

*Judgment Sheet*

**IN THE PESHAWAR HIGH  
COURT, PESHAWAR**

*(Judicial Department)*

**Cr.A No.156-P/2022  
Zahid Khan Vs the State**

Date of hearing: 28.07.2022

Mr. Malik Khuram Shehzad, Advocate, for the  
appellant.

Mr. Niaz Muhammad, AAG, for the State.

**JUDGMENT**

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**SHAHID KHAN, J-** The appellant (Zahid Khan)

has called in question the judgment of learned Special  
Judge, Anti-Terrorism Court-I, Peshawar, dated  
14.02.2022 delivered in case FIR No.11 dated  
08.04.2021 U/Ss 387, 506, 419, 420/34 PPC, 25  
Telegraph Act, 14 Foreigners Act, 1946 r/w 7 (h) of  
the ATA, 1997, P.S CTD (Peshawar), whereby, he  
was convicted and sentenced to: -

- (i) u/s 387 PPC for five (05) years RI with fine  
of Rs: 20,000/- or 20 days SI in default.
- (ii) u/s 7 (h) ATA, 1997 convicted & sentenced  
for five (05) years RI with fine in the sum of  
Rs: 20,000/- or 20 days SI in default.
- (iii) U/s 419 PPC convicted & sentenced for  
three (03) years with fine of Rs: 10,000/- or  
10 days SI in default of payment of fine.

(iv) u/s 506 PPC convicted & sentenced for two (02) years with fine of Rs:5000/- or 08 days SI in default of payment of fine.

(v) U/s 25-D Telegraph Act, 1885 convicted & sentenced to one (01) year with fine of Rs:5000/- or 08 days SI in default of payment of fine.

All the sentences were directed to run concurrently with benefit of Section 382-B Cr.P.C extended to the appellant.

2. Allegedly, Malik Sajjad through an application approached the local police, reduced into writing in Daily Diary No.13 dated 04.04.2021, speak of the threat calls from a cell phone # 0304-9267787 to on his cell phone # 0345-9099820 & cell phone # 03215239270 for demand of *donation (Bhatta)*. The event was reduced into in writing in the shape of Murasila followed by registration of the even vide FIR No.11 dated 08.04.2021 U/Ss 387, 506, 419, 420/34 PPC, 25 Telegraph Act, 14 Foreigners Act, 1946 r/w 7 (h) of the ATA, 1997, PS CTD (Peshawar) against an unknown accused.

3. Accused/appellant Zahid Khan was arrested on 12.04.2021 followed by the recovery of cell phone

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from his possession having the cell number so highlighted by the complainant in his report.

4. On completion of the investigation, the matter was sent up for trial and the prosecution, in order to bring home charge against the accused/appellant, the account of the prosecution is consisting of eleven PWs including complainant. The prosecution windup its account and the learned trial Court confronted the accused with the evidence so furnished against him during the trial through a questionnaire & examined u/s 342 Cr.P.C. However, the accused neither wish to be examined on oath u/s 340 Cr.P.C nor opted to furnish defence, however, professed to be innocent.

5. In view of the assistance so rendered by the learned prosecutor and learned defence counsel, the learned trial Court arrived at the conclusion that the prosecution has successfully bring home charge against the accused, as such, the appellant/accused was convicted & sentenced to: -

(a) u/s 387 PPC for 05 years RI with fine of Rs:

20,000/- or 20 days SI in default.

(b) u/s 7 (h) ATA, 1997 convicted & sentenced for

05 years RI with fine in the sum of Rs: 20,000/- or

20 days SI in default.

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(c) U/s 419 PPC convicted & sentenced for 03 years with fine of Rs: 10,000/- or 10 days SI in default of payment of fine.

(d) u/s 506 PPC convicted & sentenced for 02 years with fine of Rs:5000/- or 08 days SI in default of payment of fine.

(e) U/s 25-D Telegraph Act, 1885 convicted & sentenced to one (01) years with fine of Rs:5000/- or 08 days SI in default of payment of fine.

However, benefit of 382-B Cr.P.C was extended to the appellant with remarks that the subject sentences shall run concurrently.

6. Arguments heard and record gone through.

7. Admittedly, the case of the prosecution against the appellant/accused pertaining to demand of **Donation** (Bhatta) allegedly, find its origin from the cell phone (0304-9267787) calls by the appellant/accused to the complainant/victim on his cell phone #0345-9099820. Close perusal of the cell phone data Exh.PW4/7 would transpire about the fact pertaining to a cell phone call from cell # 0345-9099820 dated 30.03.2021 at 21:07.02 hours. The record prima facie falsify the allegations of the complainant/respondent pertaining to the threat calls

for the simple reason that only a single call from the alleged cell number of the accused/appellant to the cell number of the complainant/respondent is floating on surface of the record.

8. During the investigation an iota of evidence has not been collected at all which could prima facie speak of the fact that sim having its registration No.0304-9267787 is in the name of the appellant/accused. The Court is conscious enough that the subject sim number may be registered in the name of the appellant/accused but it shall not skip the attention of the Court that record of call data Exh.PW4/8 so furnished only speak of the cellular connectivity of the appellant/accused and respondent/complainant only on 30.03.2021, whereas, the event has been reported to the local police on 08.04.2021 followed by registration of the case vide FIR No.11 dated 08.04.2021. On record, no plausible excuse or explanation regarding the delay of almost eight (08) days despite the fact that the accused was allegedly conscious enough that the subject threatening calls for "Bhatta" was received more than a week ago and it left behind wider scope of consultation & deliberation may amount to guilty conscious on his part. No doubt, PW-2 Yar Gul also

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spoke about the call for donation/chanda/Bhatta but has not disclosed the name of the caller.

9. There is no denial to the factum that not only the complainant/respondent but even the supporting witness have categorically highlighted in their respective accounts that the calls in question were for contribution of funds for the welfare of the unattended segment of the society, orphans widows etc.

10. Apart from the above, the complainant allegedly received not multiple rather numerous calls of the appellant/accused and it is Gospel Truth that the Cellular Phone does have the option of recording the conversation with the incoming caller. The allegations of the respondent/complainant pertain to numerous calls on part of the appellant/accused since March, 2021 till October, 2021, on this count he had a long breathing space and could have the option to avail due assistance from a person well conversant with the function of cellular phone so that the alleged threats attributed to the accused/appellant could have been recorded. Not to do so, it prima facie speak of the fact that the allegations of the complainant/respondent are tinted with doubt.

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11. An iota of evidence has not been led by the prosecution to prove any link/nexus of the appellant/accused with a commission of offence.

12. The evidence led by the prosecution is suffering from material contradictions and discrepancies which make the prosecution case highly doubtful, and, benefit of the same should have been extended to the appellant, but the learned trial Court by not appreciating the evidence in its true perspective, reached to a wrong conclusion by holding the appellant guilty of the offence. It has been held, umpteenth times by the superior courts, that a slightest doubt occurs in the prosecution case is sufficient to grant acquittal to an accused "*Muhammad Akram Vs. State (2009 SCMR 230) Khalid Mahmood vs. State (2011 SCMR 664), Tahir Khan Vs. State (2011 SCMR 646), Nazim Khan Vs. State (1984 PLD SC 433), Farman Ahmad Vs. Muhammad Inayat (2007 SCMR 1825)*". The conclusions drawn by the learned trial Court are not borne out of the case evidence therefore, the impugned judgment is not sustainable in the eye of law.

13. Accordingly, for the forgoing reasons, the appeal is allowed. Conviction and sentences of the appellant recorded by the learned trial Court through

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impugned judgment is hereby set-aside and the appellant is acquitted of the charges leveled against him. He be set at liberty forthwith, if not required to be detained in any other case.

**Announced:**  
**28.07.2022**

  
**JUDGE**

  
**JUDGE**

Nadir SSS.

DB Hon'ble Mr. Justice Lal Jan Khattak & Hon'ble Mr. Justice Shahid Khan.