

Asia Bibi Case: Examining the Supreme Court Verdict through the *Shari'ah* and Ethical Principles

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Abstract

The Asia Bibi blasphemy case has been one of the most critical and contentious issues in Pakistan over the past decade. The case deeply polarized the nation and created a tense and emotionally charged atmosphere. On October 31, 2018, the Supreme Court of Pakistan acquitted Asia Bibi, who had previously been sentenced to death by the trial court and the Lahore High Court, by extending her the benefit of the doubt. This verdict by Pakistan's apex court provoked strong opposition from religious clerics, who declared the decision to be against the shari'ah and morality and issued fatwās calling for the assassination of the presiding judges. This scenario raised significant questions regarding the role and interpretation of religion in Pakistan. The present paper examines the Supreme Court's verdict in light of the shari'ah principles and ethical considerations. It argues that the judgment in question is consistent with the foundational principles of the shari'ah and morality. The paper reaches this conclusion by identifying various shari'ah principles applicable to such cases and analysing the verdict to assess whether these principles were adhered to. The study finds that the judges strictly adhered to the injunctions of the shari'ah in exercising caution when punishing the accused, evaluating witness testimonies, and placing the burden of proof on the accuser.

Keywords

Asia Bibi, Supreme Court, Pakistan, acquittal, blasphemy, *shari'ah*, 'ulamā'.

Introduction

The different features of Pakistani society have varying opinions about the Asia Bibi case¹ due to blasphemy laws and actions taken with respect to it. Although the displacement of Asia Bibi reflects the intersection of the *shari'ah*, case law, and morals, there is a lack of understanding regarding the level of societal consensus surrounding it or how different scholars view it. The case, particularly its aftermath, is deeply polarizing, and the perceptions in Pakistan range from extreme grief at the Supreme Court verdict to unqualified acceptance and joy with visions of its positive socio-political consequences. This study serves an important

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¹ Criminal Appeal No. 39-L of 2015 SC 2018.

purpose due to its attention to the deeply controversial issue of whether the Supreme Court's verdict can be justified in the context of Islamic law and ethics. In particular, it would highlight the effect of the case on legal boundaries concerning freedom of speech and cultural norms of Pakistan. The research attempts to fill this gap by looking at the principles of the *sharī'ah* relevant to blasphemy, especially for the Qānūn-i Tauhīn-i Risālat (Blasphemy Law). It aims to bridge the gap between religious, legal, and human rights concepts in Pakistan.

Few academics have critically analysed the Supreme Court's decision from the perspective of *sharī'ah* principles and ethical jurisprudence, despite numerous studies addressing the sociopolitical effects of the Asia Bibi case and Pakistan's blasphemy legislation. This study closes that gap by performing a legal analysis based on the *sharī'ah*. It assesses whether the ruling complies with Islamic evidentiary standards, including the burden of proof, witness credibility, and the principle of doubt in criminal cases. By examining Islamic legal traditions and highlighting their relevance to recent court rulings, this study also offers a comparative perspective. In light of the *sharī'ah* and ethical considerations, this new contribution clarifies whether the Qānūn-i Tauhīn-i Risālat (Blasphemy Law), as it is now interpreted, is consistent with Islamic legal principles and whether its application in Pakistan has to be reevaluated.

The judiciary of Pakistan has handled many historic blasphemy cases in recent years, influencing the ethical and legal discussion of the matter. A landmark decision was made in the Asia Bibi case (2018), when the Supreme Court cleared her on the grounds of the *sharī'ah* concept of doubt (*shakk*) in *hudūd* cases, confirming that false charges without solid proof do not warrant the death penalty. Similarly, the Lahore High Court reversed a death sentence in the Shagufta Kausar and Shafqat Emmanuel case (2021) due to significant procedural errors and flawed evidence.

However, the Junaid Hafeez case (2019) illustrated the dangers of blasphemy charges when a university lecturer was given the death penalty following a contentious trial in which his defence attorney was slain. Judicial decisions have also influenced legislative interpretations, in addition to specific cases. The legal effect of the "life imprisonment" option was essentially nullified when the Federal Shariat Court ruled in its 1991 judgment on Section 295-C that the only acceptable punishment for blasphemy against the Prophet Muḥammad (peace be on him) was death. This ruling is still in effect and has been supported by further decisions.

Suo Moto Case No. 1 of 2014 has also furthered the debate regarding the misuse of blasphemy laws by reiterating the state's responsibility to

protect minorities and provide them with equal trial opportunities. The Salman Taseer Assassination case (2011-2016) further established that vigilantism is not sanctioned either by Islam or by the Constitution, as the Supreme Court in the exercise of its appellate jurisdiction affirmed the death sentence of Mumtaz Qadri, who had shot the Punjab Governor for inordinately liberalizing blasphemy laws. These cases showcase the coexistence of the *sharī'ah*, legal reasoning, and human rights, which have shaped the Pakistani legal perspective on blasphemy and its exigencies.

A police official with a level no lower than superintendent of police must lead investigations into blasphemy charges, according to Section 156-A of the Code of Criminal Procedure (CrPC), which was added in the 2014 modification. The purpose of this amendment was to provide the highest level of impartiality and competency in the investigation process in cases under Section 295-C of the Pakistan Penal Code (PPC). The amendment aimed to protect against extrajudicial procedures, reduce the likelihood of political or personal bias, and enhance the overall impartiality and integrity of the investigative process by delegating such investigations to senior police officials. Additionally, the amendment made a crucial procedural change aimed at reducing the possibility of abuse in the investigation process by fostering public trust in the judicial handling of sensitive blasphemy accusations.

The verdict by the apex court of Pakistan, on October 31, 2018, acquitting Asia Bibi in a blasphemy case, giving her the benefit of the doubt, has led to infuriation and crisis throughout the country. Before entering into the detailed critical analysis of the verdict from the referred perspective, it is pertinent to note here that the Asia Bibi blasphemy case was amongst the most depreciatory and censorious issues in Pakistan over the last decade. It polarized the nation, creating a tense and emotional environment. Along with other issues, it created a lot of cavernous implications about the role and interpretation of religion in Pakistani society, particularly concerning the public and scholarly behaviour regarding blasphemy law and related issues. Owing to this case, the blasphemy law of Pakistan came under intense debate. In addition to large writing capital, numerous inscriptions appeared,

resulting in a plethora of books and articles on the subject.² Along with blasphemy law, the Asia Bibi case, including the Supreme Court's judgment regarding her acquittal, has also been studied from various perspectives.³ However, the analysis of this verdict in the light of the *sharī'ah* and morality is an unattended dimension of the issue, on which the present writer is focusing.

² Some significant works on the blasphemy issue, pre-and post-Asiā Bībī case, are as follows: Muhammad Mushtaq Ahmad, "Pakistani Blasphemy Law between *Ḥadd* and *Siyāsah*: A Plea for Reappraisal of the Ismail Qureshi Case," *Islamic Studies* 56, nos. 1-2 (2017): 9-43; Stewart Fenwick, *Blasphemy, Islam and the State: Pluralism and Liberalism in Indonesia* (London: Routledge, 2017); P. B. Cliteur and Tom Herrenburg, *The Fall and Rise of Blasphemy Law* (Leiden: Leiden University Press, 2016); Naeem Shakir, "Islamic *Shariah* and Blasphemy Laws in Pakistan," *The Round Table: The Commonwealth Journal of International Affairs* 104, no. 3 (2015): 307-17, <https://doi.org/10.1080/00358533.2015.1053235>; Muhammad Shahbaz Manj, "Mumtāz Qādrī kī Sazā: Taḥaffuẓ-i Sharī'at Kānfarans kē Faiṣalē par aik Naẓar," *al-Sharī'ah* 26, no. 12 (2015): 31-37; Shemeem Burney Abbas, *Pakistan's Blasphemy Laws: From Islamic Empires to the Taliban* (Austin: University of Texas Press, 2013); Sājīd Khān Atlawī, *Tauhīn-i Risālat kā Shar'ī Ḥukm* (Lahore: Maktabah-i Abū Bakr 'Abd Allāh, 2012); Muhammad Mushtaq Ahmad, "Tauhīn-i Risālat kī Sazā Ḥanafī Fiqh kī Rōshnī main," *al-Sharī'ah* 23, no. 3 (2011): 29-40; Ammar Khan Nasir, "Tauhīn-i Risālat kā Mas'alah," *Ishrāq* (March 2011): 25-99; Jinnah Institute, *Jinnah Institute Briefing Pack: Amendments to Blasphemy Laws Act 2010* (Islamabad: Jinnah Institute, 2010); Osama Siddique and Zahra Hayat, "Unholy Speech and Holy Laws: Blasphemy Laws in Pakistan—Controversial Origins, Design, Defects, and Free Speech Implications," *Minnesota Journal of International Law* 17, no. 2 (2008): 303-85; Riaz Hassan, "Expressions of Religiosity and Blasphemy in Modern Societies," *Asian Journal of Social Sciences* 35 (2007): 111-25; Muhammad Ismail Qureshi, *Namūs-i Risālat aur Qānūn-i Tauhīn-i Risālat* (Lahore: Al-Faiṣal Nāshirān-i Kutub, 2006); Charles Kennedy, *Islamization of Laws and Economy in Pakistan* (Islamabad: Institute of Policy Studies, 1991); Wahiduddin Khan, *Tauhīn-i Risālat kā Mas'alah* (Lahore: Dār al-Tadhkīr, 1996); Sajid Awan, *Taḥaffuẓ-i Nāmūs-i Risālat aur Gustākhi-i Rasūl kī Sazā* (Multan: 'Ālamī Majlis-i Taḥaffuẓ-i Khatm-i Nubuwwat, 1996); David Forte, "Apostasy and Blasphemy in Pakistan," *Connecticut Journal of International Law* 10, no. 27 (1994): 27-68. From Urdu literature on the subject, very few writings are referred to here. A plethora of books and articles can be traced on <<http://khatm-e-nubuwwat.org/TauheerERisalat/index.htm>>.

³ For instance, see Asia Bibi and Anne Isabelle Tollet, *Blasphemy: A Memoir; Sentenced to Death over a Cup of Water* (Chicago: Chicago Review Press, 2013); Criminal Appeal No. 39-L of 2015 SC 2018; Kunwar Khuldune Shahid, "The Release of Asia Bibi is a Small Step towards a more Open Pakistan," *The Guardian*, November 1, 2018. <https://www.theguardian.com/commentisfree/2018/nov/01/release-asia-bibi-pakistan-blasphemy-laws>; Zain Siddique, "These 7 Points Explain the Supreme Court's Decision to Free Asia Bibi," *Dawn*, November 26, 2018.

Religious parties—sharing a general sentiment that the verdict has been given under the pressure of anti-Islamic Western powers pursuing the agenda of trivializing the insult of the Prophet Muḥammad—have reacted harshly to the verdict. In their view, the love Muslims have for their Prophet requires them to go out and protest against such verdicts to make the government, courts, other state institutions, and the international establishment realize that such verdicts, being anti-Islamic, shall never be accepted by Muslims. Meanwhile, many experts in secular and *sharīah* law believed this to be a sound verdict based on available evidence; that is, as the guilt of the accused could not be established beyond a reasonable doubt, the court could not hand her the death penalty.

A Summary of the Case and Asia Bibi’s Statement

Before we analyse the Supreme Court’s verdict principally, morally and from the perspective of the *sharīah* and ethics, it is necessary to explain the nature of the case and summarize the statements of the plaintiff and the accused. Therefore, we first reproduce the summary of the incident and the statement of Asia Bibi from the written verdict of the court.

The issue started with the registration of the First Information Report (FIR) No. 326 dated 19.06.2009 under Section 295-C of the PPC,⁴ at Police Station Sadar, Nankana Sahib, by one Qari Muhammad Salaam (Prosecution Witness (PW) 1) who stated that on 14.6.2009, the appellant Mst. Asia Bibi, who belongs to the Christian community of the village, along with other Muslim ladies, including Mafia Bibi (PW2), Asma Bibi (PW3) and Yasmin Bibi (given up PW), while plucking Falsa (Grewia/purple berry), in the field belonging to one Muhammad Idrees (Court Witness (CW) 1), uttered derogatory remarks against the Prophet Muḥammad. According to the FIR, PWs reported the incident to complainant Qari Muhammad Salaam, who on 19.6.2009, called a public meeting in which the appellant confessed to having said such words. After the appellant had confessed to her guilt, Qari Muhammad Salaam lodged a complaint with the police, and consequently, an FIR was registered.⁵

Justice Asif Saeed Khosa observed that after hearing the arguments of the counsels for the complainant and the appellant by inspection of the record, the prosecution produced seven witnesses in support of its case

⁴ While Section 295-C of the PPC originally included “imprisonment for life” as a possible punishment for blasphemy, the Federal Shariat Court (FSC) ruled in *Muhammad Ismail Qureshi v. Pakistan* (PLD 1991 FSC 10) that life imprisonment was inconsistent with Islamic injunctions and that only the death penalty should apply. This ruling became legally binding after April 30, 1991, effectively nullifying the enforceability of life imprisonment under this section. Although the phrase remains in the text of the PPC, it holds no legal effect in practice.

⁵ Criminal Appeal No. 39-L of 2015 SC 2018, Chief Justice, para 16.

against the appellant. Qari Muhammad Salaam appeared before the trial court as PW1 and got his statement recorded about being informed by three Muslim ladies, holding a public meeting on 19.06.2009, in which the appellant allegedly confessed to her guilt and asked to be forgiven and lodging the FIR by him on 19.06.2009. Mafia Bibi (PW2) stated her version about the occurrence of the incident in the field of Falsa on 14.06.2009, her informing Qari Muhammad Salaam, the complainant, about it, and holding of a public meeting on 19.06.2009, where the appellant allegedly confessed her guilt and sought forgiveness. The statement of Asma Bibi (PW3) was also about all the incidents stated by Mafia Bibi (PW2). Muhammad Afzal (PW4) in his statement spoke about being informed about the incident by PW1, PW2, and PW3 and holding of a public meeting on 19.06.2009, where the appellant allegedly sought pardon after confessing to her guilt. The fifth witness was Muhammad Rizwan, SI (PW5), who registered the FIR at the Police Station. The sixth witness (PW6) was Muhammad Amin Bukhari, SP (Investigation). In his statement, he presented his own investigation of the case. The seventh witness, Muhammad Arshad, SI (PW7), was the initial investigating officer of the case. In his statement, he described how he inspected the place of occurrence on 19.06.2009, recorded statements of the witnesses, arrested the appellant, obtained her judicial remand from a magistrate, and sent her to the judicial lock-up. Prosecution also supported its case in the trial court by producing some documents. The owner of Falsa field, in which the incident allegedly occurred, Muhammad Idrees (CW1), was also summoned by the trial court. In his statement, Idrees claimed that the appellant confessed before him on 14.06.2009. He also testified about informing the complainant, holding a public meeting on 19.06.2009. He further claimed that the appellant confessed to her guilt in a public meeting and before the investigating officer on that day. The appellant was also asked to get her statement recorded under Section 342 of the CrPC and was asked why the present case was registered against her and as to why the prosecution witnesses deposed against her. She stated,

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 ensued [*sic.*] 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 [sic.] 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 [sic.] interested witness who has close family links with their above said ladies.⁶

A Discussion of Aspects Based on Principles of the *Sharī'ah*

Based on the detailed examination of the verdict, this author is of the considered opinion that, barring a few supplementary aspects, this verdict, as a whole, is based soundly on the principles of the *sharī'ah* and the same has not been violated. This claim can be supported with a lot of evidence, but I limit myself to the most important points.

The Burden of the Proof

It is a well-recognized principle of the *sharī'ah* that the burden of the proof is on the one who makes an accusation. If verdicts were based solely on the mere allegations of the plaintiffs, the very fabric of society would be destroyed, causing widespread injustice. Prophet Muhammad (peace be on him) has said, "If the people were given according to their claims, they would claim the lives and properties of men, but the defendant must take the oath."⁷ The importance of this *ḥadīth* can be gauged from the fact that traditionists have termed it a great principle,

⁶ Ibid., Justice Khosa, para 22.

⁷ Muslim b. al-Ḥajjāj, *Ṣaḥīḥ* (Riyadh: Dār al-Salām li 'l-Nashr wa 'l-Tawzī', 2000), 759, ḥadīth no. 1711. With slight variations, the same has been reported by many other traditionists. For example, see Aḥmad b. Alī b. Ḥajar al-'Asqalānī, *Bulūgh al-Marām min Adillat al-Aḥkām* (Riyadh: Dār al-Qabas li 'l-Nashr wa 'l-Tawzī', 2014), 520, ḥadīth no. 1408; al-'Asqalānī, *Fatḥ al-Bārī bi Sharḥ Ṣaḥīḥ al-Imām Abī 'Abd Allāh Muḥammad b. Ismā'īl al-Bukhārī* (n.p.: al-Maktabah al-Salafiyyah, n.d.), 5:283; Aḥmad b. Ḥusayn al-Bayhaqī, *al-Sunan al-Kubrā*, ed. Muḥammad 'Abd al-Qādir 'Aṭā' (Beirut: Dār al-Kutub al-'Ilmiyyah, 2003), 10:252, ḥadīth no. 20537; Muḥammad b. 'Alī b. Daqīq al-'Id, *al-Ilmām bi Aḥādīth al-Aḥkām* (Damascus: Dār al-Nawādir, n.d.), 647.

the essence of the chapters on injunctions, and the greatest source in the resolution of disputes.⁸

It can be seen that honourable judges abided by this principle. They seem to be fretting over taking an accused's life away based merely on the accuser's claims. For instance, Chief Justice Mian Saqib Nisar writes:

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. . . . 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.⁹

Establishment of the Guilt and Truthfulness of Witnesses

The truthfulness of the witnesses is a necessary condition both in the *sharī'ah* and secular law. A witness must describe the event as it happened. Knowingly concealing something in describing an event is an offence. The Qur'ān says, "And do not conceal testimony, for whoever conceals it, his heart is indeed sinful."¹⁰

It must be noted that forgetting a few details while recounting an incident is one thing, but knowingly concealing an important element of

⁸ For a brief look into the argument, see Yahyā b. Sharaf al-Nawawī, *Ṣaḥīḥ Muslim bi Sharḥ al-Nawawī* (Cairo: al-Maṭba'ah al-Miṣriyyah, 1930), 12:3.

⁹ Criminal Appeal No. 39-L of 2015 SC 2018, Chief Justice, para 48.

¹⁰ Qur'ān 2:283. Throughout the present article, the translation of the Qur'ānic verses is of Muḥammad Taqī-ud Dīn al-Hilālī and Muḥammad Muḥsin Khān, trans., *Translation of the Meanings of the Noble Qur'ān into the English Language* (Medina: King Fahd Glorious Qur'ān Printing Complex, n.d.).

the incident is something entirely different. No judge, according to the *sharīah* or secular law, can accept the testimony of someone who knowingly conceals important details, particularly when it can lead to the death penalty for an accused. In this particular case, two female witnesses have been guilty of concealing important details, which disqualifies them as trustworthy witnesses according to the principles of the *sharīah*. This has been duly noted in the verdict by the honourable judges. In his concurring note, Justice Asif Saeed Khosa notes that PW6, Muhammad Amin Bukhari, SP (Investigation) and CW1, Muhammad Idrees, the owner of the Falsa field, stated in their testimonies before the trial court that the appellant uttered derogatory words after a discussion of religious nature with her Muslim co-workers Mafia Bibi (PW2) and Asma Bibi (PW3) when the latter two had refused to drink water from the hands of a Christian woman, the appellant. According to these witnesses, the refusal by Mafia Bibi and Asma Bibi to drink water from the hands of the appellant led to a quarrel among the three co-workers during which the appellant made derogatory remarks about the Prophet Muḥammad and the Qur'ān. According to Justice Khosa, this is an admission by the prosecution itself of what the appellant said, uttering alleged offensive words after her religion was insulted and her religious sensibilities offended by her Muslim co-workers, Mafia Bibi (PW2) and Asma Bibi (PW3). Unfortunately, the complainant and the witnesses made no mention of such a quarrel in the FIR or their statements made before the police under Section 161 of the CrPC. Furthermore, both Mafia Bibi (PW2) and Asma Bibi (PW3) avoided mentioning this fact in their examinations-in-chief before the trial court, and they also denied the occurrence of such a quarrel when the question about it was posed to them during cross-examination. It is, therefore, very clear that both Mafia Bibi (PW2) and Asma Bibi (PW3) had little regard for the truth and were deposed falsely. Thus, their allegation against the appellant could also very well have been false and untrue.¹¹

The quarrel between Asia and her Muslim co-workers, Mafia and Asma, was the basis of the whole episode. Without the mention of this quarrel, the real nature of the case cannot be understood. However, Mafia and Asma not only failed to mention it but also denied its occurrence. They either knew by themselves that mentioning a quarrel would weaken their case, or their lawyer told them so. In either case, it gave the judges a justified reason to doubt their statements. If they could conceal such an important incident, they could also lie about the accused having committed blasphemy. Even the complainant, Qari Muhammad Salaam,

¹¹ Criminal Appeal No. 39-L of 2015 SC 2018, Justice Khosa, para 9.

did not mention this quarrel at the time of lodging the FIR or during his statement, which makes it abundantly clear that these three were trying to conceal an important incident about the nature of the case.

Justice Khosa, in his note, has also raised doubts about the inclusion of Falsa field owner Muhammad Idrees as a witness. His doubt is justified, as if Asia Bibi had confessed before Muhammad Idrees, this should have been mentioned by the complainant Qari Muhammad Salaam and the witnesses Mafia and Asma. However, this alleged confession before the field owner was first mentioned before the SP investigation, twenty and fifteen days after the incident and registration of the FIR, respectively.

Highlighting the efforts of the witnesses to conceal the quarrel, Chief Justice Mian Saqib Nisar noted that Asma Bibi denied the occurrence of the quarrel, but Muhammad Idrees, the field owner, verified the occurrence of such a quarrel in his initial statement.¹²

Judges' compliance with the principles of the *sharī'ah* relating to the truthfulness of witnesses is also evident in the way they have quoted, on more than one occasion, verses from the Qur'ān that require Muslims to shun false testimony and speak the truth while testifying. Justice Khosa, in his note,¹³ has pointed out clear contradictions in the statements of the witnesses, which I have also described above. This gives an unavoidable, sad impression that the people responsible for investigating and collecting evidence colluded to lie or conceal the truth. It is also alarming how lower courts failed to see such glaring contradictions. They would have done better if they had considered the Qur'ānic injunctions:

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 do¹⁴

O you who have believed, be persistently standing firm in justice, witnesses for Allah, even if it be against yourselves or parents and relatives. Whether one is rich or poor, Allah is more worthy of both. 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.¹⁵

¹² Ibid., Chief Justice, para 47.

¹³ See *ibid.*, Justice Khosa, para 20.

¹⁴ Qur'ān 5:8.

¹⁵ Ibid., 4:135.

Justice Khosa scrutinized the matter of the witnesses' credibility minutely. According to him,¹⁶ another alleged development in the case was the holding of a public meeting on 19.06.2009, in which the appellant was also summoned, and where she allegedly sought forgiveness after confessing. Justice Khosa observes that the evidence of the prosecution, which was produced before the court regarding the public meeting of what happened therein, was just an afterthought. He calls it "nothing short of concoction incarnate." Supporting his conclusion, Justice Khosa notes that the public meeting was claimed to have been held at about noon on 19.06.2009. In contrast, an FIR for a commission of blasphemy was lodged with the local police at 05.45 pm the same day by Qari Muhammad Salaam, the complainant (PW1). However, it's quite intriguing that the said FIR does not mention anything about the alleged public meeting, the summoning of the appellant, her confession, or her seeking forgiveness. The FIR registered on 19.06.2009 just mentions that Qari Muhammad Salaam, the complainant (PW1), Muhammad Afzal (PW4), and Mukhtar Ahmad had summoned Asma Bibi (PW3), etc., and also asked the appellant about the alleged incident of blasphemy on 14.06.2009. According to the FIR, the appellant confessed her guilt and sought forgiveness. Moreover, the statements of Mafia Bibi (PW2), Asma Bibi (PW3), and Muhammad Afzal (PW4) under Section 161 of the CrPC on that very day recorded by the initial investigating officer Muhammad Arshad, SI (PW7) also do not mention anything about the public meeting or alleged confession of the appellant therein. Justice Khosa also notes that the complainant, during cross-examination by the defence counsel, categorically maintained he presented the application at the police station and not to Mehdi Hasan, ASI at Pull Nehar Chandarkot, as suggested by the defence. The complainant was certainly lying, as Mehdi Hasan, ASI, has recorded at the bottom of the aforementioned application that it was presented to him by the complainant before 05:45 pm on 19.06.2009, at Pull Nehar Chandarkot. Mehdi Hasan, ASI, could have exposed this lie, but he was not produced in the trial court by the prosecution. It is also very strange that Qari Muhammad Salaam, the complainant (PW1), did not remember such an important fact. He did not even know where or to whom he had presented this application for lodging an FIR. It, therefore, seems that the real motivator of the case was someone else who never came out in the open. Although Qari Muhammad Salaam, the complainant (PW1), lodged an FIR, he was not present at the field of Falsa on 14.06.2009 when the incident of blasphemy allegedly took place, nor did he hear any derogatory remarks attributed to the alleged offender. The FIR does not disclose who was

¹⁶ See Criminal Appeal No. 39-L of 2015 SC 2018, Justice Khosa, para 14.

being addressed by the appellant when she allegedly uttered the offending words. Whenever an FIR is lodged with a noticeable delay and after consultations and deliberations, it loses its credibility. In this case, the FIR has been lodged with an unexplained delay of five days by the complainant, after his admission, he and other villagers had “investigated,” “consulted,” and “peeped into the matter.” Thus, in Justice Khosa’s opinion, the complainant and the FIR are not worthy of much credit.

Insult to Other Religions

Islam requires its followers to exercise caution and show wisdom in preaching their religion and exposing errors in others’ beliefs. It says, “Invite to the way of your Lord with wisdom and good instruction, and argue with them in a way that is best.”¹⁷ The Qur’ān also forbids Muslims from insulting false gods of others lest they should also insult the true God of Muslims, creating a brawl: “And do not insult those they invoke other than Allah, lest they insult Allah in enmity without knowledge.”¹⁸

Therefore, the accused might have been incited to commit blasphemy by insulting her religion or the revered personalities of her religion. There is a very real possibility in this case that Muslim co-workers might have provoked Asia by insulting her religion, to which she responded by saying something inappropriate. In that case, the blame lies squarely on her Muslim co-workers who violated the Qur’ānic injunction of not insulting the religion and gods of other religions.

Honourable judges also considered this aspect very well. Justice Khosa noted his opinion that Muhammad Idrees (CW1) and Muhammad Amin Bukhari, SP (Investigation) (PW6), before the trial court, proved the point that the appellant committed the alleged blasphemy after her Muslim co-workers offended her religious sensibilities and insulted her religion. According to the Qur’ān, a Muslim’s faith is not complete until he believes in all the Prophets and Messengers of Allah, including Jesus Christ (‘Īsā b. Maryam) and all the revealed Books of Allah, including the Bible. Therefore, insulting Jesus Christ was an equally blasphemous act that the Muslim co-workers of the appellant committed. Knowing that by offending someone’s religious sensibilities, they can be provoked to retort, Allah has ordained in the Qur’ān, “And do not insult those they invoke other than Allah, lest they insult Allah in enmity without knowledge.”¹⁹ Even if one accepts the allegations of the prosecution

¹⁷ Qur’ān 16:125.

¹⁸ Ibid., 6:108.

¹⁹ Ibid.

against the Christian appellant as true, her reaction was the one Allah had warned about.²⁰

No Innocent to be Punished

Judges have fully observed the principle of the *sharīah* that no innocent is ever to be punished. The *sharīah* regards erroneous acquittal as better than erroneous conviction. Prophet Muḥammad (peace be on him) is reported to have said, “Avert *ḥudūd* from the Muslims as much as possible, if he has a way out then leave him to his way, for if the Imam makes a mistake in forgiving, it will be better than making a mistake in punishment.”²¹

In his Urdu commentary of *Mishkāt al-Maṣābīḥ*, Aḥmad Yār Khān Na‘īmī explains the above-mentioned *ḥadīth* as follows:

If a judge/Imam acquits an offender by mistake, giving him the benefit of the doubt, it is better than punishing the accused by mistake. For, in case of acquittal, there is a chance of the offender repenting and earning the forgiveness of Allah. However, by punishing an innocent man by mistake, not only is injustice committed, but the chance of forgiveness is also eliminated. For example, if a judge asks a married adulterer if he has perhaps just touched or kissed the woman to whom he confesses and escapes death by stoning although he deserved it, the judge is not to be blamed. There is a chance that the adulterer will repent and earn forgiveness from Allah. However, if a man is stoned to death without an exhaustive investigation, there will be no way to mend this act of injustice. Even today, governments exercise great caution in awarding capital punishment and acquit the accused, giving them the benefit of the doubt.²²

Many other sayings of the Prophet have also been reported regarding the aversion of *ḥudūd*. For example, one *ḥadīth* reads, “Ward off *ḥudūd* as much as you can.”²³ Such sayings of the Prophet show that the *sharīah* is primarily interested in saving people from being punished. The Prophet can

²⁰ See Criminal Appeal No. 39-L of 2015 SC 2018, Justice Khosa, para 23.

²¹ Muḥammad b. ‘Īsā al-Tirmidhī, *Jāmi‘* (Riyadh: Bayt al-Afkār al-Duwalīyyah li ‘l-Nashr wa ‘l-Tawzī‘, n.d.), 250, *ḥadīth* no. 1424.

²² Aḥmad Yār Khān Na‘īmī, *Mir‘āt al-Manājīḥ Urdū Tarjumah-o Sharḥ-i Mishkāt al-Maṣābīḥ* (Gujrat: Na‘īmī Kutub Khānah, n.d.), 5:336-37.

²³ Muḥammad b. Yazīd b. Mājāh, *Sunan* (Riyadh: Dār al-Salām li ‘l-Nashr wa ‘l-Tawzī‘, 1999), 365, *ḥadīth* no. 2545. Another *ḥadīth* even advised the people not to take the *ḥudūd* to the court of law but to forgive on their own. See Maḥmūd b. Aḥmad al-‘Aynī, *‘Umdat al-Qārī Sharḥ Ṣaḥīḥ al-Bukhārī*, ed. ‘Abd Allāh Maḥmūd Muḥammad ‘Umar (Beirut: Dār al-Kutub al-‘Ilmiyyah, 2001), 20:369. Prophetic traditions about saving people from being punished are plentiful. Many traditionists, after quoting such traditions, just say, “Many more traditions of the Prophet are reported in this regard.” For example, see Yūsuf b. ‘Abd Allāh b. Muḥammad b. ‘Abd al-Barr, *al-Istidhkār*, ed. ‘Abd al-Mu‘ṭī Amīn Qalā‘jī (Beirut: Dār Qutaybah li ‘l-Ṭibā‘ah wa ‘l-Nashr, 1993), 24:178, *ḥadīth* no. 35932.

be seen on many occasions, trying to save not only the accused but confessors. A number of examples of his conduct in this regard can be quoted. Two prominent examples are Mā'iz al-Aslamī and a woman of the Ghāmid tribe. The Prophet Muḥammad tried his best to convince Mā'iz and the woman of the Ghāmid tribe to withdraw their confessions. It was only after they refused to withdraw their confessions that they were handed the death penalty.²⁴ In the case of a person, it is reported that the Prophet (peace be on him) even tried to avoid hearing his confession by repeatedly turning away from him. But when he persisted in making his confessional statement to the Prophet, he was punished.²⁵

The Companions (*Ṣaḥābah*) and Successors (*Tābi'ūn*) also believed in averting *ḥudūd* as much as possible. Several traditions enumerate their conduct in this regard.²⁶ It is even reported that to the Companions and Successors, an act of intercession and negotiation for the avoidance of punishment was legitimate.²⁷

In this case, honourable judges followed the principles of the *sharī'ah* regarding the investigation of an alleged matter, quoting relevant verses from the Qur'ān. For example, the Chief Justice has observed²⁸ that the Qur'ān teaches the followers of Islam to live in harmony and peace with their fellow human beings. The Qur'ān, being the final book of Allah, is not changeable, and its teachings are eternal. Allah provides Muslims with a complete code of life to live by; tolerance is a very important part of this code. It must be noted that every person, no matter which caste

²⁴ Even when Mā'iz comes for the fourth time and says, "O Messenger of Allah! Purify me," the Prophet says, "From what I purify you?" Mā'iz says, "From fornication." The Prophet even now does not impose *ḥadd* but asks the people if he is mad. The people say that he is not mad. The Prophet asks, "If he has drunk wine?" The people say, "No!" The Prophet again asks Mā'iz, "Have you committed fornication?" He says, "Yes." Now there was no way but to impose the *ḥadd*. In the case of the woman of the Ghāmid tribe, the Prophet also advises her to ask the forgiveness of Allah, and despite her persistent and repeated confessions and giving proof that she was pregnant because of committing adultery, she was not stoned to death until she gave birth to her child. See Muslim, *Ṣaḥīḥ*, 752, ḥadīth no. 1695.

²⁵ Ibid., 750, ḥadīth no. 1691.

²⁶ Ibn 'Abd al-Barr, after narrating several traditions, noted that Abū Bakr, 'Umar, 'Uthmān, Sa'īd b. Jubayr, 'Aṭā', and a group of scholars had the opinion of averting *ḥudūd* and saving the people from punishments. See Ibn 'Abd al-Barr, *al-Istidhkār*, 24:177-78, ḥadīth no. 35930-31.

²⁷ Ibid., 24:176-77, ḥadīth no. 35924.

²⁸ Criminal Appeal No. 39-L of 2015 SC 2018, Chief Justice, para 14.

or creed he/she belongs to or what the colour of his/her skin is, is to be considered innocent unless proven guilty through a fair and impartial trial as prescribed in the constitution and law. The Qur'ān makes it abundantly clear as follows: "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."²⁹

Awarding Punishments Prescribed by the Sharī'ah as an Exclusive Right of the State

The imposition of punishment at a private or individual level was a norm in uncivilized societies, where no political order or independent authority existed to decide disputes. In such societies, complete justice could not be maintained in the imposition of punishment on a culprit. Punishment depended largely on the power of the culprit or victim and their families. If the victim had no power, the culprit roamed free. And if the victim had power, the punishment continued to the satisfaction of the aggrieved party. The killing of one person could result in the killing of a whole tribe in revenge. It is a known fact that Arab tribes fought wars spanning over centuries, resulting in countless deaths. That a private individual cannot be relied upon to ensure justice in the imposition of punishment hardly needs any justification. It is quite natural, and even with an elementary understanding of the human psyche and sentiments, one can see that.

Transgression in retribution, at the private level, led human beings to establish an independent authority that could deliver justice to the victim and also refrain from exacting revenge. The state and the social order are the result of these considerations. The Prophet Muḥammad changed the state of injustice and tyranny through the institution of a collective social order. Through his numerous sayings, he made it clear that no one was allowed to impose any punishment on anyone on his/her own and that the person doing so shall be treated as a criminal just like the one on whom he/she is imposing punishment. It would be appropriate to mention here a few references from Islamic traditions.

Ibn 'Abbās narrates that before the advent of Islam, everyone was allowed to take their own revenge, but it was banned in Islam, and it was made clear that it is a sin to take revenge without the involvement of the Imam.³⁰ Some people argue in favour of an extrajudicial award of punishment because courts generally acquit alleged criminals. However, if this argument is accepted, the entire concept of a court would collapse, as

²⁹ Qur'ān 5:32.

³⁰ Al-Bayhaqī, *al-Sunan al-Kubrā*, 8:108, ḥadīth no. 16080.

the aggrieved party is always concerned about a criminal being acquitted by a court (particularly when the aggrieved party's sentiments have been hurt). There is always a greater chance of the accused being acquitted by the court, particularly when capital punishment is involved, as both the *sharī'ah* and secular law avoid awarding a penalty in cases where the guilt has not been established beyond a reasonable doubt. Therefore, extrajudicial award of punishment cannot be allowed. And it is not something new, as this has been the case throughout the Muslim tradition. For example, Ibn Shīhāb al-Zuhrī was asked if a person gets hold of the murderer of his brother, can he kill him out of the fear of the latter escaping his arrest before being brought to the Imam? He replied that Muslim tradition disallows anyone other than the Imam from taking anyone's life.³¹

Moreover, it is accepted among all scholars that the rulers, not the individuals or aggrieved parties, are the addressees of the injunctions of the *sharī'ah* about retributions. A prominent Ḥanafī scholar, Aḥmad b. 'Alī al-Rāzī al-Jaṣṣāṣ, after mentioning differences of scholars as to who is the authority for awarding punishments to the free and the slave, pleads to verses about punishments for theft and adultery and deduces from the style of the address in these verses that the government is the sole authority for awarding punishments in all cases. He argues,

Whoever listens to these verses immediately realizes that the rulers, not the individuals, are the addressees here. Simply, the address (*khiṭāb*) intends that it is the rulers who are to sever hands and order lashings. As everybody agrees that the ruler is the authority for imposing punishments on the free, and these verses do not differentiate between the free and slaves, it follows that the ruler is the only authority for imposing punishments in all cases.³²

In the case of blasphemy, too, only the state and the court are authorized to punish the offender. Those who advocate private punishments in case of blasphemy oppose not only the principles of the *sharī'ah* but also Section 295-C. If private punishment is allowed, there is no need for this law—wherever someone sees another person committing blasphemy, he will kill him. This is a swift way as compared to the legal course, which is lengthy and can also acquit an alleged blasphemer by giving him the benefit of the doubt. However, no sensible person can approve of this practice as it is not only in violation of the principles of the *sharī'ah* but can also become a source of injustice. Therefore, no person can be declared a culprit or punished without first

³¹ Ibid., 8:107, ḥadīth no. 16079.

³² Aḥmad b. 'Alī al-Rāzī al-Jaṣṣāṣ, *Aḥkām al-Qur'ān*, ed. Muḥammad al-Ṣādiq al-Qamhāwī (Beirut: Dār Iḥyā' al-Turāth al-'Arabī, 1992), 5:131.

being allowed to defend themselves or being subjected to due process. One's pudicity (*ghayrah*) too cannot justify extrajudicial killing, for no one possesses more *ghayrah* than Allah and His Prophet. If Allah and His Prophet do not kill anyone without first allowing him to defend himself, how could it be allowed for anyone else? The following *ḥadīth* from al-Bukhārī is very important in this regard:

Mughīrah b. Shu'bah narrates that Sa'd b. 'Ubādah said, "If I saw a man with my wife, I would strike him (behead him) with the blade of my sword." This news reached Allah's Messenger, who then said, "You people are astonished at Sa'd's *ghayrah*. By Allah, I have more *ghayrah* than he, and Allah has more *ghayrah* than I, and because of Allah's *ghayrah*, He has made unlawful shameful deeds and sins done in open and in secret. And none likes that the people should repent to Him and beg His pardon than Allah."³³

The Prophet knew that the matter under discussion related to *ghayrah* and that one's sentiments were very strong in such cases. But since punishing someone privately was not in line with the principles of the *sharī'ah*, the Prophet, instead of giving any other argument, made it clear by saying that he had more *ghayrah* and Allah had even more since He had forbidden all shameful deeds whether done in open or secret but despite possessing so much *ghayrah* Allah does not want anyone to be punished without allowing him to defend himself.

In this way, the Prophet made it clear that no matter how loathsome the culprit may be, how strong the sentiments may be, how enraged one may be, and how badly one may want revenge, one must not lose control and senses. One must have the culprit punished by the ruler, as it is not allowed for one to punish someone on one's own. Another tradition makes it clear that Allah does not accept the act of punishing anyone without due procedure. Al-Zuhrī narrates that a person asked the Prophet, "If someone finds a man with his wife, can he kill him?" The Prophet replied, "No! Not without testimony. . . . Allah does not accept punishing anyone without testimony."³⁴ This *ḥadīth* has been reported many times with slight variations. However, in all the versions, the Prophet was asked how someone with *ghayrah* could go find witnesses even after watching one's wife involved with another man with one's own eyes and not strike the culprit on the spot. But the Prophet did not allow striking the culprit. This shows that the *sharī'ah* does not allow taking the law into one's own hands. While explaining this *ḥadīth*, traditionists have written clearly that

³³ Muḥammad b. Ismā'īl al-Bukhārī, *Ṣaḥīḥ* (Beirut: Dār Ibn Kathīr, 2002), 1830, ḥadīth no. 7416.

³⁴ 'Abd al-Razzāq b. Hammām al-San'ānī, *Muṣannaf*, ed. Ḥabīb al-Raḥmān al-A'zamī (Karachi: al-Majlis al-'Ilmī, 1972), 9:434, ḥadīth no. 17917.

the *sharī'ah* does not allow individuals to take the law into their hands under any circumstances. The Mālikī traditionist Ibn 'Abd al-Barr (d. 1071 CE) has explained that this practice has been forbidden due to the sanctity the *sharī'ah* places on human life, lest people should start killing people on their own without adopting the procedure prescribed by the *sharī'ah* and challenge the authority of the ruler. It has been narrated that Sa'd b. 'Ubādah said to the Prophet,

O Apostle of God! Should I leave a man after watching him involved with my wife with my own eyes and first bring four witnesses?" The Prophet replied: "Yes!" Sa'd said, "I swear by the revealer of this Book that I will kill him with my sword." The Prophet said, "O Sa'd! You no doubt have *ghayrah*, but I have more *ghayrah*, and Allah has even more."³⁵

After narrating this *ḥadīth*, Ibn 'Abd al-Barr writes, "I say that *ghayrah* does not make forbidden things allowed for one. So, one must surrender to the commandments of Allah and his apostle. One must not breach limits specified by Allah, for Allah and His Apostle have more *ghayrah*, which is an undisputed fact."³⁶

Another interesting aspect of this discussion is that the *sharī'ah* places a lot of importance on the consequences of an action in making it lawful or unlawful. For example, if an action *prima facie* appears to be right but sets a wrong precedent, it will be made unlawful. In one version of the above *ḥadīth*, the Prophet is reported to have first said, "The testimony of the sword is enough in this matter," but before completing the sentence, he added, "But this will set a precedent for drunkards and the people subdued by *ghayrah*."³⁷ Many other *aḥadīth* and other reports can also be presented in favour of the position that the *sharī'ah* does not allow punishing anyone privately without allowing him to defend himself in the court. Only the court or a ruler can punish someone after their guilt has been established.

In the cases of blasphemy, these aspects are frequently overlooked by people, but the judges in this verdict have considered them and drawn attention to them. It has been noted in the verdict that the state is responsible for ensuring that incidents of blasphemy do not take place in the country. If such an incident takes place, it is the state which shall mobilize government machinery to bring the accused to a court of law for

³⁵ Yūsuf b. 'Abd Allāh b. Muḥammad b. 'Abd al-Barr, *al-Tamhīd limā fī 'l-Muwatta' min al-Ma'ānī wa 'l-Asānīd*, ed. Sa'īd Aḥmad al-'Arāb (Maghrib: Wizārat al-Shu'ūn al-Islāmiyyah, 1990), 21:255.

³⁶ Ibid., 21:256.

³⁷ Ibid., 21:257; al-Ṣan'ānī, *Muṣannaf*, 9:434, *ḥadīth* no. 17918.

being impartially tried under applicable laws. However, no individual or group of individuals is authorized to judge if a law has been violated. Only the court has the authority to decide whether such a violation has taken place after conducting a thorough and fair trial based on credible evidence. No such authority can ever be given to an individual or group. For this reason, the Supreme Court has held the following:

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.³⁸

A Discussion of Aspects Based on Common Moral and Juridical Values

Along with aspects based on the principles of the *sharī'ah*, the verdict under inquiry is also based on sound common moral and juridical values.

Suspicious Role of the Police

Common moral values require that police be sincere and honest in the investigation of cases. Inequitable behaviour by police is a significant hurdle in reaching a just decision. In the case under discussion, we find much evidence of unfair conduct by police officers as well. Justice Khosa has remarked³⁹ that after the registration of an FIR, many facts have been overlooked at the sweet will of the police. Complainant Qari Muhammad Salaam (PW1) admitted during initial judicial proceedings that the FIR was registered without prior approval from the District Coordination Officer (DCO) or District Police Officer (DPO). Section 156-A of the CrPC requires that the investigation officer in such cases be at least a Superintendent of Police. However, in this case, Muhammad Arshad (PW7), a police officer of only sub-inspector rank, carried out the initial investigation. It was he who went to examine the place of occurrence of the alleged blasphemy, recorded witnesses' statements, and arrested the appellant on the same day the FIR was registered, i.e., 19.06.2009. Later investigation was carried out by Muhammad Amin Bukhari, SP (Investigation) (PW6), claiming in the court to have done so after being entrusted with the case by Deputy Inspector-General of Police/Regional Police Officer, Range Sheikhpura on 24.06.2009. This claim is factually incorrect as the relevant letter of the

³⁸ Malik Muhammad Mumtaz Qadri v. the State PLD 2016 SC 17, cited in Criminal Appeal No. 39-L of 2015 SC 2018, Chief Justice, para 15.

³⁹ Criminal Appeal No. 39-L of 2015 SC 2018, Justice Khosa, para 18.

Deputy Inspector-General of Police/Regional Police Officer, Range Sheikhupura, was dated 26.06.2009. Muhammad Amin Bukhari never visited the alleged place of occurrence nor recorded the statements of witnesses. The circumstances surrounding the arrest of the appellant are doubtful. According to Muhammad Arshad, SI (PW7), it was he who arrested her on 19.06.2009 from the appellant's house. However, according to Muhammad Idrees (CW1), she was handed over to the police by the religious scholars present at the meeting, from the Dera of Haji Ali Ahmad, the place of public gathering.

The Chief Justice, while mentioning the contradictions in these statements, has cast doubt on the role of the police officers. He writes that PW7 claimed in his examination-in-chief to have arrested the accused with the help of two lady constables, presented her to the Judicial Magistrate and sent her to the judicial lockup. In cross-examination, he claimed to have arrested her from her house at 4-5 pm. However, he subsequently stated that he had reached the village, Ittanwali, at about 7 p.m. and stayed there for about an hour.⁴⁰

Extrajudicial Confession and Apology

It has repeatedly been felt during the study of the case that the prosecution relied heavily on the alleged confession and apology of the accused before certain people outside the court. The accused contends that her confession was obtained under duress. People conveniently overlook the element of pressure in obtaining her confession. However, in addition to the pressure, I can also see an incentive to make such a confession. She must have been told to confess and apologize to get out of this trouble. If she had confessed without apologizing, we could have taken her confession as valid; however, she always follows up her confession with an apology, clearly implying an incentive in the confession. This is a common way to trap innocent people. She failed to realize that the motive behind extracting her confession was not to acquit her but to strengthen the case against her. People extracting her confession seem to already have had a plan for her after obtaining it, which did not include pardoning her. This confession could only be trusted if she had not followed it up with an apology. Moreover, the way she was presented before a crowd of hundreds indicates this confession was obtained under duress.

Honourable judges recognized the weakness of the alleged extrajudicial confession. According to the verdict, this was not voluntary but was obtained through coercion and under pressure as the appellant

⁴⁰ Ibid., para 40.

was forcibly brought before the complainant in the presence of a gathering of hundreds, who were threatening to kill her. A confession made in such an intimidating environment can hardly be voluntary or form the basis of a conviction, much less capital punishment.⁴¹ The Chief Justice writes,

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.”⁴²

The Chief Justice has noted that extrajudicial confessions hardly bear legal weight. Time and again, courts have declared extrajudicial confessions to be a fragile piece of evidence, and extra care needs to be exercised in relying on such confessions. The reason for looking at it with suspicion is that it can be concocted. Considering the natural course of events, human behaviour, conduct and probabilities, the legal weight of such a confession is next to nothing. At best, it may be relied upon as supporting evidence when other strong evidences of something exist. In this regard, the Chief Justice has made references to the case of *Nasir Javaid v. the State*,⁴³ *Azeem Khan and another v. Mujahid Khan and others*,⁴⁴ *Imran alias Dali v. the State*,⁴⁵ *Hamid Nadeem v. the State*,⁴⁶ *Muhammad Aslam v. Sabir Hussain*,⁴⁷ *Sajid Mumtaz and others v. Basharat and others*,⁴⁸ *Zia-ul-Rehman v. the State*,⁴⁹ and *Sarfraz Khan v. the State and two others*.⁵⁰

Preachers and the Work in the Fields

This author finds himself completely unable to believe the claim of the prosecution mentioned by Justice Khosa in his opinion⁵¹ that the accused

⁴¹ Ibid., para 24.

⁴² Ibid., para 43.

⁴³ 2016 SCMR 1144.

⁴⁴ 2016 SCMR 274.

⁴⁵ 2015 SCMR 155.

⁴⁶ 2011 SCMR 1233.

⁴⁷ 2009 SCMR 985.

⁴⁸ 2006 SCMR 231.

⁴⁹ 2000 SCMR 528.

⁵⁰ 1996 SCMR 188; Criminal Appeal No. 39-L of 2015 SC 2018, Chief Justice, para 48.

⁵¹ Criminal Appeal No. 39-L of 2015 SC 2018, Justice Khosa, para 4.

was a preacher. Christians hold their preachers and priests in high esteem in Pakistan and arrange for their livelihood. Had Asia been a preacher, she would never have been working in fields like this.

Instances of False Accusations

Some people ask how a Muslim could falsely accuse someone of having committed blasphemy. This is, however, a manifestly unfounded argument which takes someone ignorant of the human psyche, social biases of people in Pakistan, and judicial precedents to make. Honourable judges also addressed this claim and showed it to be erroneous. The court has remarked that although no one can be allowed to disregard the Prophet Muḥammad, we must also take into consideration the fact that there have been instances of people misusing this law by falsely accusing people of having committed blasphemy to fulfil their nefarious designs. For example, 62 people have been murdered even before their cases could be tried in courts of law since 1990 on the alleged commission of blasphemy. This matter has become so sensitive that there have been instances of even prominent figures facing dire consequences for highlighting the fact that this law is misused. The court has alluded to the lynching of Mashal Khan, a student of Abdul Wali Khan University, Mardan, by a mob in April 2017, on the suspicion of having posted blasphemous content on social media.⁵²

The court has also referred a case in which a neighbour of a Christian man, Ayub Masih, accused him of committing blasphemy on 14.10.1996. Although the accused was arrested, the mob set fire to the houses of the entire Christian community, forcing fourteen families to migrate. Ayub Masih was also shot at in the court and attacked in jail. The session court awarded the death penalty to Ayub Masih, which the High Court also upheld. However, it was learnt during the hearing of his appeal in the Supreme Court that the complainant, Muhammad Akram, wanted to grab the plot in possession of Ayub Masih by implicating him in a false case. He succeeded in grabbing the plot after Ayub's conviction. The appeal was accepted, and the conviction of Ayub Masih was set aside.⁵³

The extent to which nefarious designs are present behind allegations of blasphemy can also be gauged from the news reports containing statistics about such incidents. For example, according to a report⁵⁴ from 1986 (when this ordinance was proclaimed) to 2018, 1,335 cases of blasphemy have been registered. Six hundred and thirty-three

⁵² Ibid., Chief Justice, para 12.

⁵³ Ibid., para 13.

⁵⁴ *Rōznāmah Jang*, November 2, 2018, front page.

of these cases have been registered against Muslims, 494 against Ahmadis, and 21 against Hindus. Sixty-two of the people implicated in these cases have been killed extrajudicially.

Love of the Prophet and Guarding His Honour

No Muslim judge, however weak in his faith he may be, can let someone go scot-free if the charge of blasphemy has been proven against him/her. Muslim judges also love the Prophet Muḥammad like all other Muslims and know that they cannot remain Muslim without having an unconditional love for the Prophet. They have a very high regard for the honour of the Prophet. Although no one is obligated to justify their love for Prophet Muḥammad (peace be on him), considering the delicacy of the matter, judges in their verdicts have also focused on this aspect and have quoted many Qur'ānic verses about the love, greatness, and honour of Prophet Muḥammad. The Chief Justice has quoted one verse after another from the Qur'ān about the love of the Prophet being a part of a Muslim's faith and the importance of following him. He has also mentioned efforts by powerful circles in the country to ensure the protection of the Prophet's honour at both national and international levels.⁵⁵

The Chief Justice has written in the verdict that Muslims of the entire world hold Prophet Muḥammad (Peace be on him) in the highest esteem and love him even more than they love themselves, their parents, and their children. They cannot allow anyone who defies his name to get away with it or go unpunished. Governments have also made efforts to protect the honour of the Prophet both at the national and international levels. One example of such an effort by the government is the presentation of a resolution to the United Nations Human Rights Council in Geneva in March 2009, which condemned "defamation of religion" as a violation of human rights and called for the formulation of laws worldwide against defamation of religion. The resolution was finally adopted by the council on March 26, 2009, despite widespread concerns. Thus, the Pakistani government succeeded in stopping defamation of religion in the name of freedom of expression. The government also blocked Facebook when it was used to host the "Everybody Draw Muḥammad Day" event. This also shows that the government tries its best to protect the honour of the Prophet Muḥammad. This ban was lifted only after Facebook agreed to block access to this page promoting this event. Again, in June 2010, the government banned seventeen websites for hosting content offensive and demeaning to Muslims. Government authorities have been monitoring the content of websites, including Google, Yahoo, YouTube,

⁵⁵ Criminal Appeal No. 39-L of 2015 SC 2018, Chief Justice, para 3-8.

Amazon, MSN, Hotmail, Bing, and social media platforms since then to ensure that they do not have such content.⁵⁶

Life Imprisonment, not an Option

Some people are of the view that if it was not possible to award the death penalty to Asia, she should have been given life imprisonment or any other such sentence. However, the judges cannot go beyond the law, and the option of life imprisonment is not available to them under Section 295-C, as it has already been removed. They noted this constraint in their verdict by mentioning that three options (i.e., death, life imprisonment, and fine) were originally available under Section 295-C. However, the validity of this provision was later challenged in the Federal Shariat Court in *Muhammad Ismail Qureshi v. Pakistan* through the Secretary of Law and Parliamentary Affairs.⁵⁷ The Federal Shariat Court declared the provision of the life imprisonment option repugnant to the fundamental principles of Islam. The court further ruled that if the President of the Islamic Republic of Pakistan failed to get the law amended before April 30, 1991, Section 295-C of the PPC would stand amended by this court's ruling. The appeal filed against this ruling was later dismissed for want of prosecution. Hence, now only the options of the death penalty and fine are available under this Section, both of which are awarded to an accused found guilty, and neither of them to the one found not guilty.⁵⁸

Religious circles, if they are convinced that the option of life imprisonment is necessary, should move to get the law amended. Seeing the crisis that has followed this verdict, one feels convinced that such an option should be available.

Perspective of the Application of the Word "Innocent"

Some people, including some clerics, criticized this verdict under the impression that the accused had been declared innocent. They object that only Allah's apostles are innocent—how can a Christian woman accused of blasphemy be declared innocent?⁵⁹ It was saddening to see such criticism. They either do not know the difference between being legally innocent and being innocent in terms of Islamic theology, or they knowingly ignore it. Wherever the judges use the word innocent they

⁵⁶ Ibid., para 11.

⁵⁷ PLD 1991 FSC 10.

⁵⁸ Criminal Appeal No. 39-L of 2015 SC 2018, Chief Justice, para 10.

⁵⁹ A cleric, Ashraf Asif Jalali, in one of his speeches, says that this judge is using the word "innocent" for Asia, which can be used only for a Prophet in Islamic *shari'ah*. "Ashraf Asif Jalali sahib replies Chief Justice on word Masoom and bardasht," <https://www.youtube.com/watch?v=PrzbfYE8IpE>, accessed December 18, 2018.

mean someone who has been proven not guilty in a particular case or against whom there is no charge; they do not mean someone innocent in the sense of infallible. Judges never call anyone innocent in the latter sense. Only the literal meaning of the word is implied when judges call someone innocent. For example, the Chief Justice, by quoting a verse from the Qur'ān, has written in one place "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."⁶⁰

Some Weaker Aspects

Although the verdict is sound and appreciable in the light of principles of morality and the *sharīah*, in my opinion, during its study, I have also spotted a few weaker aspects. Honesty requires that while I mention the aspects which I find in line with the principles of the *sharīah* and morality, I must also point out the aspects which are weaker in my opinion.

Suspicion about Late Registration of FIR

The Chief Justice described a delay of five days in registration of the FIR to be one of the bases of suspicion about the authenticity of the allegation. However, if we consider the background of the people involved, the general attitude of the police in Pakistan, and the nature of the incident, this delay does not weaken the case, particularly when the Chief Justice has himself noted that "reference has been made by the learned counsel for the complainant on the judgments of this Court reported as *Zar Bahadur vs. the State* (1978 SCMR 136) and *Sheraz Asghar vs. the State* (1995 SCMR 1365) to contend that the delay in registration of an FIR is not *per se* fatal in all the cases as it never washes away nor torpedoes trustworthy and reliable ocular and circumstantial evidence" and written that "there is no cavil to the proposition."⁶¹ Ignoring the delay in registering the FIR was also necessary, as the Chief Justice himself had ignored the request of the counsel of the complainant⁶² that Asia's appeal should be declined as it was barred by eleven days. If this leniency has been shown towards the appellant, the complainant also deserves it. In my humble opinion, the Chief Justice did not need to use this argument in favour of his verdict.

⁶⁰ Criminal Appeal No. 39-L of 2015 SC 2018, Chief Justice, para 14.

⁶¹ Ibid., para 29.

⁶² Ibid., para 23.

Contradictions in the Statements about the Timing and Duration of Public Gatherings

The Chief Justice has pointed out contradictions in the statements of the witnesses regarding the location of the public gathering and the number of people present there. He writes,

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.⁶³

The Chief Justice has also mentioned similar discrepancies in other places of the verdict.⁶⁴ In my opinion, such discrepancies regarding the location of a public gathering and the number of people present are usually natural. They should not be seen as a lie or fraud. Public gatherings on issues like this tend to be disorderly and are also shifted from one place to another. Thus, they become, in a way, more than one gathering held at different locations and at different times, but are seen as one since the places are adjacent. Moreover, it is challenging to identify everyone, let alone the notable ones, present at such gatherings. People keep gathering and exaggerating their numbers to increase the significance of the gathering; this is quite natural. To show that a large number of people were present at a place, people use such words as “hundreds” or “thousands,” although the actual strength of the gathering may not be more than a hundred or one hundred and fifty. This is based on personal experience of attending such gatherings in a rural environment, where people move from one place to another to deliberate

⁶³ Ibid., para 30.

⁴⁰ Ibid., para 25.

⁶⁴ Ibid., para 33-34.

and resolve a matter. Therefore, in my opinion, such contradictions in statements about a public gathering do not mean that such a gathering was never held. As for mentioning the number of people in one statement and omitting it in another, this can also be natural. It is possible for a witness to feel that mentioning the number of people is unnecessary while making a statement on one occasion and feel that it is necessary while making the same statement on another occasion.

Contradictions in the Statements about the Duration of the Public Gathering and the Time of Arrest

Another argument used by the honourable judges is that the statements of the witnesses about the time and duration of the public gathering contradict one another. PW2 stated that it took place on Friday at noon and lasted for 15 to 20 minutes; PW3 stated that the public gathering took place at noon and lasted for 15 minutes; PW4 stated that the public gathering took place between 11 am and noon and lasted from two to two and a half hours.

We have already discussed the matter of contradictions in statements about the timing of an incident involving the police officer arresting Asia Bibi. She stated on one occasion that he arrested her from Ittanwali at around 4 pm, but later stated that he reached Ittanwali at around 7 pm and remained there for an hour.

The argument about the timing and duration of the public gathering, the number of people present in it, and the timing of the arrest, in my opinion, is weaker even than the argument we have discussed in the previous Section. Such contradictions about the timing and duration of the public gathering and the timing of the arrest are quite natural. People on such occasions do not note time in their notebooks so that they can tell the exact number of hours and minutes later.

The Meaning of Asia

Justice Khosa writes in his opinion, “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 Leare, ‘more sinned against than sinning.’”⁶⁵ This literary observation and reference to Shakespeare to turn Asia into “sinful” towards the end of the verdict was unneeded. One may as well say that Asia is stronger than all clerics and has won the case in the face of such opposition; interestingly, in Arabic and Urdu, ‘āṣiyah means sinful and āsiyah means strong. In English, both are spelt the same. One can say that Justice Khosa saw Asia in English and mistook it for ‘āṣiyah.

⁶⁵ Ibid., Justice Khosa, para 25.

But it is written in Urdu as Āsiyah. It would not harm judges to sometimes see things in Urdu. By the way, the name of Shakespeare's tragedy is *King Lear*, not *King Leare*.⁶⁶

Conclusion

In my opinion, despite a few weaknesses, this is a sound verdict in light of the principles of ethics and the *sharī'ah*. The few weaknesses pointed out above do not significantly harm its overall credibility, as even if all the weak aspects were removed from the verdict, it would remain a sound verdict. To me, the weak aspects have been relied upon by the judges only as supporting arguments; otherwise, the verdict does not depend on them. It is not uncommon for people engaged in investigation and scholarly research to mention relatively weaker arguments in favour of the overall thesis.

Anyone can disagree with the judges, but, at least to this author, this verdict does not seem to have been given with a malicious intention or under any pressure. This verdict has been given in defiance of the internal pressure, in comparison to which external pressure in this case amounted to nothing. What judges could have faced as a result of not acquitting Asia Bibi from the International Community is nothing in comparison to what they could have faced from parties like Tehreek-e-Labbaik Pakistan and their supporters for acquitting her. They knew that not only would violent protests erupt throughout the country, but they could also be killed. But defying this pressure, they gave a verdict that they honestly believed should have been given. It seems that judges were concerned not about the pressure but about ensuring justice according to the following maxim: "Let justice be done even though the heavens fall." Heavens could have fallen as a result of this verdict.

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⁶⁶ William Shakespeare, *The Tragedy of King Lear*, ed. Jay L. Halio (Cambridge: Cambridge University Press, 2005).