

CERTIFICATE OF THE COURT IN ROOM NO. —

Sp. AT J. A. 148/15 a/w others

Imran Ahman @ Sunny Vs The State

2. 233.

SINDH HIGH COURT

Composition of Bench.

Single/D.B.

Mr. J. Mohammad Karim Khan Agha

Mr. J. Zulfiqar Ali Singi

Dates of hearing: 17-4-20

Decided on 04-05-20

(a) Judgment approved for reporting.

Yes
No

Yes

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.

IN THE HON'BLE HIGH COURT OF SINDH AT KARACHI

Spl. Anti-Terrorism Trial Appeal No. — of 2015

16/8

Imran Ahsan @ Sunny s/o Ahsan Irfan

Confined in Central Prison Karachi... Appellant/Accused

V/S

The State

Respondent - 1

Spl. Case No. 133/2008

FIR No. 857/2008

U/s 365-A/34 PPC

P.S. Shahm-e-Faisal, Ka

APPEAL U/S 25 OF THE ANTI-TERRORISM ACT, 1997

Being aggrieved by and dissatisfied with the Judgment dated 15-06-2015 passed by the Judge Anti-Terrorism Court No. IV, Karachi in above Spl. Case No. 133 of 2008 whereby the Judge, Anti-Terrorism Court No. IV, Karachi has convicted and sentenced the undersigned appellant/accused U/s 7(e) of Anti-Terrorism Act, 1997 r/w section 365-A PPC for "Imprisonment of Life", however benefit of section 365-B Cr.P.C. is extended to him. The other accused is thereby acquitted by the trial Judge in the Judgment in the above mentioned case. The appellant/accused prefers this appeal in prayer that this Hon'ble Court may be pleased to call for Record and Proceedings of

IN THE HIGH COURT OF SINDH AT KARACHI

(Criminal Appellate Jurisdiction)

Spl. ATA Jail Appeal No. of 2018

Muhammad Zubair alias Mamoon,
S/O Abdul Ghafoor,
Male, Muslim Adult,
Presently Confined in
Central Prison,
Karachi.

361

Appellant in Person

VERSUS

The state

Respondent

F.I.R No.: 851/2018

U/S: 365-A/34 PPC

R/W Sec. 7 of ATA 1997

P.S.: Shahrah-e-Faisal
Karachi.

CRIMINAL APPEAL UNDER SECTION 410 Cr.P.C R/W
SECTION 25 OF A.T.A. 1997

Being aggrieved by and dis-satisfied, with the impugned judgment dated 12-10-2018 passed by the learned special judge of Anti-Terrorism Court No. XVIII, Karachi in Case No.133/2008 whereby the present appellant was sentenced to suffer life imprisonment with forfeiture of his Property for the offence under Section 365-A P.P.C, He is also sentenced to suffer R.I. for life imprisonment for the offence under section 7-(e) Anti-Terrorism Act 1997, with benefit of section 382-B. However, both the sentences shall run concurrently.

The appellant respectfully prefers the present appeal on consideration of the following grounds.

That copy of the impugned judgment dated 12-10-2018 is enclosed.

On the basis of the information of FIR, usual investigations were carried out, as such the charge sheet was submitted before the court, hence it

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IN THE HIGH COURT OF SINDH AT KARACHI

(Appellant Jurisdiction under Anti-Terrorism Act, 1997)

Special Anti-Terrorism Acquittal Appeal No. 152 / 2015

Noor Ahmed Javed

Son of Ch. Muhammad Shafi,
Muslim, adult, resident of
House No.B-73, Block-6,
Gulshan-e-Iqbal, Karachi.....Appellant

11-07-2015
D. R. (Writ)
8407

VERSUS

1. Salman Qureshi

Son of Zia-u-Din Qureshi,
Muslim, adult, resident of
House No.B/64, Block-13,
Gulistan-e-Jauhar, Karachi.

2. The StateRespondent

FIR No.851/2008
U/s 365-A/34 PPC
R/w Section 7(a)(c) ATA 1997
P.S.Shahrah-e-Faisal, Karachi.

**ACQUITTAL APPEAL UNDER SECTION 25(4-A) OF THE
ANTI -TERRORISM ACT, 1997 (ACT XXVII OF 1997)**

Being aggrieved and dissatisfied with the impugned Judgment dated 15-06-2015, in respect of acquittal of respondent No.1 passed by the learned Judge of Anti Terrorism of Court No.IV Karachi, (Mr. Anand Ram D. Sairani) in Special Case No.133/2008, (The State Vs. Salman Qureshi and others), arising out of FIR No.851/2008 under Section 365 A/34 PPC read with Section 7, ATA 1997 of Police Station Shahrah-e-Faisal Karachi, whereby acquitting the respondent No.1, above named from the charge, by extending him the benefit of doubt under Section 265-H(i) of Criminal Procedure

IN THE HIGH COURT OF SINDH AT KARACHI

Present:

Mr. Justice Mohammad Karim Khan Agha

Mr. Justice Zulfiqar Ali Sangi.

Spl. CrI. Anti-Terrorism Jail Appeal No.148 of 2015.

Appellant: Imran Ahsan @ Sunny s/o Ahsan Irfan
through Muhammad Iqbal Chaudhry,
Advocate.

Respondent: The State through Mr. Muhammad Iqbal
Awan, Deputy Prosecutor General.

Spl. CrI. Anti-Terrorism Jail Appeal No.341 of 2018.

Appellant: Muhammad Zubair @ Mamoon s/o Abdul
Ghafoor through Abdul Jabbar, Advocate.

Respondent: The State through Mr. Muhammad Iqbal
Awan, Deputy Prosecutor General.

Spl. CrI. Anti-Terrorism Acquittal Appeal No.152 of 2015.

Appellant: Noor Ahmed Javed s/o Ch. Muhammad Shafi
through Mr. Mushtaq Ahmed, Advocate.

Respondent No.1: Salman Qureshi son of Zia-u-Din Qureshi
through Mr. Moula Bux Bhutto, Advocate

Respondent No.2: The State through Mr. Muhammad Iqbal
Awan, Deputy Prosecutor General.

Date of hearing: 17.04.2020.

Date of Judgment: 04.05.2020.

J U D G M E N T

MOHAMMAD KARIM KHAN AGHA, J:- Accused Salman Qureshi and Imran Ahasan @ Sunny were tried by learned Judge, Anti-Terrorism Court No.IV, Karachi in Special Case No.133 of 2008 arising out of Crime No.851/2008 u/s. 365-A/34 PPC read with Section 7 of Anti-Terrorism Act, 1997 registered at P.S. Shahrah-e-Faisal, Karachi. After trial vide judgment dated 15.06.2015 the appellant/accused Imran Ahsan @ Sunny

son of Ahsan Irfan was convicted and sentenced u/s.265-H(ii) Cr.P.C for the charged offence punishable u/s. 7(e) of Anti-Terrorism Act, 1997 read with Section 365-A PPC for Life Imprisonment. However, accused Salman Qureshi was acquitted u/s. 265-H(i) Cr.P.C. The appellant / accused Imran Ahsan was extended the benefit of Section 382-B Cr.P.C.

2. Being aggrieved and dissatisfied by the judgment passed by learned Judge, Anti-Terrorism Court No.IV Karachi, an appeal has been preferred by the appellant Imran Ahsan against his conviction.

3. The complainant (Noor Ahmed Javed) being dissatisfied with the aforesaid judgment dated 15.06.2015 as it acquitted accused Salman Quershi has also filed an appeal against the acquittal of Salman Quershi.

4. It may be mentioned at this stage that initially the above two accused (Imran Ahsan and Salman Quershi) were being tried along with Muhammed Zubair alias Mama s/o Abdul Ghaffar. After the evidence of 7 PW's was recorded however Muhammed Zubair alias Mama absconded which lead to his trial being separated from that of Imran Ahsan and Salman Quershi and on his re arrest the final PW in this case PW 8 Mehmood Khan who was the IO was recorded and cross examined by him and thereafter his S.342 Cr.PC statement was recorded and his defense case heard and after assessment of the evidence on record he was convicted by learned Anti Terrorism Court No.XVIII at Karachi vide judgment dated 12-10-2018 u/s 365 A PPC and sentenced to life imprisonment and forfeiture of his property and u/s 7 e ATA 1997 and sentenced to RI for life. Being dissatisfied by the impugned judgment Muhammed Zubair has also filed an appeal against his conviction.

5. Since all three appeals arise out of the same facts and have common witnesses we have decided to dispose of all three appeals by this common judgment.

6. At this stage it is also worth mentioning that initially in this case accused Imran Ahsan, Muhammed Zubair, Salman Quershi and **Mst Laiba Anthony** were all charged with the offense of kidnapping for ransom. Mst Laiba however before any witness gave evidence made an

application to become an approver in return for a pardon under S.338 Cr.PC which was allowed by the trial court and as such she gave evidence as PW 1 against the remaining accused at their trial. The complainant/appellant Noor Ahmed Javed along with the State after Mst.Laiba had given evidence as PW 1 at trial made an application that Mst.Laiba had not told the complete truth at trial and since this was a condition of her pardon which she had violated her pardon should be withdrawn and she should once again be arrayed as an accused in this case and face trial. Following such application and with the SPI's approval a separate trial as envisaged under S.339 and 339 A Cr.PC was conducted against Mst Laiba as to whether she had told the complete truth at trial or not and whether her pardon could be made final or she should once again be arrayed as an accused. That vide judgment dated 15.06.2015 Anti-Terrorism Court No.IV found that Mst.Laiba had told the complete truth at trial and as such acquitted her of the charge and upheld her grant of pardon. Being dissatisfied with the aforesaid judgment of acquittal the complainant /appellant Noor Ahmed Javed filed an appeal against her acquittal before this court which this court dismissed vide judgment dated 29.04.2020 and as such we have considered the evidence of Ms Laiba whilst deciding these appeals.

7. The brief facts of the prosecution case are that on 06.11.2008 at about 2230 hours the complainant stated that he is doing construction work and his son runs an Estate Agency called Noor Estate Agency and on 19.10.2008 at 6.00 pm a party consisting of a boy and girl went to see a house along with his son Khurram Javed in an Alto Car. His son Khurram Javed did not return back home and he therefore tried to contact him on his mobile phone which was switched off and thus he lodged a report about missing of his son on 20.10.2008 at PS Shahrah-e-Faisal. Thereafter, he started getting phone calls for ransom which he informed the CPLC about. On 28th October, 2008, Muhammad Irshad father-in-law of his son Khurram Javed paid Rs.10 Lacs to the kidnappers at 0300 hour (night time) at Pizza hut, Gulshan-e-Iqbal, Block-7. The kidnappers released his son after half an hour and they threatened him not to lodge an FIR. Initially he was fearful and as such did not immediately register an FIR but did so later on. The accused were all later arrested in another case and were then re arrested in this case.

8. After usual investigation a formal charge was framed before the competent court of law against the accused persons to which they pleaded not guilty and claimed to be tried.

9. To prove its case the prosecution examined 08 prosecution witnesses and exhibited numerous documents and other items and thereafter the side of the prosecution was closed. The statements of the accused Imran Ahsan and Salman Quershhi were recorded u/s 342 Cr.P.C wherein they denied all the allegations and claimed to be innocent. Imran Ahsan did not give evidence on oath and called 2 witnesses in support of his defense case. Salman Quershhi did not give evidence on oath but called 5 witnesses in support of his defense case to prove that he had been falsely implicated in the case.

10. In the separate and later trial (after Imran Ahsan had already been convicted and Salman Quershhi already acquitted) of Muhammed Zubair the evidence of PW 8 was recorded in his presence and he thereafter was given the opportunity to cross examine this PW and then recorded his statement u/s 342 Cr.P.C where he also denied the allegations against him and also gave evidence under oath. He also produced two affidavits in evidence in support of his defense case of false implication.

11. The facts of the case as well as evidence produced before the trial courts find an elaborate mention in the judgments referred to above passed by the learned trial courts whereby the two appellants were convicted of the charges against them and the respondent was acquitted and, therefore, the same may not be reproduced here so as to avoid duplication and unnecessary repetition.

12. Learned counsel for appellant Imran Ahsan has contended that PW Laiba should be disbelieved as she has not told the truth and as such her evidence should be discarded, that there is no other evidence against the appellant, that no PW has identified him, that his case is better than that of Salman Quershhi who was acquitted in the same case and as such based on the rule of consistency the appellant should also be acquitted, that the

PW's all improved their statements in court and as such they cannot be safely relied upon, that the abductees statement has been recorded after 11 days and cannot be safely relied upon, that no CDR data has been collected or other evidence to prove the ransom demand and for any of the above reasons the appellant should be acquitted of the charge by extending him the benefit of the doubt or at a minimum should only be convicted and sentenced for the offense of abduction under S.365 PPC and not for kidnapping for ransom under S.365 A PPC. In support of his contentions he has placed reliance on **Muhammad Yasin v. The State** (1996 SCMR 1588), **Abdul Ghafoor v. The State** (PLD 1984 Lahore 441), **Ghulam Rasool alias Gudda v. The State** (2020 YLR 212), **Javed and 2 others v. The State and another** (2009 MLD 1049), **Muhammad Afzal alias Abdullah and others v. The State and others** (2009 SCMR 436), **Sabir Ali alias Fauji v. The State** (2011 SCMR 563) and **Syed Saeed Muhammad Shah and another v. The State** (1993 SCMR 550).

13. Learned counsel for the appellant Muhammed Zubair has contended that the appellant has already spent 12 years in jail and that based on Islamic law he should be shown mercy and released from jail on account of the long period which he has already spent in jail.

14. On the other hand learned Deputy Prosecutor General has fully supported the impugned judgments and contended that Mst Laiba fully implicates both the appellants in the kidnapping for ransom in her evidence, that PW 2 Noor Javaid who was the complainant identified appellant Imran Ahsan as one of the kidnappers, that PW 5 Khurram Javed who was the abductee identified both appellants as being his kidnappers at trial and during the recording of his S.164 Cr.PC statement, that the ransom demand and its payment has been proven by PW 2 Noor Javaid and PW 7 Muhammed Irshad and as such the prosecution had proved its case beyond a reasonable doubt against the appellants Imran Ahsan and Muhammed Zubair and both of their appeals should be dismissed. In support of his contentions he has placed reliance on **Muhammad Siddique and others v. The State** (2020 SCMR 342), **Zakir Khan and others v. The State** (2995 SCMR 1793), **Junaid Rehman and others v. The State and others** (PLD 2011 Supreme Court 1135),

Aurangzeb v. The State (2010 P. Cr.L.J. 1281) and **Khawaja Hasanullah v. The State** (1999 MLD 514).

15. Learned counsel for the appellant/complainant has submitted that the respondent Salman Quershī should not have been acquitted vide judgment dated 15.06.2015 and has contended that he should have been convicted as the prosecution had proved its case against him beyond a reasonable doubt in that the respondent had rented the house where the appellant had been held captive, that his car was used in the kidnapping, that a ransom amount was recovered from his house on his pointation, that PW 7 Muhammed Irshad who delivered the ransom amount identified him as the person who collected the ransom amount and when all the above factors were taken into consideration it had been proved by the prosecution beyond a reasonable doubt that Salman Quershī was guilty of the charge of kidnapping for ransom and as such he should stand convicted of such offense and his acquittal should be set aside. In support of his contentions he has placed reliance on **Rafaqat Ali and others v. The State** (2016 SCMR 1766), **Muhammad Akram Rahi and others v. The State and others** (2011 SCMR 877), **Muhammad Riaz and others v. Bilqaiz Khan and others** (2012 SCMR 721), **Sh. Muhammad Amjad v. The State** (PLD 2003 Supreme Court 704), **Niaz Ali Rajper v. The State** (2020 P. Cr.LJ 96), **Sajan and another v. The State** (2015 P. Cr.LJ 953), **Muhammad Rasool v. The State** (2015 P. Cr.LJ 391), **Ghulam Hussain Soomro v. The State** (PLD 2007 Supreme Court 71), **Ansar Mehmood v. Abdul Khaliq and another** (2011 SCMR 713), **Muhammad Siddique and others v. The State** (2020 SCMR 342) and **Ahmed Hussain alias Ami and others v. The State** (PLD 2008 Supreme Court 110).

16. The State had not filed any appeal against the acquittal of respondent Salman Quershī.

17. Learned counsel for respondent Salman Quershī has contended that there is no direct evidence against the respondent, that as per the evidence on record the house was rented by the respondent in the name of Mst Laiba as he was an estate agent by profession and the landlord would not let it to a Christian women so he stepped in as estate agency was part of his business and in any event the rent was paid by her, that he had

given Mst Laiba permission to drive his car but not for committing crimes and that the money recovered from his house belonged to him as part of his business expenses and thus he had rightly been acquitted by the trial court as there was absolutely no incriminating evidence against him and even now he stressed that under the law having been acquitted by the trial court he had a double presumption of innocence and as such the appeal against his acquittal should be dismissed. In support of his contentions he has placed reliance on **Muhammad Banaras and another v. The State** (1968 P. Cr.LJ 906), **Abdul Ghafoor and others v. The State** (PLD 1984 Lahore 441), **Muhammad Arif v. The State** (1995 MLD 1680) and **Abdul Adeel and others v. The State** (2009 SCMR 511).

18. We have heard the arguments of the learned counsel for the parties, gone through the entire evidence which has been read out by the appellants, the impugned judgment with their able assistance and have considered the relevant law including that cited at the bar.

19. After our reassessment of the evidence we find that the prosecution has proved beyond a reasonable doubt the charges against each of the appellants (Imran Ahsan and Muhammed Zubair) for the following reasons;

(a) Although the FIR was lodged after a considerable delay we do not consider that this is fatal to the prosecution case based on the particular facts and circumstances of this case. This is because a day after his son went missing the complainant reported the matter to the police which entry was exhibited at trial. A day later he also reported the matter to the CPLC. It is also not unusual in kidnap for ransom cases for there to be a delay in filing an FIR as the parents are often frantically searching for the abducted child and as such lodging of the formal FIR is of lesser importance to them. Even other wise the delay in the FIR has been explained by the complainant as he was threatened by the kidnappers not to lodge the FIR which by his own admission made him scared and delayed him from so doing. The primary reason why there should be no unexplained delay in lodging an FIR is to avoid the possibility of the complainant cooking up a false case against the accused with the police or any third party. In this case no enmity has been suggested against the police or the other PW's including the complainant, abductee and person who paid the ransom and as such none of them had any reason to implicate the accused in a false case. If they wanted to falsely implicate the accused they could have easily nominated them as accused in the FIR but the complainant did not do so. In fact had it not been for the evidence of PW 1 Laiba who gave evidence as an approver at the trial it is

unlikely that there would have been sufficient evidence to convict the accused at trial as no one even knew their names.

(b) The star prosecution witness is PW 1 Mst Laiba who as mentioned earlier turned approver in this case against her co-accused and who was granted a conditional pardon by the trial court and despite her pardon being challenged by the State on account of her not giving completely truthful evidence at trial after a full dressed trial vide order dated 15.06.2015 Anti-Terrorism Court No.IV found that Mst.Laiba had told the complete truth at trial and as such acquitted her of the charge and upheld her grant of pardon. Being dissatisfied with the aforesaid judgment of acquittal the complainant /appellant Noor Ahmed Javed filed an appeal against her acquittal before this court which this court dismissed vide judgment dated 29.04.2020 and as such we have considered the evidence of Ms Laiba whilst deciding these appeals.

(c) Having dismissed the complainants appeal against acquittal of Ms Laiba for not giving truthful evidence after carefully considering the evidence on record including her evidence given at this trial and her S.164 Cr.PC statement vide our judgment dated 29.04.2020 it follows that this court has already believed that she has given truthful evidence at trial which in our view was not dented during cross examination. Once again we have considered her evidence and note that despite lengthy cross examination her evidence was not dented and thus we believe the evidence of PW 1 Mst Laiba which withstood the test of cross examination. Since her evidence fully implicates appellants Imran Ahsan and Muhammed Zubair in the offenses for which they have been charged we set out in material part in so far as it relates to this case of kidnapping for ransom Khurram Javed her evidence in chief below for ease of reference since we are relying on it against appellants Imran Ahsan and Muhammed Zubair.

"I converted as Muslim from Christianity on 08th June, 2000. On 8th June 2000 I got married with Salman Ahsan. Out of the wedlock I was born one son namely Saad, who is 7 years old. The boy stayed with me. My marriage ended in divorce. I also know Imran Ahsan and Ilyas Sunni who is real brother of my Ex-husband Salman Ahsan and was residing on the upper floor of the house in which I was residing as a tenant and he too was residing as tenant. Mr. Zubair @ Mamoo was a friend of Sunni and he used to visit him quite often. I also know Salman Qureshi since 3 years. He is a very good family friend of ours. The house in which I was residing was obtained by Salman Qureshi on rent. I was working as a Stock Agent in the stock exchange. Since the market was dropping since 6 to 7 months therefore, eventually has ceased. I had requested Sunni to pay half of the house of rent money out of full. He agreed to pay the full rent money as I was in paucity and he told me that he needed to talk to me about something he had in his mind. I asked him what it was he was needed to talk with me about, on

which he told me that he had a very lucrative business planned and an easy way to earn money, upon which I asked him what was that plan. He told me that I should call Salman Qureshi and to contact a rich parties contact number from which he would demand ransom after kidnap. Upon hearing this I got scared and I refused to do so and I told him that this is a crime and I would not agree. Upon my not agreeing Sunni got angry and furious and threatened to take away my son Saad and I would never see him again. I pleaded him not to do so, so he told me to agree to my plan and call Salman Qureshi for the contact number. I then called Salman Qureshi and asked him to come over to the house. I wanted to discuss something with him. Salman appeared and I narrated the whole story of Sunni as it was to Salman. After a few seconds Salman got up and walked out without saying a word. After 2 to 3 days passed Sunni told me that he had arranged for the contact numbers and that to call Salman Qureshi and ask him to lend his Car. As directed by Sunni I called Salman and asked him for his Car and Salman gave me his Car without saying any word. I told Sunni that Salman Qureshi has given the Car so Sunni said that you had to accompany us and driving the Car so that no one to doubt us and has suspicious for us. Thereafter on 16.10.2008 I called Khurram Javed owner of Noor Estate Agency and asked him to show me some house as I need to purchase a house. I introduced myself as Asma and Khurram told me that I should call and visit him on 19.10.2008 at 5:30 p.m. which was Sunday. On 19.10.2008 I called Khurram Javed and Sunni and I visited Khurram at Noor Estate Agency and introduced themselves as brother and sister. After that Khurram was in his Car and Sunni and I were in one Car, went along Khurram showed us 2 to 3 hours. When Khurram told us to pay houses, Sunni told me that I should ask Khurram to accompany to one Car. As Khurram accompanied us in one Car, Sunni told him to show us the last house. It was in block-13 Gulistan-e-Jauhar and Sunni confirmed it. After that Sunni told me to drive and to stop the Car on a particular point on the road as he wanted to discuss other formalities. While discussing other formalities I was surprised to see the back door of my Car open and Mamoo was standing with the pistol pointing towards Khurram, sat in the Car, tied his hands and eyes and told me to drive towards the house in which we were residing and took him to the upper floor of the house and confined him there. They tied him with the chain. After that Sunni called Khurram's father Javed Noor and demanded for ransom. On refusal of payment of ransom, they told his father that we had killed your son and cut the phone. After 8 days passed on the 9th day they called Khurram's father-in-law and demanded for ransom. We received the amount of Rs.10 lacs from Pizza Hut Gulshan-e-Iqbal and set Khurram free. After that I told Sunni that you have got your payment so leave the house immediately and pardon my son and me. So

they said not so easily, we will set you free, we have another target for higher ransom..... (On orders of this Court). I produce my 164 Cr.P.C. statement as Ex. 13/A and say that it bears my signature.(Attested photocopy produced). Accused Salman Qureshi, Zubair @ Mamoo, Imran Ahsan @ Sunni present in the Court are the same". (Bold added)

- (d) In our view the evidence of PW 1 Mst Laiba fully implicates the appellants Imran Ahsan and Muhammed Zubair in the kidnapping for ransom of Khurram Javed.
- (e) The next issue is whether there is any corroborative evidence to support the evidence of PW 1 Mst Laiba as she is an approver. We set out below the following corroborative/supportive evidence which we have found on record:
- (i) That her evidence is corroborated in all material respects by the complainant PW 2 Noor Javaid in respect of appellant Imran Ahsan being with Mst Laiba when she left with his son in broad day light who he identifies, the ransom negotiations, the amount of ransom which was settled and the payment of the ransom and the place where the abductee was released after the ransom was paid. He also had no ill will or enmity with any of the accused and had no reason to falsely implicate the appellants in this case and as such we believe his evidence which was not dented during cross examination.
 - (ii) That her evidence is corroborated in all material respects by PW 5 Khurram Javed who was the abductee in respect of appellant Imran Ahsan being with Mst Laiba when he left with them in broad day light to show them properties. That appellant Muhammed Zubair was the one who came in the car with a gun and kidnapped him. That he identified Imran and Zubair who were present when he recorded his S.164 Cr.PC statement as his kidnappers and also recognized them again in court. In our view it was not necessary for either Imran Ahsan or Muhammed Zubair to be put before an identification parade as **the abductee was with them for 8 to 9 days (as opposed to getting a fleeting glance of each of them)** and would have got a good look at them and as such would have been able to

easily identify them if he got the chance as he did when he recorded his S.164 Cr.PC statement. In this respect reliance is placed on **Zakir Khan V State** (1995 SCMR 1793) which in another case concerning kidnap for ransom the supreme court held as under:

"A clear distinction was drawn between the circumstances where the witness only gets a glimpse of the accused who happened to be a stranger to him and where although the witness had met the accused for the first time but he had seen him several times. It was held that in the latter case the necessity of holding an identification parade could be dispensed with and the accused could even be identified in the Court for the first time. In the present case the kidnappee had remained with the accused sufficiently long not only to identify them by their faces but to identify them even by their names. **This is not a case where a witness had only gotten a glimpse of the accused but in this case, admittedly he had remained with them during his captivity and had clearly seen their faces. Therefore, in our opinion, holding of an identification parade was not a mandatory requirement in the present case. The contention raised by the learned counsel for the appellants therefore, has very little force.**" (bold added)

He also corroborates PW 1 Mst Laiba as to where he was held captive and the ransom demands and the place where he was released after the ransom was paid. He also had no ill will or enmity with any of the accused and had no reason to falsely implicate the appellants and as such we also believe his evidence which was not dented during cross examination.

(iii) That her evidence is corroborated in all material respects by PW 7 Muhammed Irshad who was aware of the ransom negotiations, the amount of ransom which was settled and actually paid the ransom amount to the accused at the place mentioned by PW 1 Mst Laiba. He also had no ill will or enmity with any of the accused and had no reason to falsely implicate the appellants and as such we also believe his evidence in respect of this aspect of the case.

20. Turning to the appeal against acquittal of the co-accused **Salman Quershi**. The parameters for an appeal against acquittal to succeed are much narrower than in the case of an appeal against conviction. It is settled law that judgment of acquittal should not be

interjected until findings are perverse, arbitrary, foolish, artificial, speculative and ridiculous as held by the Supreme Court in the case of **The State v. Abdul Khaliq and others** (PLD 2011 Supreme Court 554). Moreover, the scope of interference in appeal against acquittal is narrow and limited because in an acquittal the presumption of the innocence is significantly added to the cardinal rule of criminal jurisprudence as the accused shall be presumed to be innocent until proved guilty. In other words, the presumption of innocence is doubled as held by the Honourable Supreme Court of Pakistan in the above referred judgment. The relevant para is reproduced hereunder:-

"16. We have heard this case at a considerable length stretching on quite a number of dates, and with the able assistance of the learned counsel for the parties, have thoroughly scanned every material piece of evidence available on the record; an exercise primarily necessitated with reference to the conviction appeal, and also to ascertain if the conclusions of the Courts below are against the evidence on the record and/or in violation of the law. In any event, before embarking upon scrutiny of the various pleas of law and fact raised from both the sides, it may be mentioned that both the learned counsel agreed that the criteria of interference in the judgment against acquittal is not the same, as against cases involving a conviction. In this behalf, it shall be relevant to mention that the following precedents provide a fair, settled and consistent view of the superior Courts about the rules which should be followed in such cases; the dicta are:

Bashir Ahmed v. Fida Hussain and 3 others (2010 SCMR 495), *Noor Mali Khan v. Mir Shah Jehan and another* (2005 PCr.LJ 352), *Imtiaz Asad v. Zain-ul-Abidin and another* (2005 PCr.LJ 393), *Rashid Ahmed v. Muhammad Nawaz and others* (2006 SCMR 1152), *Barkat Ali v. Shaukat Ali and others* (2004 SCMR 249), *Mulazim Hussain v. The State and another* (2010 PCr.LJ 926), *Muhammad Tasweer v. Hafiz Zulkarnain and 02 others* (PLD 2009 SC 53), *Farhat Azeem v. Asmat Ullah and 6 others* (2008 SCMR 1285), *Rehmat Shah and 2 others v. Amir Gul and 3 others* (1995 SCMR 139), *The State v. Muhammad Sharif and 3 others* (1995 SCMR 635), *Ayaz Ahmed and another v. Dr. Nazir Ahmed and another* (2003 PCr. LJ 1935), *Muhammad Aslam v. Muhammad Zafar and 2 others* (PLD 1992 SC 1), *Allah Bakhsh and another v. Ghulam Rasool and 4 others* (1999 SCMR 223), *Najaf Saleem v. Lady Dr. Tasneem and others* (2004 YLR 407), *Agha Wazir Abbas and others v. The State and others* (2005 SCMR 1175), *Mukhtar*

Ahmed v. The State (1994 SCMR 2311), *Rahimullah Jan v. Kashif and another* (PLD 2008 SC 298), *Khan v. Sajjad and 2 others* (2004 SCMR 215), *Shafique Ahmad v. Muhammad Ramzan and another* (1995 SCMR 855), *The State v. Abdul Ghaffar* (1996 SCMR 678) and *Mst. Saira Bibi v. Muhammad Asif and others* (2009 SCMR 946).

From the ratio of all the above pronouncements and those cited by the learned counsel for the parties, it can be deduced that the scope of interference in appeal against acquittal is most narrow and limited, because in an acquittal the presumption of innocence is significantly added to the cardinal rule of criminal jurisprudence, that an accused shall be presumed to be innocent is doubled. *The courts shall be very slow in interfering with such an acquittal judgment, unless it is shown to be perverse, passed in gross violation of law, suffering from the errors of grave misreading or non-reading of the evidence; such judgments should not be lightly interfered and heavy burden lies on the prosecution to rebut the presumption of innocence which the accused has earned and attained on account of his acquittal. It has been categorically held in a plethora of judgments that interference in a judgment of acquittal is rare and the prosecution must show that there are glaring errors of law and fact committed by the Court in arriving at the decision, which would result into grave miscarriage of justice; the acquittal judgment is perfunctory or wholly artificial or a shocking conclusion has been drawn. Moreover, in number of dictums of this Court, it has been categorically laid down that such judgment should not be interjected until the findings are perverse, arbitrary, foolish, artificial, speculative and ridiculous (Emphasis supplied). The Court of appeal should not interfere simply for the reason that on the re-appraisal of the evidence a different conclusion could possibly be arrived at, the factual conclusions should not be upset, except when palpably perverse, suffering from serious and material factual infirmities. It is averred in *The State v. Muhammad Sharif* (1995 SCMR 635) and *Muhammad Ijaz Ahmad v. Raja Fahim Afzal and 2 others* (1998 SCMR 1281) that the Supreme Court being the final forum would be chary and hesitant to interfere in the findings of the Courts below. It is, therefore, expedient and imperative that the above criteria and the guidelines should be followed in deciding these appeals.* (bold added)

21. The trial court vide its judgment dated 15.06.15 whilst acquitting respondent Salman Quereshi has made the following finding at P.12 of the judgment which is set out below for ease of reference.

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"As far as the case of co-accused Salman Qureshi is concerned the important/star witness of the case is accused Laiba who was made approver in the case. She in her statement u/s 164 Cr.P.C. as well as in her evidence did not name accused Salman Qureshi nor assigned him role. She even does not disclose presence of accused Salman Qureshi anywhere in the whole story.

In this case the star witness i.e. abductee as well as PW/approver namely Laiba in their respective statements neither assigns any role to accused Salman Qureshi nor they name him anywhere in their statements, even the abductee in his statement u/s 164 Cr.P.C. does not name this accused nor mentions his name anywhere in the story, moreover, the abductee at that time also identified all the accused in the offence except accused Salman Qureshi. The evidence of approver is more essential evidence who during her examination in trial exonerated accused Salman Qureshi. Another important witness in this matter is father in law of abductee namely PW-7 Irshad who has allegedly made ransom amount. He in his statement u/s 161 Cr.P.C. says that since dropping of money on the directions of accused was in the odd hours of the night hence he is unable to identify the accused who took the money whereas during trial he tried to improve his evidence by saying that on the directions of the accused persons on his cell phone he dropped the money in front of Pizza hut situated at Block-7, Gulshan-e-Iqbal Karachi in the odd hours of the night and he stood at the distance of 15 paces. Though he did not specifically name the accused who has picked the dropped money but says that when he dropped money he saw a Silver Alto car from which one accused alighted and picked a ransom amount left by him. The evidence of this witness is silent about the accused who has picked the dropped money and it cannot be said that how many accused were in the car who was on the front seat, who was driving the car and who was sitting on the rear seat even it is not clearly stated that who was the accused who alighted from the car and picked the dropped money, this witness by improving his evidence only stated in the end that accused Salman Qureshi is present in the court is same. Here also he does not assign the role of accused Salman Qureshi as to whether who was he? Either he was driving the car, sitting on the front seat, sitting on the rear seat or picked the dropped money. Furthermore in his cross examination this witness admits that he is 55 years old and dropped money in the odd hours of the night at the place where there are no street lights and he was standing at the distance of 15 to 20 paces, it is an admitted position that a man of that age is lesser eye site and if it is presumed for the sake of arguments that PW Irshad points out towards accused Salman Qureshi being accused who alighted from the car and picked the dropped money, the question arises that why this man says in his statement u/s 161 Cr.P.C. that due to odd hours of night he could not recognize the accused who

alighted from the car and picked dropped money, his version in statement u/s 161 Cr.P.C. seems to be plausible and later at the trial identifying the accused Salman Qureshi without any role is an improvement in prosecution case, as an old man of 55 years old standing at the distance of 15 to 20 paces in the odd hours of the night where no street light are available could not recognize the person. Moreover, neither identification parade of accused Salman Qureshi was held nor statement of his PW u/s 164 Cr.P.C. was recorded to support the prosecution case and prosecution has left this case on air having no pillar.

Moreover, accused Salman Qureshi is stated to have been arrested on 04.11.2008 whereas uncle of accused Salman Qureshi namely A Qureshi made application on 03.11.2008 to the high ups against his illegal detention by the police, copies of which were also brought on record. Accused Salman Qureshi produced five defence witness in his favour, upon which one most responsible officer of police DSP Zafar Iqbal posted at DIG Office South Karnafuli who deposed that his uncle submitted an application on 03.11.2008 in his office about arrest and taking away by AVCC police, so also concerned Police Station having jurisdiction. DW-4 ASI Abbas Ali who also narrated the same story and fortifies his version that the uncle of accused Salman Qureshi submitted application in PS Gulistan-e-Jauhar about his arrest on 03.11.2008.

In view of above discussion the case as against accused Salman Qureshi wholly revolves around doubts hence this point is answered in negative and not proved to the extent of accused Salman Qureshi".

22. The Learned counsel for the complainant has contended that the respondent had rented the house where the abductee had been held captive, that his car was used in the kidnapping, that a ransom amount was recovered from his house on his pointation, that PW 7 Muhammed Irshad who delivered the ransom amount identified him as the person who collected the ransom amount and when all the above factors were taken into account it had been proved by the prosecution beyond a reasonable doubt that Salman Quershi was guilty of the charge of kidnapping for ransom and as such he should stand convicted of such offense and his acquittal should be set aside.

23. It is notable that each and every such contention made by the complainant has been dealt with in the evidence in that the respondent was an estate agent by profession and assisted Ms Laiba in renting the house in his name because the landlord refused to rent it to a Christian

and that she paid the rent, that he knew Mst Laiba who often used his car for personal reasons and as such he would have no knowledge that the car was to be used in a crime by her on this occasion, that the approx RS 5 lacs recovered from his house was associated with his business and it is not disputed that the respondent ran a business of an estate agency and as such he was not a pauper who had no money. The trial court in the extract as set out above has fully explained why the identification of the respondent by PW 7 Muhammed Irshad who delivered the ransom cannot be safely relied upon at the time of collecting the ransom in that **there has been significant material dishonest improvements in his evidence regarding the identification of the respondent**, the ransom was dropped at night time when it was dark, that he was 15 to 20 paces away at the time when the ransom was collected and would have at best **only got a fleeting glimpse of the kidnappers in the dark**, that he has poor eye sight, that he assigned no role to the respondent when the ransom was collected, the respondent was not put before an identification parade and as such in our view his identification of the respondent as being present when the ransom was collected cannot be safely relied upon.

24. Keeping in view the law as discussed above on the narrowness of setting aside acquittals and the evidence which we have reassessed along with the impugned judgment we find that the trial court has correctly acquitted the respondent by attributing sound reasons for the same which do not merit interference by this court. As such the appeal against acquittal is dismissed.

25. The upshot of our above discussion in this judgment after our reassessment of the evidence is that the prosecution has proved its case beyond a reasonable doubt against appellants Imran Ahsan and Muhammed Zubair and as such their appeals against conviction are both dismissed and that the acquittal of Salman Quershi was rightly decided by the trial court and as such the appeal against his acquittal is also dismissed.

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