

# IN THE HIGH COURT OF SINDH AT KARACHI

PRESENT:

***Mr. Justice Aftab Ahmed Gorar***  
***Mr. Justice Amjad Ali Sahito***

Spl. CrI. Anti-Terrorism Appeal No.190 of 2017

Appellants No.1&3 : Muhammad Ayub S/o Rozi Khan Brohi  
Daad Mohammad S/o Rozi Khan  
through Syed Kashif Ali, Advocate

Appellant No.2 : Ch. Asad S/o Ch. Shahid Mehmood  
through Mr. Muhammad Azeem Korai,  
Advocate

Appellant No.4 : Gul Hassan S/o Shah Meer  
through Mr. Muhammad Yousuf, Advocate

Respondent : The State  
through Mr. Abrar Ali Khichi  
Additional Prosecutor General, Sindh

Complainant : Muhammad Saleem Lakhani  
through Syed Wasi Imam Zaidi, Advocate

Date of Hearing : 16.01.2019

Date of Order : 16.01.2019

## **J U D G M E N T**

**AMJAD ALI SAHITO, J.**— Being aggrieved and dissatisfied with the judgment dated 28.08.2017 passed by learned Judge, Anti-Terrorism Court-IX, Karachi in Special Case No.1118/2016 arising out of the FIR No.195/2016 whereby appellants were convicted and sentenced under Section 7(h) of ATA, 1997 read with Section 385 PPC to suffer R.I. for 05 years each and to pay fine of Rs.30,000/- each and in case of default thereof, they shall further suffer R.I. for 06 months. The benefit of Section 382-B Cr.PC was also extended in favour of the appellants.

2. Brief facts of prosecution as per FIR are that on 16.06.2016, Complainant Mohammad Saleem went to look after his plot located at Saira Bibi Goth which he had purchased from Mustafa Ahmed

Siddique and as and when he was available there, where accused Dad Mohammad, Muhammad Ayub, Choudhary Asad, and Gul Hasan came and asked him if he wanted to restore the possession of his plot, he should pay Rs.100,000/- as *Bhatta* and in case of failure to pay such amount, he was threatened to dump his dead body in his own plot. Complainant lodged the FIR against the accused persons which was investigated and after completing the same, the charge sheet against the accused was filed before the Hon'ble Administrative Judge where from it was received by this Court by way of transfer for its disposal in accordance with law.

3. The learned trial Court framed the charge against the accused persons at Ex.3, who pleaded not guilty and claimed to be tried. In order to establish the accusation against the accused, the prosecution examined the following witnesses:

- (i) PW-1 SIP Khan Muhammad at Ex.8, he produced the copy of the FIR at Ex. 8-A and the copy of the DD entry No.39 dated 16.06.2016 at Ex.8-B.
- (ii) PW-2 Complainant Muhammad Saleem at Ex.9, he produced the "Sanad" in his name of Plot No. 289 along with copy of bank challan at Ex.9-A, verification letter issued by Mukhtiarkar along with copy of sanction order issued by DC Karachi and list of allottees at Ex.9-B, memo of place of incident at Ex.9-C, memo of arrest of accused Dad Muhammad, Ch. Asad and Gul Hasan at Ex.9-D, memo of arrest of accused Muhammad Ayub at Ex.9-E, memo of seeking of CDR along with CDR itself at Ex.9-F.
- (iii) PW-3 Muhammad Iqbal at Ex.10, he produced a copy of "Sanad" in respect of Plot No. 367 along with a copy of bank challan at Ex.10-A.
- (iv) PW-4 Habib Ahmed at Ex.11, he produced copy of "Sanad" issued in the name of Nighat Ilyas in respect of Plot No. 333 along with bank challan at Ex.11-A, copy of sale agreement by Nighat Ilyas in respect of Plot No.333 at Ex.11-B and the copy of

application made by him and others jointly to the SHO PS Surjani Town at Ex.11-C.

- (v) PW-5 Rasheed Ahmed at Ex.12, he produced a copy of "Sanad" in respect of Plot No 327 under Sindh Goth Abad Scheme along with a copy of bank challan at Ex.12-A and copy of "sanad" issued in favour Shakir Hussain in respect of Plot No. 332 at Ex.12-B.
- (vi) PW-6 Mustafa Ahmed Siddiqui at Ex.14, he produced a copy of registered power of attorney executed by Abdul Aziz at Ex.14-A and an agreement executed by Rozi Khan, Dad Mohammad, Abdul Aziz and Moula Bux at Ex.14-B.
- (vii) PW-7 Inspector Syed Naveed Ali Shah at Ex.15, he produced a copy of the application made by him for the CDR of mobile SIMs at Ex.15-A
- (viii) PW-8 ASIP Gul Bahar at Ex.16, he produced DD entry No.46 and 51 dated 17.6.2016 at Ex.16-A and Ex.16-B.
- (ix) PW-9 SIP Mohammad Hanif at Ex.17;

4. All the prosecution witnesses were cross-examined by the learned counsel for the appellants. Thereafter, Deputy District Public Prosecutor (DDPP) closed the side of the prosecution vide statement at Ex.18.

5. Statements of the accused persons were recorded under Section 342 Cr.PC. by the learned trial Court at Ex.19 to Ex.22 in which they denied the allegations as leveled against them by the prosecution and claimed to be innocent.

6. The learned trial Court, after hearing the parties and on assessment of the evidence, convicted and sentenced the appellants as stated above vide judgment dated 28.08.2017

which is impugned before this Court by way of filing the instant Special Criminal Anti-Terrorism Appeal.

7 Learned counsel for the appellants mainly contended that that the appellants are innocent and have falsely been implicated in this case; that the appellant Daad Muhammad and Muhammad ayoub are son of mst Saira Bibi and she is the owner of Na-class land 30 admeasuring 25 acres; that the complainant and his witnesses through false fabricated documents occupied the said land and in order to remove from the way they lodged false Bhatta case; that Mst Saira still owner of the said land and they have no legal documents to believe that they are owners of the said plots; that the conviction and sentence of the appellants are not justified by the evidence and record; that the learned trial Judge seriously erred in shifting the burden of proof on the accused persons as such a burden always lies on the prosecution and never shifts on the accused; that the version given in the FIR was neither corroborated through any circumstantial nor any independent witness was produced; that the impugned judgment clearly indicates that the learned trial Judge based his reasons only on assumptions of the prosecution and took into considerations certain portions which were in favour of the prosecution. They lastly contended that the prosecution has miserably failed to prove the case against the appellants, therefore, the appellants are entitled to their acquittal.

8. On the other hand, learned counsel for the complainant as well learned Additional Prosecutor General, Sindh while supporting the impugned judgment has argued that the prosecution has proved its case against the appellants beyond any shadow of a doubt; that the appellants have demanded Bhatta from the complainant and its witnesses, hence, their appeal may be dismissed.

9. We have heard the learned counsel for the appellants as well as learned Addl. P.G. Sindh and have minutely examined the material available on record with their able assistance.

10. The case of the prosecution is that the appellants have demanded Bhatta from the complainant and his witnesses, whereas, the claim of appellants, namely, Dad Muhammad and Muhammad Ayub that in the year 1995 Na-Class Land No.30 measuring 25 acres was allotted their mother, namely, Mst. Saira Bibi and in the year 1996 the Civil Suit was filed before the Senior Civil Judge, Karachi West, which was decreed in their favour and they are the owners of the said land but the complaint lodge false FIR to occupied the said land.

11. In order to prove the case, the prosecution has examined PW-2 complainant Muhammad Saleem, who in his evidence deposed that he has purchased Plot No.289 measuring about 720 square yards from one Mustafa Ahmed Siddiqui (PW-6) about 9-10 years back. He has produced Sanad, challan, and letter regarding verification of the

document. He admitted in his examination-in-chief that on 16.06.2016 he and Iqbal were available at our respective plots at the site where present accused Daad Muhammad, Ayoub Brohi, Gul Hassan, Chaudhary Asad asked us as to why we are available here. We disclosed that we are the owner of the plots but they replied that the said plots did not belong to them but they are the owners of the same. In cross-examination, he has admitted that **“It is a fact that village “Saira Bibi Goth” is in the name of the mother of present accused Daad Muhammad. I do not remember as to on what date I had purchased the plots from Mustafa Ahmed Siddiqui.”** He has further admitted that I did not disclose in the FIR that the accused had been receiving the handsome amount from different persons at the site. He has further admitted that **I did not make any verification about the ownership of the plots purchased by me from Mustafa Ahmed Siddiqui as civil suit bearing NO.408/1997 filed before the Court of 2<sup>nd</sup> Senior Civil Judge, Karachi West by Abdul Aziz, Moula Bux, Muhammad Ayoub sons of Rozi Khan, Noor Muhammad and Noor Hussain son of Ali Murad relating to the relevant plots was decreed in their favour and that such suit was filed against Deputy Commissioner West and Assistant Commissioner, Mukhtiarkar, SDM Mangopir Karachi, SHO PS Surjani Town and Board of Revenue. It is a fact that Mst. Saira Bibi the mother of accused Daad Muhammad had filed a Constitutional Petition against me before the Hon’ble High Court of Sindh Karachi after registration of FIR by me.** However, he has denied that before registration of FIR by me Mst. Saira Bibi, the mother of accused Daad Muhammad had made an application to SSP Pir Muhammad Shah before the registration of

FIR by me. He has also denied that verification letter (Ex.9-B) does not disclose my name as an owner of my plot No.289 having an area of 720 sq.yds. He has admitted that the Sanad (Ex.9/A) was issued in the year 2011 and he had deposited relevant challan amounting to Rs.3600/- (Ex.9/A) in the year 2013 and as per "Sanad" (Ex.9/A) the allottee should start residing at the relevant plots within three years after issuance of such "Sanad" in his favour. However, he has denied that the Sanad produced by him is a fake one.

12. The prosecution in support of the complainant's version has examined PW-3 Muhammad Iqbal, who in his evidence deposed that he is an estate agent and dealing with the business of sale and purchase of the Urban property. He had purchased ten plots in the year 2008 and 2009 from one Mustafa Ahmed Siddiqui and subsequently he sold the plots to the different persons. On 8.4.2016 he was informed that the plots which he had sold out to the different individuals were being encroached upon and occupied forcibly by accused Daad Muhammad, therefore, he went and met with Daad Muhammad and asked him to allow the owners of the plots to occupy the said plots as they had purchased the same from him in a legal way, but he did not give any positive response to him. On 10.4.2016, accused Daad Muhammad and others had gathered in "Saira Bibi Goth". On the said date affectees / aggrieved persons sent a message to Daad Muhammad and others to had a meeting with them but they refused and told that they should approach the police about their grievance if they were having the same and subsequently they went to the SHO Police Station Surjani Town and made application against Daad Muhammad and Chaudhary Asad. Police called the accused Daad

Muhammad and Chaudhary Asad, the accused persons disclosed to them that if the owners of the plots wanted the restoration of the possession of their respective plots they should pay Rs.100,000/- as Bhatta to them. After negotiation with them settled the issue and during such negotiation one Ayoub Brohi also came there and in the meanwhile one person Rana available at the estate of Daad Muhammad disclosed to him that he should pay Rs.30,000/- if he wanted to save his plots and he further disclosed to him that out of Rs.30,000/- he would pay Rs.15,000/- to accused Daad Muhammad and whereas in respect of remaining Rs.15,000/- he disclosed that he would retain the same, as such, he did not pay the amount of Rs.30,000/- as demanded by him and went away. In the cross-examination, he admitted that Bibi Saira Goth is in the name of the mother of accused Dad Muhammad. He further admitted that on 16.6.2016 he and complainant Muhammad Saleem visited their plots where both accused were available and issued threats.

13. The prosecution has also examined PW-4 Habib Ahmed, who in his evidence deposed that in the year 2010 he had purchased a plot bearing No.R-333 from one builder namely Iqbal in the sum of Rs.170,000/- and after purchase the plot, he intended to raise the construction over it, but the accused Daad Muhammad, Ayoub, Gul Hassan, and Chaudhary Asad asked him to give them Rs.1,00,000/- as bhatta for the purpose of raising construction over his plot and in case of non-payment of such amount they disclosed that they would not allow him to raise any construction over his plot. All the affectees made a joint application to the SHO of PS Surjani Town and during the course of investigation Inspector Naveed Ali Shah recorded his statement under section



161 Cr.P.C. on 17.6.2016. In the cross-examination, he admitted that he had purchased his plot in the year 2010. He further admitted that his plot was occupied in the year 2016 by the accused persons, but he did not make any complaint to the police and subsequently complaint was made jointly. He further admitted that he has not disclosed in his statement recorded under section 161 Cr.P.C. that he had visited his plot at Saira Bibi Goth on 22.4.2016.

14. In order to strengthen the case, prosecution has examined PW-5 Rasheed Ahmed, who in his evidence deposed that he has purchased two plots bearing No.R-332 and R-327 located at Saira Bibi Goth in the sum of Rs.170,000/- each and produced Sanad in respect of Plot No.327 issued in his name along with the copy of challan. After purchase, he came to know that the said plots were encroached by one accused Daad Muhammad and his two brothers and two other individuals. Thereafter, we all went to the police station Surjani Town where accused were already available and they demanded Rs.100,000/- for the purpose of restoration of each plot. In cross-examination, he admitted that Saira Bibi Goth is in the name of the mother of present accused Daad Muhammad.

15. The prosecution has examined PW-6 Mustafa Ahmed Siddiqui, who in his evidence deposed that Abdul Aziz one of the sons of Saira Bibi had appointed him by executing registered power of attorney in his favour for the purpose of same landed property located at Saira Bibi Goth. He has produced a certificate of Na-class No.30 measuring 25 acres from the legal heirs of Saira Bibi namely Daad Muhammad, Abdul Aziz and Moula Bux under the sale agreement and subsequently he converted the status of land from agricultural land to the commercial land and made

plotting over Saira Bibi Goth spread over an area of 25 acres and in the year 2008 and 2009 he had sold out ten plots to Muhammad Iqbal and 50 plots to Muhammad Saleem Lakhani under sale agreement. In cross-examination, **he admitted that there are five sons of Mst. Saira Bibi and he purchased the relevant survey/Na-class number from one of them, namely, Abdul Aziz on the total consideration of Rs.50,00,000/- at the rate of Rs.2,00,000/-**. He admitted that he has not produced any proof in writing showing that he had sold out ten plots to PW Iqbal and fifty plots to complainant Saleem Lakhani. However, he admitted that civil litigation was pending before the competent Court of law.

16. The prosecution also examined PW-7 Inspector Syed Naveed Ali Shah, who in his cross-examination deposed that **“there was no any case registered against any of accused under the provisions of narcotics Act prior to the registration of a present case against them.”** He further admitted that he did not collect any evidence showing that the relevant mobile SIM number was under the use of accused Gul Hassan, but he has been informed by one PW Iqbal.

17. The prosecution has also examined PW-8 ASIP Gul Bahar, who has arrested the accused nominated in the FIR.

18. The record reflects that PWs 2 to 5 had purchased the plots from one Mustafa Ahmed Siddiqui (PW-6) in the year 2008 and 2009 and he had sold the plots on the basis of a lawful attorney appointed by one Abdul Aziz, son of Mst. Saira Bibi, as he has purchased Na-class Land No.30 measuring 25 acres from the legal heirs of Saira Bibi, mother of accused Daad Muhammad and

Muhammad Ayoub. It is pertinent to mention here that complainant Muhammad Saleem admitted in his cross-examination that after registration of FIR mother of accused Daad Muhammad had filed a Constitutional Petition before this Court against him. It means that after registration of the FIR on 16.6.2016 mother of accused persons was alive and the entire land was in her name, then how PW-6 Mustafa Ahmed Siddiqui purchased the land from the legal heirs of Mst. Saira Bibi. Furthermore, witnesses had admitted that Mst.Saira Bibi has five sons, but he has purchased the land from one of them Abdul Aziz in the sum of Rs.50,00,000/- at the rate of Rs.2,00,000/- and when the said land was not distributed nor any share was given to the legal heirs (Abdul Aziz) by her and on what basis land was subsequently sold to PW Mustafa Ahmed Siddiqui and, thereafter, he has sold the same land to the other PWs. Furthermore, the claim of PWs that they have purchased the land in the year 2008 and 2009, but the record reflects that through Sanad complainant and other PWs became owners of their respective plots, which was signed by the Mukhtiarkar in the year 2011 and verification was made in the year 2017 and Saira Bibi Goth was regularized in the year 2012, then how the complainant and PWs became owner of the plots in the year 2008 and 2009. In order to get rid of the appellants, the instant FIR was registered and thereafter the appellants were arrested. In the evidence the PWs admitted that they have jointly approached to the police station Surjani Town where they have moved application against the appellants for demanding Bhatta and in the presence of police officials appellants/accused persons had demanded Bhatta of Rs.100,000/- on each plot, but such fact has not been disclosed by

the SHO of PW-9 Muhammad Haneef in his evidence. The version of the PWs was not being supported by the police officials, as during course of investigation PW-7 Investigating Officer Inspector Syed Naveed Ali Shah admitted that there is no case registered against the accused/appellants nor the investigating officer produced any documentary evidence to believe that the appellants are habitual for demanding Bhatta from the people. Furthermore, according to the PWs, they have purchased the plot in the year 2008 and 2009 and started raising construction in the year 2016, but no complaint was made during that intervening period nor they have been demanded Bhatta from them and in fact being owner of the plots the appellants resisted and by using word Bhatta the complainant registered the instant case in order to build up the pressure upon them for withdrawing the case/plots, otherwise no evidence was brought on record in order to justify that the appellants have demanded Bhatta from the complainant party. No independent witness has been cited from the locality to believe that the appellants have demanded Bhatta from the PWs.

19. It is an admitted fact that at the time of executing power of attorney and executing unregistered sale agreement by the sons of Mst. Saira Bibi, she was alive at the time of executing above said documents, in the presence of the owner of the land no value in the eyes of law of power of attorney executing by her son Abdul Aziz in favour of Mustafa Ahmed Siddiqui (PW-6) and other sons Daad Muhammad and Muhammad Ayoub executed unregistered sale agreements, they are not owner of the land and they are only the sons of Mst. Saira Bibi. As per statement of PW-6 Mustafa Ahmed Siddiqui, he has purchased the land from the sons of Mst. Saira Bibi in the sum of Rs.2 lac per acre and he has changed the

status of land from residential to commercial but he has failed to produce any document in this regard. When the land in the name of Mst. Saira Bibi the Mukhtiarkar Goth Abad Scheme is/was not competent to issue Sanad to other person, they were not resided in the same Goth (Village).

20. The upshot of the above discussion is that the prosecution has miserably failed to bring home the guilt of the appellants/accused persons beyond reasonable doubt and it is settled proposition of law that for giving benefit of doubt to an accused it is not necessary that there should be many circumstances creating doubts, if there is a single circumstance which creates reasonable doubt about the guilt of the accused, then the accused will be entitled to the benefit. In this respect, reliance can be placed upon the case of **MUHAMMAD MANSHA v. THE STAE** reported in **2018 SCMR 772**, wherein the Hon'ble Supreme Court of Pakistan has held that:

***“4. Needless to mention that while giving the benefit of doubt to an accused it is not necessary that there should be many circumstances creating doubt. If there is a circumstance which creates reasonable doubt in a prudent mind about the guilt of the accused, then the accused would be entitled to be benefit of such doubt, not as a matter of grace and concession, but as a matter of right. It is based on the maxim, “it is better than one innocent person be convicted”. Reliance in this behalf can be made upon the cases of Tarique Parvez v. The State (1995 SCMR 1345), Ghulam Qadir and 2 others v. The State (2008 SCMR 1221), Mohammad Akram v. The State (2009 SCMR 230) and Mohammad Zaman v. The State (2014 SCMR 749).***

21. Keeping in view the above facts and circumstances of the case, benefit of doubt was extended in favour of the appellants and as a consequence whereof instant appeal was allowed by our short order dated 16.01.2019, whereby the appellants were acquitted

from the charge and they were directed to be released forthwith if not required in any other custody case.

22. These are the detailed reasons of the short order announced by us vide order dated 16.01.2019.

**J U D G E**

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Karachi,  
27<sup>th</sup> January 2019.