

THE HIGH COURT OF SINDH AT KARACHI

Special Criminal Anti-Terrorism Appeal No. 50 of 2024
Special Criminal Anti-Terrorism Appeal No. 51 of 2024
Special Criminal Anti-Terrorism Appeal No. 52 of 2024
Special Criminal Anti-Terrorism Appeal No. 53 of 2024

Present:
Naimatullah Phulpoto, J.
Irshad Ali Shah, J.

Appellants: PC Asif Khan, PC Muhammad Waseem,
PC Muhammad Kashif and PC Babar
Muneer Cheema through Mr. Ovais Ali
Shah, advocate

Respondent: The State through Mr. Abrar Ali Khichi,
Additional Prosecutor General Sindh

Date of hearing: 11.09.2024

Date of announcement: 11.09.2024

J U D G M E N T

IRSHAD ALI SHAH, J- It is the case of the prosecution that complainant Hassan Adil and P.W Mst. Shazma Khan while on their way to their destination through their car were confronted by the appellants on two motorcycles, who happened to be police officials; they threatened and harassed them by making fires in the air and then forced them to withdraw rupees fifty thousand each from their respective Bank Account through ATM which they taken from them by force and then returned rupees ten thousand to them for fuel purpose, for which the present case was registered. At trial, the appellants did not plead guilty to the charge and the prosecution to prove the same, examined nine witnesses and then closed its side. The appellants in their statements recorded under Section 342 Cr.PC denied the prosecution's allegation by pleading their innocence; they did not examine anyone in their defence or themselves on oath. After the conclusion of the trial, they were convicted under Section 7(1)(h) of AT Act, 1997 and sentenced to undergo rigorous imprisonment for ten years and to pay a fine of Rs.50,000/- each and in default in payment whereof to undergo

simple imprisonment for two months; they were further convicted under Section 386 PPC and sentenced to undergo rigorous imprisonment for ten years and to pay a fine of Rs.50,000/- each and in default in payment whereof to undergo simple imprisonment for two months; both the sentences were directed to run concurrently by learned Judge, Anti-Terrorism Court No.XV vide judgment dated 27.03.2024, which they have impugned before this Court by preferring four separate Appeals.

2. It is contended by learned counsel for the appellants that they are innocent and have been convicted and sentenced by the learned trial Court based on no evidence, therefore, they are entitled to their acquittal by extending them the benefit of doubt, which is opposed by learned Addl. PG for the state by supporting the impugned judgment by contending that the offence which the appellants have committed is affecting the society at large.

3. Heard arguments and perused the record.

4. It was stated by Mr. Muhammad Maroof Usman the then Senior Superintendent of Police, Gulshan-e-Iqbal that on 26.11.2020, the complainant came at his office under the instructions of Deputy Inspector General East with a narration that on 22.11.2020 when and his friend Mst. Shazma Khan were on the way to their destination through their car were confronted by four police officials who after harassing them forced them to withdraw rupees fifty thousand from their respective Bank Accounts through an ATM which they took from them by force and then returned rupees ten thousand to them for fuel purpose. By stating so, he made such complaint in writing. It was against the unknown police officials. It was further stated by him that he then directed the officials of PS Gulstan-e-Johar to produce the police officials on duty at the place of the incident and at the time of the incident; consequently, the appellants were produced before him; they were identified by the

complainant to be the police officials who have committed the above-stated incident. Later on, the 154 Cr.PC statement of the complainant was got recorded; it then was incorporated into a formal FIR with PS Gulstan-e-Johar, Karachi; the appellants were taken into custody. If Mr. Muhammad Maroof Usman, the then Senior Superintendent of Police, Gulshan-e-Iqbal, was having a feeling that a cognizable offence had taken place then before conducting an identification parade of the appellants through the complainant in his office, he ought to have got recorded the FIR of the incident through the complainant formally as it was a legal requirement; it was not done, therefore, such omission could not be lost sight of. The incident as said above took place on 22.11.2020; it was reported on 26.11.2020 with a delay of about four days. No plausible explanation for such delay is offered by the complainant; therefore, it could not be overlooked. The very case, on investigation, at one moment was recommended by the police to be cancelled under `B`-Class and such summary was also approved by the Magistrate having jurisdiction; such action on challenge was reversed by this Court and further investigation of the case was conducted by Investigating Officer, Inspector Tariq Qayyum and furnished a report under Section 173 Cr.PC before the Magistrate having jurisdiction, who returned the same by observing that it is a case of extortion involving terrorism, therefore, cognizance whereof is to be taken by the Special Court constituted under the Anti-terrorism Act, 1997; consequently, such report was presented before the learned trial Court. No empty was secured from the place of incident, which belies the fact that fire was made at the time of the incident. In absence of forensic report, no much reliance could be placed upon CCTV recording or photograph allegedly taken from the place of the incident. Surprisingly; on account of his failure to support the case of the prosecution, the complainant was declared hostile to the prosecution. P.W Mst. Shazma Khan was not able to

identify the appellants at trial. If their evidence being star witnesses to the incident is taken into consideration, then it supports the plea of the appellants that they are innocent.

5. The discussion involves a conclusion that the prosecution has not been able to prove its case against the appellants beyond a shadow of doubt and to such benefit they are found entitled.

6. In the case of *Mehmood Ahmed & others vs. the State & another* (1995 SCMR127), it has been held by the Apex Court that;

“Delay of two hours in lodging the FIR in the particular circumstances of the case had assumed great significance as the same could be attributed to consultation, taking instructions and calculatedly preparing the report keeping the names of the accused open for roping in such persons whom ultimately the prosecution might wish to implicate”.

7. In the case of *Muhammad Mansha vs. The State* (2018 SCMR 772), it has been held by the Apex court that;

“4....Needless to mention that while giving the benefit of doubt to an accused it is not necessary that there should be many circumstances creating doubt. If there is a circumstance which creates reasonable doubt in a prudent mind about the guilt of the accused, then the accused would be entitled to the benefit of such doubt, not as a matter of grace and concession, but as a matter of right. It is based on the maxim, "it is better that ten guilty persons be acquitted rather than one innocent person be convicted”.

8. Under the discussed circumstances, the conviction and sentence awarded to the appellants by way of impugned judgment are set aside and they are acquitted of the charged offence and shall be released forthwith, if not required to be detained in any other custody case.

9. Above are the reasons for our short order of even date, whereby the instant Spl. CrI. AT Appeals were allowed.

JUDGE

JUDGE