

## **IN THE HIGH COURT OF SINDH AT KARACHI**

Spl. Criminal A .T. Appeal No.13 of 2023

### **PRESENT:**

*Mr. Justice Zafar Ahmed Rajput*

*Mr. Justice Amjad Ali Bohio*

**Appellant** : Iftikhar Ali, through Mr. Muhammad Akbar Advocate.

**Respondent** : The State, through Mr. Zafar Ahmed Khan, Addl. Prosecutor General, Sindh

**Date of Hearing** : 31.10.2023

**Date of Order** : 31.10.2023

### **JUDGMENT**

**Amjad Ali Bohio, J.** Appellant Iftikhar Ali son of Muhammad Din by filing instant appeal has assailed the judgment passed on 30.01.2023 (*the "impugned judgment"*) by the Anti-Terrorism Court No. II, Karachi in Special Case No. 409/2022, arisen out of FIR bearing No. 253/2022, registered at P.S. Gulshan-e-Maymar, Karachi under Section 384/385, P.P.C. read with Section 7 of the Anti-Terrorism Act,1997 (**the "Act"**), whereby the appellant was convicted for the offence under Section 6(2)k, punishable under Section 7(1)(h) of the Act and sentenced him to undergo R.I for five years and to pay fine of Rs.10,000/- and in default thereof to undergo further S.I for six months. The benefit of Section 382-B, Cr.P.C. was; however, extended to appellant.

2. It is alleged that, on 20.05.2022, complainant SIP Liaquat Hussain during patrolling duty along with his subordinate staff received spy information that the appellant/accused Iftikhar Ali, who was serving as constable in police department and posted at P.S. Gulshan-e-Maymar,

Karachi was receiving *bhatta*/extortion money from the criminals of the area for their criminal activities at Afghan Camp, Gulshan-e-Maymar, Karachi. He reached the pointed place at 11:30 hrs. where he saw the appellant receiving extortion money, he apprehended him and from his personal search made in the presence of mashirs ASI Faheem Abbasi and PC Saeed recovered cash of Rs. 5600/- being extortion money.

3. After usual investigation, police submitted the report under Section 173, Cr.P.C against the appellant before the trial Court. Charge was framed against the appellant on 28.10.2022, to which he pleaded not guilty and claimed for trial. At the trial, the prosecution in order to prove its case examined PW-1 SIP Liaquat Hussain (*complainant*) at Ex:5; PW-2 ASI Faheem Abbasi (*mashir*) at Ex:6; PW-3 Javed Iqbal at Ex:7; PW-4 Muhammad Sajid at Ex:8; and PW-5 Inspector Abdul Rauf (*I.O*) at Ex:9. The P.Ws produced the relevant documents which were exhibited accordingly. Appellant's statement under Section 342, Cr.P.C. was recorded at Ex:11, wherein he denied the allegations leveled against him by the prosecution. He; however, did not opt for examination on oath and to lead evidence in his defense. On the assessment of the evidence on record, the trial Court convicted the appellant and sentenced him vide impugned judgment.

4. Learned counsel for the appellant has asserted that the appellant is innocent and has been falsely implicated by the complainant; that the names of eye-witnesses i.e. P.Ws Javed Iqbal and Muhammad Sajid do not appear in the FIR and their statements under Section 161, Cr.P.C were recorded after a delay of 13 days, which carry no evidentiary value; that despite prior information, no private person was associated by the police

to witness the arrest of the appellant while receiving so called extortion money; that the evidence of prosecution witness is full of contradictions and discrepancies rendering the case against the appellant doubtful; that the prosecution has failed to prove the charge against the appellant through the cogent evidence; hence, the impugned judgment is liable to be set aside.

5. Conversely, the Addl. P. G. has supported the impugned judgment by maintaining that the appellant was arrested on the spot and extortion money i.e. Rs. 5600/- was recovered from his possession; that the prosecution witnesses have fully implicated the appellant for the commission of alleged offence; that no malicious intent or wrongful motive has been alleged against the P.Ws. regarding the arrest and recovery process; that the trial Court, after evaluation of the evidence on record has rightly convicted the appellant; therefore, the appeal lacks merit and is liable to be dismissed.

6. We have heard the counsels and perused the record.

7. It may be observed that mere allegation that the appellant used to receive *bhatta*/extortion money from the criminals of the locality to protect them is not sufficient to convict him, unless some tangible evidence without any shadow of doubt is brought on record, as it is well settled principle of law that burden is always upon the prosecution to prove the case against an accused beyond any shadow of doubt.

8. In the instant case P.Ws Javed Iqbal and Muhammad Sajid claim to be the eye-witness of the incident. P.W-3 Javed Iqbal has deposed that he is laborer at shop in Afghan Camp Gulshan-e-Maymar and on the day of

incident he was present at the shop and noticed that the appellant visited the area viz. Afghan Camp Gulshan-e-Maymar and collected extortion money from drug dealers and encroachers. He has further deposed that he was called by the I.O. on 02.06.2022 who recorded his statement under section 161, Cr. P.C. P.W-4 Muhammad Sajid has deposed that he worked at the junk shop being laborer and noticed that the appellant used to collect extortion money from narcotic dealers and encroachers. He has further deposed that the appellant also extorted Rs.2,500/- from him on the day of occurrence. He was called by Inspector Rauf at C.I.A., Center on 02.06.2022 who recorded his statement in this case. It is an admitted position that the names of the said P.Ws are not mentioned in the FIR as eye-witness. None of the said two P.Ws. has disclosed the name of any narcotic dealer and encroacher who allegedly paid bhatta to appellant. Though the P.W Muhammad Sajid has alleged receiving of extortion money from him by the appellant on the day of arrest i.e. 20.05.2022, yet it is also an admitted position that he did not lodge any FIR for extortion of money from him by the appellant. It is also an admitted position that the statements of the said P.Ws under section 161, Cr. P.C. were recorded by the I.O. on 02.06.2022, after 13 days of the incident. No explanation has been provided for this delay either by the I.O. or the said P.Ws. Such statements recorded with a delay hold no evidentiary value in the eyes of law and cannot be considered credible under the circumstances mentioned above. Reference in this regard may be made to the cases of Muhammad Asif v. The State (2017 SCMR 486) and Shaukat Ali and 2 others v. The State (2017 YLR 724). The said two P.Ws under the circumstances appear to be the set-up witnesses of the prosecution.

9. It may be relevant to mention here that the legislature has provided specific definitions for every offence, making it the legal obligation of the prosecution to establish the essential elements of such penal provision. This case falls under the offense of extortion, as defined in Section 383, P.P.C, which reads as follows:

*383. "Whoever intentionally puts any person in fear of any injury to that person or to any other, and thereby dishonestly induces the person so put in fear to deliver to any person any property or valuable security; or anything signed or sealed, which may be converted into a valuable security, commits extortion."*

10. The charge with the intent of extracting money not legally due, involves a threat of injury as defined in Section 383, P.P.C. In the instant case, the P.Ws. did not allege in their depositions that the appellant intentionally instilled fear on them or upon the drug dealers and encroachers, thereby inducing them dishonestly to deliver the money. Consequently, the prosecution failed to substantiate the charge of extortion with any concrete and confidence-inspiring evidence. As a result, the prosecution could not prove extortion within the meaning of Section 383, P.P.C., which stipulates punishment under the penal provisions of Sections 384 and 385, P.P.C.

11. In the context of the conviction under Section 7 (1) (h) of the Act, it is evident that the prosecution has failed to produce on record any evidence establishing the offence against the appellant of demanding or receiving extortion money within the purview of "terrorism" as defined under Section 6 of the Act. The prosecution did not claim that there was a threat to extort money, creating fear of injury among the masses on a large scale or within a specific area. Besides, it is on record that none of

the P.Ws have stated that the appellant was armed, or that he made demand through the use of force or weapons. The absence of any reference to a weapon or threat prosecution's case indicates the lack of essential elements required to establish the charge of extortion money. This omission puts a serious dent in prosecution case to prove the charge.

**12.** In view of the above stated facts and discussion, we are of the considered view that in the instant case there is no convincing and trustworthy evidence against the appellant/accused to connect him with the commission of alleged offences and thus, prosecution has miserably failed to prove its case against him beyond reasonable doubt. In this regard, we are supported with the case of *Tariq Pervez v. The State* (1995 SCMR 1345) wherein the Hon'able Supreme Court has held that *"the concept of benefit of doubt to an accused persons is deep-rooted in our country for giving him benefit of doubt, it is not necessary that there should be many circumstances creating doubts. If there is a circumstance which creates reasonable doubt in a prudent mind about the guilt of the accused, then the accused will be entitled to the benefit not as a matter of grace and concession but as a matter of right."*

**13.** For the foregoing facts and reasons, we allow this criminal appeal; set aside the conviction and sentence of the appellant recorded vide impugned judgment and acquit him of the charges. He be set at liberty forthwith, if not required to be detained in any other case

**14.** These are the detailed reasons for our short order dated 31.10.2023.

**JUDGE**

**JUDGE**