

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

Present:

*Mr. Justice Mohammad Karim Khan Agha  
Mr. Justice Khadim Hussain Tunio,*

**SPL. CR. A.T. JAIL APPEAL NO.68 OF 2020**

Appellants:

1. Mohammad Ayoub son Gambo Khan
2. Bakhat Ali @ Chaukidar @ Kango @ Bengle Jakhrani son of Ghulam Rasool through Mr. Iftikhar Ahmed Shah, Advocate.

Respondent:

The State through Mr. Abrar Ali Khichi, Additional Prosecutor General, Sindh.

Date of Hearing:

31.03.2022

Date of Announcement:

07.04.2022

**JUDGMENT**

Mohammad Karim Khan Agha, J. Appellants Mohammad Ayoub son of Gambo Khan and Bakhat Ali @ Chaukidar @ Kango @ Bengle Jakhrani son of Ghulam Rasool were charge sheeted to face their trial in two Special Cases No. A-52 of 2014 arising out of FIR No.28 of 2014 under section 365-A/34 PPC r/w section 7 of ATA 1997 registered at PS Al-Fallah, Karachi and Special Case No. A-54 of 2014 arising out of FIR No.41 of 2014 under section 23(1)(A) of Sindh Arms Act, 2013 registered at PS S.S.H.I.A, Karachi. Both the appellants, vide impugned judgment dated 29.02.2020 passed by the learned Judge, Anti-Terrorism Court No.III, Karachi were convicted in crime No.28/2014 u/s.265-H(2) Cr.P.C. and sentenced to undergo R.I. for life and their properties were ordered to be forfeited to the Government. Appellant Mohammad Ayoub son of Ghambo Khan was also convicted 265-H(2) Cr.P.C. in crime No.41/2014 to undergo Rigorous Imprisonment for a period of five years and to pay a fine of Rs.5000/- and in default thereof to undergo S.I. for six months more. Appellants were also extended benefit of section 382-B Cr.P.C. All the sentences were ordered to run concurrently.

2. The brief facts of the prosecution case are that on 02.02.2014 complainant Tehseen ul Huq lodged FIR of this case at police station Al-Fallah, wherein he stated that on 28.01.2014 at about 10:30 p.m. his brother Takreem ul Huq along with his two friends namely Mohammad Faizan and Mohammad Shariq went outside to have meal in Honda Civic Car bearing registration No.Z-6327 and since then they have not returned back. It is further submitted that complainant made every effort to search his brother but could not succeed, hence this FIR.

3. After registration of the FIR, investigation of the case was entrusted to Sub. Inspector Akhtiar Ali Bulu who visited the place of incident and prepared mashirnama as well as recorded the statement of complainant under Section 161 Cr.P.C who further disclosed that unknown accused persons made phone calls from the cell phone number 0301-8265923 of abductee Takreem ul Haq and cell phone number 0315-2555357 of abductee Mohammad Shariq and has demanded ransom of Rs.70,00,000/- and 40 Tola Gold for release of abductees. The I.O. then recorded statements of PWs Mohammad Faisal, Mohammad Mubeen and Tasleem ul Haq u/s.161 Cr.P.C. who also corroborated the version of the complainant. During investigation I.O. secured a car of abductee Tehseen-ul-Huq under memo from Abbass Town Chowki of police station Sachal which was seized by ASI Ameer Bux Chandio u/s.550 Cr.P.C. from Katcha road, Super Highway on 28.01.2014 at about 2345 hours. The I.O. then applied section 365-A PPC in the case and the investigation was transferred to SIP Ali Mohammad of AVCC who then obtained CDR of the Cell phone numbers of the abductees under the memo from computer section of AVCC on 13.02.2014. During investigation on 13.02.2014 Rangers conducted raid at various places/houses and eventually found the place where the abductees were confined. The Rangers officials got released the abductees and on the pointation of abductee Takreem ul Haq conducted raid on some other houses as well as conducted raid on some houses on the pointation of Muhalla people and arrested the accused Muhammad Rafiq and Muhammad Ameen. Later on 15.02.2014 I.O. visited place of abduction i.e. northern bypass Super Highway on the pointation of abductees Takreem ul Haq and Muhammad Faizan and prepared such mashirnama. I.O. also visited place of confinement of abductees i.e. the house situated in Khadim Solangi Goth on the pointation of abductees Takreem ul Haq, Muhammad Faizan and prepared such mashirnama. I.O. then recorded statement of abductees Takreem ul Haq u/s.

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161 Cr.P.C. on 15.02.2014 who disclosed that on 28.01.2014 he alongwith his friends Muhammad Shariq, Muhammad Faizan were going to Al-Habib restaurant Super Highway on his Honda Civic Car bearing registration No. Z-6327, for dinner. As they were going in slow speed, at about 11:30 pm three armed persons emerged from the bushes and stopped their vehicles, the culprits alighted from the vehicle, conducted search of all three abductees and snatched cash and mobile phones from them, thereafter the culprits made them sit in the car and after 30 minutes' drive they took them to a house where they blind folded their eyes and chained their legs. The culprits used to talk Balochi, they had kept the abductees in a room where a lame person used to provide them food and sometimes two boys aged about 11/13 years provided them food in absence of the lame person. Meanwhile rangers conducted raid on the place where the abductees were confined and recovered them. I.O. then also recorded statements of other abductees u/s. 161 Cr.P.C. Thereafter on 17.02.2014 ASI Muhammad Wakeel arrested the accused Muhammad Ayoub from State Bank Society Road near Khadim Solangi Goth, Scheme 33 Karachi and recovered an unlicensed 30 bore pistol bearing No.4662 loaded with four live bullets from his possession and registered case against him being crime No.41/2014 for offence u/s. 23(1)(A) Sindh Arms Act. Accused Muhammad Ameen and Muhammad Rafiq who were under arrest u/s. 54 Cr.P.C. at police station SSHIA, disclosed their complicity in commission of this case, therefore, ASI Qadir Bux vide report No.50 at about 1930 hours informed police station AVCC about the arrest and disclosure of the accused. The I.O. then interrogated the accused Muhammad Ameen, Muhammad Rafiq and Muhammad Ayoub who disclosed their complicity in commission of this case, therefore, I.O. re-arrested the culprits under memo. The case being triable by Anti-Terrorism Court, I.O. SIP Ali Muhammad was not competent to investigate the case, therefore, the investigation was entrusted to Inspector Muhammad Yameen Gujjar under the orders of SSP. The I.O. Muhammad Yameen Gujjar obtained remand of the accused from Anti-Terrorism Court No.I, Karachi and produced them before the Judicial Magistrate No.XVIII for identification parade where the accused Mohammad Rafiq, Mohammad Ameen and Mohammad Ayoub were identified by the abductees in presence of witness under the memo of identification parade. During investigation accused disclosed the name of their companions to be Ameer Bux Jamali s/o Sobo and Murad Shah s/o Unknown. The I.O tried to

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search the absconding accused on the pointation of arrested accused but could not succeed. During investigation it was further found that absconding accused Ameer Bux Jamali was the father of arrested accused Mohammad Ameen and Mohammad Rafiq. After completing the investigation I.O submitted report u/s 173 Cr.P.C. before the Anti-Terrorism Court No.1 Karachi.

4. NBWs were issued against absconding accused but the same were returned un-executed. The proclamation was issued for attachment of property of absconding accused u/s 87/88 Cr.P.C., thereafter publication was also made in three national newspapers, the accused were declared as proclaimed offenders and the case was ordered to be kept on dormant file against the absconding accused vide order dated 21.05.2015.

5. On 11.06.2014 accused Bakhat Ali s/o Ghulam Rasool was arrested in crime No.145/2014 for offence u/s 23(1)(A) Sindh Arms Act of police station SIU/CIA and during interrogation he disclosed his complicity in commission of the offence. The I.O, therefore, re-arrested the accused in this case. The I.O produced the accused before learned Judicial Magistrate No.XVIII, Karachi East for identification test. The PWs Mohammad Shariq and Mohammad Faizan identified the accused in identification test under the memo of identification test. After completing the formalities I.O submitted supplementary challan against the accused.

6. The cases were tried by Anti-Terrorism Court No.IV from where the cases were received by transfer by this court. Before the cases were received by transfer the minor accused had jumped the bail. Charge against the minor and adult accused was jointly framed and evidence of some of the witnesses was also recorded, however the case of the minor accused by order dated 13.09.2018 was bifurcated as joint trial of adult and minor accused was illegal and fresh charge against the present accused was framed in this case on 04.10.2018. The accused did not plead guilty and claimed to be tried.

7. The prosecution in order to prove its case examined 13 PWs and exhibited various documents. The statement of accused persons were recorded under Section 342 Cr.P.C in which they denied all the allegations leveled against them. Accused persons neither examined themselves on oath nor produced any DW in their defence. After 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 this appeal against their conviction.

8. The facts of the case as well as evidence produced before the trial court find an elaborate mention in the impugned judgment dated 12.02.2019 passed by the trial court and, therefore, the same may not be reproduced here so as to avoid duplication and unnecessary repetition.

9. Learned counsel for appellant Ayoub contended that the appellant was completely innocent in this case and had been falsely implicated in this case by the police in order to show their efficiency; that only one PW abductee identified him and that PW's identification could not be safely relied upon as it was before a joint identification parade; that apart from this misidentification there is very little other evidence against this appellant; a major contradiction is also present in his case as according to the one of the PW abductees he was arrested on the spot by rangers however it has come in evidence that he was arrested later by the police with an illegal firearm in his possession which has been clearly foisted on him. With regard to appellant Barkat Ali learned counsel contended that although this appellant had been identified by two abductee eye witnesses the evidence of these eye witnesses could not be safely relied upon as they did not have a chance to see any of the appellants as they were blind folded throughout and as such both the appellants should be acquitted by being extended the benefit of the doubt. In support of his contentions, he placed reliance on the cases of **Mian Sohail Ahmed v The State** (2019 SCMR 956), **Gulfam v The State** (2017 SCMR 1189), **Ziaullah alias JAJJ v the State** (2008 SCMR 1210), **Kamal Din alias Kamala** (2018 SCMR 577) and **Khadim Hussain v The State** (1985 SCMR 721).

10. On the other hand learned Additional Prosecutor General Sindh has fully supported the impugned judgment. In particular he has contended that the abductee eye witnesses have correctly identified the appellants as the persons who had held them captive after their abduction; that a ransom demand had been made for the safe return of the abductees; that although there are some minor contradictions in the prosecution case these are not so material as to effect the prosecution case; that every one who plays a part in a kidnap for ransom case is equally responsible for the crime even if the accused were not the actual abductors and as such the prosecution had proved its case.

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against the appellants beyond a reasonable doubt and the appeal should be dismissed. In support of his contentions, he placed reliance on the cases of **Muhammad Zaman v The State** (2007 SCMR 813), **Khawaja Hasanullah v The State** (1999 MLD 514), **Rafaqat Ali v The State** (2016 SCMR 1766), **Dr. Javaid Akhtar v The State** (PLD 2007 SC 249) and **Muneer Ahmad v The State** (1998 SCMR 752).

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

12. At the outset we emphasize that that we must be alive to the fact that kidnapping for ransom these days is very often not a simple affair. For example, A does not simply kidnap B, take him to his home and calls B's father demanding a ransom on B's landline. Now a days kidnapping for ransom is very often carried out in a highly sophisticated and planned manner by highly organized gangs. For example, A may kidnap B, B is then handed to C, C then hands B to D at a new location, E makes the ransom call, F collects the ransom money, G hands over the ransom money to the leader of the gang. Disposable phones may be used, different vehicles and locations may be used to shift and detain the abductee and some or none of the gang members may not even know each other by face. One gang may even sell on the abductee to another gang in a different part of the country.

13. The facts and circumstances of this case as narrated by the abductees in their evidence fit in with such modus operandi. Each member of the gang may play a different role in the kidnapping, to a greater or lesser extent, but a successful kidnapping for ransom could not be carried out without the active participation of all members of the gang. As such in our view they are all liable in this joint criminal enterprise of kidnapping for ransom whether they actually snatched the abductee, drove him, guarded him, collected the ransom etc. As such through their respective roles of driver, guard, cook, accepting the ransom etc the appellants are a part of the kidnapping gang who all participated in the kidnapping. This aspect of kidnapping for ransom was recognized in the case of **Khawaja Hasanullah** (Supra) and **Ahmed Hussain V The State** (PLD 2008 SC 110) which held as under at P.113 at para 5

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*"the abductee in his statement in the examination in chief, has categorically stated that Shahzad Ali and Abdul Jabbar, petitioners abducted him in a car from Boat Basin whereas Ahmed Hussain alias Ami, petitioner used to visit the place of his detention to provide him food and they all were active members of the gang of culprits. Learned counsel for Ahmed Hussain, petitioner, when confronted that the above portion of the statement of abductee was not challenged by the defence and so much so, no suggestion was put to him in the cross-examination that petitioner was not an active partner of the accused. The law is that if a person subsequently associates himself with the accused in the crime, he may have same liability and learned counsel has not been able to satisfy us that Ahmed Hussain petitioner was not privy to the crime. In the light of the circumstances leading to the occurrence and the subsequent events, an inference could safely be drawn that the petitioners having participated in the crime, have incurred equal responsibility of commission of the offence. (bold added) .*

14. In this case it appears that the appellants played no role in actually abducting the appellants from their car which was later found abandoned on the Super Highway in Karachi and produced at trial but their role was to guard the abductees and assist in the demanding of the ransom for their safe return after threatening them when they were dropped off to them by the other members of the gang who actually carried out the abduction and are now absconders.

15. The first element of the case is whether the abductees were actually kidnapped. In this case there were three abductees. PW 3 Takreem-Ul Haq, PW 4 Muhammed Fiazan and PW 5 Muhammed Shariq. There evidence is at one in so far as their abduction is concerned. Namely that they were all travelling for dinner when they were stopped by another vehicle where upon three armed men alighted whose faces were covered and who robbed them of their wallets and phones before bundling them blind folded into another car and took them away. All three abductees corroborate each other in all material respects in respect of their abduction and their abduction was not particularly challenged at trial and as such the kidnapping of the abductees has been proven beyond a reasonable doubt.

16. From the evidence of the three abductees they were all handed over to another group of people which included the appellants and two children to

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guard and to take care of them (including feeding them occasionally in the absence of the co-accused minor children) whilst a ransom demand was made from their relatives in order to secure their release. The case of the two children was separated from that of the appellants as they were minors and their role according to the abductees was to feed them whilst they remained in captivity for the 16 days prior to their release/rescue.

17. With regard to the ransom it is settled by now that in order to prove a case of kidnapping for ransom no ransom amount needs to be paid or recovered but only proof that a demand for ransom was made. Abductee PW- 3 Takreem states in his evidence that after one or two days they obtained from us cell No's of our family members and made conversation with them and after 7 to 8 days the accused recorded our voices with dialogues whereby they were compelling us to convey their demand of ransom amount to our family members and that they understood that by recording their voices for ransom amount such voice recordings were sent to another place to another person belonging to the accused to convey our voices of the ransom demand to our family members. The ransom amount was for initially for one crore and 40 tola gold for the release of each person but was later reduced to 15/20 lacs for each person. Abductee PW 4 Muhammed Fazian corroborates the ransom demands by the accused and that they would face dire consequences if the ransom was not paid. Abductee PW 5 Shariq also corroborates such ransom demands and threats. The fact that the demands appear to have been made from another location is corroborated by the CDR which shows that many calls which were made during the period whilst the abductees were in captivity were made to the complainant and that these calls emanated from Balochistan where one of the absconding kidnappers Jamali was from. Such ransom demands are also corroborated by PW 10 Tehseen and PW 11 Muhammed Mobeen who were both related to the abductees and received these ransom demands and reported the matter to the police. Thus, we find that ransom demands were made for the release of the abductees which were passed on through the persons holding the abductees in captivity.

18. **The key aspect to this case** is whether the abductees have been able to correctly identify the appellants as the person's who held them in captivity.



19. In this case the three abductees were kept in captivity for 16 days. According to the evidence of abductee PW Muhammed Faizan during there captivity their (i.e abductees) faces were open. The abductees were in captivity for 16 days and as such would have had ample opportunity to see and identify the persons who were guarding and feeding them and would have got to know them and recognize them. In the case of **Muneer Ahmed** (supra) which was also a kidnapping for ransom case it was held that there was no need for an identification parade in such like cases where the abductees had been in custody of the appellants for a long period as it was not a case of the abductees only getting a fleeting glance of the accused but of getting to see them regularly over a continuous period of time especially when none of the abductees had any ill will or enmity with the appellants as in this case. Nevertheless, although not strictly necessary based on the particular facts and circumstances of this case an identification parade was carried out in respect of Ayoub and despite being a joint identification parade Ayoub was picked out by one of the abductees by PW 4 Muhammed Faizan with a specific role.

20. In a separate and later identification parade after his arrest appellant Barkat Ali was identified by abductees PW 4 Muhammed Faizan and PW 5 Muhammed Shariq with specific roles.

21. Essentially both the appellants were guards of the abductees who were involved in making ransom demands and occasionally providing food to the abductees in the absence of the two minor co-accused children. As mentioned earlier all three of the abductees had no enmity with the appellants and no reason to falsely implicate them in this case. They were held in captivity for 16 days and as such had a long enough time to both see and recognize the appellants if they saw them again without the need of an identification parade although they did identify them at separate identification parades which were held only 2 and 5 months respectively after the incident when the appellants had been arrested in this case so the abductees would easily be able to recognize the appellants. Even otherwise the identification parades except for the joint identification parade in respect of appellant Ayoub were carried out in accordance with the law and nearly all procedural requirements were followed by each magistrate (PW 1 Mirza Ahmed and PW 2 Abdul Qadir Buriro) who carried out an identification parade of the appellants. The



appellant's claim that they were shown to the abductees before the identification parade is a stock defense put up by appellants in such like cases and we disbelieve the same especially as the IO and all three abductees denied the allegation.

22. It is true that there are some discrepancies/contradictions in the evidence of the abductees but we do not regard these as material enough to effect the prosecution case especially as the abductees were having to endure a very traumatic experience over a long period of time where discrepancies were bound to slip in. In this respect reliance is placed on the case of **Zakir Khan V State** (1995 SCMR 1793).

23. It is relevant that it was held in the case of **Pahlwan V State** (2000 P.Cr.LJ P.299) in cases of kidnapping for ransom the evidence of an abductee is material and conviction can be based on his testimony **alone if it inspires confidence**. In this case there are three abductees all of whose evidence inspire confidence and we believe the same.

24. Appellant Ayoub was arrested by the police a few days after the incident and he had in his possession an unlicensed firearm. We find that the prosecution has proved this case him beyond a reasonable doubt through the evidence on record of the police PW's which we find to be reliable keeping in view the fact that the police had no enmity with appellant Ayoub and had no reason to involve him in a false case for by example foisting an unlicensed pistol on him.

25. In cases concerning kidnap for ransom there is a need to take a **dynamic approach**. The Supreme Court in **Noor Muhammad v. State** (1999 SCMR 2722) has also adverted to this aspect of the matter and has observed as under:-

*"However, we may observe that the people are losing faith in the dispensation of criminal justice by the ordinary criminal courts for the reason that they either acquit the accused persons on technical grounds or take a lenient view in awarding sentence. It is high time that the Courts should realize that they owe duty to the legal heirs/relations of the victims and also to the society. Sentences awarded should be such which should act as a deterrent to the commission of*



offences. One of us (Ajmal Mian, C.J., as he then was) has highlighted this aspect, inter alia in the case of *State through the Advocate General Sindh, Karachi v. Farman Hussain and others* (PLD 1995 SC 1), relevant portion whereof at page 19 reads as follows:-

*(3) It is a matter of public knowledge that in Sindh, on account of kidnapping for ransom, commission of dacoities and other offences, the people are feeling unsecured. The learned trial Court has dilated upon these aspects in detail. I am inclined to subscribe to the view found favour with it. The approach of the Court in matters like the case in hand should be dynamic and if the Court is satisfied that the offence has been committed in the manner in which it has been alleged by the prosecution the technicalities should be overlooked without causing any miscarriage of justice". (bold added).*

26. Thus, even if we find that there may be some technical defects in the prosecution case we do not find that such defects have dented the prosecution case and by adopting a dynamic approach without causing miscarriage of justice for the reasons mentioned above we hereby dismiss the appeal of the appellants.