

# IN THE HIGH COURT OF SINDH, KARACHI

*Spl. Criminal Anti-Terrorism Appeals Nos. 158 & 160 of 2020*

**Before:**

Mr. Justice Mohammad Karim Khan Agha

Mr. Justice Khadim Hussain Tunio

Appellant: Muhammad Aslam Khanzada son of Fateh  
Muhammad Khanzada in Spl. Cr. A.T.A. No.  
158/2020 through Mr. Javed Ahmed Chhattari,  
advocate.

Appellant: Barak Khan son of Naseer Ahmed in Spl. Cr.  
A.T.A. No. 160/2020 through Mr. Khurram  
Lakhani, advocate.

Respondent: The State through Mr. Muhammad Iqbal Awan,  
Adll: Prosecutor-General, Sindh

Date of hearing: 05.04.2022

Date of announcement: 11.04.2022

## **J U D G M E N T**

**KHADIM HUSSAIN TUNIO, J-** By this common judgment, we intend to dispose of the captioned anti-terrorism appeals filed by the appellants Muhammad Aslam and Barak who have challenged the judgment dated 27.10.2020 (*impugned judgment*) passed by the learned Judge Anti-Terrorism Court-XV, Karachi in New Special Cases No. 16/2020 (Old Special Case No. 226/2020) *Re: The State v. Muhammad Aslam Khanzada & another*, outcome of FIR No. 277/2020 under section 384, 385, 386 and 34 PPC r/w section 7 of the Anti-Terrorism Act, 1997 (ATA 1997) registered at P.S. Nabi Bux, Karachi-South. Through impugned judgment appellant Muhammad Aslam Khanzada, for committing extortion punishable under section 384 PPC was convicted and sentenced to suffer rigorous imprisonment for one year with fine of Rs.20,000/- under section 385 PPC whereas appellant Barak Khan was also convicted and sentenced to suffer R.I. for two years with fine of Rs.50,000/- under section 384 PPC, in case of default in payment of fine the accused were to suffer further imprisonment for two months. All the sentences were ordered to run

concurrently and benefit of section 382-B Cr.P.C. also extended to the appellants.

2. Brief facts of the prosecution case as disclosed in the impugned judgment reads as under:-

“Resume of the facts that complainant M. Tanveer son of Umer Zaman got his statement recorded under section 164 Cr.P.C, which was converted into FIR No. 277/2020, registered on 10.08.2020 at 1730 hours at P.S. Nabi Bux under section 384, 385 r/w section 34 PPC, stating therein that he was doing the business of supplying the water in tankers. In the midnight of 05 and 06-08-2020 his cousin Muhammad Munawar son of Muhammad Anwar residing in Tanveer Colony, Orangi Town, 11 ½, Karachi, Street No. 4 was taken from house in Government mobile at about 12.00 midnight by persons, some of them were in police uniform and rest were in civil dress. The complainant party was in his search and on 06.08.2020 at about 0800 p.m. a call from person namely Barak Khan was received at mobile phone number of Waqar son of Munawar viz. 0345 3124035 from Cell No 0312 2116463 and a caller said to arrive at AVLIC Lyari Town of P.S. Nabi Bux at first floor. Whereafter, the complainant, Waqar and father of Munawar arrived at P.S. Nabi Bux and contacted Barak Khan, who was also calling from Cell No. 0312 8996880. Accused Barak Khan called complainant and Muhammad Anwar to first floor and got meet with SI Muhammad Aslam Khanzada, who said that it was an agency and Munawar was with them. He further said that in case only one case is registered against Munawar then Rs.100,000/= to be given otherwise more cases to be registered. The complainant party negotiated and ultimately Rs.20,000/= were fixed. Rs. 20,000/= were paid by the complainant in presence of Muhammad Anwar to accused Barak Khan and such video clip was recorded, which became viral. 4/5 other persons were also there, who could be identified on seen again. On 17.08.2020 at 0041 hours applications were moved to the officers and then the complainant came at P.S. and caused the instant FIR to be registered.”

3. After registration of FIRs, usual investigation was conducted by the Investigating officer and on its conclusion, challan was submitted under section 384, 385, 386 and 34 PPC r/w Section 7 ATA, 1997. Then, relevant documents were supplied to the accused whereafter a charge was framed against the accused to which they pleaded not guilty and claimed to be tried. At the trial, prosecution examined as many as five prosecution witnesses namely PW-1 Muhammad Tanveer, PW-2 Muhammad Anwar, PW-3 ASI Zafar Iqbal, PW-4 HC Shahid Ali and PW-5 Inspector Arshad Mahmood, all of whom produced various documents and other items which were duly exhibited, thereafter prosecution side was closed. Statements of accused were recorded under section 342, Cr.P.C wherein they denied the prosecution case in toto and pleaded their false implication. However, they did not examine themselves on oath and

disproof of charge but appellant Barak Khan had admitted in his statement under section 342 Cr.P.C that he had received the amount from the complainant Tanveer, a professional fee of advocate that was fixed by him for the purpose of getting accused Muhammad Munawar involved in Crime No. 233/2020 PS. Nabi Bux released on bail from the court of law.

4. After hearing learned counsel for the respective parties, learned trial Court convicted and sentenced the appellants through impugned judgment as stated supra.

5. Learned counsel for the appellant Muhammad Aslam Khanzada has contended that nothing is available on record against the appellant except oral version of complainant; that the complainant is habitual of making complaints against police officials and withdraws the same after entering into compromise with the accused; that the appellant is not shown in video recorded by the complainant party; that there has been no conversation of the appellant with the complainant; that the description of the 2 *tolas* gold and Rs. 65,000/- are not disclosed in the FIR; that the case is false one, therefore, appellant may be acquitted. Similarly, learned counsel for appellant Barak Khan has contended that the appellant has not received any bhatta from the complainant; that no one was put under fear or caused any injury from the complainant party; that the conversation is available on record through which the appellant has received Rs.20,000/- as professional fees. However, after arguing at some length he submitted under the instructions of the appellant who was present in Court on bail that he would be satisfied if the conviction and sentence awarded to the appellant Barak is modified into one already undergone by him.

6. Conversely, learned APG for the State has argued that the prosecution has examined five witnesses who have fully supported the prosecution case; that the impugned judgment is legal one and does not suffer from any legal infirmity; that appellant Barak Khan collected the amount from complainant in presence of appellant Muhammad Aslam Khanzada.

7. It is the prosecution case that the incident stems from the detainment of the complainant Muhammad Tanveer's cousin namely Muhammad Munawar on the intervening night of 5<sup>th</sup> and 6<sup>th</sup> August, 2020 by several police officials in a police mobile. Throughout the next day, complainant party searched for Munawar and eventually received a phone call from appellant Barak Khan (0312 2116463) who asked them to meet him at Police Station Nabi Bux where they negotiated for the safe return of Muhammad Munawar and were threatened by appellant Barak and allegedly appellant Muhammad Aslam Khanzada of several false cases being registered against Munawar if their demands were not met. After some negotiation, the complainant paid Rs. 20,000/- for Munawar's release and they secretly recorded a video clip of the exchange as well. Appellant Muhammad Aslam's case is distinguishable from that of appellant Barak, as such both will be discussed separately.

8. Muhammad Aslam was said to be posted as a Sub-Inspector and was allegedly introduced to the complainant by Barak Khan at AVLCLyari Town's first floor. Besides the ocular account furnished by the complainant himself, he also presented a video clip before the trial Court which was also broadcasted to the public prior to the complaint and gained some attention. Sub-Inspector Muhammad Aslam was arrested on 10.08.2020 by ASI Zafar Iqbal from Police Station Nabi Bux in the presence of the complainant who was there to get his statement recorded. The video clip presented by the complainant did not show the presence of appellant Muhammad Aslam Khanzada nor did it record his voice which was admitted by the complainant in his cross-examination who deposed that *"It is correct to suggest that in video clip accused Aslam Khanzada is not visible"*. Therefore, presence of appellant Muhammad Aslam Khanzada could only be established by the ocular account provided by the complainant Muhammad Tanveer and PW-2 Muhammad Anwar, the father of Muhammad Munawar who was detained. However, their depositions are not free from contradictions. When it came to deposing as to who was present with the complainant at time of paying the extortion money of Rs.20,000/-, the complainant Muhammad Tanveer deposed that *"Waqar sat outside the Police Station whereas Anwar Chacha and I went to the*

*first floor of PS Nabi Bux. I paid Rs.20,000/- to accused Barak Khan in the presence of accused Muhammad Aslam. Anwar Chacha was with me."* Similarly, PW-2 Muhammad Anwar deposed that *"I collected Rs.20,000/- from three houses and told such a thing to accused Muhammad Aslam who became ready and said that amount be given. I paid Rs.20,000/- to Tanveer and he paid Rs.20,000/- to accused Barak Khan in my presence. A video clip of the incident was recorded."* As already discussed, the complainant has admitted that the appellant Muhammad Aslam Khanzada is not seen in the video clip nor is his voice heard even once throughout the interaction, even though from the depositions of the complainant and PW-2, it is evident that they spoke to him. This aspect of the case creates doubt in their depositions as the video clip does not have the capability of lying. Moreover, PW-5 Inspector Arshad Mehmood in his cross-examination admitted that *"It is correct to suggest that there is no conversation on phone with accused Aslam Khanzada of the complainant party. It is correct to suggest that there is no conversation of accused Aslam Khanzada either visible or hearable. It is correct to suggest that it is not mentioned in the video clip that accused Barak Khan handed over Rs.20,0000 to accused Muhammad Aslam."* Therefore, the only solid piece of evidence available on the record did not implicate the appellant Muhammad Aslam Khanzada. For these reasons and in the wake of serious doubts in the prosecution case regarding appellant Muhammad Aslam Khanzada, we see no legal justification in upholding the conviction and sentence awarded to him. The rule of benefit of doubt, which is described as golden rule cannot be ignored while dispensing justice in accordance with law as held by the Honourable Supreme Court of Pakistan in the case reported as **AYUB MASIH v. THE STATE (PLD 2002 SC 1048)**. Resultantly, the appellant Muhammad Aslam Khanzada is acquitted of the charges levelled against him, conviction and sentence awarded to him is set-aside and impugned judgment to his extent is also set aside.

9. Now coming to the case of appellant Barak Khan, the allegation against him on the face of the record is that he contacted Muhammad Waqar, son of Muhammad Munawar, the person they had detained, to have them meet at AVLCLyari Division, Police Station Nabi Bux through

cell-phone number 0312-2116463. CDR report of the same was obtained which revealed that the said cell-phone had called Muhammad Waqar, the son of detained Muhammad Munawar on his cell-phone number 0345-3124035. In his statement recorded u/s 342 Cr.P.C, when asked whether he had taken Rs.20,000/- from the complainant, appellant Barak stated that he had done so, however further stated that the same was 'professional fees' for getting Muhammad Munawar, who was detained in Crime No. 233/2020 out on bail. The transcript of the video available on the record shows the conversation between appellant Barak Khan and complainant Muhammad Tanveer and his uncle Muhammad Anwar. The video starts by Barak Khan talking about helping engage a lawyer to then Barak Khan threatening the complainant of cases being registered if he does not pay the money. Throughout the transcript, Barak keeps demanding money. At one point in the video, Barak is heard repeating "kato", referring to the FIRs being registered and then follows up by stating that he cannot help them after the registration of the FIR even if the complainant party were to pay Rs.100,000/-. Then he goes on throughout the conversation, repeatedly asking for money. Another individual is heard in the video saying "You're not in the police station anymore, you're in the Agency. Ninety thousand or we will register 5/6 cases." His presence is established beyond reasonable doubt and he, himself, had admitted the same in his statement of accused, however giving it a different angle. However, he could not disclose in his statement of accused as to who he was hiring as an advocate to help get Munawar released on bail or why he even needed the said 'professional fees' and even if so, it did not explain his demeanour throughout the video conversation and why he retained the Rs.20,000/= instead of engaging a lawyer for Muhammad Munawar. Both the eye-witnesses, complainant Muhammad Tanveer and PW-2 Muhammad Anwar remained consistent when it came to assigning Barak Khan his role, from initially calling Muhammad Waqar to arrange the meeting to then taking Rs.20,000/- and negotiating throughout the incident. Evidence of all the P.Ws is consistent on all material particulars of the case. Although there are minor contradictions in the evidence of the PWs, the same are not material and certainly not of such materiality so as to affect the prosecution case. The defence Counsel could not point out

any material discrepancy in the evidence of the eye-witnesses. Therefore, prosecution has discharged its burden to prove the charge against the appellant Barak Khan beyond reasonable doubt. However, considering the mitigating circumstances before us, such as the amount extorted being only Rs.20,000/-, the beauty of our legislature in always allowing a chance for reformation when one is sought, the appellant being only 29 years old and having his old parents to look after and the prayer advanced by the counsel for the appellant essentially placing him at the mercy of this Court, the sentence awarded to the appellant Barak Khan is modified to the term already undergone by him with fine. Both the appellants are present on bail. Their bail bonds stand cancelled and surety discharged.

10. Special Criminal Anti-Terrorism Appeals No. 158 and 160 of 2020 stand disposed of in the above terms.

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