

IN THE HIGH COURT OF SINDH AT KARACHI

Special CrI. Anti-Terrorism Appeal No.155 of 2019.

Present:

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

Appellants: Mohiuddin S/o. Zainul Abideen and
Muhammad Younus S/o. Muhammad Haroon
through Syed Zakir Hussain, Advocate.

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

Date of hearing: 10.12.2019.

Date of announcement: 20.12.2019

J U D G M E N T

Mohammad Karim Khan Agha, J.- Appellants Mohiuddin S/o. Zainul Abideen and Muhammad Younus S/o Muhammad have preferred this appeal against the impugned judgment dated 29.05.2019 passed by the learned Judge Anti-Terrorism Court No.X, Karachi in Special Case No.141 of 2019, F.I.R. No.47 of 2019 u/s. 11-J Funding Arrangement Act, ATA, 1997 registered at P.S. Manghopir, Karachi whereby the appellants have been convicted and sentenced u/s 11-N of ATA, 1997 to R.I. for 10 years each with fine of Rs.500,000/- each. In default in payment of fine, they shall undergo further R.I. for 06 months more. Benefit of section 382-B Cr.P.C. is also extended to the appellants/accused.

2. The brief facts of the prosecution case are that on 02.02.2019 at about 1730 hours Complainant SIP Raza Sharif posted at P.S. Manghopir, Karachi registered FIR No.47/2019 u/s.11-J Funding Arrangement, Anti-Terrorism Act, 1997 stating therein that on that day he received a call from P.S. Manghopir, Karachi on wireless and he was directed to immediately reach at Main Road, opposite Gate No.04 of Religious Conference (Ijtima) Manghopir, Karachi. As soon as the police party headed by SIP Raza Sharif reached at Gate No.04 of Ijtima they found 02 persons who were collecting Funds (Chanda) from the people available there for Jaish-e-Muhammad (proscribed Organization). Both the persons were holding Flags of Al-Jihad in their hands. The Complainant

approached to the said persons and apprehended them. On inquiry, they disclosed their names as Mohiuddin S/o. Zainul Abideen and Muhammad Younus S/o. Muhammad Haroon. Thereafter the complainant conducted the personal search of Mohiuddin and recovered 01 Flag of Al-Jihad, Megaphone, Mobile Phone, Watch, 03 Receipt Books of Al-Rehmat Trust. Thereafter the complainant conducted personal search of Muhammad Younus and recovered one Flag of Al-Jihad and Cash Rs.580/- from his possession. Upon inquiry, the apprehended culprits disclosed that they were collecting Funds (Chanda) for Jaish-e-Muhammad (Banned Organization). Thereafter, the complainant sealed the recovered articles on the spot and then he prepared joint memo of arrest, recovery and seizure. Later on, police party returned to P.S. along with custody of accused persons and sealed case property and lodged the FIR against the appellants.

3. After completion of investigation of this case, report U/s. 173 Cr.P.C. was submitted by the I.O. against the accused persons in the concerned ATC. The charge was framed against the appellants to which they pled not guilty and claimed trial.

4. In order to prove its case the prosecution examined 03 PWs who exhibited various documents and other items in support of the prosecution case where after the prosecution closed its side. The appellants/accused recorded their statements under S.342 Cr.PC. in which they denied all the allegations of the prosecution leveled against them. They did not give evidence under oath or call any defense witness in support of their defense case.

5. Learned Judge, Anti-Terrorism Court-X, Karachi, after hearing the learned counsel for the parties and assessment of evidence available on record, vide the impugned judgment dated 29.05.2019, convicted and sentenced the appellants as stated above, hence these appeals have been filed by the appellants against their convictions.

6. 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.

7. Learned counsel for the appellants has contended that there is no evidence on record to show that Jaish-e- Muhammed (JM) is a proscribed organization under the ATA; that there is no evidence that the appellants belonged to JM; that there is no evidence that the appellants were collecting funds at all let alone on behalf of JM and that any money which was recovered from them was their personal money; that no donor was arrested; that the memo of arrest and recovery was not made on the spot; that the evidence of the PW's is contradictory and that no independent person was made mushir in violation of S.103 Cr.PC and for any of the above reasons both the appellants were entitled to be acquitted by this court extending to them the benefit of the doubt. In support of his contentions he placed reliance on **Ghulam Rasool V The State** (2007 MLD 1203), **Abdul Sattar V The State** (2008 MLD 619), **Muhammad Khan V The State** (1999 SCMR 1220) and **Notice to Police Constable Khizar Hayat on account of his false statement** (PLD 2019 SC 527).

8. On the other hand learned DPG has contended that JM is a proscribed organization; that the prosecution evidence both documentary, oral and through recoveries shows that the appellants were collecting funds for that organization and that such funds were to be used for terrorism purposes as JM was a banned organization and as such the appeals should be dismissed.

9. We have heard the arguments of the learned counsel for the parties, gone through the entire evidence which has been read out by the appellants and the impugned judgment with their able assistance and have considered the relevant law including that cited at the bar.

10. In our view after our reassessment of the evidence we find that the prosecution has proved its case against the appellants beyond a reasonable doubt for the following reasons;

(a) That JM is a proscribed organization as is evidenced by list of proscribed organizations by Ministry of Interior u/s 11 (B) read with Schedule I ATA 1997 issued by Government of Pakistan National Counter Terrorism Authority which has been duly exhibited.

(b) That the FIR was lodged promptly and accords with the prosecution case and gave no room for any concoction.

(c) That the appellants were arrested on the spot before a large religious gathering which has not been denied by the appellants.

(d) That at the time of arrest the following articles were recovered from the appellants. Two flags of Al Jihad, one mobile phone, 3 watches, receipts of Trust Al-Rehmat, cash of RS 6500 and RS 580.

(e) That the PW 1 Asif Raza who was an eye witness to the offense during cross examination and who is the complainant and made the arrest of the appellants specifically gave evidence on the final 2 lines of his cross examination at P.23 of the paper book as under;

"That it is correct to suggest that the accused persons were demanding chanda from the people through mega phone".

(f) That the PW's are all corroborative of each other and that there are no major contradictions in their evidence which would adversely impact on the prosecution case. Admittedly the PW's are all police witnesses. It is well settled by now that a police witness is as good as any other witness provided that no ill will, enmity, malafide or personal interest is proven against him vis a vis the appellant. In this respect reliance is placed on **Riaz Ahmad V State** (2004 SCMR 988), **Zafar V State** (2008 SCMR 1254) and **Abbas V State** (2008 SCMR 108). In this case there was none and the police PW's had no reason to falsely implicate the appellants in this case. No such enmity, ill will, malafide or personal interest was even suggested to the police witnesses during their cross examination.

(g) Even if there are any contradictions in the evidence of the PW's we consider these contradictions as minor in nature and not material and certainly not of such materiality so as to affect the prosecution case and the conviction of the appellants. In this respect reliance is placed on **Zakir Khan V State** (1995 SCMR 1793)

(h) That although only around RS 7000 was found on the appellant's this does not mean that they were not collecting funds for a banned organization. Even if they had collected only one rupee for a proscribed organization and that there is reasonable cause to suspect that such funds will be used for terrorism they would still have committed an offense under S.11 (J) ATA

(i) That the PW's asked independent mushir's to witness the arrest and recovery but no one was willing to act as an independent mushir and even otherwise there is no such requirement in a case falling under the ATA

(j) That the prosecution evidence provides a believable chain of evidence from the time of the report of the illegal collection of funds, through to the arrest and recoveries made from the accused.

11. That having come to the conclusion that the prosecution has proved its case against the appellants beyond a reasonable doubt the next question is what the sentence should be. In our view although the appellants have positive CRO's albeit for narcotics related offenses and there is a need to prevent terrorism we are of the view that since only a

very small amount has been collected by the appellants it was too harsh for the trial court to sentence the appellants to the maximum punishment under the law being not more than 10 years and thus based on the particular facts and circumstances of this case we hereby exercise our discretionary powers under S.423 Cr.PC and hereby reduce the sentences of each of the appellants from one of 10 years each to one of 5 years each but in all other respects the sentences including fines etc in the impugned judgment shall remain in tact. Both the appellants shall have the benefit of S.382 B Cr.PC and apart from the above modification in sentence the appeals stand dismissed.

12. The appeals are disposed of in the above terms.

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