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544

## THE HIGH COURT OF SINDH AT KARACHI

Spl. CrI. Anti-Terrorism Jail Appeal No.65 of 2014.  
Spl. CrI. Anti-Terrorism Jail Appeal No.66 of 2014.  
Spl. CrI. Anti-Terrorism Jail Appeal No.67 of 2014.  
Spl. CrI. Anti-Terrorism Jail Appeal No.68 of 2014.

Present:

Mr. Justice Mohammad Karim Khan Agha  
Mr. Justice Zulfiqar Ali Sangi,

Appellants:

1. Abdul Sattar S/o. Gulbar Khan  
through Mr. Mubashir Bhutta, Advocate.
2. Syed Tayyab Ali Shah S/o. Asghar Ali through  
Mr. Moula Bux Bhutto, Advocate.
3. Gulsher alias Manzoor S/o. Allah Bux through  
Mr. Imdad Ali, Advocate.

For State:

Through Mr. Muhammad Iqbal Awan, Deputy  
Prosecutor General.

Date of hearing:

09.04.2020.

Date of Judgment:

23.04.2020.

### J U D G M E N T

**MOHAMMAD KARIM KHAN AGHA, J:-** Accused Abdul Sattar S/o. Gulbar Khan, Syed Tayyab Ali Shah S/o. Asghar Ali and Gulsher alias Manzoor S/o. Allah Bux were tried by learned Judge, Anti-Terrorism Court No.V, Karachi in Special Case No. B-109/2009 arising out of Crime No.184/2008 U/s. 365-A/34 PPC r/w Section 7 of ATA, 1997 registered at P.S. Zaman Town, Karachi, Special Case No.B-111/2008 arising out of Crime No.99/2008 U/s. 353 PPC r/w section 7 of ATA, 1997, Special Case No. B-112/2008 arising out of Crime No.100/2008 U/s. 13-D of Arms Ordinance and Special Case No.B-113/2008 arising out of Crime No.101/2008 U/s. 13-D of Arms Ordinance, registered at P.S. AVCC Mubina Town, Karachi vide judgment dated 25.07.2014 the appellants were convicted and sentenced as under:-

- (a) The three accused Abdul Sattar, Syed Tayyab Ali Shah and Gulsher alias Manzoor were convicted u/s 7(e) of ATA 1997 and sentenced for Life Imprisonment.
- (b) Accused Abdul Sattar and Syed Tayyab Ali Shah were also convicted u/s. 13-D of Arms Ordinance and sentenced to undergo R.I. for seven

years and fine of Rs.50,000/- each and in case of default in payment of fine they were ordered to undergo further S.I. for six month.

All the sentences were directed to run concurrently and benefit of section 382-B Cr.PC was also extended to the accused.

2. Being aggrieved and dissatisfied by the judgment passed by learned Judge, Anti-Terrorism Court No.V, Karachi, the aforesaid appeals have been preferred by the appellants against their convictions.

3. The brief facts of the prosecution case are that on 24.05.2008 one Muhammad Rafiq son of Abdul Ghaffar resident of J-1 Area Korangi Karachi reported at P.S. Zaman Town that on 23.5.2008 he alongwith his son Muhammad Adnan proceeded from their house on Motorcycle No.KBM-5977 for their Poultry Farm situated at Plot No.4, opp. Graveyard Chakra Goth Korangi No.1 Karachi. At about 3:15 p.m. when they reached near their Farm, they found one grey coloured car standing wherein five persons were present. Four were in plain clothes while one was in police uniform. One amongst them was holding pistol and one Kalashnikov. They pulled his son Adnan from the motorcycle and made him sit in their car. When the complainant tried to resist they threw some thing in his eyes and asked the complainant to come to the police station and then went away. The complainant then approached PS Zaman Town and PS Ibrahim Hyderi but he could not find any clue of his son and he lodged the FIR No.184/2008 at P.S. Zaman Town u/s. 365/34 PPC on 24.5.2008.

4. The investigation was assigned to ASI Fateh Muhammad who inspected the place of incident and the complainant in his further statement disclosed that he had received telephone call at his landline phone No.5030687 from Cell No.03438330368 and the caller had demanded Rs. Two Crore ransom for release of his son. On such statement section 365-A was inserted and investigation was transferred to SIP Fayaz Qadri. The kidnappers were continuously in contact with the complainant on his phone and on 31.05.2008 the brothers of complainant Muhammad Imran, Muhammad Ashraf and his father Abdul Ghaffar paid Rs.13,00,000/- to three kidnappers at National Highway Road, Jamshoro More Hyderabad and then at 10:00 p.m. kidnappers left kidnaped at Murtaza Chowrangi Korangi Industrial Area, Karachi. On 25.09.2008 the investigation was assigned to Choudhry Manzoor of AVCC.



5. Accused Tayyab and Abdul Sattar were arrested by AVCC in Crime No.99/2008 u/s 353/324 PPC, Crime No.100/2008 and 101/2008 u/s. 13-D of Arms Ordinance who during interrogation disclosed their involvement in the kidnapping. Their one companion was HC Gulsher alias Manzoor son of Allah Bux who was found involved in this crime and was already confined in Larkana Jail from where he was brought before an identification parade where he was identified by the abductee and witnesses Imran and Muhammad Ashraf on 08.11.2008 before Judicial Magistrate-XI East Karachi.

6. After completion of the Investigation the I.O. submitted charge against the accused persons and read over the same to the above named three accused persons to which they pleaded not guilty and claimed trial of the case.

7. In order to prove its case, the prosecution examined 14 witnesses and exhibited numerous documents and other items and thereafter the side of the prosecution was closed. The statements of the accused persons were recorded u/s 342 Cr.P.C and accused Tayyab and Abdul Sattar also recorded their evidence under oath and called 2 witnesses each in support of their defense case which in essence was false implication. Accused Gulsher did not examine himself of oath or call any defense witness in support of his defense case which also was false implication.

8. 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 25.07.2014, convicted and sentenced the appellants as stated above, hence these appeals have been filed by the appellants against their convictions.

9. The facts of the case as well as evidence produced before the trial court find an elaborate mention in the judgment dated 25.07.2014 passed by the concerned trial court and, therefore, the same may not be reproduced here so as to avoid duplication and unnecessary repetition.

10. Numerous efforts had been made to serve the complainant however he failed to put in an appearance and since the appellants had been in jail for over 10 years we were of the view that it would not meet the ends of justice not to proceed with this appeal simply because the complainant was absence especially



as we could be assisted by learned DPG who did render his valuable assistance in this case.

11. 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 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. Appellants Abdul Sattar and Syed Tayyab Ali Shah also did not contest their convictions under S.13 (d) of the Arms Ordinance 1965. In support of their contentions they placed reliance on **Orangzaib V The State** (2018 SCMR 391) and **Shahid alias Kaloo V The State** (2009 SCMR 558).

12. 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. When confronted by the court the DPG was also of the view that this case did not fall within the purview of the ATA. The DPG however submitted that the prosecution had proved its case beyond a reasonable doubt against appellants Abdul Sattar and Syed Tayyab Ali Shah under S.13 (d) of the Arms Ordinance 1965.

13. 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, PW 3 Muhammad Rafique, PW 4 Muhammed Adnan (the abductee), PW 5 Muhammed Ashraf and PW 6 Muhammed Imran who were eye witnesses who correctly identified the appellants as abducting the abductee and the evidence of other PW's and the appellants taking the police to where they held the abductee in captivity which place the police did not know of earlier. Appellants Abdul Sattar and Syed Tayyab Ali Shah were also arrested with unlicensed fire arms. 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 in that there is no evidence that the



mobile and SIM which was recovered from the appellants at the time of their arrest linked the appellants to the CDR data and ransom calls to the complainant as the SIM was in the name of Akther Javaid and not the appellants who was not even examined as a PW and no voice recordings for the ransom demand were exhibited. That there is no evidence that any ransom amount was ever withdrawn from any bank or gathered from any other source and no ransom amount was recovered from any of the appellants. The abductee was returned home unharmed and it may also be observed that the appellants have already spent over 10 years in jail. Thus, in respect of the ransom aspect of the case the appellants are entitled to the benefit of the doubt. With regard to the conviction of appellants Abdul Sattar and Syed Tayyab Ali Shah under S.13 (d) of the Arms Ordinance 1965 since an unlicensed weapon was recovered from each of them at the time of their arrest we find that the prosecution has proved this offense against both appellants Abdul Sattar and Syed Tayyab Ali Shah beyond a reasonable doubt.

14. 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. Even otherwise simple kidnapping under S.365 PPC is not an offense which falls within the purview of the ATA.

15. 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 and appellants Abdul Sattar and Syed Tayyab Ali Shah being convicted under S.13 (d) of the Arms Ordinance 1965 we hereby by exercising our judicial discretion under S.423 Cr.PC modify the convictions and sentences of the appellants as under:

“All the appellants stand convicted U/s. 365/34/PPC and all the appellants are sentenced to under go RI for 7 years and all the appellants are 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.”

Appellants Abdul Sattar and Syed Tayyab Ali Shah both stand convicted u/s 13(d) Arms Ordinance 1965 for keeping in their possession unlicensed firearms and are each sentenced to R.I for 7 years and to each pay a fine of Rs.50,000/- failing which if any appellant is in default of payment that appellant shall further suffer S.I for six months more".

There is no conviction under the ATA and as such all the appellants shall be entitled to all remissions permissible under the law and the sentences handed down to each of the appellants shall run concurrently and each of the appellants shall have the benefit of S.382-B Cr.PC.

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

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