

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
 Spl. Cr. ATA Nos. 55, 56, 57, 58, 59, 60, 61 & 62 of 2016

Date	Order with signature of Judge
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For hearing of case.

15-05-2017

Mr. Muhammad Farooq, Advocate for appellants Mujahid Ali & Sajjad Ali.
 Syed Khalid Shah, Advocate for appellants Amjad Ali and Kamran Ali in
 Spl. ATA Nos.55,56,57 & 58 of 2016.
 Mr. Muhammad Iqbal Awan, DPG.

Precisely the relevant facts are that the appellants kidnapped the abductee Shahbaz and after encounter abductee was recovered.

2. At the outset, learned counsel for the appellants contends that the conviction under Section 365-A PPC, in the impugned judgment, is illegal as the abductee and eye witnesses did not support the prosecution case; they did not identify the appellants and *even* were declared hostile. Despite they have been convicted for life. This contention is not disputed by the learned DPG, therefore, no case of kidnapping for ransom is made out, and hence the impugned judgment to that extent is hereby set-aside. With regard to conviction awarded under Sections 353/324/34 PPC and Section 23(i)(A) of Sindh Arms Act is concerned, learned counsel for the appellants contends that they would not press these appeals if the same are converted as already undergone as the appellants are in jail since 11.07.2014. Such a request is not opposed by the learned DPG.

3. We have heard learned counsel for the respective parties and have examined the material available on record coupled with the impugned judgment.

4. At the outset, we would insist that it is by *now* well established principle of Criminal Administration of Justice that **‘no conviction can be based on any other type of evidence except direct, natural and confidence inspiring’**; **‘benefit of doubt is right of accused’**; **mere heinousness or gruesome nature of crime should not detract the Court of law in any manner from due course to judge and make appraisal of evidence**; and above all **‘it is not investigating papers on which *guilt* or *innocence* is to be judged but intrinsic value of evidence’**. Reference may be made to the cases of Azeem Khan (2016 SCMR 274) and Abid Ali

& 2 others 2011 SCMR 208. These principles must always be kept in view by a *Criminal Court* while deciding the question of *guilt* and *innocence*.

5. Admittedly, private eye witnesses and abductee have not supported the prosecution case to the extent of identity of the appellants and even the *act* of conceding by learned DPG to such argument is sufficient to conclude that learned Trial Court has not appreciated said well settled principles of *Criminal Jurisprudence* which attitude cannot be approved. However, since *undisputedly* there is no evidence against the appellant regarding offence relating to abduction and ransom hence the impugned judgment to that extent of conviction under Section 365-A PPC, being unjustified, is hereby set-aside

6. With regard to other conviction, learned counsel for the appellants contends that they are innocent and have been implicated falsely; they are only bread earners of their family; they are not habitual offender's as well hardened criminals and it would be in the interest of justice if their sentences are reduced.

7. Since, the offence under section 324 PPC and 23(i)(A) Sindh Arms Act have *different* evidences hence keeping in view the facts and circumstances thereof couple with facts of parting with *challenge* to such convictions, we maintain the convictions for such offences by taking failure of prosecution to establish *main* charge as *mitigating* circumstance reduce the awarded sentence from five years to already undergone. The appellants shall be released forthwith, if they are not required in any other custody case. With these directions, the appeals are disposed of. Office shall place the copy of this order in all the connected appeals.

JUDGE

JUDGE