

Judgment Sheet

**IN THE PESHAWAR HIGH
COURT, PESHAWAR**

(Judicial Department)

**Cr.A No.164-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

SHAHID KHAN, J- The appellant (Zahid Khan)

has challenged the judgment of learned Special Judge,
Anti-Terrorism Court-I, Peshawar, dated 14.02.2022
delivered in case FIR No.10 dated 06.04.2021 U/Ss
387, 506, 419,34 PPC, 25 Telegraph Act, 14
Foreigners Act, 1946 r/w 7 (h) of the ATA, 1997, P.S
CTD (Peshawar), whereby, his co-accomplice
Alamzeb was acquitted and 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.*
- (vi) *U/s 14 Foreign Act, 1946, the appellant/accused was acquitted.*

The sentences were directed to run concurrently, however, benefit of Section 382-B Cr.P.C was extended to the appellant.

8/5/21

2. It has been alleged, Sher Ahmad, complainant through his written endorsement sent to the local police, reduced into writing in Daily Diary No.5 dated 30.03.2021 to the effect that threat calls from a cell phone # 0333-9279797 on his cell phone # 0311-9404448 for demand of **donation** for orphans and widows in the garb of Tehrik-e-Taliban prescribed organization. He was asked to co-operate and directed to come to "Chaknawar". The event was reduced into in writing in the shape of Murasila followed by

registration of the even vide FIR No.10 dated 06.04.2021 U/Ss 387, 506, 419,34 PPC, 25 Telegraph Act, 14 Foreigners Act, 1946 r/w 7 (h) of the ATA, 1997, P.S CTD (Peshawar) against the accused.

3. Arrest of the Accused/appellant has been procured on 12.04.2021.

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 fourteen 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.

87.5

- (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.
- (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.
- (f) U/s 14 Foreign Act, 1946, the appellant/accused was acquitted.



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. True enough, the prosecution's case against the appellant/accused pertaining to demand of **Donation (Bhatta)**, criminal intimidation, cheating etc, however, based/foundation of the prosecution case is, are cell phones calls from cell phone # 0333-

9279797 to the complainant's cell phone # 0311-9404448.

8. The evidence so collected during the investigation could not substantiate that sim registered through its number 0333-9279797 is in the name of the appellant/accused. Other than it, cogent and reliable evidence is missing which could prima facie speak loud & clear that the accused facing trial was well connected through the subject cell number either with his family members or his other nearer & dearer so that it could prima facie be observed that the appellant/accused being clever & crook enough not to avail the subject cell number in his name rather through a proxy. 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 so furnished only speak of the cellular connectivity of the appellant/accused and respondent/complainant but it is hard fact that the demand/request in respect of the proposed collection was for the welfare of the orphans and widows. An iota of evidence has neither been collected during the investigation nor furnished during the trial which could prima facie speak of the fact that in-fact the subject collection was **Bhatta**



amount or extortion but to avoid any penal consequences it was posed as donation for the orphans & widows.

9. Close perusal of the evidence so furnished during the trial would transpire that Yar Gul, PW-4 has very fairly conceded that no threat calls through cellular phone has ever been received by him. Likewise, he expressed his ignorance regarding the name of the caller nor any sort of threat. It has also been admitted that he has never furnished any application to the local police in respect of the subject threat calls and *Bhatta*. He denied the suggestion regarding the complaint/Mad attributed to him to had been written against accused Alamzeb. He has very fairly conceded that no threat calls were given to him by the caller/appellant-accused.

10. Similarly, the account of complainant/star witness of the prosecution, Sher Ahmad as PW-6 speak loud & clear that the application and complaint was drafted by Muharrir of the Police Post, Akhun Abad. He did disclose regarding the receipt of the threatening call, however, he very fairly conceded in his examination-in-cross that he had never ever mentioned the name of the appellant/accused either in the application nor in his

examination-in-chief recorded during the trial. He disclosed that on his visit to the police station to approach the local police through an application for redressal, a police official, namely Imtiaz who checked through software his cell phone in respect of the threatening calls and highlighted that the cell number with respect to the threatening call is in the name of Zahid r/o Akhun Abad No.4 Peshawar.

11. Deep analysis of the evidence so furnished, particularly, account of Sher Ahmad as PW-6 and Yar Gul PW-4, star witnesses of the prosecution would transpire that the subject witnesses have never ever attributed the alleged threatening calls to the accused Zahid and expressed their ignorance regarding the alleged threat calls.

12. It is floating fact on surface of the record that during the trial the star witnesses have repeatedly disclosed the demand with respect to the event in hand from the caller was with regard to donation for the welfare of orphans and widows and nothing as such has been highlighted which could give a slight presumption of Bhatta amounts to extortion.

13. In the circumstances where the complainant in his account has very fairly conceded that he has not disclosed the name of Zahid, the

accused facing trial during the investigation to the I.O and his account not only falsify the allegations of demand of Bhatta by the appellant-accused, whereas, the subject demand has been conceded as donation for the welfare of the suppressed class of the society, it would be unfair to connect the accused Zahid with the allegation of extortion/Bhatta.

14. 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.

15. 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.

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