

IN THE SUPREME COURT OF PAKISTAN

(Criminal Appellate Jurisdiction)

Present:

Mian Saqib Nisar, HCJ Asif Saeed Khan Khosa, J Mazhar Alam Khan Miankhel, J Date of Hearing: 08.10.2018 Announced in open Court on: 31.10.2018 Result: Allowed	Mst. Asia Bibi The State, etc
	... Appellants =VS= ... Respondents

CRIMINAL APPEAL NO.39-L OF 2015

(Against the judgment dated 16.10.2014 of the Lahore High Court, Lahore passed in Crl.A.No.2509/2010 and M.R.No.614/2010)

For the appellant(s): Mr. Saif-ul-Malook, ASC

For the State: Mr. Zubair Ahmed Farooq, Addl.P.G.

For the complainant: Mr. Ghulam Mustafa Chaudhry, ASC

The Blasphemy law**Blasphemy offence– Acquitted of the charge by extending the benefit of doubt–**

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.

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. (Asif Saeed Khan Khosa, J) ... (Paras-25 & 26)

JUDGMENT

MIAN SAQIB NISAR, CJ. –

01.

أَشْهَدُ أَنْ لَا إِلَهَ إِلَّا اللَّهُ
وَأَشْهَدُ أَنَّ مُحَمَّدًا عَبْدُهُ وَرَسُولُهُ

“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 (ﷺ) 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 (ﷺ) 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.

02. The sanctity of our Prophet Muhammad (ﷺ) is further evident from the Qalimah-e-Shahadat, as His name is being read together

The Law Messenger

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.

کی محمد ﷺ سے وفا تو نے تو ہم تیرے ہیں
یہ جہاں چیز بے کیا لوح و قلم تیرے ہیں

03. 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 (ﷺ) 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 (ﷺ) 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.

04. The unlimited and unparalleled love with Allah’s Messenger (ﷺ), 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 (ﷺ) 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 (ﷺ) said “None of you will have faith till he loves me more than his father, his children and all mankind”.

05. This love has to manifest itself in complete unconditional obedience to follow the footsteps of the Holy Prophet (ﷺ) 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”.” [Ali’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)]

06. The commendable charisma and personality of our Holy Prophet (ﷺ) 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)]

07. The Holy Qur’an has unequivocally described the glorification and exaltation of Holy Prophet (ﷺ) 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” (ﻻ ﻟﻮ ﻟﻮ) 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 (ﷺ), 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 (ﷺ) so that their loud voice before the Prophet (ﷺ) may render their good deeds as vain while they will not understand it”.*

Allah Almighty declared the enemy of Prophet Muhammad (ﷺ) 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 (اذى) of the Holy Prophet (ﷺ) whether by quoting words bearing different meanings or similar actions comes under his malignity. (القرآن الاحكام الجامع) Quran, Vol.XIV, page 238.”

Allama Ismail Haqqi while explaining this Verse writes:

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

The other Verses read as follow: -

“And of them are those who vex the Prophet (ﷺ) 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.” [Al-Tawbah (9:61-62)].

Ibn Taimiyyah while explaining these Verses writes: “Verse No. 62 denotes that the malignity of the Prophet (ﷺ) is the opposition of Allah and His Prophet”. (الصارم , 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 (ﷺ) 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)]

08. These Verses clearly prescribe the severe punishment of death for the opponents of Allah and his Prophet (ﷺ), who include contemners of the Prophet (ﷺ). 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 (ﷺ) 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 (ﷺ). 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.

09. 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 (ﷺ). 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 IIm-ud-Din Shaheed succeeded in murdering Rajpal. After the trial, IIm-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 (ﷺ), a new provision was introduced in Pakistan Penal Code, 1860 (PPC), 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 Vs. 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 (ﷺ) 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 (ﷺ) 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 (ﷺ) nor could a person guilty of disrespecting the Holy Prophet (ﷺ) 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 (ﷺ). 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 (ﷺ) and be left unpunished, but there is another aspect of the matter; sometimes, to fulfill nefarious designs the law is misused by individuals leveling 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 juncture, 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 Sessions, 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 Vs. 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 Muhammad (ﷺ). 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 PPC.

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-1).

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 u/s 342 Cr.P.C, expressed her full respect to the Holy Prophet (ﷺ) 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 IO. 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 PPC. 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 PPC, 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, SI (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 (ﷺ). 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 (ﷺ), 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 Vs. the State (1978 SCMR 136)** and **Sheraz Asghar Vs. 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 casts 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 Vs. The State (2004 SCMR 1185)**] Reliance in this behalf may also be made to the case titled as **Zeeshan @ Shani Vs. 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 Vs. 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 Vs. 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 get 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/ 2½ 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 Vs. The State (1995 SCMR 1345)** and **Ayub Masih vs 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 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 Vs. State (2016 SCMR 1144)**, **Azeem Khan and another Vs. Mujahid Khan and others (2016 SCMR 274)**, **Imran alias Dully Vs. The State (2015 SCMR 155)**, **Hamid Nadeem Vs. The State (2011 SCMR 1233)**, **Muhammad Aslam Vs. Sabir Hussain (2009 SCMR 985)**, **Sajid Mumtaz and others Vs. Basharat and others (2006 SCMR 231)**, **Ziaul Rehman Vs. The State (2000 SCMR 528)** and **Sarfraz Khan Vs. 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.1), 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 Vs. the state (2018 SCMR 149), S. Mahmood Aslam Shah Vs. the State (PLD 1987 SC 250) and State Vs. 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 crossexamined 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.1) 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 intimidated 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 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 Vs. The State (2016 SCMR 1617)**, **Muhammad Jamshaid Vs. The State (2016 SCMR 1019)**, **Muhammad Asghar alias Nannah Vs. The State (2010 SCMR 1706)**, **Noor Muhammad alias Noora Vs. The State (1992 SCMR 2079)** and **Ayub Masih Vs. The State (PLD 2002 SC 1048)**.

49. I will end this Judgement on a Hadith of our beloved Prophet Muhammad (ﷺ);

“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.

CHIEF JUSTICE

I agree and have appended a separate concurring opinion.

J.