

IN THE HIGH COURT OF SINDH, AT KARACHI

Present:

Mr. Justice Salahuddin Panhwar; and
Mr. Justice Yousuf Ali Sayeed.

Spl. Crl. A.T.A. No.52 of 2013

1. Muhammad Anwar
son of Ameer Bux.

2. Ahsan Ali
son of Ali Dost.

... .. Appellants

Versus

The State.

... .. Respondent

Spl. Crl. A.T.A. No.53 of 2013

Ahsan Ali
son of Ali Dost.

... .. Appellant

Versus

The State.

... .. Respondent

Spl. Crl. A.T.A. No.54 of 2013

Muhammad Anwar
son of Ameer Bux.

... .. Appellant

Versus

The State.

... .. Respondent

Spl. Crl. A.T.A. No.55 of 2013

1. Muhammad Anwar
son of Ameer Bux.

2. Ahsan Ali
son of Ali Dost.

... .. Appellants

Versus

The State.

... .. Respondent

Spl. Crl. A.T.A. No.89 of 2014

Muhammad Anwar
son of Ameer Bux.

... .. Appellant

Versus

The State. Respondent
Spl. Crl. A.T.A. No.84 of 2014

Ahsan Ali
son of Ali Dost. Appellant

Versus

The State. Respondent

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Appellants Through Mr. Abdul Razzak,
Advocate

Respondent Through Mr. Zafar Ahmed Khan,
Addl.P.G Sindh

Dates of hearing 18.10.2017
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JUDGMENT

These appeals have arisen from the common judgment dated 28.10.2013, passed by learned Anti-Terrorism Court No.II, Karachi (Ms. Khalida Yaseen), whereby convicting the appellants in four different crimes i.e. (i) Crime No.136 of 2011 P.S. AVCC/CIA (Gulshan-e-Maymar), Karachi under Section 353, 324 & 34, PPC, (ii) Crime No.137 of 2011 P.S. AVCC/CIA (Gulshan-e-Maymar) under Section 13-D Arms Ordinance, (iii) Crime No.138 of 2011 P.S. AVCC/CIA (Gulshan-e-Maymar) under Section 13-D Arms Ordinance and (iv) Crime No.362 of 2011 P.S. AVCC/CIA (Manghopir) under Section 365-A & 34, PPC and awarded them sentences of rigorous imprisonment for life under Section 7(B) & (e) of Anti-Terrorism Act, 1997, rigorous imprisonment for life under Section 7(H) of Anti-Terrorism Act, 1997 and seven years imprisonment with fine of Rs.25,000/- each under Section 13-D Arms Ordinance.

2. The appellants have also assailed the conviction and sentences, awarded to them, by the same Court vide judgment dated 04.09.2014 for rigorous imprisonment of life under Section 7(B) & (e) of Anti-

Terrorism Act, 1997 in Crime No.726 of 2011 P.S. Sohrab Goth under Section 365-A & 34, PPC read with Section 7(e) of Anti-Terrorism Act, 1997.

3. The facts giving rise to these appeals, *briefly stated*, are that on 30.11.2011 SIP Khalid Hussain Abbasi was busy in search of culprits, involved in kidnapping for ransom. During patrolling received information from a spy that some persons are in captivity in a house, situated in Katchi Abadi, Bahadur Goth, near Northern Bypass for ransom. On receipt of information, SIP Khalid Hussain Abbasi alongwith his party reached there; on the pointation of spy encircled the said house and knocked the door, but in the meantime the culprits resorted to firing on police with deadly weapons. The police, in retaliation, returned the fires in self defence and during this some culprits managed their escape from the rear side of the house while two culprits were trying to escape by climbing the wall, fell down on the ground so sustained injuries on their back and legs and were apprehended. On query, they disclosed their names as Ahsan Ali son of Ali Dost and Muhammad Anwar son of Ameer Bux. During search 30 bore pistols loaded with magazine and live bullets were recovered from each of them alongwith some cash and mobile phones. On further query they disclosed about two abductees, who were kept tied in a room of the said house. The police went in the room and found two persons, tied with iron chains. On inquiry, they disclosed their names as Colonel (Retd) Abidi and Nisar Ahmed Soomro and that they were kidnapped for ransom. The culprits disclosed the names of their companions, who managed to escape, as Hazar Khan, Dr. Ghafoor Bugti and Wali Muhammad Lehri. After completing the legal formalities, they were brought at Police Station

where separate cases i.e. kidnapping for ransom, police encounter and recovery of arms were registered.

4. Insofar as Spl. CrL. A.T.A. Nos.89 and 84 of 2014 are concerned, the same relate to kidnapping for ransom of abductees Nisar Ahmed Soomro and Colonel (Retd) Iftikhar Abidi and FIR to that effect was lodged on 28.11.2011 at Police Station Sohrab Goth by complainant Mushtaq Ahmed vide Crime No.726 of 2011.

5. After registration of the cases, the investigation was followed and in due course the separate challan sheets were submitted before the Court of competent jurisdiction.

6. During trial the learned DDPP filed an application under Section 235, Cr.P.C. read with Section 21(M) of Anti-Terrorism Act, 1997 and in consequence to such application the cases for police encounter, kidnapping for ransom and recovery of arms against both appellants were amalgamated and tried under a joint charge while case of kidnapping for ransom registered at P.S. Sohrab Goth vide FIR No.726 of 2011 was tried *separately*.

7. At the trial, the prosecution examined its witnesses, who were duly cross-examined by the defence and then closed its side. Thereafter statements of appellants under Section 342, Cr.P.C. were recorded and then the learned trial Judge convicted the appellants in all the five crimes by awarding the sentences, mentioned herein above, hence these appeals.

8. At outset, learned counsel for the appellants has referred evidence of Nisar Ahmed Soomro, Colonel Syed Iftikhar Ahmed Abdi and Shahzad Qaiser who were abducted on different occasions;

subsequently, out of them Shahzad Qaiser was released while rest two were kept on same place. The abductees Nisar Ahmed and Iftikhar Ahmed have admitted that they were got released by the police when they were tied with iron chain and at such time they heard that two persons were arrested on spy information. He further contended that encounter was taken place and the abductees were recovered safely who remained about 28 days in the captivity of abductors and they also arrested two kidnappers who tried to ran away and recovery of arms were also affected from them. Learned counsel for the appellants contends that since abductees have not supported the prosecution case to the extent that they (appellants) kidnapped them or that they were guarding them at the place where they were confined, hence this is a case of no evidence, however, he contends that since appellants are in custody since 2011, therefore, in the interest of justice, appellants' sentence may be reduced since conviction in recovery of arms (under section 7H of ATA) is *punishable* for seven years whereas conviction under Section 365/34 PPC is not maintainable in view of evidence of private witnesses.

9. Learned Addl. P.G. has opposed the contention of learned counsel for the appellants, however, he is unable to refute that private witnesses have not supported the prosecution case to the extent of 365-A PPC.

10. We have heard learned counsel and perused the record.

11. After reading evidence of Nisar Ahmed, Col Iftikhar Ahmed and Shahzad Qaiser (abductees), suffice to say that abduction is not disputed as well as their captivity but all three persons have deposed that accused are *innocent* and were not present at the time of

kidnapping however they have not denied the raid by the police and their release in consequence thereof. They have claimed hearing of arrest of *two* persons at such time, however, they (arrested kidnappers) were not present when they were released by the police officials. Besides, evidence of official witnesses have been brought on record which contends that on spy information they conducted successful raid and recovered two abductees as well arrested appellants from whose possession recovery of arms was also effected.

12. There can be no *denial* to fact that in cases of *abduction* as well *captivity* the status of *abductee* is always of '**star witness**' therefore, *normally* the fate of such like cases would depend upon *testimony* of such **star-witness**. In the instant matter, there were *three* abductees, allegedly abducted from different places and at different occasions; kept under confinement; one of them was released while two were got released by police after continuous detention of as many as '**28 days**' at a place but none of these witnesses (abductees) have named the appellants nor claimed to have seen them (appellants) during all the *episodes*. The words of such **star-witnesses** were always sufficient to dislodge the prosecution case against the appellants to such *extent* least make such claim as *doubtful* which was always sufficient for acquittal in abduction case because law by *now* is quite settled that a single doubt, if found reasonable, would be *more* than enough to claim acquittal. Reference may be made to the case of Hashim Qasim & another v. State 2017 SCMR 986 wherein it is held s:-

“20. Even a single doubt, if found reasonable, would entitle the accused person to acquittal and not a combination of several doubts is bedrock principle of justice. Reference may be made to the case of Riaz Masih @ Mithoo v. The State 1995 SCMR 1730.”

The claim of *official* witnesses regarding arrest of the appellants with weapons at time of *raid* would help them in case of *recovery* but same cannot be *safely* used to convict the appellants for a different charge of *abduction* when abductees didn't involve the appellants. Accordingly, conviction under Section 36A and Section 7 (b) and (e) of ATA, 1997 is not sustainable.

13. Since counsel for the appellants is not pressing these appeals to the extent of conviction under Section 353,354, 324, 34 PPC and Section 13-D Arms Ordinance read with Section 7 h of ATA, accordingly, in view of above discussion, we are of the considered view that prosecution has failed to prove the case of abduction for ransom hence, conviction under Section 365A and Section 7 (b) and (e) of ATA 1997 is hereby set aside, however, conviction and sentence to the extent of recovery of arms and encounter is maintained, which is seven years and both the sentences shall run concurrently. So far as sentence in default of payment of fine is concerned, the same is reduced to two month. In case the appellants have completed their period of sentences, they shall be released forthwith if not required in any other custody case.

Captioned appeals stand disposed of in above terms.

JUDGE

JUDGE

SAJID