

IN THE HIGH COURT OF SINDH, KARACHI

Spl. Criminal A.T.A. No.116 of 2022.

Present:

*Mr. Justice Mohammad Karim Khan Agha
Mr. Justice Khadim Hussain Tunio,*

Appellant: Muhammad Rahat Khan S/o.
Muhammad Rehan through Mr.
Khalid Hussain Shar, Advocate.

Respondent: The State through Mr. Muhammad
Iqbal Awan, Additional Prosecutor
General.

Spl. Criminal A.T. Jail Appeal No.121 of 2022.

Appellant: Waqar S/o. Shakeel through Mr.
Moula Bux Bhutto, Advocate.

Respondent: The State through Mr. Muhammad
Iqbal Awan, Additional Prosecutor
General.

Date of hearing: 05.04.2023

Date of Judgment: 05.04.2023.

JUDGMENT

MOHAMMAD KARIM KHAN AGHA, J:- The appellants Muhammad Rahat Khan S/o. Muhammad Rehan and Waqar S/o. Shakeel have preferred the instant appeals against the judgment dated 12.05.2022 passed by the Learned Anti-Terrorism Court No.IV, Karachi Division in Special Case No.294/2021 arising out of Crime No.226/2021 U/s. 365-A/34 PPC read with section 7 of ATA, 1997 registered at P.S. Sukhan, Karachi whereby both the appellants were convicted and sentenced to suffer life imprisonment u/s. 365-A/34 PPC r/w section 7(e) of Anti-Terrorism Act 1997. Benefit of section 382-B Cr.P.C. was also extended to the appellants.

2. The brief facts of the prosecution case as per FIR are that on 04.06.2021, around 0640 hours one Faizan S/o. Amir Syed aged about 17 years recorded his 154 Cr.P.C. statement stating therein that he resides at Kachi Abadi, Street No.05, Swabi Town, Malir Karachi with his family. His father passed away in 2017 and he works at Younus Mills as a laborer. On 03.06.2021 at about 2130 hours he left his house on a motor cycle No.HUD-0351, borrowed from his friend namely Amir Khan S/o. Rozi Khan to bring some food from hotel. When he reached at Bakhtawar Goth near Sabir Shaheed Masjid, two boys boarded on a motorcycle Unique 70 stopped him and introduced themselves as policemen, they searched him and alleged that he is drug dealer, one of them sat with him on his motorcycle and told him that they are going to police station. They took him to Bhains Colony near road No.09 where they blind folded him and after half an hour took him to Labour Square from where they made a phone call from mobile phone No.03472410543 of complainant/abductee to his friend Aamir Khan, owner of motorcycle and asked him to arrange amount of Rs.01 lac and take your friend. On this Aamir replied that he does not have such amount and has only Rs.50,000/-. In the meanwhile Aamir called 15-Madadgar and called the accused persons at Hospital Chowrangi. Accused again called Aamir on his cellphone and asked him to come at 52-A Bus Stop. At about 0540 hours Aamir along with SHO and police party reached at 52-A Bus Stop where police party got released complainant from the captivity of accused persons and apprehended them on the spot. On inquiry they disclosed their names as Muhammad Rahat Khan S/o. Muhammad Rehan and Waqar S/o. Shakeel. After completion of legal formalities FIR was lodged at PS Sukhan, Karachi.

3. After registration of the FIR and after completion of formal investigation I.O. submitted the charge sheet against the accused persons.

4. The prosecution in order to prove its case examined 06 witnesses and exhibited various documents and other items. The statements of both the accused were recorded under Section 342(1) Cr.P.C in which they denied all the allegations leveled against them and claimed false implication. However, they did not give evidence on oath and did not call any D.W. in support of their defence case. After appreciating the evidence on record the trial court convicted the appellants and sentenced them as

stated above, hence, the appellants have filed these appeals against their convictions.

5. The facts of the case as well as evidence produced before the trial court find an elaborate mention in the impugned judgment dated 12.05.2022 passed by the trial court, therefore, the same may not be reproduced here so as to avoid duplication and unnecessary repetition.

6. That Service on the complainant has been held good and as such the complainant's case was attended to by the learned Additional Prosecutor General Sindh.

7. After reading out the evidence learned counsel for the appellants under instructions of the appellants have stated that they did not press this case on merits in respect of their convictions under section 365 PPC and accepted their guilt in respect of the same provided that they would be given some reduction in sentence based on the following mitigating circumstances provided that they were also acquitted of the other offences for which they had been charged for which there was absolutely no evidence:-

- a) That the appellants are first time offenders and are capable of reformation.
- b) That the appellants are young men and have families to support.
- c) That by admitting their guilt the appellants have shown genuine remorse and;
- d) That the appellants have already served about 03 years of their sentences which under section 365 PPC may extend to 07 years.

8. Based on the above mitigating circumstances, learned Additional Prosecutor General Sindh had no objection to a reduction in sentence to some reasonable extent in respect of the offence under S.365 PPC and conceded that the prosecution had failed to prove the other offences for which the appellants had been convicted beyond a reasonable doubt. In this regard he has placed reliance on the cases of *Shah Zaib and others v. The State* (2022 SCMR 1225), *Orangzaib v. The State* (2018 SCMR 391) and *Shahid alias Kaloo v. The State* (2009 SCMR 558) whereby sentences

under section 365-A were converted into 365 PPC on the basis that offence of section 365-A had not been proven.

9. We have gone through the evidence on record and we find from the evidence of the abductee PW-1 Faizan who was also complainant in this case and the evidence of PW-5 Aamir who was present when the appellants were arrested by the police along with the complainant as their captive and the arresting police officer PW-4 Rana Shah Muhammad, none of whom had any enmity or ill will with the appellants and had no reason to implicate the appellants in a false case whose evidence we find to be reliable, trust worthy and confidence inspiring and believe the same and place reliance on it that the complainant was abducted by the appellants, therefore, their conviction is maintained only in respect of the offence under section 365 PPC.

10. With regard to the aspect of the offence of kidnapping for ransom, we find that there is no compelling evidence to prove that any ransom demand was made or paid to either of the appellants by anybody and as such this aspect of the case the prosecution has not been able to prove beyond a reasonable doubt and as such by extending the benefit of doubt both of the appellants are acquitted of the offence under section 365-A/34 PPC. Since no case of terrorism has been made out against the appellants they are both acquitted under section 7(e) of Anti-Terrorism Act, 1997.

11. With regard to the sentence under section 365 PPC which extends up to a maximum of 7 years keeping in view the mitigating circumstances raised by the appellants and the no objection given by learned Additional Prosecutor General, we hereby reduce the sentence of the appellants to the time already undergone in custody and waive off any fine and compensation payable and the appellants shall be released unless they are wanted in any other custody case.

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