

IN THE HIGH COURT OF SINDH, KARACHI

Present:

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

Special Criminal Anti-Terrorism Appeal No. 148 of 2021

Appellant : Faiz ur Rehman @ Abdul Rehman
through Mr. Nehal Khan Lashari
Advocate.

Respondent : The State through Mr. Ali Haider
Saleem, Addl. P.G, Sindh.

Date of Hearing : 14.11.2022

Date of Judgment : 23.11.2022.

J U D G M E N T

ZULFIQAR ALI SANGI-J., Appellant has assailed judgment dated 27.07.2021 passed by learned Anti-Terrorism Court No. XII, Karachi in Special Case No.340/2020 bearing Crime Nos.42/2020 U/s 11-H, 11-N, 11-F(i), (ii), of ATA, 1997 registered at PS CTD Karachi, whereby he was convicted u/s 11-F(2) and sentenced to suffer R.I. for 06 months with fine of Rs.10,000/-, in default to suffer 1 ½ month more; u/s 11-F(5) to suffer R.I. for 05 years with fine of Rs.10,000/-, in default to suffer SI for 03 months more; u/s 11-H (1) (2) r/w section 11-N to suffer R.I. for 10 years with fine of Rs.10,00,000/-, in default to suffer SI for 02 years and 06 months more.

2. Brief facts of prosecution case are that on 26.03.2020, complainant ASI Shahbaz Yousif of P.S. CTD Karachi pursuant to I.R. No.2803/CTD/DIGP dated 26.03.2020 registered FIR against accused Faiz ur Rehman @ Abdul Rehman on the allegation that he belongs to a proscribed organization namely HQN and also collects funds for such organization being used for terrorist activities throughout the country falling within the ambit of section 11-H, 11-N, 11-F(i), (ii) of ATA, 1997. It is further alleged that on information police went at Bait-ul-Muqarram Masjid where appellant was busy in collecting the money for the aforesaid purposes and was arrested and from his possession one receipt book upon which Haqani Network and monogram of Haqani Network as well as Islami Jamhori

Afghanistan was printed, cash amount of total Rs.1770, one wallet of faded colour, one copy of CNIC of his name, four visiting cards, and one Nokia mobile of black colour were recovered from him.

3. After usual investigation case was challaned and thereafter the charge against him was framed to which he pleaded not guilty and claimed trial. At the trial, prosecution examined in all 04 witnesses including complainant, mashir of arrest and recovery, and Investigating Officer etc., who produced certain documents and items to prove the prosecution case.

4. The statement of appellant u/s 342 Cr.P.C was recorded wherein he denied the prosecution allegations and pleaded his innocence. He however, neither examined himself on oath nor led any evidence in his defence to disprove the case against him. On conclusion of the trial and after hearing the parties, learned trial Court convicted and sentenced the appellant through the impugned judgment as stated above. Hence the appellant has filed this appeal against his conviction.

5. Learned counsel for the appellant mainly contended that the appellant is innocent and has been falsely implicated in this case; that no incident has been shown in the FIR constituting offence against the appellant; that appellant was attending the police station in terms of IV-schedule of the ATA; that no proof was produced before the court that appellant belongs to Haqani Network or any other banned organisation; No proof regarding any transaction in connection with collection of funds and its transmission to HQN was produced before the trial court; that alleged receipt of payment was not sent to any handwriting expert to ascertain that it was issued by the appellant; that prosecution has failed to prove charge against the appellant but learned trial court convicted him. He prayed for setting aside the impugned judgment. In support of his arguments, learned counsel has relied upon case of ***Mst. Sughra Begum & another v. Qaiser Pervez & others (2015 SCMR 1142)***.

6. On the other hand, learned Addl. P.G has contended that the prosecution has successfully proved its case by examining P.Ws, who have no enmity with the appellant and as such there evidence can be

believed; that P.W. 3 Sher Alam Khan produced receipt of payment issued by the appellant which is sufficient proof of his involvement in collecting funds for HQN, a proscribed organization. The prosecution has been able to prove charge against the appellant, thus the impugned judgment does not call for any interference by this court. He prayed for dismissal of the appeal. Learned Addl. P.G has relied upon cases of ***Mir Muhammad v. The State (1995 SCMR 614)***, ***Muhammad Din v. The State (1985 SCMR 1046)***, ***Nazir Shehzad & another v. The State (2009 SCMR 1440)***, ***Sh. Muhammad Amjad v. The State (PLD 2003 SC 704)***.

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

8. The prosecution case is that the appellant is a member of a banned organization and collects funds for the said organization which are being used for terrorist activities. To prove the charge, the prosecution has examined P.W.1 ASI Shahbaz, P.W.2 Muhammad Aamir, P.W.3 Sher Alam Khan and P.W.4 I.O. Sibtain Khan. From careful examination of evidence of all these witnesses, we do not find any substantial proof about the appellant being a member of any banned organization. In this regard there is also no evidence of when he became a member, with whom and where he was attending meetings of such an organization. The complainant and P.Ws have admitted that there was no additional document alongwith I.R to prove affiliation of the appellant with banned organization. The complainant deposed that on personal search of accused he recovered one receipt from accused upon which Haqani Network and monogram of Haqani Network as well as Islami Jamhori Afghanistan was printed, however, complainant and P.W.2 admitted in their cross examination that such facts were not disclosed by them in the memo of arrest and recovery and even in 161 Cr.P.C statement of P.W.2. P.W.3 Inspector Sibtain Khan in his cross examination admitted that recovered receipt books were not sent to handwriting expert to ascertain whether the writing on the same was of the appellant. Prosecution produced P.W.3 Sher Alam Khan, who produced a receipt allegedly issued by the appellant; however, his evidence is not of such standard to maintain the conviction. The I.O. failed to collect

any other person (s) from whom the appellant had collected the funds /amount. This failure on the part of the I.O. creates doubt upon the prosecution story as regard to the appellant having been the member of a proscribed organization and collection of the amount/funds by him for terrorist activities. The other aspect of the prosecution case is that such funds were to be utilized in terrorist activities. The prosecution has failed to trace out any clue to prove that any amount was deposited by the appellant in any account leading to it being received by a banned organization and its use in terrorist activities. Mere words are not sufficient to establish offence against the appellant unless concrete proof is produced.

9. The FIR was registered on the basis of I.R No.2803/CTD/DIGP dated 26.03.2020, 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 prosecution also failed to establish by whom the I.R was prepared and the same person was not called as a witness. The complainant during cross-examination admitted that there was no any additional document alongwith I.R to show affiliation of the appellant with Haqani Network. It is even not clear under whose direction the investigation was conducted and I.R was prepared. What is mentioned in the I.R in respect of the appellant which is not found from the evidence of witnesses produced by the prosecution before the trial court? Even there is no evidence that appellant was joined an inquiry/investigation so also it has not come in evidence when and where the said I.R was prepared.

10. On our reassessment of the entire evidence we have found other doubts in the case of the 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. It is well settled 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)**.

11. In the wake of the said golden rule of giving benefit of doubt to an accused person for safe administration of criminal justice, we are of the view that all the evidence discussed above is completely unreliable and utterly deficient to prove the charge against the appellant beyond a reasonable doubt. As a result, the Appeal is allowed and the Judgment dated 27.07.2021 is set aside and the appellant Faiz ur Rehman @ Abdul Rehman is acquitted of the charge. He shall be released forthwith, if he is not required in any other custody case.

12. The appeal is disposed of in the above terms.

JUDGE

JUDGE