

SINDH HIGH COURT

Spl. ATA. No. 5/15, 86/15

Composition of Bench.

Single/D.B.

Justice Muhammad Karim Khan Ayub  
Justice Zulfikar Ali Saeed

Dates of hearing: 30.3.2020

Decided on 7.6.2020

(a) Judgment approved for reporting.

Yes  
No

K.A.

CERTIFICATE

Certified that the judgment \*/Order is based upon or enunciates a principle of law \*/decides a question of law which is of first impression/distinguishes/over-rules/ reverses/explains a previous decision.

\*Strike out whichever is not applicable.

NOTE:—(i) This slip is only to be used when some action is to be taken.

(ii) If the slip is used, the Reader must attach it to the top of the first page of the judgment.

(iii) Reader must ask the Judge writing the Judgment whether the Judgment is approved for reporting.

(iv) Those directions which are not to be used should be deleted.



INOC H51R 31

IN THE HIGH COURT OF SINDH AT KARACHI

Special ATA Appeal No \_\_\_\_\_ / 2015

Sarfraz alias Bhoora  
S/o Sakhi Muhammad  
Muslim, Adult, Resident of  
Mujahid Colony, Street 07,  
Katchi Abadi, Dalmia, Karachi.  
Presently confined in Central Prison,  
Karachi.

05-05-2015  
24/13

APPELLANT

Versus

The State..... RESPONDENT

FIR No 634/2011  
U/S 365-A/34 r/w S. 7 A.C.A  
P.S. Aziz Bhatti, (AVCC/CIA)

APPEAL UNDER SECTION 25 OF ANTI  
TERRORISM ACT, 1997 READ WITH SECTION  
410 CR.PC

Being aggrieved and dissatisfied with the impugned judgment dated 23-04-2015 passed by the Anti Terrorist Court No. 2 in Special Case No. 182/2011, whereby the above named Appellant was convicted with Imprisonment for Life, however the benefit of section 382-B Cr.P.C has been extended in favor of Appellant, therefore the Appellant above named has preferred the instant appeal praying herein to set aside the Impugned Judgment and acquit him, inter-alia on consideration of the following among other facts and grounds:-

*(Copy of the impugned Judgment dated 23-04-2015 is herby marked as Annexure 'A')*

FACTS

That is a nutshell facts in brief leading to the filing of instant appeal that on 22-10-2011 at about 1250 hours complainant namely Qaiser lodged the instant FIR in which he stated that he lives in House No.

Serial Degr. Cell No. 15, District, Karachi. He resided in



**IN THE HIGH COURT OF SINDH AT KARACHI**

Special ATA Appeal No \_\_\_\_\_ / 2015

26  
Sardar alias Bhoora  
S/o Sakhi Muhammad  
Muslim. Adult. Resident of  
Majid Colony, Street 07,  
Katchi Abadi. Dalmia, Karachi.  
Presently confined in Central Prison,  
Karachi.

05-5-2018  
24/7

APPELLANT

*Versus*

The State ..... RESPONDENT

FIR No 635/2011  
U/S 353/324/186/34 PPC  
P.S. Aziz Bhatti

**APPEAL UNDER SECTION 25 OF ANTI  
TERRORISM ACT, 1997 READ WITH SECTION  
410 CR.PC**

Being aggrieved and dissatisfied with the impugned judgment  
dated 23-04-2015 passed by the Anti Terrorist Court No. 2 in Special Case  
No. 179/2011, whereby the above named Appellant was convicted with  
imprisonment for Life, however the benefit of section 382-B Cr.P.C has  
been extended in favor of Appellant, therefore the Appellant above named  
has preferred the instant appeal praying herein to set aside the Impugned  
Judgment and acquit him, inter-alia on consideration of the following among  
other facts and grounds:-

*(Copy of the impugned Judgment dated 23-04-2015 is hereby  
marked as Annexure 'A')*

**FACTS**

That is a nutshell facts in brief leading to the filing of instant appeal  
that on 22-10-2011 at about 1250 hours complainant namely Qaiser  
lodge the instant FIR in which he stated that he lives in House No,



Kidnap Acquitted  
No eye witnesses  
No ransom demand

427

IN THE HIGH COURT OF SINDH AT KARACHI

Spl. CrI. Anti-Terrorism Appeal No.85 of 2015.  
Spl. CrI. Anti-Terrorism Appeal No.86 of 2015.

Present:

*Mr. Justice Mohammad Karim Khan Agha*  
*Mr. Justice Zulfiqar Ali Sangi,*

Appellant: Sarfraz alias Bhoora S/o. Sakhi  
Muhammad through Mr. M/s. Hasan  
Feroz and Shah Imroze Khan,  
Advocates.

Respondent: The State through Mr. Saleem Akhtar  
Buriro, Additional Prosecutor General.

Date of hearing: 30.03.2020  
Date of Judgment: 07.04.2020.

J U D G M E N T

**MOHAMMAD KARIM KHAN AGHA, J:-** Accused Sarfraz alias Bhoora was tried by learned Judge, Anti-Terrorism Court No.II, Karachi in Special Case No.182 of 2011 arising out of Crime No.634/2011 u/s. 365-A/34 PPC read with section 7 of ATA, 1997 and Special Case No.170/2011 arising out Crime No.635/3011 u/s. 353/324/186/34 PPC registered at P.S. Aziz Bhatti (AVCC/CIA). After trial vide judgment dated 23.04.2015 appellant Sarfraz alias Bhoora S/o. Sakhi Muhammad was convicted u/s. 7 sub-section 1 clause (e) and (h) of Anti-Terrorism act, 1997 for life imprisonment for offence u/s 365-A/34 PPC as well as conviction of Life Imprisonment for offence u/s 6 sub-section 2 clause (m) for offence u/s. 353/324/186/34 PPC. Both the sentences were ordered to run concurrently. The benefit of section 382 (b) was also extended to the appellant.

2. Being aggrieved and dissatisfied by the judgment passed by learned Judge, Anti-Terrorism Court No.II Karachi, these appeals have been preferred by the appellant against his convictions.



3. The brief facts according to the FIR No.634/2011 filed on 22.10.2011 at about 1250 hours by Qaiser Banglani are that he lives in House No.R-246 Sindhi Para in Gali No.15, Dalmia, Karachi and was present in his house when he received on his mobile a phone call from mobile No. 0341-3153210 whereby the caller gave his name as Shan saying that he is talking from Aman Committee and that he along with his other accomplices had kidnapped his nephews Ayaz S/o. Nazar Muhammad and Sultan S/o. Wali Muhammad at about 11:30 am from outside their house and that to bring Rs.20 Lacs as ransom to the office and in return his nephews will be released. He immediately informed at 15 and had come to PS to report for kidnapping his nephews against Shan S/o. unknown and his companions for kidnapping his nephews as such to take action against them.

4. The police of PS Aziz Bhatti had immediately come into action. Inspector SHO Ahsanullah Jatt was on illaqa gushat along with police party in search of the accused persons when he received spy information that the abductees have been kept at Dalmia by the accused persons therefore on this information SHO along with his police party had reached at 1415 hours whereupon the accused persons to deter them from carrying out their official duty started firing at the police party to kill them with their fire arms. SHO in self defence ordered to retaliate to arrest the accused persons but while firing at the police party the culprits had made their escape good by using the narrow lanes. The abductees Ayaz S/o. Nazar Muhammad and Sultan S/o. Wali Muhammad were recovered from a simple constructed house where they were found blind folded and their hands and feet had been tied by ropes. They had also been tortured. The abductees were released who disclosed that the accused persons while talking to each other were taking the names of Shan, Waqas Foji, Qadir Gagan, Mehmood Kala, Sameer Cabenwala, Sunny, Asif Foji and along with them there were other accomplices. At the instance of the relatives of the abductees they were sent to the hospital as such SHO had come to PS and registered the FIR No.635/2011 at about 1520 hours.



5. After registration of the FIRs, one concerning kidnapping for ransom and the other concerning attempt to murder and police encounter, usual investigations were carried out and thereafter a joint charge was framed in respect of both FIR's against accused Sarfraz on 31.07.2012 to which he pleaded not guilty and claimed to be tried.

6. To prove its case the prosecution examined 10 prosecution witnesses and exhibited numerous documents and other items and thereafter the side of the prosecution was closed. The statement of the accused u/s 342 Cr.P.C. was recorded in which he had claimed that he is innocent and had been falsely implicated by the police on his failure to pay a bribe to them. He did not examine himself on oath or call any witness in support of his defense case.

7. Learned Judge, Anti-Terrorism Court No.II, Karachi, after hearing the learned counsel for the parties and assessment of evidence available on record, vide the impugned judgment dated 23.04.2015, convicted and sentenced the appellant as stated above, hence these appeals have been filed by the appellant against his convictions.

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

9. Learned counsel for the appellant has contended that with regard to the kidnapping that the appellant is not named in the FIR, that neither abductee recognized the appellant, that there was no evidence of any ransom demand and no evidence whatsoever that the appellant was involved in either the kidnapping for ransom or encounter with the police when the police rescued the abductees from where they had been held captive and as such based on the evidence on record the appellant be acquitted of the charge by extending him the benefit of the doubt.



10. On the other hand learned Additional Prosecutor General has fully supported the impugned judgment and has contended that based on the evidence of the PW's which was reliable, trustworthy and confidence inspiring, the recovery of the abductees along with the rope in which they were tied and the recovery of empties at the scene the prosecution had proved beyond a reasonable doubt that the appellant had kidnapped for ransom the abductees along with his accomplices and had entered into an encounter with the police whilst they made their escape good from the place where the abductees were held captive before being arrested later on and as such the prosecution had proved its case beyond a reasonable doubt and the appeals be dismissed.

11. We have heard the arguments of the learned counsel for the parties, gone through the entire evidence which has been read out by the appellant, the impugned judgment with their able assistance and have considered the relevant law.

12. In our view after our reassessment of the evidence based on the evidence of the PW's and the abductees we are satisfied that the prosecution has proved beyond a reasonable doubt that on 22.10.11 Ayaz and Sultan were kidnapped and held captive in a house known as Dubai House in Gali No.15 of Dalmia and that on the same day they were rescued from captivity by the police following an encounter between the culprits and the police during which the culprits escaped from the scene.

13. The only issues therefore, in our view, left before us are (a) whether the appellant was one of the persons who kidnapped the abductees for ransom and (b) whether the appellant was one of the persons involved in the encounter with the police when the police came to rescue the abductees and thereby made his escape good before being arrested.

14. In our view after our reassessment of the evidence we find that the prosecution has NOT been able to prove beyond a reasonable doubt that the appellant was one of the persons who kidnapped for ransom the abductees or was involved in the police encounter at the time the police



rescued the abductees and hereby set aside the impugned judgment and allow the appeal for the following reasons:

(a) Although the FIR was registered with promptitude the appellant is not named in the FIR but others are so named. It appears that his name only came up during the police inquiry.

(b) That there were two eye witnesses who could identify the kidnappers both of whom were the abductees Sultan and Ayaz. Sultan did not give evidence and PW 6 Ayaz during his evidence in chief specifically states that, *"The accused present in the court is not the same person whom I had identified at the police station who had kidnapped me and beaten me up"* He was declared hostile and was cross examined by the prosecution. No other witness including the police PW's or the complainant PW 4 Haji Banglani who was the complainant and accompanied the police on the raid saw the appellant at the time of the raid when the police rescued the abductees. Even otherwise the complainant was declared hostile and was cross examined by the prosecution as in his evidence he had stated that he had forgiven the appellant. Furthermore, the rope found at the scene of the offense does not connect the appellant to the kidnapping and no PW actually witnessed the kidnapping of the abductees

(c) With regard to the ransom demand. No ransom was paid and although the CDR indicated that the complainant had received a call which **might** have concerned ransom the number/SIM which this call was made from had no connection with the appellant. There was also no recording of any ransom demand.

(d) Although we have found that an encounter did take place between the police and the culprits at the time when the abductees were rescued by the police there is no evidence that the appellant was involved in that encounter.

15. It is a golden principle of criminal jurisprudence that the prosecution must prove its case against the accused beyond a reasonable doubt and that the benefit of doubt must go to the accused by way of right as opposed to concession. In this respect reliance is placed on the case of **Tariq Pervez V/s. The State** (1995 SCMR 1345), wherein the Supreme Court has observed as follows:-

*"It is settled law that it is not necessary that there should be many circumstances creating doubts. If there is a single 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."*

16. Thus, based on the above discussion we find doubt in the case of the prosecution that the appellant was involved in either the kidnapping for ransom of the abductees who were both rescued and the encounter which followed and thus by extending the benefit of the doubt to the appellant we hereby allow his appeal, acquit him of the charge and set aside the impugned judgment. Consequently the appellant shall be released unless he is wanted in any other custody case

17. The appeals stand disposed of in the above terms.

Arif