

IN THE HIGH COURT OF SINDH AT KARACHI

PRESENT:

Mr. Justice Aftab Ahmed Gorar
Mr. Justice Amjad Ali Sahito

Spl.Crl. Anti-Terrorism Jail Appeal No.220 of 2018

Appellant : Danish Niazi S/o Naeem Akhtar
Through Mr. Nadeem Ahmed Azar,
Advocate.

Respondent : The State
Through Mr. Saghir Ahmed Abbasi,
Assistant Prosecutor General, Sindh.

Dates of hearing : 05.03.2019 & 22.04.2019

Date of order : 22.04.2019

J U D G M E N T

AMJAD ALI SAHITO, J : - Being aggrieved and dissatisfied with the judgment dated 28.07.2018 passed by the learned Judge, Anti-Terrorism Court No.XV, Karachi in New Special Case No.101/2017 arising out of the FIR No.46/2017 registered at Police Station Kalri, Karachi for the offence under sections 385, 385, PPC read with section 7 of the Anti-Terrorism Act, 1997 and New Special Case No.102/2017 arising out of the FIR No.47/2017 for the offence under section 23(i)(a) of Sindh Arms Act, 2013 registered at the same police station, whereby the appellant was convicted under section 7(I)(h) of the ATA, 1997 read with sections 385, 386 PPC and sentenced him to suffer R.I. for five (5) years and to pay fine of Rs.50,000/- and in default thereof, to suffer further S.I. for two (2) months. The appellant was also convicted under section 23(i)(a) of Sindh Arms Act, 2013 and sentenced him to suffer R.I. for five (5) years and to pay fine of Rs.50,000/- and in default thereof, to suffer further S.I. for two (2) months. The benefit of section 382(B) Cr.P.C. was also extended to the appellant. Both the sentences were ordered to be run concurrently.

2. Brief facts of the prosecution case, as depicted in the FIR No.46/2017 filed by the complainant Muhammad Abbas S/o Usman on 24.03.2017, are that the complainant came at PS Kalri Karachi and reported that he is running a Pan Shop with the name and style of "Super Lucky Pan Shop" situated at Juma Baloch Road. Four days back, one boy came at his shop and demanded Bhatta amounting to Rs.15,000/- by showing his association with the agencies and also threatened to get his pan shop closed in case of non-payment of said Bhatta amount. The complainant requested the accused that he is a poor man and cannot afford to give such Bhatta amount. After some negotiations, the accused agreed to receive Rs.5,000/- as Bhatta, hence the accused obtained Rs.5,000/- from the complainant and left from there. Again on 24.03.2017, when the complainant was available at his pan shop, he received a phone call on his mobile No.0322-2027418 from mobile No.0323-2485346. The caller introduced himself as Danish Niazi and told the complainant that he was coming to receive Bhatta amount. The complainant asked him to come at 09:00 p.m. Then he went to PS Kalri and informed the officials about the accused Danish Niazi that he had paid a sum of Rs.5,000/- to him as Bhatta. And now, he was coming again to obtain Bhatta from him. The officials of PS Kalri had sent SIP Bashir Ahmed Abbasi along with police party in official mobile, who all had hidden near the pan shop of the complainant. When the accused Danish Niazi came at about 09:00 p.m., the complainant given him an envelope in which Rs.3,000/- were kept (06 currency notes of Rs.500/- each). And while he was receiving the said Bhatta amount, he was caught red-handed by the police, along with one 9mm pistol, rubbed number, loaded with the magazine having 05 live rounds. The accused failed to produce any license of a recovered pistol, hence the same was sealed at the spot. The SIP prepared memo of the arrest of accused and recovery, which was signed by the complainant

and HC Habib-ur-Rehman as a witness. The accused and the case property were brought to the police station where two separate FIRs were lodged against the accused. After completing all the formalities, the Investigating Officer has submitted the challan against the accused before the concerned Court.

3. An order for a joint trial of both the offences was passed by the learned trial Court on 17.5.2017 vide Ex.3. A joint charge was framed by the trial Court against the accused vide Ex.4, to which he pleaded not guilty and claimed to be tried vide his plea at Ex.4/A.

4. In order to establish the accusation against the accused, the prosecution has examined the complainant Muhammad Abbas as PW-1 at Ex.6, who produced memo of the arrest of accused and recovery, FIR No.46/2017 and memo of site inspection at Ex.6/A to Ex.6/C respectively. PW-2 Muhammad Akbar was examined at Ex.7. SIP Bashir Ahmed was examined as the complainant in FIR No.47/2017 as PW-3 at Ex.8, who produced departure entry, FIR No.47/2017, memo of the arrest of accused and recovery, arrival entry and entry regarding registration of FIR at Ex.8/A to Ex.8/D respectively. He also testified the documents already produced at Ex.6/A and Ex.6/B. Investigating Officer Inspector Syed Ali Dino Shah was examined as PW-4 at Ex.10, who produced sketch of the place of incident, photographs of place of incident, departure and arrival entries, receiving copy of letter sent to FSL, FSL report, carbon copy of application submitted to concerned SSP for obtaining CDR, application submitted by concerned SP to DIG South for obtaining CDR and the CDR of complainant's mobile number at Ex.10/A to Ex.10/H respectively. He also testified the document already produced at Ex.6/C.

5. All the prosecution witnesses were cross-examined by the learned counsel for the appellant/accused. Thereafter, the side of the prosecution was closed by APG vide statement at Ex.11.

Statement of the accused/appellant was recorded under Section 342 Cr.P.C. by the learned trial Court at Ex.12, in which he denied the allegations as leveled against him by the prosecution. However, the appellant/accused was neither examined himself on oath under section 340(2) Cr.P.C. nor led any evidence in his defence.

6. The learned trial Court, after hearing the parties and on the assessment of the evidence, convicted and sentenced the appellant as stated above vide judgment dated 28.07.2018, which is impugned before this Court by way of filing the instant Spl.Crl.Anti-Terrorism Jail Appeal.

7. Learned counsel for the appellant mainly contended that the appellant is innocent and has been falsely implicated in this case; that the claim of the complainant that he has paid Bhatta amount of Rs.5,000/- to the accused Danish Niazi, but he has never lodged the FIR against him prior to the incident; that denomination of the currency notes do not bear the signature of complainant to connect the appellant with the commission of alleged offence; that the Investigating Officer of the case failed to collect data of complainant's mobile SIM to connect the appellant with the commission of offence; that the pistol has been foisted upon the appellant and nothing has been recovered from the possession of the appellant to believe that the appellant has committed the offence; that the complainant was tout of the police officials and on their instigation the appellant was booked in this case; that there are major contradictions between the evidence of the prosecution witnesses, which is sufficient to demolish the prosecution case. Learned counsel for the appellant lastly prayed that the prosecution has miserably failed to prove its case against the appellant and, thus, according to him, under the abovementioned facts and circumstances of the case, the appellant is entitled to his acquittal.

8. Conversely, learned Assistant Prosecutor General Sindh for the State while supporting the impugned judgment has argued that the prosecution has successfully proved its case against the appellant beyond any shadow of reasonable doubt; that the complainant and police officials had no enmity with the appellant; that the appellant was arrested at the spot and the police officials recovered Rs.3,000/- Bhatta money from the possession of the appellant, which is sufficient to connect him with the commission of offence; that on 24.03.2017 the complainant had received a call from the appellant for demanding payment of Bhatta amount of Rs.15,000/- whereupon the complainant requested that he is a poor man and cannot afford to give such Bhatta money and after some negotiations accused agreed to receive Rs.5,000 as Bhatta, hence he obtained such amount from the complainant, on 24.3.2017 when complainant was available at his shop he received a phone call and the caller introduced himself as Danish Niazi and stated that he is coming to collect more Bhatta on that complainant told him to come around 09:00 pm, the complainant informed at PS Kalri about the accused police prepared an envelope in which a sum of Rs.3000/- was kept and handed over to the complaint and subsequently the appellant was arrested at the spot; that after the arrest of the appellant, on inquiry, appellant has disclosed his name as Danish Niazi. He lastly prayed for the dismissal of the instant appeal.

9. We have heard the learned counsel for the appellant, learned Assistant Prosecutor General Sindh for the State and have minutely examined the record of the cases with their able assistance. In order to prove the case, the prosecution examined PW-1 complainant Muhammad Abbas, who in his evidence deposed that he has received a phone call on his cell No.0322-2027418 from cell No.0323-2485346, who introduced himself as Danish Niazi and told him that he works with the Agencies and demanded Bhatta amount of Rs.15,000/- and threatened

him that if he failed to pay Bhatta, he will implicate the complainant in a false case by foisting upon the recovery of charras, in case the Bhatta amount was not given to him, as such, after some negotiation complainant paid Rs.5,000/ to the caller. Complainant further deposed in his evidence that after about four or five days i.e. on 24.03.2017, the said Danish Niazi called the complainant and told him that he was coming to collect more Bhatta amount he told him to come at around 09:00 p.m. Thereafter he informed at PS Kalri about the accused. The police officials prepared an envelope in which a sum of Rs.3,000/ in shape of six notes of Rs.500/ denomination was kept and handed over to the complainant. While the police officials had taken their position and hidden in the street. At about 09:00 pm appellant Danish Niazi came at the shop of the complainant, who handed over an envelope to the appellant. Thereafter, complainant signaled the police officials who committed raid and arrested the said accused Danish Niazi at the spot. Complainant further deposed in his evidence that police officials had also recovered the said envelope containing Rs.3,000/- from his hand, police officials conducted his search and also recovered one pistol, one wristwatch and one mobile phone from his possession, the police officials had sealed the recovered pistol and Bhatta amount in a cloth parcel and also obtained his signature thereon. The case property produced at Article-A and Article-B, one mobile phone of Max company having two SIMs, one of Zong and second of Warid, and one wrist watch are the same, which were recovered from the possession of accused Danish Niazi. Complainant has identified the accused in Court, he was the same person, who received Bhatta money from him. In cross-examination, multiple questions were put, but he has correctly replied and further he has clarified that previously he has not registered the FIR against the accused because the said person told complainant that he belongs to the law enforcement

Agency and due to fear he has not registered the FIR, when the accused was continuously demanding Bhatta he has lodged the FIR against him. PW-2 Muhammad Akbar, who is the real brother of complainant, narrated the same story and supported the version of the complainant. In support of the version of the complainant, the prosecution has also examined PW-3 SIP Bashir Ahmed, who also supported the prosecution version and he arrested the accused at the spot and recovered the one black colour 9mm pistol, rubbed number, loaded with magazine having 5 live bullets from the right side of belt of wearing pant of the accused. He failed to produce any valid license of the recovered pistol. He also opened the envelope and found cash Rs.3,000/- (6 currency notes of Rs.500/- each). He prepared a memo of the arrest of accused and recovery in which he mentioned the numbers of currency notes. The said memo was signed by the complainant and HC Habib ur Rehman as witnesses. The prosecution also examined (PW-4) Investigating Officer Inspector Ali Dino Shah, who has conducted the investigation, made arrival and departure entries, recorded statement u/s. 161 Cr.P.C. of PWs, sent pistol for FSL and received its report "**Positive**" and collected CDR of mobile phone and produced as Ex.-10/H

10. There can be no denial to legally establish the principle of law that it is always the direct evidence which is material to decide a *fact* (charge). The failure of direct evidence is always sufficient to hold a criminal charge as '**not proved**' but where the direct evidence holds the field as well stands well with test of its being *natural and confidence inspiring* then requirement of independent corroboration is only a rule of abundant caution and not a mandatory rule to be applied invariably in each case. Reliance can safely be placed on the case of **MUHAMMAD EHSAN v. THE STATE (2006 SCMR 1857)**, wherein the Hon'ble Supreme Court of Pakistan has held that:

*“5. It be noted that this Court has time and again held that the rule of corroboration is rule of abundant caution and **not a mandatory rule to be applied invariably in each case** rather this is settled principle that if the Court is satisfied about the truthfulness of direct evidence, the requirement of corroborative evidence would not be of much significance in that, as it may as in the present case eye-witness account which is unimpeachable and confidence-inspiring character and is corroborated by medical evidence.”*

11. The direct evidence, as detailed above, is in shape of evidence of complainant Muhammad Abbas, who is an owner of a pan shop and had paid Bhatta money to the appellant(Danish Niazi) and when complainant refused to pay the Bhatta to the appellant, he was threatened to implicate him in false narcotic cases and under pressure and coercion he had paid Rs.5,000/- in first time to the appellant as Bhatta and in the second time, complainant paid Rs.3,000/- where police arrested him on the spot and recovered Rs.3,000/- Bhatta money from the possession of the appellant along with pistol and other belonging, the complainant had supported the contention of the FIR as well as memo of arrest and recovery and finds corroboration from the other PWs/witnesses, which is sufficient to hold that the appellant has committed the offence for which he had been charged. In the instant matter, eyewitnesses have sufficiently explained the date, time and place of occurrence as well as each and every event of the occurrence in clear cut manners. In addition to this, they were cross-examined by the learned counsel for defence at length where multiple questions were asked by the learned defence counsel, but could not extract anything from both of them, as they remained consistent on all material points.

12. The minor discrepancies in the statement of all the witnesses are not enough to demolish the case of prosecution because these discrepancies always occurred on account of lapse of time which can be ignored. In the case in hand, the

appellant has failed to bring on record any material to show any animosity or ill-will with the complainant and the prosecution witnesses, thus in the absence thereof, the competence of prosecution witnesses was rightly believed by the learned trial Court. Moreover, a procedural formality cannot be insisted at the cost of completion of an offence and if an accused is otherwise found connected, then mere procedural omission and even allegation of improper conduct of investigation would not help the accused. The reference in this context is made to the case of the **STATE/ANF v. MUHAMMAD ARSHAD (2017 SCMR 283)** wherein the Hon'ble Supreme Court of Pakistan has held that:

“We may mention here that even where no proper investigation is conducted, but where the material that comes before the Court is sufficient to connect the accused with the commission of a crime, the accused can still be convicted, notwithstanding minor omissions that have no bearing on the outcome of the case.”

13. Considering the facts and circumstances, as discussed above, we are of the humble view that the prosecution has successfully proved its case against the appellant beyond any shadow of a doubt. Learned counsel for the appellant has failed to point out any material illegality or serious infirmity committed by the learned trial Court while passing the impugned judgment, which in our humble view is based upon the appreciation of evidence and the same does not call for any interference by this Court. Thus, the convictions and sentences awarded to the appellant by the learned trial Court are hereby maintained and the instant Spl. CrI. Anti-Terrorism Jail Appeal was dismissed while passing short order dated 22.04.2019 and these are its detailed reasons.

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