

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-21 of 2014.

Sajid Imran

Vs.

Abid Ali & another

Appellant : Sajid Imran	Through Mr. Aijaz Ahmed Shaikh, Advocate
None present for private respondent	
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 of 2009 (re-The State Vs. Manzoor Halepoto 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 a full dressed trial acquitted the private respondent by giving him the benefit of the doubt.

2. Precisely, the brief facts of the prosecution case as disclosed in the FIR 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 co-accused Bilal and Manzoor were minors, therefore, their case was tried separately under Juvenile Justice System 2000 and the learned trial Court framed charge against accused Abid Ali, to which he pleaded not guilty and claimed to be tried.

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 Farman Ali, PW/SHO Muhammad Bux, PW/IO Muhammad Saleh and PW/Judicial Magistrate Mr. Mumtaz Ali Solangi and thereafter prosecution side was closed.

5. Thereafter, statement of accused person was recorded under section 342 Cr.P.C. wherein he denied the prosecution allegations and professed his innocence.

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

7. 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 respondent are not supportable from the evidence on record. He further submitted that the respondent has been directly charged and that the discrepancies in the statements of witnesses are not so material on the basis of which the respondent 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.

8. 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.

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

10. 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.

11. 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.

12. 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; no eye witness gave evidence against him; the star witness i.e the abductee did not pick him out at an Identification parade and only identified him in court; that the abductees evidence with regard to the respondent and the incident is riddled with material and major contradictions; that other alleged eye witnesses did not implicate the respondent and overall the reasoning given in the impugned judgment for the acquittal for the respondent which is set out below is in our view sound and does not require any interference on our part:

"In this case abductee Muhammad Hussain is the star and important witness of this case. Though abductee has identified accused Abid Ali in his evidence to be same, but his identification parade is not held as it shows from the evidence of the abductee. The abductee has given different and strange story of his release other than the prosecution case so this has created doubt in the truthness of the prosecution story. Abductee who is child witness of tender age therefore his evidence in view of 1995 SCMR P-1 needs corroboration to rely upon the same. At this stage it may be pointed out that minor/juvenile accused Manzoor and Bilal, co-accused of the same F.I.R. are acquitted and recovery of the abductee from co-accused Bilal and Manzoor is not proved beyond shadow of doubt and Abid is said to have locked the abductee in a room alongwith Manzoor and Bilal if so that how they came out. Again, story of release of abductee given in the F.I.R. and as given by the abductee himself is contradictory and strange story. P.W Khurram Khalid (Ex.16) is an eye witness of this

case and he stated to have picked two persons in the identification parade. But about present accused (Abid) in his evidence has stated that accused is not same whom he had picked out in the identification parade. P.W Khurram Irfan (Ex.15) is also an eye witness of this case but he in his evidence stated that present accused (Abid) is not same and was not amongst who had come in the street and took away Hussain. In this connection, it is important to note here that IO Muhammad Saleh (Ex.20) has admitted that the abductee has not stated in his 161 Cr.P.C. statement that they took him to a house where Manzoor and Bilal and Abid were present, so presence of Abid is doubtful. It is also important to note that abductee in his evidence has stated that Manzoor told Bilal to bring Abid, who brought Abid and then he was taken away. P.W Khurram Khalid (Ex.16) has in his evidence stated that he saw Manzoor taking away abductee Hussain on motorcycle but the motorcycle is not produced in the Court during evidence of eye witnesses. Abductee Hussain, P.Ws Khurram Khalid and Khurram Irfan they have not identified any such motorcycle in this Court during their evidence to be same. P.W Khurram Khalid (Ex.16) has in his evidence stated that accused Manzoor who was picked by him in the identification test present in the Court is not same. Therefore, in view of evidence of eye witnesses implication of the accused in this case has become doubtful.

So far as arrest of accused Abid is concerned, he has said to be arrested by Muhammad Bux SHO, therefore, substantial piece of evidence against accused Abid excepting identification of accused in the Court, there are lapses in the mashirnama of his arrest as admitted by this witnesses as is admitted by SHO Muhammad Bux. The abductee in his cross examination has stated that he had not seen Abid making phone to his father and the accused was arrested at petrol pump.

IO Muhammad Saleh (Ex.20) has admitted in cross examination that two mobile phone nos. are given in the F.I.R. but data of mobile phone's not obtained so accused Abid is not implicated. He has also stated that abductee has not stated that he heard someone telling them that your son was with them and that not to worry and arrange Rs. Fifty lacs for his release.

Accused Abid is not arrested by the police during encounter as he was arrested by-pass chowk Tando Allahyar as per mashirnama. Neither abductee recovered from him nor as per abductee Abid was with Bilal and Manzoor. As per the prosecution story the accused persons were arrested during the encounter and abductee was recovered during the encounter but the abductee in his evidence has given complete different story, but he has not talked about the encounter. In his evidence the abductee has stated that they went to the place where grass was there, and thereafter an other person came and they all went to the agricultural land and thereafter went to Cattle Pan and stayed there for some time and Manzoor and Abid went away and Bilal was with him and that one police man came with whom he took tea and that he also took tea and that at petrol pump the police man stopped and thereafter police arrived but Abid ran away when earlier he has stated that Abid and Manzoor went away and police arrested Manzoor and Bilal. Therefore story of encounter has also become doubtful. In this case, father of abductee Muhammad Tariq is said to have received phone calls for ransom through his mobile phone but as

mentioned above, neither details of mobile phone calls obtained or produced in the evidence nor Muhammad Tariq an important witness has been examined by the prosecution. Therefore, it appears that he was not to support the prosecution case/story therefore; he has not been examined in this case. Again, ransom is also not paid by any body in this case.

In this case, the prosecution has also based on identification parade of accused persons including Manzoor and Bilal (juvenile accused whose case has been separately tried) but the evidence of the Magistrate recorded in this case goes to show that identification parade of Manzoor and Bilal was held but in his evidence he has stated that identification parade of Abid was held and abductee does not say so, but it is important to note that the Magistrate has admitted that the signatures of the mashirs in the identification memo are not appearing, therefore, identification parade of accused, if any, has become doubtful.

There are contradictions and improvement in the evidence of complainant and abductee Hussain, which has created doubt about the truthness of the prosecution case, benefit of which is to go to the accused. In this case learned DDPP has argued supporting his arguments with the case law relied upon by him referred to above, that evidence of the abductee in which he has identified accused Abid is sufficient solitary evidence of the abductee to implicate accused, but solitary evidence of the abductee is to be accepted had there been no other witness available when in this case Khurram Irfan and Khurram Khalid are said to be eye witness of this case, so evidence of the abductee in the circumstances needs corroboration with other evidence and is to be weighed. Again, so far as his release from the captivity is concerned, his evidence is to be read with official witness of the encounter. Reading of their evidence again has created doubt in the truthness of the prosecution story.

In this case the prosecution has not produced roznamcha entry about different events excepting one to conclude that the prosecution case is true and police has actually gone to the respective places at the time of respective events.

In view of all above, case laws relied upon by learned DDPP will have to give way to the case law relied upon by learned defence counsel, whereby prosecution case has become doubtful, when the prosecution should have proved its case beyond reasonable doubt".

13. 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.

14. 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.

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