

S. 365 made out and not S. 365 A and thus a case  
of Kidnapping but not for ransom 347

## IN THE HIGH COURT OF SINDH AT KARACHI

Special Crl. AT Jail Appeal No.67 of 2018

Present:

Mr. Justice Naimatullah Phulpoto

Mr. Justice Mohammad Karim Khan Agha

Appellant: Nadeem Ali S/o. Muhammad Mithal, presently  
confined in Central Prison, Karachi through Mr.  
Abdul Razzaq, Advocate.

Respondent: The State through Muhammad Iqbal Awan,  
Deputy Prosecutor General Sindh.

Date of hearing: 21.05.2019.

Date of Judgment: 29.05.2019.

## JUDGMENT

MOHAMMAD KARIM KHAN AGHA, J.- Appellant Nadeem Ali was tried by learned Anti-Terrorism Court No.X, Karachi in a case arising out of Crime No.169/2014 U/s. 365-A/34 PPC read with 7 ATA, 1997, P.S. SSHIA, Karachi in Special Case No.A-276 of 2014, vide judgment dated 31.01.2018, the appellant was convicted for the offence u/s 365-A PPC r/w section 7(1) (e) of ATA, 1997 and sentenced to undergo Life Imprisonment. In Crime No.87/2014 U/s. 23(1)-A of Sindh Arms Act, 2013, P.S. AVCC/CIA, Karachi in Special Case No.A-277 of 2014 the appellant was further convicted for the offence U/s 23(i)A of Sindh Arms Act, 2013 and further sentenced to undergo R.I. for 05 years. Both the sentences were ordered to run concurrently (the impugned judgment).

2. The brief facts of the prosecution case are that on 24.06.2014, complainant Khan Bahadur came at P.S. SITE Superhighway Industrial Area, Karachi and stated that on 22/23.06.2014 his younger brother namely Abbas Ali alongwith his family and one relative Muhammad Rafiq had gone to Sukhia Goth to attend marriage ceremony in a car bearing registration No.AEP-694 (maker Cuore, green colour). He further stated that after attending the marriage ceremony, his brother Abbas Ali left his family over there and returned back to his home situated at

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Dumba Goth alongwith Muhammad Rafiq and both went missing and their mobile numbers viz. 0315-2567229 & 0311-1805428 were turned-off. Later on complainant Khan Bhadur had received a call from one Abdul Khaliq (friend of Abbas Ali) on his mobile No.0312-2112688 from mobile No.0315-2567229, who was talking in Urdu but with Pashto accent and informed him that his brother Abbas Ali and said Muhammad Rafiq were under his custody and also demanded Rs.50,00,000/- (Rupees Fifty Lacs) as ransom amount for their safe release. Thereafter, the complainant had again received a call on his mobile phone from cell No.0313-2537238, the caller was talking in Urdu but with Pashto accent and again inquired about the ransom amount and so also directed the complainant to arrange the ransom amount as demanded. In the light of complainant's report, FIR bearing No.169/2014 was registered against the unknown culprit(s). Based on spy information, the police were able to recover the abductees from a house where they had been detained against their will for over 17 days and arrest the appellant on the spot.

3. After completion of investigation of these cases, reports u/s 173 Cr.P.C. were submitted by the I.O. against the present accused in the concerned Anti-Terrorism Court which amalgamated the aforesaid cases for joint trial in terms of S.21 M ATA 1997 and thereafter charge was framed against the present accused to which he pleaded not guilty and claimed to be tried

4. In order to prove its case the prosecution examined 6 prosecution witnesses and exhibited numerous documents and other items and thereafter closed its side. The accused recorded his statement under S.342 Cr.P.C whereby he denied the allegations against him and claimed his false implication. He also recorded his evidence on Oath u/s. 340(2) Cr.P.C. and called one witness in support of his defense thereafter, the side of the defence was closed. After appreciating the evidence on record the trial court convicted and sentenced the accused as per the impugned judgment. Hence, this appeal against conviction has been filed by the appellant.

5. The facts of the case as well as evidence produced before the trial court find an elaborate mention in the impugned judgment dated

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31.01.2018 passed by the trial court and, therefore, the same may not be reproduced here so as to avoid duplication and unnecessary repetition.

6. After the reading out of the evidence and the impugned judgment and arguing the matter at some length learned counsel for the appellant did not press his appeal on merits in respect of his conviction under S.365 PPC of kidnapping and abducting with intent secretly and wrongly to confine a person as he conceded that based on the evidence on record the prosecution had proved this offense against the appellant beyond a reasonable doubt and as such his sentence should be reduced to reflect the applicable sentence under the law for an offense under S.365 PPC. Learned counsel for the appellant however strenuously argued on merit that based on the evidence on record the prosecution had failed to prove its case against the appellant for committing an offense under S.365 A PPC being the kidnapping or abduction for extorting property or valuable security etc since there was no any evidence on record to prove that any ransom demand had been made let alone paid or for any offense under the ATA 1997 as no fear or insecurity had been caused to the public by the offense under S.365 PPC and as such he contended that he should be acquitted from the charges in respect of these offenses.

7. When confronted with this situation learned DPG contended that based on the evidence on record the prosecution had proved its case against the appellant beyond a reasonable doubt in so far as the appellant had committed the offense under S.365 PPC but conceded that the prosecution had failed to prove its case against the appellant for an offense under S.365 A PPC or any section of the ATA 1997 and thus he had no objection if the appellant is convicted and sentenced for an offense only under S.365 PPC for which he had been put on notice at the time of framing the charge since an offense under S.365 PPC was a pre condition to proving the offense under S.365 A PPC.

8. We have carefully gone through the evidence on record and in our view based on the eye witness evidence of the abductees, the arrest of the appellant on the spot, the abductees being shown to the police on the pointation of the appellant in a room in the house from which he was arrested outside whilst keeping watch and being armed with a firearm for

which he did not possess a license, other corroborative ocular evidence and recoveries we are fully satisfied that the prosecution has proved its case against the appellant beyond a reasonable doubt in respect of an offense under S.365 PPC and as such we hereby convict him of such offense. We are however based on the evidence on record not satisfied that the prosecution has proved its case beyond a reasonable doubt that the appellant has committed an offense under S.365 A PPC since in our view the evidence that a ransom demand was made is not corroborated by any material on record. For example, the relevant mobile phone from which the alleged ransom demand was made was not recovered; there is no CDR available or any recording of the demand and it appears that no ransom was in fact paid. We are also of the view that no act was caused so as to bring the offense within the purview of the ATA 1997. Thus, in our view the appellant stands convicted only for an offense under S.365 PPC/34 PPC, S.23(1)-A of Sindh Arms Act, and he is acquitted of the charge under S.365 A PPC and S.7 ATA 1997.

9. We are fortified in our finding by the case of **Abdul Adeel V The State** (2009 SCMR 511) which is also a case which was originally charged under S.365 A which held as under at P.516 Para's 10, 11 and 12:

*"10. In the above-noted circumstances, the abduction and detention of Saeed Ahmed at secret place is proved to the hilt. Having come to that conclusion, we have given our serious thought to the motive narrated by PW-1. According to PW-1, he received two telephone calls by unidentified person for arranging ransom. However, how much ransom was to be arranged, was not mentioned in the F.I.R. at all, either any ransom was paid for the release of the abductee. Saeed Ahmed abductee has not stated before the trial Court that the appellants demanded ransom from his father. According to him, he and Noman Iqbal accused were released and dropped at a deserted place after two days of captivity. He further stated that after the release he accompanied Noman Iqbal to his house and it was the father of Noman Iqbal who informed the police about the presence of abductee in his house. There is no hint in the statement of Saeed Ahmed that the appellants had demanded ransom. Though two cell phones were shown to have been recovered from the possession of the appellants but there is no evidence on record that they were used by the appellants for demanding ransom. The statement of Raees Ahmed PW-1 is not supported by any other corroboratory evidence. It is*



*settled law that benefit of all doubts is to be given to the accused.*

*11. In the above-noted circumstances, in our considered view, the prosecution failed to prove the motive behind the occurrence. However, as noted above, it stood proved that Saeed Ahmed was abductee and was kept under detention at secret place.*

*12. For all what has been said above, we alter the conviction of the appellants from offence under section 365-A/34, PPC to offence under section 365/34 P.P.C the appellants are in jail for more than six years, so their sentences are reduced to the period already served out by them in jail. This appeal is partly allowed and the impugned judgments are modified accordingly. These are the reasons of our short order of even date." (bold added)*

10. Thus, for the reasons discussed the above the appeal is partly allowed and impugned judgment is upheld but its convictions and sentences are altered/modified to the extent that the appellant is convicted under S.365 PPC/34 PPC and sentenced to 7 years RI and to pay a fine of RS 100,000 and is convicted under S. 23(1)-A of Sindh Arms Act and sentenced to 5 years RI. The sentences shall run concurrently and the appellant shall have the benefit of S.382 B Cr.PC. The appellant stands acquitted of the charge under S.365 A PPC and S.7 ATA.

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