

## **IN THE HIGH COURT OF SINDH AT KARACHI**

PRESENT:

***Mr. Justice Mohammad Karim Khan Agha***

***Mr. Justice Amjad Ali Bohio.***

### **Spl. Cr.A .T. Jail Appeal No.159 of 2022**

Appellant : Waqar Ahmed S/o Naeem Ahmed  
Through Mr. Iqbal Shah, Advocate

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

Date of Hearing : 21.08.2023

Date of Judgment : 25.08.2023

## **J U D G M E N T**

**AMJAD ALI BOHIO,J:** Through instant Special Criminal Anti-Terrorism Jail Appeal, the appellant, Waqar Ahmed son of Naeem Ahmed, has contested the judgment dated 28.07.2022 passed by the learned Judge of Anti-Terrorism No. XII in Karachi. This judgment arises from Crime No. 48/2017 registered at Police Station Shah Faisal, Karachi wherein trial court found him guilty of an offense under Section 365-A of Pakistan Penal Code read with Section 6(2)(e) of the Anti-Terrorism Act (ATA) of 1997. Consequently, he was sentenced to life imprisonment with a fine of Rs. 2,00,000/- for each section. In the event of failure to pay the fine, an additional six years of imprisonment was imposed for each punishment. Additionally, he was also convicted and sentenced for an offense under Section 395 of the Pakistan Penal Code to life imprisonment along with a fine of Rs. 2,00,000/- in

default whereof further subjected to six years of simple imprisonment (S.I).

2. Precisely, the prosecution's case is that on February 13, 2017, at 18:35 hours, the complainant, Mst. Shamim Akhtar, residing at House No. 5/679, Shah Faisal Colony, Karachi, a house wife, lodged F.I.R., wherein she stated that on February 7, 2017, at 02:30 a.m. during the night time, unidentified persons who introduced themselves as armed police personnel forcibly entered her house after knocking the door. The intruders proceeded to search the premises and seized a gold set, cash amounting to Rs.70,000/-, two mobile phones, and additionally kidnapped her son, Saqib. Upon inquiry, the intruders stated that they would communicate via telephone call. Following this incident, the complainant noticed two cars as well as a vehicle resembling a police mobile outside of her house but she was unable to note the registration number of the said vehicles. Subsequently, the complainant's daughter-in-law Hina received a call from the kidnappers on February 10, 2017, at 10:21 hours. The call originated from Cell Number 0312-1048259. The kidnappers demanded a ransom of Rs.5,00,000/-. However, after negotiations, the ransom was reduced to Rs.2,00,000/-, and the kidnappers informed the complainant that they would give instructions for delivering the ransom amount. Consequently, the complainant lodged the aforementioned FIR against a group of 12 to 15 unknown persons disclosing that some of them were attired in police uniforms, while others were dressed in civilian clothing.

3. Following the registration of the F.I.R, Inspector Muhammad Ismail Jat conducted usual investigation in the case. He submitted a report under Section 173 of the Criminal Procedure Code before the competent court. After fulfilling all the legal requirements, the trial court framed charges against the appellant on August 10, 2018. The appellant pleaded not guilty and opted to proceed with the trial.

4. In order to prove the charge, the prosecution examined Mst. Shamim Akhtar (PW-1) Mst. Hina Kashif (PW-2), Assistant Commissioner Muhammad Imran Pathan (PW-3) Saqib Mughal (PW-4) Muhammad Asif Arain (PW-5) SIP Syed Ishtiaq Hussain (PW-6) Associate Member CPLC Shahjahan (PW-7) SIP Ishtiaq Hussain (PW-8) HC Muhammad Arif (PW-9) and Inspector Muhammad Ismail Jat (PW-10). Following the examination of these witnesses, the prosecution closed its side of evidence on April 25, 2022, as indicated by statement Ex-22.

5. Subsequently, the trial court recorded the statement of the appellant on April 30, 2022, as required under section 342 of the Criminal Procedure Code. During his statement, the appellant denied the allegations leveled against him, claiming his innocence, and stating that he had been falsely implicated. Appellant chose not to testify on oath under Section 340(2) of the Cr.P.C and did not produce any evidence in his defense. However, he submitted copies of the FIR, charge, and judgment from a previous case (Crime No. 408/2010) under Sections 392 and 34 of the Pakistan Penal Code of the Police Station Airport to support his claim of false implication.

6. After considering the arguments advanced by the respective legal representatives of both parties and evaluating the evidence produced during the trial, the learned Judge of Anti-Terrorism Court No. XII in Karachi passed the impugned judgment on July 28, 2022. This judgment resulted in the conviction and subsequent sentencing of the appellant in accordance with the details mentioned above. Subsequent thereto, the appellant has filed this appeal.

7. We have heard the contentions put forth by the appellant's legal counsel and the learned Additional Prosecutor General representing the State. Additionally, we have meticulously re-evaluated the entire evidence produced during the trial.

8. The learned counsel representing the appellant has advanced the following arguments in support of the appeal:

- a) The appellant has been wrongly implicated due to a financial dispute involving the abducted Waqar.
- b) The six-day delay in lodging the First Information Report (FIR) without any apparent or plausible explanation raises questions about the reliability and accuracy of the reported events.
- c) The defense argues that the testimony of the abductee, Waqar, is questionable, as his statements regarding the appellant's involvement seem inconsistent. PW Waqar mentioned identifying the appellant through a photograph but later on admitted to being a co-worker with Waqar, which raises doubts whereas Complainant Mst. Shamim, testified to have seen the appellant during the alleged incident.
- d) The defense questions the reliability of telephonic conversations recorded on a memory card. The

defense asserts that the memory card and its script were produced in court with a significant delay of almost one (01) year and nine (09) months. Additionally, the authenticity of the recorded voices was deemed unidentifiable by the Investigating Officer (I.O) during his testimony.

- e) The defense asserts that the I.O, despite claiming to have prepared the manuscript and copied data onto a CD, failed to provide sufficient testimony on the matter. Furthermore, the attempt to send the recording for forensic analysis to the Lahore Forensic Laboratory was explained with lack of facilities.
- f) The appellant's counsel highlights inconsistencies between the complainant's testimony and that of another witness Mst. Hina Kashif, regarding the appellant's presence near different-colored cars during the incident.
- g) The defense asserts that all the prosecution witnesses are related to each other and potentially have personal interests in the case.

9. In conclusion, the appellant's counsel has relied upon the cases of Akhtar Ali and others v. The State (2008 SCMR 6) and Muhammad Parvaiz v. The State and another (2019 YLR 2213) in support of the arguments made in the appeal.

10. On the other hand, the learned Additional Prosecutor General representing the State has defended the impugned judgment and counter-argued against the appellant's claims. The prosecutor has termed the contradictions highlighted by the defense counsel to be of minor nature and insignificant. The prosecutor contends that the witnesses, who testified during the trial identified the accused in their statements. The prosecutor

maintains that the prosecution has effectively established the guilt of the accused beyond a reasonable doubt.

11. Upon careful examination, it becomes apparent that the complainant who filed the complaint is Saqib's (abductee) biological mother. She reported the incident to the authorities after a substantial delay of six days. Remarkably, she omitted to mention the presence of the appellant/accused in the car when the incident occurred, during which it was alleged that police officials/accused took away her son. The prosecution's case rests on the testimonies of the complainant, Mst. Shamim Akhtar, and Mst. Hina Kashif, who claim to have witnessed the incident. According to their accounts, both witnesses saw the accused/appellant Waqar inside the car, as per Shamim Akhtar's testimony, and near a black car, as per Hina Kashif's testimony. Evidently, prior to this incident, the witnesses had no acquaintance with the accused Waqar. This lack of familiarity is evident from the fact that the complainant did not nominate him in the FIR. Nor did she give any hulia of him and only got a fleeting look at him in the darkness. Given this context, it was imperative for the prosecution to conduct an identification parade for the appellant/accused in front of a magistrate. Strangely, this essential step, which would verify the accuracy of the identification of accused, was not taken. The absence of an identification parade raises concerns about the possibility of the accused being mistaken in terms of his identity or even falsely implicated. This failure to conduct an identification parade aligns with the legal precedent set forth in the case of Muhammad

Asghar alias Nanna and another v. The State (2010 SCMR 1706). In this case, the Honorable Supreme Court highlighted the significance of identification parades to ensure the credibility of identification in criminal proceedings. The observation made by the Supreme Court in this case underscores the importance of conducting proper identification procedures in order to maintain the integrity of the judicial process given as under:

*“Thus it is an admitted fact that the appellants were not known to PW-15 therefore in such circumstances the identification of the appellants through PW-15 was essential but no such identification test was held as such in the peculiar facts and circumstances of the case, the identification of the culprits in the Court only through such witness carries no weight.”*

12. It is worth noting that both the complainant in her First Information Report (FIR) and PW Mst. Hina Kashif in her statement under Section 161 of the Criminal Procedure Code (Cr.P.C.) did not mention the presence of Waqar near or inside the car at the time of the incident. In contrast, during his testimony, the abductee Saqib did not testify about the presence of the appellant/accused at the scene of the incident, whether near or inside the car. Instead, he stated that the culprits had shown him photographs of different individuals and claimed that he was kidnapped based on the instructions of the appellant. Notably, PW Saqib identified the photograph of appellant Waqar as one of the individuals involved. This discrepancy raises questions because if, the appellant Waqar had indeed been

present near or inside the car at the time of the incident, as claimed by the complainant Mst. Shamim Akhtar and PW Mst. Hina Kashif, it would be logical to expect abductee Saqib to mention his presence as well. The fact that Saqib was familiar with appellant Waqar, having worked alongside him, further complicates the matter. If Saqib was indeed kidnapped under the orders of Waqar, it seems counterintuitive for the appellant to willingly participate in the alleged incident by being present at the scene where he could be identified. This inconsistency raises doubts about the narrative presented by the prosecution. Such contradictions and illogical aspects in the produced evidence significantly weakens the prosecution's case. These facts with such uncertainties can be used as a basis for casting doubt on the credibility of the witnesses and the overall version of the prosecution case.

13. A successful case is not just about presenting evidence but also about constructing a coherent and consistent narrative that stands up to scrutiny. Inconsistencies and contradictions, especially pointed out above, cast serious doubt on the prosecution's version and raise questions about the truthfulness and accuracy of their claims.

14. Furthermore, the evidence given by PW Muhammad Asif indicates that some individuals inquired about the enmity between Waqar and Saqib. Saqib apparently disclosed a financial dispute between them, suggesting that they frequently quarreled over monetary matters due to their working relationship. Accordingly, the involvement of the appellant/accused Waqar



seems questionable, especially considering that he was not initially named in the FIR by the complainant Mst. Shamim Akhtar. Additionally, PW Mst. Hina Kashif's statement during the investigation contradicts her later testimony in court, which raises concerns about the reliability of her evidence. This situation aligns with a legal precedent established in the case of 2008 SCMR 6, which emphasizes that contradictory and inconsistent evidence cannot be considered trustworthy. In light of these inconsistencies and contradictions in the testimonies, it becomes imperative to critically evaluate the credibility of the evidence presented against the appellant/accused Waqar.

15. Moreover, the testimony provided by PW Mst. Hina Kashif also raises significant doubts. She mentioned that she eventually became aware of the names of 13 to 15 individuals involved, including the accused Waqar Ahmed, Abid, Afzal Qureshi, Muhammad Qasim, Ghulam Nabi, and Abid. Curiously, she did not elucidate how she obtained this information, leaving a gap in the credibility of her claims. Adding to the skepticism, PW Mst. Hina Kashif stated that she came to know the name of the appellant/accused Waqar when she was called to the AVCC Police Station.

16. Additionally, the I.O collected the record of telephonic conversations through a seizure memo dated November 11, 2018, which was produced by PW Mst. Hina Kashif. The fact that this evidence was collected after a lapse of one year and nine months following the incident raises questions about the veracity and integrity of the evidence. Moreover, the telephonic

conversation record produced during evidence does not contain stamp and signature of the cellular company responsible for issuing such records. This deficiency in authentication aligns with the principles highlighted in the case of Muhammad Parvaiz v. The State through Additional Advocate General KPK and another (2019 YLR 2213) as under:-

*“In respect of the C.D.R. data, suffice it to say, that the same is of no importance to the prosecution on various accounts. As initially it was the duty of the prosecution to have received the C.D.R. with an endorsement of the cellular company concerned, having stamped and signature thereupon of the concerned authorized officer, then while taking into possession the C.D.R., through a recovery memo, at least a concerned person should have been associated from the Cellular Company to independently prove the recovery or at least, recorded the statement of representative of Cellular Company to the effect of issuance and receipt of C.D.R. but no such evidence has been collected. The perusal of C.D.R. is also demonstrates that there is not even a single signature of authorized officer of the said Company, thus, it cannot be safely relied upon in any manner.”*

17. Likewise, in the case in hand to the data presented as evidence lacks the stamp or signature of an authorized officer from the concerned company, further diminishing its credibility in this case. The prosecution's inability to establish the authenticity of the recorded data is compounded by the Investigating Officer's own admission that the voice recording collected from the conversations is unidentifiable with the accused. Thus no ransom demand has been proven. Unfortunately, the trial court did not adequately address this crucial aspect of the case.

18. In conclusion, the defense has highlighted several crucial factors that cast doubt on the credibility and reliability of the

prosecution's evidence. These factors include inconsistent witness testimonies, the existing familiarity between the abductee and the accused, the absence of an identification parade, and the questionable authenticity of telephonic conversation records. Collectively, these issues create a cloud of uncertainty over the accuracy of the evidence produced by the prosecution.

19. The testimonies of the complainant and other witnesses appear to have been introduced as an afterthought against the appellant/accused. These testimonies lack the necessary reliability and consistency required by legal standards. Taking all these concerns into consideration, the current appeal filed by the appellant, Waqar Ahmed, son of Naeem Ahmed, is accepted. As a result, the conviction and sentence handed down to him in the impugned judgment dated July 28, 2022, delivered by the Anti-Terrorism Court No.XII, Karachi, are set aside. The appellant, Waqar Ahmed, is acquitted of the charges brought against him, with the principle of 'benefit of doubt' being extended in his favor. He is to be released immediately, unless he is required in any other custody case.

**JUDGE**

**JUDGE**