

# THE HIGH COURT OF SINDH, KARACHI

Special Criminal Anti-Terrorism Jail Appeal No. 84 of 2017

Present: Mr. Justice Naimatullah Phulpoto  
Mr. Justice Rasheed Ahmed Soomro

Date of hearing: 30.08.2017

Date of announcement of judgment: 31.08.2017

Appellants: Nabeel, Mohammad Safdar and Feroz through Mr. Abbas Hyder Gaad Advocate.

Respondent: The State through Mr. Mohammad Iqbal Awan D.P.G.

**NAIMATULLAH PHULPOTO, J.-** Appellants were tried by learned Judge, Anti-Terrorism Court No.X Karachi in Special Case No.B-07 of 2015. By judgment dated 29<sup>th</sup> September 2015, appellants Feroz, Nabeel and Mohammad Safdar were convicted under Section 7(1)(h) of Anti-Terrorism Act, 1997 and sentenced to undergo R.I for 05 years each and to pay fine of Rs. 20,000/- each. In case of default in payment of fine, they were ordered to suffer SI for six months more each. Benefit of Section 382-B Cr.P.C was also extended to them. Appellants preferred Jail Appeals through Senior Superintendent Central Prison Karachi dated 27.03.2017. Appeal was time-barred. Notice was issued to Prosecutor General Sindh. This Court vide order dated 01.06.2017 admitted appeal for regular hearing on the ground that appeal being statutory right of the appellants.

2. Brief facts of the prosecution case as reflected from the judgment of the trial Court are that on 05.10.2014 at 2200 hours, complainant Shakeel Ahmed son of Ali Ahmed reported to the S.H.O. PS Iqbal Market Karachi alleging therein that on 05.10.2014, he was present at his shop at 1700 hours, three persons on one motorcycle came at his shop and handover one chit to him and went away. Complainant further disclosed that filthy language was used in the said chit and demand of Rs. 100,000/- was made as Bhatta and Mobile Nos. 0342-1264259 and 0311-2764318 were mentioned on it. There was also drawing/marks of three bullets on the said chit. Complainant further

has mentioned that on the same date, his father namely Ali Jan had also received a call on his Cell No. 0345-2075628 from Cell No. 0311-2764318 and caller demanded Bhatta of Rs. 100,000/-. Complainant has mentioned in his F.I.R. that he came to know from Mohallah people that Feroz, Nabeel and Safdar were involved in demanding the Bhatta from him. F.I.R. was lodged by the complainant on 05.10.2014, it was recorded vide Crime No.183/2014 at P.S Iqbal Market for offence under Sections 384/385/386/34 PPC. Accused were arrested after usual investigation, challan was submitted against the accused.

3. Trial Court framed charge against accused at Ex. 3. Accused did not plead guilty and claimed their trial.

4. At trial prosecution examined 07 P.Ws and side was closed at Ex.12.

5. Statements of accused were recorded under Section 342 Cr.P.C. Accused Feroz denied the prosecution allegations and also denied that Sim recovered was in his name and has raised plea that P.Ws have deposed against him due to enmity as they were police officials. Accused Feroz has stated that he has been falsely implicated by the complainant as he is friend of accused Safdar and resides in the same Mohalla. Accused Nabeel has also denied the prosecution allegations and stated that P.Ws were police officials and they have falsely deposed against him. Accused Safdar also claimed innocence. All the three accused did not examine themselves on oath in disproof of prosecution allegations and all the three accused did not lead any evidence in their defence. Learned Trial Court after hearing learned counsel for the parties and assessment of evidence available on record, convicted and sentenced the appellants as stated above, hence this Appeal.

6. The facts of this case in detail as well as evidence produced before the trial Court find an elaborate mention in the judgment passed by trial Court dated 29.09.2015. Therefore, same may not be reproduced here so as to avoid duplication and unnecessary repetition.

7. Learned Advocate for the appellants mainly contended that no one had seen the appellants while throwing chit at the shop of the complainant. He further argued that neither Bhatta was received by the

appellants nor there are credentials of the complainant on record. It is also argued that chit of Bhatta was not sent to Handwriting Expert for report. It is also argued that CDR was obtained by the IO and it was produced in the evidence which shows that Sim No. 0311-2764318 recovered from accused Feroz was in the name of Shahzad and said Shahzad has not been examined during investigation nor was produced before the trial Court. In support of his contentions, he has relied upon the cases reported as **Sagheer Ahmed vs. The State and others (2016 SCMR 1754) & Abdul Hafeez and 2 others Vs. The State (2017 YLR 756)**.

8. Mr. Mohammad Iqbal Awan learned D.P.G. argued that according to the case of prosecution chit was thrown by three persons at the shop of the complainant in his presence, but after arrest according to the record, no identification parade was held. Learned D.P.G. submits that sim recovered from the possession of accused Feroz according to CDR was in the name of Shahzad and Shahzad has not been examined by the I.O during investigation. He has also pointed out that Bhatta was not paid by the complainant and ingredients of Section 384/385/386 are not satisfied from the evidence, which is available on record.

9. We have heard learned counsel for the parties and have perused the entire record.

10. We have come to the conclusion that prosecution has failed to prove its case against the appellants for the reasons that according to the case of complainant, chit for Bhatta was thrown by the accused persons in the shop of the complainant and complainant had seen the accused persons. F.I.R. was registered but after arrest of the appellants, identification parade was not held. It has also come on record that after arrest of the accused SIM was recovered from the possession of accused Feroze and said SIM was used in making calls to the complainant on his Cell. I.O got CDR record of Cell No.0311-2764318 but the same was in the name of Shahzad. Said Shahzad was neither examined by the I.O nor interrogated. Adverse inference in such circumstances could easily be drawn against the veracity of prosecution case. Nothing incriminating was recovered from the possession of other accused persons. In the present case no evidence was brought on record

regarding financial status and source of income of the complainant, for whom appellants left chit for demand of Bhatta. Complainant had not mentioned any features of the assailants in his F.I.R. No identification parade was held. As regards to the identification of the appellant before the trial court by the complainant is concerned, that too will not assist the prosecution as held by the Honourable Supreme Court of Pakistan in the case of JAVED KHAN alias BACHA and another versus The STATE and another (2017 SCMR 524). Complainant has also not disclosed the features of the accused persons even after arrest of the accused. In absence of any tangible material, mere allegation of demanding Bhatta do not attract Section 6(2)(k) of Anti-Terrorism Act, 1997 as held by the Honourable Supreme Court of Pakistan in the case reported as **Sagheer Ahmed vs. The State and others (2016 SCMR 1754)**. Complainant has stated that he came to know about the names of accused then he lodged F.I.R. but it is the matter of record that after arrest of the accused persons, identification parade was not held. Alleged recoveries were not sealed at spot. Wisdom behind sealing the recovered SIM at spot was to eliminate the possibility of manipulation of evidence after recovery. As such recovery of SIM was doubtful. In this case there are several circumstances, which have created serious doubt regarding authenticity of the alleged offence with which accused were charged. Learned Division Bench of this Court in the case of **Abdul Hafeez and 2 others vs. The State (2017 YLR 756)** on more or less in the similar circumstances held that ingredients of extortion of money were not satisfied and extended benefit of doubt to the accused. Relevant portions are of the judgment are reproduced as under:-

*"14. There is no finding of the trial Court on the basic ingredient of extortion of money demanded by the Appellants. The Complainant neither in his statement before the police at the time of recording the report nor even at the time of deposing before the trial Court either alleged element of restrain, fear of death or even instant hurt against the Appellants, as the Complainant and employees of the Farm House were searching the armed persons/culprits without taking any safety measures.*

*15. Regarding blind FIR in respect of names of the Appellants in the alleged crime, material contradiction in the statements of the prosecution witnesses and the Appellants were arrested within half an hour after lodging of the FIR by the Complainant, creates serious doubt in the authenticity of alleged offence with which the Appellants were charged.*

16. Insofar as recovery of pistol, which was alleged to have been recovered on the pointation of the Appellant Abdul Hafeez is concerned, according to the FSL report, the said weapon was not in a working condition. In the light of FSL report no weight could be attached to the recovery of pistol.

17. The lacunas as pointed out above to give due consideration and seek explanation from the Prosecution by the learned trial Judge regarding material contradictions in the case in hand, we find ourselves constrained to extend benefit of doubt in this case to all the Appellants as the cardinal principle of safe dispensation of justice requires and that the Courts should be cautious to see that innocent persons are not convicted even if certain number of guilty persons get away with the acquittals. It appears that there are number of contradictions in the prosecution evidence which creates doubt. It is settled principle of law that for extending benefit of doubt it is not necessary that there should be many circumstances creating doubt. If a simple circumstance creates reasonable doubt in a prudent mind about the guilt of accused, then he will be entitled to such benefit not as a matter of grace and concession but as a matter of right, as has been held in the case of *Tariq Pervez v. The State* (1995 SCMR 1345)."

11. For the above stated reasons, we have no hesitation to hold that there are number of infirmities in the case of the prosecution. It is settled principle of law that for extending benefit of doubt, it is not necessary that there should be multiple circumstances creating doubt. If a single circumstance, which creates reasonable doubt in a prudent mind about the guilt of accused, then he will be entitled to such benefit not as a matter of grace and concession but as a matter of right, as has been held in the case of *Tariq Pervez v. The State* (1995 SCMR 1345).

12. In the view of above, instant Special Criminal Anti-Terrorism Jail Appeal No. 84 of 2017 is **allowed**. Impugned judgment dated 29<sup>th</sup> September 2015 is set aside, appellants Feroz son of Ahmed Ali, Nabeel son of Mohammad Qayyum and Mohammad Safdar son of Mohammad Aslam are acquitted from the charges. They shall be released forthwith, if they are not wanted in some other case.

  
JUDGE

31.8.2017  
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