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IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA

Criminal Jail Appeal No.D-13 of 2014

Criminal Jail Appeal No.D-15 of 2014

Before:

**Mr. Justice Muhammad Iqbal Kalhoro
Mr. Justice Irshad Ali Shah**

Date of hearing: 13.02.2018.

Date of judgment: 08.03.2018.

Appellant in Crl.Jail.Appeal No.D-13 of 2014

Shahzad son of Muhammad Akhtar Mughul,
through Mr.Nisar Ahmed Abro, Advocate

Appellant in Crl.Jail.Appeal No.D-15 of 2014

Faisal son of Habib Ahmed Shaikh, through
Mr.Aijaz Ahmed Bhatti, Advocate

Complainant: Zafar Iqbal Mughul through Mr. Shakeel Ahmed
Abro, Advocate

State : Mr.Khadim Hussain Khooharo, Addl. Prosecutor
General

J U D G M E N T

IRSHAD ALI SHAH, J.- Facts in brief for disposal of instant appeal are that on 03.02.2006, a boy named Hamza aged about 7/8 years went missing, when he was going back to his house after attending his father Zafar Iqbal at his Jewelry Shop at Jacobabad. Subsequently, the father of the said boy received a telephone call allegedly from appellant/accused Faisal that he with rest of the culprits have abducted his son Hamza and asked the complainant to bring rupees Eight Lacs and Gold Biscuit weighing 10 Tolas at his house at Bartan Gali, Kharadar Karachi, for release of his son Hamza with a threat that in case the incident is reported to anyone then his son Hamza would be killed. After receipt of such telephone call, the complainant intimated the incident to his

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brother Muhammad Azhar and PW Masroor Ahmed and then they took with them rupees Three Lacs and Gold Biscuit weighing 10 Tolas and then went to Karachi. There they reached on 29.01.2006, and met with Faisal, Sohail, Shahzad, Imdad Hussain, Abdul Ghaffar and two unknown culprits with their faces open with pistols which were lying on the table. The complainant gave rupees three lacs and a Gold Biscuit weighing 10 Tolas to appellant/accused Faisal and promised to give him remaining ransom amount within two days. All the said accused threatened the complainant and his witnesses that in case the remaining ransom amount is not paid within five hours, they would receive the dead body of boy Hamza. The ransom amount which was paid by the complainant to appellant/accused Faisal, he divided it in between him and rest of the culprits. The complainant and his witnesses then went back to Jacobabad to make arrangement for remaining ransom amount, in the meanwhile on 01.2.2006 the complainant received a telephone call from accused Faisal intimating him that the dead body of his son Hamza is thrown at Khuwaja Nizamuddin Park at Karachi, as he was not able to arrange for payment of remaining ransom amount. On receipt of such information, the complainant with his brother Muhammad Azhar and PW Masroor Ahmed went to Karachi through a Car, there they searched for the dead body of Hamza, which was found lying at Mortuary of Edhi Centre at Sohrab Goth, Karachi. His neck was found cut and postmortem on his dead body was already conducted. The complainant on enquiry came to know that a case in respect of murder of his son Hamza had already been registered at P.S Risala at Karachi. The complainant then obtained the dead body of his son

Hamza and took it to Jacobabad and then lodged a report of the above said incident with P.S City at Jacobabad.

2. After registration of F.I.R, accused named Abdul Ghaffar on arrest died in police custody, Accused Imdad Hussain, Mst. Barkat Bibi, Mst.Shah Noor alias Beena, Sohail on investigation were let-off while appellant/accused Faisal and Shahzad were challaned by the police to face trial for an offence punishable u/s. 302, 365-A PPC & 7 ATA.

3. Appellant/Accused Shahzad and Faisal were charged for the above said offences. They denied it. The prosecution to prove it examined PW/Mashir PC Wazir Ali, produced through him mashirnama of arrest of accused Imdad Hussain, Shahzad, Mst.Barkat Bibi and Mst.Nisha Noor with recovery of rupees Eleven hundred from them. PW/SIP Mukhtiar Ahmed was given up by the prosecution. Complainant Zafar Iqbal, through him was produced FIR of the present case. PW Muhammad Azhar, through him was produced attested copy of his 164 Cr.PC statement. PW/Mashir Tufail Ahmed, through him was produced mashirnama of place of abduction/incident. PW Masroor Ahmed, through him was produced attested copy of his 164 Cr.PC statement. SIO/Inspector Khuda Bux. SIO/Inspector Amanullah, through him was produced mashirnama of arrest of accused Faisal and attested copy of roznamcha entry which he kept at P.S Kabeer Wala at Punjab before affecting the arrest of accused Faisal. SIO/SIP Ali Murad, through him was produced death certificate of boy Hamza and FIR bearing Crime No.24/2006, u/s.302 PPC, which was registered against unknown culprits at P.S Risala Karachi.

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SIO/SIP Jamaluddin could not be examined on account of his death.

Prosecution then closed its side.

4. Appellant/accused Faisal and Shahzad during course of their examination under section 342 Cr.PC denied the prosecution's allegation by pleading innocence by stating that they were working at the shop of the complainant as goldsmith and they have been involved in this case falsely. It was further stated by them that co-accused Abdul Ghaffar has died while in custody with the police. They examined none in their defense. They however, examined themselves on oath in disproof of the prosecution's allegations against them.

5. It was stated by appellant/accused Shahzad that he was arrested by the police at morning time when he was going towards his shop at Shahi Bazar and then was brought at P.S City. He informed the police that the complainant party is his relative and he has got no concern with the abduction of the abductee. By stating so, he pleaded his innocence.

6. It was stated by appellant/accused Faisal that co-accused Abdul Ghaffar was his friend and with him he was having partnership with video game shop at Jacobabad. Co-accused Abdul Ghaffar was involved in this case and then was murdered by police during course of investigation. By stating so, he produced FIR relating to murder of co-accused Abdul Ghaffar. It was further stated by him that he is unaware of the abduction of the abductee and he being innocent has been involved in this case falsely at the instance of DSP Khuda Bux.

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7. On evaluation of evidence, learned trial Court convicted and sentenced appellant /accused Shahzad and Faisal to undergo R.I for life with forfeiture of their property for an offence punishable u/s.365-A r/w Section 34 PPC. They were also convicted and sentenced to undergo R.I for life for an offence punishable u/s. 7 (e) of Anti Terrorism Act, 1997. All the conviction and sentences were ordered to run concurrently with benefit of Section 382-B Cr.PC vide its judgment dated 31.03.2014 which they have impugned before this Court by way of filing separate appeals, those are being disposed of through single judgment.

8. It is contended by learned counsel for both of the appellants/accused that they being innocent have been involved in this case falsely and there is no evidence direct or indirect against them which may connect them with the commission of the incident. The evidence which the prosecution has been able to produce before learned trial Court is doubtful in its character. By contending so, they sought for their acquittal. In support of their contentions, they relied upon case of Muhammad Riaz and others vs. the State, which is reported at 2008 PCr.LJ-318, 2). Case of Muhammad Wasif Khan and others vs. the State, which is reported at 2011 PCr.LJ-470, 3). Case of Ghulam Muhammad alias Guloo vs. the State, which is reported at 2004 YLR-216, 4). Case of Muhammad Tufail vs. the State, which is reported at 2010 PCr.LJ-1389 and 5). Case of Abdul Sattar and others vs. the State, which is reported at 2002 PCr.LJ-51.

9. Learned counsel for the complainant and learned Addl. Prosecutor General sought for dismissal of both the appeals by contending

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that there is a direct evidence of acceptance of portion of ransom amount by both the appellants/accused.

10. We have considered the above arguments and perused the record including the case law relied at bar.

11. It was stated by complainant Zafar Iqbal that on 28.01.2006 his son Hamza after visiting his shop did not go back to his house. He related the incident to PWs Muhammad Azhar and Masroor Ahmed and they searched for Hamza. In the meanwhile, he received a telephonic message from accused Faisal that he has abducted Hamza and he is now going towards Karachi. He demanded rupees Eight Lacs and Gold Biscuit weighing 10 Tolas as ransom for release of Hamza. It was further stated by the complainant that he related the telephonic message to above said witnesses and on the next date, they went to the pointed place at Karachi. There they found accused Faisal, Shahzad and 2/3 unknown persons available. By stating so, the complainant has belied his FIR wherein it was stated by him that he found available at Karachi accused Faisal, Sohail, Shahzad, Imdad Hussain, Abdul Ghaffar and two unknown culprits, which appears to be significant, such inconsistency could not be lost sight of. Be that as it may be, it was further stated by the complainant that he paid rupees Three Lacs and Gold Biscuit weighing 10 Tolas to accused Faisal and he then distributed the same amongst themselves and then they shown his son Hamza to him, who was found kept confined in other room. It was further stated by the complainant that he then was asked by the accused to arrange for remaining ransom amount and then he with his witnesses went back to Jacobabad. It is not appealing to common sense that a father who saw

his abducted son in the flat would go back to his house at Jacobabad peacefully without taking any precaution to ensure that no harm is caused to his son. Be that as it may be, it was further stated by the complainant that on 01.02.2006, he was informed by accused Faisal through phone that his son Hamza is murdered and his dead body was lying at Khuwaja Nizamuddin Park at Karachi, as he had failed to arrange for payment of remaining amount of ransom. It was further stated by the complainant that he with his above said witnesses went to Khuwaja Nizamuddin Park. There he was informed by the police that dead body of unidentified boy was shifted to Edhi Centre, Karachi. He then went to Edhi Centre Karachi and found the dead body of his son Hamza lying with cut mark on his neck. The postmortem over the dead body of the said deceased was already done. He took the dead body of his son Hamza back to Jacobabad, buried it and then lodged report of the incident. The evidence of PWs Muhammad Azhar and Masroor Ahmed is no different to that of the complainant. It is the case wherein one innocent boy has lost his life while two other persons are undergoing life imprisonment, as such utmost care is to be taken to evaluate the evidence. The FIR of the abduction was lodged by the complainant with delay of about five days to the incident which was unnatural in the case like the present one, such delay could not be lost sight of. Neither the complainant nor any of his witnesses have been able to make disclosure of the cell number(s) whereby they were intimated about the abduction and murder of boy Hamza allegedly by accused Faisal. No effort was undertaken by the police to obtain CDR of any of the accused for no obvious reason. The complainant or any of his witness have not put any effort to point out the place at Karachi where they allegedly paid portion of ransom amount

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to accused Faisal and where the abductee boy was seen allegedly confined by the complainant party. In these premises, it is rightly being contended by learned counsel for the present appellants/accused that the evidence of the complainant and his witnesses being doubtful in its character could not be relied upon to base conviction.

12. It is said that 161 Cr.PC statement of the PWs and mashirnama of place of incident were prepared and or recorded by SIP Jamaluddin but unfortunately he could not be examined on account of his death. It was natural act, yet the benefit of his non examination could be extended to the appellants/accused. Evidence of SIO/SIP Khuda Bux, SIO/Inspector Amanullah Sadhayo, SIO/SIP Ali Murad, PW/Mashir PC Wazir Ali and PW/Mashir Tufail Ahmed is only to the extent of arrest of accused and preparation of such mashirnama with recovery of death report and FIR, which was lodged with P.S Risala. Their evidence hardly needs a discussion in the circumstances of the present case.

13. The conclusion which could be drawn of the above circumstances would be that the prosecution has not been able to prove its case against the present appellants/accused beyond shadow of doubt.

14. The plea of innocence which the present appellants/accused taken before learned trial Court at trial and during course of their examination under section 342 Cr.PC should not have been lost sight of by learned trial court.

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Result

15. In view of the facts and reasons, discussed above, the conviction and sentence which are recorded against the present appellants/accused by way of impugned judgment cannot be sustained, those are set-aside. Consequently, both of the present appellants/accused are acquitted of the offence for which they are charged. They should be released forthwith, if are no more required in any other case.

16. Both of the instant appeals are disposed of in above terms.

Ashteq S.