

**JUDGMENT SHEET**

**IN THE PESHAWAR HIGH COURT,  
MINGORA BENCH (DAR-UL-QAZA), SWAT  
(Judicial Department)**

- i. Criminal Appeal No. 220-M/2015  
Daulat Khan V/S The State & 1 another**
- ii. Criminal Appeal No. 240-M/2015  
The State V/S Dawlat Khan**
- iii. Criminal Appeal No. 241-M/2015  
The State V/S Bakhtiyar & others**

**CONSOLIDATED  
JUDGMENT**

Date of hearing: 06.02.2018

**Appellant:- (Daulat Khan) by Mr. Salim Zada Khan,**  
**Advocate.**

**Respondents:- (The State & 1 another) by Mr.**  
**Rahim Shah, Astt: Advocate General and Mr.**  
**Ubaidullah Khan, Advocate appearing on behalf of**  
**the acquitted accused/Respondents.**

**MOHAMMAD IBRAHIM KHAN, J.-** Arisen from the occurrence reported in case FIR No. 06 dated 27.12.2014 under sections 387,506,34 PPC read with 7 ATA registered at Police Station CTD Malakand Region Swat, in case No. 09/8 of 2015, the trial was held before the Court of learned Judge Anti-Terrorism Courts Malakand Division at Swat. The accused/Appellant Daulat Khan has preferred this Criminal Appeal bearing No. 220-M/2015 challenging his conviction as recorded under different sections of law in the following manner:-

- *U/S 506 PPC to 2 years RI.*
- *U/S 387 PPC to 5 years RI and to pay Rs. 10,000/- as fine or in default thereof shall further undergo 5 months SI.*
- *U/S 7 (h) of Anti-Terrorism Act 1997 to 6 years RI*
- *All the sentences shall run concurrently, however, benefit of section 382 (B) Cr.P.C was extended to the accused/Appellant.*

2. The co-accused Bakhtyar, Noor-ul-Wahab and Malik Quowat Khan upon their acquittal, the State has preferred Criminal Appeal bearing No. 241-M/2015 under section 25 of the Anti-Terrorism Act, 1997 read with Para 10 (8) of the Sharia Nizam-e-Adl Regulation 2009 calling for setting aside the judgment and to be rendered conviction upon passing of an appropriate sentence.


3. The State has also preferred Criminal Appeal bearing No. 240-M/2015 against the convicted accused/Respondent Daulat Khan for the purpose of enhancement of his sentence to life imprisonment which would be more appropriate keeping the offence being graver in nature. Hence, all these connected criminal appeals are taken up for each disposal through this singled-out judgment.

4. The set of four (4) accused Daulat Khan, Bakhtiyar, Noor-ul-Wahab and Malak Quowat Khan

were jointly charge-sheeted to the effect that they had issued threats and criminally intimidated the complainant Shafiq-ur-Rahman through mobile phone bearing No. 0311-4264111 sharing their common intention received by the complainant on his mobile phone No. 0343-9442024 on 26.12.2014 at evening time and on 27.12.2014 at an unknown time as the complainant was present in his house. There was a demand of extortion of Rs. 300,000/- as 'Bahatta' with the extended threats to the complainant of dire consequences. Besides the charge runs that when the demand of extortion of Rs. 300,000/- as 'Bhatta' was made from the complainant, he was placed in fear of death and grievous hurt in order to commit the offence of extortion and at all these accused are stated to have shared their common intention while calling the complainant on his mobile phone number and making a demand of Rs. 300,000/- as 'Bhatta'. This act of these accused created a sense of fear, terror and insecurity amongst the society. Therefore, besides ordinary sections of law mainly the prosecution built up its case under section 7 ATA read with section 34 of the Pakistan Penal Code.

5. All the set of four (4) accused did not plead each guilt and claimed trial, thereby in order to bring charges the prosecution examined Khiyal Said SI as PW-1, Kifayatullah Constable bearing No.1155 as PW-2, Fazal Hussain as PW-3, Farmanullah Constable No. 1160 as PW-4, the complainant of this case Shafiq-ur-Rahman as PW-5, Hayat Ali Shah SHO as PW-6, Najeebullah Constable No. 1565 as PW-7, Ghani-ur-Rahman SHO as PW-8, Said-ul-Amin Inspector as PW-8, Jouhar Rahman SI as PW-9 and under the statement of Mr. Arif Bilal Senior Public Prosecutor evidence of the prosecution was closed.

6. Thereafter, each of accused was examined under section 342 of the Code of Criminal Procedure, they posed innocence and stated to have falsely been implicated in the case. They neither wished to produce defence nor to examine themselves on oath as required under section 340(2),

 Cr.P.C.

7. After hearing the parties at length, the decision under conviction for the sentences was delivered in respect of accused/Appellant Daulat Khan, whereas the co-accused Bakhtiyar, Noor-ul-

Wahab and Malak Quowat Khan were acquitted through the same impugned judgment, hence, these connected matters.

8. Having heard arguments of learned counsel for the convict/Appellant Daulat Khan, learned counsel for the acquitted accused/Respondents and learned Asstt: Advocate General appearing on behalf of the State, the requisitioned record delved deep into with their valuable assistance.

9. At first instance, learned counsel for the accused/Appellant Daulat Khan on his own produced the complainant of this case by the name of Shafiq-ur-Rahman, who is present before the Court and states that he has effected compromise with the accused/Appellant Daulat Khan and is no more interested in his prosecution. Consequent to the plea of compromise, learned counsel for the accused/Appellant referred to 2015 P Cr. LJ 1142

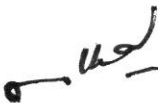
8-160- (Peshawar) "Hazir Zaman V/S Bakht Zaman and 2 others".2006 MLD 1288 (Lahore) "Hafiz Muhammad Aslam V/S The State", PLJ 2012 SC 616 (Appellate Jurisdiction) "Muhammad Murad V/S State", 2017 YLR 279 (Lahore) "Ali Raza

alias Kalo and another V/S The State and another”2016 SCMR 1190 “ Irfan and another V/S Muhammad Yousaf and another”, PLJ 2013 Cr.C (Lahore) 926 (Multan Bench Multan) “ Muhammad Awais V/S The State”2017 P Cr.LJ (Peshawar) 992 “ Atta Ullah V/S The State and another”, 2015 YLR 1210 (Supreme Appellate Court Gilgit-Baltistan) “ Arif-ud-Din V/S The State, 2004 P Cr.LJ 736 (Karachi) “ Rana Dil Muhammad V/S The State”, 2003 SCMR 663 “ Ghulam Shabbir and 2 others V/S The State”, 2004 P Cr.LJ 736 (Karachi) “ Rana Dil Muhammad V/S The State” and PLD 2007 Quetta 12 “ The State and others V/S Asmatullah and others”.


In many cases like receiving ‘Bhatta’ the accused are dangerous as when their demand is not met, they materialize the threats being extended of the dire consequences and by placing the persons under the fear of death from whom the ‘Bhatta’ has not been received. The goal is certainly accomplished upon the damage being caused but when such an accused is entangled and has been prosecuted accordingly he then exerts pressure upon the complainant to enter into compromise as to save his

own skin from conviction. Obviously, conviction in such cases is very harsh as there are no remissions and the act is of terrorism, such like accused is declared as terrorist.

10. All the judgments which have been referred to as above, there is no ancillary judgment for to patch up the matter under compromise in between the parties when the offences are covered under the Anti-Terrorism Laws. Therefore, we are constrained to consider this aspect of compromise in between the complainant and the accused/Appellant Daulat Khan as it is feared that such like compromise may be on account of coercion and exertion of pressure upon the complainant.

11. Looking forward for the prosecution evidence, the statement of the complainant Shafiq-ur-Rahman PW-5 coupled statement of PW-6 Hayat Ali Shah SHO PS Charbagh and PW-8 statement of Ghani-ur-Rahman SHO PS CTD have been brought  in as when the complainant had received telephonic call for the demand of 'Bhatta' amount of Rs. 300,000/-. The said amount of Rs. 300,000/- were arranged and it was placed near the wall of the school and after short time the accused Daulat Khan

came there and when he was picking up the money the police apprehended him. At that time the said accused had muffled his face with '*Chadar*' (چادر) which was removed by the police and he disclosed his name as Daulat Khan. The Station House Officer recovered the extortion amount of '*Bhatta*' which had been placed near the wall on the accused prior direction. This statement of the complainant clearly finds in consonance with the statement of PW-6 Hayat Ali Shah SHO that the caller demanded Rs. 300,000/- as '*Bhatta*' had come to the place near the wall of the school from where the amount was picked up by him and he was about to run when apprehended by the police officials. After disclosure of his name as Daulat Khan the amount of '*Bhatta*' was recovered from his direct possession. The amount of Rs. 300,000/- comprised of currency notes of one thousand denomination and later after recovery it were signed by the Station House Officer Hayat Ali Shah. Consequently PW-7 Constable

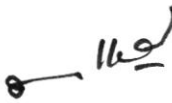
8-  Najeebullah has also narrated the same version. The police officials were standing at a distance 2/3 paces from each other and they were visible to one another but not to the accused/Appellant Daulat Khan and



when the time he picked up the amount he was apprehended by the Station House Officer. The next police official is PW-8 Ghani-ur-Rahman SHO who is also a responsible police official, he has narrated word by word the same occurrence. Thereby when an accused is apprehended on the spot and the recovery has been effected from his person of the 'Bhatta' amount which too an amount of Rs. 3 lacs then there is very less hope for to believe the innocence of such accused and rather hard to disbelieve the police officials against whom there is no allegation of any *malafide* or for any other reason that they have apprehended the accused/Appellant with ulterior motive except that he was caught red-handed with the 'Bhatta' amount and had come to the place for to collect the said amount.

12. Whereas the judgment of the Hon'ble Peshawar High Court reported as 2017 P Cr.LJ 992

(Peshawar) "Atta Ullah V/S The State and

another" there is reference to that in the case  extortion of money, the appreciation of the evidence is required and when there are allegations of demand of extortion of money and threatening calls to the complainant, which ought to have been proved. It

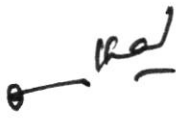
is necessary to establish the ownership of the mobile phone allegedly shown to be of the complainant. When the recovery of similar mobile phone recovered from the possession of accused had not been proved through the recovery memo and there is no record of the concerned network company which has been produced by the prosecution then for the circumstances creating doubt the veracity of the prosecution case has to be resolved in favour of the accused. It's true that the prosecution was bound to prove its case accordingly but where the accused/Appellant Daulat Khan has been directly apprehended by the police when he picked the amount of 'Bhatta' of Rs. 300,000/- from the place near the wall of the school which scene has been witnessed by all those police officials and there veracity has never been shattered. Then the record of the mobile phone is never the consideration for proving the guilt of the accused.

13.

We, accordingly under the prayer as set up in this criminal appeal hereby decrease the sentence of the accused/Appellant Daulat Khan from 6 years rigorous imprisonment awarded under section 7 (h) of the Anti-Terrorism Act 1997 to 5 years RI.

However, the accused/Appellant is extended the benefit of section 382-B Cr.P.C. He upon serving rest of his sentences shall then be released from Jail if not required in any other case. The Jail Authorities be informed accordingly from this new development with regard to decrease of the sentence of accused/Appellant as referred to above. The criminal appeal preferred by the accused/Appellant is answered accordingly.

14. Whereas the judgment of learned Anti-Terrorism Court with regard acquittal of the co-accused Bakhtiyar, Noor-ul-Wahab and Malak Quowat Khan all the considerable points for determination, the prosecution has badly failed to bring home the charges against each of them would besides be more plausible to uphold the judgment for reason that here is no appropriate evidence as none of these accused have been neither arrested from the place from where the co-accused/Appellant Daulat Khan had picked up the '*Bhatta*' amount nor their names are find mentioned in the '*Murasila*' followed by lodging of the First Information Report. Even any other evidence linked them under chain of such like grievous charges against each of them, the statement

of the complainant Shafiq-ur-Rahman recorded as PW-5 is of paramount importance in this behalf, wherein under an admission during his cross-examination this PW stated that it is correct that the accused namely Noor-ul-Wahab, Qowat Khan and Bakhtiar had not contacted him during that period regarding the threats and '*Bhatta*' amount and further deposed that he could not recognize the voice of the culprits amongst anyone of these accused. Even otherwise, the case of these acquitted accused/Respondents is quite distinguishable from that co-accused/Appellant Daulat Khan as against each of them there is no direct or ocular evidence in field except mere oral assertion of the co-accused which too has not been proved by the prosecution during the course of trial coupled with the fact that these accused though remained in police custody for sufficient length of time but there is no confession  nor any incriminating recoveries on their part. Thus, they have been rightly extended the benefit of doubt by the learned Trial Court through the impugned judgment, which to their extent calls for no interference by this Court being perfect on all counts.

15. Even otherwise, it is the duty of the prosecution to prove its case beyond any shadow of doubt and now it has been settled by the Hon'ble Apex Court that a single circumstance creating reasonable doubt is sufficient for acquittal of the accused and if any single and slightest doubt is created, its benefit must go to the accused, so, the learned Trial court has rightly extended the benefit of doubt to these accused on valid and cogent reasons based on proper appreciation of evidence and their acquittal does not call for any interference by this Court. Moreover, criterion of appraisal of evidence in an appeal against acquittal is quite different than an appeal against conviction, because in case of acquittal double presumption of innocence lies in favour of the accused. Even if another view is possible, the view favourable to the accused is to be preferred. Reliance in this regard can be placed on the case of Muhammad Iqbal vs. Abid Hussain alias Mithu and 6 others, 1994 SCMR 1928.

Learned Astt: Advocate General appearing on behalf of the State failed to point out any misreading or non-reading of the evidence on record and on the contrary the evidence was appreciated and assessed

on the settled principles of law by the learned Trial Court to the extent of these acquitted accused/Respondents.

**16.** In view of the above observations, the appeal against acquittal preferred by the State bearing No. 241-M of 2015 being shorn of merits stands dismissed. Likewise, another criminal appeal bearing No. 240-M/2015 filed by the State for enhancement of the conviction and sentences awarded to the accused/Respondent Daulat Khan is hereby dismissed having become infructuous.

Announced.  
Dt: 06.02.2018

  
**JUDGE**

  
**JUDGE**

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