

IN THE HIGH COURT OF SINDH AT KARACHI

Before: Mr. Salahuddin Panhwar, J
Mr. Zulfiqar Ahmad Khan, J

Special Criminal Anti-Terrorism Appeal No. 83 of 2014

[Hazoor Bux S/o Abdul Sattar and another v/s. The State]

Date of Hearing : 04.12.2017
Date of Announcement : 14.12.2017
Appellants : Hazoor Bux and Hussain Bux, through
M/s. Mushtaq Ahmed, Raja Hassan Nawaz
and Ajab Khan Khattak, Advocates
State : Through Mr. Abrar Ali Khichi, DPG

JUDGMENT

Zulfiqar Ahmad Khan, J:- Through this Special Criminal Anti-Terrorism Appeal the Appellants have assailed the judgment dated 17.09.2014 passed by learned Judge, Anti-Terrorism Court No.II, Karachi in Special Case No. 21 of 2011 arising out of FIR No. 36 of 2011 under Section 365-A/34 PPC read with Section 7 of ATA, 1997 registered at P.S New Town, Karachi, whereby the Appellants were convicted under Section 7(e) of Anti-Terrorism Act, 1997 and sentenced to suffer imprisonment for life. However, benefit under Section 382(b) Cr.P.C was granted to them.

2. Briefly, the facts of the case are that the complainant Haris Naeem filed an FIR by moving application to SHO New Town, Karachi that on 18.01.2011 at about 0830 hours his two friends namely Saad S/o Muhammad Ali Qaimkhani, having Mobile Nos. 0321-3669666 and 0332-3623526 and Shahriyar Arshad S/o Arshad Jawed, having Mobile No. 0346-2762866 had come to his House No.358/3 Golden Line, Sharafabad and had gone in his Car bearing No.AUP-021, Honda Civic White Colour, Model-2010, towards Chowrangi. When they left his car, his Chowkidar Natha Khan told him that three persons, wearing Shalwar and Kameez armed with weapons, had come and had left in the aforesaid car who

had abandoned the same car after a little distance but kidnapped his two friends in their own car on the show of fire arms, where after he came to report the incident at the police station. The FIR was registered against the unknown accused persons. The family of the abductee Saad Qaimkhani received phone calls from Mobile No.03213669666 (of the abductee Saad) demanding ransom amount of Rs. 2 Crore, whereas, from the family of Shahriyar Rs. 1 Crore ransom money was demanded.

3. During the investigation, it was established that the accused persons had contacted from Mobile No.0304-7791135 and 0306-4197152, demanding the ransom amount. A raid was conducted at house of co-accused Rasool Bux at Sector 51/B Liyari Express, Surjani Town, Karachi and during the encounter accused Rasool Bux died and two abductees were got released. The oath was taken by the Court on 11.07.2011. Copies under Section 265-C Cr.P.C. were supplied to the accused on the same day. Accused Raheem Gabol S/o Heebat Khan Gabol was declared as proclaimed offender on 07.10.2011.

4. A formal charge was framed (Exhibit 5) against both the accused on 13.10.2011, then by the orders of the High Court, two cases of 13-D of Arms Ordinance against both the accused were transferred to the Sessions Court therefore amended charge was framed against both the accused on 16.01.2013, to which charges they pleaded *not guilty* and claimed their trial.

5. In order to prove its case, prosecution examined 11 witnesses. PW-01 Haris Naeem Dhoraji at Ex.P/1 who produced his application which he had given to SHO as Ex.P/2 and Memo of Place of Incident as Ex.P/3. PW-02 is Muhammad Ali Qaimkhani, father of abductee Saad Ali Qaimkhani at Ex.P/4 who produced memo of place of recovery of two abductees and weapons etc. as Ex.P/5, Ex.P/6 and Inquest Report as Ex.P/7. PW-03 is abductee Saad Ali Qaimkhani at Ex.P/8. PW-04 is the second abductee Shahriyar Arshad at Ex.P/9. PW-05 is Ashraf Ali at Ex.P/10 who produced memo of taking mobile data as Ex.P/11. Ex.P/12 is mobile

data itself. PW-06 is Malik Muhammad Nawaz at Ex.P/13 who produced memo of arrest of two accused [present Appellants] and recovery as Ex.P/14. Ex.P/15 is the entry No.8. PW-07 Dr. Muhammad Tayab at Ex.P/16 who produced medical report at Ex.P/17, cause of Death as Ex.P/18 and letter given by Tahir Naseer for giving cause of death as Ex.P/19. PW-08 is SIP Muhammad Zubair at Ex.P/20 who produced FIR No.36 of 2011 as Ex.P/21. PW-09 is SIP Iqbal Hussain at Ex.P/22. PW-10 is Inspector Sher Muhammad at Ex.P/23 who produced Final Report under Section 173 Cr.P.C as Ex.P/24 and FIR No. 38 of 2011 as Ex.P/25. Ex.P/26 is the FSL Report. PW-11 is Inspector Tahir Naseer at Ex.P/27 who produced order of SSP for conducting Investigation of FIR No. 36 of 2011 as Ex.P/28. Ex.P/29 is the entry No. 71 by which he had departed from AVCC. He had arrived at AVCC vide entry No. 80, which he produced as Ex.P/30. He also produced entry No.82 by which two parents of the abductees had come to AVCC as Ex.P/31. He had produced his departure entry as Ex.P/32 as well as arrival entry at P.S Surjani Town as Ex.P/33. He had sent a letter to the Incharge Edhi Mortuary for handing over the dead body as Ex.P/34 and registered the FIR No. 38/2011 against the two accused. He had entered his arrival vide entry No.17 as Ex.P/35. He had produced the permission containing CNIC of Kareem Khatoon as Ex.P/36 and produced a letter written to SSP, AVCC Karachi for taking Call Detail Report as Ex.P/37. He had produced two letters faxed to I.O. as Ex.P/38 and Ex.P/39. He had produced a report given to SHO showing what ammunition was used as Ex.P/40 and thereafter learned DDPP closed the side of prosecution vide his statement dated 19.02.2014 at Ex.P/41.

6. The statement of accused Hazoor Bux under Section 342 Cr.P.C was recorded (Ex.P/42) and that of accused Hussain Bux (Ex.P/43). Statement on Oath under Section 340 Cr.P.C of accused Hazoor Bux was recorded as DW-01 at Ex.D/1. He had produced news clipping of newspaper as Ex.D/2 and that of public evening as Ex.D/3. Letter written to SHO Saeedabad dated: 26.06.2012 as Ex.D/4. Authority letter with the heading of Hashmi and Sons as Ex.D/5. Another

pamphlet as Ex.D/6. Picture of the house of Rasool Bux as Ex.D/7. DW-2 Hussain Bux at Ex.D/8. He had produced complaints as Ex.D/9 sent through TCS. DW-03 is Mumtaz Ali Ex.D/10. He had produced his CNIC as Ex.D/10-A and Ex.D/10-A. DW-04 is Tariq Ali at Ex.D/11. DW-05 is Tanveer Ahmed at Ex.D/12.

7. After hearing arguments of learned counsel for the Accused and DDPP for the State, the learned trial Court had convicted and sentenced the Appellants/Accused as mentioned in paragraph-1 (*supra*), hence this appeal.

8. Learned counsel for the Appellants contended that through the evidence adduced at the trial, the prosecution failed to establish that the abductees were kidnapped for extortion of ransom amount, as no such demand was placed by the Appellants therefore at the best the case falls under Section 365 PPC and not under Section 365-A PPC thus the Appellants are wrongly convicted under Section 365-A PPC. In support of his contention, he placed reliance on 2009 SCMR 558 (Shahid alias KALOO versus THE STATE) and unreported order of this Court dated 17.11.2015 passed in Special Criminal Anti-Terrorism Appeal No. 26 of 2009; order dated 12.04.2017 passed in Special Criminal Anti-Terrorism Appeal Nos. 33 of 2012 and 04 of 2013 and order dated 19.04.2017 passed in Special Anti-Terrorism Appeal No. 03 of 2009 where the Court in such circumstances at the appellate stage converted the sentence awarded under Section 365-A PPC to already undergone as under Section 365 PPC and released the appellants.

9. Learned DPG to the contrary supported the impugned judgment of the trial Court while arguing that the learned trial Court has rightly convicted the accused persons and the same does not require any interference and the same may be maintained and the appeal be dismissed.

10. We have heard learned counsel for the Appellants, Learned DPG and perused the material available on record.

11. Since, the appellants have not challenged their convictions but have only challenged legality of conviction under section 365-A PPC while pleading that it was a case falling within meaning of Section 365 PPC, therefore we would straightly come to the moot point as raised. To constitute an offence under Section 365 abduction and removal of the abductee should have been with the sole intention to cause abductee to be secretly confined. To the contrary, to fall under Section 365-A, which was added by the Act III of 1990, following ingredients are to be present:-

- i. Kidnaping or abduction of a person;
- ii. That kidnaping or abduction was for purposes of extortion of property (movable or immovable) or any value security;
- iii. From the person kidnaped or abducted; and
- iv. To compel any person to comply with any other demand whether in cash or otherwise for obtaining release of the person so abducted.

12. In the case at hand, it is admitted position that two young men namely Saad Qaimkhani and Shahriyar Arshad were forcibly abducted and dislocated from their neutral position. This act committed by the Appellants in association with their deceased brother namely Rasool Bux resulted in wrongful captivity of the abductees for a period of 44 days which *claim* is not seriously challenged by the Appellants, therefore, kidnapping/abduction stood established. Since, abduction/kidnapping for the purposes of extortion of property (movable or immovable) or any value security turns a *simple* abduction (365 PPC) into abduction for *ransom* (365-A PPC) therefore, if Appellants/convicts, at appellate stage, seek transposition of conviction under Section 365-A PPC to Section 365 PPC, then they need to show that findings given by the trial Court in this regard were based on **no-evidence**. Since to transpose a conviction from Section 365-A to 365 PPC, the decisive ingredient is the demand for ransom, in this regard the evidence of PW-2 and the CDR Ex.P/12 are very clear that the ransom was in fact demanded. PW-2, who is father of the abductee Saad Qaimkhani, vide Exhibit P/4 has stated that on the date of the incident he was present at home when at about 09:00 p.m. Ghayas, the friend of his son came and informed that his son

Saad and one other friend Shahriyar have been kidnaped in front of the house of third friend Haris Naeem. When, alongwith Arshad Jawed, father of Shahriyar and Nusrat they went to P.S New Town, they found Haris Naeem already present there. They moved an application to the Police Station. He further states that they kept on looking for Saad and Shahriyar and on 19.01.2011 FIR was lodged. He, in very clear terms stated that on 21.01.2011 a call was received by him where the caller informed him that his son Saad Qaimkhani alongwith his friend Shahriyar were kidnaped and he was asked to manage a ransom of Rs. 2 Crore. He further deposed that call came again on 24.01.2011 when the demand of Rs. 2 Crore was repeated and a call also came on 27.01.2011. It is important to note that all of these calls came from the mobile number 03213669666 of his son Saad Qaimkhani, who was in the captivity of the Appellants. As held in 1999 SCMR 610 in cases of kidnaping/abduction the statement of the abductee carries very substantial evidentiary value, the abductee Saad Qaimkhani PW-3 in his statement at Exhibit P/8 has identified the Appellants in person as they were present in the Court and has stated that "they use to guard them and give them food." As well as, the other abductee Shahriyar PW-04 through Exhibit P/9 has confirmed the identity of the Appellants and has stated that "they were the same persons who had tied them in chain and use to threaten them of the dire consequences and of killing them."

13. The CDR (Exhibit P/12) shows that from mobile number 0321-3669666 of the abductee Saad Qaimkhani a call was made on 21.01.2011 to the number of Muhammad Ali Qaimkhani viz. 0300-8225767. Again the calls were made on 24.01.2011 and on 27.01.2011 from the same number of Saad Qaimkhani on the number of his father Muhammad Ali Qaimkhani. From accused Hussain Bux, a SIM with Jacket No.3064197152 was recovered, by which he had called at the number of abductee's father Muhammad Ali Qaimkhani on his number 0300-8225767 three times on 02.03.2011. Again on 02.03.2011 a call was made from unknown number (0304-7791135) on the number of Muhammad Ali Qaimkhani.

Muhammad Ali Qaimkhani in his statement before the Court had stated that Arshad Jawed, father of Shahriyar [the second abductee] had also received a ransom call but he had not given his mobile number nor Shahriyar gave the number of his father. It needs not be over emphasized that an abduction for the purposes of *ransom* alone is sufficient to bring a case within meaning of Section 365-A PPC and it is not necessary that there must *always* be payment of demanded *ransom*. The manner in which the incident took place as shown by the evidence brought forward; demand of ransom; recovery of *abductees*, as well as identification of the Appellants were the factors so rightly considered by the trial Court for awarding conviction for offence under section 365-A PPC.

14. A careful examination of the above clearly shows that the requisite demand of extortion of money under Section 365-A PPC was placed to the family of the abductees which has been confirmed by the evidence adduced by the prosecution which is duly corroborated with the details of telephone calls made from the mobile numbers detailed in the above paragraph. Therefore, in the given circumstances we do not see any reason for transposing the sentence awarded to the Appellants from Section 365-A PPC to Section 365 PPC as there is proof beyond reasonable doubt that all the ingredients of Section 365-A PPC are present in the offence committed by the Appellants.

15. The instant appeal is accordingly dismissed and the trial Court's conviction is maintained.

JUDGE

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