

# IN THE HIGH COURT OF SINDH AT KARACHI

Present:  
Mr. Justice Nazar Akber  
Mr. Justice Zulfiqar Ahmad Khan

## **Special Cr. Anti-Terrorism Appeal No. 98 of 2020** [ Syed Ahmed Ali Gardezi v. The State and another ]

Appellant : Syed Ahmed Ali Gardezi through  
Syed Mehmood Kazmi, Advocate

State : Through Mr. Muhammad Iqbal Awan,  
Deputy Prosecutor General

Date of Hearing : 02.12.2020

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

**Zulfiqar Ahmad Khan, J:-** Through instant appeal, Appellant has assailed his conviction and sentence recorded by learned Anti-Terrorism Court No.-IV, Karachi, by judgment dated 10.07.2020, passed in Special Case No.683 of 2019, arising out of FIR No.473 of 2019, registered at P.S Landhi, Karachi for offences under sections 384/385/420 PPC read with section 7 ATA, 1997, however, subsequently section 386 PPC was also included in the charge. On conclusion of trial, accused was found guilty and consequently convicted and sentenced as under:-

- Accused is found guilty of the offence under sections 384/385/386 PPC read with section 6(2)(k) punishable under section 7(1)(h) ATA 1997. He is convicted and sentenced to suffer imprisonment for five years and fine of Rs.20,000/- (Rupees Twenty thousand). In case of default of payment of fine, he shall further suffer imprisonment for six months.

Benefit of Section 382-B Cr. P.C. was also extended to the accused.

2. Prosecution story explained in the FIR is that on 18.11.2019, complainant lodged an FIR stating therein that he has business of scrap and in the evening he installed a cart of potato chips and pakoray in front of Bilal Masjid, ground area 37/A, where a person came to his cart and introduced himself as an army intelligence officer and demanded extortion

money to the tune of Rs.500,000/- (rupees five lac.) and extended threats of dire consequences. On 16.11.2019, said person again came to his potato chips cart and handed over a slip (by mentioning his name Ahmed Ali and mobile number 0307-1268340) and slipped away, in which it was mentioned that make payment of Rs.50,000/- now and make arrangement for remaining amount later on. In case of failure, he will shoot on his legs. On 18.11.2019, when complainant was passing through Charbi ground area, accused Ahmed Ali with motorcycle was present there and asked for payment of Rs.50,000/-, to which complainant replied that he is going to bring the money, however, complainant left for police station on his motorcycle in order to lodge a report. When complainant reached near Babar Market, Habib Bank, Landhi, he found police mobile headed by SIP Rao Sardar Muhammad. He narrated the entire story to him and showed him slip of demanded extortion money, who asked the complainant to arrange the demanded money and reach at the pointed place where they would apprehend the accused with red handed. Complainant, after arranging cash of Rs.50,000/-, reached at Charbi ground and handed over cash to the accused Ahmed Ali. When he was counting money, police party on the signal of the complainant reached there and apprehended the accused with extortion money of Rs.50,000/-. On inquiry, he disclosed his name as Ahmed Ali and from his personal search one touch mobile phone of Motorola, having black colour and a wallet containing cash of Rs.1,500/- were recovered.

**3.** After usual investigation, challan was submitted against the appellant under the above referred sections. Then, trial court framed charge against the appellant at Exh.03, to which he pleaded not guilty and claimed to be tried.

**4.** At trial, prosecution examined five (05) witnesses namely, PW-01 Muhammad Aamir, PW-02 Muhammad Yousuf, PW-03 Rao Sardar Muhammad, PW-04 Mubashir Ahmed and PW-05 Ansar Pervez, who

produced certain documents. Thereafter, prosecution side was closed. Statement of accused under Section 342(1) Cr.P.C was recorded at Exh.10, in which he denied all the allegations leveled against him by the prosecution and claimed that he has been falsely implicated in the case on the instance of the complainant. He however did not examine himself on oath under section 340(2) Cr.P.C.

5. Trial Court after hearing learned counsel for the parties and assessment of the evidence by judgment dated 10.07.2020 convicted and sentenced the appellant as stated above. Hence the present appeal.

6. Learned counsel for the appellants contended that the impugned judgment is illegal, unlawful, arbitrary and is unwarranted by law as the appellant is an innocent and has been falsely implicated in this case for ulterior motives. He further contended that there are material contradictions in the evidence of prosecution witnesses, as PW-03 deposed that the cash was recovered from the accused, while PW-01 and PW-02 deposed that accused was busy in counting cash, when police officer apprehended him and cash was taken into their possession. He further contended that 161 Cr.P.C statements of the complainant, Mushir of memo of arrest are recovery and Incharge of the police party were recorded with delay without any justification and daily diary of police station produced before the trial Court are not carbon copies, unsigned and unattested; that memo of arrest and recovery was prepared at police station. It is alleged that the incident is of self-portrait picture. In support of his contention, learned counsel for the appellant has placed reliance on the case of Muhammad Akram v. the State (2009 SCMR 230), Muhammad Aslam v. the State (2018 YLR 1584 Sindh) and Attaullah v. the State and another (2017 PCr.L J 1992 Peshawar).

7. On the other hand, learned DPG has argued that the prosecution has examined (05) PWs and they have fully implicated the accused in commission of the offence. He further argued that police officials had no

enmity to falsely implicate the accused in this case and the trial Court has rightly convicted him. Learned DPG prayed for dismissal of the present appeal.

8. Heard learned counsel for the appellant as well as learned Deputy Prosecutor General, Sindh and scanned the entire evidence available on record.

9. We have noted material contradictions, defects and diversions in the evidence of prosecution witnesses, which does not inspire confidence in order to maintain conviction, rather create doubts. PW-1 is not sure that on what date his 161 Cr.P.C statement was recorded. During examination in chief, he deposed that on the next day (i.e. 19.11.2019) he was called at PS where his 161 Cr.P.C statement was recorded, but in the cross examination, he admitted that his 161 Cr.P.C statement was recorded on 20.11.2019. Besides, PW-3 also admitted that his 161 Cr.P.C statement was recorded on 03.12.2019 at PS Landhi i.e. after fifteen days of the alleged incident, for which no explanation has been provided. PW-4 in the cross examination, admitted that as per his 161 Cr.P.C statement CDR contained **06** pages, whereas, actually it consists of **09** pages, so also the same is unsigned one. Admittedly, departure and arrival entries are not carbon copies of Roznamcha, so also entries available at Ex.8/b and 8/c, are unsigned/unattested. It is settled law that non-production of entry in Roznamcha by the prosecution in the court to prove the movement of the police from the police station to the place of arrest and recovery of case property, makes the entire proceedings of police doubtful and the prosecution version becomes unbelievable.<sup>1</sup>

10. Recovery of case property and personal search articles of the appellant are also highly doubtful. As per memo of arrest and recovery, one **black** colour Motorola mobile phone was recovered from pant shirt of the appellant. However, as per parcel de-sealing note of the learned

---

<sup>1</sup> Attaullah v. the State and another, 2017 P Cr.LJ 992 [Peshawar].

Judge Anti-Terrorism Court No.IV, Karachi in presence of witnesses, learned APG and learned counsel for the appellant, one **blue** colour Motorola mobile was discovered in the white colour fabric. Moreover, original CNIC and four photographs were also discovered in the aforesaid fabric, which are not mentioned throughout entire police file/evidence. Examination in chief of PW-3 is silent regarding Rs.1500/-, which allegedly recovered from the appellant during personal search. He also contradicted evidence of other eye witnesses by deposing that he recovered Rs.50,000/- from pocket of the appellant, whereas PW-1 and PW-2 deposed that when appellant was busy in counting snatched Rs.50,000/-, police caught him and cash was taken into possession. Memo of arrest & recovery, FIR and examination in chief of the complainant are silent as to whether the case property was sealed at the spot or at PS. On the other hand, PW-1 in his cross examination admitted that both the fabric bags were stitched by the police official at PS in his presence. Likewise, PW-2 deposed that the property was sealed at PS in his presence. He also admitted that his statement was not read over to him. In view of the above discussed discrepancies, it could safely be believed that the alleged recoveries were not sealed at the spot and tempering of evidence in such circumstances could not be ruled out. It is settled law that each and every incriminating article shall be sealed on the spot<sup>2</sup> and non-sealing of the recovered articles at the spot uproots the entire prosecution case,<sup>3</sup> as wisdom behind sealing the recovered articles at the spot was to eliminate the possibility of manipulation of evidence after recovery.<sup>4</sup>

**11.** Review of the impugned judgment shows that aforementioned essential aspects of the case have slipped from the sight of the learned trial Court which are sufficient to create shadow of doubt in the prosecution version. It is settled law that for creating doubt, many circumstances are not required and if a single circumstance creates a

---

<sup>2</sup> Attaullah v. the State and another, 2017 P Cr.LJ 992 [Peshawar].

<sup>3</sup> Rahim Baksh v. the State, 2010 P Cr.LJ 642.

<sup>4</sup> Imam Bux alias IMOO v. the State, 2013 YLR 30.

reasonable doubt in a prudent mind, then its benefit be given to the accused not as matter of grace or concession but as a matter of right.<sup>5</sup>

12. In view of the above stated reasons, we have no hesitation to hold that there are several infirmities in the prosecution case, as discussed above, which have created doubt, therefore, we reached to a conclusion that the prosecution has failed to prove its case against the appellant beyond reasonable doubt and the trial Court failed to appreciate the evidence according to the settled principles of law. False implication of the appellant could not be ruled out. Resultantly, this appeal was allowed by our short order dated 02.12.2020, whereby conviction and sentences recorded by the learned trial Court were *set aside* and appellant was acquitted of the charges.

13. These are the reasons of our short order dated 02.12.2020.

JUDGE

JUDGE

Karachi,  
Dated 11.06.2021  
Barkat Ali, PA

---

<sup>5</sup> Muhammad Mansha v. the State, 2018 SCMR 772.