

HIGH COURT OF SINDH AT KARACHI

Special Criminal Anti-Terrorism Jail Appeal No.16 of 2018

Present: Mr. Justice Naimatullah Phulpoto
Mr. Justice Rasheed Ahmed Soomro

Appellant : Rana Muhammad Saqib son of Muhammad Iqbal Rana through Ms. Fatima Jamila Jatoi & Mr. Hyder Farooq Jatoi, Advocates

Respondent : The State through Mr. Mohammad Iqbal Awan DPG.

Date of Hearing : 10.09.2018

Date of Announcement : 24.09.2018

JUDGMENT

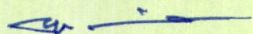
NAIMATULLAH PHULPOTO, J.- Appellant Rana Muhammad Saqib son of Muhammad Iqbal Rana was tried by learned Judge, Anti-Terrorism Court-I, Karachi in Special Cases Nos.268/2015 and 269/2015. On conclusion of the trial, vide judgment dated 08.12.2017 convicted the appellant under section 7(h) of the Anti-Terrorism Act, 1997 and sentenced him to 7 years R.I., with fine of Rs.50,000/-, in case of non-payment of fine, he will suffer S.I. for six months more. The appellant was also convicted under section 23(1)(a) of the Sindh Arms Act, 2013 and sentenced to 5 years R.I., with fine of Rs.20,000/-, in case of non-payment of fine, he was ordered to suffer S.I. for 6 months more. All sentences were ordered to run concurrently. Benefit of Section 382-B, Cr.PC was also extended to accused.

2. Brief facts of the prosecution case as disclosed in the FIR are that on 22.07.2015 at about 2130 hours, complainant Syed Riaz-ul-Haq Hashmi son of Syed Ehsan-ul-Haq Hashmi, registered present FIR No.154/2015, under sections 384, 385, 386, 34, PPC read with section 7 of the Anti-Terrorism Act, 1997 at P.S. Al-Falah, Karachi, wherein he has stated that he and his wife Shazia at Plot No.A-29, Mueenabad, Al-Falah Society Malir, were operating Shazia Maternity Hospital. At about 1 ½ year to two years prior to lodging of FIR, two boys aged about 20/25 years, at about 02:30 p.m. came there and handed over one envelope. Complainant found one bullet along with a chit. It was written in the chit to pay extortion of Rs.20,00,000/-, in case of non-payment of extortion second bullet would hit

in his head. Complainant made application in written on 13.01.2014 at P.S. Al-Falah. Complainant had paid extortion to the accused persons several times and he had paid total amount of Rs.14,00,000/- extortion to accused persons. On 22.07.2015, complainant received phone call of accused from mobile phone No.0310-2695018 and directed him that they had to come there to receive extortion and directed him to be ready with extortion of Rs.100,000/- as such, complainant informed such fact through phone to the SHO P.S. Al-Falah. On 22.07.2015, at about 2000 hours, complainant was present in the hospital, when accused persons came on two motorcycles and they have him signal while accelerating their motorcycles, therefore, complainant went out and he handed over said envelope of Rs.100,000/- to one of the accused, who was sitting on one motorcycle bearing Registration No.KFZ-4447 Superstar of black colour and two accused persons who were on other motorcycle. In the meantime, SIP Abdul Sattar along with subordinate staff came there in police mobile and on the pointation of complainant he apprehended one of accused persons, who on inquiry disclosed his name as Rana Muhammad Saqib son of Muhammad Iqbal Rana. On his personal search, said amount of Rs.100,000/-, given by the complainant, consisting upon 100 notes of Rupees 1000 denomination, one Q-Mobile phone,, one purse of brown colour, his CNIC, Rs.600/- and one pistol 30 bore with three bullets were recovered from his possession. Accused failed to produce license of the pistol, as such, he was arrested under memo of arrest and recovery in presence of mashirs. Accused disclosed names of his companions as Arsalan son of Talat Hussain and Aamir son of unknown. Accused and case property were brought to P.S. Al-Falah, where FIR No.155/2015 under section 23(1)(a) Sindh Arms Act, 2013 was also registered.

3. After usual investigation, challan was submitted against the accused under the above referred sections. Both the cases were amalgamated by the trial court under section 21-M of the Anti-Terrorism Act, 1997.

4. Trial court framed charge against the accused Rana Muhammad Saqib at Ex.6 and 6/A in both the cases, to which accused pleaded not guilty and claimed to be tried.



5. At trial, prosecution examined four witnesses. Thereafter, prosecution side was closed.
6. Statement of accused under Section 342 Cr.P.C was recorded at Ex.12. Accused denied all the incriminating pieces of prosecution evidence brought against him on record. Accused claimed false implication in the present cases. Accused raised plea that there was a dispute between them upon delivery by his wife at their Maternity Hospital, he demanded papers regarding delivery by his wife, complainant called him to hand over the papers to him on the day of incident, however, he handed over him to police, thereafter, these false cases have been registered against him. Accused did not examine himself on oath in disproof of prosecution allegations nor led any evidence in his defence.
7. Trial Court after hearing the learned counsel for the parties and assessment of evidence, by judgment dated 08.12.2017 convicted and sentenced the appellant as stated above. Hence this appeal.
8. The facts of the case as well as evidence produced before the trial Court find an elaborate mention in the judgment dated 08.12.2017 passed by the trial Court and, therefore, the same may not be reproduced here so as to avoid duplication and unnecessary repetition.
9. Learned advocate for appellant after arguing the appeal at some length submits that she would not press the appeal on merits and prayed for reduction of sentence. Learned counsel mainly argued that appellant is a young person, he is sole supporter of the family and is the first offender. It is submitted that these circumstances require caution in the matter of the appellant's sentence. In support his contentions, reliance is placed upon the case reported as Muhammad Yasin Vs. the State (1984 SCMR 866).
10. Mr. Mohammad Iqbal Awan, learned DPG argued that prosecution has proved its case against the appellant under Section 384, 385 and 386, PPC and under Section 23(1)(a) of the Sindh Arms Act 2013, however, recorded no objection in case sentences are reduced to some reasonable extent. It is admitted by learned DPG that accused is not previous convict as per record.

11. From perusal of evidence of four prosecution witnesses and other material placed on record we have come to the conclusion that prosecution had proved its case beyond doubt against the appellant. However, lenient view in the sentence of the appellant is taken for the reason that appellant is a young person, he not previous convict and is supporter of old parents. Section 423 Cr.P.C, subsection (b) (2) gives appellate Court sufficient powers in an appeal from a conviction, (1) reverse the findings and sentence, and acquit or discharge the accused, or order him to be retried by a Court of competent jurisdiction subordinate to such Appellate Court or sent for trial, or (2) alter the finding maintaining the sentence, or, with or without altering the finding reduce the sentence, or (3) with or without such reduction and with or without altering the finding, alter the nature of the sentence, but, subject to the provisions of section 106, subsection (3), not so as to enhance the same.

12. In the present case, learned Advocate for the appellant did not press appeals on merits. It is argued that appellant is sole supporter of large family. Learned DPG has admitted that there is no previous record of the appellant that he is not previous convict in such like cases. In the case of **State through Deputy Director (Law), Regional Directorate, Anti-Narcotics Force vs. Mujahid Naseem Lodhi (PLD 2017 SC 671)**, in the matter of sentence, it is observed that "in a particular case carrying some special features relevant to the matter of sentence a Court may depart from the norms and standards prescribed above but in all such cases the Court concerned shall be obliged to record its reasons for such departure."

13. As per prosecution case, the appellant was arrested at the spot and extortion money/bhatta was recovered from his possession, one T. pistol loaded with 3 live rounds was recovered from his possession.

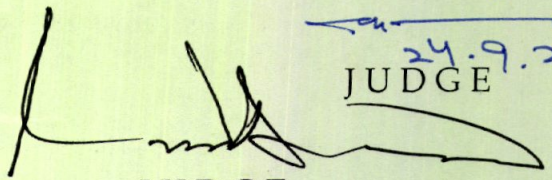
14. It is necessary to mention here that awarding of punishment is only meant to have a balance in the society because normally all the divine laws speak about hereafter. Thus, conceptually, punishment to an accused is awarded on the concept of retribution, deterrence or reformation so as to bring peace which could only be achieved either by keeping evils away (criminals inside jail) or strengthening the society by reforming the guilty. The law itself has categorized the offences. There are certain offences, the

punishment whereof is with phrase 'not less than' while there are other which are with phrase 'may extend up-to', such difference itself is indicative that the Courts have to appreciate certain circumstances before setting quantum of punishment in later case which appear to be dealing with those offences, the guilty whereof may be given an opportunity of 'reformation' by awarding lesser punishment. The concept of reformation should be given much weight because conviction normally does not punish the guilty only but whole of his family/dependents too. A reformed person will not only be a better brick for society but may also be helpful for future by properly raising his dependents. The plea of reduction in sentence however shall not be available to hardened criminals, guilty of serious offences. Reliance is placed on the case of Suneil Vs. The State (2018 PCr.LJ 959).

15. Consequent to above discussion, we dismiss the appeal, but alter the conviction of the appellant under section 7 of the Anti-Terrorism Act, 1997 and reduce from 7⁽²⁾ years R.I. to 5 years R.I., whereas, fine of Rs.50,000/- and S.I. for six months in case of non-payment whereof is maintained. Conviction and sentence awarded to appellant under Section 23(1)(a) of the Sindh Arms Act, 2013 are maintained. Both the sentences shall run concurrently. Appellant is extended benefit of Section 382-B, Cr.PC.

16. The appeal is dismissed with above modification/reduction in sentence.

Gulsher/PS


JUDGE
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