

# HIGH COURT OF SINDH AT KARACHI

Special Criminal Anti-Terrorism Appeals Nos. 253 & 254 of 2015  
Special Criminal Anti-Terrorism Jail Appeals Nos. 258 & 259 of 2015

Present: Mr. Justice Naimatullah Phulpoto  
Mr. Justice Abdul Malik Gaddi

Date of Hearing : 27.10.2017  
Date of Judgment : 02.11.2017  
Appellants : Shahid @ Jaga through Mr. Asif Ali Pirzada Advocate.  
Respondent : The State through Mr. Mohammad Iqbal Awan DPG.

## JUDGMENT

**NAIMATULLAH PHULPOTO, J.-** Shahid @ Jaga son of Mohammad Haneef appellant was tried by learned Judge, Anti-Terrorism Court No.IX, Karachi in Special Case No. B-150/2015 and Special Case No. B-151/2015. After full-dressed trial, appellant was found guilty vide judgment dated 29.08.2015, accused was convicted under section 386 PPC and was sentenced to suffer R.I for seven years and to pay fine of Rs.25,000/- in case of default, accused was ordered to suffer R.I for two months more. Accused was convicted u/s 23(1)-A Sindh Arms Act and sentenced to suffer R.I for seven years and to pay fine of Rs.25,000/- in case of default, he was ordered to suffer R.I for two months more. Accused was further convicted under Section 7 of ATA 1997 and sentenced to suffer R.I for seven years and to pay fine of Rs.25,000/- in case of default, he was ordered to suffer RI for two months more. All the sentences were ordered to be run concurrently. Appellant was also extended benefit of section 382-B Cr.P.C.

2. Brief facts of the prosecution case in nutshell are that complainant Mohammad Abbadullah Khan lodged the FIR No.418/2014 at Police Station New Karachi on 01.02.2012 stating therein that he owns Rahat Dawa Khana at Modern Complex Khan Shop No. A-14 Sector 11-I New Karachi. On 01.02.2014, he was available at his Dawa Khana. At 8:30 pm he received a call at his mobile phone No. 0321-3303700 received phone call from mobile phone No.0315-2158587. The caller talked and demanded bhatta of Rs.100,000/-. The caller



avoided to disclose his identity and issued threats of dire consequences and asked for arrangement of extortion amount. The complainant switched off mobile phone. Caller telephoned complainant again for bhatta. Complainant replied him that he could not arrange such amount. It is alleged that caller asked complainant to make arrangement of Rs.10,000/- and remaining amount he should pay in installments. On the next day i.e. 02.12.2014, the complainant was called at 7:00 am along with the extortion amount of Rs.10,000/- at Town Office New Karachi Sector 11-I. Thereafter, the complainant went to P.S and lodged such report. It is alleged that accused was arrested on 02.12.2014 by the police party headed by ASI Mohammad Afzal and one unlicensed 30 bore pistol along with three live rounds were recovered as well as one Qmobile phone. It is alleged that bhatta money was also recovered from his possession. Such memo was prepared at the spot in the presence of mashirs. Thereafter, the accused and case property were brought at police station where FIR No. 419/2014 u/s 23(1)-A Sindh Arms Act was lodged by ASI Mohammad Afzal against accused on behalf of state.

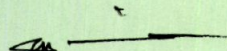
3. After usual investigation, challan was submitted against accused for offences under Sections 384/385/386 PPC, Section 25-D Telegraph Act read with Section 7 of the Anti-Terrorism Act, 1997 & 23(1)(a) of Sindh Arms Act, 2013 separately. Learned Trial Court amalgamated the aforesaid cases for joint trial in terms of Section 21-M of Anti-Terrorism Act, 1997.

4. Trial Court framed charge against accused under the above referred sections at Ex.4. Accused pleaded not guilty and claimed their trial.

5. At trial, prosecution examined four witnesses, who produced relevant documents to substantiate the prosecution case. Thereafter, prosecution side was closed vide statement at Ex.10.

6. Statements of accused were recorded under Section 342 Cr.P.C at Ex.11. Accused claimed false implication in these cases and denied the prosecution allegations. Accused declined to examine on oath in disproof of the prosecution allegations and did not lead evidence in defence.

7. Trial Court after hearing learned counsel for the parties and examination of the evidence available on record, by judgment dated 29.08.2015, convicted and sentenced the appellant as stated above. Hence





these appeals are filed. We intend to dispose of these appeals by this single judgment.

8. The facts of the case as well as evidence produced before the trial Court find an elaborate mention in the Judgment dated 29.08.2015 passed by the learned trial Court, therefore, the same may not be reproduced here so as to avoid unnecessary repetition.

9. Mr. Asif Ali Pirzada learned Advocate for the appellant has mainly contended that at the time of payment of bhatta, no life threat was issued to the complainant. It is further argued that according to the case of prosecution, police had also arrived at the time of payment of bhatta but no police official has deposed that they had actually seen the complainant while passing on bhatta to the accused and mere allegation without any cogent evidence would not be sufficient to maintain the conviction. Moreover, there are material contradictions in the evidence of the complainant and ASI head of police party. It is further argued that complainant has deposed that he was standing on the road for payment of bhatta to the accused. Police came there and asked the complainant as to why he was standing. Complainant replied to the police that he was standing to pay bhatta to the accused, but different version has been given by ASI. He has deposed that complainant gave signal to the police mobile and narrated story to the police regarding payment of bhatta. Complainant has also failed to disclose his business and his antecedents. Learned counsel further argued that I.O has failed to verify that as to who was the owner of the SIM allegedly recovered from the possession of the accused. He further argued that mobile data was not obtained by the I.O from the concerned company and incharge of the mobile company was also not examined by the prosecution. He further argued that there was no evidence that SIM was sealed at the spot. Lastly, it is argued that ingredients of Sections 386 PPC read with Section 7 Anti-Terrorism Act, 1997 are not satisfied from the evidence, which is available on record. In support of his contentions, he has relied upon the case of *Irshad Ali and another vs. Mohammad Shahid and another* (2015 P.Cr.L.J 158).

10. Mr. Mohammad Iqbal Awan, learned DPG argued that complainant is private person and he has fully supported the prosecution case. No previous enmity or ill-will on the part of the complainant or police is alleged by the accused. He further argued that accused was caught hold at the spot with

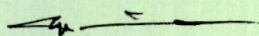


extortion money, delivered to him by the complainant and one unlicensed pistol along with live bullets were also recovered from the possession of the accused. FSL report is in positive. Learned DPG supported the impugned judgment and prayed for dismissal of the appeals.

11. We have carefully heard the learned counsel for the parties and scanned the entire evidence.

12. Record reflects that Complainant Mohammad Abbadullha Khan has deposed that he was student and his father was Hakeem. They have two clinics in the name of Rahat Dawa Khana. On 01.12.2014, he was present at Rahat Dawa Khan. At about 2030 hours, he received call on his Cell No. 0321-3303700 from Cell No. 0315-2158587 and caller demanded bhatta of Rs.100,000/- by issuing threats of killing. Again he received call and demand of Rs.10,000/- as bhatta was made and remaining amount was required to be paid in installments of Rs.10,000/-. Thereafter, he went to police station and lodged the FIR. Accused asked complainant to reach at New Karachi for payment of bhatta. Complainant on 02.12.2014 at 7:00 am, went to the pointed place. At 7:00 am police mobile reached there headed by one ASI. ASI enquired the reason of his standing there, complainant disclosed that he had come there for payment of bhatta amount and was waiting for culprit. Thereafter, police took position at some distance and at about 7:15 am to 7:20 am, one person came on the bike who was armed with pistol in the fold of his pant. Complainant further deposed that accused showed him pistol and demand the bhatta amount, which he delivered to him. Police party apprehended the accused. Accused on enquiry disclosed his name as Shahid and from his personal search police recovered one pistol with three live rounds in its magazine, bhatta amount and Qmobile, which were sealed at spot. Accused was arrested and mashirnama of arrest and recovery was prepared in his presence at spot. complainant further deposed that police party reached at police station along with accused and case property. He further deposed that in his presence I.O Inspector Ali Haider visited the place of wardat at his pointation and prepared mashirnama of wardat.

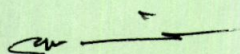
13. We are unable to rely upon the evidence of complainant and other prosecution witnesses for the reasons that complainant in his evidence has deposed that at the time of payment bhatta, no life threat was issued to the complainant. According to the case of prosecution, police had also arrived at





the time of payment of bhatta but no police official has deposed that they had actually seen the complainant while passing on bhatta to the accused. Mere allegation without cogent evidence would not be sufficient to maintain conviction. Moreover, there are material contradictions in the evidence of the complainant and ASI head of the police party. Complainant has deposed that he was standing on the road for payment of bhatta to the accused. Police party came there and asked complainant as to why he was standing. He replied to the police that he was standing to pay bhatta to the accused but different version has been given by ASI on the same point. He has deposed that complainant gave signal to the police mobile and narrated the story to the police regarding payment of bhatta. Complainant has also failed to disclose his business and his antecedents. So far CDR is concerned, I.O failed to verify that as to who was the owner of the SIM recovered from the possession of the accused. In such circumstances, evidence of call data would not improve the case of prosecution. Moreover, mobile data has also not been obtained by the I.O from the concerned company. Prosecution has failed to examine incharge of the mobile company. There was no evidence that SIM was sealed at the spot. Prosecution did not take any step to prove the ownership of the mobile phone. SIM and mobile recovered from the possession of the accused have not been proved by cogent evident. No record of concerned Network has been produced by the prosecution, showing the use, possession and ownership of said cell number by the accused at the relevant time. Such circumstances created doubt about the veracity of the prosecution case as held in the case reported as **Atta Ullah vs. The State and another (2017 P.Cr.L.J 992)**. We have come to the conclusion that not a single word has been deposed by the complainant that accused put him in fear of injury, death or grievous hurt. Element of terrorism was also missing in this case. Antecedents/ business of the complainant from whom bhatta was demanded have also not brought on record. Appellant has been convicted under Section 386 PPC, but prosecution has failed to establish ingredients of Section 386 PPC. At this juncture, it would be appropriate to refer section 386 of the Pakistan Penal Code, which is as under:--

*"386. Extortion by putting a person in fear of death or grievous hurt. Whoever commits extortion by putting any person in fear of death or of grievous hurt to that person to any other, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine."*





14. At the cost of repetition, it is mentioned that complainant in his evidence no where has deposed that accused put him in fear of death or of grievous hurt and he has failed to substantiate the charge of extortion through concrete or confidence inspiring evidence, as such element of terrorism is missing in this case. Therefore, conviction under Section 7(h) of Anti-Terrorism Act, 1997 is not sustainable under the law. Evidence of complainant is also silent regarding his financial status and source of income against which accused had been demanding bhatta. Defence plea was also not considered by the Trial Court and it was rejected without assigning reasons. The crucial issue of jurisdiction of Anti-Terrorism Court is involved in this case. In the case of *Sagheer Ahmed vs. The State and others (2016 SCMR 1754)*, it has been held by the Honourable Supreme Court that in the cases in which element of terrorism is missing, Anti-Terrorism Court has no jurisdiction to try such cases under the provisions of Anti-Terrorism Act, 1997. Relevant portion is reproduced as under:

"2. We have heard the learned counsel for the parties and have gone through the record.

3. High Court in the impugned judgment has observed as follows:

"10. The averments of FIR are silent regarding the financial status and source of income of the complainant against which accused have been demanding Bhatta. Complainant has also not disclosed the specific dates, times and places of demanding Bhatta by accused persons nor any such evidence was produced before the Investigating Officer to prima facie establish such allegations. In absence of any tangible material, mere allegations of demanding Bhatta do not attract section 6(2)(k) of Anti-Terrorism Act, 1997, in the present case nor said section was mentioned in the FIR and Challan. Perusal of Challan reflects that Investigating Officer had made a request to the Anti-Terrorism Court for return of FIR and other documents so that Challan may be submitted before the ordinary Court of law as no case under the provisions of Anti-Terrorism Act, 1997 was made out, but his request was declined by the Anti-Terrorism Court vide order dated 09.06.2014, and cognizance was taken by the Court.

11. Cumulative effect of the averments of FIR, surrounding circumstances and other material available on record have replicated that offence having been committed on account of previous old enmity with a definite motive. The alleged offence occurred at Faiz Wah bridge, which is not situated in any populated area, consequently, the allegations of aerial firing have not appeared to us to be a case of terrorism as the motive for the alleged offence was nothing but personal enmity and private vendetta. The intention of the accused party did not depict or manifest any act of terrorism as contemplated by the provisions of the Anti-Terrorism Act, 1997. Consequently, we are of the considered view that complainant has failed to produce any



material before the Investigating Officer that at the time of occurrence sense of fear, panic, terror and insecurity spread in the area, nevertheless it was a simple case of murder due to previous enmity, thus, alleged offence does not fall within purview of any of the provisions of Anti-Terrorism Act, 1997. While probing the question of applicability of provisions of Anti-Terrorism Act, 1997, in any crime, it is incumbent that there should be a sense of insecurity, fear and panic amongst the public at large to invoke the jurisdiction of the Anti-Terrorism Court. Indeed, in each murder case there is loss of life which is also heinous crime against the society but trial of each murder case cannot be adjudicated by the Anti-Terrorism Court, except existence of peculiar circumstances as contemplated under sections 6, 7, 8 of Anti-Terrorism. Act, 1997."

4. We note that observation made by the High Court is based upon the record of the case and no misreading in this respect was pointed out before us. The submission of learned counsel for the petitioner that in evidence petitioner has brought on record sufficient material to substantiate the fact of demand of Bhatta in FIR that complainant party was doing business of brick kiln. There is no allegation in the FIR that complainant party was engaged in brick kiln business. Be that as it may, we find that High Court has rightly dealt with the matter and prima facie there is nothing on record to deviate from the same. The petition is, therefore dismissed and leave refused."

15. In this case, there are number of infirmities/lacunas, as highlighted above which have created serious doubt in the prosecution case. It is settled principle of law 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 vs. The State (1995 SCMR 1345)**, wherein the Honourable Supreme Court has held as under:-

*"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 matter of grace and concession but as a matter of right."*

16. For the above stated reasons, while respectfully relying upon the above cited authorities, we have no hesitation to hold that prosecution has failed to prove its case against the appellants beyond any shadow of doubt. Moreover, learned Judge, Anti-Terrorism Court-IX, Karachi had no jurisdiction to try these cases. Accused have faced agony of long trial since 02.12.2014, as such re-trial in the peculiar circumstances of the case is not



ordered. Consequently, Appeals are allowed, conviction and sentence awarded by the learned Judge, Anti-Terrorism Court-IX, Karachi vide judgment dated 29.08.2015 are set aside. Appellant Shahid @ Jaga is acquitted of the charges. Appellant Shahid @ Jaga shall be released from custody forthwith, if he is not wanted in some other custody case.

*J. J. J.*  
JUDGE

2.11.2017  
JUDGE