

IN THE HONOURABLE HIGH COURT OF SINDH, BENCH AT SUKKUR
Criminal Jail Appeal No. D- 18 of 2016

Rafique Ahmed S/o Ali Bux Pitafi.

Now confined in Central Prison Sukkur Applicant.

Through: Superintendent, Central Prison Sukkur.

CRIMINAL JAIL APPEAL OF CONVICTED PRISONER AGAINST THE
CONVICTION PASSED BY THE HONOURABLE ANTI TERRORISM
COURT SUKKUR, ON 21-01-2016 IN SPL. CASE NO. 13/2015, U/S 365-A,
344, 148, 149 PPC & 7 ATA 1997 CR.NO. 03/2015 PS. DAD LAGHARI.



ORDER SHEET
IN THE HIGH COURT OF SINDH BENCH AT SUKKUR
Cr. Jail A. No.D-18 of 2016

Date	Order with signature of Judge
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For hearing of main case

BEFORE Mr. Justice Abdul Rasool Memon J;
Mr. Justice Irshad Ali Shah J;

24.05.2018

Miss. Rizwana Jabeen Siddiqui Advocate for appellant
Mr. Zulfiqar Ali Jatoli APG

IRSHAD ALI SHAH J:- The appellant by way of instant appeal has impugned judgment dated 21.1.2016 of learned Judge Anti-Terrorism Court Sukkur, whereby he has been convicted and sentenced to undergo as under:-

- i) For committing offence u/s 148 PPC, he is convicted and sentenced to suffer R.I for three years.
- ii) For committing offence u/s 365-A PPC r/w section 149 PPC, he is convicted and sentenced to suffer R.I for imprisonment for life and for forfeiture of his property.
- iii) For committing offence u/s 344 PPC r/w section 149 PPC, he is convicted and sentenced to suffer R.I for three years and also to pay fine of Rs.10000/-and in case of default in payment of fine, he shall suffer S.I for three months more.
- iv) For committing offence u/s 7(e) ATA, 1997 r/w section 149 PPC, accused is convicted and sentenced to suffer R.I for imprisonment for life.

2. The narration of the facts disclosed by complainant Muhammad Ayoob in his FIR is to the following effect;



"Complaint is that Abdul Wahab Leghari aged about 23 years is my son and Shahid Hussain son of Muhammad Amin Leghari aged about 25 years is my nephew. On 31.12.2014 my son Abdul Wahab Leghari and nephew Shahid Hussain Leghari at 5.00 pm by taking spades with them left for irrigating the wheat crop by saying that they would return within one hour or half an

hour. My son Abdul Wahab and nephew Shahid Hussain did not return to home till late hours. In order to search them I and my nephew Altaf Hussain son of Muhammad Amin Leghari and Qudratullah son of Abdul Rehman Leghari by taking torch lights with us left for our lands when we reached at our land we did not find them. Their spades were found lying there. At about 7.30 pm we reached near bridge of Nurly Minor which is situated on katcha way leading from Well No.4 to Well No.6 there we were attracted by cries of Abdul Wahab and Shahid Hussain. We went running towards them and under the light of torches we found and identified accused Rafiq Ahmed son of Ali Bux by caste Pitafi r/o Gaji Minor, 2. Abdul Majeed son of Raees by caste Shar r/o Kharohi, 3. Balo son of Godho by caste Shar r/o Katcho Ronti and two unidentified persons to whom we saw properly under the light of torches and they would be identified by us if are seen again. All were having kalashnikovs in their hands. All the culprits were found going ahead while kidnapping Abdul Wahab and Shahid Hussain by beating and dragging them by holding their hairs. We advanced to rescue them but all accused by pointing their weapons at us threatened not to go near them. We due to fear did not go near to accused. Accused Rafiq Pitafi then asked us to arrange for ransom amount of Rs.20 lacs by saying that now he and his associates have abducted our boys. Due to fear and odd hours of the night we went back to our home. Being poor I could not arrange for ransom amount. In the coming morning I accompanied with above said witnesses and then went and met with accused Rafiq Ahmed Pitafi at his house and asked him that being poor persons we could not arrange for ransom amount so in the name of Almighty ALLAH he may release our boys. It was replied by accused that boys have been dispatched away; we should bring ransom amount then he would release the boys. Accused Rafiq Ahmed kept us on false hopes and promises from time to time and today he clearly refused. Now I have appeared to lodge report at police station that the above accused in collusion with each other, being armed with deadly weapons in order to spread terror have kidnapped my son Abdul Wahab and nephew Shahid Hussain Leghari for ransom. I am complainant, redressal may be made."

3. On investigation, the said abductees were secured by the police, the appellant was apprehended by the police after an encounter and from him was recovered the unlicensed klashnikovs and he after usual investigation he was challaned by the police before the court of law to face the trial for the above said offence.

4. At trial, the appellant denied the charge and prosecution to prove it, examined PW-1 complainant Muhammad Ayoob, produced through FIR of the present case, PW-2 Abdul Wahab (abductee), PW-3 Shahid



Hussain (abductee), PW-4 Ghulam Fareed, produced through him mashirnama of place of incident, PW-5 SIP Shoukatullah, produced through him mashirnama of arrest of the appellant and recovery of klashnikove from him and recovery of above named abductees and FIR Crime No.4/2015 and No.5/2015 of PS Dad Leghari, PW-6 HC Sher Khan, PW-7 Inspector/SDPO Muhsin Raza, produced through him criminal record of absconding accused Rano, Zafar @ Bali and Bashir Ahmed and orders of SSP Ghotki relating to constitution of investigation of present case and arrest of absconding accused and then prosecution closed the side.

5. The appellant in his statement recorded u/s 342 Cr.PC denied the prosecution allegation by pleading innocence by stating that he has been involved in this case falsely by the police at the instance of Akmal Leghari with whom he has political rivalry. Appellant did not examine himself on oath nor anyone in his defence.

6. On evaluation of the evidence so produced by the prosecution, learned trial court convicted and sentenced the appellant by way of impugned judgment, as stated above.

7. 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. The FIR was lodged with delay of eleven days to the incident; such delay was overlooked by learned trial court without any plausible justification. There was inconsistencies and contradictions in between evidence of the complainant and his witnesses those were ignored by learned trial court without any cogent reason. The arrest of the appellant and recovery of abductees from him by the police after ineffective encounter was doubtful. By contending so, she sought for acquittal of the appellant. In support of her contention, she relied upon case of **Muhammad Tufail vs. The State**, which is reported at 2013 SCMR 768 and Case of **Mst. Mahboob Bibi vs. The State**, which is reported at 2017 SCMR 1835.



8. Learned APG has supported the impugned judgment.

9. We have considered the arguments and perused the record.

10. It was stated by complainant Muhammad Ayoob that on 31.12.2014 his son Abdul Wahab and nephew Shahid Hussain went to take care of water rotation at their lands but did not return. Then he and PWs Altaf Hussain went at their lands. There at about 7.30 pm time they heard cries and on torch light they found five culprits. One or two amongst them were armed with klashnikovs while remaining were armed with pistols. By stating so, complainant has belied his FIR wherein it was stated by him that all culprits were armed with klashnikovs. It was further stated by the complainant that he and above said witnesses identified the said culprits to be Rafiq Pitafi, Shabir Shar and Bhalo Shar, while remaining two culprits according to him they could not identify as their faces were found muffled. By stating so, he has also belied his FIR wherein it was stated by him that the unknown culprits were seen by him and his witnesses properly and would be identified if are seen again by them. By introducing name of Shabir Shar, complainant omitted the name of Abdul Majeed Shar. The inconsistencies as are pointed above in evidence of complainant and his FIR could not be lost sight of. It was further stated by the complainant that above said culprits were forcibly kidnapping his son Abdul Wahab and nephew Shahid Hussain. He and his witnesses tried to rescue them but accused prevented them from doing so by pointing their weapons at them and then accused Rafiq Ahmed asked him to arrange for Rs.20 lacs as ransom for release of the said abductees. It was further stated by the complainant that he and his witnesses then went back to their village and then approached the appellant for return of the said abductees but to no avail. If the narration made by the complainant is believed to be true, then he was under lawful obligation to have lodged the FIR of the incident with the police promptly. It was not done by the complainant without any plausible explanation which appears to be



strange in the circumstances. The lodging of FIR on 11th day of the incident is reflecting consultation. Be that as it may, during course of his cross examination it was admitted by the complainant that the appellant being his co-villager was his friend. If it was so, then abduction of son and nephew of the complainant by the appellant without taking pre-cautionary measures to conceal his identity so as to avoid the charge after release of abductees upon payment of ransom is appearing to be strange, which has made the version of the complainant to be doubtful and in that context reference was rightly placed by learned counsel for the appellant upon case of Muhammad Tufail (*supra*). It was further admitted by the complainant during course of his cross examination that he has not disclosed specifically the name of the accused who demanded the ransom. By stating so, complainant again belies his FIR wherein it was stated by him that it was the appellant who demanded from him ransom amount for release of the above said abductees. No ransom amount for release of the above said abductees was ever paid by the complainant to anyone. PWs Altaf Hussain and Qudratullah who allegedly accompanied the complainant to place of incident at the time of alleged abduction of the said abductees were not examined by the prosecution at trial for no obvious reason. No doubt PW Abdul Wahab and Shahid Hussain, the alleged abductees have attempted to support the case of the prosecution but their evidence is not enough to believe the case of prosecution beyond shadow of doubt simply for the reason that they as per SIO/SIP Shoukatullah were recovered after an encounter which continued for about 15/20 minutes yet apparently proved to be ineffective. It was not witnessed by any independent person, though the said SIO/SIP with his police party allegedly reached at the place of incident on spy information. The 161 Cr.PC statements of PWs Abdul Wahab and Shahid Hussain the alleged abductees as per SIO/Inspector Muhsin Raza were recorded on 19th day of the incident. Why with such delay and why those were not recorded soon after their



recovery? No explanation to it is offered by the prosecution which has made the very recovery of the above said abductees by the police from appellant and others after ineffective encounter to be doubtful one. Be that as it may. It was stated by PW Abdul Wahab that after his captivity for 4/5 days he was shifted to another place where he was confined for 8/10 days. It was stated by PW Shahid Hussain that after five days of his captivity he was shifted to unknown place and there he was kept confined for seven days. Such inconsistency in between their evidence could not lost sight of. Both of them however, were unanimous on the point that they were secured by the police after an encounter with the appellants and others when they were being shifted to some other place. We are told that the appellants have already been acquitted by the court having jurisdiction in that police encounter case. The shifting of the abductees by their captivators by allowing them to cover the distance by foot even otherwise is not appealing to prudent mind. PW Ghulam Fareed during course of his cross examination was fair enough to admit that he could not say that what was mentioned in mashirnama of place of incident. If it was so, then no much reliance could be placed upon mashirnama of place of incident. In presence of above said circumstances it has rightly been contended by the learned counsel for the appellant that the prosecution has not been able to prove its case against the appellant beyond shadow of doubt.

11. In view of the facts and reasons discussed above, the impugned judgment *cannot be sustained*, it is set-aside. Consequently, the appellant is acquitted of the offence for which he was charged, tried, convicted and sentenced by learned trial court.

12. Above are the reasons, for our short order dated 24.5.2018,

whereby the instant appeal was disposed of.

CERTIFIED TO BE TRUE COPY

TYPED BY

COMPARED BY

READ BY

ASSISTANT REGISTRAR.

Sd/- 24/5/2018
IRSHAD ALI SHAH,
JUDGE.

Sd/-
ABDUL RASOOL MEMON,
JUDGE.

