

IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Anti-Terrorism Jail Appeal No.64 of 2014

Present:

Mr. Justice Mohammad Karim Khan Agha
Mr. Muhammad Saleem Jessar.

Appellants:

1. Abdul Sattar s/o Gulbar Khan through Mr. Mubashir Bashir Bhutta, Advocate.
2. Syed Tayyab Ali Shah s/o Asghar Ali through Mr. Moula Bux Bhutto, Advocate.
3. Gul Sher @ Manzoor s/o Allah Bux through Mr. Muhammad Yousuf, Advocate.

For State:

Mr. Muhammad Iqbal Awan, Deputy
Prosecutor General.

Date of hearing: 19.02.2020.

Date of announcement: 28.02.2020.

JUDGMENT

Mohammad Karim Khan Agha, J.- Appellants Abdul Sattar s/o Gulbar Khan, Syed Tayyab Ali Shah s/o Asghar Ali and Gulsher @ Manzoor s/o Allah Bux have preferred this Special Criminal Anti-Terrorism Jail Appeal against the impugned judgment dated 25.07.2014 passed by the learned Judge Anti-Terrorism Court No.V Karachi in Special Case No.B-110/2008, F.I.R. No.201 of 2008 U/s. 365-A/34 PPC r/w Section 7 of Anti-Terrorism Act, 1997, P.S. Quaidabad, Karachi, whereby the appellants have been convicted for offence as defined u/s 365-A PPC read with Section 6(E) punishable U/s 7(e) of ATA, 1997 and convicted and sentenced for life imprisonment. Benefit of section 382-B Cr.P.C. has also been extended to the appellants.

2. Being aggrieved and dissatisfied by the judgment passed by learned Judge, Anti-Terrorism Court No.V, Karachi, the aforesaid appeal has been preferred by the appellants.

3. The brief facts of the case as per FIR are that on 26.6.2008 at about 6:00 am Ahmed son of Muhammad Ismail aged 16 years resident of House No.466, Old Muzaffarabad Colony Landhi Karachi went to Rehmat Health

Club Majeed Colony Landhi but did not return home and instead at about 10:00 am one telephone call from mobile phone No.03062476484 was received by the father of Ahmed namely Muhammad Ismail s/o Gul Muhammad. The caller verified that his son Ahmed was with them and after 03 days investigation he would be released. On 27.6.2008 at about 1:00 pm another telephone call was received from the same mobile phone number and asked the complainant to give the phone to the mother of the abducted Ahmed. The caller demanded Rs.1.5 Crore as ransom for release of Ahmed. On 01.7.2008 at about 9pm the caller again made phone call and reduced the amount to One Crore. The complainant then told the caller that he can pay only 3 or 5 Lac but the caller switched off the phone. The complainant then went to the PS Quaidabad and on 03.07.2008 he got registered his Crime No.201/2008 u/s 365-A/34 PPC.

4. The investigation was assigned to SIP Fayyaz Ahmed Qadri of AVCC who inspected the place of incident and recorded the statements of witnesses. During investigation the culprits remained in contact with the complainant from mobile phone Nos.0306-2476484 and 0313-3162168 on mobile phone of complainant being No.0345-3205256 and on 21.7.2008 an amount of Rs.20, Lac was settled between the complainant and the culprits to be paid at Jamshoro Bye Pass Hyderabad for the return of the abductee. On that day the complainant with his nephew Ghulam Haider with the demanded amount reached at the pointed place and three persons on one motorcycle arrived there and received Rs.20 Lac which was kept in a packet. The culprits then told the complainant that if the amount was correct the abductee would be returned otherwise they would receive his dead body. At about 11:30 p.m. on the same day the abductee returned to his house.

5. On 25.09.2008 the investigation was transferred to SI Chaudhary Manzoor Ahmed. The two accused Abdul Sattar and Tayyab Ali were arrested in Crime No.99/2008 u/s 353/324/34 PPC and Crime Nos.100 and 101 of 2008 u/s 13-D of the Arms Ordinance, who disclosed during interrogation their involvement in this offence, hence they were arrested in this case. The said accused also disclosed that the name of third accused and their accomplice was HC Gulsher alias Manzoor. On 06.10.2008 an identification parade was held before JM-II Malir Karachi wherein

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kidnaper Ahmed Ismail recognized the said two accused Abdul Sattar and Tayyab Ali. The accused head constable Gulsher alias Manzoor S/o. Allah Bux was found to be confined in Larkana Jail from where he was brought by the I.O. and on 10.11.2008 the complainant Muhammad Ismail and kidnaper Ahmed Ismail also recognized him as a culprit before JM-VI Malir.

6. After completing the investigation charge was framed against the appellants to which the accused persons pleaded not guilty and claimed to be tried.

7. The prosecution to prove the charge examined 09 PW's who exhibited various documents and other items in support of the prosecution case where after the prosecution closed its side. The statements under section 342 Cr.P.C. of the accused persons were recorded in which they denied the allegations leveled against them and claimed false implication. Accused Abdul Sattar and Syed Tayyab Ali both gave evidence under oath in support of their case of false implication and accused Syed Tayyab Ali called two DW's in support of his defense case.

8. Learned Anti-Terrorism Court No.V Karachi after hearing the learned counsel for the parties and assessment of evidence available on record, vide judgment dated 25.07.2014, convicted and sentenced the appellants as stated above, hence this appeal has been filed by the appellants against their conviction.

9. The facts of the case as well as evidence produced before the trial court find an elaborate mention in the impugned judgment, therefore, the same are not reproduced here so as to avoid duplication and unnecessary repetition.

10. After the reading out of the evidence and the impugned judgment learned counsel for the appellants candidly conceded that the prosecution had proved beyond a reasonable doubt that this was a case of kidnapping u/s 365 PPC by the appellants but that there was no evidence whatsoever that the appellants had made any kidnapping for ransom and as such the

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appellants should only be convicted and sentenced for an offense u/s 365 PPC and not S.365 A PPC and that it was not a case which fell within the purview of the ATA.

11. Learned DPG conceded that the prosecution had failed to prove the ransom element of the case but had proved beyond a reasonable doubt that this was a case of kidnapping u/s 365 PPC and he had no objection to the conviction and sentences being modified accordingly. The DPG was also of the view that this case did not fall within the purview of the ATA.

12. Having gone through the evidence on record we are of the view that the prosecution has proved its case against the appellants beyond a reasonable doubt in respect of the offense u/s 365 PPC through the evidence of the complainant, the abductee, other PW's and the appellants themselves pointing out where they had held the abductee in captivity which was information which only they could have known. With regard to the evidence that the appellants had kidnapped the complainant's son for ransom we find that the prosecution has not been able to prove this aspect of its case beyond a reasonable doubt which was the alleged motive behind the kidnapping in that there is very little evidence that any ransom demand was made, no mobile phones or SIM's were recovered from any of the accused and as such the CDR data is inconsequential, no voice recordings for the ransom demand were exhibited, no evidence of collection of the ransom money from the bank or otherwise was produced, the other person (Ghulam Haider who was the nephew of the complainant) who was allegedly present when the ransom money was allegedly handed over and was an important witness in this respect did not give evidence, that the complainant did not tell the police or anyone else that he was paying/had paid the ransom and only told the police after the event, that no ransom was recovered from the appellants and thus there are doubts with regard to this aspect of the case. In this respect reliance is placed on **Abdul Adeel V The State** (2009 SCMR 511) and **Danish Javed V State** (2018 MLD 394). The abductee was also recovered unharmed and it may also be observed that the appellants have already spent over 11 years in jail.

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13. We are of the view that this case does not fall within the purview of the ATA since according to the evidence there was no design, object or intent to cause terror and thus the provisions of the ATA will not apply and even other wise a case of simple abduction under S.365 PPC does not fall within the purview of the ATA.

14. Thus, based on our reassessment of the evidence on record and whilst taking into consideration the above cited case law, the arguments of the appellants, and the no objection given by the DPG to the appellants only being convicted under S.365 PPC we hereby by exercising our judicial discretion under S.423 Cr.PC hereby modify the convictions and sentences of the appellants as under:

“All the appellants stand convicted U/s. 365/34/PPC and are **all** sentenced to under go RI for 7 years and are **all** ordered to pay compensation of Rs.100,000 to the complainant failing which if any appellant is in default he shall undergo SI for a further 6 months”.

All the appellant shall have the benefit of S.382-B Cr.PC.

15. The appeals stand dismissed **except** as modified above.