

# IN THE HIGH COURT OF SINDH, KARACHI

Present:  
Mr. Justice Salahuddin Panhwar  
Mr. Justice Muhammad Saleem Jessar

## **Special Criminal A.T Appeal No. 264 of 2016**

(Wajahat  
versus  
The State)

## **Special Criminal A.T Jail Appeal No. 270 of 2016**

(Sohail Khan  
versus  
The State)

Date of Hearing : 14.04.2017  
Appellant Wajahat : Through Mr. Hussain Baksh Saryo,  
Advocate in Spl.Cr. ATA No.264/2016  
Appellant Sohail Khan : Through M/s. Irshad Ahmed Jatoi and  
Muhammad Qasim, Advocates in  
Spl.Cr.ATJANo.270/2016  
Respondent : Through Mr. Muhammad Iqbal Awan,  
APG

## **JUDGMENT**

**Muhammad Saleem Jessar, J.:-**By means of instant judgment we propose to dispose of following Criminal Anti-Terrorism Appeals filed by appellants Wajahat and Sohail Khan, who have been convicted and sentenced by the learned Judge, Anti-Terrorism Court No.VIII, Karachi (hereinafter to be referred as trial Court) in Special Case No.265/2015, New SPL Case No.219/2015 (State versus Nisar Khan and others), Special Case No.266/2015, New SPL Case No.220/2015 (State versus Nisar Khan), Special Case No.267/2015, New SPL Case No.221/2015 (State versus Wajahat) and Special Case No.268/2015, New SPL Case No.222/2015 (State versus Sohail Khan). The learned trial Court after full-dressed trial and having heard to either side has convicted appellant Sohail Khan and convict Nisar Khan under Section 7(1)(e) of Anti-

Terrorism Act, 1997. While appellant Wajahat has been acquitted due to insufficiency of evidence, however, all three accused/appellants Nisar Khan, Sohail Khan and Wajahat have been found guilty of the charge punishable under Section 23(1)(a) of Sindh Arms Act, 2013. The convict Nisar Khan and appellant Sohail Khan have been convicted and sentenced to R.I for 14 years in terms of Section 7(1)(e) of A.T.A 1997 in Crime No.80 of 2015. While Wajahat has been acquitted under Section 265-H(1)Cr.P.C. in same crime. Besides, it the properties belonging to appellant Sohail Khan and convict Nisar Khan have been ordered to be forfeited within the meaning of Section 2(P)(a) of A.T.A 1997. The appellants Wajahat, Sohail Khan and convict Nisar Khan have been convicted and sentenced to undergo R.I for 7 years with fine of Rs.100,000/- (Rupees one Lac) in Crime Nos. 81, 82 and 83 of 2015 registered with P.S. Shah Latif Town in terms of Section 23(1)(a) of Sindh Arms Act, 2013, in case of their failure to pay fine, they will further undergo for imprisonment of 6 months more. The benefit of Section 382-BCr.P.C has been extended to the appellants/convict.

2. The crux of prosecution case as depicted by the prosecution in its F.I.Rs captioned above is that soon after registration of FIR, investigation was entrusted to Inspector Muhammad Yaseen Gujar of AVCC. On 21.02.2015, SIP Raza Muhammad, during patrolling, appeared accused Nisar Khan, Wajahat Afridi and Sohail Khan while going in a car bearing No. ACM-201(belonging to complainant party).T.T pistols were recovered from the possession of all the three accused. After the arrest of accused person, complainant Riaz Ahmed was called at P.S where he identified the accused to be the same who had abducted him and received ransom from his brother. On 23.02.2015, SIP Raza Muhammad

pointed out the place of arrest of accused to Inspector Muhammad Yasin Gujar. I.O also visited the place of incident on the pointation of complainant so also the places where ransom amounts were received by the accused persons twice. He also obtained C.R.O of accused and recorded statement U/s 161 Cr.P.C of witnesses. The brother of complainant appeared at AVCC and identified accused Nisar that he had received ransom amount of Rs.50,000/- twice from him. During interrogation, the apprehended accused disclosed the name of their fourth companion as Abdul Rehman but his parentage and other particulars were not disclosed. The I.O also obtained CDR of the cell phones used in commission of offence. After completion of investigation, charge-sheet was submitted in the Court of law against accused Nisar Khan, Wajahat and Sohail Khan.

**OATH:**

After the above cases received to Anti-Terrorism Court for trial, and oath as prescribed under Section 16 of Anti-Terrorism Act, 1997 was taken by learned Judge of Anti-Terrorism Court No. VII, Karachi, where these cases were earlier pending. Thereafter, the case was transferred to the Anti-Terrorism Court No.VIII, Karachi and the learned Judge also took oath being Judge of Anti-Terrorism Court at Ex.04.

**ORDER FOR JOINT TRAIL:**

Out of above four cases, case Crime No.81, 82 & 83/2015, U/s 23 (1)(a) of Sindh Arms Act, 2013 were non-scheduled offence, but had nexus and connectivity with the scheduled offence, therefore, an order for joint trail of all the four offences was passed as provided U/s 21-M of ATA, 1997.

**CHARGE:**

A joint charge U/s 7 (1) (e) of ATA, 1997 and 23 (1)(a) of Sindh Arms Act, 2013 was framed against accused Nisar Khan, Wajahat and Sohail Khan to which they did not plead guilty and claimed their trial.

**TRIAL:**

At the trial, prosecution examined Riaz Ahmed Khan, the complainant of FIR No. 80/2015, U/s 365-A/34 PPC, R/w section 7 of ATA, 1997 as PW-01 at Ex.05. He produced his statement recorded U/s 154 Cr.P.C at Ex.06 and memo of place of incident along with sketch at Ex. 07 & 08. The second witness of the prosecution was Irshad Ahmed Khan, who was brother of complainant. He was examined as PW-01 at Ex.09. He produced memos of the places where ransom amount was paid to the accused at Ex.10& 11 and memo of identification of accused at Ex.12. The third witness of the prosecution was SIP Syed Sajid Hussain, who was examined as PW-03 at Ex.13, who produced memos of arrest of accused and recovery of arms and ammunitions and Car at Ex.14& 15 respectively. The fourth witness of the prosecution was SIP Raza Muhammad, he was examined as PW-04 at Ex.16, he produced roznamcha entry at Ex.17, FIRs of crime Nos. 82, 83 & 84/2015, U/s 23 (1)(a) of Sindh Arms Act, 2013 at Ex.18, 19 and 20, roznamcha entry at Ex.21, 22, 23 & 24 and memo of place where from the accused were arrested at Ex.25. The fifth witness of the prosecution was HC Sajjad Husain, who was examined as PW-05 at Ex.26. He produced memo under which CDR was received and produced CDR at Ex.27& 28 respectively. The last witness of the prosecution was Inspector Muhammad Yasin Gujjar, who investigated all the four cases. He was examined as PW-06 at Ex.29. He produced roznamcha entries at Ex.30& 31, memo of the place where from abductee was recovered at Ex.32,

report of FSL at Ex.33, letter issued to FSL at Ex.34, letter addressed to SSP for obtaining CDR at Ex.35 and letter issued for CRO of the accused at Ex.36. No other witness was examined by the learned ADPP for the state, who closed the prosecution side vide statement at Ex.37.

**STATEMENT OF ACCUSED:**

Statements of the accused U/s 342 Cr.P.C were recorded at Ex.38, 39 & 40. In their statements, they denied the prosecution evidence and claimed themselves to be innocent, had falsely been implicated in these cases. The accused further stated that nothing incriminating had been recovered from their possession. However, they did not examine them on oath nor produced any witness in their defense, however, requested for justice.

Learned trial Court after assessment of evidence and material placed before it had found following points for determination:-

**Point No.(i)**

Whether on 18.02.2015, at about 2315 hours, the present accused Nisar Khan, Wajahat and Sohail Khan in furtherance of their common intention had kidnapped the abductee/complainant Riaz Ahmed from Malir Nadi Bridge, Karachi, while he was going to his house in the Car of his brother Irshad so also snatched Rs.35,000/- from him and thrown the abductee at Malir Nadi, as claimed by the prosecution?

**Point No.(ii)**

Whether the present accused Nisar Khan, in furtherance of common intention received ransom amount of Rs.50,000/- each twice from the brother of complainant namely Irshad, as claimed by prosecution?

**Point No.(iii)**

Whether on 21.02.2015 at 1130 hours at main National Highway road near Abbot Laboratory, present accused Nisar Khan, Wajahat and Sohail Khan were arrested by SIP Raza Muhammad along with unlicensed 30 bore TT pistols while going in the Car bearing No. ACM-201 which was robbed from the complainant at the

time of his abduction, as claimed by the prosecution?

Mr. Hussain Bux Saryo, counsel for appellant Wajahat at the very outset stated that the appellant Wajahat had not been convicted by the trial Court for the Main Offence viz. in Crime No.80/2015 under Section 365-A/34P.P.Cread with Section 7A.T.A. 1997 and he has been acquitted from its charge, but has been convicted and sentenced by the trial Court for allegedly keeping unauthorized weapon in terms of the Section 23(1)(a) of Sindh Arms Act, 2013. He further submitted that the weapon allegedly shown to have been recovered from the appellant Wajahat was not recovered from his possession, but has been foisted upon him by the Police, as one of the complainant's brother was serving in the Police Department as A.S.I and in order to strengthen the rope of their false case, they have foisted the weapon against him. He further advanced that the said weapon was sent for its examination that whether it is in working condition or not after 5 days of its seizure and no plausible explanation has been furnished by the prosecution for keeping the same for 5 days. Mr. Hussain Bux further focused that by doing so, the prosecution itself had shown that the weapon was alleged and subsequently was foisted upon the appellant, hence, the said recovery being dubious and doubtful cannot be based for strengthen the conviction against the appellant Wajahat.

Mr. Irshad Ahmed Jatoy, learned counsel for the appellant Sohail Khan contended that prosecution witnesses were setup and there are material and major discrepancies in the prosecution evidence, therefore, the prosecution had miserably failed to prove its charge against the appellant by the trial Court without appreciation of the evidence as relied upon so called recoveries and

cock-and-bull story, which has no independent legs to stand upon. He further submits that there is no eye witness before whom the alleged ransom amount was paid and even it is also not surfaced that appellants had received the alleged ransom amount. Mr. Jatoti further submitted that the alleged abductee (victim Riaz Ahmed Khan) has resiled from his own version as to the version given by him in 154 Cr.P.C statement. He further submitted that although the names of the appellants were not given by the complainant in F.I.R, after their arrest the appellants were not subjected to identification parade and in absence of their identification, they cannot be held responsible for the alleged commission of the offence particularly when no characteristic and feature of the culprits are mentioned in the F.I.R. He further focused that when the victim has deposed before the trial Court that his brother had paid Rs.50,000/- ransom amount to the culprits at Malook Hotel. Moreover, an amount of Rs.50,000/- was also paid by his brother, but no proper time or venue has been specified by him in the evidence and as per allegation the culprits had demanded more Rs.200,000/- (Rupees two Lac) for which his brother refused and went to sleep for overnight without making payment of demand of ransom and ultimately the abductee was thrown by the culprits in Papaya Garden at 04:00 a.m. (morning before sunshine). He further contended that the abductee after getting himself able to unfold his eyes and hands, came in the nearby field and inquired from a cultivator, who was plowing the Tractor regarding the Main Road and on his guidance he reached at Quaid Abad and then to his house at 11:00 a.m. Before the trial Court the abductee without naming the culprits had identified them in following words and the said words are available at page-37 of Paper Book in Bottom of his examination-in-chief:-

“.....Accused present in Court wearing light green and dark green colour clothes are same who had abducted me”

But he failed to recognize where they were paid ransom from his brother or not. In his cross, he admitted that “The accused did not receive the amount in my presence. I do not know as to how much time passed till first ransom was paid as it was under fear of death”. Even he did not pinpoint the place where the alleged ransom was given. The person plowing Tractor was also not examined by the police during the investigation nor the abductee had pointed him through police to ascertain the fact that at the relevant time he after his release met to that Tractor Driver and inquired about the way towards the Main Road. He further admitted in his cross that until his arrival his brother had not intimated his abduction to police, even he could not show the place, where he was thrown by the culprits and to reply the query he responded in his cross-examination, which is available at Page-41 of the Paper Book in following terms:-

“It is a fact that the place where I was thrown by the accused persons was not recognized by me nor I showed the same to the police”.

In his cross, he had also admitted in following points at Page-41 of the Paper Book as:-

“The I.O called me at AVCC office again on 25.2.2015. I was shown my car, accused person, my wallet and mobile phone. I.O is by caste Gujar. It is incorrect to suggest that I am also Punjabi and running my bakery with the help of I.O. It is incorrect to suggest that all the articles/case property was already with I.O who asked me to become complainant. It is incorrect to suggest that I am deposing falsely”.

The abductee in his 154 Cr.P.C statement had given different version from his deposition before the trial Court in following points, which are available at Pages 47 to 49.



“.....third time, they demanded more Two Lac, brother refused the same, then, they having rounded me, thrown me in Malir River, it was appeared that their one accomplice also came later along with them, I reached at house hardly from Malir River and was in fear, now, I have come to do report that I can identify well to all three persons, brother Irshaad can identify well that person who remained receiving the extortion money from brother Irshaad, they also took away my car. My complaint is against the above persons recognizing by their faces, on 18-2-15 from 11:15 p. m., till unknown time, having abducted me, to snatch Thirty Five Thousands cash and to receive extortion money of Fifty Thousands Rupees twice, to take away my above car by throwing me in Malir River. Legal action may be taken, heard the statement, which is founded correct”.

In his entire 154 Cr.P.C statement, nowhere he had contended that he was thrown in Papaya Garden and then was able to inquire from a person plowing the Tractor and then reached to Quaid Abad viz Main Road. The I.O also had not recovered anything from the place of offence and the place of abduction. In his evidence, PW Irshad Ahmed Khan, who is brother of alleged abductee had identified to convict Nisar Khan before the trial Court by pointing that the accused sitting in the middle, who had been receiving ransom amount from him.

These are the reasons of our short order dated 14.04.2017.

Judge

Judge