Cr. Acquitted - Narcotics - NFR

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IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD

Before:
Mr. Justice Abdul Maalik Gaddi
Mr. Justice Mohammad Karim Khan Agha

Cr. Acq. Appeal No.D-22 of 2014

Sajid Imran

Vs.

Bilal and others

Appellant : Sajid Imran	Through Mr. Aijaz Ahmed Shaikh, Advocate
None present for private respondents	
Respondent : the State	Through Mr. Shahzado Saleem Nahyoon, Deputy Prosecutor General.
Date of hearing :	28.08.2018
Date of judgment :	28.08.2018

J U D G M E N T

MOHAMMAD KARIM KHAN AGHA, J.- This criminal acquittal appeal has been filed by appellant Sajid Imran against the judgment dated 19.11.2014, passed by the learned Judge of Anti-Terrorism Court, Hyderabad in ATC Case No.38-A of 2009 (re-The State Vs. Bilal Khanzada and others) under Crime No.279 of 2009, registered at P.S Tando Allahyar under sections 365-A, PPC and sections 6/7 ATA, whereby the learned trial Court after full dressed trial acquitted the private respondents by giving them the benefit of the doubt.

2. Precisely, the brief facts of the prosecution case as disclosed in the F.I.R., which was lodged at police station Tando Allahyar by complainant Sajid Imran, are as under:

> "The complainant was residing alongwith his family members on the address mentioned in the FIR. As per the FIR, on previous date, i.e. 09.11.2009, he came at house of his brother Muhammad Tariq Khanzada and boy Muhammad Hussain Tariq S/o Muhammad Tariq Khanzada had gone out in the Mohalla and due to lapse of sufficient time, he did not return. Therefore, he and his brother Muhammad Tariq Khanzada jointly went outside in his search in the Mohalla during which boys Khurram Khalid S/o Muhammad Khalid Khanzada and Khurram Irfan S/o Haji Irfan Khanzada standing in the mohalla disclosed that

they were available in the Mohalla near their house and at 08:00 hours one Bilal S/o Master Muhammad Akbar Khanzada and one unknown Sindhi speaking boy has taken him away by force on the motorcycle and seated him in the middle and motorcycle driven by Sindhi speaking and that Bilal Khanzada was sitting behind and that they tried to stop them but they did not stop and driven the motorcycle away and they followed but could not get any clue as to which side of the town they had disappeared. As per the FIR, hearing such news the complainant party searched in the surroundings and in the meanwhile there was a ring on mobile phone No.0300-3308240 of Muhammad Tariq Khanzada from phone No.0315-3044481 and caller refused to disclose his name and told him not to worry as the boy was in their possession and that he will have to arrange Rs. Fifty lac and make call on that number and after delivery of the money the boy could be taken back and saying so disconnected the phone. AS per the FIR, thereafter, they were making search of the boy and accused persons during which they came to know that Humayoon S/o Master Muhammad Akbar Khanzada and Bilal Khanzada friend, boy Aziz Ahmed S/o Faqeer Muhammad Junejo was very much aware about this crime and he continued to search but could not get any clue, therefore, Muhammad Tariq Khanzada appeared at the P.S. and lodged the complaint that accused Bilal S/o Master Akbar Khanzada and one unknown person Sindhi language speaking had jointly abducted Muhammad Hussain Tariq aged about 12 years by force and had demanded Rs. Fifty lac for his return as ransom and that Humayoon Khanzada brother of Bilal Khanzada and his friend Aziz Junejo are very much aware about this crime. As per the FIR the unknown accused would be identified by witnesses namely Khurram Khalid and Khurram Irfan if see them again. The FIR was registered as crime No.279/2009 as mentioned above."

3. After usual investigation, challan of the case was submitted before the concerned Court. Since at the time of commission of offence accused (private respondents namely Bilal and Manzoor Ali) were minors, therefore, their case was tried separately under Juvenile Justice System 2000 and the learned trial Court framed charge falling under section 6(2)(e) punishable under section 7(e) of ATA Act, 1997 r/w sections 365-A, 34 PPC, to which they pleaded not guilty and claimed to be tried.

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4. The prosecution in order to prove its case against the accused examined PW/complainant Sajid Imran, PW/Abductee Hussain, PWs Rehmatullah, Khurram Irfan, Khurram Khalid, PW/SIP/SHO Pervez Ahmed, PW/SIP Farman Ali, PW/SHO Muhammad Bux, PW/SDPO Muhammad Saleh and PW/Judicial Magistrate Mr. Mumtaz Ali Solangi and thereafter prosecution side was closed.

5. Thereafter, statements of accused persons were recorded under section 342 Cr.P.C. wherein they denied the prosecution allegations and professed their innocence.

6. The trial court after hearing the learned counsel for the parties and assessment of evidence, by impugned judgment acquitted the accused / respondents as stated in concluding para of the impugned judgment. Hence, this acquittal appeal has been filed by the appellant.

7. At this point it is pertinent to note that Respondent Bilal has expired and as such this appeal against acquittal lies only against respondent Manzoor Ali.

8. Mr. Aijaz Shaikh, learned Counsel for appellant contended that the judgment passed by the learned trial court is perverse and the reasons are artificial, vis-à-vis the evidence on record; that the grounds on which the trial court proceeded to acquit the respondents are not supportable from the evidence on record. He further submitted that the respondents have been directly charged and that the discrepancies in the statements of witnesses are not so material on the basis of which respondents could be acquitted. He further contended that the learned trial court has based its finding of acquittal merely on the basis of minor contradictions on non-vital points in the statements of prosecution witnesses and that the prosecution evidence has not been properly appreciated. Therefore, under the circumstances, he was of the view that this appeal may be allowed as prayed.

9. On the other hand, the learned Deputy Prosecutor General Sindh has supported the impugned judgment passed by learned trial court by arguing that the impugned judgment has been passed after due appreciation of evidence on record and there is no illegal infirmity in the same.

10. We have heard the learned Counsel for the parties and perused the evidence so brought on record alongwith impugned judgment with their able assistance.

11. At the outset the question of time bar arose since the appeal had been filed 9 days after the limitation for its filing. Learned counsel for the appellant when confronted with this situation conceded that the appeal was time barred by 9 days but pointed to a condonation application which he had filed. Such application however failed to explain each day of delay by way of a cogent reason as is required by the law and as such his condonation application is dismissed and the appeal is liable to be dismissed on the ground of time bar alone.

12. Even otherwise it is settled law that the grounds on which a criminal acquittal appeal will succeed are very narrow. A presumption of double innocence attaches to the respondent and even then for the appeal to succeed this court must be satisfied on the evidence that the impugned Judgment was arbitrary, capricious or against the principles of natural justice. The respondent is also entitled to any benefit of doubt which may have arisen in the prosecution case.

13. After considering the arguments of the parties and perusing the record, we are of the opinion that the prosecution has failed to prove its case against the respondent for the main reasons that in this case all pieces of evidence produced by the prosecution are weak in nature and the whole case of the prosecution is based upon contradictory evidence adduced by the prosecution. There is no confidence inspiring and trustworthy evidence on record to implicate the respondent; that the abductees evidence (who is a minor) with regard to the respondent and the incident is riddled with material and major contradictions; that the identification of the respondent is in doubt and overall the reasoning given in the impugned judgment for the acquittal of the respondent which is set out below is in our view sound and does not require any interference on our part:

> "The prosecution in order to prove its case against accused persons has relied upon ocular evidence, demand of ransom, recovery of abductee, recovery of weapons and motorcycle, arrest of accused and identification parade. So far as ocular testimony is concerned, it consists of P.W Khurram Khalid (Ex.10), Khurram Irfan (Ex.08) and abductee Hussain Tariq (Ex.06). So far as abduction is concerned and about the encounter recovery of abductee and weapons from the accused, Police Witness SIP Pervez Ahmed (Ex.11), SIP Farman Ali (Ex.15) are material. So far as ocular testimony is concerned, P.W Khurram Irfan (Ex.08) who as per the F.I.R. in the prosecution story **though is an eye witness of this case, but in his examination in chief has not identified the accused in the Court and has stated that he had also not identified them in the identification parade.** Though P.W Khurram Khalid (Ex.10), has identified accused Bilal and Manzoor during the evidence in the Court and has also stated that he had picked two persons namely present accused Bilal and Manzoor before the

Magistrate, **but in his evidence he has stated that after narrating the incident to the complainant he went P.S where his statement was recorded (i.e. before F.I.R.). So F.I.R. appears to be an arranged affairs and registered after preliminary enquiry.** So far as abductee Muhammad Hussain Tariq (Ex.06) is concerned he has identified both the accused present in the Court, **but he has given different and strange story of his release nor being from captivity of the accused**. So arguments of the defence is that he is tutored witness, so far as abduction by the accused and recovery is concerned so also identification. Moreover, **in his evidence he has stated that he has come in the Court many a time so can not be ruled out that accused was shown to him to identify**. It is also to be noted that P.W Khurram Irfan (Ex.08) who did not identify the accused in the Court so also in the identification parade according to his evidence and **though he is declared hostile but nothing in favour of prosecution is extracted from him during his cross examination by the prosecution. Therefore, evidence of abductee about his recovery and evidence of this eye witness has created doubt in the prosecution evidence.** Again, abductee in his evidence identified the accused saying that he has identified them in the identification parade, but evidence of Magistrate (Ex.18) goes to show that identification parade of Manzoor and Abid was not held through the abductee but as per Magistrate identification parade of accused Abid was held through abductee and adult accused and **Magistrate has stated that he had taken dummies of 15/18 years of age, and Magistrate in his evidence has stated that abductee has not given role of the accused. Learned Magistrate has also admitted that signature of the Mashir does not appear in the mashirnama of identification parade**. Therefore, defence plea of the defence put to the Magistrate in his cross examination that he had prepared the mashirnama of identification parade as formality only.

So far as recovery of abductee and recovery of weapons from the accused and motorcycle is concerned it is important to note that the same are said to be outcome of encounter between accused (Manzoor and Bilal) and the police, but it is important to note that case of encounter under section 13(d) Arms Ordinance was challaned before Sessions Court Hyderabad and was tried by the Ist Additional Sessions Judge and VIth Addl. Sessions Judge, Hyderabad in which accused Bilal is acquitted from case registered u/w 13(d) Arms Ordinance by judgment Ex.D/2 and again accused Manzoor Halepoto and Abid Ali were acquitted in case crime No.280/2009 registered under sections 324, 353, 34 PPC (of encounter) by order of Ist. Addl. Sessions Judge, Hyderabad passed on two applications u/s 265-K Cr.P.C. (Ex.D/1) in which inter alia, it has been held that though in the F.I.R. it is alleged that there was encounter between them and police but admittedly no empty has been recovered from the place of incident. These Judgment are filed by the accused in their respective statements under Section 342 Cr.P.C. Therefore, arrest of the accused and recovery of the abductee from them so also TT Pistols from present accused Manzoor and Bilal has been falsified. Learned DDPP though has argued that solitary evidence of abductee is sufficient to convict the accused but this principle will not apply when two eye witnesses are available on the record. **But again evidence of abductee is not trustworthy looking to the prosecution story. So either the abductee is false or prosecution story is false or both are false. About the recovery of weapons the IO has admitted in the evidence that some words are written in the pistol and indicator and light of motorcycle lying in the court are missing, but such mention is not given in the F.I.R.** so also in the F.I.R. **Therefore recovery of the pistols and motorcycle appears to be an arranged affairs looking to the defence theory that the complainant party wanted to purchase house of accused, therefore, to pressurize them this false case has been manipulated.** About the identification parade, it may also be pointed out that

as per the Magistrate, features, description and hulais of the dummies has not described in the memo, whether they were of the same set of the accused. The Magistrate has also stated that identification of accused Bilal not held as he was not produced in the evidence produced. In the evidence of the P.W it has come on the record dummies were of different heights and as per Magistrate ten dummies were taken when requirement of law is that ten dummies for each accused are to be had. In this case accused Bilal is said to be local person where place of vardat is situated and identification parade about him though was not necessary, **but still in view of evidence of the record and circumstances since encounter and recovery of the weapons is not proved so recovery of abductee from accused as alleged by the prosecution has become doubtful.**

So far as demand of ransom is concerned P.W Tariq, who happens to be father of abductee Hussain Tariq is said to have received the phone call about demand and payment of Rs. 50,00,000/- as ransom, **but Tariq, father of abductee is not examined so it is to be taken that this witness being very important witness of the case is not examined because he was not supporting the prosecution case on the point of ransom, so he is not examined. Again Phone no. on which call for demand of ransom was made is not disclosed by the complainant in his evidence and though in the F.I.R. mobile phone no. Tariq, father of abductee and accused is given, but still phone call data is also not produced by the prosecution in this case. Therefore, it is not proved that phone call from such and such no. was made.** In this connection it is important to note that the complainant in his evidence has stated that call was made from Mirpurkhas and then they went to trace out but could not succeed. From this it can be gathered that in order to strengthen case of the prosecution this plea merely has been taken by the prosecution. There are other material infirmities defects and flaws in the prosecution evidence.

Evidence of abductee gives strength to the defence plea that he has deposed what he was tutored by the prosecution and that a child witness is untrustworthy and acts what he is told.
Evidence of remaining PWs is not worth improving the case of prosecution for convicting the accused persons.
In view of the infirmities, defects and flaws in the prosecution evidence to me dent has been created in the prosecution case which was given rise to the doubt in the prosecution story when prosecution has to prove its case beyond reasonable doubt and beyond slightest doubt on this capital charge, but prosecution has failed to discharge its burden. In this connection case laws relied by defence have to given way to case laws of the prosecution in the circumstances of the case as every case has own merits and circumstances. In view of all above, my findings on Point No.01 is therefore, above "Not Proved."(bold added)

14. During the course of arguments, we have specifically asked the question from learned Counsel for appellant to point out / show any piece of evidence, which is not supportable from the evidence on record, no satisfactory answer was available with him. Thus, from a perusal of evidence recorded by trial court as well as the impugned judgment, it appears that the impugned judgment of the trial court is based upon sound reasons and does not require any interference especially as when mentioned above it is considered that the impugned judgment is neither perverse nor arbitrary and in this case there appear to be no legal infirmities in the impugned judgment.

If anything the prosecutions evidence is unreliable and riddled with contradictions which cannot be safely relied upon by any stretch of the imagination. It is settled law that in a criminal case the accused is entitled to even the slightest benefit of doubt in the case against him. In this case there are many doubts in the prosecution evidence and the trial court has rightly extended the benefit of doubt to the respondent in the impugned judgment.

15. For what has been discussed above, we are of the considered view that the impugned judgment is based upon valid and sound reasons and is entirely in consonance with the law and as such we find this Criminal Acquittal Appeal to be without merit and the same is dismissed along with any listed applications.

16. Above are the reasons for our short order dismissing this appeal against acquittal announced today in open Court.