

IN THE HIGH COURT OF SINDH AT KARACHI

Before: Mr. Naimatullah Phulpoto, J
Mr. Zulfiqar Ahmad Khan, J

Special Cr. Anti-Terrorism Jail Appeal Nos. 217 and 218 of 2017

[Ammaduddin v. the State]

Appellant : Ammaduddin through Mr. Ajab Khan
Khattak, Advocate
State : Through Mr. Ali Haider Saleem, DPG
Date of Hearing : 24.01.2018
Date of Judgment : 30.01.2018

JUDGMENT

Zulfiqar Ahmad Khan, J:- Through these appeals the consolidated judgment dated 24.05.2017 passed by learned Judge, Anti-Terrorism Court No.V, Karachi in Special Case Nos. A-59 & A-60 of 2014 in **(1)** Crime No.04 of 2014, under sections 384, 385, 34 PPC read with Section 7 of Anti-Terrorism Act, 1997 and **(2)** Crime No.05 of 2014, under Section 23(1)(a) of Sindh Arms Act, 2013 read with Section 7 of Anti-Terrorism Act, 1997, both registered with P.S SITE Super Highway, Karachi is impugned, whereby the appellant was convicted under Section 7(1)(h) of Anti-Terrorism Act, 1997 and sentenced to undergo R.I for 05 years with fine of Rs.30,000/-. In default whereof, to undergo S.I for 03 months; and under Section 23(1)(a) of Sindh Arms Act, 2013 he was convicted and sentenced to undergo R.I for 05 years and to pay fine of Rs.25,000/-. In default whereof, to undergo S.I for 03 months. Both of these sentences were ordered to run concurrently and benefit of Section 382(b) Cr.P.C was extended to the accused.

2. The accused was initially tried by the learned trial Court for these crimes and convicted under section 7(1)(h) of Anti-Terrorism Act, 1997, sentenced to undergo R.I for five (5) years and to pay fine of Rs.50,000/-, in default whereof,

to undergo S.I for three (3) months vide judgment dated 23.07.2015. He was also convicted for the offence under Section 23(1)(a) of Sindh Arms Act, 2013 and sentenced to undergo R.I for fourteen (14) years and to pay fine of Rs.50,000/-. In default whereof, to undergo S.I for six (6) months. All the sentences were ordered to run concurrently and benefit of Section 382(b) Cr.P.C was extended to the appellant. The accused preferred an appeal before this Court in Special Criminal Appeal Nos.186 and 187 of 2015, wherein this Court vide order dated 03.11.2016 observed at that time of alleged offence and arrest, the appellant was a minor and ought to have been tried under Juvenile Justice System Ordinance as in statement under Section 342 Cr.P.C the accused gave his age as 18 years. The judgment was therefore set aside and the case was remanded back to the trial Court to decide afresh keeping in view the age of the appellant and procedure provided under the Juvenile Justice System Ordinance. In compliance of the said order of this Hon'ble Court, a fresh charge was framed and read over to the appellant on 28.11.2016, to which appellant did not plead guilty and claimed to be tried, the prosecution had examined 5 PWs before learned trial Court and after concluding the case the impugned judgment was passed which convicted the appellant as per the opening paragraph hereof. Hence these appeals.

3. Brief facts of the prosecution case are that on 13-01-2014 at about 1700 hours, the Complainant Khamiso (PW-1) reported at Police Station SITE Super Highway that he was a Commission Agent in New Sabzi Mandi and was running his business in the name of Bhural and Bilawal Jan and his younger brother Abdul Hakeem and relative Bilawal Jan were also running that business with him. 10 to 15 days prior to the date of FIR (13.01.2014) he and his relative had been receiving calls on their Mobile Phone Nos. 0345-2241695, 0300-2664912 and 0306-2530351 from Mobile Nos. 0303-9106724, 0344-2727636 and 0345-0200924 demanding Bhatta of Rs.1,000,000/-, otherwise threatening to kill his

brother and cousin. Due to fear, the complainant agreed to pay Rs.250,000/-, but the culprits gave different dates and places to make payment and he informed the police. On the date of FIR, he and his Munshi Bilal alongwith police party including SHO Rana Haseeb Ahmed kept Rs.30,000/- in a theli and reached at Main Road Janjal Goth, Scheme-33, Malir Karachi by a private car while police hid themselves. At about 5:00 p.m. three persons riding on the motorcycle bearing No.KBY-5555 came there. One person came to the complainant and demanded amount and also took out a pistol. The complainant gave him the said theli, in the meantime police party surrounded and arrested him. He disclosed his name Ammaduddin, but his two companions succeeded to flee. Police recovered cash of Rs.30,000/-, as well as one 30 bore pistol without license from him. Police prepared Mashirnama and registered two separate cases bearing Crime Nos. 04 and 05 of 2014. The investigation was assigned to Inspector Asadullah Ansari, who on completion of investigation submitted two separate challans.

4. The accused in his 342 Cr.P.C statement denied the allegations and has taken the plea that he is innocent and has been falsely implicated in this case due to enmity and vengeance of police personnel. In support, he has provided copy of order passed by 1st Additional Sessions Judge/Ex-Officio Justice of Peace, Malir Karachi in Criminal Petition No.324 of 2012 dated 24.05.2012, where he supported his uncle's case, who was forced to vacate his shop upon illegal demand of Bhatta by police officials whereupon he alongwith other individuals held protest and sent application to high-ups, which aggravated the area police. He has also submitted a copy of application dated 24.05.2012 made by his uncle to SHO, P.S Sohrab Goth.

5. Learned counsel for the appellant pointed out the discrepancies and infirmities in the Prosecution's case. To start with, he submitted that while the case of the prosecution is that the appellant was arrested red-handed alongwith

Rs.30,000/- (Rupees Thirty Thousand) as Bhatta money on 13.01.2014, however, as per P.W-1 he first contacted the police in the morning at 10:30 a.m. and disclosed the fact about alleged Bhatta demand, whereupon a scheme was made to trap the appellant red-handed during Bhatta receipt, however, no FIR was registered at that instance when police received first information from the complainant rather police only registered the case on the later part of the day when the arrest was made and no reason for such delay in the registration of the FIR has been explained. The learned counsel further drew Court's attention to memo of arrest and seizure of arms and extortion of money as per Ex.8/A, where a China Nokia Mobile Phone alongwith SIM is alleged to have been recovered from the accused, however, neither SIM, nor mobile number has been produced as allegedly having been recovered from the accused to support the prosecution's case that calls were made and received from the phone number of the accused. He further, by referring to CDRs of different phone numbers mentioned in the FIR distinguishes that no evidence has been brought to surface that any communication has been made by the accused with the complainant or his brother. The counsel further pointed out that while the police party was armed with deadly weapons and as per the FIR three (3) persons came to collect the Bhatta amount on a motorcycle, however, astonishingly two of them ran away and only the accused was arrested. He further pointed out that while the prosecution has shown involvement of a motorcycle bearing No.KBY-5555, however, no evidence has come to surface as to the ownership of the said motorcycle. By referring to the Expert report dated 21.01.2014, the counsel contended that while the prosecution alleges that a gun was recovered on 13.01.2014, but the same was only sent for forensic after lapse of seven (7) days, for which delay no reason has been assigned. Last but not least, the counsel contended that admittedly the prosecution has made the case of recovery of a 30 bore pistol from the possession of the accused, however, surprisingly no allegation has been made that the accused used the gun or fired upon any

person. Lastly, it was submitted that the prosecution's case was highly doubtful. In support of his contention, reliance was placed upon a case of Tariq Pervez v. the State (1995 SCMR 1345).

6. Mr. Ali Haider Saleem, Learned DPG argued that evidence of the police officials was trustworthy and confidence inspiring. Delay in dispatching of the pistol to the Expert would not be fatal to the case of prosecution. He prayed for dismissal of the appeals. However, candidly admitted that no SIM was recovered from the accused.

7. After hearing learned counsel for the appellant as well as learned DPG, we have scanned the entire prosecution's evidence, as it was the case of spy information and the accused was arrested at public place viz. Main Road of Janjal Goth, Scheme-33, Malir Karachi, however, no efforts were made by the police to associate any independent person to witness the said arrest and recovery, which shatters prosecution's narrative.

8. PW-1 Khamiso has stated that upon having received telephone calls demanding Bhatta on his Phone No. 0345-2241695 and also on his brother's Mobile No. 0300-2664912 of Rs.1,000,000/- (rupees ten lac), he went to police station on 13.01.2014 in the morning where he cooked plan with the police officials to call the accused at 5:00 p.m. on the same day. It is interesting to note that while mobile phone number of the caller has been provided by PW-1, however, no SIM was recovered from the accused. In his cross, he stated that he was not certain that call to him came from Mobile No. 0303-9106724. He further stated that he alongwith area police reached at the pointed place at about 5:00 p.m. through private car while the police reached there on a police mobile. He stated that at the stop of Chakar Hotel where the present accused came, who was armed with pistol and demanded money he gave him Rs.30,000/- and when the accused was leaving, police party apprehended him. This however does not find support with the Annexure-8/A, where the accused arrived on the

motorcycle with two other individuals and upon police action those two individuals ran away and the accused was arrested alongwith 30 bore pistol. Most interesting aspect is that police was unable to recover SIM of the mobile of the accused person to match with the CDR, if calls were ever made by the accused person, which gives serious jolt to the prosecution's case that the accused had demanded Bhatta from PW-1 and his brother. Since no SIM is recovered from the accused person, we are at loss to find the utility of the CDR collected by the Investigating Officer (PW-5), nonetheless no Expert from Mobile Company was examined to substantiate the data collected by the Investigating Officer. The case of the prosecution is that accused was arrested alongwith 30 bore pistol with magazine on 13.01.2014, however, pistol for forensic only reached on 21.01.2014. It is highly doubtful that pistol remained in safe custody during this period coupled with the fact that the Expert has not been examined by the Court. Of more peculiar concern is that while it has been alleged that the accused was making a demand of Rs.1,000,000/-, however, he reduced his claim to Rs.30,000/-, which does not appeal to common sense, in particular, in the strange circumstances where the accused was allegedly arrested from a public place, why police did not call any private Mashirs. It is also very important aspect that the trial Court has completely negated the defense taken by the accused for no reasons that he was arrested by police as in vengeance, as he alongwith other family members had complained against the area police officials and made public demonstrations against latter's high handedness.

9. In this case, there are numbers of infirmities and lacunas, as highlighted above, which have created serious doubts in the prosecution case. 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 vs. The State (1995 SCMR 1345), wherein the Honourable Supreme Court has held as under:-

“The concept of benefit of doubt to an accused person 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.”

10. 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 appellant beyond any shadow of doubt. Benefit of doubt is extended to the appellant. Consequently, appeals are allowed, conviction and sentence awarded by the learned Judge, Anti-Terrorism Court-V, Karachi vide Judgment dated 24.05.2017 are set aside. Appellant Ammaduddin S/o Mian Rasool Jan is acquitted of the charges. Appellant shall be released from the custody forthwith, if he is not required in some other custody case.

Judge

Judge