

THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD.

Criminal Appeal No.D-44 of 2021.

Present

Mr. Justice Muhammad Iqbal Kalhoro

Mr. Justice Adnan-ul-Karim Memon

Date of hearing: 10.11.2022

Date of decision: 10.11.2022

Appellant: Ghulam Rasool through Mr. Ghulamullah Chang advocate.

Complainant: Through Mr. Ahsan Gul Dahri advocate.

The State: Through Mr. Shawak Rathore, Deputy Prosecutor General, Sindh.

JUDGMENT

MUHAMMAD IQBAL KALHORO, J:- Appellant Ghulam Rasool stood a trial in Special Case No.22 of 2020, arising out of Crime No.148/2020, PS Doulatpur, District Shaheed Benazirabad u/s 386, 506(ii) PPC, r/w Section 6/7 ATA-1997 for demanding Bhatta from complainant by putting him in fear of causing damage on 05.11.2020, and has been convicted vide impugned judgment dated 09.03.2021 by learned Anti-Terrorism Court Shaheed Benazirabad in the terms as stated below.

“i. Accused Ghulam Rasool Rind is awarded R.I punishment and sentenced to imprisonment for the offence U/S 386 PPC and to undergo sentence for five years.

ii. He is also awarded punishment u/s 7(1)(h) of Anti-Terrorism Act-1997 to undergo for five years with fine of Rs.50,000/- and if the fine is not paid, he has to undergo SI for six months. Benefit of section 382-B CrPC has been extended to him.”

2. Aggrieved by said judgment, he has filed instant appeal. In the trial, prosecution has examined as many as eight PWs who have produced necessary documents including FIR, memos, and relevant entries etc. Appellant was confronted with such evidence U/s 342 Cr.P.C for his explanation and rebuttal, if any, which he has denied but has not examined himself on oath nor led any evidence in defence.

3. After hearing both the parties, learned trial Court has convicted the appellant in terms as stated above.

4. Learned Defence Counsel has submitted that there are material contradictions in evidence of the prosecution witnesses; that Section 386 PPC is not attracted in this case as only attempt to extortion has been alleged in FIR; and that there is delay of two days in registration of FIR.

5. Learned Deputy PG has not supported the conviction but learned counsel for complainant has supported the impugned judgment.

6. We have heard the parties and perused material available on record. PW-1/ complainant has stated in his evidence that appellant alongwith co-accused in a car came at his otaque and while pointing out a pistol to him demanded Rs.200,000/- as Bhatta. Record reflects that the said alleged pistol has not been recovered from the appellant. Even in personal search of the appellant after arrest no chit/document regarding demand of Bhatta was recovered. No firing was made at otaque of complainant, therefore, the element of causing fear to the life of complainant is missing.

7. Record further reflects that complainant is the President of Press Club Daulatpur while the appellant is Ex-President of Press Club Daulatpur and previously relationship between the parties was strained on different issues, therefore, false implication of appellant cannot be ruled out.

8. Evidence of police officials including the investigation officer was recorded to the effect but in our view the same require independent corroboration, which is lacking in the case in hand. In these circumstances and after an independent evaluation of evidence available on record, we are of the view that the prosecution has not been able to prove its case against the appellant beyond a reasonable doubt. It is settled that the benefit of all the favorable circumstances shall be extended to the accused not as a matter of grace or concession but as a matter of right. Reliance is placed on the case of Abdul Jabbar and another v. The State (2019 SCMR 129) and Tariq Pervez v. The State (1995 SCMR 1345).

9. In view above, the appeal is allowed, and the appellant is acquitted on benefit of doubt of the charge. The convictions and sentences awarded to him vide impugned judgment are set aside. He is on bail. His bail bonds are cancelled and surety discharged.

10. The appeal is accordingly disposed of.

J U D G E

J U D G E

Irfan Ali