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IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA.

Criminal Appeal No.D-73 of 2016
Criminal Appeal No.D-74 of 2016

Present:

Mr. Justice Muhammad Iqbal Kalhoro,
Mr. Justice Irshad Ali Shah,

Appellant : Gudoo Abro, through Mr. Ahsan Ahmad Qureshi,
Advocate.

Respondent: The State through Mr. Khadim Hussain Khooharo,
Additional Prosecutor General.

Mr. Mazhar Ali Mangan, advocate for complainant.

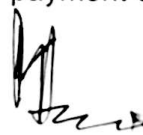
Date of Hearing : 15.02.2018.

Date of Judgment : 15.02.2018.

J U D G M E N T.

MUHAMMAD IQBAL KALHORO, J.- Appellant was booked in Crime No.57/2016 under Sections 386, 324, 34, PPC read with Section 7(h) of Anti-Terrorism Act, 1997 and Crime No.64/2016 under Section 23(1)(a) of Sindh Arms Act, 2013, both registered at Police Station Darri, Larkana, and was tried in both the crimes and offences being Special Cases No.29/2016 and 30/2016 by the Court of Judge, Anti-Terrorism, Larkana. By means of the impugned judgment the appellant was convicted in the following terms:-

- a) Accused Gudoo Abro is convicted for an offence punishable U/S 7(h) of Anti-Terrorism Act 1997, and is sentenced to suffer R.I for five (05) years and to pay fine of Rs.5,000/- (five thousand) to be paid to the complainant and in case of default in payment of fine, he shall suffer further S.I for two months.
- b) Accused Gudoo Abro is convicted for an offence punishable U/S 386 PPC, and is sentenced to suffer R.I for seven (07) years and to pay fine of Rs.20,000/- (twenty thousand) to be paid to the complainant and in case of default in payment of fine, he shall suffer further S.I for six months.



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- c) Accused Gudoo Abro is convicted for an offence punishable U/S 324 PPC, and is sentenced to suffer R.I for five (05) years and to pay fine of Rs.10,000/- (ten thousand) to be paid to the complainant and in case of default in payment of fine, he shall suffer further S.I for four months.
- d) Accused Gudoo Abro is convicted for an offence punishable U/S 23(1)(a) of Sindh Arms Act 2013, and is sentenced to suffer R.I for seven (07) years and to pay fine of Rs.5000/- (five thousand) to be paid to the Government and in case of default in payment of fine, he shall suffer further S.I for two months.

Through the captioned two appeals the appellant has challenged his said conviction and sentences, which were ordered to run concurrently.

2. Brief facts of the case are that an FIR bearing Crime No.57/2016 was lodged by complainant Imran Ali Kalhoro on 02.5.2016 at 2000 hours, alleging an incident which occurred on 01.05.2016 at 6.30 p.m., when he along with his brother Aamir Khan and friend Shahzado was present at his medical store situated on Bakrani road near Janazah Masjid, Larkana. It is alleged that the appellant along with one unidentified person came on motorcycle and demanded "Bhatta" of Rs.3000/- from the complainant and threatened him that in case he did not pay the same, he would be murdered. Complainant, however, did not oblige him, which prompted the appellant to directly fire upon him with intention to commit his murder but luckily none of the bullets hit the complainant. During investigation, appellant was arrested on 13.5.2016 at 1700 hours from near the Drainage Wells (Kinna Khooh) situated on road leading from Bakrani Tower to Bakapur, Larkana City and from him one 30-bore pistol loaded with five live bullets was recovered, which were sent to the Ballistics Expert along with empties recovered from the spot for report. Such report has been received, which is in positive. Regarding the recovery of pistol a separate FIR bearing Crime 64/2016 was registered against him. After due formalities the challan in both the case was submitted against the appellant.

3. The formal charge against the accused was framed at Ex.5 but he did not plead guilty and opted to face the trial.



4. The prosecution to prove its two cases has examined PW-1/complainant Imran Ali Kalhor at Ex.6 who produced FIR at Ex.6-A, PW-2 eye-witness/mashir PC Zulfiqar Ali Noohani at Ex.7 who produced attested carbon copy of entry No.15 at Ex.7-A, memo of arrest of accused and recovery at Ex.7-B, attested carbon copy of entry No.17 to 19 at Ex.7-C, and memo of place of occurrence at Ex.7-D, PW-3 eyewitness Aamir Ali Kalhor at Ex.8, PW-4/mashir of place of occurrence Ghulam Mustafa at Ex.9, who produced memo of place of occurrence and recovery of empties at Ex.9-A, PW-5 duty officer ASI Sadaruddin Panhwar at Ex.10, PW-6 SIP Abdul Sattar Magsi, investigating officer at Ex.13, who produced photographs of the place of occurrence at Ex.13-A to 13-E, FIR No.64/2016 of PS Darri Larkana at Ex.13-F and opinion of Ballistic Expert at Ex.13-G, PW-7 SIP/SHO Kareem Bux Napar, investigating officer at Ex.14, PW-8 Shahzad Seelro at Ex.18 and PW-9 SIP/SHO Miran Khan Durrani at Ex.19, who produced the letter of SSP about constitution of JIT at Ex.19. Thereafter, the statement of appellant under section 342, Cr.P.C was recorded at Ex.21, in which he denied the allegations. However, he did not examine himself on oath nor led any evidence in his defence. After conclusion of the trial and hearing of the parties, the appellant was convicted by the learned Anti-Terrorism Court vide impugned judgment in the terms as stated in para No.1. Being aggrieved by the same he has filed these two separate appeals.

5. Mr. Ahsan Ahmad Qureshi, learned Counsel for appellant has submitted that he does not dispute the conviction of the appellant in both the cases, but would request for reduction of sentence of the appellant to the period already undergone by him. In support of his said plea, learned Counsel has argued that the charge against the appellant under section 386, PPC read with section 7(h) of Anti-Terrorism Act, 1997, has not been proved because the appellant allegedly made only a demand of "Bhatta" from the complainant and no "Bhatta" actually was paid to him, therefore, extortion as defined in law was not committed. According to him, the case against the appellant at the most would fall under section 386 read with section 511 PPC, which is attracted when an attempt of an offence is made, regarding which no specific penal provision is available in law. He has next submitted that besides above legal position there are a number of contradictions in the evidence, the

benefit of which can be given to the appellant in the shape of modification in his sentence and reducing it to the period already undergone by him.

6. Mr. Mazhar Ali Mangan, learned Counsel for the complainant and Mr. Khadim Hussain Khooharo, learned Additional Prosecutor General have not disputed the suggestion of learned defence Counsel, and have rendered their no objection to reduction of the sentence.

7. We have considered submissions of the parties and have perused the material available on record. The prosecution has examined in all 09 witnesses, who have deposed unambiguously against the appellant. Therefore, insofar as the allegations against the appellant are concerned, the same appear to have been established. However, at the same time, it is apparent that the appellant did not receive any "Bhatta", but had allegedly made only a demand of it from the complainant. Therefore, the argument of learned defence Counsel which has not been opposed by the learned Addl. P.G and Counsel for the complainant that section 7(h) of ATA and 386 PPC jointly would not be attracted to the case of the appellant is not without force and can be considered in favour of the appellant vis-à-vis his request for reduction of sentence. The record reflects that appellant is in jail since date of his arrest viz. 13.5.2016. Section 386, PPC provides that whoever commits extortion shall be punished with imprisonment of either description for a term which may extend to ten years and shall also be liable to fine. section 511 PPC provides that whoever attempts to commit an offence punishable with imprisonment for life or imprisonment regarding which no express provision is made describing the punishment for such an attempt, be punished with imprisonment of any description provided for the offence for a term which may extend to ½ of the longest term of the imprisonment provided for that offence or with such fine as is provided for the offence. In law no specific penal provision is available for making an attempt to commit extortion, therefore, the aforesaid provision of law seems to be attracted. Section 324, PPC provides for punishment which may be extend to 10 years and shall also be liable to fine. Section 23(1)(a) of Sindh Arms Act provides for punishment to the extent of fourteen years and with fine. It is admitted position that no one was injured in the firing of the appellant and nothing in "Bhatta" was

paid to the appellant. Therefore, the gravity of offence has to be looked into through the said backdrop. A perusal of the above provisions of law reflects that the Court has the discretion to award punishment to an accused for the said offences for any term which however shall not be beyond the maximum quantum of punishment provided therein. Learned Counsel has submitted that the appellant is repentant and has promised to improve himself. Before us no material has been placed either showing that appellant has been previously convicted by any Court of law for committing the crime of similar nature.

8. Keeping in view the above, we do not find any impediment in accepting the request of learned defence Counsel regarding reduction in sentence awarded to the appellant particularly so when both the Counsel for the complainant and learned Additional Prosecutor General have not opposed it. Consequent to above discussion, we dismiss both the appeals on merits. However, the sentences awarded to the appellant in both the cases under all the offences are converted and reduced to the period already undergone by him, which shall include the period the appellant is required to undergo on his failure to pay fine in terms of impugned judgment.

9. These appeals in above terms stand disposed of

PZ
JUDGE

JUDGE 15/2/2018