

**IN THE HIGH COURT OF SINDH, CIRCUIT COURT,  
HYDERABAD**

**Criminal Appeal No.S-109 of 2018**

Appellants: Sabhago and Loung through Mr. Sher Muhammad Laghari, Advocate.

Respondent: The State, through Ms. Safa Hisbani, A.P.G for the State.

Date of hearing: 28-03-2022.

Date of decision: 28-03-2022.

**JUDGMENT**

**IRSHAD ALI SHAH, J.** The facts in brief necessary for disposal of instant Criminal Appeal are that the appellants allegedly with rest of the culprits in furtherance of their common intention by making trespass into house of complainant Mst. Rahmat Khatoon abducted his daughter Mst. Jadul with intention to subject her to rape or to get her marry with someone against her wishes, for that the present case was registered.

2. After due trial, the appellants were convicted under section 365-B read with section 34 P.P.C and sentenced to undergo rigorous imprisonment for life and to pay fine of Rs.50,000/- each and in default whereof to undergo simple imprisonment for six months with benefit of section 382-b Cr.P.C by learned Additional Sessions Judge, Shahdapur vide Judgment dated 18.04.2018, which is impugned by the appellants before this Court by preferring the instant criminal appeal.

3. It is contended by learned counsel for the appellants that the appellants being innocent have been involved in this case falsely by the complainant party in order to satisfy its dispute with them over plot; no abduction of Mst. Jadul has taken place and evidence of the prosecution witnesses being doubtful has been believed by learned Trial Court without lawful justification; therefore, the appellants are liable to their acquittal by extending them benefit of doubt.

4. The complainant by filing her affidavit has recorded no objection to the acquittal of the appellants. However, learned Assistant Prosecutor General, Sindh by supporting the impugned judgment has sought for dismissal of instant criminal appeal by contending that abductee is yet to be recovered.

5. Heard arguments and perused the record.

6. The F.I.R of the incident has been lodged by the complainant with delay of about five months that too after having a recourse under section 22-A&B Cr.P.C which appears to be surprising. Such delay in lodgment of F.I.R having not been explained plausibly could not be overlooked; it is reflecting consultation and deliberation. The complainant during course of her examination was fair enough to say that one Shero has demanded Rs.70,000/- for return of her daughter. If it is believed to be so, then liability of the abduction of the abductee, if any, was upon that shero; he surprisingly has not been made as accused of the incident by the complainant. PW Sohrab, who

happened to be son of the complainant, as per the complainant was available at the time of incident. He during course of his examination was fair enough to admit that he was intimidated about the incident by his mother when he came back to his house. If it is believed to be so, then he was not an eyewitness of the incident. He has also admitted dispute with the appellants over plot. In such situation, no much reliance could be placed upon the evidence of the complainant and her witnesses to base conviction. In these circumstances, it could be concluded safely that the prosecution has not been able to prove the involvement of the appellants in commission of the said incident beyond shadow of doubt and to such benefit they are found entitled.

7. 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".*

8. In case of *Muhammad Mansha Vs. The State* (2018 SCMR 772), it has been held by the Hon'ble Apex court that;

*"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".*

9. Above are the reasons of short order of even date whereby the instant criminal appeal was allowed and the appellants were acquitted of the offence, for which they were charged, tried and convicted by learned Trial Court.

JUDGE

*Muhammad Danish\**