

Eye witness evidence Believed
Kidney for reason

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CERTIFICATE OF THE COURT IN REGARD TO REPORTING

HIGH COURT OF SINDH

Spl. Cr. ATA No. 44 of 2013

Composition of Bench: S.B./D. B.

Mr. Justice Mohammad Karim Khan Agha,
and Mr. Justice ~~Zulfiqar Ali Sangi~~ ^{Muhammed Saleem Jassas}

Date(s) of Hearing: 12-3-2020

Decide on: 25-3-2020
~~2019~~

(a) Judgment approved for reporting:

Yes

CERTIFICATE

Certified that the judgment*/order is based upon or enunciates a principle of law */ decides a question of law which is of first impression / distinguishes / overrules / reverses / explains a previous decision.

* Strike out whichever is not applicable.

- NOTE:
- (i) This slip is only to be used when some action is to be taken.
 - (ii) If the slip is used, the Reader must attach it to the top of the first page of the judgment.
 - (iii) Reader must ask the Judge writing the Judgment whether the Judgment is approved for reporting.
 - (iv) Those directions which are not to be used should be deleted.

①

IN THE HIGH COURT OF SINDH AT KARACHI
(CRIMINAL APPELLATE JURISDICTION)

Sp. A.T.A APPEAL NO. *64* /2013

Adnan Hussain

Son of Munawar Hussain,
Resident of House No.900,
Sector 33/D, Korangi 2nd,
Presently Confined in Central Prison,
Karachi.

29/9/2013
APPELLANT

V e r s u s

The State RESPONDENT.

FIR No.71/2008
U/s: 365-A/324/392/34 PPC
R/w Section 7(c) of ATA, 1997
P.S Korangi Karachi.

**APPEAL UNDER SECTION 25 (1) OF ANTI TERRORISM
ACT 1997**

Being aggrieved by and dis-satisfied with the judgment dated 16.09.2013 passed by the Learned Judge of Anti Terrorism Court No.V, Mr. Muhammad Jawaid Alam, in Special Case No. 45/2008, in (FIR No. 71/2005) dated 28.01.2008 of Police Station Korangi at Karachi under Section 365-A/324/392/34 of Pakistan Penal Code Read With Section 7(c) of Anti Terrorism Act, and in FIR bearing No.72/2008 dated 28.01.2008, Under Section 13 D Arms and Ordinance wide Special Case No. 45/2008, The State Versus Adnan Hussain and Another, the Learned Judge while convicting the Present Appellant as under:

Kidnap for ransom

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Eye witness Believed — Abducted in Car + Attempted
murder; taken to mother's house then his house

IN THE HIGH COURT OF SINDH, KARACHI

Special Criminal Anti-Terrorism Appeal No.44 of 2013.

Present:

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

Appellant	Adnan Hussain s/o. Munawar Hussain through Mr. Iftikhar Ahmed Shah, Advocate
Respondent	The State through Mr. Muhammad Iqbal Awan, Deputy Prosecutor General, Sindh
Complainant	Through Mr. Asif Ibrahim, Advocate
Date of Hearing	12.03.2020.
Date of Judgment	25.03.2020.

J U D G M E N T

MOHAMMAD KARIM KHAN AGHA, J:- Accused Adnan Hussain son of Muhammad Hussain was tried by the learned Judge, Anti-Terrorism Court No.V, Karachi in Special Case No.45/2008, arising out of Crime No.71/2008 U/s. 365-A/324/392/34 PPC r/w Section 7 (e) of ATA, 1997, registered at P.S. Korangi Karachi, Special Case No.46/2008 arising out of Crime No.72/2008, U/s. 13-D Arms Ordinance, registered at P.S. Korangi Karachi. After trial, vide judgment dated 16.09.2013 the accused Adnan Hussain s/o Munawar Hussain was convicted and sentenced as under:-

1. For the offence punishable u/s 7 (e) of Anti-Terrorism Act, 1997 sentenced for life imprisonment.
2. For the offence punishable under Section 324 PPC sentenced to undergo R.I. for 05 years and shall also be liable to pay fine of Rs.50000/- and in default of payment of fine to further undergo one year S.I. The fine if recovered shall be paid to injured Abdul Aziz.
3. For the offence punishable under Section 13-D of Arms Ordinance sentenced to undergo R.I for seven years.

All the sentences were ordered to be run concurrently. The benefit of section 382-B Cr.P.C. was also extended to the appellant.

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2. Being aggrieved and dissatisfied by the judgment passed by learned Judge, Anti-Terrorism Court No.V, Karachi, the appellant Adnan Hussain has preferred the instant appeal against his conviction.

3. The brief facts of the prosecution case are that on 27.01.2008 at about 11:00 p.m. the complainant Muhammad Younus Qureshi alongwith his friends Abdul Aziz and Atif was coming towards his house situated at Korangi No.3 ½ Karachi in his car and when they reached at Sector 35-A Zaman Town Iqra school one yellow black Taxi wherein four person were sitting stopped in front of his car. Three persons alighted from the Taxi and 02 were holding TT pistols. They came to the complainant and put pistol on his temple and all three sat in the car of the complainant and searched him and his friends. They snatched their cash, mobiles, NIC, driving license and his licensed pistol 30 bore. They forced the complainant to go towards Bismillah Stop and when they reached at Bismillah Stop the culprits directed him to stop the car at service road behind a Bus. One amongst them took his friend Abdul Aziz out of the car and fired at him which hit at his belly and thereafter ordered the complainant to drive forward. They took the complainant and his friend Atif to Korangi Industrial Area and asked the complainant to stop the car where Atif alighted. One amongst them took Atif with him at some distance in Gali and thereafter complainant heard the fire report. That person then came back and told that he had done way with him and now it is your turn and if he wants to be released to make telephone to his house to arrange Rs.250,000/-. The complainant replied that he had no money with him, however, Rs.80,000/- were lying in the house of his mother in Landhi. All the three persons then threatened him that if he created any problem they would shoot him. Thereafter one amongst them sat at the driving seat of the car and made the complainant sit at the centre of the back seat of the car and took him to Landhi. When the car reached at the corner of the house of his mother, some mohallah people were sitting there and when saw that the car of the complainant was being driven by someone else and complainant was appearing upset they suspected something wrong and told this fact to mother and brother of the complainant. The brother of the complainant then made phone call on the cell of the complainant which was switched off. At that time the culprits reversed the car towards Korangi and beat the complainant, abused him

and inquired about the family members of his house at Korangi. They took the complainant in his house, knocked the door and forcibly entered into the house. One guarded the children of the complainant while two started to search the house for valuables. In the meantime the brother and mohallah people also reached there and knocked the door. On seeing that the people were collected there, the culprits tried to run away from there by making fire. Mohallah people chased those 03 persons and caught two culprits with weapons near Batiul Hamid Masjid, while one of their colleagues succeeded to run away. Those two disclosed their names as Adnan Hussain s/o Munawar Hussain and Muhammad Rizwan s/o. Muhammad Yasin. They disclosed the name of absconding person as Aamir. Two pistols with live bullets and magazine were taken from them. The complainant along with Mohalla people took the culprits to police station Korangi where at 02:00 a.m on 28.1.2008 FIR was registered being Crime No.71/2008 u/s. 365-A/324/392 PPC read with Section 7 (I) of ATA 1997. The accused were arrested and mashirnama of seizure of weapons and bullets was prepared and separate FIRs u/s.13-D of Arms Ordinance were also registered against accused Adnan and Rizwan being crime Nos.72/2008 and 73/2008 respectively.

4. After registration of FIRs, the same were sent to In charge SI AVCC, Karachi for investigation who inspected the places of incident on the pointation of the complainant, recorded the statement of witnesses and collected the empties. On completion of investigation three separates challans were submitted before the concerned trial court. The attendance of absconding accused Amir could not be secured hence vide order dated 07.05.2008 he was ordered to be tried u/s. 512 Cr.PC. All the above cited three cases were ordered to be tried jointly being connected cases.

5. The joint charge against the accused persons was framed to which they pleaded not guilty and claimed trial of the case.

6. In order to prove its case, the prosecution examined 14 prosecution witnesses and exhibited numerous documents and other items and thereafter the side of the prosecution was closed. The statement of the accused u/s 342 Cr.P.C. was recorded in which he denied the allegations leveled against him and claimed false implication due to political rivalry.

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He did not examine himself on oath or call any witness in support of his defense case.

7. Learned Judge, Anti-Terrorism Court No.V, Karachi after hearing the learned counsel for the parties and assessment of evidence available on record, vide the impugned judgment dated 16.09.2013, convicted and sentenced the appellant as stated above, hence this appeal has been filed by the appellant against his conviction.

8. 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.

9. Learned counsel for the appellant has contended that he is innocent and has been falsely implicated in this completely concocted case on account of politician rivalry, that there are many contradictions in the evidence of the prosecution witnesses and as such they cannot be relied upon, that the prosecution witnesses are also all related to each other and as such their evidence cannot be relied upon, that with regard to the kidnapping and attempted murder the eye witness PW's cannot be relied upon as they are planted witnesses and were not present at the time of the alleged incident, that with regard to the attempted murder the ocular account of the eye witnesses is not supported by the medical evidence, that no blood stained earth was recovered from where the injured eye witness fell, that the evidence of PW 3 Moeen Akhtar who is the brother of the complainant cannot be relied upon as it would have been too dark for him to see the persons in the car which was reversing from his mothers house, that with regard to the robbery at the complainants house evidence of eye witness PW 11 Muhammed Amir cannot be relied upon as he is a planted witness, that no recovery of any stolen items from the house were made and no empties were recovered from outside the house where the robbery occurred and as such for any of the above reasons the appellant should be acquitted of the charge by this court extending to him the benefit of the doubt. In support of his contentions he placed reliance on the cases of **Notice to Police Constable Khizar Hayat son of Hadait Ullah on account of his false statement** (PLD 2019 Supreme Court 527), **Mst.**

Asia Bibi vs. The State and others (PLD 2019 Supreme Court 64), *Amin Ali and another vs. The State* (2011 SCMR 323), *Abdul Jabbar and another vs. The State* (2019 SCMR 129), *Muhammad Arif vs. The State* (2019 SCMR 631), *Kanwar Ali Special Judicial Magistrate* (PLD 2019 Supreme Court 488), *Mursal Kazmi alias Qamar Shah and another vs. The State* (2009 SCMR 1410), *Muhammad Asif vs. The State* (2017 SCMR 486), *Manzoor Elahi vs. The State* (2018 YLR Note 190), *Azeem Khan and another vs. Mujahid Khan and others* (2016 SCMR 274), *Muhammad Pervez and others vs. The State* (2007 SCMR 670), *Mst. Rukhsana Begum and others vs. Sajjad and others* (2017 SCMR 596), *Said Ahmed vs. Zammured Hussain and 4 others* (1981 SCMR 795), *Ali Sher and others vs. The State* (2008 SCMR 707), *Mushtaq and 3 others vs. The State* (PLD 2008 Supreme Court 1), *Muhammad Hussain vs. The State* (2011 SCMR 1127), *Ata Muhammad and another vs. The State* (1995 SCMR 599), *Munawar Ali alias Munawar Hussain vs. The State* (PLD 1993 Supreme Court 251), *Zeeshan @ Shani vs. The State* (2012 SCMR 428).

10. On the other hand learned Deputy Prosecutor General has fully supported the impugned judgment. He has contended that the prosecution has proved its case against the appellant beyond a reasonable doubt as the appellant has been identified by reliable eye witnesses who also picked him out at an identification parade for kidnapping and attempting to murder PW 8 Abdul Aziz, that he has also been identified by another reliable eye witness in taking part in the robbery of the complainants house and was arrested from the spot and a pistol was recovered from him by the mohallah people and immediately produced before the police where an FIR was registered with promptitude which gave no time to concoct a false story and as such his conviction and sentence should be upheld and the appeal dismissed. In support of his contentions he has placed reliance upon the cases of *Junaid Rehman and others V The State* (PLD 2011 SC 1135), *Ijaz Ahmad V The State* (2009 SCMR 99), *Muhammad Ilyas and others V The State* (2011 SCMR 460), *Muhammad Din V The State* (1985 SCMR 1046) and *Majhi V The State* (1970 SCMR 331). Learned counsel for the complainant has adopted the arguments of learned DPG.

11. We have heard the arguments of the learned counsel for the parties, gone through the entire evidence which has been read out by the appellant, the impugned judgment with their able assistance and have considered the relevant law including that cited at the bar.

12. After our reassessment of the evidence we are of the view that the prosecution has proved beyond a reasonable doubt the charges against the appellant for the following reasons;

(a) The FIR in respect of the incident was filed within hours of the incident and such prompt filing of the FIR rules out the possibility of the complainant concocting a false case against the appellant. Even otherwise the complainant had no enmity with the appellant and had no reason to falsely implicate him in a case.

(b) The appellant is named in the FIR with a specific role.

(c) With regard to the kidnapping in the car of the complainant and the attempted murder of PW Abdul Aziz by the appellant and his co-accused the prosecution examined 3 eye witnesses to this incident. The first was the complainant PW 2 Mohammed Younis, the second was PW 8 Abdul Aziz who was the eye witness who was taken in the car and was let out and shot and injured by firearm by the person sitting in the front seat of the car (the appellant), the third was PW 9 Atif Ahmed who was later permitted to leave the car and was shot at by one of the accused whilst making his escape good. All the above eye witnesses were in the car for a considerable period of time at close quarters with the appellant where they would have got a good look at the appellant and thus in our view there was no need even of an identification parade and they would all have been able to correctly identify the appellant. Especially with respect to the complainant who remained with the appellant throughout the time he was kidnapped in his car, up to the time they drove to his mother's house, then drove to his house where they entered in the light of the house and stayed whilst robbing the house, until they left the house and the appellant was arrested on the spot by the mohallah people along with the complainant who took him straight to the police station with his co-accused and registered his FIR. Even otherwise eye witness PW 9 Atif Ahmed correctly picked out the appellant at an identification parade a few days later giving him a specific role. There may have been a few procedural irregularities in holding the identification parade but we deem these to be irrelevant in the light of the above discussion. In this respect reliance is placed **Muhammed Siddique V State** (2020 SCMR 342). PW 8

Abdul Aziz was not produced at the identification parade as he was too ill as is evidenced by medical certificates as he was recovering from a gun shot wound in the stomach which was made by the appellant. The evidence of the above eye witnesses concerning their kidnapping and the attempted murder of PW 8 Abdul Aziz corroborates each other in all material respects. The eye witnesses were not related to the complainant and had no reason to falsely implicate the appellant, they were not chance witnesses, were not shattered during lengthy cross examination and as such we believe their evidence and find that they have correctly identified the appellant as one of the persons who hijacked the complainant's car, kidnapped them, robbed them and attempted to murder Abdul Aziz by shooting him in the abdomen.

(d) It is settled law that we can convict if we find the direct oral evidence of one eye witness to be reliable, trust worthy and confidence inspiring. In this respect reliance is placed on **Muhammad Ehsan V The State** (2006 SCMR 1857). In this case we find 3 eye witnesses to be fully corroborative and reliable, trust worthy and confidence inspiring. Never the less by way of abundant caution we will consider below whether any corroborative /supportive evidence is available in respect of the direct oral eye witness evidence.

(e) The medical evidence through PW 13 Dr. Afzal Ahmed is corroborative of the fact that Abdul Aziz received a firearm injury in his abdomen and that there was no blackening surrounding the wound which ties in with the evidence that he was not shot from close range. It is true that the medical evidence indicates that Abdul Aziz received two firearm injuries one being in the abdomen and the other being in the arm but we are of the view that based on the other overwhelming prosecution evidence against the appellant that this does not dent the prosecutions account of the incident.

(f) An empty was recovered from where Abdul Aziz was shot which produced a positive FSL report from the pistol recovered from the appellant when he was grabbed hold of by mohallah people later in the night and arrested.

(g) That there was a positive chemical report on the blood stained clothes of the wounded Abdul Aziz.

(h) The complainant's car in which he was kidnapped as corroborated by PW's 3 Moeen Akhter, PW 8 Abdul Aziz and PW 9 Atif Ahmed was recovered.

(i) According to the evidence of the complainant after Abdul Aziz and Atif Ahmed were taken out of the car by the appellant and his co-accused they made a ransom demand from him of RS.250,000. Since the complainant did not have this amount of money he directed them to his mother's house where there was RS 80,000. The appellant and his co-

accused drove to his mother's house for this purpose however when the complainant was seen not driving the car and in a distressed position when the car pulled up outside his mother's house by PW 3 Moeen Akhtar who was not a chance witness as he lived in that house and whose evidence we have no reason to disbelieve the car quickly and inexplicably reversed away from the house which aroused suspicion (and is corroborated by PW 3 Moeen Akhtar who called his brother (the complainant) straight after this incident which is corroborated by the complainant in his evidence) and lead to the Mohallah people following the complainants car along with PW 3 Moeen Akhtar to the complainants house. We believe the complainant that a ransom demand was made from him by the appellant and his co-accused and that they threatened him if he did not pay which is the only logical explanation of the appellant taking the complainant in his car to his mother's house in order to collect the RS 80,000. It is well settled by now that once a demand for ransom is made then this fulfills the legal ingredients under S.365 A PPC of kidnapping for ransom whether or not any ransom is paid. In this respect reliance is placed on **Sh.Muhammed Amjad V The State** (PLD 2003 SC 704). The appellant and his co-accused desire to extract money or money's worth from the complainant is also corroborated by the acts of the appellant and his co-accused after retreating from his mother's house as they then went to the complainant's house in order to commit robbery.

(j) According to the evidence of the complainant the appellants and his co-accused after retreating from his mother's house drove to his house where they forcibly entered the house in search of valuables. The complainant's son PW 11 Muhammed Amir who was about 15 years old and was studying for his exams at the time who was living at the house and who was not a chance witness was an eye witness to this robbery. When the appellant entered his house along with his father (the complainant) and his other co-accused armed with pistols PW 11 Muhammed Amir got a good look at the appellant under light for a substantial period of time at close quarters and as such was able to easily identify him as one of the robbers who had entered his house which he did a few days later at an identification parade with a specific role. There may have been a few procedural irregularities in holding the identification parade but we deem these to be irrelevant in the light of the above discussion. In this respect reliance is placed **Muhammed Siddique V State** (2020 SCMR 342). PW 11 Muhammed Amir corroborates his father's evidence in all material respects regarding the appellant and his co-accused breaking into his house, committing robbery and then fleeing whilst hearing firing and was not shattered during lengthy cross examination and as such we believe his evidence.

(k) The appellant was arrested on the spot by mohallah people and taken immediately to the police. PW 12 Muhammed Kamran was the Mohallah person who got hold

of the appellant and caught him red handed with a pistol in his hand after fleeing the complainant's house. He was not a chance witness as he lived close by, he was not related to the complainant and had no reason to falsely implicate the appellant and thus we believe his evidence about grabbing hold of the appellant whilst he was trying to escape from the appellant's house whilst carrying an unlicensed pistol. The superior courts have regarded catching a person red handed in an act especially if a murder cum offensive weapon is recovered from him as compelling evidence against an accused. In this respect reliance is placed on the cases of **Muhammed Din** (Supra) and **Majhi** (Supra)

(l) It is to be noted that most of the key witnesses (for example eye witnesses PW 8 Abdul Aziz and PW 9 Atif Ahmed and PW 12 Muhammed Kamran) are **not** related to the complainant and none of them had any enmity with the appellant or have any reason to falsely implicate him. Even the evidence of those PW's who were related to the complainant can be relied upon provided that they have no enmity or ill will towards the appellant. None of the related PW's have been shown to have such traits and as such we rely on their evidence e.g. PW 3 Moeen Akhtar and PW 11 Muhammed Amir. In this respect reliance is placed on the case of **Ijaz Ahmad** (Supra). Even the evidence of police witnesses can be safely relied upon if none of the above traits are present and they are not in this case and it is notable that the evidence of PW 14 Bashir Ahmed who was the IO in this case completely corroborates the prosecution case. In this respect reliance is placed on **Zafar V State** (2008 SCMR 1254)

(m) That all the PW's are consistent in their evidence and even if there are some contradictions in their evidence we consider these contradictions as minor in nature and not material and certainly not of such materiality so as to effect the prosecution case and the conviction of the appellant. In this respect reliance is placed on **Zakir Khan V State** (1995 SCMR 1793). Their evidence provides a believable corroborated unbroken chain of events from the kidnapping of the complainant and two others in his car, to PW 8 Abdul Aziz being released from the car and shot, PW 9 Atif Ahmed being released from the car and shot at, the journey to the complainants mother's house, the retreat to his house where they committed robbery to the arrest of the appellant red handed on the spot by mohallah people as he was fleeing from the complainant's house with his co-accused.

(n) It is claimed by the appellant that this is a concocted case but he has produced no evidence as to why any of the PW's would want to falsely implicate him in a case a part from a bald allegation that they were political rivals. This defense also based on the particular facts and circumstances of the case also does not appeal to logic, reason or common sense. If the complainant wanted to fix the appellant in a false case

he could have simply planted an unlicensed weapon on him and informed the police. We do not find it believable that to implicate the appellant in a false case the complainant and the PW's who they had no enmity with concocted such a complex story with so many PW's where 3 are kidnapped in the complainants car, one is shot, they then go to the complainants mother's house before retreating and then breaking into his own house whereupon whilst escaping they are arrested by the mohallah people.

(o) In kidnapping for ransom cases courts need to take a dynamic approach in assessing the evidence. In the case of **Advocate General Sindh, Karachi v. Farman Hussain and others** (PLD 1995 SC 1), in a kidnapping for ransom case it was observed as under:-

"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).

13. Thus, based on the above discussion especially in the face of reliable, trust worthy and confidence inspiring eye witness evidence and other corroborative/supportive evidence mentioned above we have no doubt that the prosecution has proved its case against the appellant beyond a reasonable doubt and as such the appeal against conviction filed by the appellant is dismissed and the impugned judgment is upheld.

14. The appeal is disposed of in the above terms.