

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA

Criminal Appeal No.D-19 of 2014

Criminal Appeal No.D-20 of 2014

Before:

Mr. Justice Muhammad Iqbal Kalhoro

Mr. Justice Irshad Ali Shah

Appellants in Criminal Appeal No.D-19 of 2014

Muhammad Ibrahim Tunio, 2. Muharram Tunio,
3.Piyar Ali Tunio and 4.Allah Dino Tunio, through
Mr. Asif Ali Abdul Razaque Soomro, Advocate.

Appellant in Criminal Appeal No.D-20 of 2014

Muhammad Mithal alias Mitho, through
Mr. Muhammad Tariq Metlo, Advocate

Complainant: Khadim Hussain Nangrejo Kalhoro through Mr.
Sikandar Ali Junejo, Advocate.

State: through Mr. Khadim Hussain Khooharo Additional
Prosecutor General

Date of hearing: 07.03.2018.

Date of judgment: ⁿ16.03.2018.

J U D G M E N T

IRSHAD ALI SHAH, J.- The appellants by way of two separate appeals have impugned judgment dated 20th April, 2014, of learned Judge, Anti Terrorism Court, Larkana, whereby they have been convicted and sentenced as under;-

- a) Accused namely Mithal alias Mitho, Muhammad Ibrahim, Muharram, Piyar Ali and Allah Dino guilty for having committed murders of innocent persons namely Ali Hassan, Abdul Raheem and Muhammad Siddiq by

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taking lenient view connect them for an offence punishable u/s.302 (b) PPC and award them imprisonment for life. They are also ordered to pay compensation of rupees One Lac each to the heirs of deceased persons as compensation u/s.544-A Cr.PC recoverable as land revenue and in default of payment the recovery of above said amount, they shall suffer imprisonment for R.I for one year.

b). Accused Mithal @ Mitho, Muhammad Ibrahim, Muharram, Piyar Ali and Allah Dino are further convicted for an offence punishable u/s.365-A r/w Section 149 PPC, and sentenced to suffer imprisonment for life, and the properties of accused are ordered to be forfeited to the Government.

c). Accused Mithal @ Mitho, Muhammad Ibrahim, Muharram, Piyar Ali and Allah Dino are also convicted for an offence punishable u/s.7 (e) of Anti-Terrorism Act 1997, and sentenced to suffer imprisonment for life.

d). Accused Mithal @ Mitho, Muhammad Ibrahim, Muharram, Piyar Ali and Allah Dino are also convicted for an offence punishable u/s.7 (e) of Anti-Terrorism Act 1997, and sentenced to suffer imprisonment for life, and ordered to pay fine of Rs.50,000/- each (fifty thousands) and in case of default of payment of fine they shall suffer imprisonment for a period of R.I for six months more.

e). Accused Mithal @ Mitho, Muhammad Ibrahim, Muharram, Piyar Ali and Allah Dino are also convicted for an offence punishable u/s.347 PPC, and sentenced to suffer R.I for three years and ordered to pay fine of Rs.10,000/- each (ten thousands) and in case of default of payment of fine they shall suffer imprisonment for a period of R.I for six months more.

f). Accused Mithal @ Mitho, Muhammad Ibrahim, Muharram, Piyar Ali and Allah Dino are also convicted for an offence punishable u/s.148 PPC, and sentenced to suffer R.I for two years.

2. The facts in brief necessary for disposal of instant appeals are that on 10.05.2009, when complainant Khadim Hussain, his brother Ali Hassan, cousin Abdul Raheem and labourer Muhammad Siddiq were loading their

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vehicle with banana fruit at the fruit farm of Muhammad Usman Nangrejo Kalhoro, there at about 0900 hours under the light of their vehicle, they found coming accused Gul Hassan with K.K, Ghulam Muhammad with K.K, Niaz with K.K, Mithal alias Mitho with K.K, Bahadur with G-3 rifle, Muradoo with G-3 rifle, Mubeen with G-3 rifle, Muhammad Ibrahim with K.K, Atta Muhammad with K.K, Ali Muhammad with K.K, Muharram with K.K and four unknown culprits with their faces open with K.Ks. The said culprits overpowered the complainant and his witnesses, abducted away Ali Hassan, Abdul Raheem and Muhammad Siddiq by asking the complainant party to arrange for ransom money for release of said abductees. The complainant went back to his village, related the incident to his "Nekmard" Muhammad Usman Nangrejo Kalhoro. In the meanwhile, the complainant received telephonic call from the above said culprits asking him to arrange for rupees thirty Lacs as ransom money for the release of said abductees with a threat that in case ransom money is not paid then said abductees would be killed. On 14.06.2016, complainant received telephonic call from SHO, P.S, Guloo Siyal, intimating him that on account of encounter of police with gang of dacoits Mubeen, Muradoo Narejo, the said abductees have been killed by the said dacoits. On such information, the complainant with his witnesses went at R.H.C Naudero, collected the dead bodies of said abductees and then lodged report of the incident with P.S Abdul Rehman Unar.

3. On investigation, the appellants were arrested and were challaned before learned trial Court. They denied the charge and prosecution

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to prove it, examined complainant Khadim Hussain produced through him FIR of the present case and his further statement. Medical Officer Dr.Hakim Ali Jogi produced through him postmortem reports and inquest reports on the dead bodies of the said deceased. PW/Mashir Muhammad Akram produced through him mashirnama of place of incident. PW Allah Dino. PW Abdul Rehman was given up by the prosecution. SIO/SIP Ghous Bux, through him was produced order of S.S.P Khairpur whereby a Joint Investigation Team was constituted to conduct the investigation of the present case. SIO/Inspector Abdul Hameed through him was produced "roznamcha" entry relating to departure from P.S Abdul Rehman Unar. SIO/SIP Imam Bux, through him was produced FIR Crime No.29/2009 of P.S, Keti Mumtaz, it was relating to murder of the said abductees as result of their encounter with the police. Then prosecution closed its side.

4. The appellants in their statements recorded under section 342 Cr.PC denied the prosecution allegations by pleading their innocence by stating that they have been involved in this case falsely by the complainant party due to dispute with them over landed property and fish pond. They examined none in their defense or themselves on oath in disproof of the prosecution allegations.

5. The appellants Allah Dino and Piyar Ali in order to prove their innocence produced copies of police report u/s.550 Cr.PC, together with

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subsequent Karwai and Misc.Application u/s.22-A & B Cr.PC whereby they sought for direction against the police to record their FIR.

6. The learned trial Court, on the basis of evidence so produced by the prosecution convicted and sentenced the appellants through judgment, which the appellants have impugned before this Court by way of filing separate appeals, as stated above.

7. It is contended by learned counsel for the appellants that they being innocent have been involved in this case falsely by the complainant party only to settle their dispute with them over landed property and fish pond, the identity of the appellants at night time under the light of vehicle was a weak piece of evidence, the FIR was lodged with un-plausible delay of 35 days to the incident, there is no disclosure of phone number whereby the demand for ransom money was made from the complainant party allegedly by the appellants, the complainant and his witnesses being related inter-se were chance witnesses, their evidence carries with it inconsistencies, contradictions and omissions, which was not to have been believed by learned trial Court. By contending so, they sought for acquittal of the appellants. In support of their contentions, they relied upon case of *Asif Jameel and others vs. the State, which is reported at 2003 MLD-676, 2). Case of Mehmood and others vs. the State which is reported at 1995 SCMR-127, 3). Case of Tayyab vs. the State, which is reported at 1995 SCMR-412, 4). Case of Mst.Saima alias Sobia vs. the State which is reported at 2011 YLR-632, 5). Case of Mst.Mehboob Bibi and*

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others vs. the State which is reported at 20178 SCMR-1835, 6). Case of Khalid Javed and another vs. the State, which is reported at 2003 SCMR-1419, 7). Case of Sheera Masih and others vs. the State, which is reported at PLD 2002 Supreme Court-443, 8). Case of Attaullah alias Qasim and others vs. the State, which is reported at SBLR 2006 Sindh-1448, 9). Case of Abdul Haq vs. the State, which is reported at PLD 1996 Supreme Court-01, 10). Case of Muhammad Akram vs. the State, which is reported at 2009 SCMR-230, 11). Case of Riaz Ahmed vs. the State, which is reported at 2010 SCMR-846, 12). Case of Pathan vs. the State, which is reported at 2015 SCMR-315, 13). Case of Ashiq Hussain vs. the State, which is reported at 1993 SCMR-417, and 14). Case of Nasrullah alias Nasroo vs. the State, which is reported at 2017 SCMR-724.

8. It is contended by learned counsel for the complainant and learned Additional Prosecutor General that there was no need for the complainant party to have disclosed the cell phone number whereby the appellants demanded ransom money from the complainant party for release of the abductees, the abductees were killed by the appellants only for the reason that the complainant party failed to pay the ransom money to the appellants. By contending so, they sought for dismissal of the instant appeals.

9. We have considered the above arguments and have perused the record.

10. Un-natural death of the said abductees is proved of evidence of Dr.Hakim Ali Jogi. Now is to be examined the liability of the present appellants

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towards the present incident. It was stated by complainant Khadim Hussain that on 10.05.2009, when he, Allah Dino, Abdul Rehman, Ali Hassan, Abdul Raheem and Muhammad Siddiq went to load their vehicle with banana fruit at the garden of Muhammad Usman, there at about 09.30 P.M, came fifteen culprits, duly armed with weapons. They overpowered him and others. They were identified by them to be Gul Hassan, 2).Turab, 3).Muhammad Ibrahim, 4). Mubeen, 5).Niaz, 6).Muharram, 7).Attoo, 8).Ali Hassan, 9).Wali Muhammad, 10).Qurban and 11).Bahadur and for rest of the culprits it was stated by the complainant that he does not remember their names. Non-disclosure of names of rest of the culprits by the complainant under the pretext that he does not remember their names could not be ignored, which smells of something wrong. It was further stated by the complainant that the said culprits were identified by him and others under the light of vehicle. The identity of the culprits at night time under the light of vehicle is appearing to be weak piece of evidence. Significantly that vehicle was not produced by the complainant at trial. It was further stated by the complainant that the said dacoits overpowered him and others and then abducted him, Ali Hassan, Muhammad Siddiq, Abdul Raheem, Allah Dino and Abdul Rehman and after covering some distance, they let him, Allah Dino and Abdul Rehman to go by asking them to arrange for ransom money of rupees Thirty Lacs for the release of said abductees. By stating so, the complainant belied his FIR wherein it was stated by him that the said culprits abducted away Ali Hassan, Abdul Raheem and Muhammad Siddiq by asking him and others to arrange for ransom

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money. It was further stated by the complainant that he related the incident to his "Nekmard" Muhammad Usman, made search for the abductees. In the meanwhile they were asked by the culprits on phone to arrange for ransom money for release of the said abductees otherwise the abductees would be killed. No such phone number the complainant was able to disclose before the police or before learned trial Court. It was further stated by the complainant that on 04.06.2009, he was intimidated by SHO Hazoor Bux Narejo that the said abductees have been killed by the dacoits. On such information, according to the complainant, he and his witnesses went to Rural Health Centre, Naudero, collected the dead bodies of the said abductees and on 15.06.2009 lodged FIR of the incident with P.S, Abdul Rehman Unar, subsequent to it made further statement on 20.6.2009. Neither the FIR nor the further statement of the complainant are containing the names of appellants Piyar Ali Tunio and Allah Dino Tunio, though those were lodged and recorded with considerable delay to the incident which is spreading over a period of more than one month and two months respectively. It was admitted by the complainant that "Faisla" between him and accused Muhammad Ibrahim, Muharram, Allah Dino and Piyar Ali was held by Haji Munawar Ali Abbasi but he was not satisfied with his observation. The involvement of appellants Allah Dino and Piyar Ali in commission of the incident during course of investigation if is seen in the light of above said dispute is appearing to be doubtful one. It was also admitted by the complainant that on the next day of the incident, he and others held a protest, such news was published in daily newspaper "Kawish" dated

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12.05.2009 but it did not take disclosure of names of the accused. Had the complainant been aware of the names of the culprits then he would have disclosed the same to media person at the time when he with rest of the culprits hold a protest on account of abduction of the said abductees. Significantly, Abdul Rehman was said to be present with the complainant at the time of abduction of abductees was not examined by the prosecution. Inference which could be drawn of non examination of PW Abdul Rehman would be that he was not going to support the case of prosecution. Next evidence is that of PW Allah Dino. It was stated by PW Allah Dino that the culprits in all were fifteen in number. By stating so he disclosed their names with addition of names of appellants Allah Dino and Piyar Ali. It was further stated by him that the culprits abducted away the said abductees by asking the complainant and others to arrange for ransom money for release of the said abductees. By stating so, he has belied the complainant that he and others were also taken away by the culprits at the time of abduction of said abductees and after covering some distance were let go by the culprits to arrange for ransom money for release of the said abductees. The omissions and inconsistencies between the evidence of the complainant and PW Allah Dino as are pointed above, if are judged in the light of unexplained and un-plausible delay in lodging of the FIR, then those made the evidence of complainant and PW Allah Dino to be untrustworthy.

11. Next evidence is that of SIO/SIP Ghous Bux, it was stated by him that on 15.06.2009, the FIR of the present case was handed over to him.

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Significantly, he visited the place of incident on 16.06.2009, and prepared such mashirnama in presence of mashir Muhammad Akram. The preparation of mashirnama of place of incident with delay of one day even to FIR could not be lost sight of. It was further stated by SIO/SIP Ghous Bux that he then recorded 161 Cr.PC statements of the witnesses. It was admitted by him that 161 Cr.PC statements of the witnesses were recorded by "Munshi". That Munshi the prosecution was not able to examine. His non-examination has deprived the appellants of their valuable right of defense at trial. In such circumstances, it could not be concluded safely that whatever the investigation was conducted by SIO/SIP Ghous Bux was fair. Next evidence is that of SIO/SIP Abdul Hameed. His evidence is only to the extent that he recorded FIR of present case. His evidence if is believed to be true even then it is not enough to improve the case of prosecution.

12. Next evidence is that of SIO/SIP Imam Bux, it was stated by him that on 14.06.2009, he and his police party undertook an encounter with dacoits at Sharifpur Forest, as result whereof, three dacoits were killed. It was further stated by him that he called for police party of some other police stations for help, then proceeded further, when reached at Bahini Jungle near Shahoo-Ji-Dhand, there at about 1430 hours, he found available fifteen dacoits. They were identified by him to be Mubeen Narejo, Ali Ahmed Narejo, Iqbal Narejo, Mustoo Narejo, Zamir Narejo, Master Saeed Narejo, Muradoo Narejo, Irshad Narejo, Nazeer Narejo, Ubed Narejo, Deeno Muree, Wahidoo Muree and two unknown culprits, there according to him were found tied with

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trees three person(s). It was further stated by him that he asked the dacoits to release the said person(s) and surrender before the police, but they failed to do it, encounter took place, as result whereof dacoits Mubeen Narejo and Muradoo Narejo according to him fired and killed the said persons (abductees) and then made their escape good by taking advantage of jungle. It was further stated by him that he then prepared mashirnama of examination of dead bodies, dispatched the dead bodies of the abductees to Rural Health Centre at Naudero, then lodged an FIR at P.S Ketu Mumtaz, for the above said incident. On cross examination, it was stated by SIO/SIP Imam Bux that accused Piyaar Ali, Muharram Ali, Muhammad Ibrahim, Allah Dino and Muhammad Mithal present in Court are not same. By stating so, he made involvement of at least the accused present in the court to be doubtful one.

13. 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 present appellants beyond shadow of doubt.

14. The plea of innocence which the appellants taken before learned trial Court at trial and during course of their examination under section 342 Cr.PC ought not to have been lost sight of.

Result

15. In view of the facts and reasons, discussed above, the conviction and sentence which are recorded against the appellants by way of impugned judgment cannot be sustained, it is set-aside. Consequently, the appellants are

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acquitted of the offence, for which they were charged, tried and convicted and sentenced by learned trial Court. They shall be released forthwith in the present case.

16. Both the appeals are disposed of in above terms.

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