

ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA 6
Crl. Appeal No.D-11 of 2015

Date of Hearing	ORDER WITH SIGNATURE OF JUDGE
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07.03.2018.

1. For Hg. of Appln. u/s 426, Cr.P.C on M.A. No.356/2015.
2. For hearing of case.

M/s Sarfraz Khan Jatoi and Habibullah G. Ghouri, advocates for the appellant.

Mr. Khadim Hussain Khooharo, Addl. P.G.

For reasons to be recorded later-on, this appeal is dismissed. The conviction awarded to the appellant is maintained; however, the sentence is modified and reduced to the period he has already undergone, which shall include the period he is to suffer in case of non-payment of fine. The appellant shall be released if not required in any other case.


JUDGE


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IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA.

Criminal Appeal No.D-11 of 2015

Present:

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

Appellant : Wahid Bux alias Fakiro Shaikh, through M/s Sarfraz Khan
Jatoi and Habibullah G. Ghouri, Advocates.

Respondent: The State through Mr. Khadim Hussain Khooharo,
Additional Prosecutor General.

Date of Hearing : 07.03.2018.

Date of Judgment : 07.03.2018.

J U D G M E N T.

MUHAMMAD IQBAL KALHORO, J.- Appellant faced a joint trial before Anti-Terrorism Court, Kashmore at Kandhkot in Special Cases No.75, 76 & 77 of 2013 bearing Crime No.259, 260 & 261 of 2016, under sections 365-A; 353, 324, 368, 34, PPC; and 23(i)(a) of Sindh Arms Act, 2013 read with sections 6/7 of Anti-Terrorism Act, 1997, all three registered at Police Station A-Section, Kandhkot, and vide impugned judgment dated 31.1.2015 was convicted and sentenced in the following terms:-

- a) Under Section 324 read with section 34, PPC to undergo R.I for 10 (ten) years and to pay fine of Rs.30,000/- (thirty thousand) and in case of default to suffer S.I for one year more.
- b) Under Section 353 read with 34, PPC to undergo R.I for 02 (ten) years and to pay fine of Rs.10,000/- (ten thousand) and in case of default to suffer S.I for six months more.
- c) Under Section 368 read with 34, PPC to undergo R.I for seven (07) years and to pay fine of Rs.50,000/- (fifty thousand) and in case of default to suffer S.I for one year more.
- d) Under Section 23(1)(a) of Sindh Arms Act 2013 to suffer R.I for seven (07) years and to pay fine of Rs.30000/- (thirty five thousand) and in case of default to suffer S.I for six months more.

Through the captioned appeal the appellant has challenged his said conviction and sentences.



2. Brief facts of the prosecution case are that on 29.9.2013, at about 12.00 noon, complainant Aijaz Ali, Regional Officer, Agriculture Pesticides Company, while going along with his officials, namely, Ghulam Ali and Ghulam Nabi in a car to Buxapur, was abducted near Toll Plaza by four accused including the appellant, who were duly armed with deadly weapons. However, such information was communicated to the police who got him released near Guddu Pull(Bridge) after engaging in an encounter with the said four accused, during which three accused escaped but the appellant, who was injured in the encounter, was arrested along with a Kalashnikov. Subsequent to such incident, three FIRs for abduction, police encounter and recovery of Kalashnikov were registered against the appellant. After usual investigation, necessary challans in all the three cases against the appellant and absconding accused were submitted.

3. On an application moved by the prosecutor, all the three crimes being inter-connected were amalgamated by the learned Anti-Terrorism Court vide order dated 07.1.2014 and the appellant was tried jointly in all the three cases as provided under Section 21-M of the Anti-Terrorism Act, 1997. As such, a common charge was framed against the appellant at Ex.12, to which he pleaded "not guilty". Resultantly, the prosecution in order to prove its case examined PW-1/complainant Aijaz Ali Shah at Ex.13, he produced FIR and a photostat copy of his CNIC; PW-2 Ghulam Nabi Chachar at Ex.14, he has produced memo of place of wardat and a photostat copy of his CNIC; PW-3 Ghulam Ali at Ex.15, who produced a photostat copy of his CNIC; PW-4 HC Kabeer Khan, the author of FIR No.259/2013 at Ex.16; PW-5 complainant/I.O Muhammad Hussain Domki at Ex.17, he has produced a photostat copy of roznamcha entry No.10, memo of arrest and recovery, FIRs bearing Crime No.260/2013 and 261/2013, memo of place of incident in Crime No.260/2013 and Ballistic Expert Report; PW-6 mashir/HC Abdul Qadir at Ex.18; PW-7 Dr. Abdul Karim at Ex.19, he has produced a police letter and MLC of injured accused.

4. After the evidence of prosecution, statement of the appellant under section 342, Cr.P.C was recorded, he has denied the prosecution case and has professed his innocence. However, he has not examined himself on oath or led any evidence in his defence. The learned Anti-Terrorism Court after hearing the parties has convicted the appellant vide impugned judgment in the terms as stated in para No.1. However, all the said sentences have been ordered to run concurrently and benefit of Section 382-B, Cr.P.C has also been extended to the appellant.

5. Messrs Sarfraz Khan Jatoi and Habibullah G. Ghouri, learned advocates for the appellant after arguing the case at some length have jointly submitted that they will not press the appeal on merits and would not dispute the conviction, if the sentences awarded to the appellant in all the three cases are altered and reduced to the period already undergone by him. In support of the said request, they have submitted that appellant is the first offender and has not committed any offence in the past. There are a number of discrepancies in the evidence of prosecution witnesses, besides the charge under Section 365-A, PPC could not be proved against him, as the main witness viz. complainant/abductee and the eyewitness namely Ghulam Nabi in their depositions have not identified the appellant to be the culprit, who has committed the offence.

6. Mr. Khadim Hussain Khooharo, learned Additional Prosecutor General in view of above grounds has not opposed the request of the learned defence Counsel for reduction of sentence of the appellant.

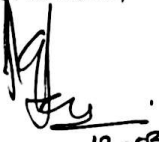
7. We have considered submissions of the parties and have perused the material available on record. PW-5 SIP Muhammad Hussain (Ex.17) and PW-6 HC Abdul Qadir (Ex.18) have supported the prosecution case. They both have disclosed that after the information regarding abduction of complainant Aijaz Ali was received by them, they chased the accused and after engaging in an encounter with them, during which three accused escaped, they were able to catch the appellang along with a kalashnikov lying in front of him. Their evidence is consistent on the factum of encounter and recovery of Kalashnikov from the appellant. At the same time, it may be mentioned that the evidence of complainant Aijaz Ali (Ex.13) and PW Ghulam Nabi (Ex.14) is not ignorable. They have supported the episode of abduction and subsequent release of the abductee after an encounter by the police with the accused. But they have not specifically stated about arrest of the appellant and recovery of Kalashnikov from him at the spot. This circumstance coupled with the fact that appellant was not identified by the complainant Aijaz Ali Shah and eyewitness Ghulam Nabi to be the accused, who has committed the offence of abduction, appears to be sufficient to concede to the request of learned Counsel for reduction of sentences of the appellant. The learned Additional Prosecutor General has also not denied that the appellant is the first offender.

8. The case history shows that appellant was arrested on 29.9.2013 and since then he is in jail. Keeping in view the facts and circumstances, we do not find any impediment in considering arguments of learned defence Counsel regarding reduction in sentences awarded to the



appellant particularly so when the learned Additional Prosecutor General has not opposed it. Consequent to above discussion, we dismiss the appeal on merits; however the sentences awarded to the appellant in all the three cases for committing the above said offences are converted and reduced to the period already undergone by him, which shall include the period the appellant is required to undergo on his failure to pay fine in terms of impugned judgment.

9. These are the reasons of our short order dated 07.3.2018, whereby this appeal was disposed of in above terms.


JUDGE 12-03-2018


JUDGE