

IN THE HIGH COURT OF SINDH, KARACHI

Present:

Mr. Justice Mohammad Karim Khan Agha

Mrs. Justice Kausar Sultana Hussain.

Criminal ATJA No.170 of 2020

Appellant:	Muhammad Shakir S/o. Bashir Ahmed through Mr. Habib-ur-Rehman, Advocate.
Complainant:	Muhammad Ilyas through Mr. Sanaullah Brohi, Advocate.
The State:	Through Mr. Muhammad Iqbal Awan, Additional Prosecutor General.

Criminal ATJA No.176 of 2020

Appellant:	Abbas S/o. Muhammad Yamin through Mr. Moula Bux Bhutto, Advocate.
Complainant:	Muhammad Ilyas through Mr. Sanaullah Brohi, Advocate.
The State:	Through Mr. Muhammad Iqbal Awan, Additional Prosecutor General.
Date of Hearing:	25.10.2021
Date of Judgment:	28.10.2021

JUDGMENT

MOHAMMAD KARIM KHAN AGHA, J:- The Appellants Muhammad Shakir and Abbas were convicted in the Court of Anti-Terrorism Court No.XX, Karachi in Special Cases No.420/2019 in Crime No.189/2019 u/s. 385/386/34 PPC R/w section 7 ATA, 1997, Special Case No. 420-A/2019 in Crime No.191/2019 u/s. 23(I)-A of Sindh Arms Act and Special Case No.420-B/2019 in Crime No.192/2019 u/s. 23(I)-A of Sindh Arms Act

registered at P.S. Al-Falah, Karachi vide Judgment dated 08.10.2020 and were sentenced to R.I. for 05 years and to pay fine of Rs.25,000/-each in each section and in default of payment, the appellants were to undergo further R.I. for period of 06 months in each section. However, they were also given the benefit of Section 382-B Cr.P.C.

2. The brief facts of the prosecution case as per FIR lodged by complainant Muhammad Ilyas are that on 08.05.2019 he had received a phone call from mobile phone No.03093467781 on his mobile phone No.03452532605 and the caller introduced himself to be Chingari and demanded extortion amount of Rs.25,00,000/- and issued threats of dire consequences. The complainant had also been receiving bhatta calls from same number and thereafter the caller demanded Rs.10,00,000/- as bhatta. On 16.05.2019 the complainant had also received phone call from mobile SIM No.03447844562 whereby the caller had made the demand of Rs.500,000/- as bhatta from him therefore, complainant went to PS and lodged his FIR. On 23.05.2019 the complainant again received a call from the said caller who had finally demanded Rs.25,000/- and called him at Bagh-e-Malir Puliya along with extortion amount.

3. It is further alleged that after receiving such call the complainant contacted on "15" emergency and told them the entire situation which lead to one ASI Ramzan coming to his shop where the complainant told him about the entire situation. Thereafter, ASI Ramzan called police mobile bearing registration No.SPB-718 wherein HC Ghulam Abbas, HC Yousuf and PC Saleem Shahzad had come and went at the pointed place. Thereafter, they reached at the pointed place along with police officials who hide themselves near to the place of incident and started waiting for the accused persons. Two culprits had come to Mohammad Usman, the friend of complainant and their accomplices were standing under the bridge (puliya). As and when the complainant handed over Rs.25,000/- to them as soon as the said persons turned back the police officials intercepted them and caught hold of them on the spot whereas two of their accomplices managed to escape from the place of incident towards

main Road Shahrah-e-Faisal. Due to the public place police did not make any fire shot upon absconding accused. On inquiry the apprehended accused persons disclosed their names to be Mohammad Shakir and Abbas. Their search was conducted in presence of complainant Muhammad Ilyas and Muhammad Usman and the personal search of accused Shakir led to the recovery of one pistol of 30 bore along with magazine loaded with three live bullets from the fold of his backside of his pant. His further personal search was conducted which led to the recovery of Rs.25,000/- (bhatta amount which was received by him from the complainant). All notes with denomination of Rs.1000, two mobile phones i.e. Q mobile and one Nokia along with SIMs from his possession. The personal search of accused Abbas was conducted which led to the recovery of one pistol of 30 bore along with magazine loaded with two lives bullets from the fold of his trouser. His further personal search was conducted which led to the recovery of one wallet containing Rs.1100/-, NIC and one mobile phone Q of black colour along with SIM No.03092467781 from the left side pocket of his trouser. The apprehended accused persons disclosed the names of absconding accused to be Suleman alias Ghouri and Tariq alias Nomi. The arrested accused persons on an inquiry disclosed the weapons to be unlicensed. Thereafter, the police sealed the recovered articles and police made their arrest at the spot. Thereafter, they both along with case property were brought at PS where such FIRs were registered against them u/s 23(I)-A of Sindh arms Act respectively at the same P.S.

4. It is further alleged that during the course of the investigation the accused Suleman was arrested on 04.06.2019 in Crime No.198/2019 u/s 23(I)-A of Sindh Arms Act and during interrogation he admitted his involvement in this case therefore, Inspector Ahmed Ali Solangi made his arrest under such memo of re-arrest in presence of complainant Ilyas. This co-accused was acquitted by the trial court.

5. During the course of investigation the CDR of the relevant mobile SIM numbers belonging to accused as well as complainant party was sought by the investigation officer and after completing the remaining investigation the charge sheets against the accused were filed before the court of law having jurisdiction.

6. After usual investigation the matter was challaned and the appellants were sent up to face trial. They pleaded not guilty and claimed trial.

7. In order to prove its case, the prosecution examined 04 PWs and exhibited various items and other documents. The appellants recorded their statements under Section 342 Cr.P.C. whereby they claimed that they were innocent and had been falsely implicated in this case. They did not give evidence on oath or call any witness in support of their defence.

8. After appreciating the evidence on record, the learned trial court convicted and sentenced the appellants as set out earlier in this Judgment and hence, the appellants have filed these appeals against their convictions and sentences.

9. The facts of the case as well as evidence produced before the trial court find an elaborate mention in the impugned judgment dated 08.10.2020 passed by the trial court and, therefore, the same may not be reproduced here so as to avoid duplication and unnecessary repetition.

10. Learned counsel for the appellants have contended that the appellants are completely innocent and have been falsely implicated in this case at the behest of the Pakistan rangers; that the prosecution witnesses are planted witnesses and did not witness any offence being committed by them; that the pistols which were recovered from them were foisted as too the alleged extortion money and the CDR from the recovered mobile phones does not link them to the offence of extortion and as such for any of the above reasons the appellants should be acquitted of

the charge by extending them the benefit of the doubt. In support of their contentions they have placed reliance on the case of **Dr. Muhammad Abrar v. the State** (SBLR 2010 Sindh 816).

11. On the other hand learned APG appearing for the State and learned counsel for the complainant have fully supported the impugned judgment. In particular they have contended that the evidence of all the PW's is reliable, trust worthy and confidence inspiring and can be relied upon to convict the appellants; that the appellants were arrested on the spot by the police with unlicensed pistols, the extortion money and mobile phones one of whose SIM's matched with calls made to the complainant's phone and as such the prosecution had proved its case beyond a reasonable doubt against both the appellants and as such both their appeals should be dismissed. In support of their contentions they placed reliance on the case of **Muhammad Yaqoob v. The State** (2020 SCMR 853).

12. We have heard the arguments of the learned counsel for the appellants as well as learned Additional Prosecutor General and learned counsel for the complainant and have gone through the entire evidence which has been read out by the learned counsel for the appellants, and the impugned judgment with their able assistance and have considered the relevant law including the case law cited at the bar.

13. Based on our reassessment of the evidence we find that the prosecution has proved its case against the appellants beyond a reasonable doubt for the following reasons;

(a) The FIR was lodged with promptitude which left no room for concoction. The complainant did not name the appellants in the FIR and as such had no intention to fix them in a false case otherwise he would have named them with a specific role.

(b) The complainant and PW 3 Usman were independent witnesses who had no enmity with the appellants and no reason to implicate them in a false case and gave evidence that they were present when the extortion money was handed over to the appellants and when the police arrested the appellants on the spot from whom the extortion money was recovered along with unlicensed pistols from each of the accused and mobile phone and SIM. They acted as mashirs for the memo of arrest and recovery. They were not chance

witnesses and were not dented despite a lengthy cross examination and we find their evidence to be reliable, trust worthy and confidence inspiring and we believe the same.

(c) That the appellants were caught red handed with the extortion money and the unlicensed pistols, phones and SIM's on the spot by the police who then arrested them and recovered the above items under memorandum.

(d) With regard to the evidence of the police PW's who were present at the time of the arrest and recovery no enmity has been suggested against them and they had no reason to involve the appellants in a false case by foisting either the unlicensed pistols or extortion money on them. It is well settled by now that in the absence of any ill will or enmity the evidence of the police witnesses can be relied upon and as such we rely upon the same. In this respect reliance is placed on the case of **Mushtaq Ahmed V The State** (2020 SCMR 474).

(e) Significantly the SIM belonging to one of the recovered mobile phones belonged to the nephew of one of the appellants which created a direct link between the appellant and the SIM which could not possibly have been foisted on him especially as the appellant's nephew was living in the Punjab.

(f) The CDR record reveals that a call was made from the SIM recovered from one of the appellants to the complainant on the day when the complainant was instructed to go to pay the extortion money which once again links the appellants to the offence.

(g) That all the PW's are consistent in their evidence and even if there are some contradictions in their evidence we consider these contradictions as minor in nature and not material and certainly not of such materiality so as to effect the prosecution case and the conviction of the appellant. In this respect reliance is placed on **Zakir Khan V State** (1995 SCMR 1793) and **Khadim Hussain v. The State** (PLD 2010 Supreme Court 669). The evidence of the PW's provides a believable corroborated unbroken chain of events from the extortion demands to the registration of the FIR to the arrest of the appellants on the spot by the police whilst receiving the extortion amount with unlicensed pistols and mobile phones and a SIM which linked the appellants to the extortion demand.

(h) That the case of the acquitted co-accused who was extended the benefit of the doubt is on a completely different footing to the appellants in that he was not arrested on the spot, no recovery was made from him and no reliable identification or other material was produced by the prosecution to link him with the offence.

(i) We have also considered the defence case in juxta position to that of the prosecution which is of false implicate simpliciter by the Pakistan rangers. The appellants did not give evidence on oath in this respect, produced no complaint lodged by any family members that they were in illegal detention of the Rangers for 7 days and did not produce any witness from their house hold or even neighbour to support their defence case who could have stated that he/she witnessed the appellants being picked up by the rangers. Thus, in the face of trust worthy, reliable and confidence inspiring prosecution evidence we find the defence of the appellants to be a mere after thought.

14. We find however that the offences do not fall within the purview of the ATA 1997 as there was no design or intent to create terror and that no member of the public was terrorized as the incident took place in the early hours of the morning when no member of the public was available at the place of the incident and as such the appellants are not convicted under the ATA 1997 but are only convicted u/s 385/386/34 PPC and u/s 23 (1) A SAA.

15. We also note that the appellants are first time offenders and are of young age and are capable of reformation and that they are also the sole bread winners of large families and hence taking these mitigating factors into account by exercising our judicial discretion we hereby reduce the terms of imprisonment for each appellant from 5 years to 3 years (including fine) in respect of convictions u/s 385 PPC and S.23 (1) A SAA. Both sentences shall run concurrently, the appellants shall have the benefit of S.382 (b) Cr.PC and now that the convictions under the ATA have been removed any remissions which they are entitled to under the law.

16. The appeals are dismissed except with regard to modification in sentence as mentioned above.