

IN THE HIGH COURT OF SINDH AT KARACHI

PRESENT:

***Mr. Justice Mohammad Karim Khan Agha
Mr. Justice Zulfiqar Ali Sangi***

**Special Criminal Anti-Terrorism Appeal No.03 of 2021
Constitution Petition No.3947 of 2021**

Appellant/Petitioner : Ghulam Rasool Rabbani S/o
Muhammad Abdullah
Through Mr. Shahid Hussain
Soomro, Advocate
a/w Mr. Sajid Hussain Soomro

Respondent : The State
Through Mr. Saleem Akhter
Addl. Prosecutor General Sindh.

Date of Hearing : 11th August, 2022

Date of Judgment : 16th August, 2022

J U D G M E N T

ZULFIQAR ALI SANGI, J.- Being aggrieved and dissatisfied with the judgment dated 28.12.2020 passed by learned Judge, Anti-Terrorism Court No.XII, Karachi in Special Case No.344 of 2020 arising out of FIR No.159/2020 for offences under Sections 11-J(ii), 11-OOO, 11-OO, 11-Q, 11-N of ATA, 1997 at PS CTD, Karachi; whereby the appellant was convicted under Section 265-H(ii) Cr.P.C. and sentenced for offence under Section 11-F(1) with R.I. six months along with fine of Rs.10,000/- and in case of failure to pay fine, he shall suffer SI for 06 months. The appellant was also sentenced for offence under Section 11-F(5) with R.I. for five years along with fine of Rs.10,000/- and in case of failure to pay fine, he shall suffer SI for 04 months more. The appellant also sentenced under Section 11-J(2) with R.I. for ten years along with fine of Rs.10 million and in case failure to pay fine, he shall suffer SI for six months more. The appellant was also sentenced under Section 11-OOO with R.I. for ten years along with fine of Rs.10 million and in case of failure to pay fine, he shall suffer SI for six months more. The Masjid/Madressah Baab-ul-Harmain Shareefain

was also forfeited under Section 11-Q(4) with directions to Administrator Education Assets (Madaris & Schools), Education & Literacy Department Government of Sindh to takeover and complete forfeiture process of the aforesaid Masjid as it belonged to a banned organization in accordance with law.

2. The brief facts of the prosecution case as per FIR are that on 11.11.2020, Inspector Fayyaz Ahmed of PS CTD Karachi received an I.R. No.3683/JUD/03/A/Karachi, in which legal action/proceedings was directed by High-ups to initiate against accused who belongs to one proscribed organization namely JuD and collects funding for such organization at Madressah/Masjid Harmain Shareefain Jamali Goth, Super Highway Malir Karachi, which is used for terrorism activities all over the country, due to which financial assistance is provided to terrorists and such acts falls within the ambit of ATA. Therefore, FIR under Sections 11-J(ii), 11-N, 11-F(i)(ii) of ATA 1997 was registered to the above effect.

3. After completing the usual investigation, charge against the appellant was framed to which he pleaded not guilty and claimed to be tried.

4. The prosecution in order to prove its case examined 05 witnesses and exhibited various documents and other items. The statement of accused was recorded under Section 342 Cr.P.C in which he denied all allegations of fund raising leveled against him and belonging to any proscribed organization. After appreciating the evidence on record, the learned trial Court convicted the appellant as mentioned above; hence, the appellant has filed this appeal against conviction.

5. The facts of the case as well as evidence produced before the trial court find an elaborate mention in the impugned judgment dated 28.12.2020 passed by the learned trial Court and, therefore, the same may not be reproduced here so as to avoid duplication and unnecessary repetition.

6. Learned counsel for the appellant has contended that the prosecution has failed to establish any connection of the appellant with banned organization (JUD); that there is no evidence that the funds were transferred by the appellant to the banned organization

(JUD); that there is also no evidence in respect of the property where the mosque was constructed is in the name of appellant; that the mohalla people had moved an application to the High-ups seeking for permission of construction of mosque on the concerned plot and thereafter they constructed it only for the purpose of prayers and Islamic education; that the witnesses, who were produced by the prosecution are not residents of the area where the said mosque is located. He lastly contended that the impugned judgment may be suspended and the appellant may be acquitted of the charge. He has placed reliance on the cases of ***The State vs. Muhammad Babar Lodhi and another (2000 PCRLJ 1044)***, ***Shahmeer vs. The State (2020 PCRLJ 1215)*** and ***Muhammad Mansha vs. The State (2018 SCMR 772)***.

7. On the other hand, learned Addl. P.G. Sindh has fully supported the impugned judgment on the basis of evidence produced by the prosecution before the trial Court.

8. We have heard the learned counsel for the appellant as well as learned Addl. P.G. Sindh and perused the material available on record with their able assistance.

9. The FIR was registered on the basis of I.R No. 3683/JUD/03/A/Karachi, as mentioned in the FIR and deposed by the complainant before the trial court, however, the said I.R was not produced by the prosecution before the trial court nor is there any evidence that it was collected by the investigation officer during the investigation of the case. The name of appellant has not transpired in the FIR and there is no allegation that the appellant was collecting the funds for the proscribed organization. The prosecution also failed to establish that by whom the I.R was prepared and the same person was not called as a witness. The complainant during cross-examination admitted that he have gone through the contents of I.R for about 10/15 minutes and no specific name of any person was available in such I.R. Complainant further admitted in his cross-examination that no specific material regarding JUD was obtained during site inspection of the concerned Masjid which he conducted after the registration of FIR.

10. After the FIR investigation officer Ali Hyder proceeded towards the Masjid/Madressah Harmain Shareefain and as per his deposition appellant was not available in the Masjid and he knocked the door of the house adjacent to Masjid and collected some documents from Mst. Sakina the wife of the appellant. Mst. Sakina was not examined by the I.O nor was she produced before the trial court. Investigation officer also captured some photographs of the Masjid and the same were exhibited in the evidence before the trial court but he did not collect any material which reflects that the said Masjid belonged to any banned organization or was being used by the same. The photographs so captured by the investigation officer also do not indicate any substance in respect of any connection with the banned organization. The investigation officer examined two private persons namely Muhammad Arif and Muhammad Akbar. Only Muhammad Arif was examined as PW- 2 who also has not disclosed a single word in his evidence that appellant was/is collecting funds for JUD. During cross-examination he stated that **“it is correct to suggest that I do not know whether Ghulam Rasool Rabbani (appellant) belongs to Ahl-e-Hadees.”** which reflects that PW Muhammad Arif was not in knowledge that to which sect or organization appellant belongs. Except this witness prosecution has no witness who testifies that the appellant belongs to banned organization JUD and evidence of this witness is not of such standard to maintain the conviction.

11. As per the case of the prosecution that at the time of arrest of the appellant some article which includes receipt of the funds/chanda were recovered from the appellant and were exhibited in the evidence through mashir H.C Kamran Yakoob to prove the case but investigation officer failed to collect evidence in respect of donors and even the names of the persons who donated the funds nor the amount on receipt is disclosed by the prosecution. In one receipt it is stated that amount of Rs. 500/- is mentioned was donated by Jamia Masjid Muhammadi wa Madressah Taleem-ul-Quran wa Hadees Luqman of Shahdad pur but the investigation officer had not inquired from the said donor to prove that the amount of Rs. 500/- was donated to the appellant by the said donor. The investigation also stated that the wife of the

appellant herself produced certain documents which includes one chanda book in the name of Baab-ul-Harmain Shareefain, out of which one receipt was issued but the amount and the name of such donor is also not been disclosed by the mashir and the investigation officer. **The mashir Kamran Yakkob also admitted during the cross-examination that the chanda receipts recovered from the appellant at the time of his arrest were not related to JUD (the banned organization).** The receipts were also not sent by the investigation officer to the handwriting expert to prove that the handwriting on the receipt is of the appellant. The investigation officer admitted during cross-examination that he inspected the Masjid for about 50 minutes and during site inspection he had not found any material, banner, literature with regard to JUD the banned organization. The investigation officer during his cross-examination also admitted that no monogram or name of JUD is available upon the receipts which were recovered during arrest of the accused.

12. The evidence of PW-4 Ghulam Hyder is also not helpful to the prosecution as this witness has not deposed a single word about the involvement of the appellant for having any relation with JUD or collecting the funds for the said banned organization. The documents produced by this witness appear to be doubtful as they do not state the date of their issuance and the name of their purchaser. Even otherwise the witness has admitted during cross-examination that **“It is correct to suggest that name of Jamia masjid Harmain Sharefain is not mentioned in Ex. 08/B-1.”** Such fact has also been admitted by the investigation officer during his cross-examination. Further this witness being the District Education Officer Higher Secondary south/ Administrator of Maderssah/Schools/Masjid of proscribed Organization of Sindh has not deposed a single word in respect of affiliation/registration of the Masressah of appellant with the JUD (banned organization).

13. The investigation officer Ali Hyder stated in his cross-examination that whoever came to meet accused during his custody disclosed that he is not associated with JUD and he recorded their statements under section 161 Cr.P.C and as per his evidence such reference is available in the contents of charge sheet, however, he stated that only one Muhammad Hassan

disclosed about the association of accused with JUD. The said Muhammad Hassan was not examined before the trial court. On the reassessment of entire evidence it appears that there are several other doubts in the case of prosecution which we deem not necessary to discuss in presence of above discussed material points/doubts as the Apex Court has held in several judgments that if a single infirmity creating reasonable doubt regarding truth of the charge makes the whole case doubtful.

14. It is well settled by now that the prosecution is bound to prove its case against the accused beyond any shadow of reasonable doubt, but no such duty is cast upon the accused to prove his innocence. It has also been held by the Superior Courts that conviction must be based and founded on unimpeachable evidence and certainty of guilt, and any doubt arising in the prosecution case must be resolved in favour of the accused. In the case of **Wazir Mohammad v. The State (1992 SCMR 1134)**, it was held by Honourable Supreme Court that "In the criminal trial it is the duty of the prosecution to prove its case against the accused to the hilt, but no such duty is cast upon the accused, he has only to create doubt in the case of the prosecution." Honourable Supreme Court in another case of **Shamoon alias Shamma v. The State (1995 SCMR 1377)** held that "The prosecution must prove its case against the accused beyond reasonable doubts irrespective of any plea raised by the accused in his defence. Failure of prosecution to prove the case against the accused, entitles the accused to an acquittal. The prosecution cannot fall back on the plea of an accused to prove its case.....Before, the case is established against the accused by prosecution, the question of burden of proof on the accused to establish his plea in defence does not arise." Reliance is also placed on the case of **Naveed Asghar and 2 others v. The State (PLD 2021 SC 600)**.

15. Keeping in view the said golden rule of giving benefit of doubt to an accused person for safe administration of criminal justice, we are firmly of the opinion that all the evidence discussed above is completely unreliable and utterly deficient to prove the charge against the appellant beyond reasonable doubt. Resultantly, the Appeal is allowed and the Judgment dated 28.12.2020 passed by

the Court of Judge Anti-Terrorism No.XII, Karachi Special case No. 344/2020 arising out of Crime No.159 of 2020, registered at Police Station CTD, Karachi, under sections 11-j (ii), 11-ooo, 11-oo, 11-Q, 11-N, of ATA 1997 is set aside and the appellant Ghulam Rasool Rabbani s/o Muhammad Abdullah is acquitted of the charges. He shall be released forthwith, if he is not required to be detained in some other custody case.

16. The appeal is disposed of in the above terms and as such the CP.No.3947 of 2021 is also disposed of as infructuous.

JUDGE

JUDGE