

**IN THE HIGH COURT OF SINDH AT KARACHI**Present : Omar Sial, J

Criminal Appeal No. 154 of 2022

Criminal Appeal No. 155 of 2022

Appellants : Hamza Khan & Muhammad Umair  
through Mr. Liaquat Ali Awan, Advocate

Respondent : The State  
through Mr. Talib Ali Memon, APG

Date of hearing : 9<sup>th</sup> May, 2022

Date of judgment : 16<sup>th</sup> May, 2022

**JUDGMENT**

**F.I.R. No. 324 of 2018** under sections 385, 386, 506-B, and 34 P.P.C. as well as section 7 of the Anti-Terrorism Act 1997 was lodged at the Bilal Colony police by a person named Muhammad Fahad on 13.11.2018. Fahad claimed that he had received extortion calls for 3 days from a phone number which he identified.

2. The two appellants in these appeals namely Hamza Khan and Muhammad Umair were arrested on 14.11.2018 when allegedly taking money from Muhammad Fahad (the complainant of F.I.R. No. 324 of 2018). Apart from a number of mobile phones allegedly an unlicensed pistol was also recovered from each appellant. **F.I.R.s Nos. 325 and 326 of 2018** under section 23(1)(a) of the Sindh Arms Act, 2013 were therefore registered against them respectively.

3. The trial of the case originating from F.I.R. No. 324 of 2018 was conducted by the learned 14<sup>th</sup> Anti-Terrorism Court, Karachi, which on 15.03.2019 acquitted the two appellants. The trial of the case originating from F.I.R. Nos. 325 and 326 of 2018 was conducted by the learned 5<sup>th</sup> Additional Sessions Judge, Karachi, Central, who on 23.02.2022 found the two appellants guilty of the offence charged with and sentenced them to 7 years in prison and pay a fine of Rs.100,000 each otherwise remain in prison for another 6 months. It is this latter judgment which has been assailed by the two appellants in these proceedings.

4. At trial the prosecution examined Akram Butt as its first witness. He was the police officer who had arrested the two appellants, effected recovery and was also the complainant of the case. One pistol with two bullets in the respective magazines was each found in the possession of the appellants. The second prosecution witness was Maqsood Hussain Yousuf Zai who was the investigating officer of the case. The third prosecution witness was Muhammad Fahad (the complainant of F.I.R. No. 324 of 2018) who had acted as a witness to the recovery. The two appellants professed their innocence in the case.

5. I have heard the learned counsel for the appellants and the learned APG and with their able assistance have gone through the available record.

6. Article 57 of the Qanun-e-Shahadat Order 1984 provides that "Judgments orders or decrees, other than those mentioned in Articles 54, 55 and 56, are irrelevant, unless the existence of such judgment, order or decree is a fact in issue, or is relevant under some other provision of this Order." Under Article 19 of the Order which deals with relevancy of facts forming part of same transaction it is provided that "Facts which though not in issue, are so connected with a fact in issue as to form part of the same transaction, are relevant, whether they occurred at the same time and place or at different times and places." In view of Article 19 the facts of the case arising from F.I.R. No. 324 of 2018 would be relevant for the proceedings of the case arising from F.I.R. Nos. 325 and 326 as they pertain to the same transaction and thus pursuant to Article 57 of the Order the judgment in the former case would be relevant to this case.

7. The acquittal of the two appellants in the main case against them F.I.R. No. 324 of 2018 in which the learned trial court disbelieved the prosecution witnesses, with regards to the allegation against them as well as the recovery effected from them (which also included the two pistols) creates doubt as to whether even the pistols were recovered from them or not.

8. Apart from the above aspect that creates doubt the record also reflects that the pistols were sent for forensic examination on 16.11.2018 and the report which was issued shows that the pistol recovered from Muhammad Umair was not even in working condition. The numbers inscribed on the weapons as reflected by the memo of recovery as well as the sketch of the weapons made by the police does not tally with the alphabets and numbers found on the weapon

by the forensic unit in that the alphabets preceding the numbers find no mention in the police documents. In any event neither of the two appellants was confronted with the report of the forensics unit and thus the report could not have been used as evidence against them. Doubt is created whether the weapon seized were the same as the ones sent to the forensics unit and then subsequently presented at trial. Doubt is also created whether the weapons were even in working condition or not.

9. In view of the above, it is my view that the prosecution was unable to prove its case beyond reasonable doubt. The appeals are therefore allowed and the appellants are acquitted of the charge. They may be released forthwith if not required in any other custody case.

JUDGE