

3. To substantiate the charge, prosecution examined following witnesses:

PW-1 Haleem Khan at Exh.5; P.W-2 H.C Muhammad Faheem at Exh.06; P.W-3 SIP Tariq Shah Zaman at Exh.07; PW-4 Alam Khan at Exh.8; PW-5 ASI Malik Muhammad Aslam at Exh.09; PW-6 Inspector Shabbir Mustafa Rajput at Exh.10 and PW-7, Inspector Tabasum Ahmed Shaikh at Exh.11. Learned Deputy District Public Prosecutor for the State *then* closed the prosecution side vide his statement at Exh.12.

4. The statements of accused persons namely Ayaz Khan and Gul Sahab Jan were recorded under section 342 Cr.P.C as Ex.13 & Ex.14 respectively wherein they have denied the allegations leveled against them and pleaded their innocence and agitated that they have been implicated due to business rivalry. Subsequently, after hearing the learned counsel for the parties, the trial Court passed the impugned judgment whereby the appellants were convicted and sentenced as enumerated above, against which the instant appeal has been filed.

5. At the outset, learned counsel for the appellants contends that appellants preferred application to SHO, P.S. Korangi industrial Area, which is available on page 117 of paper book wherein it is contended that there is some dispute with Haleem Khan on Reti and Bajri, which they are also selling and they have also received threats from the builders that they would be killed and sought legal protection, which application is dated 06.11.2013. Further, he has emphasized that not a single witness has stated that who placed the Kafan and chits at the house of complainant;

admittedly extortion money was not paid and Sims as allegedly recovered from the appellants were not in their names.

6. Learned D.P.G., while refuting the contentions of learned counsel for the appellants, has contended that this is a case of extortion, hence judgment recorded by the trial Court is in accordance with law; however, he is not in a position to deny the production of application by the appellants which was brought on record during evidence.

7. We have heard counsel for the respective parties and have minutely examined the available record.

8. At the outset, we feel it quite appropriate to reiterate well established principle of **Criminal Administration of Justice** that in criminal cases *Onus Probandi* always remains upon the prosecution to prove its case beyond any reasonable shadow of doubt; mere heinous or gruesome nature of crime should never detract the Court of law in any manner from the due course to judge and make the appraisal of evidence in a laid down manner and to extend the benefit of reasonable doubt to an accused person being indefeasible and inalienable right of an accused. Reference, if any, may be made to case of *Azeem Khan & another v. Mujahid Khan & ors* 2016 SCMR 274. Another principle is that conviction cannot be based on any other type of evidence, however, convincing it may be, unless direct or substantive evidence is available. Reference is made to case of *Yasin @ Ghulam Mustafa v. State* 2008 SCMR 336. No court should depart from these *two* well established principles even while dealing with a case of gruesome nature because it is never the gruesome nature of the

charge but evidence which shall always prevail while convicting or acquitting.

9. The perusal of the record shows that there came no *direct* and *confidence* inspiring evidence on record to establish that it were the present appellants who had left 'KAFFAN' and 'chit'; admittedly extortion amount was not paid; the Sims recovered were not in the name of appellants hence the CDR report was never of any help to connect the appellants with the offence. Needless to add that in such like cases for demand of *extortion* on phone, the status of *sim*; its *owner* and CDR shall always operate as *foundation* hence the investigating agency must not deal with such *aspects* lightly rather must investigate such *aspects* thoroughly so as to blindly send up a person as an *accused*. Here, it would be material to refer relevant para of case of Azeem Khan supra which reads 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.

The *involvement* of the appellants appear to be consequence of *suspicion* but prosecution never established the required ingredients for *safe* conviction of the appellants in absence of *direct* evidence therefore, it was never safe to hold conviction. Even otherwise, it is admitted fact that before this incident, as shown by the Complainant in his FIR, similar application was moved by the appellants stating therein that they are having business of Reti & Bajri and there is apprehension that they would be implicated falsely by the builders and in similar fashion complainant lodged FIR alleging therein that he is in business of Reti and Bajri and accused persons demanded extortion. The *defence* plea of the appellants was also not properly examined and appreciated as required by settled principles of law. Here in this case that there is rival claim between the parties, which is in the documentary shape, hence, question of false implication of the appellants cannot be ruled out. Accordingly, while extending benefit of doubt we hereby acquit the appellants. Appellants are on bail, their bail bonds stand cancelled and surety stands discharged.

10. While parting, we feel it quite justified to direct the Inspector General of Police to direct the *investigation* officers/SHOs to ensure proper investigation with regard to the status of *sim*; its *owner* and CDR in such like cases wherein the *extortion* is allegedly made through phone calls.

Appeal stands allowed in the above terms.

J U D G E

J U D G E