

CERTIFICATE OF THE COURT IN REGARD TO REPORTING

Sp. A. T. Jail A. 137/2017

M. Schail Brothers vs. The State


HIGH COURT OF SINDH

Composition of Bench: S. B./D. B.

Mr. Justice Mohammad Karim Khan Agha,
Mr. Justice Zulfikar Ali Soofi

Date(s) of Hearing: 1-11-19

Decide on: 19-11-2019

(a) Judgment approved for reporting: Yes 

CERTIFICATE

Certified that the judgment*/order is based upon or enunciates a principle of law */ decides a question of law which is of first impression / distinguishes / overrules / reverses / explains a previous decision.

* Strike out whichever is not applicable.

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- NOTE:
- (i) This slip is only to be used when some action is to be taken.
 - (ii) If the slip is used, the Reader must attach it to the top of the first page of the judgment.
 - (iii) Reader must ask the Judge writing the Judgment whether the Judgment is approved for reporting.
 - (iv) Those directions which are not to be used should be deleted.

IN THE HIGH COURT OF SINDH
AT KARACHI.

SPL. ATA Jail appeal No. /2017
137

Appellants,

Mohammed Sohail s/o Mujeeb Saad,

Jamshed s/o Muhammad Jamil

Peer Muhammad s/o Mujeeb Saad

They all are adult, muslim
in prison in central prison

State - - - - - Appellants/ Accused

State - - - - - Respondent

SPL Case No. 16/2014

AR No. 239/2013

u/s 365-A/34 PPC

r/w Section 7 ATA Act
1997

P.S. J. Kihal Town (Avec)

Under section 25(2) of Anti Terrorism
1997 appeal in time to submitted kindly
and approve with sympathetic
consideration

Respectfully

approved and desisted of the impugned
order on 23rd April 2017 by the ATC Court
Karachi, where the learned Trial Court
sentenced each of them R.I. for
involvement with the benefit of
35-B Cr.P.C. to extended to each
accused/appellants. I.C. from the
2 = 23

IN THE HIGH COURT OF SINDH AT KARACHI

Spl. Criminal A.T. Jail Appeal No.137 of 2017

Present:

Mr. Justice Mohammad Karim Khan Agha
Mr. Justice Zulfiqar Ali Sangi.

Appellants: 1. Muhammad Sohail S/o. Mujeeb Saad,
2. Jamshed S/o. Muhammad Jameel,
3. Peer Mohammad S/o. Mujeeb Saad
through Mr. Mohammad Hussain Shah,
Advocate.

For State: Mr. Muhammad Iqbal Awan, Deputy
Prosecutor General.

Date of hearing: 07.11.2019

Date of announcement: 19.11.2019

J U D G M E N T

Mohammad Karim Khan Agha, J.- Appellants Mohammad Sohail S/o. Mujeeb Saad, Jamshed S/o. Muhammad Jameel and Peer Mohammad S/o. Mujeeb Saad have preferred this Criminal Anti-Terrorism Jail Appeal against the impugned judgment dated 29.04.2017 passed by the learned Anti-Terrorism Court No.V, Karachi in Special Case 16 of 2014, F.I.R. No.239 of 2013 u/s. 365-A/34 PPC read with section 7 of ATA 1997 registered at P.S. Ittehad Town, Karachi whereby all the appellants have been convicted and sentenced to R.I. for life. However, the benefit of section 382-B Cr.PC was extended to the appellants.

2. The brief facts of the prosecution case are that on 27.07.2013 at about 2130 hours complainant Farooq Ahmed son of Haji Jan reported at Police Station Ittehad Town that he was running his Pan Shop at Sector 11½ Sadiqabad Orangi Town Karachi whilst his son Fayyaz aged about 25 years was a private Medical Representative. That one of the mohalla residents Rashid Ansari told him that he and Fayyaz were coming on their motorcycles from Murshid Hospital Orangi Town towards their house at about 1645 hours when they reached near Abu Huraira Madressah Ittehad town three persons who were on one motorcycle stopped Fayyaz whilst the said Rashid Ansari due to fear stayed back when these three persons

kidnapped Fayyaz along with his motorcycle KCC-4414. On this information the complainant made a phone call to Fayyaz on his mobile phone but his number was not responding. The FIR was registered u/s 365/34 PPC and the investigation was assigned to SIO/SIP Anwar Hussain who on 28.7.2013 inspected the place of incident and recorded the statement of witnesses. When the complainant received a call for ransom the investigation was transferred to AVCC. Inspector Sajid Ali of AVCC while patrolling in the area was informed by complainant that the culprits of his case crime No.239/2013 had called him with Rs.2 lacs demand near graveyard Ittehad Town. Since the Investigating Officer of that crime Khan Tariq was not present hence this Inspector was directed to take action who along with his police party and CPLC members who were picked up on the way contacted the complainant who told him that he had no such amount with him but even then he directed the complainant to call the culprits in order to hand over the ransom amount. The complainant stood at Bus Stop D-7 and the members of the CPLC and police hide there. At about 0215 hours two persons arrived and demanded money from complainant but the police party caught both of them who disclosed their names as Mohammad Sohail son of Mujeeb Saad and Jamshed son of Mohammad Jameel. They were searched and from Sohail one mobile phone Nokia and cash Rs.70/- was recovered. The complainant recognized the said mobile which was of his son. From Jamshed Rs.110/- was recovered and the Inspector arrested the accused under mashirnama on the spot. He made interrogation from the accused at the spot and both volunteered to point out the place where the abductee was being held. The accused led the police party to a house situated near a hill after passing the graveyard of Ittehad Town. The police party surrounded that house and entered therein. In the courtyard of that house one person was sleeping on a cot, he was apprehended and disclosed his name as Peer Mohammad son of Mujeeb Saad who was searched and Rs.120/- was recovered from him. In a room in the house one person was found tied to a cot who was released and disclosed his name as Mohammad Fayyaz. One motorcycle bearing NO KCC-4414 was standing in the room which Mohammad Fayyaz had been riding. The Inspector arrested Peer Mohammad and thereafter handed over the accused, mashirnamas and property to Investigating Officer Khan Tariq. On 01.08.2013 the said Inspector Khan Tariq inspected the place of incident.

During interrogation he came to know that actual name of Mohammad Sohail son of Mujeeb Saad was Mohammad Shahid son of Mujeeb then on completion of investigation he submitted the challan before the trial court.

3. The charge was framed against all three accused to which all the accused plead not guilty and claimed trial.

4. The prosecution to prove the charge examined 07 PW's who exhibited various documents and other items in support of the prosecution case where after the prosecution closed its side. The appellants/accused persons recorded their statements under section 342 Cr.PC claiming false implication by the police as they refused to pay them a bribe and that they were not arrested from the spot but elsewhere. None of the accused however either examined themselves on oath nor called any witness in support of their respective defense case.

5. Learned Judge Anti-Terrorism Court No.V, Karachi Division after hearing the learned counsel for the parties and assessment of evidence available on record, vide the impugned judgment dated 29.04.2017, convicted and sentenced the appellants as stated above, hence this appeal has been filed by each appellant against his conviction.

6. The facts of the case as well as evidence produced before the trial court find an elaborate mention in the impugned judgment, therefore, the same are not reproduced here so as to avoid duplication and unnecessary repetition.

7. Mr. Muhammad Hussain Shah, learned counsel for the appellants has contended that the eye witnesses were put up witnesses; that the appellants had been fixed by the police for not paying them a bribe which they had demanded; that all the witnesses were interested and as such could not be relied upon; that the requirements of S.103 Cr.PC had not been made; that the abductee's motor bike was not produced before the court and that for any one of the above reasons all the appellants were entitled to be acquitted of the charge based on the benefit of the doubt being extended to them. He did not rely on any case law in support of his contentions.

8. On the other hand learned DPG for the State has fully supported the impugned judgment which according to him did not require interference as the prosecution had proved its case against all the appellants through cogent and reliable evidence beyond a reasonable doubt. In particular he pointed to the reliability of the PW's; that the two of the appellants (Sohail and Jamshed) were arrested from the spot whilst coming to collect the ransom demand; that the abductee's mobile phone was recovered from Sohail; that both the appellants had voluntarily taken the police and the complainant to a house where the abductee was found tied to a cot whilst being guarded by appellant Peer Mohammad; that the motorbike of the abductee had also been recovered from the place where he was being held captive and as such the appeals should be dismissed in respect of each appellant. In support of his contentions he placed reliance on **State V Farman Hussain** (PLD 1995 SC 1) and **Junaid Rehman V The State** (PLD 2011 SC 1135)

9. We have heard the arguments of the learned counsel for the parties, gone through the entire evidence which has been read out by the appellants and the impugned judgment with their able assistance and have considered the relevant law including that cited at the bar.

10. We have come to the conclusion based on our reassessment of the evidence on record that the prosecution has been able to prove its case against each of the appellants beyond a reasonable doubt for the following reasons;

(a) That the FIR has been lodged by the complainant without any unreasonable delay in a case of kidnapping for ransom and as such there was no time to concoct a false case.

(b) That the eye witness PW 3 Muhammed Rashid who saw the abductee PW 6 Fayyaz Ahmed being kidnapped by the appellants was **not** a chance witness as he was working in the same company as the abductee Hilton Co. and thus as they lived in the same area there was every reason for them to be traveling on motor bikes near each other when the kidnapping took place whilst they were on their way home. His evidence about the kidnapping was relayed timely to the complainant which is reproduced by the complainant in his evidence. He did not give any hulia or description of the appellants because he was too far away (35/40 metres) hence the FIR lodged by the complainant father does also not give any huila or description of the appellants as it was based on the evidence provided to him by this eye witness PW who saw the appellants abducting the accused by force by motorbike. His evidence

regarding the kidnapping is also corroborated by PW 6 Ahmed Fayyaz the abductee who was later recovered by the police. He has no enmity with the appellants and had no reason to falsely implicate them. He was unscathed during cross examination and as such we believe his evidence that the abductee was kidnapped by the appellants whilst he was traveling on motor bike coming from Ittehad town since it is reliable, trustworthy and confidence inspiring

(c) That the complainant PW 1 Muhammed Farooq corroborates the evidence of PW 3 Muhammed Rashid as to how he came to know of the kidnapping and the lodging of the FIR. That while agreeing to pay the ransom to the appellants in consultation with the police and the CPLC he was present when the police arrested the appellants on the spot at the time when he was meant to pay the ransom to the appellants. Thus, since the appellants Sohail and Jamshed were arrested on the spot the question of wrongful identification does not arise. His son's mobile which had been used to make the ransom demand was also recovered from the appellant Sohail in his presence which corroborates the ransom calls as per evidence of his son PW 6 Ahmed Fayyaz the abductee who was later recovered by the police in the presence of the complainant. The complainant did not know the appellants Sohail and Jamshed and had no reason to falsely implicate them in this case.

(d) That PW 5 Sajjad Ali who was inspector at the AVCC who arranged with the complainant the plan to pay the ransom and then he would arrest the appellants if they arrived also had reliable people from the CPLC with him. His evidence is fully corroborated by the complainant PW 1 Muhammed Farooq regarding the events leading up to the arrest of the appellants Sohail and Jamshed when they were demanding the ransom from the complainant. He also arrested both of them on the spot and recovered the complainant's son's mobile from appellant Sohail. He had no enmity with the appellants Sohail and Jamshed and no reason to falsely implicate them in this case. It is now well settled that police witnesses are as reliable as any other witness provided that no ill will, malafide or personal interest is alleged against them and none was in this case. In this respect reliance is placed on **Riaz Ahmad V State** (2004 SCMR 988), **Zafar V State** (2008 SCMR 1254) and **Abbas V State** (2008 SCMR 108)

(e) That **immediately** on their arrest appellants Sohail and Jamshed admitted the kidnapping and **straight away** took the police and the complainant to the house where the abductee was being held and where the abductee was recovered from. On such short notice it was neither possible for either the police or the complainant to know where the abductee was being held and **thus in our view the appellants Sohail and Jamshed immediately taking them to the place where the abductee was being held on their pointation is important evidence against them.**

(f) At the house where appellants Sohail and Jamshed took the police appellant Peer Muhammed was found guarding the abductee and was arrested on the spot. The abductee was

recovered from the house who whilst giving evidence corroborates the ransom demands made by the appellants through his phone. PW 6 Ahmed Fayyaz the abductee concerning his recovery and release from his illegal confinement also corroborates the complainant PW 1 Muhammed Farooq and PW 5 Sajjad Ali. Again the abductee had no enmity with the appellants and had no reason to falsely implicate them in this case.

(g) That when the appellants Sohail and Jamshed are arrested on the spot by the police attempting to receive the ransom demand from the complainant when they immediately disclose that they will take the police to the place where the abductee is being held captive it is only natural that the complainant being the father of the abductee would accompany the police to the house where his son was allegedly being held for ransom. Thus, the complainants presence at the time of the recovery of his abducted son is based on natural human conduct and is thus both fully explainable and understandable.

(h) As per Mashirman of arrest and recovery the bike driven by the abductee at the time of his abduction was found at the place where he was being held captive even if it was not produced in court which fully fits in with the prosecution case. That the rope used to tie the abductee was also recovered from where he was being held captive.

(i) It is true that the complainant and the abductee are interested witnesses being related to each other (father and son) but this is quite common in kidnap for ransoms cases and it is well settled by now that just because the PW's are related this is no reason to disregard their evidence especially where no enmity, ill will or personal interest has been shown to exist between the appellants and the interested witnesses. In this respect reliance is placed on **Junaid Rehman's case** (Supra)

(j) That there are no major contradictions in the evidence of the PW's of any materiality such as to throw any doubt on the prosecution case. It is also well settled by now that minor contradictions in the prosecution case will not be of any significance. In this respect reliance is placed on **Zakir Khan V State** (1995 SCMR 1793). In fact we find that the prosecution evidence is consistent in all material respects and fully supports the prosecution case from start to finish by an unbroken chain of evidence linking the appellants to the kidnapping of the abductee to the recovery of the abductee.

(k) In short we find that the evidence of all the key PW's namely PW 1 Muhammed Farooq, PW 3 Muhammed Rashid, PW 5 Sajjad Ali and PW 6 Ahmed Fayyaz the abductee to all be reliable, trust worthy and confidence inspiring none of whom were damaged during cross examination whose evidence we believe and which is corroborated by the abductee being recovered on the pointation of the appellants Sohail and Jamshed when the other PW's could have no possible idea where the abductee was being held captive, the recovered motor bike which was being driven by the abductee at

the time of his abduction and the recovered rope which was used to tie the abductee to the cot. In this respect reliance is placed on **Muhammad Ehsan v. The State** (2006 SCMR 1857).

11. Thus, since for the reasons discussed above we have found that the prosecution has been able to prove its case against each of the appellants beyond a reasonable doubt the appeals are dismissed in respect of each of the appellants and the impugned judgment is upheld along with its conviction and sentences in respect of each of the appellants which are maintained.

12. The appeals are disposed of in the above terms.

Amf