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ORDER-SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT LARKANA

Cr. Jail Appeal No.D-19 of 2015.

Date of hearing	Order with signature of Judge
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For hearing of case.

28.09.2017.

Mr. Muhammad Aslam Jatoi Advocate for the appellant.
Mr. Khadim Hussain Khoharo Addl.P.G

For the reasons to be recorded later on instant appeal is allowed. The impugned Judgment dated 02.03.2015 passed by learned Judge, Anti Terrorism Court, Larkana, in Crime Nos.37,38 and 39 of 2013 registered at Police Station Sultan-Kot is set-aside. The appellant is in Jail, he be released forthwith if not required in other custody case.

~~JUDGE~~

JUDGE

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**IN THE HIGH COURT OF SINDH, SINDH CIRCUIT COURT
LARKANO**

Cr. ATA Appeal Nos.D-19of 2015

Date

Order with signature of Judge

Present

Mr. Justice Muhammad Junaid Ghaffar and
Mr. Justice Muhammad Saleem Jessar

Date of hearing : 14.09.2017 & 28.09.2017
Date of judgment : 28.09.2017
Appellant/Convict : Baban @ Baboo s/o Mubarak Jaffery
through Mr. Mohammad Aslam Jatol,
Advocate
Respondent : The State Through Mr. Khadim Hussain
Khojaro Addl.P.G.

JUDGMENT

MUHAMMAD SALEEM JESSAR.J- By this common judgment, we intend to decide the instant appeal whereby Appellant/Convict Baban s/o Mubarak Jaffery has assailed the common judgment dated 02.03.2015 delivered by learned Judge, Anti-Terrorism Court Shikarpur, in respect of Crime No.37/2013, U/S 365-A PPC, 6/7ATA PS Sultan Kot District Shikarpur vide Special Case No.20/2013 The State VS Baban & others, Crime No.38/2013, Under Section 324, 353, 148, 149 of PS Sultan Kot, vide Special Case No.21-2013 The State Vs Baban & others and Crime No.39/2013 Under Section 23(I)A Sindh Arms Ordinance of PS Sultan Kot vide Special Case No.22/2013 re-Baban & others. The learned trial court after full dressed trial has convicted and sentenced the appellant/convict under section 265-H(II) CrPC and sentenced him for an offence punishable under section 365-A PPC to suffer R.I for Imprisonment for life. The learned trial court also found him guilty for offence punishable under section 324 PPC, convicted and sentenced him to suffer R.I for a period of 07 years, Under Section 353 PPC to R.I for a period of three years, Under Section 23(I)A Sindh Arms Act to suffer R.I

for a period of ten years. The learned trial court also awarded the benefit of section 382-B of CrPC.

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2. The brief facts of the prosecution case are that on 06.05.2013, the complainant Rano/alleged abductee alongwith his cousins Manzoor and Ali Mardan was going to their village from Sultan Kot on Tractor. When at about 7.00 p.m they reached at link road near Dost Wah water supply, they saw and identified the accused namely Qadiroo, Eiden, Ali Sher, Baban Jaffari (appellant), Ghulam @ Ghulamoo, Noor Nabi, Banho, Gulzar duly armed with deadly weapons and two unidentified accused, whose faces were opened were standing on road. The accused while pointing their weapons had directed them to stop, therefore, complainant Rano stopped the tractor and got alighted the complainant Rano. The accused on force of weapons kidnapped complainant Rano for ransom and directed to his cousin/PWs to arrange ransom amount of Rs.2500,000/- for his release. The information of above incident was received to SIP Hajan Shah. After about more than one month viz. on 27.06.2013, the police party headed by SIP Syed Hajan Shah Bukhari of CIA Shikarpur was on patrolling duty when they received spy information that Kidnaped Rano Jaffari, who was kidnapped on 06.05.2013 within the jurisdiction of PS Sultan Kot (District Shikarpur) is available in the jungle near Dost Wah (water channel). Upon receipt of such information he informed to his high ups, therefore, In-charge CIA inspector Sardar Khan Chandio alongwith his subordinates In-charge Special Team alongwith his subordinate staff, SHO Zahid Hussain Abro of PS Hamayoo alongwith his staff had arrive at Dost Shaakh for his assistance. With their help, they reached at pointed place at 0800 hours, they saw ten armed persons were sitting under straw made shade. The culprits on seeing the police vehicles tried to ran away. The police party while parking their vehicles alighted and proceeded by foot behind them. The accused started firing straightly upon them with intention to commit their Qatl-e-Amd and to deter them in performance of their duties. The police party also retaliated in their defence and the encounter was continued for half an hour. Later, they in strategic manner apprehended one accused alongwith K.K. The K.K was having magazine containing 11

bullets, its number was erased and it was Pakistani made and in working condition. They enquired whereabouts of the person who disclosed his name to be present appellant. For the recovered K.K he disclosed it to be unlicensed/without permission for escaping accused he disclosed their names to be Qadiroo, 2. Eiden, 3. Ali Sher, 4. Ghulam @ Ghulamoo Jaffari, 5. Banho Kosh Jatol, 6. Noor Nabi @ Dodo, 7. Gulzar Jatol and two unidentified for whom he disclosed were not known to him. The police party had searched and found one person whose feet were chained and cuffed. He disclosed his name as abductee Rano Jaffari, his chain was removed from his legs. Such memo of recovery of abductee, recovery of weapon and arrest of appellant was handed down. Nothing was recovered from the appellant except the weapon. The police party came at PS Sultan Kot they got registered three FIRs being Crime No.37 of 2013 Under Section 365-A PPC r/with section 6/7 ATA through complainant/abductee Rano Jaffari, Crime No.38 of 2013 Under Section 324, 353, 148, 149 PPC r/with section 23(i)A of Sindh Arms Act 2013 on behalf of the State and FIR No.39 of 2013 under section 23(i)A of Sindh Arms Act 2013 on behalf of the State.

3. After registration of FIRs the investigation was conducted by the SIP/complainant Syed Hajan Shah who after completion of legal formalities had submitted the Challan before the trial court on 12.07.2013.

4. After taking cognizance and completion of codal formalities learned trial court had framed an amalgamated charge against the appellant and co-accused Noor Nabi @ Duroo at Ex.10 on 06.08.2014 to which they pleaded not guilty and claimed to be tried vide their pleas at Ex.10-A & 10-B respectively.

5. To prove its case, the prosecution had examined in all four witnesses namely PW-01 Syed Hajan Shah at Ex.11, PW-02 Complainant/Abductee Rano Jaffari at Ex.12, PW-03 ASI Suhno Khan at Ex.13 and PW-04 tractor Driver Ali Mardan Jaffari at Ex.14, then side of prosecution was closed vide statement of DDPP dated 08.01.2015 at Ex.15.

6. The appellant/convict and co-accused were examined under section 342 CrPC at Ex.16 & 17, in which they had denied the allegations levelled against them by the prosecution and professed their false implication and innocence. However, co-accused Noor Nabi had examined one Abdul Latif and HC Asad Mahar to be his D.Ws vide Ex.19 & 20 respectively then side of defense was closed vide statement of defense counsel dated 28.01.2015 at Ex.21. The learned trial court after hearing respective Counsel and the prosecutor has acquitted co-accused Noor Nabi while extending benefit of doubt, whereas, has convicted and sentenced the appellant in the terms stated above. However, case against the absconders was kept on dormant file till their arrest.

7. We have heard Mr. Mohammad Aslam Jatoi, learned counsel for appellant/convict and Mr. Khadim Hussain Khooharo learned Addl. Prosecutor General, Sindh for the State and have scanned the record carefully.

8. Learned counsel for the appellant/convict has argued that the alleged abductee was abducted allegedly on 06.05.2013, whereas, FIR thereof was lodged by the abductee himself after his recovery on 27.06.2013. He next submitted that though the alleged abductee, at the time of his abduction was accompanied by his cousins and place of incident was away from the police Station Sultan Kot at a distance about 05/06 kilometers, but they did not got registered any FIR of such a heinous crime nor even intimated the same to police. He submitted that a bird or calf of cattle misses, the owner becomes disturbed; however, here in this case a man was allegedly kidnapped but the matter was not reported. He next contended that neither the ransom amount was paid to the appellant nor the alleged abductee was recovered from his exclusive possession, his tent, vessel or house nor he was recovered on the piontation of appellant. He next contended that though the complainant had nominated the co-accused Noor Nabi, yet he has been acquitted from the charge only on the basis of the statements of D.Ws. He next contended that though the alleged encounter with police continued for 30 minutes, neither the appellant nor any member from police party or their vehicle had sustained a an injury or even scratch.

He next contended that the weapon allegedly shown to have been recovered from his possession was not recovered and has been foisted upon him by the police just to strengthen the rope of this case. He next focused upon the examination report of the weapon which was sent to the laboratory on 09.07.2013 though it was recovered on 27.06.2013 with the delay of about 13 days. He next contended that PW Ali Mardan who is allegedly eye witness and cousin of the abductee had not supported the case of prosecution and therefore, was declared hostile by the DDPP. In spite of lengthy cross conducted by the DDPP nothing was fructed for prosecution. In support of his contention he has placed reliance upon the cases of 2011 MLD 1667, 2012 SCMR 538, 2013 PCrLJ 1786, 2015 PCrLJ 316, 2014 YLR 794, 2015 YLR 822, 2015 YLR 1911, 2011 PCrLJ 158 and 2013 PCrLJ 1786. He further contended that neither the mashirs nor the heads of police party called from the district police were examined. He submitted that trial court had erred while convicting the appellant as the prosecution had not come with clean hands. He lastly prayed that judgment being illegal is not sustainable and same may be set-aside.

9. On the other hand, learned APG appearing for the State supported the impugned judgment by contending that appellant is nominated in FIRs and was found in possession of an unlicensed K.K. He however, could not controvert the major discrepancies with regard to the non-payment of ransom amount and recovery of alleged abductee from the Jungle and not from the exclusive possession of present appellant.

10. After having heard the Counsel for the appellant and while examining the evidence adduced by the prosecution we have found that the alleged abductee Rano was not recovered from exclusive possession of the appellant. Though there had been an alleged encounter, resulting in the recovery of abductee, none from either side had sustained an injury or any scratch on their part. Moreover, the alleged abductee though had been in captivity for about 47 days, not a single rupee was paid by the family of the abductee to the culprits including the appellant. The abductee in his cross examination stated that they had taken tea at the Hotel of Zahid Pathan,

however, he has not been examined by the police. He further admitted that he didn't know how many accused were available at the time of raid and who subsequently ran away, while appellant was arrested. It is amazing that a person was abducted and was missing for such a long period of time, but no FIR was lodged by his family /alleged eye witnesses who were with him at the time of his abduction. The alleged abductee after his release himself got registered the case of his abduction which creates serious doubts in the veracity of prosecution evidence. The alleged K.K was recovered on 06.05.2013 but was sent for examination on 09.07.2013 and no plausible explanation has been furnished by the prosecution for keeping the weapon in their custody for such a long period. PW Ali Mardan who was allegedly eye witness of the occurrence has not supported the case of prosecution and was declared hostile by the prosecution itself. Inspite of lengthy cross conducted by DDPP not a single suggestion was found in favour of the prosecution. In view of such situation and the discussion hereinabove we are of the considered view that prosecution has failed to prove its case against the appellant beyond reasonable shadow of doubt.

11. It is well settled principle of law when even slightest of doubt and or a single circumstance arising in the prosecution case is sufficient to discard the prosecution evidence. Reference in this context can be made from the case of **Tarique Parvaiz Vs the State** reported in 1995 SCMR 1345 whereby Honourable Supreme Court of Pakistan while extending benefit of doubt to petitioner/appellant has interpreted and held as under:-

The concept of benefit of doubt to an accused person is deep rooted in our country. Forgiving him benefit of doubt it is not necessary that there should be many circumstances creating doubts. If there is a circumstance which creates reasonable doubt in a prudent mind about the guilt of the accused, then the accused will be entitled to the benefit not as a matter of grace and concession but as a matter of right.

12. Moreover, neither the ransom was paid, nor the abductee was recovered from exclusive possession of the appellant, therefore, the case against appellant is not free from doubts. Therefore, we are of the considered view that the

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prosecution has miserably failed to prove its case against the applicant. Consequently instant appeal was allowed on 28.9.2017 and the appellant was acquitted from the charges arising out of crime No.37/2013 PS Sultan Kot (District Shikarpur) under section 365-A PPC r/with section 6/7 ATA 1997, Crime No.38/2013 PS Sultan Kot Under Section 324, 354, 148, 149 PPC and Crime No.39/2013 PS Sultan Kot under section 23(i)A, SAA, 2013 and these are the reasons thereof.


3.11.2017
Judge


Judge
3.11.2017