Kidnapping for Ransom Acquitted

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IN THE HIGH COURT OF SINDH, KARACHI

Present:
Mr. Justice Mohammad Karim Khan Agha
Mr. Justice Abdul Mobeen Lakho,

Special Criminal A.T. Appeal No. 198 of 2020

Appellant	Muhammad Sohail son of Muhammad Sher through Mr. Raj Ali Wahid Kunwar, Advocate
Complainant	Haji Khair Muhammad son of Haji Zardad through Mr. Muhammad Hanif Samma, Advocate
Respondent/State	The State through Mr. Mohammad Iqbal Awan, Deputy Prosecutor General and Ms. Rahat Ahsan, Additional Prosecutor General.

Criminal Revision Application No. 18 of 2021

Applicant	Haji Khair Muhammad son of Haji Zardad through Mr. Muhammad Hanif Samma, Advocate
Respondent No.1 /State	The State through Mr. Mohammad Iqbal Awan, Deputy Prosecutor General and Ms. Rahat Ahsan, Additional Prosecutor General.
Respondent No.2	Muhammad Sohail son of Muhammad Sher through Mr. Raj Ali Wahid Kunwar, Advocate.
Date of Hearing	18.05.2021
Date of Announcement	26.05.2021

JUDGMENT

MOHAMMAD KARIM KHAN AGHA, J:- The appellant Muhammad Sohail has assailed the impugned judgment dated 30.11.2020 passed by Learned Judge, Anti-Terrorism Court No.X, Karachi in Special Case No.71 of 2018 arising out of Crime No.24 of 2016 under Section 365-A/506-B/34 PPC r/w Section 7 of ATA, 1997 registered at PS SITE-B, Karachi whereby the appellant was convicted u/s.

7(e) of ATA, 1997 and was sentenced to undergo life imprisonment with a fine of Rs.500,000/- (Rupees Five Lacs). In case of default in payment of such fine he shall undergo S.I. for 02 years more. He was also convicted under Section 506-B PPC and was sentenced to undergo R.I. for 02 years. Benefit of Section 382-B was also extended to the appellant. Both the sentences were ordered to run concurrently.

2. The brief facts of the case as stated by the complainant are that on 13.01.2016 at about 1830 hours some persons in cars bearing No.AYK-653 and ISI-809, having **muffled faces** kidnapped his real son namely Muhammad Sarwar aged about 11 years while he was going to purchase grocery from Labour Square, SITE Area, Karachi. According to the complainant kidnappers demanded huge ransom money viz. 10 crores from him in lieu of release of his kidnapped son by making calls to the complainant on 20.01.2016 at 0349 and 0359 hours, on his cell phone No.0334-2435780 and 0316-8136856 through cell No.0093708049681 and extended threats to him for serious dire consequences, in case of non-compliance of his directions. The complainant had shown his **suspicion** on persons namely Shafique ur Rehman son of Bahadur Sher, Waseef Ahmed @ Norain son of Muhammad Sher, Abdul Nasir son of Muhammad Iqbal, Waqas son of Bahadur Sher, Faqeer Muhammad Malang son of Muhammad Gul, Shabbir son of Sardar Muhammad, Muhammad Inam son of Bahadur Sher, **Sohail son of Muhammad Sher,** Asadullah son of Nida Muhammad, Babar son of Muhammad Iqbal, Nihad son of Ameer Uddin, Ali Ahmed son of Zain Deen and their accomplices **including complainant's relatives.** As per the complainant **he was personally investigating the matter and if, he came to any conclusion, he would also nominate others.** The above narrated facts by the complainant in his statement u/s.154 Cr.P.C were subsequently incorporated in the FIR No.24 of 2016.

3. After completing thorough investigation the report u/s.173 Cr.P.C. was submitted by the I.O. against the above accused in the concerned ATC as well as against the absconding accused u/s. 512 Cr.P.C. A formal charge was framed against accused to which he pleaded not guilty and claimed trial of the case.

4. The prosecution in order to prove its case examined 8 witnesses and exhibited various documents and other items. The statement of the accused was recorded under Section 342 Cr.P.C in which he denied all the allegations leveled against him and claimed false implication on the basis of enmity with the

complainant party which had arisen regarding a financial dispute between the complainant party and accused and the other absconding co-accused. He did not give evidence on Oath or call any DW in support of his defence case. After appraising the evidence on record the trial court convicted the appellant and sentenced him as set out earlier in this judgment. Hence, the appellant has filed this appeal against his conviction.

5. The facts of the case as well as evidence produced before the trial court find an elaborate mention in the impugned judgment dated 30.11.2020 passed by the trial court and, therefore, the same may not be reproduced here so as to avoid duplication and unnecessary repetition.

6. Learned counsel for the appellant contended that the appellant was innocent of any wrong doing and had been falsely implicated in this case by the complainant and his abducted son due to enmity between the complainant party and the accused and his absconding co-accused arising out of a monetary dispute in which numerous FIR's and civil proceedings had been lodged/initiated respectively against each party; that this was a fabricated case by the complainant and the alleged abductee who both gave false evidence which could not be safely relied upon and should be discarded; that no one witnessed the abduction, that there was no evidence of any ransom demand being made or any ransom being paid; that there was no last seen evidence; that this was a case of no evidence and that for any of the above reasons the appellant should be acquitted of the charge by being extended the benefit of the doubt. In support of his contentions he placed reliance on **Aamir Ali and 02 others v The State** (2017 P Cr. L J 1451), **Ghulam Mustafa v The State** (2009 SCMR 916), **Haji Arif v The State** (PLD 2007 Quetta 50), **Rehmat Ali alias Rehma v The State** (2018 YLR 1181), **Farooq Ahmed v The State** (2020 SCMR 78), **Khizar Hayat** (PLD 2019 SC 527), **Hajan and others v The State** (2014 P Cr. L J 1123), **Gohar Khan v The State** {2020 YLR 195 (Federal Shariat Court}, **Suleman Shah alias Sunny v The State** (2020 YLR 2226) and **Attaullah alias Qasim v The State** (2006 PLD 206).

7. On similar grounds raised by the appellant the learned DPG when confronted by this court as an officer of this court only half heartedly supported the impugned judgment. In order to assist this court he brought to the courts attention the case of **Muhammad Kamran v The State** (2021 SCMR 479).

8. On the other hand learned counsel for the complainant fully supported the impugned judgment and contended that the evidence of the complainant was

fully corroborated by the abductee who was recovered safely from Afghanistan after paying the ransom demand of the kidnappers which included the appellant and as such the appeal should be dismissed. He also submitted that the sentence should be enhanced from life imprisonment to the death penalty due to the heinous nature of the offense. In support of his contentions he placed reliance on **Zafar v The State** (2008 SCMR 1254), **Rashid Aslam v The State** (2017 YLR 2052), **Abbas v The State** (2008 SCMR 108), **Riaz Ahmad v The State** (2004 SCMR 988), **Junaid Rehman v The State** (PLD 2011 SC 1135), **Zakir Khan v The State** (1995 SCMR 1793) and **Ghulam Hussain Soomro v The State** (PLD 2007 SC 71).

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

10. After our reassessment of the evidence we find that the prosecution has **NOT** proved its case beyond a reasonable doubt against the appellant for the following reasons:-

> (a) The complainant lodged his FIR around one month after the date of the incident however we do not deem this delay in registering the FIR to be fatal to the prosecution case as the delay has been explained by the fact that in kidnapping of children usually there is some delay in registering the FIR as the priority is the recovery of the child by at first searching for him. In this respect reliance is placed on **Ghulam Hussain Soomro** (Supra). Even otherwise in this case the complainant reported the matter to PS Site A PS Site B which PS's refused to register the FIR and the complainant got his FIR lodged on the orders of the Court. The complainant also reported the matter to the Wing commander 53 Wing on the same day.
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> However what raises doubt in our minds is that despite his other son **PW 3 Muhammed Khan** allegedly seeing the accused and the co-accused driving two separate cars at 3.30pm on 13.01.2016 which is the date of the incident when the complainant reports the incident in his FIR he states the time of occurrence as 6.30pm yet he only has suspicions on those he names in the FIR despite his being told the names of the accused who should be nominated by his other son **PW 3 Muhammed Khan** who saw them 2 hours and 30 minutes before the incident. As such they ought to have been nominated accused in the FIR. The complainant in his FIR states that the persons who kidnapped his son had muffled faces which contradicts

the evidence of his other son **PW 3 Muhammed Khan** who according to his evidence saw the kidnappers in unmuffled faces.

Intriguingly none of the accused on the day of the incident are named in the report to the Wing commander 53 Wing, at PS Site A or in the complainants first S.161 Cr.PC statement. Furthermore, when the complainant gave his further statement on 06.04.2016 the accused is **not** nominated and **only becomes a nominated accused on 14.11.17 for the first time (nearly 18 months after the incident)** which raises the suspicion of his false implication in this case by the complainant especially in the back drop of this case which we will come to later.

Interestingly, the accused was arrested in this case whilst already under arrest in another case on 28.11.2017 and shortly after he is officially nominated as an accused in this case. From the names whom suspicion was initially caste on, then others who were later nominated through subsequent statements it appears that the complainant has no clear idea who was in fact responsible for the alleged abduction as the names change from statement to statement when according to **PW 3 Muhammed Khan** the names were immediately known which castes doubt on whether the complainant is undertaking a pick and choose exercise of who should be the accused and who to falsely implicate. **Significantly,** there is no evidence on record to show when the accused was originally arrested which means that he could have been arrested before the kidnapping.

In terms of false implication not only are the complainant party and the accused and his absconding co accused related and interested witnesses but **admittedly** there is enmity between them over a monetary dispute which is admitted by the complainant in his cross examination as set out below in material part and as such their evidence must be viewed with extreme care and caution in terms of false implication (in this respect reliance is placed on the cases of **Zakir Khan** (Supra) and **Abbas** (Supra));

> **"Sardar Muhammad is my real brother. It is correct to suggest that there was monetary dispute between the present accused and my brother named above, prior to this incident. Akhtar Muhammad Jan is son of my brother namely Noor Muhammad. It is correct to suggest that prior to present incident, Akhtar Muhammad Jan got registered FIR No.630/2015 U/s. 420, 419, 406 PPC at P.S. Site-A, against present accused and his brothers. It is correct to suggest that prior to present incident, I got registered FIR No.299/2015 U/s. 420, 419, 406 PPC at P.S. Kalri, against present accused and his brothers. It is correct to suggest that present**

accused had filed Constitutional Petition No. S-2104/2015 against me & Akhtar Muhammad Jan before Hon'ble High Court of Sindh at Karachi & I appeared in that CP as a respondent. It is correct to suggest that I filed a Civil Suit No.2592/2015 against present accused and his brother before Hon'ble High Court of Sindh at Karachi for declaration, recovery of Rs.80,00,000/-, specific performance, damages and permanent injunction. It is correct to suggest that FIR No.15/2016 U/s.420, 419, 406 & 489-F PPC was registered at P.S. Maripur by me against present accused and his brother including other relatives. It is correct to suggest that I got registered FIR No.27/2016 U/s. 419, 420, 406, 489-F PPC at P.S. Kalri against present accused, his brother and relatives on 24.02.2016, after registration of present case. It is also correct to suggest that I also got registered FIR No.42/2016 U/s. 489-F, 420, 406 & 506 PPC at P.S. Shershah on 05.03.2016 against present accused, his brother and relatives. It is correct to suggest that I also got registered FIR No.76/2016 U/s. 420, 406 & 489-F PPC at P.S. Madina Colony, Karachi against present accused, his brother and relatives including real parents of present accused. It is correct to suggest that I got registered FIR No.299/2016 U/s. 489-F, 420 & 406 PPC at P.S. Satellite Town, Quetta on 16.11.2016 against present accused his brother, real parents and his other relatives. It is also correct to suggest that on same day, viz. 16.11.2016, I also got registered FIR No.293/2016 U/s. 489-F, 420 & 406 PPC at P.S. Satellite Town, Quetta against present accused, his real parents and his other relatives. It is not in my knowledge that whether, my brother Sardar Muhammad submitted an application against present accused and his brother regarding closing of his shop, as present accused owed some money towards my brother on 28.10.2017. It is correct to suggest that present accused got registered FIR No.244/2017 U/s. 395 & 506 PPC, 25 Telegraphic Act at P.S. Pak Colony, Karachi on 09.11.2017, against me and PW Akhtar Muhammad Jan. It is correct to suggest that on 10.01.2018, my further statement U/s. 161 Cr.P.C. was recorded by I.O/PI Akhtar Aziz, wherein, I stated before the I.O that present accused was also involved in this case, as he was already nominated in the instant FIR. It is correct to suggest that I showed my suspicion over involvement of present accused in this case including his other relatives".

Such monetary dispute between the parties is also confirmed by PW 8 Akhtar Aziz the second IO in his evidence in the following terms;

> **"During investigation, I came to know that there was a monetary dispute of about Rs.2 ½ Billions between the parties and 10 to 12 FIRs were pending adjudication before different Courts of law in the same context. Moreso, 02 Civil litigation are also pending between the parties.** After concluding my investigation, **I submitted Charge-Sheet of the instant FIR under B-Class before the Administrative Judge of ATCs, Hon'ble High Court of Sindh at Karachi, wherefrom, the same was marked to this Hon'ble Court.** My request of B-Class was declined by the Court and FIR was registered. I was also directed to submit Charge-Sheet. The accused present in Court is same, who is nominated in the instant case"

Keeping in view the extreme care and caution which now must be applied in reappraising the evidence of an interested and related witnesses who had enmity with the accused and had every reason to falsely implicate him we find that we cannot believe the evidence of **PW 3 Muhammed Khan** who is the son of the complainant and brother of the abductee. This is because when 2 separate moving cars are driven past him he claims to be able to remember and recognize the 7 kidnappers in one car along with its registration No. and the 6 kidnappers in another car and also its registration number but incredibly cannot remember the colors of the cars. Such level of identification of the 13 persons along with car registration numbers of which he only got a fleeting glance in our view is simply not believable and does not appeal to logic, reason, commonsense or natural human conduct. In this respect reliance is placed on **Msk Askar Jan V Muhammed Daud** (2010 SCMR 1604) and **Fayyaz Ahmed V State** (2017 SCMR 2026).Thus we disbelieve his evidence and place no reliance on it especially as his S.161 Cr.PC statement was recorded 2 months after the incident which gave him plenty of time to concoct his story in order to falsely implicate the accused and his father does not mention his evidence in his own evidence despite **PW 3 Muhammed Khan** allegedly informing him of the kidnappers at which point the complainant told him to keep mum which again does not appeal to natural human conduct. i.e. if you have been told the name of the kidnappers of your **minor son** prior to lodging any kind of complainant before the Wong Commander 53 Wing or a PS Site A you would have named such persons. The failure to do so is inexplicable.

(b) There was no eye witness to the kidnapping or last seen evidence merely the suspicions of **PW 1 Hajji Khaiar Muhammed** who is the complainant. Presumably these suspicions are based on the information which his son **PW 3 Muhammed Khan** gave him whose evidence we have already disbelieved and/or on account of

the fact that enmity existed between his party and the accused and the absconding co-accused which gave him every reason to falsely implicate them.

(c) According to the evidence of **PW 1 Hajji Khaiar Muhammed** he was living and working in Karachi with his family when the abduction of his son took place and he found out about it after he finished work. However no evidence has been produced that he actually was in Karachi at the relevant time. In fact his family permanently resides in Quetta which is where his abducted son goes to school. As such it has not been conclusively proved that the complainant was even in Karachi with his family at the time of the abduction of his son. **Significantly,** his wife who told him about his missing son when he came home from work was **not** examined as a witness who could have given evidence that they were staying in Karachi and when her son left to get vegetables. Even otherwise since no one was an eye witness to the abduction how was the complainant able to take the police to the place of wardat when no one knew where his son had been abducted from?

(d) **PW 1 Hajji Khaiar Muhammed** in his own evidence states that **after** the arrest of the accused he was repeatedly getting ransom demands for the return of his son. Thus, there appears to be no evidence to connect the accused to the abduction and ransom demands through the complainant. It is also surprising that the CPLC was not involved which is usually the case of kidnapping for ransom who have particular expertise in this area especially as they work closely with the AVLC in kidnapping cases. Their involvement would have enabled the ransom demands to have been traced and recorded.

(e) Admittedly a case of kidnapping for ransom can be made out if ransom demands are made even if no ransom is paid. In this respect reliance is place on the case of **Junaid Rehman** (Supra). In this case however apart from the evidence of the complainant there is no other evidence that any ransom demands were made. It has been held by the Supreme Court that only one sides verbal allegation of a ransom demand is not sufficient to prove that a ransom demand was made. In this respect reliance is placed on **Fazal Subhan V The State** (2019 SCMR 1027). No other PW heard any ransom demands being made. The CDR which was collected did not link any such demand to the accused let alone to any person operating in Afghanistan where the complainant allegedly paid the ransom. No mobile phone or SIM was ever recovered from the accused or any other absconding co-accused to link them to the ransom demand or any CDR or any other communication with the accused and there was no voice recording of the ransom demand which castes extreme doubt on the prosecution case. In this respect reliance is placed on **Azeem Khan V Mujahid Khan** ((2016 SCMR 274).

(f) The complainant claims that he paid a ransom amount to the absconding co-accused of RS one crore and 5 lacs yet there is no evidence where the complainant got this money from e.g. no bank withdrawal slip was produced. The complainant also claims to be a

transporter so it is difficult to know where he got such a huge amount of money from in cash. No explanation is given in the evidence and interestingly not a single rupee of the alleged ransom was ever recovered.

(g) That according to the evidence of the complainant he called the IO to his house in Quetta where they stayed the night while he crossed over into Afghanistan where after paying the ransom his son was released by the kidnappers. However there is no evidence that he ever crossed over into Afghanistan. It cannot be ruled out that the abductee was staying with a relative of the complainant in Chaman and he simply went and collected him and produced him before the police after pretending to pay a ransom. Notably the police PW's in their evidence did not mention any thing about the complainant intending to pay any ransom or seeing any ransom amount despite staying at the complainants house at Quetta. Likewise the police from Karachi who came to Quetta on the complainant's calling did not have any permission to do so pursuant to this private inquiry being carried out by the complainant, they came in a private vehicle and not a police mobile, no relevant entries were exhibited of their departure and return and they would be extremely unlikely to come from Karachi to Quetta in their own vehicle at their own expense with no guarantee of any arrest being made or the abducted boy being recovered which all tends to caste doubt on the complainant's evidence.

(h) The other key witness is **PW 6 Sarwar Khan** who is the abductee. According to his evidence he was stopped by 5 persons sitting in one car all of whom he recognized. He got in their car to go to purchase vegetables. He then saw 4 other persons get out of another car which included the accused who then all got into his car whereafter smelling some scent he became unconscious. Again it is unusual that an abductee can remember and identify 10 people after seeing them for such a short period of time. According to him the ransom demand was RS 20 Crore yet according to the complainant only 10 crore was demanded and only one crore and 5 lacs paid which appears to be quite a major contraction in their evidence. According to his evidence he was taken from location to location after every few months and on two occasions he received beatings and on another occasion abuse and beating from the accused and only prior to his release was he treated reasonably well. He stated that Owias was arrested but this was not the case. He did not see his father (the complainant) pay over any ransom either before or after his release. In his S.164 Cr.PC statement he states that his cousin and uncle were also present with his father however he has deliberately omitted this from his evidence since it was not stated by his father (who gave evidence before him).He is a young boy of 11 years of age and in our view his evidence smacks of tutoring by his father and his counsel which was put to him in cross examination. He did not state how often he went to Karachi and admitted that he was a permanent resident of Balochistan where he went to school. He was well and in good health at the time of his release (and even had had his hair cut) and did not even need any medical treatment despite his beatings and abuse but

instead went straight home with his father which does not seem to stack up with someone who had been held for over 2 years in captivity in isolation and was subject to constant beatings. The accused played a role in the abduction of the complainants son and according to the evidence of the abductee was present during the abduction and he guarded, fed and beat him yet the accused was in jail prior to the release of the complainants son which tends to suggest that the accused had nothing to do with the kidnapping and detention of the abductee in captivity. In short we have grave doubts about the truthfulness of the abductee's evidence.

(i) The defense was consistent in its case throughout. Specific enmity and false implication was put to each relevant witness during cross examination and also in the accused S.342 Cr.PC statement.

(j) We are fortified in our findings by the recent decision of the Supreme Court in **Muhammed Kamran's** case which held as under at P.482 Para. 4

> *"Though it is rather hard to contemplate a false accusation of abduction, bracketing one's own kith and kin, nonetheless, appellant's belated nomination as the central figure in the episode warrants serious consideration for reasons more than one. The witnesses are discrepant on fundamental issues of demand of ransom and the manner whereby it was paid to the appellant. According to the complainant (PW-9), the captor asked for a sum of rupees 4 crore whereas according to Hassan Javed abductee (PW-7) the demanded amount was rupees 20 lac; the latter is supported by Hamza Shahzad (PW-8), no other than complainant's son who endured captivity alongside the said witness. Even if the discrepancy is viewed as too trivial to cast bearing on the inherent fate of the case, still absence of Hassan Javed's family from the scene is mindboggling; equally devastated by the disappearance of their child, none approached the police or joined the complainant in his pursuit for recovery of the children. Absence of call data, otherwise technically available, to confirm alleged conversation from appellant's cell phone to a landline PTCL number, subscribed by the complainant, a valuable piece of evidence to establish the alleged communication, is a missing link with obvious consequences. The genesis of supplementary statement is also fraught with doubts. According to the complainant, in his belated disclosure, he had nominated the appellant being the principal culprit, however, when confronted with supplementary statement Ex. DD, his name was conspicuously missing therein. Appellant's nomination by one of the abductees, namely Hassan Javed (PW-7) in his statement Ex.DC, purportedly recorded on 8.9.2008 met the same embarrassment. Complainant's choice to let off three co-accused, initially nominated by him in his supplementary statement, is a last straw. To synchronize mutually destructive position,*

> *taken after an appalling delay, to rescue the charge, resting on a moral paradigm, inherently lacking evidentiary certainty on appellant's guilt, is an option beyond juridical possibility. It would be grievously unsafe to maintain the conviction. Criminal Appeal is allowed; impugned judgment dated 25.05.2015 is set aside; the appellant is acquitted of the charge and shall be released forthwith, if not required to be detained in any other case".* (bold added)

11. Thus, for the reasons mentioned above we find that the case of the prosecution is riddled with doubt to which the accused is entitled to the benefit of not as a matter of concession but as of right as was held in the case of **Tariq Pervez V/s. The State** (1995 SCMR 1345). As such we allow the appeal and acquit the accused of the charges against him and set aside the impugned judgment. It follows that the criminal revision is dismissed. The accused shall be released unless wanted in any other custody case.

12. The appeal and criminal revision stand disposed of in the above terms.

JUDGE

JUDGE 26/05/21.