

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR
Criminal Appeal No.S-08 of 2024

Appellant: Meer Afazal alias Afazal son of Mohano Khan bycaste Mazari **through** Mr. Shabbir Ali Bozdar, advocate.

The State: **Through** Syed Sardar Ali Shah Rizvi, Additional Prosecutor General.

Date of hearing 25-03-2024

Date of decision 25-03-2024

J U D G M E N T

IRSHAD ALI SHAH, J. The facts in brief necessary for disposal of instant Criminal Appeal are that PW Muhammad Tariq being resident of Qasoor Punjab when came at Sadiqabad for treatment of his ailment was abducted by the appellant and others for ransom; was kept confined in jungle at Motio Phaho. On coming to know about his confinement, Police Party of PS Wasti Jeewan Shah led by complainant ASI Faizullah went there, undertook an encounter with the captors who made their escape good from the place of incident leaving the said abductee behind at the place of the incident, who was got released, for that the present case was registered. The appellant was apprehended by the police when he was found confined at District Prison Ghotki and then was challaned to face trial of the above incident. On conclusion of trial he was convicted u/s 148 r/w 149 PPC and sentenced to undergo rigorous imprisonment for two years and to pay fine of Rs. 20,000/- and in default in payment whereof to undergo simple imprisonment for one month; he was further convicted u/s 324 r/w 149 PPC and sentenced to undergo

rigorous imprisonment for seven years; he was further convicted u/s 353 r/w 149 PPC and sentenced to undergo rigorous imprisonment for two years and to pay fine of Rs. 10,000/- and in default in payment whereof to undergo simple imprisonment for one month; he was further convicted u/s 368 r/w 149 PPC and sentenced to undergo rigorous imprisonment for life with forfeiture of his property. All the sentences were directed to run concurrently with benefit for section 382 (b) Cr.P.C by learned Additional Sessions/(MCTC) Ubauro, vide judgment dated 13-02-2024, which is impugned by the appellant before this Court by preferring the instant Criminal Appeal.

2. It is contended by learned counsel for the appellant that the appellant being innocent has been involved in this case falsely by the police and evidence of the PWs being doubtful in its character has been believed by learned trial Court without assigning cogent reasons; therefore; he is entitled to be acquitted of the charge by extending him benefit of doubt, which is opposed by learned Additional P.G for the State by contending that the prosecution has been able to prove its case against the appellant beyond shadow of reasonable doubt.

3. Heard arguments and perused the record.

4. It was stated by complainant ASI Faizullah and PW/mashir PC Shahnawaz that on the date of the incident when they with rest of the police personnel were conducting patrol within jurisdiction of PS Wasti Jeewan Shah, came to know through spy information that a

person abducted from Qasoor Punjab is being shifted by his captors from one to other place and they are about to cross Chowghati; on such information they proceeded to the pointed place. It was done by them without associating any independent person to witness the incident; such omission on their part could not be over looked. On asking it was stated by them that they reached at the place of incident within 30 minutes. It is not appealing to a common sense that the captors who were having abductee with them would have been there for about 30 minutes only to meet with an encounter with the police party. It was further stated by them that at the place of incident they identified the appellant and others, asked them to release the abductee, which they failed to release; consequently an encounter took place between them and the captors, which continued for about 10/15 minutes. On asking, they were fair enough to admit that such encounter proved to be ineffective one, which appears to be doubtful. It was further stated by them that the captors then made their escape good from the place of incident, leaving behind the abductee who was secured. It is not appealing to common sense that a person who was abducted for ransom was left behind unharmed by his captors only to become witness against them. On asking it was stated by the complainant that mashirnama of arrest and recovery was written by PC Mujahid Hussain. The complainant in that respect was belied by PW/mashir PC Shahnawaz by stating that it was written by the complainant himself. Such inconsistency in between their evidence could not be overlooked. PW Muhammad Tariq by supporting the factum of his release after an armed encounter stated that a ransom

worth Rupees six crores and sixty lacs was paid by his relatives to the captors for his release. If it is believed to be so, then there was hardly a need for his captors to have kept him confined with them even after receipt of ransom money. He allegedly was abducted from Sadiqabad Punjab; the FIR for his abduction has been lodged with PS Allahdad at Qasoor Punjab. How this happened? No explanation to it is offered by the prosecution. Least to say that such FIR too has not been brought on record by the prosecution; its non-production as such could not be over looked. As per I.O/SIP Ghulam Muhammad, the appellant was apprehended by him when he was confined at District Prison Ghotki under memo. After arrest, the appellant was to have been subjected to identification parade through PW Muhammad Tariq to confirm his involvement in the present case; such exercise has not been undertaken by the police; therefore, his identity by PW Muhammad Tariq at trial could hardly satisfy the requirement of law. The appellant during course of his examination u/s 342 Cr.P.C has pleaded innocence; such plea on his part could not lost sight of in the circumstances of the case.

5. The conclusion which could be drawn of the above discussion would be that the prosecution has not been able to prove its case against the appellant beyond shadow of reasonable doubt and to such benefit, he is found entitled.

6. In case of *Asghar Ali @ Saba vs. the State and others (1992 SCMR 2088)*, it has been held by Apex Court that;

"The identification in Court of a person produced as an accused months after the event could not satisfy the requirements of law for proving the identity of the culprit."

7. In the 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".

8. In view of the facts and reasons discussed above, the conviction and sentence awarded to the appellant under impugned judgment are set aside, he is acquitted of the offence with which he was charged, tried, convicted and sentenced by learned trial Court; and shall be released forthwith, if not required to be detained in any other custody case.

9. The instant Criminal Appeal is disposed of accordingly.

JUDGE