IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Spl. Anti-Terrorism Jail Appeal No. D–63 of 2022

Before:
Mr. Mahmood A. Khan, J.
Mr. Khalid Hussain Shahani, J.

Appellant	:	Allah Yar s/o Phog, Abro *Through* Mr. Rukhsar Ahmed Junejo, Advocate
The State	:	*Through* Mr. Muhammad Raza Katohar, DPG
Date of hearing	:	03.03.2026
Date of decision	:	03.03.2026

J U D G M E N T

KHALID HUSSAIN SHAHANI, J. – This criminal appeal stems from the judgment dated 20.04.2022 rendered by the learned Judge, Anti-Terrorism Court-I, Sukkur, in Special Case No.166 of 2017, whereby the appellant, *Allah Yar son of Phog Abro*, was convicted under Section 365-A, Pakistan Penal Code, read with Section 7(1) (e) of the Anti-Terrorism Act, 1997, and sentenced to imprisonment for life along with forfeiture of his property to the State. Benefit of Section 382-B, Cr.P.C., however, was extended to him.

2. The genesis of the prosecution case traces back to an allegation that on 03.10.2016, one *Anees-u-Rehman*, a minor, was abducted from Rohri, and a demand for ransom was purportedly made for his release. Following preliminary proceedings under Sections 200 and 202, Cr.P.C, the complaint matured into a regular special case. It is germane to mention that the co-accused were acquitted under Section 265-K, Cr.P.C, thereby leaving the appellant as the sole convict.

3. At the inception of hearing, learned Counsel for the appellant, with commendable candor, submitted that he would not press the appeal on merits, and confined his submission to the leniency of sentence by considering the period already undergone in custody as sufficient satisfaction thereof.

4. The learned Deputy Prosecutor General, exhibiting fairness expected of a law officer, raised no demurrer to such request.

5. Upon re-examination of the impugned judgment, it appears that the learned trial Court's approach to the element of ransom demand does not withstand close judicial scrutiny. The record divulges that there was no direct or cogent evidence to establish that the appellant himself had either demanded or participated in any demand of ransom. The allegation of such demand rests solely upon an unexamined witness, namely Abdul Rauf, a relative of the complainant, who was said to have received a telephonic call from the alleged abductors. His non-appearance leaves a critical lacuna in the prosecution case. The complainant's own contention regarding ransom allegedly conveyed by co-accused also stands uncorroborated, as no contemporaneous details concerning time, date, or mode of demand were adduced in evidence.

6. The learned trial Court further relied upon the deposition of the abductee, *Anees-u-Rehman*, who stated that during confinement, the accused consoled him that his father, being the owner of a tractor, would soon secure his release. Such statement, even if accepted in entirety, falls short of constituting evidence of a monetary ransom demand; it rather negates the prosecution theory of extortion for pecuniary gain, rendering the alleged amount of Rs.2,500,000/- devoid of evidentiary substratum.

7. The *sine qua* non for conviction under Section 365-A, PPC, is the existence of unimpeachable evidence that ransom was demanded or obtained. Its absence, coupled with the acquittal of co-accused and non-production of the most material witness erodes the substratum of the impugned conviction. While the abduction itself may arguably be substantiated, the aggravating element of ransom, being unproven, fails the statutory requirement of Section 365-A PPC.

8. In the circumstances, the offence, in its factual contour, more appropriately falls within the ambit of Section 364-A PPC, which criminalizes the mere act of kidnapping or abduction of a minor with intent to subject him to wrongful restraint or harm, without the aggravating factor of ransom. The said provision prescribes punishment ranging from rigorous imprisonment not less than seven years and extending up to fourteen years, or even to death or imprisonment for life in extreme cases.

9. Adverting now to the quantum of sentence, the updated jail roll dated 03.03.2026 reflects that the appellant has served a total of eight years, ten months, and nine days of substantive detention, inclusive of one year and twenty-two days of remissions, cumulatively exceeding nine years of incarceration. His conduct during confinement has been reported as satisfactory, devoid of any infraction or disciplinary breach. Considering his good conduct, the lack of evidence supporting a ransom demand, the acquittal of co-accused, and the overarching principles of justice emphasizing proportionality and reformation, we deem it expedient, in the interest of equity and fairness, to commute the sentence to the period already undergone. The order of forfeiture of property, being ancillary to the conviction under Section 365-A PPC, cannot survive and is accordingly set aside.

10. Consequently, while maintaining the finding of guilt for abduction, the conviction of the appellant is altered from Section 365-A PPC, to Section 364-A PPC. The sentence is reduced to the period already served. The appellant shall be released forthwith if not required in any other custody case. The appeal stands disposed of accordingly.

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