

# IN THE HIGH COURT OF SINDH AT KARACHI

Present:

Mr. Justice Omar Sial

Mr. Justice Shamsuddin Abbasi

**Spl. CrI. Anti-Terrorism Appeal No. 32 of 2025**

*(Rafaqat Hussain v. the State and another)*

**Spl. CrI. Anti-Terrorism Appeal No. 33 of 2025**

*(Khawaja Muhammad Yahya v. the State and another)*

Mr. S.M Mansoor Akhtar Peerzadah, Advocate for Appellants.

Mr. Abrar Ali Khichi, Additional Prosecutor General, Sindh.

Complainant Ali Mohammad is present in person.

Date of hearing: 23.04.2026

Date of Judgment: 18.05.2026

## **JUDGMENT**

**Omar Sial, J.** On 19.11.2024 at about 0020 hours, the complainant, Ali Muhammad, appeared at Police Station New Karachi Industrial Area and stated that he carried on business at Sindhi Hotel, Anaj Market, New Karachi, under the name and style of Noor Traders. He further stated that on 18.11.2024 at about 1330 hours, he received a call on his mobile phone No. 0345-1141395 from cell No. 0320-9244360. The caller introduced himself as "Haider" and reminded the complainant that the complainant had paid him Rs. 100,000 in extortion money (*bhatta*) twice in 2015. When the complainant declined to make any further payment, the caller threatened him with dire consequences and then switched off his phone. Consequently, F.I.R. No. 687 of 2024 was registered under sections 384, 385, and 386 of the P.P.C., read with section 7 of the Anti-Terrorism Act, 1997, and section 25 of the Telegraph Act. Thereafter, on 10.12.2024, the caller again demanded Rs.

50,000 as bhatta from the complainant. Acting upon this demand, the complainant, along with a police party headed by S.I.P. Kashif Barkat, proceeded to the specified place, where the accused were apprehended; the demanded amount was recovered from their possession. A pistol was recovered from each of the accused. A 0.30 bore unnumbered from Khawaja and a 9 mm from Razaqat. Two separate F.I.R.s (FIR No.197/2024 and 198/2024) were registered under section 23(1)(a) of the Sindh Arms Act, 2013.

2. During the trial, the accused pleaded not guilty and claimed a trial. The prosecution examined **PW-1 Ali Muhammad** (the complainant); **PW-2 Abdul Samad Memon** (witness to the crime scene inspection); **PW-3 Kaleem Ahmed Masoom** (purchaser of motorcycle seized in the incident); **PW-4 Syed Abdul Salam** (owner of motorcycle seized in the incident); **PW-5 S.I.P Kashif Barkat** (arrested the accused); **PW-6 S.I.P Muhammad Arshad** (registered the FIR); **PW-7 A.S.I Syed Zia Abbas** (maalkhana incharge). **PW-8 P.I. Tariq Qayyum** (investigating officer).

3. In their respective section 342 Cr.P.C. statements, both appellants professed innocence. Khawaja Muhammad Yahya appeared as his own witness and asked to be examined under section 340(2) Cr.P.C. He also brought his wife, Samreen, as his witness. According to Khawaja, he was forcibly picked up from his house on 06.12.2024. He was asked to pay Rs. 500,000, but when he could not pay it, a case was registered against him. His wife corroborated what Khawaja had said. Razaqat Hussain also had a similar story to tell.

4. The learned 4th Anti-Terrorism Court, Karachi, vide judgment dated 30.06.2025, convicted and sentenced the accused as follows:

- i. Both appellants were convicted for offences u/s 384/385/386/34-PPC, 25 Telegraph Act, read with Section 6(2) (k) punishable under section 7(1)(h) ATA 1997 and sentenced to suffer imprisonment for five year each and a fine of Rs.10,000 each, in case

of default of payment of fine, they would remain in prison for another three month.

- ii. Both the appellants were convicted for an offense under section u/s 23 (1) (a) of Sindh Arms Act 2013 and sentenced to suffer imprisonment for three years each and a fine of Rs. 5,000; in case of default, they would remain in prison for another month.

5. We have heard the learned counsels for the appellants, the complainant, and the learned Additional Prosecutor General. Our observations and findings are as follows:

6. The evidence against the two appellants is that (i) they were caught red-handed on the spot with the bhatta amount and (ii) the call data record supported the complainant's allegation.

7. As regards the arrest of the appellants on the spot, we are not entirely convinced that that was the case as alleged by the prosecution. The F.I.R. shows that the appellants were arrested at 3:30 a.m. on 10.12.2024. The memo of arrest records that the arrest was made from Muhammad Hassan Road Corner Comprehensive School Block-M North Nazimabad when they came to collect the bhatta on a motorcycle. This version is completely negated by a recording of a television program titled Manzar-e-Aam, aired on Channel-5 on 11.12.2024. Over-exuberant police officers, including the investigating officer in the case, are seen leading the television program's host to a hotel, where the two appellants are arrested. The television program recording was produced as evidence by Khawaja's wife during her testimony. Malafide and misrepresentation on the part of the police is obvious, and this fact alone would be sufficient to create doubt in the prosecution case. Doubt regarding the authenticity of the prosecution case is magnified when one sees CCTV footage ostensibly showing Khawaja being arrested from his home on the night of the 06.12.2024. The footage does not reveal specific faces but shows some white colored vehicles often used by law

enforcement agencies, forcibly taking away somebody from the house. This footage alone would not have been sufficient, but, coupled with the television program recording, it supports the appellant's defense.

8. Identification of the appellants is also shrouded in mystery. The prosecution's version is that as the two appellants were arrested on the spot, they were identified by the complainant and the policemen who arrested them. For starters, the appellants were not arrested from the place and in the manner as claimed by the police. Secondly, while the complainant is shown as a witness to the arrest and recovery, his counsel categorically told the Court that the complainant had not seen the appellants. The complainant, when asked to clarify, reiterated what the counsel had said and added that he was unable to see the people who came to collect the *bhatta* because it was very dark at the place of arrest viz. Muhammad Hassan Road Corner Comprehensive School Block-M North Nazimabad, and the police immediately covered their faces when they were apprehended. He had no explanation when asked how he identified the appellants in Court, having not even seen them. He preferred to remain silent. Either way, he was a dishonest witness who had lied on oath. The television recording also proves his deception.

9. The recovery of the motorcycle, said to be driven by the two appellants when they came to receive the *bhatta*, is equally shrouded in mystery. The memo of arrest and seizure records that the motorcycle on which the accused came was black in color, the model was Suzuki 150, the engine number was PKG 30031424, while the chassis number was rubbed off. The registration number was not specified. PW-3 Kaleem Ahmed Masoom testified that he purchased the motorcycle from Syed Abdul Salam and subsequently sold it to Syed Munawar Abbas Zaidi. PW-4 Syed Abdul Salam also came in as a witness and said that he had purchased the motorcycle from Mehran Autos. According to the prosecution, the motorcycle's owner at the

time of the incident was Syed Munawar Abbas Zaidi. For reasons best known to the prosecution, the owner was not investigated, nor his statement recorded, nor was he produced as a witness at the trial. No theft report for the motorcycle was produced, nor was it even alleged that the accused had stolen Zaidi's bike. The investigation officer admitted that "It is correct to suggest that the whereabouts of the owner of the motorcycle was not found out". Further doubt is cast on the accuracy of the case by this aspect.

10. It was alleged by the prosecution that when the two accused were caught, two mobile phones were recovered from Khawaja, and one Vigo Tel phone was recovered from Razaqat. No specifications were recorded for the two phones recovered from Khawaja. The SIM numbers of all three phones were not mentioned in the memo. No ownership records for the SIMs in the three phones were produced at trial. However, the investigation officer acknowledged that two numbers were used throughout the episode. One of the two SIMs had been issued to a Bangal Khan, while the other number had been issued to a Basharat Ali. Neither were interrogated. It was not explained how the appellants were using numbers issued to other persons. The call data record, however, corroborates the complainant's allegation to the extent of the calls he received from these numbers. We are also swayed in favor of the prosecution, taking into account the appellant's criminal record and the disclosures they made during their interrogation.

11. A pistol was recovered from each of the accused. A 0.30 bore unnumbered from Khawaja and a 9 mm from Razaqat. At the trial, Razaqat produced the entire record of his pistol, whereas Khawaja said that it had been foisted upon him.

12. This case for the prosecution fell apart because of the television program. On the one hand the Sindh Police says that it does not have the budgets and approvals to comply with the Honorable Supreme Court's recommendation in *Zahid Sarfaraz Gill vs. The State* (2024 SCMR 934) to implement body cams in

narcotics related seizures and arrests, while on the other hand, an officer so recklessly, takes an entire camera crew to record the arrest and seizure of, at best, a petty criminal.

13. We inquired from counsel as to why these two individuals were nominated in this crime and why they were picked up in the manner the families claim they were. The explanation we got was that Khawaja is a software person and Razaqat is his friend. Several years ago, Razaqat was a co-accused in a murder case, in which he was apparently not the main accused. Razaqat believes he was picked up on his antecedents, limited to that case, while Khawaja strongly believes that he is only in this mess because Razaqat was his friend. The explanation cannot be wholly disregarded upfront, keeping in mind the ground realities. It still does not explain why the police would raid the way they did. Usually, there is no smoke without a fire.

14. We do not agree with the terrorism conviction. Repeatedly, this Court has drawn the attention of the learned trial courts to consider the wisdom of the Honorable Supreme Court in **Ghulam Hussain vs The State (PLD 2020 SC 61)**. A trial court must ensure that satisfactory evidence was produced at the trial to show satisfaction of section 6(1) (b) or (c). Reasons should be given as to why the trial court in its wisdom reached the conclusion that the charge was terrorism. This Court has, in the past, also drawn the attention of the learned trial courts to the fact that categorizing an offense as terrorism so easily and arbitrarily without assigning any reasons is against our national interest. Each case categorized as terrorism contributes to a statistic that our enemies throw around to malign Pakistan. We fail to see logic in approving the taking of a 50,000 bhatta in the facts that surrounded the allegation, as terrorism. There was a time when bhatta demands in Karachi at least had created a sense of fear and insecurity in the city. The circumstances of that time were different. The Sindh Government, and in particular the Sindh

Police, must be appreciated for drastically reducing bhatta-related complaints.

15. Looking at the case holistically, we are of the opinion that the ends of justice will be met if:

- (i) Both appellants are acquitted of the terrorism charges;
- (ii) Both appellants are acquitted of the conviction under the Sindh Arms Act, 2013;
- (iii) The convictions awarded to both appellants under the Pakistan Penal Code are upheld. However, the sentence is reduced to the period they have already served.
- (iv) The appellants may be released upon payment of a fine or imprisonment in lieu thereof, as ordered by the learned trial court.
- (v) The appellants will be entitled to remissions and the benefit of section 382-B Cr.P.C.

**JUDGE**

**JUDGE**