IN THE HIGH COURT OF SINDH AT KARACHI

Present:
Mr. Justice Omar Sial
Mr. Justice Syed Fiaz ul Hassan Shah

Special Criminal Anti-Terrorism
Appeal No. 194 of 2023
[Taufiq Ahmed Jaghrani & Others vs. The State]

Constitutional Petition No. D – 5769 of 2023
[Taufiq Ahmed Jaghrani & Others
vs. Federation of Pakistan & Others]

Appellants/petitioners	:	through Mr. Aamir Mansoob Qureshi, Advocate.
Respondent	:	through Mr. Muhammad Iqbal Awan, Additional Prosecutor General
Date of Hearing	:	11.08.2025
Date of Decision	:	25.08.2025

JUDGMENT

Omar Sial, J.: On 26.03.2016, the Darakhshan police station in Karachi was informed by Armaghan Zahid that on 12.03.2016, his son Kashan-ur-Rehman went to pick up his maternal aunt and was kidnapped by unknown persons. Armaghan received a phone call from an unknown person who demanded rupees ten million ransom for the release of his son. After negotiations, the ransom amount was reduced to Rs. 343,000. The ransom amount was collected from Armaghan by two persons on a motorcycle near the United States embassy in Karachi. F.I.R. No. 124 of 2016 was registered under sections 365-A and 34 P.P.C.

2. On 27.03.2016, Sub-Inspector Rashid Hussain Alvi received spy information on the location of some people suspected of being involved in short-term kidnappings. The

police party started snap-checking vehicles and soon saw two motorcycles coming their way, which did not stop when signaled to stop and instead opened fire on the police party. The police reciprocated the firing, and they managed to apprehend three out of the four persons on the two motorcycles. The names of the three apprehended accused were Taufiq, Adnan, and Kashif. A pistol each was recovered from them, for which they failed to produce licenses. The three men were arrested, and four F.I.Rs (Nos 40 to 43 of 2016) were registered against them. F.I.R. No. 40 was under sections 324 and 353 P.P.C. while the remaining three F.I.Rs (one against each arrested accused) were under section 23(1)(a) of the Sindh Arms Act, 2013.

3. After the arrest, Taufiq told the police that he could take them to where he had kept a portion of the ransom money collected from Aramghan. On 28.03.2016, Taufiq took the police to a house from where two 9 mm pistols, one 0.32 bore pistol, one repeater, one rifle, and several rounds were recovered. Twenty-two mobile phones, fifteen passports, four computerized national identity cards, number plates, cheque books, and debit cards were also recovered. In addition, Rs.227,280 (the ransom money) was also recovered. It is pertinent to point out that no further F.I.R. was surprisingly registered for the recovery made, which was in addition to the ransom money.

4. The record shows that an identification parade was held in which Kashan identified all three accused, but his father said that none of the three accused were the persons who had taken the ransom from him.

5. All three accused pleaded not guilty and claimed to be tried. The victim, Kashan (PW-1), and his father, Armaghan (PW-2), were the principal witnesses. The prosecution also examined S.I. Rashid Hussain Alvi (PW-3, who arrested the accused in the cases of police encounter and unlicensed weapons); A.S.I. Iftikhar Qureshi (PW-4 who witnessed the arrest and recovery); S.I. Abdul Sattar Baloch (PW-5 who inspected the place where Kashan was confined); Munir Ahmed Kashkheli (PW-6 the

learned magistrate who conducted the identification parade); Inspector Muhammad Sohail (PW-7 who arrested the accused in the present case); P.C. Mohammad Ijaz (PW-8 who witnessed the arrest of the accused in the kidnapping case); Najeeb Farooqi (PW-9 who was accused Taufiq's landlord); Inspector Jehanzaib Khan (PW-10 who was the investigating officer of the case).

6. In their respective section 342 Cr.P.C. statements, the accused professed innocence and said that they had been picked up by the Rangers on 15.03.2016 and that the Rangers had also issued a press release confirming this. The learned Anti-Terrorism Court No. 2 at Karachi on 26.10.2023 concluded that the accused were guilty and convicted and sentenced them as follows:

(a) Life imprisonment for an offence under section 365-A P.P.C.

(b) Five years imprisonment for an offence under section 353 and 34 P.P.C. read with section 6(2)(m) of the Anti-Terrorism Act, 1997.

(c) Five years imprisonment for an offence under section 324 and 34 P.P.C. read with section 6(2)(n) of the Anti-Terrorism Act, 1997.

(d) Five years imprisonment for an offence under section 23(1)(a) of the Sindh Arms Act 2013.

7. We have heard the learned counsel for the appellants and the learned Additional Prosecutor General, and with their assistance have reappraised the evidence. The complainant, who had appeared earlier, did not wish to engage private counsel. Our observations and findings are as follows.

8. The primary evidence against the accused in the kidnapping for ransom case was the testimonies of the kidnapee (Kashan) and his father (Aramaghan). A reading of Kashan's testimony is sufficient to demolish the prosecution's case

irreparably. Suffice it to say that he categorically stated at trial that "*amongst the four accused who kidnapped me, none is present in the Court.*" He also narrated that on the day of the identification parade, a policeman had shown him photographs of some people and told him that if he could say that they were the ones who had kidnapped him, then it would help the police to locate the real kidnappers. The ethnicity of the persons who kidnapped (as narrated by Kashan) was also different from that of the accused. Kashan's father also did not identify the accused as the people who had come to take the money from him. Armaghan, in his testimony, said that "*the culprits who had taken the ransom amount from me are not present in court.*" It is pertinent to mention that neither witness was declared hostile by the prosecution; thus, it was accepted that, according to both witnesses, the persons in the Court were not the kidnappers or the ransom takers.

9. We have gone through the testimony of the learned magistrate who conducted the identification parade and find that, sadly, a very casual approach was taken in a serious case. All the accused were put on parade jointly in the same set of dummies, and then the witnesses were asked to identify them. The Supreme Court in many cases, has disapproved a joint identification parade. Reference may be made to the case of **Gulfam and another vs The State (2017 SCMR 1189)**, where it was observed: "*Holding of a joint identification parade of multiple accused persons in one go has been disapproved by this Court in many a judgment and a reference in this respect may be made to the cases of Lal Pasand v.The State (PLD 1981 SC 142), Ziaullah alias Jaji v. The State (2008 SCMR 1210), Bacha Zeb v. The State (2010 SCMR 1189) and Shafqat Mehmood and others v. The State (2011 SCMR 537).*"

10. Apart from the joint test identification parade, the record reveals that no description of the kidnappers was given before the parade by the witnesses. The learned magistrate, in his testimony, agreed that "*it was correct to suggest that the*

features, height, age of all three accused were different." The memo of the parade shows that only the first names of the dummies (and no parentage, addresses, or national identity card numbers) are written. The guidelines given in the case of **Re Kanwar Anwar Ali (PLD 2019 SC 488)** were not complied with. In Mian Sohail Ahmed and others vs The State and others (2019 SCMR 956) the Court observed: "*Both the appellants were jointly seated in the lineup. The idea of identification parade or lineup is to stand or seat the suspect in a group of persons (dummies or fillers) that closely resemble the characteristics of the suspect, in order to test the recognition, memory, perception and observation of the witness and thus verify the testimony of the witness. Placing two or more suspects jointly in an identification parade (or joint parade), tarnishes the homogeneity, sameness and identicalness of the members of the parade and defeats the very purpose of having a test identification parade. Joint parade passes for suggestive and indicative identification, compromising the reliability of the witness and opening doors to misidentification, rendering TIP unsafe and untrustworthy.*"

11. The test identification parade (apart from the fact that the victim said he was told by the police who to identify) could also not be relied upon for conviction due to the defects highlighted above. Our thought has been drawn to whether there was a fear factor for the witnesses to decline identification. However, at the very least, the prosecution should have asked for the witnesses to be declared hostile and an argument to be raised in this connection before the trial court. Unfortunately, none was done. Neither did the complainant put forward this stance in the appeal. We are therefore constrained to assume that there was no pressure on the witnesses to give false testimony.

12. The other piece of evidence that the prosecution relied upon was the recovery of a portion of the ransom money upon Taufiq's lead. This, too, was not beyond doubt, as the notes produced in court, as the case property, were dated well after the incident complained of. The record reveals many other

prosecution lapses; however, we have not delved into those lapses because, based on the observations above, we have concluded that the prosecution failed to prove a case under section 365-A P.P.C. The accused are acquitted of the charge.

13. Learned counsel for the appellants submitted that in the case, neither did a police encounter take place nor were weapons recovered from the appellants but that as the appellants have already undergone the sentence given for those offences, he has been instructed by his clients, for reasons best known to them that they do not wish to argue those charges on merit. He accordingly did not press the appeal to that extent. We would, however, be failing in our duties if we did not point out that a terrorism offence was not made out as it was not proved (in fact, no evidence was led) that the alleged police encounter was with the design, intent, and purpose mentioned in clauses b and/or c of section 6(1) of the Anti-Terrorism Act. Reference may be made to the case of Ghulam Hussain vs The State (PLD 2021 SC 61).

14. Given the above, the appellants are acquitted of an offence under section 365-A P.P.C. and the offences under the terrorism legislation. Their convictions and sentences for offences under section 353, 324, and 23(1)(a) Sindh Arms Act, 2013 are upheld. The sentences were to run concurrently, and the benefit of remissions was given to the appellants by the learned trial court itself. The appellants have therefore completed their sentences for those offences and may be released if not required in any other custody case.

15. In view of the observations made hereinabove, the petition has become infructuous which is disposed of accordingly.

JUDGE

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