

**JUDGMENT SHEET
IN THE HIGH COURT OF SINDH, KARACHI**

Present:

Mr. Justice Muhammad Iqbal Kalhoro J.
Mr. Justice Shamsuddin Abbasi, J.

Appellant: **Spl. Cr. A.T. Appeals No.77 & 78 of 2020**
Ameer Hamza through Mr. Mumtaz Ali Khan Deshmukh,
advocate.

Respondent: The State through Mr. Abrar Ali Khichi Addl. P.G.

Appellant: **Spl. Cr. A.T. Appeal No.79 of 2020**
Bilal through Mr. Mumtaz Ali Khan Deshmukh, advocate

Respondent: The State through Mr. Abrar Ali Khichi Addl. P.G.

Appellant: **Spl. Cr. A.T. Appeal No.80 of 2020**
Muhammad Irfan through Mr. Mumtaz Ali Khan Deshmukh,
advocate

Respondent: The State through Mr. Abrar Ali Khichi Addl. P.G.

07.10.2020.

JUDGMENT

Muhammad Iqbal Kalhoro, J. On the information of complainant, appellants were arrested by police of P.S Mominabad on 16.12.2018 from main road Urdu chowk near garbage dump, Sector 10, Orangi Town, Karachi and from appellant Ameer Hamza, Bhatta amount of Rs.20,000/-, which they had received from complainant Noor Alam was recovered. An unlicensed 32 bore revolver with live rounds was also recovered from each appellant. It is also alleged that on 06.12.2018 complainant had received chit/parchi demanding extortion/bhatta of Rs.15,00,000/- followed by another chit/parchi in the night between 9th and 10th December, 2018 at his house by unknown culprits and thereafter on 10.12.2018 he received phone call from Cell No.0330-3180794 by an unknown person threatening him to pay Rs.1500,000/- as bhatta. Accordingly, on 14.12.2018 complainant lodged FIR No.443/2018 U/s 384,385,386, 34 PPC & 25 Telegraph Act against unknown persons. After arrest of appellants alongwith extortion money and unlicensed weapons on 16.12.2018, they were booked in the aforesaid crime as well as in FIRs No.444/2018, 445/2018 and 446/2018 u/s 23(i), A, Sindh Arms Act, 2013 of P.S. Mominabad, Karachi.

2. Appellants were tried against the said allegations and have been convicted U/s 384, 385, 386, 34 PPC r/w section 6(2)(k) punishable u/s 7(1) (h) ATA, 1997 and sentenced to suffer R.I. for 05 years with fine of Rs.20,000/-each, in default, to suffer SI for 06 months more and u/s 23(i), A, Sindh Arms Act, 2013 to suffer R.I. for 05 years with fine of Rs.20,000/- each, in default to suffer R.I. for six months more. All the sentences have been ordered to run concurrently. Benefit under section 382-B Cr.P.C has been extended to them. By means of these appeals, the appellants have challenged their conviction and sentence as stated above.

3. Learned defence counsel at the very outset submits that the appellants are not previous convict and are continuously in jail since the date of their arrest i.e. 16.12.2018, therefore, the period already undergone by them in jail may be treated as their sentence and they may be released. He further submits that there are certain discrepancies in the prosecution case, which are sufficient to justify reduction of sentence.

4. Learned Additional Prosecutor General has not opposed this proposal and has conceded that the appellants are not previous convict.

5. We have heard learned counsel for the parties and perused the material available on record. In the trial, the prosecution has examined four witnesses, who have supported the prosecution case on its salient features viz. demand of Bhatta by dropping chits at the house of complainant followed by phone call, arrest of the appellants from spot and recovery of Bhatta amount as well as unlicensed weapons from them. However, there is no evidence to suggest the offence was committed by the accused with a design to achieve any of the objective specified in clause (b) of subsection (1) of section 6 of ATA, 1997 or aimed to achieve any of the purposes mentioned in clause (c) of subsection (1) of section 6, ATA, 1997. At the most offences committed by the appellants would fall u/s 384, 385 PPC. In the circumstances, applicability of section 6(2) (k) punishable u/s 7(1)(h) ATA, 1997 does not seem attracted. This legal position has not been disputed by the learned DPG. No record has been produced to show that the appellants are previous convict. Their counsel have stated that they are regretful of what went wrong in the past and have improved themselves. The jail roll of appellants dated 06.10.2020 reflects that they have served out a sentence of 01 year, 10 months and 20 days including remission. The punishment u/s 384 PPC may extend to 03 years, section 385 PPC is extendable to 02 years and section 23(i), A, Sindh Arms Act, 2013 is punishable upto 14 years. In such circumstances, we see no impediment legal or otherwise in acceding to the request of learned defence counsel for reduction of the sentence of the appellants, when they have shown intention to improve and be useful cog in the machine.

6. In view of above, conviction and sentence of the appellants u/s 7 (1)(h) ATA, 1997 is set-aside. However, their conviction u/s 384,385,PPC and 23(i), A, Sindh Arms Act, 2013 is maintained, but their sentence on all counts is reduced to R.I. for 02 years. Fine of Rs.20,000/- is reduced to Rs.10,000/- each, in default, appellants will have to undergo a period of one month more.

The appeals in the terms as stated above stand disposed of alongwith pending application(s).

Judge
Judge