

~~Arif Habib / Jinnah / Karim Khan~~
Bhatta demand to clinic ~~upheld~~ upheld

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CERTIFICATE OF THE HIGH COURT OF SINDH, KARACHI

Spl Criminal Anti-Terrorism Appeal NO. 146 of 2021
Spl Criminal Anti-Terrorism Appeal NO. 147 of 2021

Sikandar Khan

Vs

The State & another

HIGH COURT OF SINDH

Composition of Bench.

D.B.

Mr. Justice Muhammad Karim Khan Agha
Mr. Justice Zulfiqar Ali Sangi

Date(s) of hearing: 01-09-2022

Decided on : 06-09-2022

Judgment approved for Reporting

Yes

K.A.

CERTIFICATE.

Certified that the judgment */Order is based upon or enunciates a principle of law
*/decides a question of law which is of first impression/distinguishes/. Over-rules/
reverses/explains a previous decision.

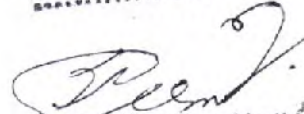
* Strike out whichever is not applicable.

NOTE: - (i) This slip is only to be used when some action is to be taken.

(ii) If the slip is used, the Reader must attach it to the top of the first
page of the judgment.

(iii) Reader must ask the Judge writing the Judgment whether the
Judgment is approved for reporting.

(iv) Those directions which are not to be used should be deleted.

PRESENTED ON
17-08-2021

Deputy Registrar (Judl.)

3499

IN THE HIGH COURT OF SINDH AT KARACHI

(Constitutional Extra Ordinary Jurisdiction)

Special Anti Terrorism Appeal No. 146 of 2021

Sikandar Khan
Son of Kamil Jan,
Muslim, adult, Resident of
Karachi
Presently confined in
Central Jail, Karachi

..... Appellant
VERSUS

1. The State
 2. IVth Anti Terrorism Court
Karachi Division
- Respondents

FIR No. 68/2020
U/S:384/385/34 PPC
R/W Section 7 ATA 1997
P.S: PIB Colony, Karachi

**APPEAL UNDER SECTION 25 OF THE ANTI
TERRORISM ACT 1997**

The Appellant being aggrieved and dissatisfied by the Judgment dated: 09-08-2021 in respect of Special Case No. 147/2020, FIR No. 68/2020, U/S:384/385/34 PPC R/W Section 7 ATA 1997, P.S: PIB Colony, Karachi, the Learned Trial Court IV Anti Terrorism Court Karachi, whereby he had convicted the Accused Sikandar Khan Son of Kamil Jan Muhammad guilty for the charged offence U/S 384/385/386/34 PPC, R/W Section 6 (2) (K) punishable under Section 7 (1) (h) of ATA 1997, he is convicted and

PRESENTED ON
17.08.2021

Deputy Registrar (Judl.)

IN THE HIGH COURT OF SINDH AT KARACHI

3500

(Constitutional Extra Ordinary Jurisdiction)

Special Anti Terrorism Appeal No. 147 of 2021

Sikandar Khan
Son of Kamil Jan,
Muslim, adult, Resident of
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..... Appellant
VERSUS

1. The State

2. IVth Anti Terrorism Court
Karachi Division

..... Respondents

FIR No. 84/2020
U/S:384/385/386/324/34
PPC
R/W Section 7 ATA 1997
P.S: PIB Colony, Karachi

**APPEAL UNDER SECTION 25 OF THE ANTI
TERRORISM ACT 1997**

The Appellant being aggrieved and dissatisfied by the Judgment dated: 09-08-2021 in respect of Special Case No. 148/2020, FIR No. 84/2020, U/S:384/385/386/324/34 PPC R/W Section 7 ATA 1997, P.S: PIB Colony, Karachi, the Learned Trial Court IV Anti Terrorism Court Karachi, whereby he had convicted the Accused Sikandar Khan Son of Kamil Jan Muhammad found guilty for the charged offence U S 384/385/386/324/34 PPC, R/W Section 6 (2) (k) punishable Under Section 7 (1) (h) of ATA 1997, he is

~~Roll No. E-00000000000000000000~~
~~Roll No. E-00000000000000000000~~

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Bhatta demand at clinic upheld

IN THE HIGH COURT OF SINDH, KARACHI

Present:

Mr. Justice Mohammad Karim Khan Agha
Mr. Justice Zulfiqar Ali Sangi

SPL. CRIMINAL A.T. APPEAL NO.146 OF 2021.
SPL. CRIMINAL A.T. APPEAL NO.147 OF 2021.

Appellant: Sikandar Khan son of Kamil Jan
Through Syed Nadeem-ul-Haq,
Advocate.

Respondent: The State through Mr. Ali Haider
Saleem, Additional Prosecutor
General Sindh.

Complainant: In Person

Date of Hearing: 01.09.2022

Date of Judgment: 06.09.2022.

JUDGMENT

MOHAMMAD KARIM KHAN AGHA, J:- The appellant Sikandar Khan s/o Kamil Jan was tried before the Court of Anti-Terrorism Court No.IV, Karachi in Special Case No.147 of 2020 under FIR No.68/2020 for the offence punishable u/s 384/385/34 PPC r/w Section 7 ATA, 1997 and Special Case No.148 of 2020 under FIR No.84/2020 for the offence punishable u/s 384/385/386/324/34-PPC and 3/4 Explosive Substance Act read with Section 7 ATA, 1997 both registered at PS PIB Colony, Karachi and vide judgment dated 09.08.2021 he was convicted and sentenced to suffer R.I. for five years with fine of Rs.10,000/- and in case of non-payment of fine, he shall further suffer two months more imprisonment. All sentences were ordered to run concurrently. The appellant was also extended the benefit of Section 382-B Cr.P.C.

2. The brief facts of the prosecution case as per FIR No.68 of 2020 are that on 20.02.2020 complainant Dr. Siraj Uddin lodged this FIR stating therein that he is a doctor and runs his clinic at House No.A-199, Muhallah Siraj Clinic, Welfare Colony, Purani Sabzi Mandi, Karachi. On 14.02.2020 at about 08:15 pm two persons boarded on one motorcycle came at his clinic, adjacent to Taj Medical Store and handed over an

envelope to his nephew and asked him to hand over the same to the complainant. The envelope containing a chit, through which extortion money was demanded on the pretext of so-called Khilafat UI-Muslimeen Abu Ibrahim ul Quresh Al Hashmi and complainant was asked to contact on number 0093780286861 with the threat of dire consequences if he failed to pay the extortion money. On 18.02.2020 at about 08:15 pm. two persons boarded on 125-motorcycle came at the Clinic and one person came at the medical store and shot fire and slipped away on the motorcycle. Three empties of 9mm were secured from the place of incident, complainant called on 15 (Madadgar), police reached on the spot. Thereafter complainant came to police station and lodged the FIR against the extortionists and stated that he and his nephew could identify them if they would come in front of them.

3. In continuation of the above incident another FIR No.84 of 2020 was also lodged by the complainant Dr. Siraj Uddin stating therein that on 27.02.2020 at about 20:45 hours four persons boarded on two motorcycles came at the Clinic of complainant and hit the bottle teemed with explosive material on the wall of the Clinic and shot fires with pistol and fled on their motorcycles. Hence the said FIR was lodged for taking legal action against the culprits.

4. After completion of formal investigation report under 'A' Class was submitted before the concerned Court. Thereafter during investigation appellant/accused Sikandar Khan was arrested on the pointation of complainant's nephew and during interrogation disclosed his involvement in the offence. The challan was submitted before the learned trial court where the appellant pleaded not guilty to the charge.

5. The prosecution in order to prove its case examined 06 witnesses and exhibited various documents and other items. The statement of accused was recorded under Section 342 Cr.P.C in which he denied the allegations leveled against him and claimed false implication by the police. However, the appellant did not give evidence on oath nor produce any DWs in support of his defence.

6. After hearing the parties and appreciating the evidence on record, the trial court convicted the appellant and sentenced him as set out earlier

in this judgment; hence, the appellant has filed this appeal against his conviction.

7. The facts of the case as well as evidence produced before the trial court find an elaborate mention in the impugned judgment dated 09.08.2021 passed by the learned trial court and, therefore, the same may not be reproduced here so as to avoid duplication and unnecessary repetition.

8. Learned counsel for the appellant has contended that the appellant is completely innocent; that there was a delay in lodging the FIR which allowed the complainant to cook up a false case against him in league with the police; that it was a case of mistaken identity and as such for any or all the above reasons the appellant should be acquitted of the charge by extending him the benefit of the doubt. In support of his contentions, he placed reliance on the case of **Uzamee v The State** (2019 P Cr. L. J Note 137)

9. On the other hand, Additional Prosecutor General Sindh has fully supported the impugned judgment and in particular has contended that the evidence of eye witness Shamsuddin's evidence in respect of the bhatta demand, shots fired at the clinic and later shots and fire bomb thrown at the clinic can be safely relied upon and that he has correctly identified the appellant who gave him the bhatta note and fired on and threw a fire bomb at the clinic; that the pistol which was recovered from the appellant when he was arrested on the spot produced a positive FSI report when matched with the empties recovered at the crime scene and as such the appeal be dismissed. In support of his contentions, he placed reliance on the cases of **Niaz Uddin v The State** (2011 SCMR 725) and **Mubasher v The State** (PLD 2015 Lahore 426).

10. We have heard the arguments of the learned counsel for the appellant as well as learned Additional Prosecutor General Sindh who was also representing the interest of the complainant and gone through the entire evidence which has been read out by the learned counsel for the appellant, and the impugned judgment with their able assistance and have considered the relevant law including the case law cited at the bar.

11. After our reassessment of the evidence we find that the prosecution has proved beyond a reasonable doubt the charge against the appellant for the following reasons keeping in view that each criminal case must be decided on its own particular facts and circumstances;

(a) That the bhatta amount was demanded on 14.02.2020 but the complainant refused to comply with the same. As a result of such non compliance the accused fired on his clinic. This lead to him lodging the first FIR two days later as he now considered the bhatta threat to be a serious one and as such we do not consider the delay in lodging the FIR to be fatal to the prosecution case as the delay was caused by anxiety and fear on the part of the complainant which in our view sufficiently explains the delay in lodging the FIR. In this respect reliance is placed on the case of **Muhammad Nadeem alias Deemi v The State** (2011 SCMR 872). Like wise the lodging of the second FIR which took place after another attack on the complainant's clinic. Significantly the FIR's were against unknown persons which clearly indicate that the complainant had no intention of falsely implicating anybody. If the complainant had wanted to false implicate the appellant he could have named him in the first FIR and had him arrested in the first FIR prior to the later attack on his clinic which caused serious damage and lead to the lodging of the second FIR.

(b) We find that the prosecution's case primarily rests on the sole eye witness to the bhatta demand and firing on the clinic and in particular his correct identification of the appellant as the person who gave him the bhatta demand and fired on the clinic whose evidence we shall consider in detail below;

(i) **Eye witness PW 2 Shamsuddin.** He is the nephew of the complainant. According to his evidence on 14.02.2020 two persons came to the medical store by motorbike one of whom alighted and gave him an envelope and told him to hand over the same to the complainant. He handed over the envelope to the complainant in which an extortion demand was made. On 18.02.2020 two persons boarded on motor bike again came to the clinic one of whom came to the counter of the store and started firing inside the store before escaping. On 27.02.2020 four persons boarded on 2 motorbikes came to the medical store two of whom came to the medical store and threw a bottle of explosives on the store and made firing before again escaping. He came to know that two persons would again come to the medical store therefore he called PI Tabassum Ahmed who deployed his officers around the store who arrested the appellant on his pointation when he came to the store and from whom an unlicensed pistol was recovered.

The eye witness was not a chance witness as he worked in the medical clinic. It is true that he was related to the complainant being his nephew however he had no enmity or ill will towards the appellant and had no reason to falsely

implicate him in this case and it is well settled by now that under such circumstances the evidence of such witnesses can be safely relied upon.

The eye witness saw the appellant on 3 separate occasions; **firstly** when he handed over to him the envelope containing the extortion demand in day light in the clinic face to face; **secondly** when the appellant entered the clinic and made fire on the clinic inside whilst the eye witness was present and **thirdly** when the appellant came and fire bombed the clinic when the eye witness was present. All these incidents happened within a short time period of 13 days and it was even stated in the FIR that he could identify the culprits if he saw them. He was not damaged at all on cross examination and in respect of the arrest of the accused he was present when the appellant was arrested on his pointation by the police again coming to the clinic on 29.02.2020 2 days after he last saw the appellant and as such we find that the eye witness has correctly identified the appellant despite no hulia of him being given and no identification parade being held as the very fact that the appellant was arrested at the clinic with an unlicensed weapon shows that his was coming to the clinic to follow up on his extortion demand yet again and based on the particular facts and circumstances of the case we do not consider that in this case any hulia or identification parade were necessary.

We find the evidence of this witness to be reliable trust worthy and confidence inspiring and believe the same especially in respect of the correct identity of the appellant who he had got a good look at three times over a period of 15 days from close range and was arrested on the spot on the way to the clinic with an unlicensed weapon and we can convict solely based on his evidence. In this respect reliance is placed on the cases of **Muhammad Ehsan v. The State** (2006 SCMR 1857). As also found in the cases of **Farooq Khan v. The State** (2008 SCMR 917), **Niaz-ud-Din and another v. The State and another** (2011 SCMR 725) and **Muhammad Ismail vs. The State** (2017 SCMR 713). That what is of significance is the quality of the evidence and not its quantity and in this case we find the evidence of this sole eye witness to be of good quality and believe the same especially in terms of the correct identification of the accused who he had seen three times over a short period.

Thus, based on our believing the evidence of the PW eyewitness especially in terms of him correctly identifying the appellant what other supportive/corroborative material is there against the appellant? It being noted that corroboration is only a rule of caution and not a rule of law. In this respect reliance is placed on the case of **Muhammad Waris v The State** (2008 SCMR 784)

(c) That the evidence of the complainant fully corroborates that of the eye witness in terms of the bhatta demand and attacks on the clinic. He was the owner of the clinic and he had no ill will or

enmity with the appellant and had no reason to implicate him in a false case and as such we believe his evidence.

(d) That the appellant was arrested on the spot by the police and an unlicensed pistol was recovered from him.

(e) When this pistol was matched with the empties recovered at the crime scene it produced a positive FSL report.

(f) That the police PW's had no enmity or ill will towards the appellant and had no reason to falsely implicate him in this case for instance by foisting a pistol on him and in such circumstances it has been held that the evidence of the police PW's can be fully relied upon and as such we rely on the police evidence. In this respect reliance is placed on **Mushtaq Ahmed V The State** (2020 SCMR 474).

(g) That all the PW's are consistent in their evidence and even if there are some contradictions in their evidence we consider these contradictions as minor in nature and not material and certainly not of such materiality so as to effect the prosecution case and the conviction of the appellant. In this respect reliance is placed on the cases of **Zakir Khan V State** (1995 SCMR 1793) and **Khadim Hussain v. The State** (PLD 2010 Supreme Court 669). The evidence of the PW's provides a believable corroborated unbroken chain of events from the appellant giving PW 2 Shamsuddin the envelope containing the bhatta demand to give to the complainant to the non payment of the bhatta demand leading to the attack on the shop by firearm and then by firearm and explosive device to the appellant being arrested on the spot while coming to demand payment of the bhatta on the pointation of PW 2 shamsuddin to the appellant having an unlicensed firearm on his person at the time of his arrest which when matched with empties recovered at the crime scene produced a positive FSL report.

(h) The fact that the appellant had a CRO with 3 serious criminal cases against him and had been detained in a detention centre in KPK for about 5 years indicated that he was involved in terrorist organizations on behalf of whom he was making the bhatta demand.


(i) Undoubtedly it is for the prosecution to prove its case against the accused beyond a reasonable doubt but we have also considered the defence case to see if it at all can cast doubt on or dent the prosecution case. The defence case is simply one of false implication by the police. The appellant did not give evidence on oath and did not produce any DW in support of his defence case or produce any other evidence which could dent the prosecution case. Thus, for the reasons mentioned above we disbelieve the defense case as an afterthought in the face of a reliable, trust worthy and confidence inspiring eye witness and other corroborative /supportive evidence against the appellant which has not at all dented the prosecution case.

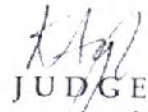
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12. The case was tried under the ATA. Based on the acts and conduct of the accused and FIR and facts and circumstances of the case we find that the case falls within the purview of the ATA in that the appellant made a demand for bhatta; when this was not paid he and his accomplices fired in the clinic which was planned, designed and had the intention of terrorizing the complainant into paying the bhatta demand; when he yet again failed to do so the same tactics were employed except this time with explosive device in addition to firing in order to terrorize him into making payment.

13. Thus, we find that the prosecution has proved its case against the appellant beyond a reasonable doubt for the offences for which he has been convicted and hereby maintain his convictions and sentences in the impugned judgment and dismiss the appeals.

14. The appeals are disposed of in the above terms.


JUDGE,


JUDGE 00/01/22