

IN THE HIGH COURT OF SINDH AT KARACHI

Special CrI. Anti-Terrorism Appeal No.207 of 2017.
Special Cr. Anti-Terrorism Appeal No.208 of 2017

Present:

Mr. Justice Mohammad Karim Khan Agha
Mr. Justice Zulfiqar Ali Sangi.

Appellant: Kamran Khan through Mr. Nadeem Ahmed Azar, Advocate.

For State: Mr. Muntazir Mehdi, Deputy Prosecutor General.

Date of hearing: 30.10.2019

Date of announcement: 06.11.2019

J U D G M E N T

Mohammad Karim Khan Agha, J.- Appellant Kamran Khan son of Ahsanullah Khan has preferred this appeal against the impugned judgment dated 25.09.2017 passed by the learned Judge Anti-Terrorism Court No.IX, Karachi in Special Case No.599 of 2016, F.I.R. No.93 of 2016 registered at SITE police station, Karachi whereby the appellant has been convicted and sentenced to R.I. for five years with fine of Rs.25,000/- and in case of default he was ordered to undergo R.I. for six months more. In another F.I.R. No.94 of 2016 u/s, 23(I)A of Sindh Arms Act registered at SITE police station, Karachi, the appellant has been convicted and sentenced to suffer R.I. for seven years with fine of Rs.25,000/- and in case of default he was ordered to undergo R.I. for six months more. However, the benefit of section 382-B Cr.P.C. was extended to the appellant.

2. The brief facts of the case are that the appellant/accused and absconding accused Qari Islam and Yousuf were demanding Bhatta amounting to Rs.300,000/- from complainant Fazal-e-Rabi and his brother Hazrat Khan by making such phone calls from mobile Nos.0320-2028385, 0320-2028356 and 0320-2027446. It is also the case of the prosecution that the accused issued threats of dire consequences if the complainant and his brother did not meet their demand by making the payment of bhatta. The complainant party therefore, in order to placate the accused decided to

make the payment of Rs.100,000/- as bhatta to the accused and in consultation with the police the complainant arranged Rs.10,000/- in original currency notes whereas the remaining currency notes of Rs.90,000/- were fake notes. The complainant again in consultation with the police asked the accused to reach at Chakar Hotel to receive the bhatta amount from them whereas the police had also made a plan to be available in civil dress in order to apprehend the accused. That the appellant/accused came at the pointed place in the company of his companions where he received an amount of Rs.100,000/- from the complainant and in the meanwhile the police who were present at the time of payment in plain clothes encircled and apprehended accused at the spot and recovered the amount from his possession. In addition to recovery of bhatta amount the police also recovered the mobile phone of the accused and the complainant and a pistol of 30 bore along with five live bullets from his possession.

3. During the course of investigation the police obtained the CDR of the relevant mobile numbers pertaining to accused as well as the complainant and after completing the usual investigation the accused was sent up to stand trial.

4. A formal charge was framed against the accused to which he pleaded not guilty and claimed trial.

5. In order to prove its case the prosecution examined 03 PW's who exhibited various documents in support of the prosecution case where after the prosecution closed its side. The appellant/accused recorded his statement under S.342 Cr.PC and under oath and called a DW in support of his defense which in effect was that he had been falsely implicated in this case.

6. Learned Judge, Anti-Terrorism Court-IX, Karachi, after hearing the learned counsel for the parties and assessment of evidence available on record, vide the impugned judgment dated 25.09.2017, convicted and sentenced the appellant as stated above, hence this appeal has been filed by the appellant against his conviction.

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7. The facts of the case as well as evidence produced before the trial Court find an elaborate mention in the impugned judgment, therefore, the same are not reproduced here so as to avoid duplication and unnecessary repetition.

8. After the reading out of the evidence and the impugned judgment learned counsel for the appellant initially tried to argue the appellant's case however in the face of the overwhelming evidence against the appellant on record he decided not to press the appeal on merits but instead prayed for reduction in sentence and fines imposed on the appellant based on the following mitigating circumstances (a) that the appellant was of young age (b) that the appellant was the sole bread winner of his family and (c) that the appellant was previously of good character and should be given a chance to reform himself.

9. Learned DPG contended that based on the evidence on record the prosecution had proved its case against the appellant beyond a reasonable doubt and as such the impugned judgment did not require interference. When, however, the DPG was confronted by the court whether the mitigating circumstances raised by the appellant justified a reduction in sentence he conceded that they did so to some reasonable extent.

10. Having gone through the evidence on record we have no doubt that the prosecution has been able to prove its case against the appellant beyond a reasonable doubt for the offenses for which he has been charged. In that the appellant's presence at the scene is not in doubt as he was arrested on the spot by the police; that the bhatta money and pistol were recovered from him at the spot along with his mobile phone; that the CDR data from his recovered phone showed that he had been in contact with the complainant and that no enmity has been alleged against the police witnesses who had no reason to falsely implicate him and whose evidence is corroboratory with no major contradictions and ties in with that of the complainant and the overall prosecution case.

11. In our view taking into account the mitigating circumstances mentioned above by the learned counsel for the appellant and the DPG's no objection to a reasonable reduction in sentence we are inclined to allow the same.

12. We hereby uphold the convictions in the impugned judgment but reduce the sentences and fines in the impugned judgment as under;

- (a) 01. u/s 6(2)(k) ATA punishable u/s 7 (h) ATA r/w S.384/386 PPC the sentence of imprisonment is maintained but the fine is reduced to RS 5,000 and
- (b) 02. u/s 23 (1) A SAA the sentence of imprisonment is reduced to 5 years and the fine is reduced to RS 5,000

13. In all other respects apart from the above variation/reduction in sentences and fines the impugned judgment shall remain in tact. The appellant shall have the benefit of S.382-(B) Cr.PC and the sentences shall run concurrently.

14. The appeals stand disposed of in the above terms.