

Present:

Mr. Justice Mohammad Karim Khan Agha
Justice Mrs. Kausar Sultana Hussain.

Appellant	Sikander Patni @ Karim Akra s/o Muhammad Iqbal through Mr. Habib-ur-Rehman Jiskani, Advocate
Respondent	The State through Mr. Muhammad Iqbal Awan, Additional Prosecutor General, Sindh.
Date of Hearing	: 01.06.2023
Date of Judgment	: 01.06.2023

Mohammad Karim Khan Agha, J. Appellant Sikander Patni alias Akram Akra was tried in the Anti-Terrorism Court No.X, Karachi in two Special Cases No.665 of 2019 arising out of FIR No.767 of 2019 u/s 385/386 PPC r/w Section 7 of ATA 1997 registered at PS Kharadar, Karachi and Special Case No.665-A of 2019 arising out of FIR No.288 of 2019 u/s 23(i)A Sindh Arms Act, 2013 registered at PS Kalri, Karachi and vide judgment dated 29.12.2021 the appellant was convicted and sentenced as under:-

1. The accused Sikander Patni @ Karim Akra s/o Muhammad Iqbal is convicted u/s. 7(1)(h) of ATA, 1997 r/w. S. 385/386 PPC and he is sentenced to undergo R.I. for a period of "08" years with fine of Rs.300,000/- and in default in payment of such Fine, he shall undergo further S.I. for a period of "06" Months.
2. The accused Sikander Patni @ Karim Akra s/o Muhammad Iqbal is also convicted u/s.23(i)A of Sindh Arms Act, 2013 and he is sentenced to undergo R.I. for a period fo "08" years with fine of Rs.300,000/- and in default in payment of such fine, he shall undergo further S.I. for a period of "06" months.

Both the sentences were ordered to run concurrently. Benefit of Section 382-B was also extended to the appellant.

2. Brief facts of the prosecution case in nutshell are that on 15.10.2019 at about 1830 hours a call was received on the complainant's cell No.0345-3012741 from cell No.0331-2604558 and introduced himself as Karim Akra and sought help from the complainant and also issued threats to him of serious

dire consequences in case, he failed to do so. On 16.10.2019 at about 01:30 hours the appellant again made a call to the complainant on his cell number from his cell phone and demanded Rs 1,00,000/- as extortion money from him and kept on calling him on different dates and timings and issued threats to the complainant. Thereafter on 06.11.2019 at about 2222 hours the appellant again made a call to the complainant on his cell number from another cell no.03112943034, complainant told the appellant that he was unable to arrange such extortion money but finally Rs 25000/- extortion money was settled between the appellant and the complainant including place of payment i.e. Mama Hotel Chowk, Naya Abad, Shah Waliullah Road, Kalri, East, Karachi. On 07.11.2019 at about 0015 hours at Mama Hotel Chowk the appellant himself received extortion money Rs.25000/- from the complainant. Meanwhile the caller apprehended/arrested red handed by the police party headed by Asst. Muhammad Siddique of PS Karhi, Karachi and on query/interrogation he disclosed his name as Sikander Patni w/o Karim Ali w/o Muhammad Iqbal and upon his personal search the extortion money Rs.25000/- was recovered from his side pocket including 02 Mobile Phones (G-Live and Q-Mobile) containing Jazz Sim and Zon Sim. His further search also led to the recovery of one 30 bore unlicensed pistol along with loaded magazine which contained 03 rounds from his possession. Recovered articles were sealed at the spot and FIRs were registered against the appellant.

3. After usual investigation the matter was challaned and the appellant was sent up to face trial. He pleaded not guilty and claimed trial.

4. In order to prove its case, the prosecution examined four (09) PWs and exhibited various items and other documents. The appellant recorded his statement under Section 312 Cr.P.C. wherein he claimed that he is innocent. He did not give evidence on oath or call any witness in support of his defence.

5. After appreciating the evidence on record, the learned trial Court convicted and sentenced the appellant as set out earlier and hence, the appellant has filed this appeal against his convictions and sentences.

6. After reading out the evidence, learned counsel for the appellant, under instructions, did not press these appeal on merit provided that the appellant is given a reasonable reduction in sentence handed down to him based on the following mitigating circumstances:-

- i) That the appellant is first time offender and capable for reformation.
- ii) He has a large family to support.
- iii) The extortion amount was relatively minor being only Rs.25000/-
- iv) By accepting his guilt he has shown genuine remorse and saved the precious court time;

7. Based on the above mitigating circumstances learned APC had no objection to the reduction in sentence to some reasonable extent.

8. We have gone through the material available on record and find that the complainant gave evidence that time and again the appellant demanded extortion money from him subject to threats of life. Following such telephone call on 07.11.2019 at about 0445 hours at Mama Hotel Chowk, Naya Abad, Kalri, Lyari, Karachi complainant handed over the extortion money to the appellant. The complainant is an independent witness and has no enmity with the appellant and as such we have no reason to disbelieve his evidence. At the time when the extortion money amounting to Rs.25000/- was being handed over to the appellant he was caught red handed by police party headed by ASI Muhammad Siddique and extortion money was recovered from him. An unlicensed pistol was also recovered from him at the time of his arrest. No enmity has been suggested against any of the police officials who arrested the appellant and caught him red handed with extortion money and unlicensed pistol on the spot. Likewise the police officials who made memo of arrest and recovery had no enmity or ill will with the appellant and had no reason to implicate him in a false case. We find the evidence of (09) PWs to be reliable, trustworthy and confidence inspiring who arrested the appellant on the spot red-handed as such, we find that the prosecution has proved its case against the appellant beyond a reasonable doubt for the offences under PPC and SAA, 2013, however, we do not find that this was a case of terrorism under the Anti-Terrorism Act, 1997 as there was no intention, purpose or design to create terror rather the appellant simply extorted money which is relatively minor amount being only Rs.25000/- which was recovered from him. In this regard reliance is placed on the case of Ghulam Hussain v The State (PLD 2020 SC 61).

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9. With regard to sentencing based on the mitigating circumstances raised by the appellant and no objection given by the learned Addl. Prosecutor General Sindh we hereby modify the convictions and sentences as under:-

- a) Appellant Sikander Patni @ Karim Akra is convicted u/s.385/386 PPC and sentenced to R.I. for Five (05) years without fine;
- b) Appellant Sikander Patni @ Karim Akra is convicted u/s. 23(1)A of Sindh Arms Act, 2013 and sentenced for R.I. Five (05) years without fine;

Both the sentences shall run concurrently and the appellant shall have the benefit of Section 382-B Cr.P.C Appellant Sikander Patni @ Karim Akra is now acquitted from all the charges under Anti-Terrorism Act, 1997 and shall also have the benefit of all the remissions available under the law.

10. The instant Special Criminal Anti-Terrorism Appeal is disposed of in the above terms.