**IN THE HIGH COURT OF SINDH, AT KARACHI**

**PRESENT:-**
**Mr. Justice Salahuddin Panhwar**
**Mr. Justice Shamsuddin Abbasi**

**Spl. Crl. Anti-Terrorism Jail Appeal No.07 of 2013**

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| Appellant | Adnan Akhtar @ Addi son of Dr. Shamshad Akhtar through Mr. Abdul Razzak, Advocate. |
| Respondent | The State through Mr. Fahim Ahmed Panhwar, DPG. |

**Spl. Crl. Anti-Terrorism Jail Appeal No.10 of 2013**

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| Appellant | Aqeel Ahmed @ Shami son of Zahoor Ahmed through Mr. Liaquat Ali Hamid Meo, Advocate . |
| Respondent | The State through Mr. Fahim Ahmed Panhwar, DPG. |

**Criminal Revision No.84 of 2013**

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| Appellant | The State through Mr. Fahim Ahmed Panhwar, DPG. |
| Respondents | 1. Aqeel Ahmed @ Shami son of Zahoor Ahmed through Mr. Liaquat Ali Hamid Meo, Advocate .<br>2. Adnan Akhtar @ Addi son of Dr. Shamshad Akhtar through Mr. Abdul Razzak, Advocate. |
| Dates of hearing | 20.08.2019, 28.08.2019 |
| Date of Judgment | **28.08.2019** |

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**JUDGMENT**

***Shamsuddin Abbasi, J:-*** Appellants Adnan Akhtar @ Addi and Aqeel Ahmed @ Shami were tried by Anti-Terrorism Court No.I, Karachi, in Special Case No.10 of 2009, arising out of FIR No.55 of 2009 under Section 365-A/34, PPC read with Section 7 of Anti-Terrorism Act, 1997, registered at Police Station Gulistan-e-Jauhar {AVCC}, Karachi. By impugned judgment dated 30.03.2013 they were convicted under Section 7(e) of Anti-Terrorism Act, 1997, read with Section 365-A/34, PPC and sentenced to undergo "imprisonment for life and forfeiture of their property". However, the benefit in terms of Section 382-B, Cr.P.C. was extended in favour of the appellants.

2. FIR in this case has been lodged on 09.02.2009 at 1430 hours whereas the incident is shown to have taken place on 02.02.2009 at 1740 hours. Complainant Muhammad Shah Nawaz Khan has stated that on 02.02.2009 his son Muhammad Ibad Khan aged about 14 years was playing in the street infront of his House No.B-287, Block-2, Gulistan-e-Jauhar, Karachi. It was about 5:40 pm when a white coloured Toyota Corolla car came there wherein three men and a woman were sitting who on the pointation of weapons kidnapped his son and after a little while a phone call was received at his PTCL number whereby the culprits demanded Rs.200,000/- as ransom, else the complainant would receive the dead body of his son. They continuously kept on their demand and finally agreed on Rs.75,000/- towards ransom. The culprits first asked the complainant to reach Saddar, then Kalapul and later on Korangi Crossing, near Marriage Hall where a person came and received ransom amount and also told the complainant that they would drop his son at Allah Wali Chowrangi. The complainant immediately reached there and met with his son who was so nervous and unable to state anything and later on narrated the whole story and informed the complainant that he was kidnapped by three men and one woman and he can identify them if seen again.

3. Pursuant to the registration of FIR, the investigation was followed and in due course the challan was submitted before the Court of competent jurisdiction whereby the appellants were sent up to face trial under the above referred Sections.

4. A charge in respect of offences under Section 365-A/34, PPC read with Section 7 of Anti-Terrorism Act, 1997, was framed against appellants on 27.04.2010 at Ex.15, to which they pleaded not guilty and claimed trial.

5. At trial, the prosecution has examined as many as 15 witnesses namely, ASI Muhammad Ashiq as PW.1 at Ex.16, SIP Shakeel Ahmed Yousuf Zai as PW.2 at Ex.17, Senior Civil Judge Mr. Kamran Atta Soomro as PW.3 at Ex.18, Civil Judge & Judicial Magistrate Mr. Javed Iqbal Malik as PW.4 at Ex.19, Inspector Nasrullah Khan as PW.5 at Ex.20, Syed Aafaq Hussain as PW.6 at

Ex.21, Abdul Jabbar as PW.7 at Ex.22, complainant Muhammad Shah Nawaz as PW.8 at Ex.23, abductee Muhammad Ibad Khan as PW.9 at Ex.24, Inspector Fayaz Ahmed Qadri as PW.10 at Ex.25, SIP Muhammad Muslim Tunio as PW.11 at Ex.26, DSP Raja Muhammad Amjad as PW.12 at Ex.27, ASI Muhammad Nawaz Brohi as PW.13 at Ex.28, Inspector Tahir Naseer as PW.14 at Ex.29, I.O. Inspector Ch. Manzoor Ahmed as PW.15 at Ex.31 and then closed its side vide statement Ex.32.

6. Statements of appellants under Section 342, Cr.P.C. were recorded at Ex.33 and Ex.34, wherein they denied the commission of offence as well recovery of ransom amount from their possession and also pleaded their innocence. They opted not to examine themselves on oath under Section 340(2), Cr.P.C. and did not lead any evidence in their defence.

7. On conclusion of trial and after hearing the learned counsel for the parties, the learned trial Court convicted the appellants and recorded sentence as explained in para-1 above.

8. Feeling aggrieved by the conviction and sentences, referred herein above, the appellants have preferred their respective appeals through Superintendent Central Prison, Karachi, whereas the State filed revision application seeking enhancement of sentence.

9. It is jointly contended on behalf of appellants that they have been falsely implicated in this case by the police in collusion with complainant party with malafide intention and ulterior motives. It is next submitted that FIR has been lodged after the delay of 07 days without furnishing valid reason and plausible explanation. It is also submitted that the complainant is not eye-witness of the incident and he has been informed about the incident by his wife but she has not been examined by the prosecution. They further added that all the witnesses are related inter-se and no independent witness has been examined to corroborate their version, even at the time of incident the abductee was playing football and there were 10/12 other boys were also present but none of them have been examined; that the identification parade was conducted after 07 days of arrest of

appellants; that recovery of alleged ransom amount is highly doubtful and in contravention of Articles 38, 39 and 40 of Qanun-e-Shahadat Order; that there are material contradictions in the statements of witnesses despite the learned trial Court recorded conviction without applying it's judicial mind and taking into consideration contradictions and discrepancies in the evidence of the prosecution witnesses. Lastly, submitted that the impugned judgment is bad in law and facts and liable to be set-aside and prayed accordingly.

10. In contra, the learned DPG though supported the case of the prosecution against the appellants on the ground that the prosecution has successfully discharged its onus of proving the guilt of the appellants in respect of offences charged with despite the learned trial Court endowed lesser punishment of life imprisonment instead of awarding death sentence; that the witnesses in their respective evidence have deposed full account of the incident and fully involved the appellants with the commission of offence charged with. Lastly submitted that the appellants are habitual offenders and involved in other cases of similar nature as such they are liable to be dealt with in accordance with law and their sentences may be enhanced from imprisonment for life to death sentence.

11. We have given anxious consideration to the submissions of learned counsel for the appellants and the learned APG for the State as well perused the entire material available before us and the relevant law with the able assistance.

12. To prove the guilt of the appellants, the prosecution has examined as many as 15 including complainant and abductee. All of them in their respective examination-in-chiefs though supported the case of the prosecution and implicated the appellants with the commission of the offence, but could not face test of cross-examination and shatter their evidence one way or the other.

13. It is the case of the prosecution that an amount of Rs.75,000/- was agreed to be paid by the complainant to the culprits towards ransom and the place of receiving extortion money was also fixed despite that complainant did not bother to inform the police

about the incident. No explanation or valid reason has been furnished to justify as to why he had not accompanied police or any other person while going to deliver the ransom amount to the culprits. This fact, thus, rendered the case of the prosecution extremely doubtful. Furthermore, the incident is shown to have taken place on 02.02.2009 and the abductee is alleged to have been released on 03.02.2009 after payment of ransom amount inspite of that complainant neither informed the police nor lodged FIR promptly, which has admittedly been lodged on 09.02.2009 i.e. after 07 days of the incident without furnishing valid reason and plausible explanation. It is by now well settled that in absence of any plausible explanation, the delay in lodgment of FIR casts a suspicion on the prosecution story and it gave rise to a doubt, which could not be extended to anyone else except to the accused. Even in FIR no names or features of the accused persons have been mentioned despite an earlier alleged payment of ransom and recovery of the abductee.

14. Another intriguing aspect of the matter is that except complainant and abductee, the prosecution has not produced any other witness to substantiate their version. The propriety of safe administration of justice demands care and caution while examining the evidence brought on record coupled with other corroborative evidence, which is lacking in this case. It is surprising rather astonishing that while preparing memo of site inspection, memo of release of abductee, memo of recovery of ransom amount and memo of seizure of mobile phones data, the officer did not bother to associate independent person from the locality and entire record is silent as to whether any step was taken to join private persons from the locality although availability is not disputed. It is also an undisputed fact that at the time of incident the abductee was playing football infront of his house with his friends, but none of them have been cited as witness in the case. It is well settled principle of law that ocular, if not qualifying the parameters of evidentiary value, same requires independent corroboration. Upon scrutiny of the material available on record, we find no corroboration to maintain conviction and sentences of the appellants particularly when they are facing the charges of capital punishment. At this juncture, the principle of *falsus in uno-falsus in omnibus* is applicable. The Hon'ble

apex Court has rendered a landmarked judgment dated 04.03.2019 passed in 238-L of 2013 on the principle of *falsus in uno-falsus in omnibus* and ruled as under:-

> *"A court of law cannot grant a license to a witness to tell lies or to mix truth with falsehood and then take it upon itself to sift grain from chaff when the law of the land makes perjury or testifying falsely a culpable offence".*

15. Insofar as the recovery of ransom amount on the pointation of appellant Aqeel Ahmed @ Addi is concerned, suffice it to say that the prosecution has failed to prove that such recovered notes were the same that were delivered by the complainant to the culprits at the time of release of abductee for the reason that the complainant paid only Rs.75,000/- towards ransom whereas according to memo of seizure {Ex.26/A} the police recovered Rs.150,000/- from the house of appellant Aqeel Ahmed @ Addi on his pointation and as per deposition of I.O. the remaining amount pertains to other crime. Furthermore, the complainant did not disclose either in FIR or anywhere else the serial numbers and denominations of such currency notes, hence in view of this background of the matter it cannot be said that the said recovered currency notes were of the complainant. The recovery of weapons from the possession of appellants is also of no consequence as the same were not sent to Ballistic Expert to ascertain as to whether the same were in working condition or not, hence the same cannot be used against the appellants in this particular case. Reliance may well be made to the case of *Muhammad Akram v The State* {2009 SCMR 230}, wherein it has been observed as under:-

> *"the recovered notes were not marked and the serial number of the notes paid as ransom were not recorded. So it could not be said with certainty that the recovered amount was the same which was delivered at the time of release of Asghar Ali..... The evidence of recovery of weapons is also of no consequence and cannot be used against the petitioners for the reason that the weapons were never sent to any Expert to determine whether they were in working condition or not"*

16. The prosecution has also failed to establish that the appellants made phone calls to the complainant through their mobile phones as cell phones allegedly recovered from the possession of appellants were not proved on record to have been used by them for

demanding ransom. Mere production of call record is not sufficient to connect the appellants with the commission of offence inasmuch no evidence has been brought on record to substantiate that the cell numbers used in the commission of offence belonged to appellants.

17. By looking into the merits of the case, besides evidence of abductee Muhammad Ibad Khan and complainant Muhammad Shah Nawaz Khan, who is not eye witness of the incident, rest of the evidence is based on circumstantial evidence. It is settled proposition of law that circumstantial evidence is to be considered as a chain, and each piece of evidence, is linked in the chain, if any one link breaks, the claim would fail. The circumstantial evidence can only form basis for conviction, when it is compatible with the innocence of accused or guilt of any other person and in no manner be incapable of explaining upon any reasonable hypotheses except that of guilt of accused. Every link in circumstantial evidence should be proved by cogent evidence and if not then no conviction could be maintained or awarded to an accused.

18. As far as disclosure of the appellants before police in which they confessed their guilt is concerned, it is settled principle of law that disclosure of an accused before police is inadmissible being hit by Articles 38 and 39 of the Qanun-e-Shahadat Order, 1984. There is no cavil to the legal proposition that the extra judicial confession is a very weak type of evidence and no conviction could have been awarded without having strong corroboration which aspect of the matter hardly needs any comments. Reliance may well be made to the cases of *Wazir Muhammad and another v. State* {2005 SCMR 277}, *Liaquat Ali v. The State* {1999 P.Cr.LJ 1469 Lahore}; *Tahir Javed v. The State* {2009 SCMR 166} and *Zafar Iqbal and others v. The State* {2006 SCMR 463}. Hence, no weight can be given to such disclosure of appellants before police. Even otherwise, in case, if such extra judicial confessions were made by the appellants during the course of investigation, it was incumbent upon the Investigation Officer to get their confessional statements recorded before the Judicial Magistrate, which has not been done in the case in hand.

19. Another piece of evidence against the appellants is identification parades which were conducted under supervision of the

Judicial Magistrates, Karachi {East}. It is an undisputed fact that appellant Aqeel Ahmed @ Shami was arrested on 13.02.2009 and he was produced before Magistrate for identification parade on 24.02.2009 i.e. after 11 days of his arrest whereas appellant Adnan Akhtar has been shown arrested on 24.12.2009 and he has been put to identification test on 07.01.2010 i.e. after 11 days of his arrest. No satisfactory explanation has been furnished for delayed conducting the identification parade. It is a settled law that a delayed identification test both with reference to the date of occurrence and the date when the accused was taken into custody is always looked upon with the maximum caution by the Courts of law. For this principle, we are fortified with the dictum laid down in the case of *Asghar Ali v. The State* {1992 SCMR 2088} and *The State v. Farman Hussain* {PLD 1995 SC 1}. In the instant case, the identification parade carried an inherent defect that is that both complainant and abductee though identified the appellants in the identification test but without any reference to the role allegedly played by them during the occurrence. The same, therefore, has lost its efficacy and cannot be relied upon. Reliance may well be made to the case of *Khadim Hussain v. The State* {1985 SCMR 781}.

In another case of *Sabir Ali alias Fauji v The State* {2011 SCMR 563}, the Hon'ble Supreme Court held as under:-

> *"6...It is also settled principle of law that role of the accused was not described by the witnesses at the time of identification parade which is always considered inherent defect, therefore, such identification parade lost its value and cannot be relied upon".*

Similar view was taken by the Hon'ble Supreme Court in the case of *Muhammad Fayyaz v The State* {2012 SCMR 522}.

20. It is, by now, well established principle of law that it is the prosecution, which has to prove its case against the accused by standing on its own legs and it cannot take any benefit from the weaknesses of the case of defence. In the instant case, the prosecution remained failed to discharge its responsibility of proving the case against the appellants, hence there remains no cavil to the proposition that if there is a single circumstance which creates reasonable doubt regarding the prosecution case, the same is

sufficient to give benefit of the same to the accused, whereas the instant case is replete with circumstances which have created serious doubt about the prosecution story. Even as per saying of the Holy Prophet (P.B.U.H), the mistake in releasing a criminal is better than punishing an innocent person. Same principle was also followed by the Hon'ble Supreme Court of Pakistan in the case of *Ayub Masih v. The State* {PLD 2002 SC 1048}, wherein at page 1056, it was observed as under:--

> *"....It will not be out of place to mention here that this rule occupies a pivotal place in the Islamic Law and is enforced rigorously in view of the saying of the Holy Prophet (P.B.U.H) that the "mistake of Qazi (Judge) in releasing a criminal is better than his mistake in punishing an innocent".*

In supra mentioned case of *Ayub Masih*, the Hon'ble Supreme Court also pleased to observe as under:--

> *"...The rule of benefit of doubt, which is described as the golden rule, is essentially as rule of prudence which cannot be ignored while dispensing justice in accordance with the law. It is based on the maxim, "it is better that ten guilty persons be acquitted rather than one innocent person be convicted"..."*

21. It is also a cardinal principle of administration of criminal justice that prosecution is bound to prove its case against accused beyond shadow of any doubt. If any reasonable doubt arises in the prosecution case, the benefit thereof must be extended to the accused not as a matter of grace or concession but as a matter of right. Likewise, it is also well-embedded principle of criminal justice that there is no need of so many doubts in the prosecution case rather any reasonable doubt arising out from the prosecution evidence, pricking the judicious mind, is sufficient for acquittal of the accused. Rule for giving benefit of doubt to an accused has been laid down by the Hon'ble Supreme Court in the case of *Muhammad Mansha v. The State (2018 SCMR 772)* wherein it has been ruled as under:-

> *"Needless to mention that while giving the benefit of doubt to an accused it is not necessary that there should be many circumstances creating doubt. If there is a circumstance which creates reasonable doubt in a prudent mind about the guilt of the accused, then the accused would be entitled to the benefit of such doubt, not as a*

> *matter of grace and concession, but as a matter of right. It is based on the maxim, "it is better that ten guilty persons be acquitted rather than one innocent person be convicted". Reliance in this behalf can be made in the cases of Tariq Pervez v. The State (1995 SCMR 1345), Ghulam Qadir and 2 others v. The State (2008 SCMR 1221), Muhammad Akram v. The State (2009 SCMR 230) and Muhammad Zaman v. The State (2014 SCMR 749)."*

22. The final and eventual outcome of the entire discussion is that the prosecution has failed to discharge its onus of proving the guilt of the appellants beyond shadow of reasonable doubt. Accordingly, both appeals are allowed, the conviction recorded by the learned trial Court vide judgment dated 30.03.2013 is set-aside and the appellants are acquitted of the charge by extending them the benefit of doubt. They shall be set free forthwith, if not required to be detained in connection with any other case. In view of the above, the Criminal Revision No.84 of 2013 is dismissed as having become infructuous.

JUDGE

JUDGE

Naeem