

THE HIGH COURT OF SINDH AT KARACHI

Spl. Cr. Anti-Terrorism Jail Appeal No.251 of 2018

Present: *Mr. Justice Nazar Akbar*
Mr. Justice Zulfiqar Ahmad Khan

Appellant: Muhammad Anwar Jatoi son of Bashir Ahmed Jatoi,
through Mr. Muhammad Riaz, advocate

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

Date of Hearing : **03.11.2020**

J U D G M E N T

NAZAR AKBAR, J.- Appellant Muhammad Anwar Jatoi son of Bashir Ahmed Jatoi, was tried by learned Judge, Anti-Terrorism Court-I, Karachi, in Special Case No.AJ-227 of 2015, registered at Police Station Mochko, Karachi for offences under sections 365-A/34, PPC, read with Section 7 of the Anti-Terrorism Act, 1997. Appellant was found guilty and by impugned Judgment dated 31.08.2018 he was convicted under section 7(e) of the Anti-Terrorism Act, 1997 and sentenced to undergo life imprisonment and forfeiture of his property. Benefit of Section 382-B, Cr.P.C. was extended to the appellant. The appellant has challenged the impugned Judgment through instant appeal.

3. The brief facts of the prosecution case as disclosed in the F.I.R. are that on 22.01.2015 at 1800 hours, complainant Muhammad Hassan son of Haji Moosa lodged FIR No.20/2015, under sections 365/34, PPC at Police Station Mochko wherein he has stated that he was doing work in Haji Muhammad Cheekoo Garden near Ramzan Goth with Muhammad Saleem. On 21.01.2015, Muhammad Saleem after loading his Suzuki bearing Registration No.KR-9281, at about 1700 hours, informed the complainant through phone call that he had come out from Cheekoo Garden and at about 1930 hours, he would come at Agra Taj Colony, but he did not reach as such complainant made phone call on

his mobile Phone No.03130-8227255 and Mobile Phone No.0321-3390170 but both numbers were switched off, therefore, complainant reached at Garden, but could not find out Muhammad Saleem, as such, he informed at his home about his missing. They remained in search of Muhammad Saleem, but could not succeed, hence present FIR was registered against unknown accused persons.

3. During investigation, section 365-A, PPC was inserted and papers were forwarded to AVCC, Karachi, for further investigation and investigation was assigned to Inspector Gulab Khan Chandio, who obtained call data record of mobile phones, inspected place of payment of ransom amount of Rs.300,000/-, place of release of abductee and prepared such memos. Thereafter, investigation was entrusted to Inspector Hassan Baloch, who arrested accused Muhammad Anwar Jatoi, who was already confined at P.S. Mangho Pir in Crime No.429/2015, u/s 353/324, PPC and prepared such memo in presence of mashir and obtained call data record of mobile Phone No.0302-3984693 under memo in presence of mashir. Identification parade of accused was held before the Judicial Magistrate and after usual investigation, submitted challan before the Court.

4. Formal charge against the accused was framed by trial Court. Accused pleaded not guilty and claimed to be tried.

5. In order to prove its case prosecution examined nine prosecution, thereafter learned APG closed the side of prosecution vide statement Ex.14.

6. Statements of accused were recorded under section 342 Cr.P.C. at Ex. 15, in which he denied the allegations of prosecution and claimed that he has been falsely involved in this case. In his statement he deposed that complainant and abductee had deposed against him at the instance of police officials with collusion of Wadera Muhammad Ali Khuharo, who had also registered false

FIRs against him and his maternal cousin and they have been acquitted from that cases. He produced copies of judgments in that cases at Ex.15/A and 15/B. He, however, neither examined himself on oath nor led any evidence in his defence.

7. The learned trial court after hearing the learned counsel for the parties and on the assessment of entire evidence convicted and sentenced the appellant vide judgment dated 31.08.2018 as stated above.

8. The facts of this case as well as evidence produced before the trial court find an elaborate mention in the impugned judgment dated 31.08.2018 passed by the trial Court therefore the same may not be reproduced here so as to avoid duplication and unnecessary repetition.

9. Learned counsel for appellant Muhammad Anwar Jatoi contended that; the impugned judgment is based on a misreading and non-reading of evidence; there is no evidence that appellant had anything to do with the kidnapping; there was no evidence that any ransom demand was made; appellant was arrested on 05.11.2015 in the present case whereas identification parade was held on 21.11.2015, delay in conducting identification parade has not been explained by the prosecution; there was a delay in lodging of FIR, which has also not been explained; no recovery has been made from the appellant; none of the PWs had deposed that call for ransom had been made by the appellant from his cell phone and, as such, for all the above reasons the prosecution had failed to prove its case against appellant Muhammad Anwar Jatoi, beyond a reasonable doubt and thus for all the above reasons the impugned judgment should be set aside and the appellant be acquitted. In support of his contentions, learned counsel for appellant placed reliance on the cases of SHAHID alias KALOO versus The STATE (2009 SCMR 558), ABDUL ADEEL

and others versus The STATE (2009 SCMR 511) AND DANISH JAVED and 2 others vs. The STATE (2018 MLD 394)

10. The learned D.P.G. fully supported the impugned judgment and contended that based on the evidence on record the prosecution had proved its case against the appellant beyond a reasonable doubt and as such the instant appeal should be dismissed.

11. We have considered the arguments of learned counsel, perused the record and the case law cited by them at the bar.

12. At the outset we are of the view that in a kidnapping for ransom case a delay of a few days in registration of FIR is not fatal to the prosecution case as usually in such cases the parents are frantically looking for the missing person before deciding to register an FIR as a last resort once the realization finally sets in that their missing person is not with a friend or relative and is missing.

13. The question appears to us to be based on the particular facts and circumstances of this case whether the prosecution has been able to prove beyond a reasonable doubt through the evidence on record that Muhammad Anwar Jatoi kidnapped the abductee **and** demanded a ransom for his release and what role, if any, as per the evidence has played in the offense.

14. From perusal of evidence it transpired that PW-2 complainant Muhammad Hassan had only deposed about missing of abductee Muhammad Saleem, who lodged such FIR in which there is no mention of demand of ransom. PW-3 Muhammad Saleem (the abductee) had deposed that accused persons facilitated to talk to his brother Ismail on mobile phone, who informed him about his release after payment of ransom Rs.300,000/- and in the evening accused persons released him, he made a call to his brother from the mobile of owner of a Pan Cabin, later on his brother came there and took him to his

house. He further deposed that his brother informed him that he paid ransom Rs.300,000/- for his release. Prosecution had failed to examine brother of the abductee, namely, **Ismail as a witness in the instant as he is the persons, who allegedly paid the ransom amount to accused persons, which creates serious doubt in the prosecution version.** There is another aspect of delay in holding the identification parade of the accused as the accused was allegedly arrested in the instant FIR on 05.11.2015 whereas identification parade was held on 21.01.2015, the delay in holding the identification parade has also not been explained by the prosecution. None of the mobile phone for which call data has been obtained by the prosecution, allegedly used in the commission of offence, is in the name of the present appellant. Prosecution has also not associated the cabin man from whose mobile phone the alleged abductee had made a call to his brother, informing him about his release, who later on took him to his house. IO had deposed that he left for inspection of the place where the abductee was released and the cabin from where alleged abductee made a phone call to his brother at 1200 hours. IO further deposed that said cabin was closed due to odd hours and he returned back to AVCC/CIA Police Station at 1930 hours. Failure on the part of the prosecution to examine the owner of the cabin also causes dent in the prosecution case as 1200 hours to 1930 hours were not the odd hours.

15. Furthermore, if someone is kidnapped there is usually a motive for such kidnapping. In cases of kidnapping for ransom the motive is the ransom money. In this case, however, there seems to be very little evidence that any ransom demand was in fact made. The only evidence on this aspect of the case is the uncorroborated account of the abductee whose evidence in light of the non-examination of his brother, namely Ismail, as discussed above, is now in our view to a certain extent in doubt. For example, regarding the ransom, the brother of the complainant who allegedly paid the ransom has not been

examined by the prosecution to prove whether he actually had paid the ransom amount and to whom the same had been paid. Thus, in our view there is hardly any evidence to show that demand of ransom was made let alone by whom. Apart from the ransom money no other motive has been shown as to why appellant or any of the other accused may want to kidnap the complainant's cousin.

16. With regard to the kidnapping let alone the ransom aspect we are acutely aware that it is a well settled principle of criminal law that it is for the prosecution to prove its case against the accused beyond a shadow of a doubt and if there is any doubt in the prosecution's case the benefit of such doubt, as set out in the case of **Tariq Pervez v. The State** (1995 SCMR 1345) must go to the appellant as of right as opposed to concession. However in considering this aspect of the case we are also guided by the case of **Faheem Ahmed Farooqui V State** (2008 SCMR 1572) where it was held as under at P.1576 at Para D

"It needs no reiteration that for the purpose of giving benefit of doubt to an accused person, more than one infirmity is not required, a single infirmity creating reasonable doubt in the mind of a reasonable and prudent mind regarding the truth of the charge makes the whole case doubtful. Merely because the burden is on the accused to prove his innocence it does not absolve the prosecution from its duty to prove its case against the accused beyond any shadow of doubt."

17. In this case for the reasons discussed above primarily being the failure of the prosecution to examine the brother of the abductee, namely, Ismail, comes in the definition of hearsay evidence, which fact has been ignored by the trial court and had not appreciated the same while evaluating the prosecution evidence. We are of the view that when the evidence is read and considered in totality there would be a reasonable doubt in a reasonable and prudent person's mind that appellant Muhammad Anwar Jatoi was not guilty of the offense of kidnapping let alone kidnapping for ransom for which he has been convicted by the trial court.

18. Thus, for the reasons discussed above we find that the prosecution has failed to prove its case beyond a reasonable doubt against the appellant Muhammad Anwar Jatoi, as such, he is hereby acquitted and is ordered to be released immediately by the concerned jail authorities in the aforesaid case, unless he is in custody in respect of some other case.

19. These are the reasons for our short order dated 03.11.2020, acquitting the aforesaid appellant in this case.

J U D G E

J U D G E

Karachi, dated
Nov. 10, 2020

Gulsber/PS