

IN THE HIGH COURT OF SINDH AT KARACHI

**PRESENT: MR. JUSTICE SALAHUDDIN PANHWAR
MR. JUSTICE SHAMSUDDIN ABBASI**

SPL. CR. A.T. APPEAL NO.153/2019

Appellant : Sheikh Ghulam Mohiuddin,
Respondent : The state,

SPL. CR. A.T. APPEAL NO.154/2019

Appellant : Syed Imran Ahmed,
Respondent : The state,

Date of hearing : 03.10.2019.

Date of order : 03.10.2019.

Appearance

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M/s. Abdul Hameed Khan, Masood Ali Khan and Mazharul-Islam
advocates for appellants.
Mr. Siraj Ali Chandio, DPG.

ORDER

SALAHUDDIN PANHWAR, J. These appeals impugned judgment dated 31.05.2019 passed in special case No.205/2019 arising out of FIR No.62/2019 under section 384, 385, 34 PPC read with section 25-B Telegraph Act read with section 7 ATA 1997 PS New Karachi, whereby appellants were convicted and sentenced to undergo R.I. for ten years each with fine of Rs.200,000/- each and in default thereof to suffer further for R.I. of one year each.

2. Brief fact of the case are that on 12.03.2019 complainant got registered FIR that on 26.02.2019 in between 11.30 am he was present at his house alongwith his wife and daughter, on

the same day he received a call from cell No.0310-7806125 and he attended such call, the caller stated that his son namely Amjad ul Haq, living in USA, has been sending U\$ to him as such he is a well to do man, meanwhile complainant disconnected the call. The complainant further stated that on the same day at about 9.30 pm the caller again made a call on his mobile phone and his son-in-law attended such call, who talked with the unknown caller around 3/4 minutes and in the meanwhile he cancelled the call, thereafter the caller kept on calling the complainant on his cell phone from the new mobile number and demanded extortion money Rs.500,000- from the complainant and extended threats to him for serious dire consequences in case he failed to pay the extortion money and kept on demanding extortion money from him, thereafter on 10.03.2019 at about 10.30 pm the caller again called the complainant and demanded extortion money Rs.300,000/- and again threatened to kill him, in case of non-payment of extortion money hence complainant approached the police station for FIR.

3. At the outset learned counsel for appellants contends that this is a case of no evidence though there was alleged demand of Rupees 3 lacks and rupees 6 lacks extortion, it is further contended that there is civil dispute between appellants and complainant, complainant is nephew of complainant's wife, according to prosecution complainant's son Amjadul Haq received phone calls by the culprits but he has not been examined by the prosecution without any reason hence this is a case of sufficient doubt, further he has highlighted the contradictions in memo of arrest that PW 1 gave a completely contradictory statement that "myself and M Nazim were called to police station on 15th March 2019 through a phone call. As the I/O had received the information from a special informer that

mentioned accused are standing at total petrol pump in new Karachi, then we alongwith IO departed towards the place that the informer had told.” Report at page 63 reveals that these people left police station at 20:10 hours the total petrol pump mentioned above is hardly 4-5 minutes’ drive away, whereas these innocent accused surprisingly kept on standing at the above place, totally unarmed waiting to be arrested from 30:10 hours to 22.00 hours i.e. for approximately two hours. It may be noted that both these accused reside miles away from the place in FB Area, Block 8 but they kept on standing at total petrol pump for two hours only to get arrested, moreover, both the accused always travel on their personal bikes everywhere however on that particular day in order to be prepared to be arrested both of them came walking to that place of arrest and very difficultly managed to get arrested. After detailed checking by police one of the accused was found having hazardous material and from pocket of another accused someone else’s mobile was recovered with a SIM which is also registered on someone else name, surprisingly second accused did not have a single penny in his pocket whereas he brought his original CNIC for getting arrested so that police does not arrest somebody else by mistake. There is another very significant information which the police plaintiff and PW 2 all have kept successfully hidden from this court that spot of arrest is exactly in front of the house of Mr. Shahid ul Haq and accused Imran is the real nephew of complainant’s wife. More over complainant’s wife was brought up in the house of accused Imran’s home, even her marriage took place while living in accused’s home, in fact that house is the bone of contention in which the aunt is demanding her share but surprisingly at the time of arrest complainant was unable to identify Imran although they had been

meeting each other for the last fifteen days over the house issue. That when complainant and his son in law Waleed etc. failed to illegally occupy the house of accused then they decided to avenge accused Imran and police used their conventional methods and arrested wife and brother etc. of accused Imran in the police mobile in front of whole neighbourhood on 14th March 2019.

4. Heard and perused the record.

5. The glaring facts, so pointed out by the learned counsel for the appellant, make it quite obvious and clear that the parties were known to each other *well*; dispute between parties (complainant and appellant) is also not disputed therefore, links of chain lasting into identification and arrest of accused, does not fit into a *logical* and believable story which, otherwise, is requirement for maintaining a conviction. Reference in this regard may well be made to case of Mst. Shamim & 2 others v. State & another 2003 SCMR 1466 wherein it is observed as:-

"7. ... The prosecution story being the foundation on which edifice of the prosecution case is raised occupies a pivotal position in a criminal case. It should, therefore, stand to reason and must be natural, convincing and free from any inherent improbability. It is neither safe to believe a prosecution story which does not meet these requirements nor a prosecution case based on an improbable prosecution story can sustain conviction.

Further, allegation was that of demanding extortion by strangers (unknown) through phone calls hence in such eventuality it was obligatory upon the prosecution to have examined competent witness so as to prove such charge in the manner as has been detailed in the case of Azeem Khan v. Mujahid Khan 2016 SCMR 274 as:-

"22. The Cell phone call data is of no help to the prosecution for the reasons that numerous calls have been made indicating continuous interaction between the two cell phones, contrary to the evidence given by Muhammad Wali (PW-3), who has stated at the trial that the unknown caller made calls on his cell phone four time.

No competent witness was produced at the trial, who provided the call data, Ex.P-1 to Ex.P-5. No voice record transcript has been brought on record. Similarly from which area the caller made the calls, is also not shown in it. Above all, the most crucial and conclusive proof that the cell phone was owned by the accused and SIM allotted was in his name is also missing. In this view of the matter, this piece of evidence is absolutely inconclusive and of no benefit to the prosecution nor it connects the accused with the crime in any manner.

Since, the prosecution has not been able to *safely* establish such *root* of the charge hence benefit was always required to be extended to the appellant/ accused. *Prima facie*, in the instant case except ocular account no circumstantial evidence has been gathered which, *otherwise*, is requirement for conviction on such like *bald* allegation which (*bald allegation*) can always be leveled. Trial may be initiated on allegation but conviction could only be recorded when charge is proved beyond reasonable doubt. Further, in FIR it is not disclosed that accused Imran was nephew of complainant's wife even at the time of arrest of accused; complainant was made as mashir but he has failed to identify him; according to complainant extortion was received by his son-in-law but surprisingly he has not been examined. Withholding of such material witness by prosecution gives rise to presumption that had this witness been examined he would not have supported the charge of giving *extortion* to accused. Thus, it could safely be concluded that prosecution never succeeded in proving the charge beyond reasonable doubt.

These are the reasons because of which captioned appeals were allowed by short order.

J U D G E

Imran/PA

J U D G E