

IN THE HIGH COURT OF SINDH AT KARACHI

Special Crl. Anti-Terrorism Appeal No.79 of 2019

Present:

Mr. Justice Mohammad Karim Khan Agha

Mr. Justice Zulfiqar Ali Sangi.

Appellant Naeem Ahmed s/o. Jamil Ahmed Qureshi,
through Mr. Mumtaz Ali Khan Deshmukh,
Advocate.

Respondent: The State through Mr. Muhammad Iqbal
Awan, Deputy Prosecutor General.

Date of hearing: 13.12.2019

Date of announcement: 24.12.2019

J U D G M E N T

Mohammad Karim Khan Agha, J.- Appellant Naeem Ahmed son of Jamil Ahmed Qureshi has preferred this appeal against the impugned judgment dated 14.03.2019 passed by the learned Judge Anti-Terrorism Court No.X, Karachi in Special Case No.845 of 2017, F.I.R. No.73 of 2017 u/s. 384/385/386/34 PPC r/w section 7 of A.T.A. 1997 registered as P.S. Super Market, Karachi whereby the appellant Naeem Ahmed was convicted u/s. 7(1) (h) of the Anti-Terrorism Act, 1997 read with u/s. 384/385/386/34 PPC, 25 Telegraph Act and ordered to undergo R.I. for 10 years with fine of Rs.2,00,000/- In default in payment of fine he was ordered to suffer further R.I. for 06 months more whereas accused Talha son of Chaudhry Muzaffar Ahmed was acquitted from the charge of this case u/s.265-H(1) Cr.PC by extending him benefit of doubt. Hence criminal Anti-Terrorism Acquittal Appeal No.79/2007 has been filed by Appellant Naeem Ahmed against his conviction.

2. The brief facts of the prosecution case are that on 11.03.2017, at about 0115 hours Mst. Nighat Hassan w/o. Muzammil Hassan got registered FIR No.73/2017 U/s. 384/385/386/34 PPC, 25 Telegraph Act r/w. Section 7 ATA, 1997 at PS Super Market, Karachi stating therein that

for the last 06/07 months, since August, 2016 an unknown caller had been continuously calling and sending messages at her cell No.0307-7184647 from cell No.0313-1119868 and further threatened her to arrange Rs.3,00,000/- as Bhatta amount as complainant's husband being a car contractor was well off. As such, the complainant and her husband told the said caller to stop bothering them as they were hardly surviving and the complainant further told the caller that they were white collar people, but said unknown caller issued further threats to kidnap her daughters and further threatened to kidnap and kill her entire family, in case, she failed to pay extortion money. The complainant further stated in FIR that out of fear, she had even paid Rs.1,00,000/- as extortion to the said unknown caller, earlier but, he again started demanding further extortion money and had been issuing threats to her that in case of non-payment of Rs.3,00,000/- as extortion money, they would not spare the life of her husband. The complainant further stated that the said caller would also call her from different cell numbers and even asked his accomplices to call her from their cell numbers and by such acts, the entire family of the complainant was under fear of death and/or harm and thus she lodged the FIR.

3. After registration of the FIR, usual investigations were carried out and after conclusion of the investigation the case was sent up for trial. An amended charge was framed against the accused persons to which they both pleaded not guilty and claimed trial.

4. In order to prove its case the prosecution examined 05 PW's and exhibited numerous documents and other items in support of its case where after the prosecution closed its side. The statements of accused as envisaged u/s 342 Cr.P.C were recorded. The Appellant Naeem Ahmed denied the allegations against him and claimed false implication by the police. He did not record his evidence on oath but called one DW in support of his defense case.

5. Learned Judge, Anti-Terrorism Court No.X, Karachi, after hearing the learned counsel for the parties and assessment of evidence available on record, vide the impugned judgment dated 14.03.2019, convicted and sentenced the appellant as stated above, hence this appeal has been by the appellant against his conviction.

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. 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 overwhelming evidence against the appellant on record he decided not to press the appeal on merits but instead prayed for a reduction in sentence in respect of the appellant based on the following mitigating circumstances (a) that the appellant was the sole bread winner of a large family which since his incarceration was facing financial difficulties and (b) that the appellant was a young man capable of reformation as he was a first time offender with no CRO.

8. Learned DPG contended that based on the evidence on record the prosecution had proved its case against the appellant beyond a reasonable doubt and as such the impugned judgment did not require interference. When, however, the DPG was asked by the court whether the mitigating circumstances raised by the appellant justified a reduction in sentence he conceded that as a matter of law they did justify a reduction in sentence to some reasonable extent.

9. Having gone through the evidence on record we have no doubt that the prosecution has been able to prove its case against the appellant beyond a reasonable doubt for the offenses for which he has been charged. In that the appellant was caught red handed on the spot by the police with the collected bhatta money, that the PW's (both police and independent) had no ill will or enmity with the appellant and thus had no reason to falsely implicate him in this case; that we find the evidence of the PW's to be reliable, trust worthy and confidence inspiring whose evidence is corroborated by the recovery of the bhatta money from the accused when he was arrested on the spot, the recovery of his mobile phone on the spot and the CDR data which linked him to the persons from whom he was extorting money and threatening. The only issue before us is whether sufficient mitigating circumstances have been shown to justify the

reduction in sentence to some reasonable extent as prayed for by the appellant.*

10. We are of the view that the mitigating circumstances mentioned above by the learned counsel for the appellant which have been accepted by the DPG as amounting to mitigating circumstances do justify a reduction in the appellant's sentence. As such based on the mitigating circumstances mentioned by the appellant and exercising our judicial discretion under S.423 Cr.PC we hereby reduce the sentence of imprisonment of the appellant from 10 years to 7 years however all other sentences including fines, compensation etc imposed on the appellant in the impugned judgment shall remain in tact. The appellant shall have the benefit of S.382 B Cr.PC. A part from the above modification in sentence the appeal stands dismissed.

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