

IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD

Criminal Appeal No.S- 317 of 2007

**Appellant:** Shoukat Ali son of Sher Muhammad alias Sheru,  
Through Mian Taj Muhammad Keerio, Advocate

**State:** Ms. Safa Hisbani, A.P.G

**Date of hearing:** 30.08.2019

**Date of decision:** 30.08.2019

**J U D G M E N T**

IRSHAD ALI SHAH, J. The appellant by way of instant appeal has impugned judgment dated 06.12.2017 passed by learned Additional District & Sessions Judge, Shahdadpur whereby the appellant has been convicted and sentenced as under;

*“for the offence U/S 365-B PPC read with section 34 PPC Rigorous Imprisonment (R.I) for life and fine of Rs.50,000/= (fifty thousand) and in default thereof, to further undergo six months S.I. The accused Shoukat Ali is also convicted and sentenced under section 452 PPC read with section 34 PPC for (7) seven years and fine of Rs.10,000/=and in default in payment of fine to further undergo for three (3) months S.I.”*

2. The facts in brief necessary for disposal of instant appeal are that the appellant allegedly with rest of the culprits in furtherance of their common intention by committing trespass in house of complainant Muhammad Anwar, abducted his sister Mst. Parveen with intention to subject her to rape or to marry her, for that they were booked and reported upon.

3. At trial, appellant did not plead guilty to the charge and the prosecution to prove it examined PW-1 complainant Muhammad Anwar at (Ex.07), he produced FIR of the present case; PW-2 Mevo at (Ex.08), he produced memo of wardat and memo of arrest of the appellant; PW-3 SIO / ASI Ali Akber at (Ex.09), he produced Roznamcha entries and prosecution then closed its side.

4. The appellant in his statement recorded under Section 342 Cr.P.C denied the prosecution allegations by pleading innocence; he examined none in his defence or himself on oath to disprove the prosecution allegation against him.

5. On evaluation of evidence, so produced by the prosecution, the learned trial court convicted and sentenced the appellant as detailed above.

6. It is contended by the learned counsel for the appellant that the appellant being innocent has falsely been involved in this case by the complainant party in order to satisfy their grudge with him being their neighbourer; there is un-explained delay of about three months in lodgment of FIR and the evidence which the prosecution has produced before the learned trial court being untrustworthy and doubtful has been believed by learned trial court without assigning cogent reasons. By contending so, he sought for acquittal of the appellant.

7. Learned A.P.G for the State by supporting the impugned judgment has sought for dismissal of the instant appeal by contending that it is well reasoned.

8. I have considered the above arguments and perused the record.

9. The FIR of the incident has been lodged with delay of about three months. The explanation which is offered by the complainant for such delay is that in first instance his nekmard kept him to wait for return of Mst. Parveen privately. No nekmard is examined by the prosecution to prove such an assertion of the complainant. In that situation, it would be hard to conclude that the delay in lodgment of FIR has been explained plausibly. Indeed, it is reflecting consultation and deliberation.

10. In case of **Mehmood Ahmed & others vs. the State & another (1995 SCMR-127)**, it was observed by the Hon'ble Court that;

*“Delay of two hours in lodging the FIR in the particular circumstances of the case had assumed great significance as the same could be attributed to consultation, taking instructions and calculatedly preparing the report keeping the names of the accused open for roping in such persons whom ultimately the prosecution might wish to implicate”.*

11. It is specifically alleged in FIR by the complainant that his sister Mst. Parveen has been abducted allegedly by the appellant and others with intention to subject her to rape or to marry her but the complainant together with his brother PW Mevo during course of their examination have omitted the allegation of rape or marriage, which appears to be significant. On asking, the complainant was fair enough to admit that the

entire story of FIR is false and age of his sister was not 15 years. If it is believed to be so, then it affects the case of prosecution adversely. PW Mevo, on asking was fair enough to admit that they have got audio recording of their sister, whereby she has refused to come back to their house. If it is believed to be so, then it signifies a fact that Mst. Parveen had left the house of her parents of her freewill and she is reluctant to join them. In that situation, the involvement of the appellant for abducting Mst. Parveen, obviously is appearing to be doubtful. PW Mumtaz has been given up by the prosecution without any cogent reason. His non-examination impliedly indicates that he was not going to support the case of prosecution. PW-SIO / ASI Ali Akber no doubt has attempted to support the case of prosecution, so far investigation of the case allegedly conducted by him is concerned. But his evidence was shattered, when PW Mevo who happened to be mashir of memo of place of incident and memo of arrest of the appellant was fair enough to admit that he signed one document at P.S. If evidence of PW Mevo to that effect is believed to be true, then it would show that the investigation of the present case which allegedly was conducted by SIO / ASI Ali Akber was only to the extent of table. It was table investigation.

12. The conclusion which could be drawn of the above discussion would be that the prosecution has not been able to prove its case against the appellant beyond shadow of doubt and the appellant is found entitled to such benefit.

13. In case of **Tarique Pervaiz vs. The State (1995 SCMR 1345)**, it has been held by Hon'ble Apex Court that;

*“For giving benefit of doubt to an accused it is not necessary that there should be many circumstances creating doubt- if a simple circumstance creates reasonable doubt in a prudent mind about the guilt of the accused, then he will be entitled to such benefit not as a matter of grace and concession but as a matter of right.”*

14. Based upon above discussion, the conviction and sentence awarded to the appellant by way of impugned judgment are set-aside, the appellant is acquitted of the offence, for which he has been charged, tried and convicted by the learned trial court, he shall be released forthwith, in the present case.

15. The instant appeal is disposed of in above terms.

**J U D G E**