

IN THE HIGH COURT OF SINDH AT KARACHI

Spl. Criminal A.T. Jail Appeal No.231 of 2016

Present:

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

Appellant: Qadir Muhammad through Mr. Abdul Razzak,
Advocate.

For State: Mr. Muhammad Iqbal Awan, Deputy
Prosecutor General.

Date of hearing: 17.10.2019

Date of announcement: 23.10.2019

JUDGMENT

Mohammad Karim Khan Agha, J.- Appellant Qadir Muhammad S/o. Wazeer Muhammad has preferred this Criminal Anti-Terrorism Jail Appeal against the impugned judgment dated 04.07.2016 passed by the learned Anti-Terrorism Court No.IV, Karachi Division in Special Case No.A 143/2013 and No.A-144/2013No.

2. We have observed however that the appellant was convicted and sentenced under Special case B-366 of 2013, F.I.R. No.438/2013 u/s. 386/34 PPC read with section 7 of ATA 1997 registered at P.S. Taimuria, Karachi to life imprisonment with fine of Rs.50,000/-. In case of default in payment of fine he was ordered to undergo R.I. for four months more.

3. The Appellant, who had been called by this court and was present in custody before this court, informed this court that he intended to file appeal against the Special Case No.B-366 of 2013, FIR No.438 of 2013 under Section 386/34 PPC read with section 7 of ATA 1997 which he had been convicted and sentenced vide the impugned judgment but he was unable to do so as he was not very literate and was confused as the impugned judgment was a consolidated one and hence due to bona fide mistake he mis-titled his jail appeal. Under these circumstances, when the appellant has already been in jail since long and the DPG has no objection to the same since sending back the jail appeal for amendment would only

prolong the incarceration of the appellant and it seems in the interest of justice not to delay this case on a technical issue we have considered this appeal as against his conviction and sentence in Special Case No.B-366 of 2013, FIR No.438 of 2013 under Section 386/34 PPC read with section 7 of ATA 1997 vide the impugned judgment as mentioned above.

4. The brief facts of the prosecution case No.366/2013 as disclosed in the FIR No.438/2013 by the complainant Khan Mashoor Afridi are that he runs a school in the name and style of "The Educators". On 09.09.2013 an envelope was dropped by a motorcyclist at reception of his School, whereby Rs.50,00,000/- was demanded as extortion money (Bhatta) by Tahreek-e-Taliban to be paid within 24 hours and in case of nonpayment, threat of dire consequences as well as murder of students of school was made. Mobile phone No.0311-2899155 was provided in that letter for contact to them. After receiving this letter the complainant became terrorized due to which he went home at about 11:30 am, where he found there another envelope, addressed to him by Hakeemullah Mehsood of Tehreek-e-Taliban and one 30 bore live bullet was also found in that envelope and demand of Rs.50,00,000/- as extortion was made therein too. He brought the said letters to police station and lodged such F.I.R. against accused of Tehreek-e-Taliban, Pakistan.

5. The I.O. of the Crime No.438/2013 u/s. 386/34 PPC, read with section 7 ATA 1997 of P.S. Taimuria (SIU) of Special Case No.366/2013 after usual investigation submitted the Challan on 26.12.2013 before the court of ATC-II Karachi and thereafter charge was framed against the appellant and other co-accused to which they all plead not guilty and claimed trial.

6. The prosecution to prove its case examined 6 PW's who exhibited various documents and other items in support of the prosecution case. The appellants/accused recorded their statements under section 342 Cr.PC whereby they claimed false implication and the appellant gave evidence under oath and called two DW's in support of his defense case.

7. Learned Judge Anti-Terrorism Court No.IV, Karachi after hearing the learned counsel for the parties and assessment of evidence available on record, vide the impugned judgment dated 04.07.2016, convicted and

sentenced the appellant as stated above, hence this appeal has been filed by the appellant against conviction.

8. It is important to mention at this stage that the co-accused of the appellant in the same case were also convicted but were sentenced to 5 years imprisonment and have since been released from jail having served out their sentences

9. The facts of the case as well as evidence produced before the trial court find an elaborate mention in the impugned judgment, therefore, the same are not reproduced here so as to avoid duplication and unnecessary repetition.

10. After the reading out of the evidence and the impugned judgment learned counsel for the appellant initially tried to argue the appellant's case on merits however in the face of the evidence against the appellant on record he decided not to press the appeal on merits but instead prayed for reduction of the appellant's sentence from life to any lesser sentence on account of the fact that the case against him was very similar to the co-accused who had only been sentenced for 5 years and as such he should be afforded similar treatment especially as he was a first time offender.

11. Learned DPG conceded that a reduction in sentence was justified based on the particular facts and circumstances of the case.

12. Having gone through the evidence on record we are of the view that the prosecution has proved its case against the appellant however we have observed that the key difference between the appellant receiving a heavier sentence than his co-accused is that the note was found to have the mobile phone number of the SIM which was found in the mobile phone which was recovered from the appellant. We note however that the prosecution did not prove that the SIM was in the appellants name and thus there are some doubts regarding this aspect of the case. Thus, if we were to rule out this aspect of the case in our view the case of the appellant would be on a similar footing as his co-accused who each received a sentence of 5 years imprisonment. Thus based on this factor and the fact that the appellant was previously of good character we in

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exercise of our powers under S.423 Cr.PC deem this to be a fit case which warrants a reduction in sentence.

13. Thus, for the reasons mentioned above we hereby uphold the conviction of the appellant but modify his sentence to 5 years imprisonment and a fine of Rs.50,000 and in default of payment the appellant shall undergo a further 3 months imprisonment. The appellant shall have the benefit of S.382-B Cr.PC.

14. The appeal stands disposed of in the above terms.

Amf