

THE HIGH COURT OF SINDH AT KARACHI

Special Criminal Anti-Terrorism Jail Appeal No.125 of 2018
Special Criminal Anti-Terrorism Appeal No.145 of 2018

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

Appellant: Mst. Qaima Bibi W/O Khan Muhammad in Spl. Crl. A.T.J.A No.125 of 2018. (Nemo).

Appellants: (1) Noor Ahmed S/o Khan Muhammad
(2) Muhammad Khan @ Papoo S/o Ali Murad (Nemo).

Respondent: The State, through Mr. Hussain Bux Baloch, Additional Prosecutor General Sindh.

Date of Hearing : **21.12.2020**

J U D G M E N T

NAZAR AKBAR, J.--- All the above named Appellants were tried by learned Judge, Anti-Terrorism Court No.I, Karachi in Special Case No.72/2016 arising out of FIR No.386/2015, P.S. New Karachi Industrial Area, Karachi, for offences under Sections 365-A/34, PPC read with Section 7(e) of the Anti-Terrorism Act, 1997. On conclusion of trial, the trial Court, vide judgment dated **17.04.2018**, convicted and sentenced the appellants as under:-

“In view of the above reasons, I am of the firm opinion that prosecution has proved its case against the accused beyond any shadow of reasonable doubt, I therefore, convict the accused persons namely Mst. Qaima Bibi wife of Khan Muhammad, Noor Ahmed son of Khan Muhammad and Muhammad Khan @ Papoo son of Ali Murad u/s 265-H(ii) Cr.P.C for the offence punishable u/s 7(e) of Anti-Terrorism Act, 1997 r/w section 365-A/34 PPC and sentence them to suffer “**Imprisonment for life**” and order for forfeiture of their property. The benefit of Section 382-B, Cr.PC is also extended to them.”

2. Brief facts of the prosecution case are that on **01.12.2015** at 1615 hours, on the basis of statement of the complainant Hassan Ali

son of More Khan Magsi, **FIR No.386/2015** u/s 365-A PPC was registered at P.S New Karachi Industrial Area wherein complainant stated that on **28.11.2015** he was present at his house, his five years old son Adil was playing outside the house and suddenly he disappeared. The complainant searched him in the street and neighborhood but could not find him, therefore, the complainant went to Police Station and reported the matter about missing of his son. On **30.11.2015** brother of the complainant namely Rajab Ali received phone call on his Cell No.0300-3115733 from Cell No.0332-2647218 and caller informed him that child was in their captivity and directed him to bring Rs.20,00,000/- ransom in Hyderabad and take the child, in case of failure, they would get dead body of the child. Investigation was entrusted to Inspector Mohammad Hassan of AVCC on **04.12.2015** and later on transferred to DSP Muhammad Jahan Zeb Khan on **09.01.2016**.

3. The prosecution case against the appellants is that on **03.12.2015** at 0900 to 0920 hours SIP Muhammad Hashim posted at AVCC/CIA, Karachi accompanied with police officials namely ASI Waseem Illahi, ASI Sharafat Ali, ASI Mukhtiar Ahmed, P.C Akram, P.C Soaib in police mobiles Nos.SP-7335 and SP-3875 and members of CPLC namely Deputy Chief Sher Malik, Kashif, Atiq were busy in an investigation in the instant FIR and reached at Jamshoro on spy information that some accused persons having kidnapped a child and have kept at Goth Chandio District Jamshoro. On such information, they reached at the said place, entered in the house of accused persons and at apprehended two accused persons and one lady accused, on enquiry, they disclosed their names as Muhammad Khan alias Papoo s/o Ali Murad; Noor Ahmed s/o Khan Muhammad and lady accused Qaima Bibi w/o Khan Muhammad (the present appellants). One

abductee child namely Aadil s/o Hassan Ali aged 5 years was recovered from their possession. The police party cursory interrogated the accused persons, who disclosed that in fact co-accused Javed, their cousin and Din Muhammad, brother of accused Noor Ahmed have kidnapped the child from Karachi and brought him and kept at their home and they supervised the child.

4. After completion of investigation, Pw-6 IO on **20.01.2016** submitted challan against the accused before the trial Court and on **15.07.2016** charge was framed against accused persons to which they pleaded not guilty and claimed to be tried.

5. At trial, prosecution examined 07 witnesses i.e. **PW.1** complainant Hassan Ali Magsi at Ex:06; **PW.2** ASI Javed Iqbal at Ex.07; **PW.3** ASI Naveed Ahmed at Ex.08; **PW.4** ASI Mukhtiar Ahmed at Ex.10; **PW.5** SIP Muhammad Hashim Bullo at Ex.11; **PW.6** DSP Muhammad Jehan Zeb Khan at Ex.12; and **PW.7** Inspector Muhammad Hassan Baloch at Ex.14; thereafter the prosecution closed its side vide Ex:14.

6. Statements of accused were recorded under Section 342 Cr.PC at Ex.16 to 18. Accused denied the allegations leveled against them by the prosecution and claimed to have been falsely implicated in the present case at the instance of *Wadero*. They did not examine themselves on oath nor led any evidence in their defence.

7. Trial Court after hearing the learned counsel for the parties and assessment of evidence, by judgment dated **17.04.2018**, convicted and sentenced the appellants as stated above, hence these appeals.

8. The record shows that Mr. Kashif Ali, Advocate has filed power on behalf of appellants in these appeals, however, after filing power he remained absent on most of dates of hearings despite intimation notice,

therefore, we have perused the record and evidence with the help of learned Additional Prosecutor General, Sindh.

9. Mr. Hussain Bux Baloch, learned Additional Prosecutor General Sindh sought for dismissal of instant appeals by contending that appellants were identified by the kidnaped, therefore, prosecution has proved its case against the appellants/accused beyond any shadow of doubt.

10. The case of prosecution from the statement of complainant PW-01 Hassan Ali under **Section 154** Cr.P.C is that on **30.11.2015** his brother Rajab Ali received on his mobile **No.0300-3416733** a call from mobile **No.0332-2647218** and the caller demanded Rs.20,00,000/- as ransom from him. The prosecution has, however, failed to prove that phone number from which the ransom call was received was in the use of any of the three accused/appellants. The prosecution has not even able to locate the owners of the said phone number, nor there is any other evidence showing the said phone was in the possession of the appellants. Besides, the prosecution has not examined the said Rajab Ali, brother of the complainant, who has allegedly received the ransom call. Admittedly there is no allegation of kidnaping against the present appellants, who are inter se mother, father and son. The place of recovery of five years old abductee boy was neither locked nor guarded by anyone. It is a straw hut (چھوڑی) without even door. There is also no allegation of demanding ransom by them and even there is no allegation from the police that the appellants have received any ransom amount.

11. The police officer, PW:5 Mohammad Hashim, who has gone to recover the child on **03.12.2015** from a hut, was neither the I.O of the case nor he has sought any permission from the relevant authorities to leave Karachi and recover the child from Jamshoro. He also did not

associate the victim's family, nor any officials of AVCC accompanied him. The requirement of **Section 166 Cr.P.C** to inform the area police before conducting the raid in connection with any specific crime was totally violated. There is no private witness of recovery of child and even complainant was not informed by the police officer who has recovered the child despite the fact that he has received spy information six hours prior to leaving the AVCC office, Karachi.

12. In view of the above facts and evidence, we have no hesitation to hold that there are several circumstances/infirmities in the prosecution case as highlighted above, which have created reasonable doubt about the guilt of accused. By now it is settled law that for giving benefit of doubt to an accused, it is not necessary that there should be many circumstances creating doubts. If there is a circumstance, which creates reasonable doubt in a prudent mind about the guilt of the accused, then the accused will be entitled to the benefit not as a matter of grace and concession but as a matter of right. In the case of *Muhammad Mansha vs. The State (2018 SCMR 772)*, the Hon'ble Supreme Court has observed as follows:-

“4. Needless to mention that while giving the benefit of doubt to an accused it is not necessary that there should be many circumstances creating doubt. If there is a circumstance which creates reasonable doubt in a prudent mind about the guilt of the accused, then the accused would be entitled to the benefit of such doubt, not as a matter of grace and concession, but as a matter of right. It is based on the maxim, "it is better that ten guilty persons be acquitted rather than one innocent person be convicted". Reliance in this behalf can be made upon the cases of *Tariq Pervez v. The State (1995 SCMR 1345)*, *Ghulam Qadir and 2 others v. The State (2008 SCMR 1221)*, *Muhammad Akram v. The State (2009 SCMR 230)* and *Muhammad Zaman v. The State (2014 SCMR 749)*.”

13. In view of the above discussion, we have come to the irresistible conclusion that prosecution has utterly failed to prove its case against the appellants and trial court failed to appreciate the evidence

according to settled principles of law. Consequently, by short order dated **21.12.2020** the instant appeals were allowed and conviction and sentence recorded by the trial Court by judgment dated **17.04.2018** was set aside and appellants were acquitted of the charges. These are the reasons for our short order.

J U D G E

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Karachi
Dated: 06.01.2021

Ayaz Gul