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IN THE HIGH COURT OF SINDH, KARACHI

Present:

Mr. Justice Mohammad Karim Khan Agha
Mr. Justice Amjad Ali Bohio

SPL. CR. A.T. JAIL APPEAL NO.26 OF 2022

Appellant	1. Muhammad Saqib s/o. Saleem through Mr. Faizan Faizi, Advocate. 2. Muhammad Akhlaq @ Kashif S/o. Muhammad Ilyas through Mr. Moula Bux Bhutto, Advocate assisted by Mr. Aftab Ahmed Shar, Advocate.
Respondent	The State through Mr. Muhammad Iqbal Awan, Addl. Prosecutor General Sindh.

SPL. CR. A.T. JAIL APPEAL NO.27 OF 2022

Appellant	Muhammad Rehan s/o. Khalid through Syed Aamir Ali Shah, Advocate.
Respondent	The State through Mr. Muhammad Iqbal Awan, Addl. Prosecutor General Sindh.

SPL. CR. A.T. JAIL APPEAL NO.131 OF 2022

Appellant	Muhammad Babar s/o. Jan Muhammad through Mr. Moula Bux Bhutto, Advocate assisted by Mr. Aftab Ahmed Shar, Advocate.
Respondent	The State through Mr. Muhammad Iqbal Awan, Addl. Prosecutor General Sindh.
Date of Hearing	05.09.2023.
Date of Announcement	13.09.2023.

131(a)

JUDGMENT

Mohammad Karim Khan Agha, J:- Appellants Muhammad Saqib, Muhammad Rehan, Muhammad Akhlaq @ Kashif and Muhammad Babar were tried by the Anti-Terrorism Court No.I, Karachi in Special Case No.A-228 of 2015 under FIR No.472 of 2014 u/s. 365-A/302/34 PPC r/w. Section 7 ATA, 1997 registered at PS Zaman Town, Karachi and vide judgment dated 27.04.2022 they were convicted under section 265-H(2) Cr.P.C. and sentenced for the offence punishable u/s.7(1)(a) of Anti-Terrorism Act, 1997 to undergo R.I. for life and to pay fine of Rs.1,00,000/- (Rupees One Lac) each and in default they shall suffer S.I. for six (06) months more. Appellants were also convicted and sentenced for the offence punishable u/s. 302(b) PPC to undergo R.I. for life and to pay compensation of Rs.1,00,000/- (Rupees One Lac) each, u/s.544-A Cr.PC to the legal heirs of the deceased Mubarak Ali and in default thereof they shall suffer S.I. for six months more. They were also convicted for the offence punishable u/s.7(e) of Anti-Terrorism Act, 1997 and sentenced to undergo Imprisonment for life. They were also convicted and sentenced for the offence punishable u/s.365-A PPC to undergo R.I. for life and ordered for forfeiture of properties. All the sentences were ordered to run concurrently. However, the appellants were extended the benefit of Section 382-B Cr.P.C.

2. The brief facts of the prosecution case as narrated in the FIR are that on 17.12.2014 at about 9:00 p.m. his younger brother Mubarak Ali son of Muhammad Rafiq, aged about 19/20 years, left house on motorcycle bearing registration No.KGH-3399. In the late night, when his brother did not come, they started searching him and during the search, complainant came to know that friends of his brother namely Saqib son of Muhammad Saleem and Rehan had taken him to Tea Stall and gave drugs in the tea and after that they called their companions from Orangi Town and shifted his brother to Orangi Town through taxi. On 18.12.2014 in the morning mother of the complainant received call from mobile phone No.0313-1271305 of abductees on her mobile phone and the caller told her that abductee was in their custody and they demanded Rs.15-lac as ransom and also issued threats that if money was not paid they would commit his murder. Thereafter, they submitted application in CPLC. The elder brother of the complainant namely Raheel, while searching abductee,

went to Edhi Cold Storage Sohrab Goth, where he found dead body of deceased, which was brought from the jurisdiction of PS Manghopir, as such, they went there and such FIR being Crime No.273 of 2014, u/s. 302/34 PPC was registered at PS Manghopir, Karachi. After funeral, the complainant came to know that his brother was taken away by Saqib son of Muhammad Saleem, Kashif, Yasir and Rehan in Taxi from Sherabad Hotel and kept him in Orangi Town No.10, Faqeer Colony in the house of absconding accused Shafiq Aba and due to nonpayment of ransom, committed his murder in said house and thrown his dead body, hence present FIR was registered.

3. After usual investigation the case was challaned and the accused were sent-up to face trial where they plead not guilty to the charge.

4. The prosecution in order to prove its case examined 14 witnesses and exhibited various documents and other items. The statements of accused persons were recorded under Section 342 Cr.P.C in which they denied the allegations levelled against them and claimed false implication by the police in collusion with the complainant party. However, the appellants did not give evidence on oath and only appellant Rehan produced two DW's in support of his defence case.

5. After hearing the parties and appreciating the evidence on record, the trial court convicted the appellants and sentenced them as set out earlier in this judgment; hence, the appellants have filed these appeals against their convictions.

6. The facts of the case as well as evidence produced before the trial court find an elaborate mention in the impugned judgment dated 27.04.2022 passed by the trial court and, therefore, the same may not be reproduced here so as to avoid duplication and unnecessary repetition.

7. Learned counsel for the appellants have contended that they are all innocent of any wrong doing and have been falsely implicated by the complainant in collusion with the police and hence the 6 day delay in lodging the FIR whilst the police and the complainant were consulting with each other; that there are material contradictions in the evidence of the witnesses; that there was no eye witness to the abduction; that there

was no evidence that any ransom demand was ever made let alone paid; that there was no evidence that the appellants had murdered the deceased and that the only evidence against them were their retracted judicial confessions which could not be safely relied upon as they were not made voluntarily with the object of telling the truth and thus for all or any of the above reasons the appellants should be acquitted of the charge by being extended the benefit of the doubt. In support of their contentions, they placed reliance on the cases of **Khalid Javed v The State** (2003 SCMR 1419), **Ghulam Hussain v The State** (PLD 2020 SC 61), **Muhammad Pervez v The State** (2007 SCMR 670), **Javed Iqbal v The State** (2023 SCMR 139) **Syed Mehroz Mehdi Zaidi** (2023 YLR 665),**Muhammad Ramzan alias Phanna v The State** (2004 P Cr. LJ 537), **Karamat Hussain v The State**(1972 SCMR 15), **Nazo alias Ali Nawaz v The State** (1977 SCMR 20), **Mah Gul v The State** (2009 PSC (Crl.) 12), **Shamoon alias Shamma v The State** (1995 SCMR 1377), **The State v Ahmed Omar Shekih and others** (2021 SCMR 873), **Wazir Muhammad v The State** (1992 SCMR 1134), **Muhammad Khan v The State** (1999 SCMR 1220), **Akhtar Ali v The State** (2008 SCMR 6) and **The State v Ahmad Omer Shaikh and others** (2020 SCMR 2096).

8. On the other hand Mr. Muhammad Iqbal Awan Additional Prosecutor General Sindh has contended that the delay in lodging the FIR has been fully explained and is not fatal to the prosecution case in abduction cases; that the confession of each of the accused can be safely relied upon; that the ransom demand has been proved through CDR and the murder of the abductee by the appellants has been proven through the confession of the appellants as corroborated by the medical evidence. In support of his contentions, he placed reliance on the cases of **Akhtar v The State** (2020 SCMR 2020), **Muhammad Latif v The State** (PLD 2008 SC 503), **Sheraz Tufail v The State** (2007 SCMR 518), **Tariq Hussain Shah v The State** (2003 SCMR 938), **Ghulam Nabi v The State** (2007 SCMR 808), **Joygun Bibi v The State** (PLD 1960 SC (Pak) 313), **Manjeet Singh v The State** (PLD 2006 SC 30), **Muhammad Amin v The State** (PLD 2006 SC 219) and **Khan Muhammad v The State** (1999 SCMR 1818).

9. We have heard the arguments of the learned counsel for the appellants and learned Additional Prosecutor General Sindh and have

also gone through the entire evidence which has been read out by the learned counsel for the appellants, and the impugned judgment with their able assistance and have considered the relevant law including the case law cited at the bar.

10. After our reassessment of the evidence we find that the prosecution has **NOT** proved beyond a reasonable doubt the charge against the appellants for which they were convicted based on the particular facts and circumstances of the case and the fact that each criminal case must be decided on its own unique evidence for the following reasons;

(a) It is true that the FIR was lodged after a delay of 6 days and usually in abduction cases this is not fatal to the prosecution case as in such like cases the families are initially concerned with tracing out the person who has not come home/is missing who is usually a child. However based on the particular facts and circumstances of this case where the abductee was 16 years old and the ransom demand was made a day after he went missing we find it damaging to the prosecution case that the FIR was not lodged after the ransom demand rather than waiting 5 more days without explanation. **Even more damaging** to the prosecution case however is the fact that the dead body was recovered 19.12.14 but the complainant party still did not lodge the FIR **for a further 4 days** which delay has not been explained. Thus, on account of this delay based on the particular facts and circumstances of the case we find the delay in lodging the FIR almost fatal to the prosecution case as the complainant had plenty of time to consult and potentially falsely implicate anybody of his choice.

(b) Further weight is given to the delay in the FIR being fatal to the prosecution case by the fact that it nominated all 4 appellants **based on an unknown source** and states that the appellants even made the abductees intoxicated before abducting him.

(c) The appellants were all friends of the abductee and had no motive to abduct or kill him.

(d) The main evidence against each of the appellants are their respective judicial confession before a magistrate which are each set out as under for ease of reference;

JUDICIAL CONFESSION OF MUHAMMAD REHAN UNDER SECTION 164 CR.PC.

"My inner conscience is saying that we have committed a blunder for money. I got my friend Mubarak kidnapped after that I asked for forgiveness from God. My conscious had woken up then I told Mubarak's relatives that I got Mubarak kidnapped for money".

JUDICIAL CONFESSION OF MUHAMMAD IKHLAQ aka Kashif UNDER SECTION 164 CR.PC.

"Sir, we did this in our greed for money. These two brothers Saqib and Rehan brought Mubarak so I in connivance with them all mixed intoxicated capsule in his tea then I put him in the taxi and took him to my house. On the next day, we called his family for extortion and demanded Rs.1,500,000/which his family refused to pay then Saqib called and informed that they have approached the Governor's House and if you release him, we will get in a fix so for the same reason I and Babar strangulated Mubarak to death with a rope and threw the body at Khairabad Road".

JUDICIAL CONFESSION OF MUHAMMAD SAQIB UNDER SECTION 164 Cr.PC.

"On 17 December Mubarak called me and he asked where I was. I said I am sitting at the hotel. Then Babar called so Rehan and I took Mubarak to Sherabad Hotel, where we drank tea. We had mixed sleeping pills in Mubarak's tea and Mubarak fell asleep and then I and Rehan left and Kashif and Babar took him to Orangi Town".

JUDICIAL CONFESSION OF MUHAMMAD BABAR UNDER SECTION 164 Cr.PC.

"Saqib and Rehan brought Mubarak to me at 36-B Korangi and Saqib and Kashif had served him tea mixed with sleeping pills and made Mubarak drink such tea and Mubarak got unconscious. I and Kashif took Mubarak to Orangi Town and kept him with us one night and on the next day called Mubarak's mother and demanded Rs.1500,000/who refused to pay it. Saqib called and said kill him because if he remained alive we all will get in a fix so I and Kashif strangulated Mubarak to death with a rope due to which Mubarak died and we threw the body at Khairabad Road".

It is well settled by now that we can rely on a retracted judicial confession provided that it was made (a) voluntarily (b) with the object of telling the truth and (c) there are only minor procedural irregularities in the manner in which the confession was recorded.

In this case all the appellants retracted their judicial confessions claiming that they were not made voluntarily and that they were pressurized into making the confession by the police.

We find that we have doubts that the confessions were made voluntarily for the following reasons;

(a) Appellants Rehan and Saqib were arrested on 24.12.2014 yet they made their confession on 14.01.2015 which was **after a delay of 21 days** which delay has not been explained. Although there is no hard and fast rule as to the time frame of confessing generally the sooner it is made after the arrest of the accused the more reliable it is. In this case **another** peculiarity occurred in that the other two appellants Babar and Kashif were arrested on 09.01.2015 before any of the two other accused had confessed. Yet **surprisingly** 6 days after their arrest **all 4** of the appellants decide to confess before the same magistrate on the same day. Although there appears to

be no bar on how many appellants can confess in one day at the same time before the same magistrate we find that it does not appeal to natural human conduct that all 4 of the appellants would confess all on the same day despite different arrest dates at the same time before the same magistrate. Why did appellants Rehan and Saqib not confess before the magistrate in their initial 21 days of their arrest if it was troubling their conscience and why did they need to wait for the other two appellants to be arrested before they all confessed together in unison. Likewise hardly ever do all accused all confess at the same time let alone all confess at all; maybe one or two accused might confess on different days but not all accused together on the same day before the same magistrate despite being arrested at different times.

(b) In further support of the above doubt about the judicial confessions a brief review of the 4 confessions reveal that they are very short, flimsy **and devoid of any detail which was not otherwise known in the FIR**. Dates, times, and places are nearly all missing in each confession. In fact Rehan's confession is completely devoid of any detail. He does not speak of any ransom or of the abductee even being murdered.

Thus, we find that we cannot safely rely on the judicial confessions and exclude the same from consideration.

(e) Even if we had believed all of the judicial confessions we would have also by way of caution wanted to find some corroborative evidence.

The only corroborative piece of evidence in respect of the abduction appears to come from PW 8 Muhammed Jameel. According to his evidence he received a call from appellant Kashif who took him to a tea stall where three boys came and he found one to be in drowsy condition. He dropped appellant Kashif and the drowsy boy at Kashif's house.

There is no evidence that he knew Kashif, the deceased or any other of the appellants from before. He could not identify Kashif or any other of the appellants in court. He could not remember the name of the tea stall or where Kashif's house was where he dropped him. He does not mention the other appellants getting out of his car. He gave no hulia of any of the appellants or the deceased in his S.161 statement which was recorded **nearly three weeks** after the incident. He did not have a driving license despite allegedly being a taxi driver. He is not named in the FIR. How would he have even known of the murder of the so called drowsy person as the picture of the deceased was only sent to police stations and was not placed in newspaper or the media. No identification parade was carried out which might have enabled him to identify the appellants. We find this witness to be a chance witness, if not a planted witness, and we do **not** find his evidence to be trust worthy or confidence inspiring and disbelieve the same. Thus, he is not an eye witness to the abduction as even if he was believed the deceased might have

gone voluntarily with Kashif since he did not witness any struggle from the drowsy man especially as Kashif and the deceased were friends. Since we have disbelieved his evidence he cannot be regarded as a witness for the purposes of last seen evidence. Even, if he was believed his evidentiary value as a last seen evidence witness is little, if any, as the body of the deceased was found 2 days after he allegedly dropped the drowsy person alive at Kashif's alleged home.

(f) **Significantly,** another taxi driver Habib Ahmed who gave his S.164 Cr.PC statement on the same lines as PW Muhammed Jameel was given up by the prosecution and as such under Article 129 (g) Qanoon-e-Shahdat Ordinance an adverse inference can be drawn that he would not have supported the prosecution case.

(g) The medical evidence does not fully support the prosecution case as according to the medical evidence no intoxicating substance was found in the body of the deceased. According to the medical evidence the deceased was murdered by strangulation caused by an object like a rope however no rope, tranquilizer bottle, blood or article of clothing or any possession belonging to the deceased was found at the wardat i.e Appellant Kashif's house.

(h) With regard to the ransom demand there is insufficient evidence in this respect. The appellants are not connected through the CDR which was collected to any ransom demand. Even the CDR is not reliable having been produced by the complainant as opposed to a reliable body such as the CPLC. There are no voice recording concerning any ransom demand despite the complainant's side allegedly going initially to the CPLC which usually provides such equipment in kidnapping for ransom cases. In fact there is hardly any evidence regarding the role of the CPLC which usually play a key role in such like cases working with the AVCC which again raises doubt on the complainant's version of events. No witness from the CPLC was even examined to support the complainant's case. Thus, we find that the ransom demand has not been proven.

(i) With regard to the murder of the abductee there is no eye witness to the murder and no evidence at all to link the appellants to the murder except their judicial confessions which we have found we cannot safely rely upon for the reasons mentioned earlier in this judgment and even other wise are not corroborated by independent evidence of an unimpeachable character.

11. It is a well settled principle of criminal law 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 and in this case we have found many doubts in the prosecution case.

12. Thus, for the reasons discussed above by extending the benefit of the doubt to the appellants they are acquitted of the charge, the impugned judgment is set aside, their appeals are allowed and the appellants shall be released unless wanted in any other custody case.

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