

Remand ~~under~~ ^{due to} Violation of S.367 & 491
C.P.C

IN THE HIGH COURT OF SINDH, KARACHI

Special Criminal A.T. Appeal No.06 of 2022
Special Criminal A.T. Appeal No.07 of 2022

Present:

Mr. Justice Mohammad Karim Khan Agha
Mr. Justice Khadim Hussain Tunio

Appellant in Spl. Crl. : Osama Salman Khan S/o Rizwan
A.T.A. No.06/2022 Ghaznavi through Mr. Raj Ali
Wahid Kunwar, Advocate.

Appellant in Spl. Crl. : Amjad Ali S/o Peer Bukhsh
A.T.A. No.07/2022 Shahani through Mr. Mamoon
A.K. Shirwany, Advocate.

Complainant Zeeshan S/o Muhammad Yousuf
through Mr. Shaukat Ali
Shehroze, Advocate

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

Date of Hearing : 06.04.2023

Date of Order : 06.04.2023

JUDGMENT

MOHAMMAD KARIM KHAN AGHA, J:- The appellants Usama Salman and Amjad Ali Shahani were tried before the Anti-Terrorism Court No.II, Karachi in Special Case No.675/2018 under FIR No.127/2018 registered U/s 385/386/34 PPC R/w Section 7 of ATA, 1997 at PS Liaquatabad, Karachi and vide judgment dated 30.11.2021, they were convicted and sentenced as under:-

- i. Accused Usama Salman son of Muhammad Rizwan and Amjad Ali Shahani son of Pir Bux are sentenced and convicted u/s 385 PPC for extortion to Rigorous Imprisonment of two years and fine of rupees one lac each.
- ii. Accused Usama Salman son of Muhammad Rizwan and accused Amjad Ali Shahani son of Pir Bux are sentenced and convicted u/s 386 PPC to Rigorous Imprisonment for ten years and fine of rupees one lac each.

- iii. *Accused Usama Salman son of Muhammad Rizwan and accused Amjad Ali Shahni son of Pir Bux are sentenced and convicted u/s 6(2)(k) punishable u/s 7(i) of the Anti-Terrorism Act, 1997 to R.I. for 14 years the sentences to run concurrently.*

However, the appellants were granted benefit of Section 382-B Cr.P.C.

2. The brief facts of the prosecution case are that the complainant Zeeshan was a builder and according to the FIR *bhatta* had been demanded from him by the appellants as he was making illegal construction in Liaquatabad and in essence unless he paid *bhatta* the appellants would file constitutional petitions against his illegality before the High Court. The complainant Zeeshan on a number of occasions paid *bhatta*; however on one occasion after he paid *bhatta* to the appellants an argument started between the complainant and the appellants, as such, the appellants were caught hold of by the people of the locality and in the meantime, police mobile came and the police arrested Usama on the spot and recovered Rs.20,000/- which the complainant had just paid to him as *bhatta* at Muhammadi Sweets, Sindhi Hotel. The other appellant Amjad Ali escaped from the scene and later surrendered before the police.

3. After usual investigation, the case was challaned and the appellants pleaded not guilty to the charge and claimed their trial.

4. The prosecution in order to prove its case examined 05 Prosecution Witnesses and exhibited various documents and other items. The statement of accused was recorded under Section 342 Cr.P.C in which they denied the allegations levelled against them and claimed false implication by complainant in collusion with the police. Appellants also gave evidence on oath; however, they did not produce any DWs in support of their defence.

5. After hearing the parties and appreciating the evidence on record, the trial court convicted the appellants and sentenced them as set out earlier in this judgment; hence, the appellants have filed these appeals 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 dated 30.11.2021 passed by the trial court and, therefore, the same may not be reproduced here so as to avoid duplication and unnecessary repetition.

7. At the very outset, we observed that the impugned judgment had violated Section 367 Cr.P.C. as it has not made any points for determination and had not separately answered the same which is a mandatory requirement of Section 367 Cr.P.C. and such defect was not curable under Section 537 Cr.P.C. When this position was brought to the attention of learned counsel for the appellants, learned Addl. P.G. and learned counsel for the complainant, they agreed that the judgment was defective in the above respect and was not curable and under these circumstances, this was a case of remand. We are in agreement with learned counsel for the appellants, learned Addl. P.G. and learned counsel for the complainant which is in line with our own observation mentioned above.

8. Accordingly, under the above circumstances, the impugned judgment is set aside and the case is remanded back to the Anti-Terrorism Court No.II, Karachi for the limited purpose of hearing the learned counsel for the appellants, the State and learned counsel for the complainant and based on the evidence on record to re-write the judgment in accordance with Section 367 Cr.P.C. and the relevant law. It is made clear that no fresh evidence shall be recorded in respect of this case; however, learned trial Court shall not be influenced by any of the findings in the impugned judgment which has been set aside.

9. The R&PS shall be immediately sent back to the Anti-Terrorism Court No.II, Karachi by the office to comply with this order within three (03) months of receipt of this order. The question regarding bail of the appellants shall be determined by the Anti-Terrorism Court (ATC) No.II, Karachi. A copy of this order shall be sent by fax to Anti-Terrorism Court (ATC) No.II, Karachi for compliance.

10. The instant appeals stand disposed of in the above terms.