

IN THE HIGH COURT OF SINDH AT KARACHI

PRESENT:

Mr. Justice Aftab Ahmed Gorar

Mr. Justice Amjad Ali Sahito

Spl.Crl.Anti-Terrorism Appeal No.129 of 2018

Spl.Crl.Anti-Terrorism Appeal No.130 of 2018

Spl.Crl.Anti-Terrorism Jail Appeal No.137 of 2018

Appellant in Spl.Crl.
ATA Nos.129 & 130
of 2018 : Abdul Jabbar S/o Muhammad Arif
Through Mr. Musharaf Azhar,
Advocate

Appellant in Spl.Crl.
ATJA No.137/2018 : Muhammad Asif S/o Ghulam Mustafa
Through Ms. Fatima Jameela Jatoi
Advocate

Respondent : The State
Through Syed Meeral Shah Bukhari,
Additional Prosecutor General, Sindh

Dates of Hearing : 23.04.2019 & 14.05.2019

Date of Judgment : ____ .05.2019

J U D G M E N T

AMJAD ALI SAHITO, J.— Being aggrieved and dissatisfied with the judgment dated 14.04.2018 passed by learned Judge, Anti-Terrorism Court No.II, Karachi in (1) Special Case No.1722 of 2016 arising out of the FIR No.188/2016 under sections 384, 386/34 PPC read with Section 7 of Anti-Terrorism Act, 1997, (2) Special Case No.1723 of 2016 arising out of the FIR No.189/2016 under section 23(i)(a) of Sindh Arms Act, 2013 and (3) Special Case No.01/2017 arising out of the FIR No.266/2016 under section 23(i)(a) of Sindh Arms Act, 2013, all FIRs registered at PS Bahadurabad, whereby the appellants were convicted and sentenced to suffer R.I. for five (5) years under section 7(h) of ATA, 1997 with fine of Rs.5,000/- each and in default thereof, their imprisonments be extended for three (3) months. Appellants were also convicted and sentenced to suffer R.I. for five (5) years u/s.23(i)(a) of Sindh Arms Act, 2013. All sentences were ordered to be run concurrently. However, the benefit of Section 382-B Cr.P.C. was also extended to the appellants.

2. Brief facts according to FIR No.188/2016 filed by complainant Muhammad Hatim Khan on 04.10.2016 at 2333 hours are that he is a General Manager of Karam Ceramic Limited and on 09.09.2016 he along with his family was having dinner at Kabees Restaurant, Muhammad Ali Society when at about 9 PM, he had received a call on his mobile No.0300-2005961 from the number 021-34207785 and caller told his name as Farooq Baloch and demanded Rs.1 Crore bhatta and on non-payment he had threatened him of dire consequences and of killing him and thereafter many times, he had received calls from 021-34200032, 021-32012022 & 0305-3769835 on different dates and the caller gave his name as Sajjad and kept demanding Bhatta and kept threatening him and received many messages. He then registered his case against an unknown person for demanding Bhatta of Rs.1 crore and on non-payment, threatened him of his life. SI Muhammad Latif of PS Bahadurabad had conducted the investigation and had stated that on 07.10.2016 after lodging the FIR the complainant Muhammad Hatim Khan got inspected the place of incident i.e. Kabees Restaurant and ASI had told him to bargain with the caller which Hatim had done it and it was agreed to pay Rs.1 lac as Bhatta, Rs.50,000/- at one time and the rest afterwards. The place for making payment of Bhatta was settled under the bridge of Awami Markaz on 06.10.2016 at 12.00 in the night when two motorbike riders had come, one of them alighted from the motorbike came towards Hatim had taken the envelope of Rs.50,000/- when he was apprehended by the police already waiting for them whereas other accused on motorbike had escaped as such FIR No.189/2016 was filed by ASI Taweez Gul on 07.10.2016 at about 0130 hours Ex.P/15 on record. According to this FIR No.189/2016 from arrested accused Muhammad Asif was recovered 30 bore pistol from the nefa of his shalwar loaded magazine with six rounds and on the barrel of which was written the number 3256 and the word TARGET and under the round figure was written OMB & Co. and on the upper side of the barrel was written 30 bore & from

the right side pocket of kameez was recovered white envelope containing 50 notes of Rs.1000/- one mobile Nokia RM-944 SIM No.0301-3832579 IMEI No.359974/06/3176742 & 361719/06/107 258342-2 double sim, one Q-Mobile Model E-4 green and white colour IMEI number was rubbed & cash of Rs.560/- visiting cards. The accused disclosed the name of escaping accused as Abdul Jabbar and had pointed out towards complainant Hatim Khan that he had taken the envelope from him. Hatim had identified the envelope and had disclosed that he had been calling Muhammad Hatim from different numbers and had been demanding Rs.1 Crore whereas messages were done by Abdul Jabbar and then he and Jabbar had come to take Bhatta money and he was arrested and brought to PS where the case was registered against him. ASI Taweez Gul had registered an FIR No.226/2016 on 22.11.2016 at 0300 hours claiming therein that he was on patrol along with his police party when had reached Bungalow No.32, Faran Society, Ahmed Barrister Road. He saw the person in suspicious condition, who disclosed his name as Abdul Jabbar S/o Muhammad Arif and as private witnesses were not available he had searched him in presence of PC Razaqat and driver Muhammad Jameel and on search was recovered a pistol 30 bore tucked on the right side under his shirt loaded magazine with four rounds. He could not produce the license and on interrogation he disclosed that in the night between 6 & 7 of October, 2016 he along with his accomplice Muhammad Asif had gone to take Bhatta at Shahra-e-Faisal Awami Markaz under the bridge and that his accomplice person Muhammad Asif got down the motorbike and had gone towards the two persons whereas he was on the road with the started motorbike when suddenly saw the police, therefore, he left his accomplice and escaped towards Baloch Colony on motorbike and today he was roaming to commit some crime. ASI found that he was involved in FIR No.188/2016, therefore, he was arrested. The firearms were sealed on the spot and from him was recovered Rs.300/- and copy of CNIC & was brought to the police station.

3. The charge was framed against the accused persons on 03.03.2017 to which they pleaded not guilty and claimed to be tried. In order to establish the accusation against the accused, the prosecution examined the witnesses PW-01 Ayaz Ahmed Judicial Magistrate (East) at Ex.P/1, who produced the envelope containing identification parade papers as Ex.P/2; application of I.O. along with order at Ex.P/2-A, identification parade by witness Muhammad Hatim consisting of four pages at Ex.P/2-B and the other by witness Waheed consisting of four pages at Ex.P/2-C. receipt of delivery of CDR by accused persons at Ex.3. PW-2 Muhammad Hatim Khan at Ex.P/4, who produced the FIR at Ex.P/5, memo of site inspection at Ex.P/6, memo of arrest and recovery of accused Asif at Ex.P/7, a notice of I.O. for identification at Ex.P/8. PW-3 Sub Inspector Muhammad Khan Lodhi at Ex.P/9, who produced the entry No.28 by which FIR was registered at Ex.P/10. PW-4 Waheed Ahmed at Ex.P/11. PW-5 ASI Taweez Gul Muhammad at Ex.P/12, who produced the departure entry No.29 at Ex.P/13, entry No.36 by which he had left the PS at 11:30 PM at Ex.P/14, FIR No.189/2016 at Ex.P/15, entry No.44 by which he had arrived at the PS as well as he had entered the registration of FIR No.189/2016 at Ex.9/16, memo of site inspection at Ex.P/17, entry No.27 by which he had departed from the PS at Ex.P/18, memo of arrest of accused Abdul Jabbar as Ex.P/19, FIR No.226/2016 at Ex.P/20 and entry No.35 at Ex.P/21, memo of site inspection of arrest of accused Abdul Jabbar at Ex.P/22. PW-6 PC Muhammad Jameel at Ex.P/23. PW-7 Sub-Inspector Ghulam Asghar at Ex.P/24, who has produced entry No.39 at about 1850 hours by which he had departed from the PS for site inspection at Ex.P/25, a sketch of the place of incident at Ex.P/26. The letter was written to FSL at Ex.P/27, a letter written for CRO at Ex.P/28, FSL report at Ex.P/29. Pw-8 Sub-Inspector Muhammad Latif at Ex.P/30, who has produced departure entry No.11 at 1030 am from the police station at Ex.P/31, arrival entry No.16 at 12:05 PM at Ex.P/32, entry No.5 for preparing the memo of site inspection at Ex.P/33,

arrival entry No12 at 9:30 am at Ex.P/34. The letter was written to FSL at Ex.P/35, FSL report at Ex.P/36, statement u/s 161 of Waheed Ahmed Soomro at Ex.P/37 and that of PC Rajib at Ex.P/38, PC Muhammad Jameel at Ex.P/39. PW-9 PC Faizan Ali at Ex.P/40, who produced memo of seizure of CDR at Ex.P/41 and CDR of 28 pages at Ex.P/42. PW-10 Inspector Tariq Ali at Ex.P/43, who produced order of SSP for investigation of FIR No.188/2016 and connected case 189/2016 at Ex.P/44, entry No.26 at Ex.P/45, letter written by SI Lateef for taking CDR of 0301-3832579 from where the threat had come 0305-3769835 and the other were three numbers of PTCL 021-34207785, 021-34200032 & 021-32012022 & LAST MOBILE No.0300-2229966 as Ex.P/46, letter written by SSP Investigation at Ex.P/46 to DIG which letter at Ex.P/47 for call detail report, departure entry No.40 from Jamshed Quarters at Ex.P/48, entry No.28 dated 25.10.2016 at 1735 hours by which he had reached PS Bahadurabad at Ex.P/49, entry No.29 by which he had departed from PS Bahadurabad for Jamshed Quarters at Ex.P/49, entry No.59 by which he had arrived at PS Jamshed Quarters at 1900 hours at Ex.P/50, showing from NADRA that SIM was issued in the name having ID Card No.31301-2073954-0 at Ex.P/51 notice to accused Abdul Jabbar at Ex.P/52. Lastly, learned DDPP for the State closed the side of prosecution at Ex.53.

4. Statements of the appellants Muhammad Asif and Abdul Jabbar were recorded u/s.342 Cr.P.C. at Ex.54 & Ex.55, in which they denied the prosecution allegations as leveled against them and claimed to be tried. However, statement of accused Abdul Jabbar was recorded on oath under section 340(2), Cr.P.C. at Ex.56 and in his defence DW-1 Muhammad Arif was examined at Ex.57 and DW-2 Abdul Rasheed at Ex.58. However, accused Muhammad Asif has neither examined himself on oath nor led any evidence in his defence. Learned counsel for the appellants closed their side at Ex.59. The

learned trial Court, after hearing the parties and on the assessment of the evidence, convicted and sentenced the appellants as stated above vide judgment dated 14.04.2018, which is impugned before this Court by way of filing these instant Appeals.

5. Mr. Musharraf Azhar, learned counsel for appellant Abdul Jabbar mainly contended that the appellant is innocent and has been falsely implicated in these cases; that the complainant failed to disclose the features of the appellant in the FIR when he has parked the motorcycle in front of him; that the identification parade conducted by the learned Magistrate was not in accordance with law; that the time of incident was night then how the complainant identified the present appellant in the course of identification parade; that the recovery was foisted upon him otherwise nothing was recovered from his possession; that at the time of incident appellant Abdul Jabbar has left Karachi for his village; that the CDR produced by the investigating officer was not attested; that there are major contradictions between the evidence of prosecution witnesses. Learned counsel for the appellant lastly prayed that the prosecution has miserably failed to prove its case against the appellant and thus, according to him, under the abovementioned facts and circumstances of the case, the appellant is entitled to his acquittal.

6. Ms. Fatima Jatoi, learned counsel for appellant Muhammad Asif mainly contended that the appellant is innocent and has been falsely implicated in these cases; that the accused Muhammad Asif was not arrested at the spot and the instant crime has been foisted upon him; that the identification parade was held under pressure and coercion upon the appellant Muhammad Asif and as such, the same has not been taken in accordance with law; that the prosecution has failed to bring home the guilt of the appellant Muhammad Asif, hence according to her, under the abovementioned facts and circumstances, the appellant is entitled to his acquittal.

7. Conversely, Syed Meeral Shah Bukhari, learned Additional Prosecutor General Sindh appearing for the State while supporting the impugned judgment has argued that the prosecution has successfully proved its case against the appellants beyond any shadow of reasonable doubt; that the complainant and police officials had no enmity with the appellant; that the appellant Muhammad Asif was arrested on the spot and the police officials recovered Rs.50,000/- Bhatta money from the possession of the appellant, which is sufficient to connect him with the commission of offence; that on 09.9.2016 the complainant had received a call from the appellant for payment of Bhatta Rs.One Crore and was threatened by the appellant if he failed to pay Bhatta he will be killed as he has already killed Amjad Sabri, Again complainant has received a call from the accused, who has demanded Bhatta of Rs.One Crore and that the complainant replied him that he can only give an amount of Rs.100,000/- and presently he has Rs.50,000/- so he can pay the same and it was decided that the payment should be made under the bridge of Awami Markaz on 06.10.2016 at about 12:00 night. Thereafter, the complainant informed such situation to his friend Waheed Ahmed Soomro and police and finally it was decided that police mobile should go with him and the police officials parked their mobile vehicle in the street and at about 12:30 a.m. night, two-person motorbike riders came from Karsaz and came towards them and stop in front of them. Both the persons were wearing shalwar kameez, one of them got down from the motorbike and came towards him and that person asked his name and he has given him the envelope of Rs.50,000/- and as he returned he signaled the police, as the police came there where a person on the motorbike escaped from the scene, hence the complainant and his witness has clearly seen the accused persons while receiving Bhatta from the complainant; that at the time of receiving Bhatta appellant Abdul Jabbar was driving the motorbike, such role of accused was disclosed by the

eyewitnesses before the magistrate. He lastly prayed for the dismissal of instant appeals.

8. We have heard the learned counsel for the parties and perused the record available with their able assistance. On the evaluation of the materials brought on record, it appears that the case of prosecution depends upon the ocular testimony produced in the shape of the statement of complainant Muhammad Hatim Khan (PW-2) and eyewitness (PW-4) Waheed Ahmed Soomro and duly supported by the other PWs. PW-2 complainant Muhammad Hatim Khan being a highly educated person having a degree of B.Com. deposed in his evidence that he was working as General Manager in Karam Ceramic Karachi and on 9.9.2016 he was having dinner at Hotel Kaybees at Muhammad Ali Society, it was 9:00 p.m. when he had received calls on his phone No.0300-2005961 from the PTCL number and disclosed his name as Farooq Baloch and demanded Bhatta of Rs.One Crore and threatened him that if he failed to pay such amount, he will be killed as he has already killed Amjad Sabri. He deposed in his evidence that in the whole month of September he was continuously receiving phone calls and messages, the phone calls were coming from two numbers of PTCL and from different numbers of Jazz and Zong. Thereafter, he informed such situation to his friend (PW-4) Waheed Ahmed Soomro, who advised him to inform the police and lodged the FIR and, thereafter, he lodged the instant FIR at PS Bahadurabad. Again complainant has received calls from the accused, who has demanded Bhatta of Rs.One Crore and that the complainant replied him that he can only give an amount of Rs.100,000/- and presently he has Rs.50,000/- so he can pay the same and it was decided that the payment should be made under the bridge of Awami Markaz on 06.10.2016 at about 12:00 night. Thereafter, the complainant informed such situation to his friend Waheed Ahmed Soomro and police and finally it was decided that police mobile should go with him and the police officials parked their mobile vehicle in the street and

at about 12:30 a.m. night, two motorbike riders came from Karsaz and came towards them and stop in front of them. Both the persons were wearing shalwar kameez, one of them got down from the motorbike and came towards him and that person asked his name and he has given him the envelope of Rs.50,000/- and as he returned he signaled the police, as the police came there whereas a person on the motorbike escaped from the scene, and other accused was arrested at the spot by the police and the accused disclosed his name as Asif and the escaping accused name was also disclosed by him as Jabbar. Police took personal search of the accused Asif and from his right side pocket of kameez recovered a pistol brown colour along with six live bullets and from his right side pocket of kameez recovered an envelope containing Rs.50,000/- which was given by the complainant to the caller/accused and recovered two mobile of Nokia and Q-Mobile and few currency notes. The recovered articles were sealed at the spot and such mashirnama of arrest and recovery was prepared, which was signed by the complainant and Waheed Ahmed Soomro. He further deposed in his evidence that on 30.11.2016 I.O. called them at the PS and gave them a notice for identification of the accused who had escaped from the scene of crime and on 06.12.2016 they had gone to the Court of Magistrate where about 8 to 10 persons were there and they were asked to identify that person, who had escaped from the scene of crime and they had identified the accused Abdul Jabbar amongst those persons. In cross-examination, the witness admitted that **“It is correct to suggest that till the accused Asif was arrested I was receiving the calls on the same mobile and on the same number”**. It is important to note here that the complainant while giving his evidence has clearly mentioned that the accused persons who came there were wearing shalwar kameez and one of the accused who has received envelope of Rs.50,000/- and the second was boarded on the motorbike, hence it was sufficient time with the complainant and his friend to see the accused persons at the place of incident. The place of

incident was under the bridge of Awami Markaz, which is a very busy area having streetlight, hence it cannot be said that the complainant and PW-4 Waheed Ahmed Soomro have not clearly identified the accused, and that's why notices were issued to them for identification parade of the escaped accused before the Court of Magistrate and both of them have clearly identified the accused that he was the same person who was sitting on the motorbike at the time of receiving Bhatta. The evidence of the complainant finds corroboration from the evidence of (PW-4) Waheed Ahmed Soomro, who has fully supported the version of the complainant and further deposed that on 6.10.2016 complainant informed him that the call had come and had a bargain that he cannot give Rs.One Crore and he can only give Rupees one lac at the moment, presently he can only give Rs.50,000/- as such the said caller had agreed and called him to come at the Bridge opposite Awami Markaz and time was fixed at 12:00 in the night. At about 11:30 p.m. he and complainant had gone to the PS and they were informed about the phone and bargain and it was decided that the police will park their vehicle in the street and at the time of giving Bhatta, they will call the police. At about 12:30 night one motorbike came from Karsaz and stopped about 15 feet away, one got down from the motorbike whereas the other had remained seated on the bike and the person who was sitting at the rear seat had come down and came towards complainant and called his name Hatim and demanded Bhatta from him, which was paid by the complainant in an envelope containing Rs.50,000/-, the mobile was parked in the darkness in the street in the service road, complainant signaled the mobile to come, police officials came there and arrested accused Asif at the spot and recovered Bhatta amount in an envelope containing Rs.50,000/- along with one TT pistol with live bullets so also two mobile phones and certain notes and on enquiry, he failed to produce its license. After the arrest of the accused, he disclosed his name as Asif and so also co-accused who escaped from the scene of the incident as Abdul Jabbar. He further

deposed in his evidence that on 06.12.2016 the I.O. has called him and complainant for identification of the accused, who was running away from the scene of the offence, both the witnesses appeared before the Magistrate and identified the accused Abdul Jabbar. Learned counsel for the appellants had put multiple questions to the witnesses, but they could not shatter their confidence.

9. In support of the version of both the witnesses i.e. complainant and PW-4, on the point of identification parade, prosecution examined PW-1 Ayaz Ahmed, Judicial Magistrate who has conducted the identification parade of the accused in presence of witnesses and both the witnesses i.e. complainant and PW-4 have clearly identified the accused Abdul Jabbar along with his role that he was accompanied by co-accused Muhammad Asif. On the point of arrest and recovery, prosecution examined ASI Taweez Gul Mahammad (PW-5), who has also supported the version of complainant and PW-4 that on 06.10.2016 he was on patrolling duty and called him by the SHO and informed that the accused are demanding Bhatta money from the complainant and today they are giving Bhatta money and directed that ASI Taweez Gul Mahammad should go and stop them, as such, it was decided that they will park their vehicle in the street and at the settled time, one motorbike came to the complainant and witness having two riders, one person got down from the motorbike towards complainant and he has given him one envelope containing Bhatta money, meanwhile they reached there and arrested the accused Muhammad Asif and recovered envelope containing Rs.50,000/- and also recovered one TT pistol and live bullets and two mobile phones. He further deposed in his evidence that on 21.11.2016 he was posted at PS Bahadurabad on Mobile-I and arrested the accused Abdul Jabbar along with one TT pistol with live bullets. PW-5 Taweez Gul Mahammad has produced entries, which show that the complainant appeared at PS and informed the whole story that on the day of the incident at 12-night caller/accused persons were coming to receive Bhatta money,

which shows the moment of the police and then arrested the accused persons. He has produced entries as Exh.P/13, P/14 so also FIR was registered under section 23(i)(a) of Sindh Arms Act, 2013 as Exh.P/15 so also mashirnama of arrest and recovery of accused Abdul Jabbar as Ex.P/19 so also FIR as Exh.P/20. The version of the PW-5 ASI Taweez Gul Mahammad was supported by PW-6 PC Muhammad Jameel that in his presence accused Abdul Jabbar was arrested and recovered from his possession TT pistol. After the arrest of the accused persons, the investigation of FIR being Crime No.226/2016 came to the PW-7 SI Ghulam Asghar, who has started the investigation and on 23.11.2016 sent the pistol for FSL and received such report in positive. Further investigation was conducted by the PW-8 SIP Muhammad Latif, who has also sent recovered pistol for FSL and received its report in positive, which was produced by him as Exh.P/36. The prosecution also examined PC Faizan Ali as PW-9, who has received CDR of FIR No.188/2016 through e-mail, which was available in his computer and such print was taken by the Inspector Tariq, which he has produced as Exh.P/42. Finally, the investigation was completed by the Inspector Tariq Ali, who in his evidence verified that he has taken out the print of CDR from the computer, which was produced by him as Exh.P/42. He has also given details of mobile calls from which the accused had made calls to the complainant.

10. In turn of the accused persons, while recording statement under section 342, Cr.P.C. in which they have denied the allegation as leveled against them by the prosecution and stated that they have been falsely implicated in these cases, whereas, the claim of accused Abdul Jabbar that he is innocent falsely implicated in this case, his statement was recorded on oath under section 340(2), Cr.P.C. wherein he stated that at the time of incident he was out of Karachi and has gone to his village Machi-Goth District Rahim Yar Khan. In support of his contention, he produced DW-1 Muhammad Arif.

11. There can be no denial to legally establish the principle of law that it is always the direct evidence which is material to decide a fact (charge). The failure of direct evidence is always sufficient to hold a criminal charge as **“not proved”** but where the direct evidence holds the field as well stands well with test of it's being natural and confidence inspiring then requirement of independent corroboration is only a rule of abundant caution and not a mandatory rule to be applied invariably in each case. Reliance can safely be placed on the case of **MUHAMMAD EHSAN v. THE STATE (2006 SCMR 1857)**, wherein the Hon'ble Supreme Court of Pakistan has held that:

“5. It be noted that this Court has time and again held that the rule of corroboration is rule of abundant caution and not a mandatory rule to be applied invariably in each case rather this is settled principle that if the Court is satisfied with the truthfulness of direct evidence, the requirement of corroborative evidence would not be of much significance in that, as it may as in the present case eye-witness account which is unimpeachable and confidence-inspiring character and is corroborated by medical evidence.”

12. The direct evidence, as detailed above, is in shape of evidence of complainant PW-2 Muhammad Hatim Khan, who was working as General Manager in Karam Ceramics and had received threat call from the accused/appellant Asif, who demanded Bhatta from him and threatened him that he will be killed if he failed to pay the Bhatta and under the pressure and coercion he became ready to pay Rs.50,000/- to the said caller, therefore, he along with his friend PW-4 Waheed Ahmed Soomro went to PS and narrated the above story and subsequently it was decided that police will go together with the complainant and PW-4 and in the presence of Waheed Ahmed and police officials complainant paid Bhatta to the said caller/accused and he was arrested on the spot and police recovered Bhatta money containing Rs.50,000/- which was paid by the complainant as

Bhatta to the accused, subsequently the accused disclosed his name as Muhammad Asif and in the presence of witnesses two mobile phones and one TT pistol along with live bullets were recovered. After the arrest of accused Abdul Jabbar police produced him before the learned Magistrate for conducting identification parade, wherein the complainant and eyewitness (PW-4) Waheed Ahmed Soomro have identified the accused along with the role that co-accused Abdul Jabbar was accompanied with the main accused Muhammad Asif, they were wearing shalwar kameez and parked motorbike, Muhammad Asif got down from the motorbike whereas the appellant stayed on motorcycle, after receiving the Bhatta they signaled the police, thereafter, police reached there and arrested the accused Muhammad Asif and co-accused/Abdul Jabbar was escaped away from the scene of occurrence and subsequently he was arrested, appellant Muhammad Asif was arrested on the spot along with Bhatta money and appellant Abdul Jabbar was accompanied with accused and he was identified by eye witness during identification parade along with role in view of above, it is sufficient to hold that the appellants have committed the offence for which they had been charged by the learned trial Court.

13. As regards the arguments of learned counsel for the appellants concerning violation of Section 103, Cr.P.C. It suffices to say that accused Muhammad Asif was arrested by police on the spot recovered Bhatta money and un license pistol along with six (6) live bullets in presence of complainant Muhammad Hatim Khan and PW-4 Waheed Ahmed Soomro and they have furnished straightforward and confidence inspiring evidence. Further, after the arrest of accused Abdul Jabbar, police officials recovered one TT pistol from him, and nothing has been brought on record to show that they have deposed against the appellants maliciously or out of any animus. It is a settled principle of law that the prosecution witnesses belong to police officials by itself cannot be considered as a valid reason to discard their testimonies. Reference in this context is made

to the case of **ZAFAR vs. THE STATE (2008 SCMR 1254)** wherein the Hon'ble Supreme Court of Pakistan has held that:

“Police employees are the competent witnesses like any other witnesses and their testimonies cannot be discarded merely on the ground that they are police officials.”

14. The CDR received by the (PW-9) PC Faizan Ali, which was available in his computer, Inspector Tariq Ali (PW-10) has taken out its print and prepared a memo of CDR which was containing 28 pages. This piece of evidence was generated through the automatic device in view of Article 164 of Qanun-e-Shahadat Order 1984, it is admissible in law. The next contention of the learned counsel for appellant Abdul Jabbar was that at the time of incident he/Abdul Jabbar was present at his village, during cross-examination he has not taken such plea, but in his statement recorded under section 342.Cr.P.C and on oath as well as his DW taken plea that at the time of incident he was present his village, on such plea the learned trial Court while passing the judgment has discussed at length which is available at Paras 93 to 95, which are as under:.

93. *The learned DC for accused Abdul Jabbar had agitated that complainant had received calls on his number 0300-2005961 and the mobile phone used having IMEI No.35960205795186 has received calls from 0301-3832579 but on 16.10.2016 the calls were coming from 0301-3832579 on mobile phone having IMEI No.35960205795186 what difference does it make if the complainant had used another mobile phone and had used the same sim. What matter is that complainant had received calls on his No.0300-2005961 from the number 0301-3832579*

94. *The CDR also shows that Abdul Jabbar has No.0300-2229966 and is constantly in touch with the No.301-3832579 from 4.9.2016 onwards upto 2.10.2016 at 10:44 hours and the location is at Saddar Bazaar Karachi. The IO had admitted that location of 0300-2229966 on 07.10.2016 is of Rahim Yaar Khan.*

95. *I had already pointed out that the accused Abdul Jabbar and his witnesses have not given the exact date when they had left Karachi. The father that accused Abdul Jabbar in his cross-examination has given the 3 dates when they had left Karachi i.e. 8, 9, 10 or 11 of Moharram of the year 2016 which is falling in Islamic Calendar of 2016 on 10, 11, 12 and 13 of October which means that Abdul Jabbar was in Karachi on 07.10.2016.*

Abdul Jabbar did not say that he had not given his sim to anyone. I have also given my opinion as to why I have not believed the statement of accused Abdul Jabbar on statement on oath. No enmity has been brought on record to prove as to why Complainant Hatim would involve these two accused falsely in the crime. Hatim is General Manager of Ceramic Industries; why would he involve the two accused. Whereas the constant touch on telephone by the two accused proves that they did not have any job except thinking of committing criminality. Therefore, I answer the Point No.1 & 2 as proved.

15. The minor discrepancies in statements of all the witnesses are not enough to demolish the case of prosecution because these discrepancies always occurred on account of lapse of time which can be ignored. In the case in hand, the appellants have failed to bring on record any material to show any animosity or ill-will with the complainant and the prosecution witnesses, thus in the absence thereof, the competence of prosecution witnesses being officials was rightly believed. Moreover, a procedural formality cannot be insisted at the cost of completion of an offence and if an accused is otherwise found connected, then mere procedural omission and even allegation of improper conduct of investigation would not help the accused. Reference in this context is made to the case of the **STATE vs. MUHAMMAD ARSHAD (2017 SCMR 283)** wherein the Hon'ble Supreme Court of Pakistan has held that:

“We may mention here that even where no proper investigation is conducted, but where the material that comes before the Court is sufficient to connect the accused with the commission of crime, the accused can still be convicted, notwithstanding minor omissions that have no bearing on the outcome of the case.”

17. Considering the facts and circumstances, as discussed above, we are of the humble view that the prosecution has successfully proved its case against the appellants beyond any shadow of a doubt. Learned counsel for the appellants have failed to point out any material illegality or serious infirmity committed by the learned trial Court while passing the

impugned judgment, which in our humble view is based upon the appreciation of evidence and the same does not call for any interference by this Court. Thus, while maintaining the convictions and sentences awarded to the appellants by the learned trial Court the instant Spl. CrI. Anti-Terrorism Appeals No.129 & 130 of 2018 and Spl. CrI. Anti-Terrorism Jail Appeal No.137 of 2018 are dismissed.

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