

ORDER SHEET
IN THE HIGH COURT OF SINDH CIRCUIT COURT
HYDERABAD.

Cr. J Appeal No.D-32 of 2014.

DATE ORDER WITH SIGNATURE OF JUDGE[S]

15.02.2023.

FOR HEARING OF MAIN CASE.

Mr. Sajjad Ahmed Chandio Advocate for appellant.

Mr. Shahzado Saleem Nahiyoan, Addl.P.G. for State.

We have heard learned counsel for the appellant and learned A.P.G.
who was also representing the complainant.

Reserved for Judgment.

A.

**IN THE HIGH COURT OF SINDH,
CIRCUIT COURT, HYDERABAD**Present:-

Mr. Justice Mohammad Karim Khan Agha
Justice Mrs. Kausar Sultana Hussain

Cr. Jail Appeal No.D- 32 of 2014

Appellant : Mehboob alias Muharram Ali	through Mr. Sajjad Ahmed Chandio, Advocate
Respondent : The State	through Mr. Shahzado Saleem Nahiyoan, Additional Prosecutor General, Sindh
Complainant : Abdul Latif Pathan	Present in person
Date of hearing	15.02.2023
Date of judgment	01.03.2023

J U D G M E N T

MOHAMMAD KARIM KHAN AGHA, J.-Appellant Mehboob alias Muharram Ali S/o Ghulam Qadir Rind Baloch along with other absconding co-accused (Shandar alias Shahzado S/o Ali Bux Rind Baloch, Ghulam Rasool S/o Ghulam Muhammad Rind Baloch, Shabbir Ahmed S/o Hussain Khoso, Muhammad Bux S/o Ghulam Qadir Abro and Muhammad Umer S/o Shah Muhammad Mari), was tried by the learned Judge, Anti-Terrorism Court, Hyderabad, in (1) ATC Case No.58 of 2012 (re: The State V Mehboob Rind Baloch and others), culminating from Crime No.160 of 2012, registered at Police Station Market, under sections 365-A PPC and sections 6/7 of Anti-Terrorism Act, 1997; (2) ATC Case No.59 of 2012 (re: The State V Mehboob Rind Baloch and others), emanating from Crime No.5 of 2012, registered at Police Station Budhani, under sections 353, 324 PPC and section 6/7 of Anti-Terrorism Act, 1997; and, (3) ATC Case No.60 of 2012 (re: The State V

Mehboob Rind Baloch), arising out from Crime No.6 of 2012, registered at Police Station Budhani, under section 13(d) Arms Ordinance; and, vide judgment dated 26.02.2014, (the impugned Judgment), was convicted under sections 365-A, 34 PPC and sentenced to suffer life imprisonment and to pay fine of Rs.100,000/-, in default whereof he was directed to suffer R.I. for 06 months more. He was also convicted u/s 353/34 PPC punishable u/s 7 of Anti-Terrorism Act, 1997, and sentenced to suffer R.I for 1½ years and to pay fine of Rs.20,000/-, in case of default thereof he was also directed to suffer R.I for 01 month more. He was further convicted u/s 13(d) Arms Ordinance and sentenced to suffer R.I for 05 years with fine of Rs.30,000/- and in default thereof he was also directed to undergo R.I for 03 months more. All the sentences were ordered to run concurrently. Benefit of section 382-B Cr.P.C was extended to him; whereas the case of absconding co-accused namely Shandar alias Shahzado, Ghulam Rasool, Shabbir Ahmed, Muhammad Bux and Muhammad Umer was ordered to be kept on dormant file till their arrest.

2. Facts of the prosecution case(s) are as under:-

"Facts of the case crime No. 160/2012 of P.S Market

Complainant Abdul Latif Pathan lodged FIR at that Police Station and stated in the same that he was residing on the address given in the FIR and was being cloth merchant. As per the FIR, complainant's son Abdul Haq (aged about 13 Years old) was studying in Madarsa Al-Rehmania Ticuna Park Hirabad Hyderabad, and every week of Thursday, he used to come to his home on holiday and used to return Madarsa on Saturday. As per the FIR, on Thursday 12/7/2012 after the Madarsa was over he did not reach Home. The complainant and others waited for him but Abdul Haq did not come, on which complainant made enquiry from Madarsa and came to know that all the children had left for their homes at 5.30 on which the complainant alongwith his relative Juma Khan and son Abdul Khaliq searched for his son Abdul Haq. As per the FIR on 22/07/2012, a phone call on mobile phone of complainant's son Haziq No. 03332648862 was received from mobile phone No.03233584091 and the caller informed that Abdul Haq was with them, on that the complainant immediately informed Market Thana and on 26/07/2012 a phone call from 03233584091 was received by the complainant on his phone No. 03332736233 and he was informed that his son Abdul Haq was in their custody and he should

pay ransom for Rs. 1 crore within two days else his son would be killed. As per the FIR, on such threats the complainant through his sources and influences came to know that his son was abducted by Mehboob alias Muharram S/o Ghulam Qadir by caste Rind Balouch, Shahzado S/o Ali Bus Rind, Ghulam Rasool Rind and Bashir Khoso. The complainant therefore, appeared at the P.S and lodged present FIR that his son Abdul Hag had been abducted for ransom of Rs. One Crore by these persons, therefore the case may be investigated.

Facts of case crime No. 5/2012 of P.S Budhani

Complainant Inspector Javed Hussain Addl. SHO P.S Market Hyderabad lodged report at the P.S Budhani on 2/08/2012 at 1400 hours and stated in the same that on 2/08/2012, he alongwith his staff ASI Rajab Ali, HC Muhammad Sharif, PC Sajjad Hussain, P.C Abdul Hameed and P.C Muhammad Sharif under Roznamcha entry No.12 of P.S Market at 1130 hours had left for investigation of crime No. 160/2012 under Section 365-A, 34 PPC, 6/7 ATA and reached at Hala Naka from where taking mashirs Abdul Aleem Pathan and Abdul Malik Pathan reached Chalgari stop where spy information was received that Abductee Abdul Haq abducted from area of Market was hidden by criminals of Rind community in devi and babar jungle near Mashaq Dargah. As per FIR, on such spy information, they reached P.S Budhani from where taking ASI Wazir Ali, PC Samoo Khan and following Bachau Band near Mashaq Dargah at 12.30 hours and issuing immediate directions to the staff encircled devi and babar jungle near Mashaq Dargah and saw that firing started from the jungle and then they also taking position started firing in their defense and after 20/25 minutes firing from the side of accused was stopped and they started proceeding to Jungle and saw that three persons out of whom one was having KK like weapon was in his hand and that remaining two with pistol were going running towards river Indus and one person who was having TT Pistol in his hand holding abductee Abdul Haq from his hand was trying to run away, but the abductee seeing the police shouted that he was Abdul Haq Pathan and the accused was apprehended alongwith pistol. As per the FIR, the pistol was taken into custody and was found in working condition and was empty and that abductee Abdul Haq was also taken in custody by police. As per the FIR the accused was enquired about his name and residence and license about pistol who disclosed his name as Mehboob alias Muharram by caste Rind Balouch originally r/o Haji Shah Mari Shikarpur and at present r/o Wapda Colony Shahdadpur and enquired about absconders, he disclosed their names as Ali Bux Rind, Ghulam Rasool and Bashir Khoso and also disclosed that the pistol was unlicensed. As per the FIR from his personal search Rs.2100/- consisting notes of different

currency recovered from the front pocket of his shirt and that 30 empties of KK and 10 of TT Pistol were also recovered from that place, which were taken into custody and the pistol was sealed at the spot for FSL and accused Mehboob alias Muharram Rind was arrested in case of Market P.S in presence of mashirs Abdul Aleem Pathan and Abdul Malik and their signatures were obtained. As per the FIR. ASI Wazir Ali was sent to chase the escaping accused and tracking their foot prints. As per the FIR the recovered property, arrested accused and the abductee were brought at the P.S Budhani, here the complainant lodged present FIRs to the effect that from apprehended accused and-escaping accused abductee of crime No.160/2013 of P.S Market had been recovered and these accused fired straight at the police party with intention to kill and deterred the police party in their official duty therefore, they have committed the offence u/s 353, 324, 34 PPC and that since accused Mehboob alias Muharram possessed unlicensed pistol therefore, he had also committed an offence u/s 13(d) A.O therefore, such 13(d) A.O case would be registered against him.

Facts of the case crime No. 6/2012 of P.S Budhani

That Inspector Javed Hussain Addl. SHO P.S Market lodged the FIR at P.S Budhani and stated in the same that in crime No. 5/2012 under Section 353, 324 and 34 PPC arrested accused Mehboob alias Muharram Rind r/o Shah Mari Shikarpur at present Wapda Colony Shahdadpur possessed one without no. TT Pistol with magazine unlicensed. Therefore acting as complainant he had lodged the FIR under Section 13(d) Arms Ordinance."

3. It appears that Crime Nos.160/2012 and 05/2012 were main case whereas the Crime No.6/2012 was an offshoot of the said Crime being No.5/2012. The I.O(s) conducted investigations and recorded the statements of the PWs, and after completing formal investigation prepared separate challans concerning all the aforementioned three FIRs and as mentioned in the precedent para, accused Mehboob alias Muharram Ali Rind was shown as arrested accused and other co-accused as absconders. The learned trial Court by order dated 15.09.2012 directed that all the three cases be tried jointly and that case crime No. 160/2012 of P.S Market will be treated as leading case and joint charge be framed.

4. The charge against accused Mehboob alias Muharram Ali Rind was framed to which he pleaded not guilty and claimed to be tried. In order to substantiate its case, the prosecution examined as

many as 9 witnesses and exhibited numerous documents and other items. The statement of the accused was recorded u/s 342 Cr.P.C, wherein he has denied all the prosecution allegations and claimed his false implication in this case on account of enmity. He further stated that he was implicated in this case falsely at the instance of his ex-Zamindar Wadero Qasim Zardari. However, he neither examined himself on oath in order to disprove the prosecution case nor led any evidence in defense.

5. Learned trial Judge after hearing the learned counsel for the parties and evaluating the evidence available on record, convicted and sentenced the accused/appellant as set out earlier in this judgment.

6. Learned trial court in the impugned judgment has already discussed the evidence in detail and there is no need to repeat the same here, so as to avoid duplication and unnecessary repetition.

7. Learned counsel for the appellant has contended that the appellant is innocent and has been falsely implicated in this case on account of enmity at the instance of his previous owner/landlord Qasim Zardari; that there was an unexplained delay of 18 days in lodging the FIR; that the material PWs are interested and related to the complainant; therefore, their evidence does not inspire any confidence; that the evidence of the alleged abductee fully contradicts the evidence of the other PW's and no reliance can be placed on it; that no ransom demand was made; that no encounter took place between the police and the appellant and his absconding co-accused; that no recovery was made from him either at the alleged scene of the incident nor on his pointation and the pistol and phone were foisted on him and thus for all or any of the above reasons the appellant should be acquitted by extending him the benefit of the doubt. In support of his contentions he placed reliance on the cases of **Khalid @ Khalidi and 2 others V The State** (2012 SCMR 327), **Hakim Ali and 4 others V The State and another** (1971 SCMR 432), **Tariq Pervez V The State** (1995 SCMR 1345), **Mushtaq V The State** (2002 PCr.LJ 1312), **State through Advocate-General, Sindh, Karachi**

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V Farman Hussain and others (PLD 1995 Supreme Court 1), **Zeeshan @ Shani V The State** (2012 SCMR 428), **Abdul Ghafoor V The State** (2022 SCMR 1527), **Mst. Mehboob Bibi and others V The State** (2017 SCMR 1835), **Mohammad Hayat and 3 others V The State** (2018 PCr.LJ Note 61), **Aamir Ali and 2 others V The State** (2017 PCr.LJ 1451), **Hakeem Ali Momin V Ghulam Nabi and 6 others** (2019 MLD 1491), **Abdul Latif Unar and another V The State** (2018 PCr.LJ Note 49), **Iftikhar Ahmed alias Imtiaz and another V The State** (2022 YLR 84 [Sindh]) and **Aslam Surhiani and another V The State** (2017 PCr.LJ 174).

8. On the other hand, learned APG, as well as the complainant (present in person and shown his full confidence and faith in the learned APG) fully supported the impugned judgment and contended that the appellant belongs to a gang of dacoits; that he has committed the alleged offence; that the abductee was recovered from the possession of appellant during a police encounter, along with an unlicensed pistol; that the ransom demand was proved; that the appellant had lead the police to the place where he had disposed of his mobile phone which was used to make the ransom demands and there was a voice recording of the demand as such he is fully involved in the commission of offence; that the appellant is a habitual offender and also remained involved in similar type of cases; that prosecution witnesses have fully supported the case against the appellant; that if there was any contradiction in the evidence of the prosecution witnesses the same was only a result of passage of time and only of minor in nature hence cannot be taken as a ground for acquittal of the appellant. In support of his contentions, learned APG has placed reliance on the cases of **Fawad Khan V The State** (2021 SCMR 162), **Khan Muhammad and others V The State** (2011 SCMR 705) and **Ahmed Hussain alias AMI and others V The State and others** (PLD 2008 Supreme Court 110).

9. We have considered the arguments of learned counsels as well as the complainant, present in person, scanned the entire evidence available on record with their assistance and considered

the relevant law and authorities cited by the learned counsel for the appellant as well as the learned APG at the bar.

10. Based on 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 keeping in view that each criminal case must be decided on its own particular facts and circumstances for the following reasons;

(a) In kidnapping for ransom cases it is not unusual for there to be a slight delay in lodging the FIR as the families are initially concerned with tracing out the missing person or in fear of the persons demanding ransom. In this case the FIR was lodged **after a delay of 18 days** after the abductee first went missing. During this period the police were not informed and no NC was even registered. Despite the complainant having received the ransom demand which he allegedly recorded he still did not lodge the FIR. This unexplained delay even in a kidnapping for ransom case although not fatal to the prosecution case puts us on caution. In this respect reliance is placed on the case of **Mehboob Bibi** (Supra)

(b) That the complainant allegedly found out the names of the kidnappers who he named in the FIR from his own sources. He might not want to reveal the source due to fear of repercussions but he is even not able to remember when he received the information from the source. Same is the case of PW 7 Muhammed Juma who also states in his cross examination that, ***"it is correct that the above named 4 fours (named in the FIR) were told to me by the police"***. So where did the names of the accused really come from after a delay of 18 days in lodging the FIR. From the sources of the complainant who was a cloth merchant or the police? This begs the question whether the complainant cooked up the case against the appellant in collusion with the police especially as the accused in his S.342 Cr.PC statement claimed that he has enmity with an influential person.

(c) The case of the prosecution in essence is that the abductee was kidnapped on his return home from the Madrassa where he had been studying and was taken to a jungle area where a demand of RS one crore, later reduced to RS50 lacs, was made to the complainant by the appellant and the absconding co-accused in return for the safe return of the abductee, that after receipt of spy information the police recovered the abductee after a lengthy and intense encounter with the appellant and his absconding co-accused which lasted for between 20 to 30 minutes. **However when we closely analyze the prosecution story we find it not free from doubt as is set out below.**

(d) The star witness is PW 2 Abdul Haque who was the

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abductee and was allegedly kept in captivity by the appellant and the absconding co-accused for 22/23 days pending the payment of the ransom before he was rescued by the police. For ease of reference his evidence in chief is reproduced below;

"I do not remember exact date, but it was Thursday, I was at my Madarsa. After close of my Madarsa i.e. 5.30 pm, I came out from Madarsa for reaching my house and reached at Qureshi Road. Two persons arrived on motorcycle. They forcibly on the point of pistol made me sit on the motorcycle and person who was sitting back put at my nose some intoxicants. I became unconscious and regained my senses in a Jungle. They remained shifting me from one place to other place and they took telephone no. of my brother. After 2/3 days, they took telephone no of my father. They threatened me to ask my father to pay Rs. One Crore to them otherwise would kill me and give me to the dogs. They continued making phone to my father. I remained in their custody for about 22/23 days. **They had roped me with chain.** Thereafter, one day at about 12.00 noon police arrived there. **With the police my brother and son of my uncle came and recovered me. The persons who had kept me were Mehboob alias Muharram, Ghulam Rasool, and Bashir Khoso. When police had come I had shouted and police came to me and apprehended one person while three ran away from there. One accused present in the Court is same, witness identified accused Mehboob.** My statement was also recorded before the Court."

A number of points from his evidence create doubts in the prosecution case which are as under:

(i) That in his cross examination he states that at about 100/150 students go to their home weekly from the Madrassa who all proceed together at 5.30pm. Yet despite it being a day light incident no witness saw his abduction which is some what suspiring since he had also passed a bazar and a shop.

(ii) That according to his cross examination he was rescued by the police from a mud hut however according to the other eye witnesses he was arrested in the jungle whilst being taken away by the appellant and there is no evidence of any existence of any mud hut.

(iii) That according to his evidence in chief he was roped with a chain however according the other eye witnesses he was not roped with any thing and he was arrested in the jungle whilst being taken away by the appellant. No rope or chain was recovered from the vardat.

(iv) **That most importantly**, according to the other eye witnesses he was released after an intense encounter

with the police where one police witness himself fired 20 shots which is also evidenced by the large recovery of empties at the scene. The encounter went on for about 20 to 30 minutes according to the evidence of those involved in the encounter yet the abductee in his evidence does **not** even mention that he was released by the police following an encounter between the police and his abductors. The abductee was 13 years of age so was not that young and his ability to give reliable evidence was tested by the trial court judge. We find therefore inconceivable that he could not remember such a long, loud and dangerous encounter prior to his rescue which must have put him in fear of his life.

(v) We find that his evidence or lack thereof in respect of the police encounter puts the whole police encounter in doubt as well as his abduction by the appellant and the other absconding co-accused because the appellant was allegedly arrested on the spot **after** the encounter and as such it cannot be ruled out that he was a tutored witness. In this respect reliance is placed on the case of **Safdar Baloch** (Supra)

(vi) That despite being held in captivity for about 22/23 days in the jungle it appears that there is no evidence that the abductee needed any medical treatment after his release which we also find extremely surprisingly.

As such we disbelieve the evidence of the abductee which we find to be manifestly unreliable and completely contradictory to the other prosecution eye witnesses especially in relation to his release following an encounter between the police and his abductors.

This in turn casts doubt on the evidence of the other alleged eye witnesses in respect of the encounter and recovery of the abductee namely PW 3 Rajib Ali and PW 9 Haji Javed (police men involved in the alleged encounter) and PW 8 Abdul Aleem who waited outside the jungle when the alleged encounter took place and allegedly recovered the abductee whose evidence we find under the circumstances we cannot safely rely upon especially when we consider the other factors mentioned below.

A number of other aspects in the prosecution case also create doubt in our minds as to the whole prosecution story which are as under;

(vii) That when the appellant was arrested on the spot after the encounter a pistol was recovered from him with an empty magazine which was unlicensed. This ties in with the prosecution story of their being a police encounter whereby the appellant would have discharged his weapon during the encounter and run out of bullets hence the empty magazine. We find however it

extremely doubtful that an encounter with the police occurred because; (a) as discussed above **incredibly** it was not mentioned by the abductee in his evidence; (b) despite the encounter going on for about 20-30 minutes where a large amount of ammunition was fired from both sides **not** a single policemen who took part in the operation or a single kidnapper being about 10 in total (6 policemen and 4 alleged dacoits) received a scratch let alone a firearm injury nor was any police vehicle hit which does suggests that no encounter took place at all (c) the pistol from the appellant which was recovered from him on his arrest on the spot after the encounter with an empty magazine which indicates that he fired all his ammunition during the encounter however not a single recovered pistol empty matched his recovered pistol as per FSL report.(d) That four other police man from a different PS who also took part in the encounter were given up by the prosecution despite being on the witness list and as such an inference under Article 129(g) Qanun-e-Shahadat Ordinance 1984 can be drawn that they would not have supported the prosecution case of an encounter. In this respect reliance is placed on the case of **Khalid alias Khalidi** (Supra) and (e) That the FIR was lodged on 01.08.2012 at 6.30pm naming the accused as the kidnappers yet by 11.30am on **the next day** 02.08.2012 being the night after the FIR was lodged without any publicity the police through the IO PW 9 Haji Javed just happened to receive spy information (who according to PW 8 Abdul Aleem the spy just happened to be a policeman) about the whereabouts of the accused and the abductee which no one had known for 22/23 days and he just happened to have with him two relatives of the complainant to act as mashirs who then proceeded to the pointed place where the alleged encounter took place we find not to be believable. As such for the reasons mentioned above we disbelieve the prosecution case of any encounter taking place and find that it is quite likely that the recovered pistol from the appellant was in fact foisted on him as according to the prosecution he was a habitual criminal who needed to be put behind bars. Interestingly, it seems that no serious efforts have been made to trace out and arrest the absconding co-accused all of whom are known by name for the last 10 years. In this respect reliance is placed on the cases of **Zeeshan alias Shani** (Supra), **Aslam Surhiani** (Supra) and **Muhammed Hayat** (Supra).

(viii) With regard to the recovery of the phone 8 days after the arrest of the appellant on the pointation of the appellant we have extreme doubts about this aspect of the case. This is because the mobile phone apparently was not hidden but was just thrown in the jungle during the chaos of an alleged encounter. If this was so how was the appellant so easily able to find the phone?

which could have been tossed any where in the jungle area. It does not appeal to logic, reason or commonsense that the appellant would take the police to a phone from where ransom calls were made as this would directly implicate him in a capital case of kidnapping for ransom. Interestingly despite the lapse of 8 days the phone was still in perfect working order and had not been found by any one else. The most likely scenario is that the phone was foisted on the appellant as he claims. In any event the prosecution produced no evidence that either the recovered phone or SIM belonged to or was in the name of the appellant.

(ix) That with regard to the ransom demand we have already concluded in (viii) above the phone recovered on the poination of the appellant was most likely foisted on the appellant and as such is no use in proving the demand. The complainant received the ransom demand according to his evidence on 26.07.2012 although his son PW 6 Muhammed Haziq was called by the kidnappers who told him that they had abducted the complainants son before that on 22.07.2012 which information he passed on to his father the complainant. The complainant noted down the relevant phone numbers however no CDR was obtained or IEMA of any phone in order to prove any ransom demand which proof was required apart from the witnesses bald oral assertions in their evidence and the delayed FIR. In this respect reliance is placed on the case of **Mehboob Bibi** (Supra)

(x) That **about two weeks** after the rescue of the abductee the complainant claimed he had recorded the ransom demands and down loaded them on a CD which he gave to PW 9 Haji Muhammed who was the IO. There is no evidence that this CD was kept in safe custody and it was not exhibited by its maker the complainant. Instead the CD was given to PW 9 Haji Muhammed IO who **edited it by making excerpts** and exhibiting it. **No voice verification was made to determine whose voice was on the CD making the demand** and as such for the reasons mentioned above we find that we cannot rely on this excerpt and exclude the same and thus we find that the prosecution has not proved that any demand was made. It is also significant as to why the complainant kept the voice recording for about **one month** of its receipt before telling the police about it or handing it over to the police and did not even mention its existence in the FIR which creates further doubts about its authenticity and the fact that it might have been tampered with. In this respect reliance is placed on the case of **Ishtiaq Ahmed Mirza v Federation of Pakistan** (PLD 2019 SCMR 675)

(xi) That further doubt is also caste on any demand

being made because according to the evidence despite a lapse of about one month from the alleged demand and the rescue it has not come in evidence that any effort was made to collect any money to pay such a demand which ordinarily would have been expected if your son's life was in extreme danger. Furthermore, there is no evidence that any ransom money was either paid or recovered.

11. Thus, we find based on the reasons mentioned above, that the prosecution case does not ring true and that there are many doubts in the same and as a matter of law the accused is entitled to the benefit of a single doubt as a matter of right and not by way of concession and as such by extending the benefit of the doubt to the appellant we set aside the impugned judgment, acquit the appellant of the charge and allow his appeal. The appellant shall be released unless wanted in any other custody case.

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