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IN THE HIGH COURT OF SINDH, KARACHI

Present:
Mr. Justice Mohammad Karim Khan Agha
Mr. Justice Amjad Ali Bohio

Special Criminal A.T.J.A. No.62 of 2022

Appellants:	1. Umer Farooq S/o. Maqbool Ahmed, 2. Muhammad Dilshad S/o. Muhammad Yaar through M/s. Liaquat Hussain and Owais Sheikh, Advocates.
Respondent/The State:	Through Mr. Muhammad Iqbal Awan, Additional Prosecutor General, Sindh
Date of hearing:	25.08.2023.
Date of Judgment:	05.09.2023.

JUDGMENT

MOHAMMAD KARIM KHAN AGHA, J:- The Appellants Umar Farooq S/o. Maqbool Ahmed and Muhammad Dilshad S/o. Muhammad Yaar have filed this appeal against the judgment passed by the Anti-Terrorism Court No.XV, Karachi (Judicial Complex ATCLs, Central Prison, Karachi) dated 21.02.2022 in new Special Case No.19 of 2021 (Old Special Case No.261 of 2020) arising out of F.I.R. No.198/2020 U/s. 365-A & 34-of the Pakistan Penal Code, 1860, read with section 7 of the Anti-Terrorism Act, 1997 registered at P.S. F.B. Industrial Area, Karachi whereby the appellants were convicted and sentenced to life imprisonment along with forfeiture of their properties under section 365-A of the Pakistan Penal Code, 1860. Benefit of section 382-B Cr.P.C. was also extended to the appellants.

2. The facts of the case are that complainant Muhammad Usman Ali S/o. Israr Khan lodged FIR bearing Crime No.198/2020, registered at Police Station F.B Industrial Area on 03.09.2020 under section 365-A/34 of the Pakistan Penal Code, 1860, wherein he stated that he was residing at House No.3, Pak Peoples Colony, Block No.21, F.B. Area Karachi and used to run his hotel named as Karachi Awami Hotel. For about 6/7 months two persons, whose names he came to know later to be Umar Farooq and Muhammad Dilshad had been coming there to eat meal that is why, acquaintance developed with them. On 02.09.2020 the complainant along with his friend was taking meal, in the meanwhile,

accused Umar Farooq and Dilshad arrived and sat there, who were given some food by the complainant from his food. Both the accused took the food, in the meanwhile son of complainant namely Suleman aged about 18 months started weeping in the lap of the complainant. The accused persons asked the complainant to hand the child over to them as they would provide eatable things to the child and would return back. The complainant handed his child over to the accused and paid Rs.10/- too. Both the accused took with them Suleman, the son of the complainant at about 09:00/09:30 pm. After passage of sufficient time, the accused did not turn up as a result thereof complainant became anxious. The complainant then started searching the child along with his relatives. In the meanwhile, complainant received a message on his Cell No.0344-2852711 from cell phone No.0307-2596176 in which it was written that son of the complainant namely Suleman was with them and it was said to the complainant to arrange ransom amount of Rs.300,000/-. It was further written in the message that they would come into contact after half an hour. Since, the balance in the mobile phone of the complainant was not present as such the complainant came into contact from cell number of his friend Muhammad Shahzad S/o. Muhammad Nawaz viz: 0300-3329009 with cell No.0307-2596176 and he conversed with accused Umar Farooq. Accused Umar Farooq disclosed to the complainant that his son Suleman was with him and co-accused Dilshad. The complainant was told to arrange immediately the ransom amount and the accused would come into contact after an hour. Again accused Umar Farooq called the complainant and told the complainant that he was sending message showing the account numbers for ransom amount. In the message two numbers were mentioned viz: 0303-0287645 and 0305-3633767 in which the amount was to be sent by the complainant as demanded by the accused. The accused were in contact with the complainant. The complainant then came at the police station and caused the instant FIR registered. In the course of investigation section 7 of the Anti-Terrorism Act, 1997 was added.

3. After completion of investigation charge was framed against the accused on 18.01.2021 to which they denied the allegations and claimed trial.

4. The prosecution in order to prove its case examined 03 witnesses and exhibited various documents and other items. The statements of the accused were recorded under Section 342 Cr.P.C who claimed false implication in connection with a financial dispute with the complainant and a certain

encroachment. However, the appellants did not give evidence on oath or call any D.W. in support of their defence case.

5. After appreciating the evidence on record, the trial Court convicted and sentenced the appellants as set out earlier and hence, the appellants have filed this appeal against their convictions and sentences.

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

7. Learned counsel for the appellants have contended that the appellants are entirely innocent of any wrong doing and have been falsely implicated in the case on account of a financial and encroachment dispute that they had with the complainant hence the delay in lodging the FIR; that no abduction took place; that there is no evidence of any ransom demand being made and no ransom money was recovered and that this is a case of no evidence and that for any or all the above reasons the accused should be acquitted by extending him the benefit of the doubt. In support of their contentions they placed reliance on the cases of **Amir Muhammad Khan v. The State** (2023 SCMR 566), **Tariq Pervez v. The State** (1995 SCMR 1345), **Muhammad Khan and another v. The State** (1999 SCMR 1220), **Mian Khalid Perviz v. The State through Special Prosecutor ANF and another** (2021 SCMR 522), **Muhammad Rafique and others v. The State and others** (2010 SCMR 385), **Akhtar Ali and others v. The State** (2008 SCMR 6) and **Muhammad Akram v. The State** (2009 SCMR 230)..

8. On the other hand Additional Prosecutor General Sindh of behalf of the State has fully supported the impugned judgment and contended that since the prosecution has proved its case against the appellants through reliable evidence the appeal be dismissed.

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

10. After our reassessment of the evidence we find that the prosecution has NOT proved beyond a reasonable doubt the charge against the appellants for which they were convicted based on the particular facts and circumstances of the case and the fact that each criminal case must be decided on its own unique evidence for the following reasons;

(a) It is true that the FIR was lodged after a delay of 6 hours however based on the particular facts and circumstances of the case we do not find this omission fatal to the prosecution case as usually in cases of children going missing the parents firstly use their best efforts to trace out their child before going to the police.

(b) That the evidence of the complainant does not appeal to natural human conduct. Namely, that he handed over his 18 month suckling son to 2 virtual unrelated strangers who he had only known on and off for 6 to 7 months on account of them sharing his food and also gave them 10 rupees to buy food for the child. Such a situation is completely un believable and does not appeal to logic, commonsense or reason. The complainant himself could have given his young son food or brought him a toy himself at 10 RS especially keeping in view the fact that babies who are only 18months old eat special food. Where did he expect the accused to get such food from?

(c) Furthermore, who abducts a child who is given to them by its father to go and buy food for the child? Is this even abduction? Again this does not appeal to natural human conduct. This is because the abductees knew the complainant and knew the complainant had handed over his son to them and obviously if they made any attempt of abduction or ransom demand they would be caught by the police as the complainant knew there identities especially as they were living next door to the complainant in a space which he had let them use.

(d) That his friend Muhammed Shazade was an important witness who according to the complainant's evidence was with him during this occurrence and the complainant even had to use Muhammed Shazade's phone as his battery had run low in order to talk to the abductors. However Muhammed Shazade was not called as PW to corroborate the complainants evidence and nor was Muhammed Shazade's phone seized. Under Article 129 (g) Quanoon-e-Shahdat Ordinance 1984 the adverse inference can be made that Muhammed Shazade would not have supported the prosecution case.

(e) Like wise Tayab was an important witness who was give up by the prosecution. He was an important witness as according to the complainant Tayab had provided the SIMS to one of the accused from whom the ransom demands were made. As with Shazade mentioned above adverse inference may be drawn that if not called as a PW he would not have supported the prosecution case. The same considerations apply to the complainant's brother Shaukat who went to the PS with the complainant to lodge the FIR and was searching for the child. If called all these witnesses could have corroborated the prosecution case but having

been dropped by the prosecution the adverse inference can be drawn that they would not have supported the prosecution case.

(f) The ransom demand has not been adequately proven through CDR, voice recording and even the message allegedly sent to his mobile was not recovered or otherwise proven.

(g) There is no proof that any ransom demand was with drawn from any bank. How could such amount of money be arranged in such a small period of time. There is no evidence that he collected it from a bank (which would have been closed at that time of night) or borrowed it from others.

(h) Again it does not appeal to natural human conduct that two persons having just abducted an 18 month child would be sitting in plain sight by a plaza where they could be easily recognized. Abductors go to places where the abductee is hidden and they cannot be identified by others with him.

(i) Again it is too much of a co-incidence that while the complainant is going to the pointed place in a police mobile to pay the ransom near Tariq Road he just happens to see the abductors and the abductee sitting near a plaza in plain sight whilst he is in a moving police mobile at speed at night time from a reasonably far distance.

(j) That despite the appellants being arrested near a busy plaza no independent witness under S.103 Cr.PC was associated with their arrest and recovery of the abductee. Instead the police and the complainant acted as mashirs which again detracts from the prosecution case where there are hardly any witnesses to the so called abduction and ransom demand.

(k) That the accused have both alleged false implication over a financial dispute and an encroachment dispute with the complainant for which the complainant had good reason to fix them in a false case which cannot be simply ruled out.

(l) In short for the reasons mentioned above we find that the prosecution case does not ring true and we find that we cannot safely rely on the evidence of the complainant for the reasons mentioned above which we do not find be confidence inspiring and thus cannot safely rely upon it.

11. It is a well settled principle of criminal law that the prosecution must prove its case against the accused beyond a reasonable doubt and that the benefit of doubt must go to the accused by way of right as opposed to concession and in this case we have found many doubts in the prosecution case.

12. Thus, for the reasons discussed above, by extending the benefit of the doubt to the appellants they are acquitted of the charge, the impugned judgment is set aside, their appeal is allowed and the appellants shall be released unless wanted in any other custody case.

13. The appeal stands disposed of in the above terms.