot, being apprised of the incident by Mafia Bibi (PW2) and Asma Bibi (PW3) and the appellant confessing before him and seeking pardon! It appears that Muhammad Idrees (CW1) was introduced in this case at some later stage by way of an afterthought. He had not joined the initial investigation of this case conducted by Muhammad Arshad, SI (PW7) and had not made any statement before him. It was the subsequent investigating officer namely Muhammad Amin Bukhari, SP (Investigation) (PW6) who had claimed that Muhammad Idrees (CW1) had appeared before him on 04.07.2009, i.e. after 20 days of the alleged occurrence and after 15 days of registration of the FIR. Such belated surfacing of the said witness was quite suspicious and in all likelihood he had been planted in this case at some subsequent stage. Apart from that the confession allegedly made by the appellant before Muhammad Idrees (CW1) was not put to the appellant at the time of recording of her statement under section 342, Cr.P.C. and the law is settled that a piece of evidence or a circumstance not put to the accused person at the time of recording of his statement under section 342, Cr.P.C. cannot be used or considered against him. The statement made by Muhammad Idrees (CW1) before the trial court is, therefore, to be kept completely out of consideration.

11. The next development allegedly taking place in this case was that Qari Muhammad Salaam complainant (PW1) was informed about the incident but the evidence brought on the record about that development was also not free from doubt. In the FIR lodged by him the complainant had stated that Mafia Bibi (PW2), Asma Bibi (PW3), Yasmin Bibi and some others had informed him and other people of the village about the incident but in the FIR he had not divulged as to when he was informed about the incident. In his examination-in-chief before the trial court the complainant had stated that he was informed by Mafia Bibi (PW2), Asma Bibi (PW3) and Yasmin Bibi on 14.06.2009 and on that occasion Muhammad Afzal (PW4) and Muhammad Mukhtar Ahmad were also present with him whose

presence with him had not been mentioned by him in the FIR. In his cross-examination the complainant had changed his stance and had stated that he was informed about the occurrence on 16.06.2009 (not on 14.06.2009 as stated by him in his examination-in-chief).

12. According to the prosecution the next person informed about the alleged incident was Muhammad Afzal (PW4) but where was he contacted for the purpose was also in doubt. Qari Muhammad Salaam complainant (PW1) had stated before the trial court that on 14.06.2009 Mafia Bibi (PW2), Asma Bibi (PW3) and Yasmin Bibi came to him and informed him about the incident and on that occasion Muhammad Afzal (PW4) and Muhammad Mukhtar Ahmad were also present with him. However, Muhammad Afzal (PW4) had maintained before the trial court that on 14.06.2009 Qari Muhammad Salaam complainant (PW1), Mafia Bibi (PW2), Asma Bibi (PW3), Yasmin Bibi and Muhammad Mukhtar Ahmad came to his house and narrated the occurrence to him.

13. According to the record of the case some steps had been taken by the complainant party before reporting the matter to the police but the ambivalence surrounding taking of such steps was quite noticeable. The alleged occurrence had taken place on 14.06.2009 and the matter was reported to the police on 19.06.2009, i.e. after five days. Qari Muhammad Salaam complainant (PW1) had initially stated before the trial court that he had been informed about the incident on 14.06.2009 but during the same testimony he had also stated that he had been apprised of the occurrence on 16.06.2009. He had stated before the trial court that between 16.06.2009 and 19.06.2009 he and the people of the village had "investigated and consulted and peeped into the matter" and the matter was reported to the police when they had felt satisfied about correctness of the allegations levelled against the appellant. Muhammad Idrees (CW1) had also stated that Qari Muhammad Salaam complainant (PW1) had verified the facts from him. It has pertinently been noticed by us that no detail of any such investigation, consultation or peeping into the matter by the complainant party or of verification by the complainant had been divulged before the trial court nor any evidence had been produced in that regard.

14. The next development allegedly taking place in this case was a public gathering convened and held on 19.06.2009 wherein the appellant was summoned and she had statedly made a confession and had sought pardon. I have found that the evidence produced by the prosecution in respect of the said public gathering and about what transpired therein was not only an afterthought but was nothing short of concoction incarnate. The said public gathering was allegedly held at about Noon on 19.06.2009 and an FIR in respect of the alleged commission of blasphemy by the appellant had been lodged by Qari Muhammad Salaam complainant (PW1) with the local police at 05.45 P.M. on the same day, i.e. 19.06.2009 but it is quite intriguing to note that in the FIR so lodged no mention whatsoever had been made to any public gathering convened or held earlier on the same day or to summoning of the appellant in any such public gathering, making of a confession by her and seeking pardon by her therein! All that was mentioned in the FIR was that on 19.06.2009 Qari Muhammad Salaam complainant (PW1), Muhammad Afzal (PW4) and Mukhtar Ahmad had summoned Asma Bibi (PW3), etc. and when the appellant was asked about the incident taking place on 14.06.2009 she confessed and sought

pardon. After lodging and registration of the FIR the initial investigating officer namely Muhammad Arshad, SI (PW7) had recorded the statements of Mafia Bibi (PW2), Asma Bibi (PW3) and Muhammad Afzal (PW4) under section 161, Cr.P.C. (Exhibits-DA, DB and DC respectively) on that very day and in those statements the said witnesses had also failed to mention anything about any public gathering convened and held on the same day, summoning of the appellant in such gathering, making of a confession by the appellant or seeking pardon by her therein!

15. The witnesses produced by the prosecution before the trial court in order to prove the convening and holding of the so-called public gathering on 19.06.2009 and summoning of the appellant to that gathering, making of a confession by her and seeking pardon by her therein were Qari Muhammad Salaam complainant (PW1) and Muhammad Afzal (PW4). The statements made by the said witnesses have, however, been found by me to be mutually contradictory besides having been contradicted by the remaining record of the case. Qari Muhammad Salaam complainant (PW1) had stated that a public gathering was called in the village on 19.06.2009 but he had failed to mention the time or specific place of its holding. He claimed that in that gathering the appellant had confessed her guilt before him. He had conceded that convening and holding of any public gathering on 19.06.2009 had not been mentioned by him in the FIR (Exhibit-PA) lodged by him later on the same day. He had maintained that in the public gathering the appellant had narrated the occurrence to him and then Mafia Bibi (PW2) and Yasmin Bibi had narrated the occurrence but in her statement made before the trial court Mafia Bibi (PW2) had not said anything about her presence in the public gathering and Yasmin Bibi was not produced by the prosecution before the trial and she had been given up as unnecessary. Although Mafia Bibi (PW2) had stated about a public gathering in her statement made before the trial court yet she had never claimed to be present in any such gathering and, thus, her statement in that regard was nothing but hearsay. She had stated that the public gathering was held after four days of the alleged occurrence which meant that either the public gathering was held on 18.06.2009 and not on 19.06.2009 or the alleged occurrence had taken place on 15.06.2009 and not on 14.06.2009. I have already mentioned above that in her statement made before the police under section 161, Cr.P.C. Mafia Bibi (PW2) had said nothing about any public gathering at all and she was duly confronted with that earlier statement. In her statement made before the trial court Asma Bibi (PW3) had stated about holding of a public gathering but she had failed to mention any date, time or place of holding of such gathering. In her examination-in-chief she had never claimed to be present in the public gathering but in her cross-examination she had stated that she and others had gone to attend the public gathering on their own. It has already been mentioned by me above that in her statement made before the police under section 161, Cr.P.C. Asma Bibi (PW3) had also said nothing about any public gathering at all and she was duly confronted with that earlier statement. Muhammad Afzal (PW4) had stated before the trial court about his presence in the public gathering and about summoning of the appellant to that gathering, making of confession by her in that gathering and her seeking pardon but he was confronted with his earlier statement made before the police under section 161, Cr.P.C. wherein he had said nothing at all about any such public gathering, summoning of the appellant to that gathering, making of confession by the appellant in that

gathering and her seeking pardon. Muhammad Idrees (CW1) had also stated before the trial court about the public gathering convened and held on 19.06.2009 and also about what transpired therein but he had admitted in black and white that he was not present in that gathering and he was told about the same by some other persons. His statement about the public gathering and whatever transpired therein was, thus, hit by the rule against hearsay evidence. It may, however, be pointed out that the said witness had maintained that the public gathering was held after two or three days of the alleged occurrence and not after five days as asserted by some other witnesses.

16. Apart from what has been discussed above the evidence produced by the prosecution about where the public gathering had been held, how many people had participated in that gathering, who had brought the appellant to the gathering, how the appellant was brought to the gathering and the time consumed in the meeting has been found by me to be replete with glaring contradictions exposing complete falsity of the said part of the prosecution's story. As regards the place of holding the public gathering Qari Muhammad Salaam complainant (PW1) had stated that the public gathering was held in the house of Muhammad Mukhtar Ahmad who was not produced by the prosecution and was given up as unnecessary. He had also stated that the total area of the house of the said Muhammad Mukhtar Ahmad was 5 Marlas. Mafia Bibi (PW2) had stated that the public gathering was held in the house of her father namely Abdul Sattar wherein she and her sister namely Asma Bibi (PW3) also resided. Asma Bibi (PW3) had stated in one breath that the public gathering was held in her house but in the other breath she had stated that the public gathering was held in the house of her neighbour namely Rana Razzaq. Muhammad Afzal (PW4) had maintained that the public gathering was held in the house of Muhammad Mukhtar Ahmad who had not been produced by the prosecution and had been given up as unnecessary. According to Muhammad Idrees (CW1) the public gathering was held at the Dera of Haji Ali Ahmad and not at any other place. The number of persons who had participated in the said public gathering was stated by Qari Muhammad Salaam complainant (PW1) to be about 100, Mafia Bibi (PW2) had given that figure as more than 1000 including many Ulema and Imams of mosques, according to Asma Bibi (PW3) the number of participants was about 2000 including people of nearby villages and according to Muhammad Afzal (PW4) more than 200/250 people were present in that gathering. Muhammad Idrees (CW1) had stated that many religious scholars were also present in the gathering but he did not know the names of the religious scholars who had participated. If, as stated by Qari Muhammad Salaam complainant (PW1), the total area of the house wherein the public gathering had been held was only 5 Marlas then hundreds or thousands of people could not conceivably fit into that very small house. The evidence produced by the prosecution regarding bringing the appellant to the public gathering was equally discrepant and utterly unreliable. According to Qari Muhammad Salaam complainant (PW1) some residents of the village including one Mudassir had gone on two motorcycles to the house of the appellant and had brought her with them to the public gathering. The said Mudassir was not produced by the prosecution as a witness. Asma Bibi (PW3) had stated that the house of the appellant was situated only three houses away from the place where the public gathering was held and that the appellant was brought there on foot and

she also went back on foot. Muhammad Afzal (PW4) had stated that the house of the appellant was situated 200/250 yards away from the house wherein the public gathering had been held and it was one Mushtaq Ahmad who had brought the appellant to the gathering. Later on during the same statement the said witness had maintained that Mushtaq Ahmad had brought the appellant from the field of Falsa. Muhammad Idrees (CW1) had stated that the appellant's house was situated in front of the Dera whereat the public gathering was held. According to Mafia Bibi (PW2) and Asma Bibi (PW3) the public gathering lasted for about 15/20 minutes but Muhammad Afzal (PW4) had deposed that the gathering had continued for two to two and a half hours. There was a general consensus among the prosecution witnesses that the public gathering was held on a Friday and it had commenced its proceedings around Noon time. If the proceedings had continued for two to two and a half hours then the participants of the gathering, including some religious scholars and Imams of mosques, might have missed their Friday prayers which was not expected of them!

17. According to the prosecution after the public gathering was over Qari Muhammad Salaam complainant (PW1) had lodged an FIR with the local police on the same day, i.e. 19.06.2009. The circumstances in which the complainant had lodged the FIR were also not free from serious doubts. The original FIR (Exhibit-PA) was in the shape of a written application which had statedly been drafted by an Advocate. The record of this case is completely silent about availability of an Advocate in the village of the parties and nobody had stated anything about the complainant going to any city so as to contact an Advocate and to get an FIR drafted by him. As a matter of fact the complainant had stated before the trial court that he did not even remember the name of the Advocate who had drafted the FIR. The application Exhibit-PA showed that the same was presented by the complainant before Mehdi Hassan, ASI at Pull Nehar Chandarkot (bridge over Chandarkot canal) at 05.45 P.M. on 19.06.2009 when the complainant had met that police officer there while on his way to the Police Station. Qari Muhammad Salaam complainant (PW1) had, however, stated before the trial court that the application Exhibit-PA was delivered to the Station House Officer of the concerned Police Station which was factually incorrect and was belied by the document Exhibit-PA itself. Muhammad Rizwan, SI (PW5) had stated in black and white that on 19.06.2009 the complainant had presented the complaint Exhibit-PA before him at the Police Station and he had then chalked out the formal FIR (Exhibit-PA/1). Even Question No. 6 put to the appellant at the time of recording of her statement under section 342, Cr.P.C. was about the complainant presenting the application Exhibit-PA at the Police Station which was against the record. It was suggested to the complainant by the defence during his cross-examination that the application Exhibit-PA was presented by him before Mehdi Hassan, ASI at Pull Nehar Chandarkot and not at the Police Station but the complainant had categorically denied that suggestion and had maintained that it was incorrect to suggest that the application Exhibit-PA was not presented by him at the Police Station. The complainant had lied in that regard because it had been recorded by Mehdi Hassan, ASI at the bottom of the application Exhibit-PA that the said application had been presented by the complainant before him at 05.45 P.M. on 19.06.2009 at Pull Nehar Chandarkot. This lie told by the complainant could have further been exposed by

Mehdi Hassan, ASI but for some undisclosed reason the said police officer was not produced by the prosecution before the trial court. It is quite strange and out of the ordinary that Qari Muhammad Salaam complainant (PW1), the initiator of this criminal case, did not remember who had drafted the application Exhibit-PA for the purpose of lodging the FIR and he did not even know where and before whom the said application had been presented by him for the purpose of getting an FIR registered. It, thus, appears that something else was happening behind the scene and the actual movers of the present criminal case were some others who had never come to the fore. Apart from that the FIR had been lodged in this case by Qari Muhammad Salaam complainant (PW1) who was not present in the incident allegedly taking place in the field of Falsa on 14.06.2009 and who had not himself heard any derogatory remark attributed to the appellant. The FIR lodged by him had not even disclosed as to which female co-worker was being addressed by the appellant when she had allegedly uttered the offending words on the relevant occasion. An FIR lodged with a noticeable delay and after consultations and deliberations loses its credibility and in the present case the FIR had been lodged with an unexplained delay of five days and the complainant had admitted before the trial court that the FIR had been lodged after he and the people of the village had "investigated", "consulted" and "peeped into the matter". The complainant and the FIR lodged by him, thus, were not worthy of much credit.

18. The investigation conducted in this case by the police after registration of the FIR had also left much to be desired. Qari Muhammad Salaam complainant (PW1) had admitted before the trial court that no permission was obtained from the District Coordination Officer or the District Police Officer, etc. for lodging or registration of an FIR in respect of the offence of blasphemy. The initial investigation of this case was conducted by a Sub-Inspector of Police, i.e. Muhammad Arshad, SI (PW7) which was a violation of section 156-A, Cr.P.C. according to which investigation of such a case could be conducted by an officer not below the rank of Superintendent of Police. After lodging of the FIR it was Muhammad Arshad, SI (PW7) who was entrusted the investigation of the case and it was he who had gone to the place of occurrence, had recorded statements of the witnesses under section 161, Cr.P.C. and had arrested the appellant on the same day, i.e. 19.06.2009. Muhammad Amin Bukhari, SP (Investigation) had appeared before the trial court as PW6 and had claimed to have conducted the subsequent investigation of this case after the Deputy Inspector-General of Police/Regional Police Officer, Range Sheikhupura had entrusted the investigation of the case to him on 24.06.2009. That statement of PW6 was factually incorrect because the relevant letter of the Deputy Inspector-General of Police/Regional Police Officer, Range Sheikhupura was dated 26.06.2009 as was evident from the statement of PW6 himself. The said officer had never visited the place of occurrence and had not recorded the statements of witnesses himself. Even the circumstances in which the appellant had been arrested in connection with this case were quite doubtful. Muhammad Arshad, SI (PW7) had stated before the trial court that the appellant had been arrested by him on 19.06.2009 from the appellant's house. Muhammad Idrees (CW1), however, had a different story to tell in that regard and according to him the religious scholars present in the public gathering had handed over the

appellant to the police and the appellant had been arrested at the Dera of Haji Ali Ahmad where the public gathering was held.

19. The argument of the learned counsel for the complainant that some factual assertions made by the prosecution witnesses were deemed to have been admitted by the defence because the prosecution witnesses were not cross-examined regarding those assertions and no suggestion was put to them regarding incorrectness of such assertions has been found by me to be misconceived. In the case of Nadeem Ramzan v. The State (2018 SCMR 149) this Court had clarified while referring to the earlier cases of S. Mahmood Alam Shah v. The State (PLD 1987 SC 250) and State v. Rab Nawaz and another (PLD 1974 SC 87) that "the principle that a fact would be deemed to be proved if the witness stating such fact had not been cross-examined regarding the same was a principle applicable to civil cases and not to criminal cases. It was held that a ciminal case is to be decided on the basis of totality of impressions gathered from the circumstances of the case and not on the narrow ground of cross-examination or otherwise of a witness on a particular fact stated by him."

20. The glaring and stark contradictions in the evidence produced by the prosecution in respect of every factual aspect of this case, noticed by me above, lead to an irresistible and unfortunate impression that all those concerned in the case with providing evidence and conducting investigation had taken upon themselves not to speak the truth or at least not to divulge the whole truth. It is equally disturbing to note that the courts below had also, conveniently or otherwise, failed to advert to such contradictions and some downright falsehood. All concerned would have certainly done better if they had paid heed to what Almighty Allah has ordained in the Holy Qur'an:

> "O you who have believed, be persistently standing firm for Allah, witnesses in justice, and do not let the hatred of a people prevent you from being just. Be just, that is nearer to righteousness. And fear Allah; indeed, Allah is acquainted with what you do."

(Surah Al-Ma'idah: verse 8)

> So follow not [personal] inclination, lest you not be just. And if you distort [your testimony] or refuse [to give it], then indeed Allah is ever, with what you do, acquainted."

(Surah An-Nisa: verse 135)

21. There are indications available on the record that something had transpired between the appellant, a Christian by faith, and her Muslim co-workers in the field of Falsa on the fateful day and it was in the background of that something that the present allegation regarding commission of blasphemy had belatedly been levelled against the appellant after deliberations spanning over five long days. It is unfortunate that all the four private witness as produced by the complainant party, i.e. Qari Muhammad Salaam complainant (PW1), Mafia Bibi (PW2), Asma Bibi (PW3) and Muhammad Afzal (PW4) had remained completely silent about that something and it were the Court Witness namely Muhammad Idrees (CW1) and the senior investigating officer namely Muhammad Amin Bukhari, SP (Investigation) (PW6) who had spilled the beans in that regard and had shown that the boot might

in fact be on the other leg! According to the statement made by Muhammad Idrees (CW1) before the trial court he had come to know that before the offending words were allegedly uttered by the appellant a quarrel had taken place between the appellant and the other female co-workers over an issue of fetching water to drink. Elaborating the said quarrel the said witness, owner of the relevant field of Falsa, had disclosed that while working together in that field on the relevant occasion the worker ladies wanted to drink water and the appellant was requested to fetch water but Mafia Bibi (PW2) and Asma Bibi (PW3) said that they would not drink water from the hands of the appellant because she was a Christian. Muhammad Amin Bukhari, SP (Investigation) (PW6) had stated before the trial court that it came to his knowledge during the investigation that during a religious discussion between the ladies working together in the field of Falsa on the fateful day a Muslim lady asked for water but when the appellant offered her water the Muslim lady refused to have/drink it from the hand of a Christian lady. He had also confirmed that in his statement recorded under section 161, Cr.P.C. Muhammad Idrees (CW1) had stated that a quarrel had taken place between the appellant and the ladies appearing as prosecution witnesses on the issue of drinking water. The record shows, and it is sad to note, that when taking place of such a quarrel between the appellant and Asma Bibi (PW3) on the issue of drinking water was suggested to the latter by the defence during her cross-examination she had denied that suggestion. The denial of that suggestion by Asma Bibi (PW3) has, however, failed to surprise me because in the FIR, in their statements recorded by the police under section 161, Cr.P.C. as well as in their statements made before the trial court all the private witnesses belonging to the complainant party, i.e. Qari Muhammad Salaam complainant (PW1), Mafia Bibi (PW2), Asma Bibi (PW3) and Muhammad Afzal (PW4) had maintained complete silence over this factual aspect of the case and this fact had come to light only through the statements of a Court Witness and an investigating officer who were both independent witnesses.

22. The above mentioned suppression of a critical fact by the members of the complainant party in fact holds the key to a just, fair and correct decision of the present case. The record of the case shows that the appellant and her forefathers had been living in the same village since before the creation of Pakistan in the year 1947 and during all this while no such incident or quarrel over religions of the parties had ever taken place. It may be advantageous to read again what the appellant had stated in her statement recorded under section 342, Cr.P.C.:

> "I am married woman having two daughters. My husband is a poor labourer. I used to pluck Falsa from the plants of Muhammad Idrees along with number of ladies on the daily wages basis. On the alleged day of occurrence, I along with number of ladies were working in the fields. Both the ladies Mst. Mafia Bibi and Mst. Asma Bibi PWs quarreled with me over fetching water which was offered by me to bring for them but they refused saying that since I am Christian, so, they never took water from the hand of Christian. Over this, quarrel was insued and some hot words were exchanged between myself and the PWs ladies. The PWs then approached Qari Salaam complainant through his wife who remained teaching the both ladies, hence, the PWs were conspiring with Qari Salaam got a false, fabricated and fictitious case against me. I offered my oath to police on Bible that I had never passed such

> derogatory and shameful remarks against the Holy Prophet (PBUH) and the Holy Quran. I have great respect and honour to the Holy Prophet (PBUH) as well Holy Quran and since police had conspired with the complainant, so, the police has falsely booked me in this case. The PWs are real sisters and interested to falsely involve me in this case as they felt disgrace and dishonor on the basis of altercation and hard words extended to them. Qari Salaam complainant is also interested person and both the ladies remained teaching Holy Quran from his wife. My forefathers are living in this village since creation of Pakistan. I am also about 40 years old and since the alleged occurrence, no complaint likewise this never exist against me. I am uneducated and no priest of Christian. So much so there is no church of the Christian in the village, so, being ignorant of any Islamic thought, how can I use such clumsy and derogatory remarks against the beloved Prophet (PBUH) of Allah and the Divine book viz Holy Quran. PW Idrees is also a interested witness who has close family links with their above said ladies."

In the backdrop of that statement of the appellant, suppression of the fact by the complainant party about the quarrel over drinking water and confirmation about such quarrel by the Court Witness and the senior investigating officer there are two possibilities which appeal to reason: firstly, the appellant had uttered the offending words after her own religion or religious sensibilities had been insulted and injured by the Muslim co-workers at the spot or, secondly, due to the quarrel taking place between the appellant and her Muslim co-workers at the spot without any offending word having been uttered by the appellant the quarrel was reported by the Muslim ladies to others who then, after deliberating over the matter for five long days, had decided to go after the appellant with a false allegation regarding commission of blasphemy. Both these possibilities require some examination.

23. The statements made by Muhammad Idrees (CW1) and Muhammad Amin Bukhari, SP (Investigation) (PW6) before the trial court revealed that the alleged blasphemy had been committed by the Christian appellant after her Muslim co-workers had insulted the appellant's religion and had injured her religious sensibilities only because she believed in and was a follower of Jesus Christ. According to the Holy Qur'an a Muslim's faith is not complete till he believes in all the Holy Prophets and Messengers of Almighty Allah including Jesus Christ (Isa son of Maryam) (Peace Be Upon Him) and all the revealed Holy Books of Almighty Allah including the Holy Bible. From that perspective insulting the appellant's religion by her Muslim co-workers was no less blasphemous. Almighty Allah, the Creator of mankind, knew how a human being whose religion and religious sensibilities are insulted is likely to snap and retort and that is why it was ordained in the Holy Qur'an that

> "And do not insult those they invoke other than Allah, lest they insult Allah in enmity without knowledge. Thus We have made pleasing to every community their deeds. Then to their Lord is their return, and He will inform them about what they used to do."

(Surah Al-An'am: verse 108)

The Muslim co-workers of the appellant had violated the command of Almighty Allah by insulting the Deity believed in and the religion followed by the appellant

and, even if the prosecution's allegations against the appellant were to be accepted as correct, the stated reaction to the same by the appellant was not different from that warned about by Almighty Allah.

24. In view of the glaring contradictions in the evidence produced by the prosecution it has appeared to me to be equally plausible that due to the quarrel taking place between the appellant and her Muslim coworkers at the spot without any offending word having been uttered by the appellant the quarrel was reported by the Muslim ladies to others who then, after deliberating over the matter for five long days, had decided to go after the appellant with a false allegation regarding commission of blasphemy. If that were so then the Muslim witnesses in this case had violated a covenant of the Holy Prophet Muhammad (Peace Be Upon Him) with those professing the Christian faith. In his book The Covenants of the Prophet Muhammad with the Christians of the World (published by Angelico Press on 01.09.2013) John A. Morrow has referred to and reproduced many covenants entered into by the Holy Prophet Muhammad (Peace Be Upon Him) with people of the Christian faith and one of such covenants is called the Covenant of the Prophet Muhammad (Peace Be Upon Him) with the Monks of Mount Sinai. It is reported that in or around the year 628 A.D. a delegation from St. Catherine's Monastery, the world's oldest monastery located at the foot of Mount Sinai in Egypt, came to the Holy Prophet Muhammad (Peace Be Upon Him), requested for his protection and he responded by granting them a charter of rights. That charter, also known as The Promise to St. Catherine, was translated from Arabic to English language by Dr. A. Zahoor and Dr. Z. Haq as follows:

> "This is a message from Muhammad ibn Abdullah, as a covenant to those who adopt Christianity, near and far, we are with them.
>
> Verily I, the servants, the helpers, and my followers defend them, because Christians are my citizens; and by God! I hold out against anything that displeases them. No compulsion is to be on them. Neither are their judges to be removed from their jobs nor their monks from their monasteries. No one is to destroy a house of their religion, to damage it, or to carry anything from it to the Muslims' houses. Should anyone take any of these, he would spoil God's covenant and disobey His Prophet. Verily, they are my allies and have my secure charter against all that they hate.
>
> No one is to force them to travel or to oblige them to fight. The Muslims are to fight for them. If a female Christian is married to a Muslim, it is not to take place without her approval. She is not to be prevented from visiting her church to pray. Their churches are to be respected. They are neither to be prevented from repairing them nor the sacredness of their covenants. No one of the nation (Muslims) is to disobey the covenant till the Last Day (end of the world)."

The promise made was eternal and universal and was not limited to St. Catherine alone. The rights conferred by the charter are inalienable and the Holy Prophet Muhammad (Peace Be Upon Him) had declared that Christians, all of them, were his allies and he equated ill treatment of Christians with violating God's covenant. It is noticeable that the charter imposed no conditions on Christians for enjoying its

privileges and it was enough that they were Christians. They were not required to alter their beliefs, they did not have to make any payments and they did not have any obligations. The charter was of rights without any duties and it clearly protected the right to property, freedom of religion, freedom of work, and security of person.

25. It is unfortunate that while utilizing the sacred concept of Namoose-Risalat (honour and dignity of Prophethood) the above mentioned promise made by the Holy Prophet Muhammad (Peace Be Upon Him) to those professing the Christian faith had not been adhered to by his followers in the present case. It appears that after an altercation taking place in the field of Falsa a feast of falsehood had followed and the Muslim members of the complainant party led by Qari Muhammad Salaam complainant had paid little heed to the following command of Almighty Allah in the Holy Qur'an:

> "O! ye who believe! Stand out firmly for justice, as witnesses to Allah, even as against yourselves, or your parents, or your kin, and whether it be (against) rich or poor, for Allah can best protect both. Follow not the lusts (of your hearts), lest ye swerve, and if ye distort (justice) or decline to do justice, verily Allah is well-acquainted with all that ye do."

(Surah Al-Nisa: verse 135)

Even if there was some grain of truth in the allegations levelled in this case against the appellant still the glaring contradictions in the evidence of the prosecution highlighted above clearly show that the truth in this case had been mixed with a lot which was untrue. Even in this regard the Muslim witnesses belonging to the complainant party had ignored what had been ordained by Almighty Allah in the following verse of the Holy Qur'an:

> "And do not mix the truth with falsehood or conceal the truth while you know [it]."

(Surah Al-Baqarah: verse 42)

Blasphemy is a serious offence but the insult of the appellant's religion and religious sensibilities by the complainant party and then mixing truth with falsehood in the name of the Holy Prophet Muhammad (Peace Be Upon Him) was also not short of being blasphemous. It is ironical that in the Arabic language the appellant's name Asia means 'sinful' but in the circumstances of the present case she appears to be a person, in the words of Shakespeare's King Lear, "more sinned against than sinning".

26. For what has been discussed above a conclusion is inescapable and irresistible that the prosecution had failed to prove its case against the appellant beyond reasonable doubt. This appeal is, therefore, allowed, the conviction and sentence of the appellant recorded and upheld by the courts below are set aside and she is acquitted of the charge by extending the benefit of doubt to her. She shall be

released from the jail forthwith if not required to be detained in connection with any other case.

(Sd)
(Asif Saeed Khan Khosa)
Judge

MWA/A-21/S Appeal allowed.

;