

IN THE HIGH COURT OF SINDH, KARACHI

Present:

Mr. Justice Mohammad Karim Khan Agha

Mr. Justice Amjad Ali Bohio

Special Criminal A.T.J.A. No.38 of 2022

Appellant:	Abdul Sami S/o. Abdul Razzaq through Ms. Farzana Mateen, Advocate.
The State:	Through Mr. Muhammad Iqbal Awan, Additional Prosecutor General, Sindh
Date of Hearing:	10.08.2023.
Date of Judgment:	15.08.2023.

J U D G M E N T

MOHAMMAD KARIM KHAN AGHA, J:- The Appellant Abdul Sami S/o. Abdul Razzaq has filed this appeal against the judgment passed by the Anti-Terrorism Court No.XV, Karachi dated 14.01.2022 in Special Case No.34/2021 arising out of F.I.R. No.1365/2020 U/s. 365-A & 34-of the Pakistan Penal Code, 1860, 25-D Telegraph Act, 1885 read with section 7 of the Anti-Terrorism Act, 1997 registered at P.S. Shah Latif Town, Karachi whereby the appellant was convicted and sentenced to life imprisonment along with forfeiture of his property under section 365-A of the Pakistan Penal Code, 1860. Benefit of section 382-B Cr.P.C. was also extended to the appellant.

2. The facts of the case are that complainant Ahsan Ali Buriro lodged FIR No.1365/2020 at Police Station Shah Latif Town, Karachi under section 365-A, 342, 337-A(i) & 34 of the Pakistan Penal Code, 1860 and 25-D of the Telegraph Act, 1886 wherein he stated that he used to reside in House No.62, Street No.10, first floor, Gulshan-e-Abbasi Colony, near Khaldabad, Quaidabad, Landhi Block-B, Karachi and was employed in a garment factory. On 12.12.2020 Israr Ali, younger brother of complainant left the house at 0730 hours for his work but did not turn up till odd hours of the night. The complainant received a call from cell number of his brother Israr but the caller was unknown, who said that Israr was caught with his sister and in case the complainant wanted life of Israr, then he

had to arrange for Rs.200,000/- otherwise his brother would be done to death. The complainant and abductors settled on Rs.25,000/-. The complainant sent Rs.25,000/- through Easypaisa on phone No.0330-2658712 as given to him. Pursuant to the payment of the ransom, his brother was released at about 0300/0400 hours and was brought at house. Israr, the younger brother of the complainant then disclosed about the incident that took place with him to the complainant that he received a call from unknown number, whereby it was enquired that was he Suleman? To which Israr replied that no, he was not Suleman. The caller was a female, who said to Israr that she came from Hyderabad to the house of her brother and some work for her to be searched, on which younger brother of the complainant required copy of CNIC. The female caller disclosed that she was simple woman and was unaware about the ways; therefore, the card may be taken from her. As a result, Israr was taken to her house, where a person was already present, later two other persons arrived there, who tied and maltreated Israr and confined him. On 15.12.2020 brother of the complainant was on the way to his work and as soon as he reached near Madina Colony, Multani Hotel, he saw a person involved in the commission of his abduction and called the complainant. The said person was caught and 15 police was called. Custody of that person with the help of 15 police was brought at PS. The nabbed person was Abdul Sami S/o. Abdul Razzak. The complainant alleged that accused Abdul Sami S/o. Abdul Razzak abducted his brother Israr, confined him for two days with them, extorted Rs.25,000/- as a ransom in connivance with co-accused Nazku S/o. Unknown, Afzal S/o. Shaman, Jameela W/o. Shaman and Shaman S/o. Muhammad Hussain and maltreated him. After completing the investigation, charge sheet was submitted under sections 365-A and 34 of the Pakistan Penal Code, 1860, 25-D of the Telegraph Act, 1865, read with section 7 of the Anti-Terrorism Act, 1885, read with section 7 of the Anti-Terrorism Act, 1997. The accused Shaman S/o. Muhammad Hussain, Afzal S/o. Shaman and Jameela W/o. Shaman were shown as absconders in the charge sheet whereas because of incomplete information name of accused Nazku was inserted with blue ink.

3. After completion of investigation charge was framed against the accused on 20.04.2021 to which he denied the allegations and claimed trial.

4. The prosecution in order to prove its case examined 05 witnesses and exhibited various documents and other items. The statement of the appellant

accused was recorded under Section 342 Cr.P.C. The appellant examined himself on oath and produced one DW in support of his defence case.

5. After hearing the parties and appreciating the evidence on record, the learned trial Court convicted and sentenced the appellant as set out earlier in this judgment hence, the appellant has filed this appeal against his conviction and sentence.

6. The facts of the case as well as evidence produced before the trial court find an elaborate mention in the impugned judgment dated 14.01.2022 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 appellant has contended that the appellant is entirely innocent of any wrong doing and has been falsely implicated in the case on account of old enmity after consultation hence the delay in lodging the FIR; that no abduction took place; that there is no evidence of any ransom demand being made and no ransom money was recovered and that this is a case of no evidence and that for any or all the above reasons the accused should be acquitted by extending him the benefit of the doubt. In support of her contentions she placed reliance on the case of **Fazal Subhan and another v. The State** (2019 SCMR 1027).

8. On the other hand Additional Prosecutor General Sindh of behalf of the State has fully supported the impugned judgment and contended that since the prosecution has proved its case against the appellant through reliable evidence the appeal be dismissed.

9. We have heard the arguments of the learned counsel for the appellant as well as by learned Additional Prosecutor General Sindh, gone through the entire evidence which has been read out by the learned counsel for the appellant, 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 appellant for which he was 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) That the abductee according to the prosecution evidence was abducted on 12.12.2020, the ransom demand of two lacs later reduced to RS 25,000 after negotiations was made and paid by mobile phone through easy paisa on the same day and the abductee was released on the same day unharmed. The FIR however was not lodged at the PS until 15.12.2020 which was three days after the release of the abductee unharmed and after the arrest of the appellant. No report of the abduction or payment of the ransom amount was made either before or after the abductees release and as such we find that this unexplained delay of 3 days in lodging the FIR when read in connection with the other reasons mentioned below is fatal to the prosecution case as it indicates that the complainant and the abductee fixed the appellant in this case after consultation especially as it was suggested to the complainant that he had enmity with the family of the accused.

(b) That the evidence of the abductee regarding his abduction does not appeal to common sense, reason and logic. According to the evidence of the abductee on 10.12.2020 an unknown lady Ayesha rang him out of the blue and asked him for a job which he said he would look into. Then again on 12.12.2020 this same lady again called him and asked him about the job. The abductee told her that he would need a copy of her CNIC however instead of telling her to bring her CNIC to him he agreed to go to her house and collect it whereupon no lady called Ayesha was present. It is not usual conduct in our society to go to an unknown ladies house who is seeking a job from you to collect her CNIC card. The situation is vice versa especially as there is no evidence that any job existed or had been arranged.

(c) According to the abductee he was then tied up and beaten by 3 men and his phone was used to make the ransom demand to his brother the complainant who received the ransom demand over his phone and after payment of the ransom via easy paisa the abductee was released on the same day **however** there is no evidence that he received any physical injuries or trauma from his alleged beating and detention and in fact went straight back to work without reporting the incident which was in fact reported by his brother (not himself) 3 days after the incident.

(d) The abductee went voluntarily to the house where he was allegedly detained by 4 persons and was released after only a matter of hours. He did not know any of the kidnapers from before and would not have got a good or long look at any of them, he gave no statement after his release giving any hulia of any of the abductees so even if he was abducted we cannot rely on his correct identification of the appellant as being one of the abductees who he told his brother was sitting at the hotel from where he was arrested especially as it was suggested that there was enmity between

the complainant party and the relatives of the appellant as supported by the evidence of DW 1.

(e) That the appellant was allegedly detained by the police through a call to the police on emergency number 15 on the pointation of the complainant and the abductee whilst sitting at a hotel however no witness from the police 15 party was called as a witness to prove this fact and it does not make sense that the police who were called by the complainant and the abductee on account of such a heinous crime was not arrested by one of the police officers who was called on 15 number on at least suspicion.

(f) That despite the appellant being detained from a busy hotel in broad day light no independent witness under S.103 Cr.PC was associated with his arrest and the abductee and complainant acted as mashirs which again detracts from the prosecution case.

(g) That when the appellant was produced at the PS on 15.12.2020 by the complainant where he was arrested and the FIR was registered despite the appellant not being interrogated by any one and without making any admission or confession before any body the FIR named his co-accused along with parentage who the complainant had not seen and the abductee did not know from before. We do not see how this was possible under the above circumstances.

(h) That when the police went to where the abductee had been allegedly detained no rope or other implement through which the abductee's hands were tied was recovered and no witness was called to support the prosecution case that the house in question had only been rented for one day. The person who allegedly rented the house did not give evidence. No rental agreement was produced and even otherwise it does not appeal to logic, reason or commonsense that a person would let his house for only one day or that kidnappers would take a one day let of a house. Did they know that the ransom would be paid on the same day?

(i) That no mobile phones was recovered from the appellant, complainant or abductee to link them to the ransom demand. No CDR was collected to link any one to the ransom demand. No ransom was recovered and as such we find that it has not even been proven that any ransom demand was made.

(j) Significantly, it does not appeal to logic, commonsense or reason that 4 perpetrators would agree to such a small ransom of RS 25,000 which would have been divided between them minus the amount for renting the room. This would amount to approx RS6000 each.

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(k) That the appellant denied the allegations in his S.342 Cr.PC statement and did the same under oath whereby he claimed that he was taken from outside his house by 4 persons in plain clothes and perhaps this is the reason why no police men from the 15 call was called to give evidence. He also produced one DW in support of his defence case that there was an old dispute between the complainant party and the accused side.

(l) In short for the reasons mentioned above we find that the prosecution case does not ring true and we do not find the evidence of either the abductee or the complainant to be confidence inspiring and thus cannot safely rely upon it.

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 appellant he is acquitted of the charge, the impugned judgment is set aside, his appeal is allowed and the appellant shall be released unless wanted in any other custody case.

13. The appeal stands disposed of in the above terms.