

IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD
Criminal Appeal No.S- 157 of 1999

Appellant: Rizwan Ahmed son of Laung Khan Solangi,
Through Mr. Ghulamullah Chang, Advocate

Complainant: Amb alias Ambho son of Shamo Kolhi,
Through Mr. Nisar Ahmed Durani, Advocate.

State: Ms. Safa Hisbani, A.P.G

Date of hearing: 02.09.2019

Date of decision: 02.09.2019

J U D G M E N T

IRSHAD ALI SHAH, J. The appellant by way of instant appeal has impugned judgment dated 15.11.1999, passed by learned 3rd Additional Sessions Judge Hyderabad, whereby the appellant for an offence punishable U/S 364-A PPC has been convicted and sentenced to undergo R.I for 07 years with benefit of section 382-B Cr.P.C.

2. It is the case of the prosecution that the appellant has abducted Manoo a boy aged 10 years with intention to subject him to un-natural lust or to commit his murder for that he was booked and reported upon.

3. The appellant did not plead guilty to the charge and prosecution to prove it examined complainant Amb alias Amboo and his witnesses and then closed the side.

4. The appellant in his statement recorded U/S 342 Cr.P.C denied the prosecution allegations by pleading innocence by stating that Manoo was kidnapped by Arjan and he has been involved in this case falsely by the complainant party. The appellant examined himself on oath to disprove

the prosecution allegation and also examined DWs Narain, Nawaz Ali and Muhammad Sharif in his defence to prove his innocence.

5. On evaluation of evidence so produced by the prosecution, learned trial court convicted and sentenced the appellant as is detailed above.

6. It is contended by learned counsel for the appellant that the appellant being innocent has been involved in this case falsely by the complainant party otherwise he has nothing to do with the alleged incident; the complainant is not an eye-witness of the incident; the FIR of the incident has been lodged with the delay of about two days and evidence of PW Arjan being inconsistent and doubtful has been relied upon by learned trial court without lawful justification. By contending so, he sought for acquittal of the appellant.

7. Learned counsel for the complainant has recorded no objection to acquittal of the appellant while learned A.P.G for the State has sought for dismissal of the instant appeal by contending that the impugned judgment is well reasoned and on arrest from the appellant was also secured the country made pistol, allegedly used in commission of incident.

8. I have considered the above arguments and perused the record.

9. As per complainant Amb alias Amboo, his brother Manoo went missing, after two days, he came to know through PW Arjan that Manoo has been taken away by the appellant, when he and Manoo were having a bath at watercourse. If it is believed to be so, then it signifies the fact that the complainant is not eye-witness of the incident. PW Arjan admittedly is residing with the complainant. If he was having knowledge about the

abduction of Manoo, allegedly at the hands of the appellant then there was no reason for him to have withhold, such information for about two days, under the pretext that he was under fear, which was extended to him by the appellant. The delay in lodgment of the FIR, as such could not be lost sight of, same indeed is reflecting consultation and deliberation. As per SIO / ASI Ghulam Shabbir one Ghulam Nabi Khaskheli was also apprehended by him, under suspicious to be involved in commission of the alleged incident. Its signifies, a fact that the police or to say the complainant party was not certain about the involvement of the actual culprits of the incident. On arrest from the appellant has been recovered a county made pistol, allegedly used in commission of incident, but such recovery was on 11th day of arrest of the appellant. PW / Mashir PC Sain Bux, who is alleged to be witness of such recovery, on asking was fair enough to state that his signature was obtained on blank paper at the place of incident. In these circumstances, the appellant could hardly be connected with the alleged recovery. The complainant after recording of his evidence before learned trial court and during course of hearing of the instant appeal before this court has also filed his affidavits stating therein that he has disclosed the name of the appellant before police under misunderstanding. Such affidavits could hardly be used as evidence but those could not be lost sight of. In these circumstances, it could be concluded safely that the prosecution has not been able to prove its case against the appellant beyond shadow of doubt.

10. In case of **Mehmood Ahmed & others vs. the State & another (1995 SCMR-127)**, it was observed by the Hon'ble Court that;

“Delay of two hours in lodging the FIR in the particular circumstances of the case had assumed great significance as the same could be attributed to consultation, taking instructions and calculatedly preparing the report keeping the names of the accused open for roping in such persons whom ultimately the prosecution might wish to implicate”.

11. In case of **Tarique Pervaiz vs. The State (1995 SCMR 1345)**, it has been held by Hon'ble Apex Court that;

“For giving benefit of doubt to an accused it is not necessary that there should be many circumstances creating doubt- if a simple circumstance creates reasonable doubt in a prudent mind about the guilt of the accused, then he will be entitled to such benefit not as a matter of grace and concession but as a matter of right.”

12. Based upon above discussion, the conviction and sentence awarded to the appellant by way of impugned judgment are set-aside, the appellant is acquitted of the offence, for which he has been charged, tried and convicted by the learned trial court. The appellant is present in court on bail, his bail bond is cancelled and surety is discharged.

13. The instant appeal is disposed of accordingly.

J U D G E