

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

Criminal Appeal No.D-01 of 2016

Present:-

Mr. Justice Muhammad Iqbal Kalhoro.  
Mr. Justice Muhammad Saleem Jessar.

Date of hearing: 22.11.2022  
Date of decision: 22.11.2022  
Appellant: Bilal Masood,  
Through Mr. Ghulamullah Chang, advocate.  
The State: Through Mr. Nazar Muhammad Memon, APG.

JUDGMENT

**MUHAMMAD IQBAL KALHORO**, J:- Appellant has been convicted and sentenced to suffer Rigorous Imprisonment for life, pay fine of Rs.200,000/- for the offence u/s 6(2)(a) and 6(2)(e) punishable u/s 7(a) and 7(e) of Anti-Terrorism Act, 1997, in default, to suffer 01 year imprisonment vide impugned judgment dated 22.12.2015 in ATC Case No.73 of 2013 arising out of Crime No.31/2013 of PS Sakhpir u/s 365/A, 302, 34 PPC 6/7 ATA.

2. As per brief facts, complainant Muhammad Javed, a State Broker, registered FIR on 12.06.2013 at 1530 hours reporting incident of abduction of his son Wajdan alias Viki aged about 16/17 years on 11.06.2013, receiving phone call from unknown person demanding ransom of Rs.20,00,000/- for his release, and subsequently finding dead body of his said son with one firearm injury on his head in mortuary of Civil Hospital and identifying him, after it was discovered by the police from within jurisdiction of PS Budhani on 12.06.2013 trussed up in a briefcase left by the side of road. This FIR was registered against unknown accused. However, complainant on 20.06.2013 recorded his further statement u/s 162 CrPC stating that on the night of incident his brother Muhammad Ali, and friend Kashif Hussain while trying to search out the deceased had seen appellant Bilal Masood and his brother Ali Hassan in one CNG Rickshaw along with one briefcase and suspected that appellant Bilal Masood was

involved in the case. This information was recorded on 20.06.2013 but the police papers show that the aforesaid two persons had disclosed the said information to the complainant on third day of discovering dead body viz. 14.06.2013 and it was communicated to police which, acting upon such information, had arrested appellant from in front of his Flat No.A/10, 1<sup>st</sup> Floor, Aijaz Manzil Tahirabad, Liaquat Colony Hyderabad, on the same day viz. 14.06.2013, recovered from there alleged crime weapon i.e. MT 5 TT Pistol like Rifle, a coin of empty from the bedroom of appellant and found a bullet mark over the wall of bedroom. All these recoveries were duly recorded in the police dockets and photograph of bullet marks on the wall of bedroom of appellant was also taken and made part of the prosecution case.

3. During investigation, appellant's judicial confession was also recorded to the effect that deceased was his friend. On the day of incident he (the deceased) had sent a message to meet him and when he met him at the agreed place, he divulged that he was in need of 15/16 lacs of rupees, which they both conspired to take from father of the deceased by playing a drama of his abduction for ransom. But since, his father did not give encouraging reply (and kept them waiting), finally at about 1230 hours, the deceased wished to go home and tell his father that they were merely playing a joke with him. But he (the accused) stopped him and thereupon the deceased told him that if he did not let him go, he would inform his parents that he had abducted him. Still he restrained him and pointed out pistol to him. As soon as he loaded chamber, fire was made (involuntarily) which hit chest of the deceased and he died. Thereafter, he forced his body in a briefcase and left it on a road ahead of Ayoob Restaurant.

4. On the basis of such evidence, the Challan was submitted in the court and trial commenced. In the trial, prosecution examined 12 witnesses and produced all the necessary documents: FIR, further statement of complainant, relevant memos, postmortem report etc. to establish the charge against appellant. The entire evidence was confronted to appellant u/s 342 CrPC but he pleaded innocence and retracted from his judicial confession.

5. Learned defense counsel after arguing the case at some length submits that except judicial confession, no confidence inspiring evidence has been brought on record by the prosecution against appellant. Even if the judicial confession is accepted in toto, it is

obvious that the deceased was not murdered by the appellant intentionally or deliberately, and while loading chamber of the pistol, it was abruptly fired hitting and killing the deceased; then appellant out of fear and shame got rid of the dead body by throwing it on the road; as far as abduction for ransom is concerned it has not been proved and moreso such drama was played out at the instance of deceased, who was in need of money, therefore, the sentence of appellant under provisions of Anti-Terrorism Act, 1997 is not justifiable and as murder of the deceased by appellant was not intentional, his sentence may be converted from sections 6(2)(a) & 6(2)(e) punishable u/s 7(a) & 7(e) ATA, 1997, to u/s 302(c) PPC and reduced to the period already undergone by appellant, who is in jail since the day of his arrest viz. 14.06.2013 and has already earned remission of 01 year 10 months and 24 days, total 11 years 04 months and 02 days.

6. Learned Additional PG has not opposed this proposal.

7. We have heard the parties and perused material available on record. In this case, FIR has been registered against unknown accused. On third day of discovery of the dead body viz. 14.06.2013, complainant was informed by his brother PW Muhammad Ali and friend Kashif Hussain about seeing the appellant travelling in a CNG Rickshaw along with a briefcase evoking suspicion in their mind about him. Such suspicion, when shared with the police, led to arrest of appellant and collection of pieces of evidence from his flat. At the time of his arrest, allegedly he accepted his guilt before police. Therefore, his residence (Flat No.A/10) was searched, from where a coin of empty casing of a bullet was recovered, besides the alleged crime weapon viz. MT 5 TT Pistol like Rifle, and the bullet mark on the wall of bedroom was also found. The pistol and the coin were sent for FSL Report (Ex.21/O), which reads, in regard to coin, that no definite opinion can be expressed regarding one 32 bore damaged condition crime bullet now as marked "D" due to lack of sufficient identifiable data for examination.

8. The witnesses have supported the story of FIR, arrest of appellant and recovery of incriminating articles from him. However, it is an admitted position that there is no eyewitness in the case and it is based mainly upon confession of the appellant and recovery of articles connecting him with the offence. The confession has been retracted by the appellant in his statement u/s 342 CrPC. Recovery of articles from

his flat and call data (Ex.21/B) showing that the call to father of the deceased was made from mobile phone of the appellant using SIM of the deceased no doubt connects the appellant with the offence. But, except that, we have no further details to determine as to how this offence had happened. And for which we have nothing but to rely inevitably upon confession of the appellant. So, if we accept confession, it would appear that the murder committed by the appellant of the deceased was not intentional. It happened only when the deceased wanted to wrap up drama of his abduction, conceived by himself, and only then the appellant changed his mind and wished to make most of the opportunity by stopping him from going home. But in any case, it was not idea of appellant and he followed the deceased only, and secondly, as per his confession, he did not want to commit murder of the deceased but (by mistake) while loading chamber of the pistol, which is licensed in his name, the bullet was fired hitting the deceased. His getting rid of the dead body by trussing it in the briefcase was not but an act of desperation to save himself from the possible consequences.

9. In the facts and circumstances, insofar as abduction of the deceased and receiving the ransom from his father is concerned, it actually never happened or materialized, and even father / complainant did not believe it to be so and started searching out for his son. The phone call to complainant was made by the appellant only at the instance of deceased, who was in need of the money and it was the deceased who on his own volition played part of the abductee in the episode. The role of the appellant starts only when the deceased wanted to conclude the episode and go home, but appellant refused to let him do so. The confession does not show that what was in the mind of appellant at the time when he tried to stop the deceased, whether he wanted to have the benefit to himself or still wished to give its benefit to the deceased. Notwithstanding, before the abduction for ransom by the appellant could have been carried out, an stroke of idiosyncrasy intervened and the bullet was fired from the pistol, when the appellant loaded its chamber.

10. We have no other evidence available on record but the confession of the appellant to make such an opinion, and which shows that it was not an intentional murder of the deceased by the appellant. Therefore, we find ourselves in complete agreement with the contention of learned defense counsel that neither the provisions of Anti-Terrorism

Act for offence of abduction for ransom are made out, nor the murder of the deceased can be opined to be a result of preplanning or premeditation on the part of the appellant. Therefore, in our view appellant's act of murdering the deceased comes within the scheme of section 302(c) PPC. For, involuntary fire by the appellant to the deceased is a sufficient mitigating circumstance to bring his case within the ambit prescribed u/s 302(c) PPC, which provides for imprisonment of either description for a term which may extend to twenty five years. The jail roll of the appellant received today shows that he has remained in jail for 09 years 05 and 08 days and has earned remission of 01 year 10 months and 24 days, total 11 years 04 months and 02 days, and his remaining sentence is 15 years 07 months and 28 days. Therefore, there is no impediment legal or otherwise in accepting request of learned defense counsel, not opposed by learned Additional PG Sindh.

11. Consequently, the appeal is dismissed, conviction of the appellant is maintained, however, his sentence u/s 6(2)(a) & 6(2)(e) punishable u/s 7(a) & 7(e) Anti-Terrorism Act, 1997, is set aside and he is sentenced u/s 302(c) PPC to the period already undergone by him and to pay compensation of Rs.200,000/- (rupees two lacs) u/s 544-A CrPC to the legal heirs of the deceased, its default shall expose him to suffer 3 months more SI.

12. The appeal in hand with modification as above is dismissed and disposed of accordingly.

JUDGE

JUDGE