

Reduction 365A to 365.
No proof of ransom demand

323

IN THE HIGH COURT OF SINDH, KARACHI

Special Criminal Anti-Terrorism Appeal No.15 of 2012.
Special Criminal Anti-Terrorism Appeal No.16 of 2012.

Present:

Mr. Justice Mohammad Karim Khan Agha
Mr. Justice Muhammad Saleem Jessar.

Appellant

1. Qari Amin-ul-Haq @ Abdul Manan @
Maney Khan s/o Shah Hussain Khan.

2. Fazal Raheem s/o Ghulam
Muhammad, through Mr. Muhammad
Farooq, Advocate.

For complainant

: Through Mr. Muhammad Sahib Khan,
Advocate.

Respondent/State

: Through Mr. Muhammad Iqbal Awan,
Deputy Prosecutor General, Sindh

Date of Hearing

: 11.03.2020.

Date of Judgment

: 24.03.2020.

JUDGMENT

MOHAMMAD KARIM KHAN AGHA, J:- Accused Qari Amin-ul-Haq @ Abdul Manan @ Maney Khan s/o Shah Hussain Khan and Fazal Raheem s/o Ghulam Muhammad, were tried by the learned Judge, Anti-Terrorism Court No.I, Karachi in Special Case No.02/2010, arising out of Crime No.824/2009 U/s. 365-A/34 PPC r/w Section 7 (e) of ATA, 1997, registered at P.S. Sohrab Goth (AVCC) Karachi and Special Case No.01/2010 arising out of Crime No.162/2009, U/s. 13-D Arms Ordinance, registered at P.S. Gulshan-e-Maymar. After trial vide judgment dated 28.04.2012 the appellants named above were convicted and sentenced as under:-

1. Convicted accused Qari Amin-ul-Haq @ Abdul Manan @ Many Khan son of Shah Hussain Khan and Fazal Raheem son of Ghulam Muhammad u/s 265-H(ii) Cr.P.C. for the offence punishable u/s 7 (e) of Anti-Terrorism Act, 1997 r/w section 365-A PPC and sentenced to Imprisonment for Life and forfeiture of their property.

2. Convicted the accused Qari Amin-ul-Haq @ Abdul Manan @ Many Khan s/o Shah Hussain Khan for offence punishable u/s 13(d) Arms Ordinance 1965 for keeping in possession unlicensed Kalashnikov No.1954112270, with magazine which contains 10 live bullets and sentenced him to suffer R.I for two years and to pay a fine of Rs.20,000/-. In case of default of payment of fine, he shall further suffer S.I for six months more.

Both the sentences were ordered to be run concurrently. The benefit of section 382-B Cr.P.C. was also extended to the appellants.

2. Being aggrieved and dissatisfied by the judgment passed by learned Judge, Anti-Terrorism Court No.I, Karachi, the aforesaid appeals have been preferred by the appellants.
3. The brief facts of the prosecution case are that on 20.11.2009, the complainant Bashir Gul s/o Nandhar Gul lodged FIR No.824/2009, u/s 365-A PPC at police station Sohrab Goth, stating therein that he has been residing at the above given address and adjacent to his house, he has a cattle pond. On 17.11.2009 at about 1.00 p.m. his younger brother Muhammad Gul s/o Nandhar Gul aged about 18/19 years left his house for purchasing Bhoosa for a shop, situated in Gul Village and when after 2/3 hours his brother did not return, he went and met with Bhoosa Wala and asked about his brother, who told that his brother had not come to his shop. Then, he and his brothers were searching their brother and in the night, the complainant received phone call on his mobile phone No.0312-2328480 from mobile No.0305-2779099. The caller did not disclose his name and he was speaking in Pashto language, and he told the complainant that his brother Muhammad Gul was in their custody, he also allowed him to talk to his abducted brother and later called the complainant again and demanded ransom of Rs.20 lacs for release of his brother. The caller further directed the complainant that they would wait till Juma Prayers. The complainant told the caller that he would arrange the money. On 20.11.2019, after consulting with his family members, the complainant registered FIR No.824/2009, against unknown persons for kidnapping his brother Muhammadi Gul, between his residency and Gul Village and for demanding ransom of Rs.20 lac.
4. After registration of the FIR, the same was sent to In charge AVCC, Karachi for investigation, and the investigation was entrusted to Inspector Muhammad Babar, who contacted the complainant and searched for the abductee and accused persons. On 25.11.2009, during investigation SIP Kamdar of SIU Saddar, Karachi, informed the I.O. that accused Qari Ameen-ul-Haq and Fazal Rahim

had been arrested in the above crime and the abductee and one Kalashnikov with 10 bullets had been recovered from them. On receiving such information, I.O Inspector Muhammad Babar went to SIU Saddar, Karachi and met with SIP Kamdar, who handed over him custody of accused as well as memo of arrest of accused and recovery of abductee. On 03.12.2009 I.O visited the place of captivity on the pointation of abductee and prepared such memo. He recorded statements of witnesses and collected the case property. On 18.12.2009, he collected call data record from the office of computer lab of AVCC and prepared such memo. After completing the investigation he submitted the charge sheet before the concerned court of law.

5. The charge against the accused persons was framed to which they pleaded not guilty and claimed trial of the case.

6. To prove its case the prosecution examined 11 prosecution witnesses and exhibited various documents and other items and thereafter the side of the prosecution was closed. The statements of the accused u/s 342 Cr.P.C. were also recorded in which they denied all the allegations leveled against them and claimed to be innocent. Both of the appellants gave evidence under oath however neither of the appellants called any witness in support of their defense case

7. Learned Judge, Anti-Terrorism Court No.I, Karachi after hearing the learned counsel for the parties and assessment of evidence available on record, vide the impugned judgment dated 28.04.12, convicted and sentenced the appellants as stated above, hence this appeal has been filed by the appellants against their convictions.

8. The facts of the case as well as evidence produced before the trial court find an elaborate mention in the impugned judgment dated 28.04.2012 passed by the trial court and, therefore, the same may not be reproduced here so as to avoid duplication and unnecessary repetition.

9. After the reading out of the evidence and the impugned judgment learned counsel for the appellants candidly conceded that the prosecution had proved beyond a reasonable doubt that this was a case of kidnapping u/s 365 PPC by the appellants but that there was no evidence whatsoever that the appellants had made any kidnapping for ransom and as such the appellants should only be convicted and sentenced for an offense u/s 365 PPC and not S.365 A PPC and that it was not a case which fell within the purview of the ATA. Appellant Qari

Amin-ul-Haq did not contest his conviction under S.13 (d) of the Arms Ordinance 1965. In support of his contentions he placed reliance on **Orangzaib V The State** (2018 SCMR 391) and **Shahid alias Kaloo V The State** (2009 SCMR 558).

10. Learned DPG conceded that the prosecution had failed to prove the ransom element of the case but had proved beyond a reasonable doubt that this was a case of kidnapping u/s 365 PPC and he had no objection to the conviction and sentences being modified accordingly. The learned counsel for the complainant under instructions after discussing the case with the DPG also had no objection to this proposition. The DPG and complainant were also of the view that this case did not fall within the purview of the ATA. The DPG and the complainant however submitted that the prosecution had proved its case beyond a reasonable doubt against appellant Qari Amin-ul-Haq under S.13 (d) of the Arms Ordinance 1965.

11. Having gone through the evidence on record we are of the view that the prosecution has proved its case against the appellants beyond a reasonable doubt in respect of the offense u/s 365 PPC through the evidence of the complainant, PW 2 Muhammad Gul (the abductee) and other PW's especially as the appellants were caught red handed with the abductee in their captivity against his will who were both arrested on the spot. One unlicensed Kalashnikov was also recovered from appellant Qari Amin-ul-Haq at the time of his arrest. With regard to the evidence that the appellants had kidnapped the complainant's son for ransom we find that the prosecution has not been able to prove this aspect of its case beyond a reasonable doubt in that there is no evidence that the mobile and SIM which was recovered from the appellants at the time of their arrest linked the appellants to the CDR and ransom calls to the complainant as the SIM was in the name of Asghar Ali and not the appellants who was not even examined as a PW and no voice recordings for the ransom demand were exhibited. It is also an admitted position that no ransom amount was ever paid. The abductee was also recovered unharmed and it may also be observed that the appellants have already spent over 10 years in jail. Thus, in respect of the ransom aspect of the case the appellants are entitled to the benefit of the doubt. With regard to the conviction of appellant Qari Amin-ul-Haq under S.13(d) of the Arms Ordinance 1965 since the unlicensed weapon was recovered from him when he was arrested

on the spot we find that the prosecution has proved this offense against appellant Qari Amin-ul-Haq beyond a reasonable doubt.

12. We are of the view that this case does not fall within the purview of the ATA since according to the evidence there was no design, object or intent to cause terror and thus the provisions of the ATA will not apply. Even otherwise simple kidnapping under S.365 is not an offense which falls within the purview of the ATA.

13. Thus, based on our reassessment of the evidence on record and whilst taking into consideration the above cited case law, the arguments of the appellants, and the no objection given by both the DPG and the complainant to the appellants only being convicted under S.365 PPC and appellant Qari Amin-ul-Haq being convicted under S.13(d) of the Arms Ordinance 1965 we hereby by exercising our judicial discretion under S.423 Cr.PC modify the convictions and sentences of the appellants as under:

"Both the appellants stand convicted U/s. 365/34/PPC and are **both** sentenced to under go RI for 7 years and **both** are ordered to pay compensation of Rs.100,000 to the complainant failing which if any appellant is in default he shall undergo SI for a further 6 months.

Appellant Qari Amin-ul-Haq stands convicted u/s 13(d) Arms Ordinance 1965 for keeping in possession unlicensed Kalashnikov and is sentenced to R.I for two years and to pay a fine of Rs.20,000/-. In case of default of payment of fine, he shall further suffer S.I for six months more".

There is no conviction under the ATA and the sentences shall run concurrently and both the appellants shall have the benefit of S.382-B Cr.PC.

14. The appeals stand dismissed **except** as modified above.