IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Spl. Anti-Terrorism Appeal No. D-56 of 2023

BEFORE:
Mr. Justice Amjad Ali Bohio, J.
Mr. Justice Khalid Hussain Shahani, J.

Appellants	:	1) Abdul Hakeem s/o Allah Diwayo 2) Hazaro s/o Allah Diwayo, both by caste Pitafi Through M/s Shabbir Ali Bozdar & Arifa Soomro Advocates
Complainant	:	Nagesh Kumar s/o Shankar Lal, Hindu Through M/s Ubedullah Ghoto & Naeemullah Chachar, Advocates
The State	:	Through Mr. Khalil Ahmed Maitlo, DPG
Date of hearing	:	03.12.2025
Date of short order	:	03.12.2025
Date of Reasons	:	04.12.2025

J U D G M E N T

KHALID HUSSAIN SHAHANI, J.— This appeal is directed against the judgment dated 20.09.2023 passed by the learned Anti-Terrorism Court, Ghotki at Mirpur Mathelo, in Special Case No.12/2023, whereby the appellants were convicted for offences punishable under Section 386, 387 read with Sections 148, 149 PPC for seven years Rigorous Imprisonment with a fine of Rs.5,000, and for Section 384 PPC read with Section 149 PPC for three years R.I, and for Section 337-H(ii) PPC for two years R.I. The appellants were also convicted for offence under Section 6 (2) (k) and 7 of the Anti-Terrorism Act, 1997, for which they were sentenced to two years R.I. The benefit of Section 382-B Cr.P.C. was extended to them.

2. The prosecution case, as narrated in the F.I.R. No.75/2023 registered at Police Station Daharki on 12th March, 2023 at about 1600 hours, is that the complainant, Nagesh Kumar, is a businessman who owns multiple enterprises including a petrol pump, flour mill, cotton factory, and oil mill. Prior to the incident, he had received several *bhatta* chits (extortion demands) from unknown culprits. On 11th March, 2023 at about 20:30 hours, while the complainant was present at his petrol pump situated on the National Highway

Road along with his cousins Suneel Kumar and Ramesh Lal, two black motorcycles arrived carrying five armed persons. Two of them were later identified as the appellants, Hazaro and Abdul Hakeem, both sons of Allah Diwayo from the Pitafi community, accompanied by three others whose faces could not be clearly identified. The armed persons threatened the complainant, demanding Rs.10,00,000/- (Ten Hundred Thousand Rupees) as *bhatta* (extortion money). They warned that failure to pay would result in harm to him, his family, and destruction of the petrol pump. During the confrontation, the armed persons fired weapons at the fuel pump and then fled toward the southern direction.

3. After usual investigation, the police filed a challan before the trial court against the appellants and another accomplice. The trial court framed charges under the aforementioned sections. The appellants pleaded not guilty and claimed trial. During the proceedings, the prosecution examined several witnesses and produced documentary evidence. The appellants, in their statements under Section 342 Cr.P.C, denied all allegations and submitted certain documents in their defence, professing innocence. The trial court, after hearing arguments and examining the evidence, convicted the appellants vide the impugned judgment.

4. Mr. Bozdar, learned counsel for the appellants mainly contended that the impugned judgment is wholly unsustainable in law and fact. He argued that the prosecution has miserably failed to prove its case beyond reasonable doubt. He pointed out significant contradictions in the testimony of prosecution witnesses regarding the place of the incident, identification of the perpetrators, and the actual occurrence of the crime. He further submitted that there was no recovery of any weapon, incriminating material, or evidence directly linking the appellants to the offence. He emphasized that mere allegation unsupported by credible testimony does not warrant conviction, particularly in cases involving serious offences under the Anti-Terrorism Act. He also highlighted that the

appellants, being young, having no previous criminal record, and being the sole earners of their families, deserved lenience and reconsideration in light of mitigating circumstances.

5. Mr. Maitlo, learned DPG for the State duly assisted by Mr. Ghoto learned counsel for the complainant has supported the conviction, emphasizing that the prosecution witnesses have consistently deposed regarding the incident and that the appellants were identified at the scene.

6. We have meticulously examined the evidence on record and note the following material facts:

7. The prosecution case is built on the alleged demand of *bhatta* of Rs.10,00,000/- (Ten Hundred Thousand Rupees) from the complainant, but there is absolutely no evidence on record that any amount of *bhatta* or ransom was ever paid by the complainant or received by any person on behalf of the appellants or their alleged associates. The prosecution has not produced any bank record, cash memo, or any other documentary proof to show that money was handed over, nor has any witness deposed that the complainant actually paid any sum in compliance with the alleged demand. In extortion cases, the demand is only one ingredient; the prosecution must also show that the victim was induced to deliver money or property, or that there was at least a concrete step towards such delivery. Here, the complete absence of any evidence of payment or receipt of *bhatta* renders the prosecution's narrative of extortion highly suspect and fails to establish the essential ingredient of Section 386 PPC, which requires that the accused induced the complainant to deliver money by putting him in fear of death or grievous hurt.

8. The prosecution relies heavily on the alleged *bhatta* chits, one of which is said to have been issued in the name of Shankar Lal produced at Ex.6/B. However, Shankar Lal, whose name appears on the chit, has not been examined as a prosecution witness at all. The trial court has not explained why this crucial witness, whose name is on the very document forming the basis of

the *bhatta* allegation, was not produced before the court. In a case where the prosecution seeks to prove a series of *bhatta* demands, the failure to examine the person in whose name a chit was issued is a serious lacuna, as it deprives the defence of an opportunity to cross-examine him on the authenticity, date, and circumstances of that chit. This omission, coupled with the lack of any independent corroboration, further undermines the reliability of the *bhatta* chits as evidence.

9. The prosecution witnesses have not been able to specify the date or time when the bhatta chits were issued or received. The F.I.R and the evidence of the complainant and other witnesses are silent as to when exactly these chits were delivered or handed over to the complainant or Shankar Lal. In the absence of any fixed date or time, the chits become floating, unanchored documents whose connection with the alleged incident of 11.03.2023 remains speculative. The trial court has not addressed this glaring deficiency, nor has it explained how the prosecution can rely on chits whose issuance and receipt are not fixed in time, especially when the entire case hinges on the sequence and timing of the *bhatta* demands.

10. The *bhatta* chit produced at exhibit 6/B does not bear the name of the sender, nor is there any signature or mark that can be attributed to the appellants or any other accused. The prosecution has not produced any evidence to show who wrote or issued that chit, and the trial court has not drawn any adverse inference against the appellants for this absence. Moreover, the chit was not sent to a handwriting expert for examination during investigation or trial, and it was not even handed over to the investigation officer until 28.03.2023, long after the incident and the registration of the F.I.R. In such circumstances, the mere production of a chit without sender's name, without expert examination, and with delayed handing over to the I.O cannot be treated as reliable evidence to fasten guilt on the appellants. The law does not require that every document must be sent to a handwriting expert, but where the authenticity

of a crucial incriminating document is in serious doubt and no expert opinion is sought, the court must be extremely cautious before relying on it as the basis of conviction.

11. The prosecution alleges that during the incident, the armed persons fired weapons at the fuel pump, yet the record shows that no marks of firing were actually seen at the venue of occurrence. The investigation officer and other witnesses have not produced any photograph, sketch, or expert report showing bullet marks on the petrol pump or surrounding area. In a case where the prosecution relies on the use of firearms to create terror, the absence of any physical evidence of firing at the alleged scene is a serious gap in the chain of evidence. The trial court has not explained how the prosecution can claim that shots were fired at the pump when no such marks were found, and this failure to reconcile the oral testimony with the physical facts further weakens the prosecution's case.

12. The prosecution has relied on the *mashirnamas,* but both *mashirs* are from the complainant's own party and are interested witnesses. The trial court has not treated them as interested or considered their evidence with the necessary caution required in criminal jurisprudence. When both mashirs are connected to the complainant and have a direct interest in the outcome of the case being made for all the purposes, their evidence cannot be accepted at face value without independent corroboration. The failure to appreciate their interest and to demand stronger corroboration renders the reliance on the *mashirnama* legally unsustainable.

13. The complainant has not made any prior complaint to any authority regarding the alleged receipt of *bhatta* chits before the incident of 11.03.2023. There is no record of any complaint to the police, revenue authorities, or any other forum about these extortion demands, which is highly unusual in a genuine *bhatta* extortion case where the victim typically approaches some authority for protection. This absence of any prior complaint lends weight to the

defence theory that the instant case was registered against the appellants only after they succeeded in securing bail in another case bearing Crime No.41/2022, which was registered by the complainant party. The timing of the present F.I.R immediately after the appellants' bail in the earlier case raises a strong suspicion of false implication and vendetta, which the trial court has not properly considered or rebutted with reasoned findings.

14. So far the identification of the accused and recovery is concerned, the prosecution case rests primarily on the assertion; *firstly*, that two of the five armed persons were identified as the appellants. However, the three remaining armed persons were never identified or apprehended. The witnesses were present at a petrol pump during the evening, under electric light, yet their testimony regarding the exact identification of the accused after a lapse of time reveals contradictions and inconsistencies. No independent evidence, such as CCTV footage, fingerprints, or forensic analysis, has been brought on record to corroborate the identification. *Secondly*, no weapon, ammunition, motorcycle, or any other incriminating material has been recovered from the accused. The prosecution has not established any chain of possession or custody of the motorcycles used in the alleged crime. The absence of recovery significantly weakens the prosecution's case, as possessing a weapon used in the commission of such a serious offence would be material evidence.

15. The prosecution failed to establish the essential ingredients of the offences as defined under the respective penal sections. Section 386 PPC (Extortion by putting a person in fear of death or grievous hurt) requires proof that the accused intentionally instilled fear on the complainant by threat of death or grievous hurt, thereby inducing him to deliver money. The mere allegation of threat unsubstantiated by clear and convincing evidence does not suffice. With respect to the invocation of the Anti-Terrorism Act, 1997, specifically Section 6 (2) (k) involving extortion of money (*bhatta*) or property and Section 7 thereof, this Court is cognizant of the legal principle enunciated in precedents

that extortion, to qualify as an offence under the ATA, must carry elements of terrorism as defined in Section 6 of the Act. Mere demand for *bhatta*, without demonstrating that such demand creates widespread terror, disrupts public order, or involves organized extortion on a terroristic scale affecting the public at large, does not fall within the ambit of terrorism. The Apex Court has consistently held that extortion by individuals or small groups, even if accompanied by threats, does not automatically constitute terrorism within the meaning of the ATA unless there is evidence of a wider conspiracy or impact on public peace and security.

16. The trial court's judgment does not adequately address the material evidence or documents submitted by the appellants in their defence or provide reasoned findings on the contradictions highlighted by the defence. The judgment appears to have accepted the prosecution narrative without critically examining the gaps and inconsistencies in the evidence.

17. As regard to the co-accused who were not identified (the three unnamed persons who fled), the prosecution has neither apprehended nor produced them. This raises a question about the credibility of the identification and the completeness of the investigation. If the prosecution could not identify or apprehend three out of five alleged perpetrators, the identification of the two appellants becomes even more suspect. Even, no documentary evidence, such as mobile call data records linking the appellants to the planning of the crime, bank records showing the transmission of demands, or any other corroborating circumstantial evidence, has been produced. The case rests entirely on the oral testimony of the complainant and his associates. The trial court failed to appreciate that under the principles of criminal jurisprudence, the burden lies on the prosecution to prove the case beyond a reasonable doubt. The court cannot convict on mere suspicion or on the balance of probabilities. The evidence produced must inspire confidence and leave no reasonable doubt in the mind of the court.

18. Given the above, we are of the considered view that the prosecution has failed to discharge its burden of proof beyond reasonable doubt. The contradictions in the evidence, the absence of material recovery, the weaknesses in identification, the failure to establish the essential elements of the offences, and the overreach in invoking the Anti-Terrorism Act leave considerable doubt regarding the culpability of the appellants. Consequently, this Court is/was constrained to set aside the impugned conviction and sentence. Accordingly, the Special Anti-Terrorism Appeal No.D-56 of 2023 is/was therefore allowed and the impugned judgment dated 20.09.2023 passed by the learned Anti-Terrorism Court, Ghotki at Mirpur Mathelo, is set aside vide short order 03.12.2025 by acquitting the appellants Abdul Hakeem and Hazaro of all charges, with directions to be released forthwith if not required in any other case. These are the detailed reasons thereof.

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