

HIGH COURT OF SINDH AT KARACHI

PRESENT:

Mr. Justice Aftab Ahmed Gorar
Mr. Justice Amjad Ali Sahito

Spl. Crl. Anti-Terrorism Jail Appeal No.68 of 2017

Appellants : (i) Gulshan s/o Ghulam Hyder
(ii) Ali Nawaz s/o Sohrab
(iii) Sikandar s/o Abdul Karim
(iv) Abdul Rasheed s/o Abdul Karim
(v) Naveed s/o Ghulam Mustafa
(vi) Abdul Aziz s/o Abdul Karim
(vii) Abdul Jabbar s/o Abdul Karim
Through Mr.Ajab Khan Khattak, Advocate

Respondent : The State
Through Mr.Saghir Ahmed Abbasi,
Asst. Prosecutor General, Sindh.

Dates of hearing : 07.02.2019, 14.02.2019, 28.02.2018 &
06.03.2019

Date of Judgment : .03.2019

J U D G M E N T

AMJAD ALI SAHITO, J.- Appellants mentioned above were tried by the learned Judge, Anti-Terrorism Court No.IX, Karachi in Special Cases No.A-32/2015, A-33/2015, A-34/2015, A-35/2015, A-36/2015 & A-37/2015 arising out of Crime No.417 of 2014 for offence under Section 365-A/34 PPC read with Section 7 of Anti-Terrorism Act, 1997 registered at Police Station Sohrab Goth (AVCC) Karachi, whereby the learned trial Court after full dressed trial, convicted the appellants as under:-

Section
Section 365-A r/w
Section 7(e) of ATA,
1997

Conviction
All the accused mentioned above were convicted and sentenced to suffer imprisonment for life each with forfeiture of their property as required under Section 7(2) of ATA, 1997.

<p>Section 6(b)(ee) of ATA 1997 punishable u/s 7(ff) of ATA 1997 r/w Section 4/5 Explosive Substance Act</p>	<p>Accused Gulshan and Ali Nawaz are convicted and sentenced to suffer R.I. for fourteen years each with forfeiture of their property if any as required u/s 7(2) of ATA, 1997.</p>
<p>Section 23(I)-A SAA</p>	<p>Accused Naveed, Sikandar, and Abdul Rasheed are convicted and sentenced to suffer R.I. for seven years each and fine of Rs.50,000/- each and in case of default of payment of fine, the accused will have to undergo R.I. for one year each, more.</p>

However, the benefit of Section 382-B, Cr.P.C. was extended to them.

2. Brief facts of the prosecution case as set forth in the FIR bearing Crime No.417/2014 of PS Sohrab Goth lodged by complainant Mohammad Ashraf on 18.12.2014, are that on 11.12.2014 Sher Mohammad, his brother who is a Milk Man by profession did not return back at his house from his milk shop and therefore, they made a mobile phone call on his mobile number but the same was found to be switched off. On 13.12.2014 the brother-in-law of Sher Mohammad namely Irshad Ali made a call from his mobile phone to the mobile of Sher Mohammad which was attended by somebody else who disclosed to Irshad Ali that Sher Mohammad had been kidnapped for ransom and that he was in their captivity. It is also alleged that the person who attended the call also put Sher Mohammad online who also certified his kidnapping for ransom. Basheer Ahmed, uncle of Sher Mohammad is also said to have spoken with Sher Mohammad on his mobile

phone and therefore, such FIR was lodged by complainant Mohammad Ashraf, brother of Sher Mohammad at PS Sohrab Goth. During the course of the investigation, the complainant party informed the CPLC by making such application to them that Sher Mohammad was kidnapped for ransom by the culprits. It is further alleged that on 19.12.2014 the AVCC/CIA police in the company of officials of CPLC conducted a raid after receipt of spy information at a house located near to the shrine of Tajuddin Baba adjacent to Mewa Shah Graveyard, Pak Colony Karachi and recovered abductee Sher Mohammad and also arrested the accused namely Gulshan, Ali Nawaz, Sikandar, Abdul Rasheed, Naveed, Abdul Aziz and Abdul Jabbar available there at the spot. A hand grenade from the accused Gulsan and Ali Nawaz was shown to had been recovered from there possession and whereas 30 bore pistols were allegedly recovered from the possession of each accused Naveed, Sikandar, and Abdul Rasheed. The accused, as well as abductee, was brought at PS AVCC/CIA along with the case property where the FIRs against the accused Gulshan, Ali Nawaz, Naveed, Sikandar, and Abdul Rasheed were registered separately and individually for allegedly having been found in possession of the explosive substance as well as unlicensed pistols of 30 bore.

3. Since all the cases were interconnected having the same set of evidence as well as documents as such all the cases were consolidated for joint trial and disposal thereof under one and common judgment in terms of Section 21-M of ATA

1997. At the commencement of trial, a joint charge against the accused/appellants mentioned above was framed at Ex.6 to which they pleaded not guilty and claimed to be tried vide their pleas at Ex.7 to Ex.13.

4. At the trial, in order to establish the accusation against the appellants, the prosecution has examined the following witnesses:-

- (i) PW-1 Abductee Sher Mohammad at Ex.P-1, who produced memo of the place of captivity and recovery of kidnapee at Ex.P-1/A, memo of inspection of the place of the incident at Ex.P-1/B, memo of recovery of the motorcycle at Ex.P-1/C.
- (ii) PW-2 Mohammad Basheer at Ex.P-2.
- (iii) PW-3 Mohammad Ashraf, brother of the complainant, at Ex.P-3, who produced a copy of the application made to SHO PS SITE Superhighway at Ex.P-3/A, FIR bearing Crime No.417/2014 at Ex.P-3/B, memo of handing over a motorcycle at Ex.P-3/C.
- (iv) PW-4 SHO Ghulam Asghar at Ex.P-4, who produced DD entry No.41 dated 19.12.2014 at Ex.P-4/A, memo of arrest and recovery at Ex.P-4/B, copies of FIRs bearing Crime Nos. 173, 174, 175, 176, 177 of 2014 at Ex.P-4/C to Ex.P-4/G respectively.
- (v) PW-5 Kashif Iftikhar, an official of CPLC at Ex.P-5, who produced a copy of application of PW Mohammad Ashraf at Ex.P-5/A.
- (vi) PW-6 ASI Saleem Akhtar, official of BDU, at Ex.P-6, who produced clearance certificate of hand grenade at Ex.P-6/A, DD entries Nos.20, 28 and 33 dated 25.12.2014 (one leaf) at Ex.P-6/C, letter dated 30.12.2014 addressed to SSP Technical at

Ex.P-6/E, letter dated 30.12.2014 addressed to SSP Special Technical at Ex.P-6/G, detailed inspection report of hand grenade at Ex.P-6/F.

- (vii) PW-7 Inspector Mohammad Yasin at Ex.P-7, who produced letter dated 18.12.2014 addressed to SSP ACLC at Ex.P-7/A, DD entry No.4 dated 19.12.2014 at Ex.P-7/B, DD entry No.29 dated 19.12.2014 at Ex.P-7/C, CDR at Ex.P-7/D, letter dated 22.12.2014 addressed to DSP Admin AVCC/CIA at Ex.P-7/E, FSL report at Ex.P-7/F, letter dated 22.12.2014 addressed to DSP Admin AVCC/CIA at Ex.P-7/G, FSL report at Ex.P-7/H, letter dated 22.12.2014 addressed to DSP Admin AVCC at P-7/I, FSL report at Ex.P-7/J, letter dated 14.01.2015 addressed to SSP AVCC/CIA at Ex.P-7/K, letter dated 14.01.2015 addressed to SSP AVVC/CIA at Ex.P-7/L, permission order of Home Department as required u/s 7 of Explosive Substance Act at Ex.P-7/M.

5. Thereafter, the side of prosecution was closed by learned DDPP vide statement at Ex.P-8.

6. Statements of the above named accused/appellants were recorded under Section 342, Cr.P.C. at Ex.9 to Ex.15, in which they have denied the allegations leveled by the prosecution. However, none of the appellants examined themselves on Oath nor produced any witness in their defence.

7. The learned trial Court after hearing the parties counsel and on the assessment of evidence, convicted and sentenced the appellants as stated above which has given rise to the instant appeals.

8. Mr. Ajab Khan Khattak, learned counsel for the appellants has argued that the appellants have falsely been implicated in this case; that the evidence of prosecution witnesses is full of contradiction and discrepancies which are fatal to the prosecution case; that the ransom has not been proved as the prosecution miserably failed to produce any recovery effected from the appellants; that there is a delay of 07 days in lodgment of the FIR, which the complainant failed to explain the delay of lodging the FIR; that the place of incident is thickly populated area but the investigating officer has failed to associate any independent person from the locality to believe that the appellants are involved in the commission of offence; that neither the SIM has been recovered nor any ransom amount has been paid to the appellants, hence it is a case of only detention which falls under Section 365 PPC; that the appellants are poor persons and have falsely been implicated in this case. Lastly, it was argued that the prosecution has failed to prove its case against the appellants beyond reasonable doubts and according to him, under the above-mentioned facts and circumstances, the appellants are entitled to their acquittal. In support of his contention, he has relied upon the case of RIZWANA VS. THE STATE (2016 MLD 890), AZEEM KHAN AND OTHERS VS MUJAHID KHAN AND OTHERS (2016 SCMR 274) & one unreported case of Jaweed and others Spl. A.T.Jail Appeal No.72 of 2014.

9. Mr. Saghir Ahmed Abbasi, learned Assistant Prosecutor General, Sindh has argued that the evidence of the abductee is sufficient for maintaining the conviction in this case as it is a reliable and trustworthy for the reason that said abductee has remained in the captivity of the appellants for about (08) days; that the appellants were arrested from the house wherefrom the abductee was recovered; that the appellants have demanded ransom amount of Rs.20 lacs for the release of the abductee through his mobile phone; that the complainant has also supported the prosecution case in this regard as well as police officials; that the trial Court after appreciating the evidence has convicted and sentenced to the appellants in accordance with law.

10. We have heard the learned counsel for the appellants as well as learned Assistant Prosecutor General, Sindh and have gone through the evidence with their assistance. From the evidence, we find that the prosecution case rests upon two pieces of evidence viz. ocular testimony and recoveries. The ocular testimony consists upon evidence of the witnesses i.e. PW-1 Sher Muhammad (Abductee), PW-2 Muhammad Bashir, uncle of the abductee, PW-3 Muhammad Ashraf, PW-4 SIP Ghulam Asghar of police station AVCC, PW-5 Kashif Iftikhar, posted as Assistant Chief in CPLC, Governor House, Karachi and supported by the other witnesses.

11. We would add that in case of abduction/kidnapping normally the case would depend upon the evidence of the abductee. In such cases, the abductee shall always be

regarded as star witness while the other evidence would be that of a corroborated piece of evidence. In the instant case, the star witness of the case is Sher Muhammad/abductee. Let's examine what the prosecution has brought on record to prove the case of abduction for ransom, (PW-1) Sher Muhammad/abductee, who in his examination-in-chief, has deposed that on 11.12.2014 after closing his milk shop was going on motorcycle towards his home situated in Village Allah Bux near Ahsanabad Chowrangi, after covering some distance on motorcycle, it ran out of fuel and it was about 12 O'clock. In the meantime, two persons being armed with pistols with muffled faces emerged out on the road. They robbed mobile phone and cash Rs.5000/- and they also directed him to accompany with them and at a little distance ahead, found a third person who was also with a muffled face, after abusing and threatening, directed him to sit down. The first two-person stood upon him and the third person tied his hands and folded his eyes, through mobile phone the accused persons called some other person and informed him that they have kidnapped the abductee (Sher Muhammad) and thereafter they made him sit on the motorcycle and two persons out of them also sat with him on the same motorcycle the accused person had put fuel in the motorcycle or not. After covering a little distance, they reached in an open plot and found one person, who was speaking in the Sindhi language also accompanied them. The cloth with which he was muffled was somewhat transparent as he could able to

see that person. After covering some distance by foot, entered into a residential house and threatened the abductee to keep quiet. He was also maltreated. During his detention, the abductee also heard the voices of children from other rooms. After some time, one accused inquired him how much amount you will pay on which abductee Sher Muhammad replied that he has only Rs.14,000/- but they replied that you have a business of milk and directed him to settle the amount of Rs.50/60 lacs as a ransom for his release. During his detention, the accused persons administered intoxication and injected two times for his sound sleep. The accused persons were calling themselves as Gulshan, Sikandar, Ali Nawaz, Naveed, Shabeer and Abdul Aziz. After two days of abduction i.e. 13.12.2014 one accused gave miss call through his mobile phone to brother-in-law of abductee namely Irshad and after sometime Irshad called back which was attended by the accused and in his presence, the accused person demanded ransom amount of Rs.20 lacs from his brother-in-law and also threatened him that in case of failure, they will commit his murder and cut his dead body in pieces. On 14.12.2014, the accused persons informed the abductee that the ransom amount has been settled between them and he will be released very soon. On 15.12.2014, the accused persons informed him that the ransom has been paid to them for his release, therefore, they will release him very soon. Thereafter, the accused persons stripped off his clothes and asked him to wear the ladies clothes and Burkaa produced by them which

he wore and then the taxi was called and he was made to sit in the middle of the two accused persons and one of them was pointing the pistol at him and threatened that if he will cry he will be killed. The vehicle was brought in the bushes and there was hut made of straws where his Burkaa was removed then the accused persons told him that the ransom amount has not been paid to them by his relatives, therefore, they would commit his murder. They stayed in the night in the said hut and thereafter accused persons engaged in talks for a settlement of the ransom amount with his uncle Basheer and his brother. They used to maltreat the abductee. On 19.02.2014, it was 2 AM or 3 AM night, suddenly the police party and the private persons in large number came there and directed that nobody should move from there, Police officials controlled upon the accused persons and snatched the pistols from them and about 6/7 accused persons were arrested, who confined the abductee. They were brought to the police station. The abductee has identified all the accused persons present in the Court by saying that they all are the same who were arrested on the day and time when he was released on account of a raid conducted by the police. In cross-examination, he denied the suggestion that some amount of outstanding against him and therefore he voluntarily caused his disappearing for fabricating this case. The prosecution also examined PW-2 Muhammad Bashir, who in his evidence deposed that on 11.12.2014, Sher Muhammad did not return home. In the morning time, he

inquired from Ashraf and Qasim about the missing of the abductee. In the evening time on 14.12.2014, he received a call on his mobile No. 0324-2995227 from the mobile phone of abductee Sher Muhammad, somebody from his phone informed him that Sher Muhammad has been abducted and asked him to make an arrangement of Rs.20 lacs as ransom amount for his release. Thereafter, he switched off the mobile. The accused persons threatened not to make complaint anywhere but complainant Ashraf has moved an application to the CPLC, who advised him to lodge the report to PS Sohrab Goth but at the same time they remained in contact with CPLC. On 18.12.2014, complainant Ashraf lodged the FIR at PS Sohrab Goth. On 19.12.2014 around 06:00 or 06:30 AM he received a call from Inspector Yasin that Sher Muhammad has been got released and you should appear at PS Garden. Thereafter, he along with Ashraf, Qasim and other relatives reached to PS Garden where they were informed that Sher Muhammad has been got released. In his cross-examination, he admitted that the names of the accused persons were disclosed by the police. The prosecution also examined complainant Muhammad Ashraf(PW3) who has also narrated the same story and confirmed that he has moved an application to the CPLC. They directed him to lodge the FIR and subsequently, he has lodged the FIR. He also confirmed that on 19.12.2014 at about 06:30 to 06:45 AM, he received a call from PS Garden and informed that his brother has been released, as such, he along with his uncle Bashir, brother

Qasim went to PS Garden where they met with Inspector Yasin, who informed that his brother has been released. In cross-examination, he admitted that on the very first day, he has moved an application to the CPLC. The prosecution also examined SIP Ghulam Asghar, who in his evidence, deposed that on 19.12.2014 they were on patrol. One spy informed them that one kidnappee is under the clutches of the kidnappers who are confined near Baba Tajuddin Tomb in Mewa Shah Graveyard and are demanding ransom amount for his release. Such information was shared with CPLC. Thereafter, they proceeded towards the place of information and on the pointation of spy they cordoned of the said house and entered the house by breaking the doors and found seven kidnappers and one abductee whose hands were tied, who later on disclosed his name Sher Muhammad whereas seven kidnappers were apprehended and recovered pistols, hand grenades, and other personal articles. Such a memo of arrest and recovery was prepared. The accused persons brought to the police station where separate FIRs were registered against the seven accused persons. In cross-examination, he admitted that the informer gave information at about 04:30 am (night) at Bara Board which is located at a distance for about 2 kilometers from the place of incident. Prosecution also examined Kashif Iftikhar (PW-5) Assistant Chief in CPLC, Governor House, Karachi, who in his evidence deposed that on 15.12.2014, he was posted as Assistant Chief in CPLC Governor House, Karachi on the same day he received an

application from Muhammad Ashraf wherein he disclosed that his brother namely Sher Muhammad was missing since 11.12.2014 and it was informed that his brother has been abducted for ransom amount and they are demanded Rs.20 lacs as Bhatta for his release. On 19.12.2014, for the purpose of tracking the whereabouts of the culprits as well as kidnappee by technical methods, during such process SIP Asghar Abbasi received a message from informer that the kidnappee has been kept under confinement at a Kacha Built house near to the Tajuddin Baba Mazar situated inside the Mewa Shah graveyard and after conducted raid, the abductee and seven accused persons were arrested. He admitted that Mewa Shah Graveyard is located adjacent to the place where kidnappee recovered. Prosecution also examined Incharge BDU Team (PW6) Muhammad Ayoub who has defused the hand grenades, (PW-7) Mohammad Yasin investigating officer who in his evidence deposed that he has recorded the statement of the witnesses and also collected mobile data record (CDR) and thereafter he has sent the recovered weapons to the office of AIG Police Forensic Department Sindh Karachi and received positive report in which said weapons were shown in working condition.

12. It is evident that the abductee narrated manner his abduction, demand of ransom and recovery by police which is apparently natural and confidence inspiring. The abductee also disclosed that in his presence, the ransom was demanded and identified all accused persons in the

Courtroom that they all are the same who abducted him and demanded ransom amount. In absence of enmity, the abductee has fully implicated the appellants in the commission of the offence. In this context, reliance can be placed on the case **MUHAMMAD RIAZ AND OTHERS V. BILQIAZ KHAN AND OTHERS (2012 SCMR 721)** wherein it is held as:-

“9. ...These prosecution witnesses particularly the abductees had neither any enmity with the appellants-convicts nor was so alleged with specific proof to warrant as inference that they had falsely implicated them....”

13. Furthermore, the version of the abductee Sher Muhammad for abduction and demand for ransom has been corroborated/ confirmed by the PW-2 Muhammad Bashir and PW-3 Muhammad Ashraf.

14. As far as the contention of learned counsel for the appellants that payment/demand for ransom has not been proved, hence, the case is not made out, is misconceived and has no force. For the sake of convenience relevant provision i.e. Section 365-A PPC is reproduced here, which reads as under:-

“365-A Kidnapping or abduction for extorting property, valuable security, etc. *whoever kidnaps or abducts any person for the purpose of extorting from the person kidnapped or abducted, or from any person interested in the person kidnapped or abducted, any property, whether movable or immovable, or valuable security, or to compel any person to comply with any other demand, whether in cash or otherwise, for obtaining release of the person kidnapped or abducted, shall be punished with (death or) imprisonment for life and shall also be liable to forfeiture of property.*”

Section 2(n) of Anti-Terrorism Act, 1997 provides as under:-

“2(n) *“kidnapping for ransom” means the action of conveying any person from any place, without his*

consent, or by force compelling or by any deceitful means inducing him, to go from any place, and unlawfully detaining him and demanding or attempting to demand, money, pecuniary or other benefit from him or from another person, as a condition of his release;

15. From the bare perusal of Section 365-A, PPC and Section 2(n) of Anti-Terrorism Act, 1997, it is obvious that in order to constitute an offence of kidnapping for ransom, the proof of payment of money or even demand thereof is not *sine qua non* and said offence also stands constituted if there is an abduction for the *purposes* of extortion of money or the ransom is demanded. PW-1 Sher Muhammad has deposed that he was abducted for ransom and demand of Rs.20 lacs for his release was made by the abductors. It is pertinent to mention here that PW-1 Sher Muhammad abducted on 11.12.2014 and was recovered from the custody of the appellants on 19.12.2014 after his remaining in captivity of the abductors for about eight (08) days. In our humble view, the ingredients of the offence of kidnapping for ransom are fully satisfied and proved in this case. In this regard, reliance can be placed on the case of **Muhammad Riaz and others *supra***, wherein the Hon'ble Supreme Court of Pakistan has held that:

"11. A close reading of the afore-referred provision would show that essential ingredients to prove the offence are twofold: (i) the act of abduction, (ii) "for the purpose of extorting from the person Kidnapped or abducted, or from any person interested in the person Kidnapped or abducted,...or to compel any person to comply with any other demand, whether in cash or otherwise, for obtaining release of the person Kidnapped or abducted". In Muhammad Amjad v. State (PLD 2003 SC 704), ambit of this provision came up for consideration and the Court held as follows:--

“38. Section 365-A P.P.C. deals with kidnapping or abduction for extorting property, valuable securities etc. while committing above crime various acts are done i.e. capturing the victim and then detaining him under captivity. Normally thereafter, demand is made for ransom. More often than not these acts are done by more than one person, but in this case everything was done by the appellant himself. To constitute an offence under this section it is not necessary that the money must have passed on to the culprit, nor it is necessary that the victim must have been released. Abduction/kidnapping may be by force or by deceitful means.”

12. The evidence led proved beyond reasonable doubt that the appellants had abducted the two abductees for the purpose of extorting ransom and had compelled the complainant to comply with the demand for cash/ransom for releasing the abductees.”

16. The minor discrepancies in statements of all the witnesses are not enough to demolish the case of prosecution because these discrepancies always occurred on account of lapse of time which can be ignored. It is not a discrepancy or discrepancies which could be pressed for an acquittal but the defence has to bring on record the contradictions which too should be of a nature to cut at the root of the prosecution towards their presence and manner of the incident. It is settled principle that the variations in the statements of witnesses which are neither material nor serious enough to affect the case of the prosecution adversely are to be ignored by the court. It is also a settled principle that statements of the witnesses have to be read as a whole and the court should not pick up a sentence in isolation from the entire statement and ignoring its proper reference, use the same against or in favour of a party. The contradictions have to be material and substantial so as to adversely affect the case of

the prosecution. The brother of the abductee Mohammad Ashraf (PW3) moved an application to CPLC on 11.12.2014 who advised him to engage the kidnappers in talks and linger on the negotiation about the settlement of the ransom, hence the delay of lodgment of FIR has properly been explained by the complainant. The recovered arms ammunition were sent to the office of FSI for its report which was received as positive that all pistols are in working condition along with BDU report.

17. The upshot of the above discussion is that the prosecution has successfully proved its case against the appellants through ocular evidence supported by the recovery of arms ammunition. Learned counsel for the appellants have failed to point out any material illegality or serious infirmity committed by learned trial court while passing the impugned judgment, which is in our humble view is based on an appreciation of the evidence and same does not call for any interference by this court. Thus, the convictions and sentences awarded to the appellants mentioned hereinabove by the learned trial Court are hereby maintained and the instant appeal filed by the appellants merits no consideration, which is dismissed. However, all the convictions and sentences awarded to the appellants shall run concurrently.

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