

IN THE HIGH COURT OF SINDH AT KARACHI

Present:

Mr. Justice Mohammad Karim Khan Agha
Mr. Justice Amjad Bohioi

SPL. CRIMINAL A.T. APPEAL NO.101 OF 2023

Appellant	Amjad Ali Shahani s/o Pir Bux Shahani through Mr. Raj Ali Wahid Kunwar, Advocate
Respondent	The State through Mr. Saleem Akhtar Buriro, Additional Prosecutor General, Sindh.

SPL. CRIMINAL A.T. APPEAL NO.104 OF 2023

Appellant	Usama Salman Khan s/o Muhammad Rizwan through Khawaja Muhammad Azeem and Mr. Muteeullah Gondal, Advocates
Respondent	The State through Mr. Saleem Akhtar Buriro, Additional Prosecutor General, Sindh.
Date of Hearing	: 08.08.2023
Date of Judgment	: 08.08.2023

J U D G M E N T

Mohammad Karim Khan Agha, J. Appellants Amjad Ali Shahani and Usama Salman Khan were tried in the Anti-Terrorism Court No.II, Karachi in Special Case No.675 of 2018 arising out of FIR No.127 of 2018 u/s 385/386/34 PPC r/w Section 7 of ATA 1997 registered at PS Liaquatabad, Karachi and vide judgment dated 10.06.2023 the appellants were convicted and sentenced for an offence u/s.6(2)-K which is punishable u/s. 7(1)(h) of ATA, 1997 and sentenced to undergo R.I. for a period of "05" years with fine of Rs.10,000/- **each** and in default in payment of such Fine, they shall undergo further S.I. for a period of "06" Months.

2. Brief facts of the prosecution case as narrated in FIR lodged by the complainant are that he lives in Liaquatabad No.7, and does the work of construction. It is further stated that for past few months Usama and Amjad

Shahani were demanding bhatta from him and in case of non-payment of bhatta they threatened him that they would file Constitution Petition before the Hon'ble High Court to stop his work and because of fear, he had given Rs.20000/- and the second time Rs.30000/- to them. It is further stated that on 05.05.2018 at about 12:30 am the same two accused persons had come to his house and called him at road opposite Muhammadi Sweets, Sindhi Hotel, Liaqutabad and made demand of Rs.7 laks and given threats for dire consequences. The complainant because of fear had given Rs.20000/- as bhatta which Usama put in his pocket, however both the accused started abusing him whereupon people of neighborhood assembled and apprehended both of them, meanwhile police came but seeing the police party accused Amjad Ali Shahani had escaped from the scene whereas Usama was apprehended by ASI Jameel Tanoli. Complainant disclosed the facts to the police, who had taken the personal search of Usama recovered bhatta amount which was identified by the complainant as the same money/amount given by him (the complainant) thereafter the FIR was registered against them.

3. After usual investigation the matter was challaned and the appellants were sent up to face trial. They pleaded not guilty and claimed trial.

4. In order to prove its case, the prosecution examined four 06 PWs and exhibited various items and other documents. The appellants recorded their statements under Section 342 Cr.P.C. wherein they claimed that they are innocent. They did not give evidence on oath or call any witness in support of their defense.

5. After appreciating the evidence on record, the learned trial Court convicted and sentenced the appellants as set out earlier and hence, the appellants have filed these appeals against their convictions and sentences .

6. After reading out the evidence, learned counsel for the appellants, under instructions, did not press these appeals on merit provided that the appellants are given a reasonable reduction in sentence handed down to them based on the following mitigating circumstances:-

- i) That the appellants are first time offenders and capable for reformation.
- ii) Both the appellants are young and have a large family to support.

- iii) By accepting their guilt they have shown genuine remorse and saved the precious court time;
- iv) Both the appellants have served out a major portion of their sentence.

7. Based on the above mitigating circumstances learned APG had no objection to the reduction in sentence to some reasonable extent.

8. We have gone through the evidence available on record and find that appellant Usama Salman Khan was arrested on the spot by the police and after arrest bhatta amount of Rs.20000/- which he was demanded was recovered from him. Other appellant Amjad Ali Shahani was later arrested by the police on the statement of appellant Usama Salman Khan as a co-accused in this matter. The complainant is an independent witness and has no enmity with the appellants and as such we have no reason to disbelieve his evidence. Since there is no enmity or ill will of the police officials who made arrest with the appellants and had no reason to implicate them in a false case. We find the evidence of (06) PWs to be reliable, trustworthy and confidence inspiring and no reason to disbelieve the same. We also find that the prosecution has proved its case against the appellants beyond a reasonable doubt for the offence under section 385/386/34 PPC, however, we do not find that this was a case of terrorism under the Anti-Terrorism Act, 1997 as there was no intention, purpose or design to create terror, as the appellants not given the death threats to the complainant but he was only threatened that a petition would be filed against him if he did not stop construction work and as such the appellants are acquitted for the offence under ATA, 1997.

9. With regard to sentencing based on the mitigating circumstances raised by the appellants and no objection given by the learned Addl. Prosecutor General Sindh and in particular that both the appellants have served out a major portion of their sentence we hereby reduce the sentences of the appellants to that of time already served in custody and waive off any fine and compensation payable by them. The appellants Usaman Salman Khan s/o of Muhammad Rizwan and Amajad Ali Shahani s/o Pir Bux Shahani are released unless they are wanted in any other custody case.

10. These Special Criminal Anti-Terrorism Appeals are disposed of in the above terms.

JUDGE

JUDGE