

IN THE HIGH COURT OF SINDH AT KARACHI

Special Anti-Terrorism Jail Appeal No.23 of 2012

Present:

Mr. Justice Mohammad Karim Khan Agha
Mr. Justice Zulfiqar Ali Sangi,

Appellants 1. Suleman Shah @ Sunny s/o Zahoor Ahmed
2. Naveed Khan s/o Muhammad Anwar.
through Mr. Ahtesham Ullah Khan, Advocate.

Respondent The State through Mr. Saleem Akhtar Buriro,
Additional Prosecutor General Sindh.

Criminal Revision No.34 of 2012.

Appellant The State through Mr. Saleem Akhtar Buriro,
Additional Prosecutor General Sindh.

Respondents Through Mr. Ahtesham Ullah Khan, Advocate.

Date of hearing: **06.04.2020.**

Date of Announcement: **27.04.2020.**

J U D G M E N T

Zulfiqar Ali Sangi, J:- Accused Suleman Shah @ Sunny son of Zahoor Ahmed and Naveed Khan son of Muhammad Anwar were tried by learned Judge, Anti-Terrorism Court No.I, Karachi, in Special Case No.80/2009 arising out of Crime No.96/2009 u/s. 365-A/302/34 PPC r/w Section 7(a) (e) of ATA, 1997, registered at PS Gulbahar (AVCC) Karachi. After trial vide judgment dated 28.08.2012 the appellants named above were convicted and sentenced as under:-

- 1. Convicted accused namely Suleman Shah @ sunny s/o Zahoor Ahmed and Naveed Khan s/o Muhammad Anwar and sentenced them to suffer "Imprisonment for life" and it was ordered for forfeiture of their property.*
- 2. Convicted accused namely Suleman Shah @ sunny s/o Zahoor Ahmed and Naveed Khan s/o Muhammad Anwar and sentenced them to suffer "Imprisonment for life" with fine of Rs.2,00,000/- each for the offence punishable under section 7(a) of Anti-Terrorism Act, 1997 r/w section 302 PPC. In case of default of payment of*

fine, they shall suffer R.I. for 2 years more. Both the sentences awarded to the accused shall run concurrently. The benefit of Section 382-B of Cr.P.C. has also been given to the appellants.

2. Being aggrieved and dissatisfied by the judgment passed by learned Judge, Anti-Terrorism Court No.I, Karachi, the aforesaid appeals have been preferred by the appellants against their convictions.

3. The brief facts of the prosecution case are that on 07.09.2009 at 1450 hours, complainant Muhammad Saleem son of Muhammad Sharif lodged FIR No.96/2009, u/s 343/346/34 PPC at Police Station Gulbahar, Karachi, stating therein that he resided on the address mentioned in column No.2 along with his family. He was doing his own business. On 02.09.2009 early in the morning at 9.00 a.m. his younger brother Muhammad Naeem son of Muhammad Sharif aged about 59/60 years, whitish colour, height 5.6”, left his Flat No.A-8, Firdous Colony, Gulbahar, Karachi, for the work and did not return to his house. The complainant had filed a report at the police station Gulbahar concerning his missing brother. He was searching for his brother but could not succeed in finding him. On 04.09.2009 the complainant received a phone call on his mobile phone No.0333-2362069 at 10.00 p.m. from PTCL No.8411613 and the caller informed him that his brother had received injuries by their vehicle and they were providing treatment to him at their house due to fear of their arrest. On 06.09.2009 at about 5.30 p.m he received the call on his mobile phone from PTCL No.7817047 that they would leave his brother in Gulbahar near his house but his brother could not reach at the house. He had suspected that his brother Naeem son of Muhammad Sharif after the accident by the accused had been put in illegal confinement.

4. After registration of FIR, the investigation of the case was entrusted to SIO of Police Station Gulbahar, Karachi. During the investigation, on 09.09.2009, the accused demanded a ransom amount of Rs.50,00,000/- from the complainant, as such investigation was

transferred to AVCC Garden Karachi, and the same was entrusted to Inspector Muhammad Baber who conducted the investigation and arrested present accused on respective dates.

5. After completion of the investigation and all the formalities, the I.O. submitted the charge sheet before the trial court. Thereafter formal charge was framed and read over to the accused persons to which they pleaded not guilty and claimed to be tried.

6. To prove its case the prosecution examined 11 prosecution witnesses and thereafter the side of the prosecution was closed. Statements of the accused persons were recorded u/s 342 Cr.P.C in which they denied all the allegations leveled against them and pleaded to be innocent.

7. The facts of the case as well as evidence produced before the trial court find an elaborate mention in the judgment dated 28.08.2012 passed by the trial court and, therefore, the same may not be reproduced here so as to avoid duplication and unnecessary repetition.

8. Mr. Ahtesham Ullah Khan learned counsel for the appellants has contended that the appellants are innocent and have been implicated falsely; that there is a delay of 05 days in the registration of FIR and same has not been explained by the complainant; that there is no direct evidence against the appellants that they have committed the offence; that no one saw the appellants kidnapping or murdering the deceased Muhammad Naeem; that no weapon was recovered from the appellants; that no identification parade was held; that proceedings of recovery of the dead body on the pointation of the appellants was joint and doubtful; that recovery of an iron rod is also doubtful; that the prosecution has not proved the case against the appellants beyond a reasonable doubt and as such for any of the above reasons he should be acquitted by extending to him the benefit of the doubt.

9. Khawja Naveed Ahmed learned counsel for the complainant has fully supported the impugned judgment and contended that the prosecution has proved the case against the appellant beyond a reasonable doubt; that no major contradictions were pointed out by the defence counsel in the evidence of the prosecution witnesses; that the dead body was recovered on the pointation of the appellants; that iron rod which was used for murdering the deceased was recovered on the pointation of the appellants; that the case of prosecution based upon the circumstantial evidence supported by the other material including the recovery of the dead body on the pointation of the appellants. He prayed that the appeal filed by the appellants may be dismissed.

10. On the other hand, Mr. Saleem Akhtar Buriro, learned Additional Prosecutor General after going through the evidence read out by the defence counsel contended that the prosecution has proved its case against the appellants beyond a reasonable doubt; that no major contradictions were pointed out by the defence counsel and he vehemently supported the impugned judgment of the trial court and prayed that the appeals filed by the appellants may be dismissed and he prayed for enhancement of the sentence.

11. We have heard the arguments of the learned counsel for the parties, gone through the entire evidence which has been read out by the appellant, the impugned judgment with their able assistance and have considered the relevant law.

12. On our reassessment of evidence, we have found that the prosecution has failed to prove the case against the appellants beyond a reasonable doubt. We do not find any evidence against the appellants in respect of kidnapping and murdering the deceased Muhammad Naeem.

13. Neither of the appellants was nominated in the FIR nor was any allegation leveled against them as there was no eye witness of the incident of the kidnapping or murdering the deceased. Thus there is no

direct ocular evidence against them. There is also no chain of circumstantial evidence which can connect the appellants with the commission of the offence.

14. No Sims used for the demand of ransom as alleged by the prosecution was recovered from the possession of the appellants and based only on the recovery of mobile set alleging that the Sims used for the demand of ransom were used in the said mobile set cannot link the appellants to the offence.

15. The recovery of the dead body on the pointation of the appellants is also doubtful for the reason that the witnesses of the recovery have given contradictory evidence before the trial court. The complainant deposed in his examination-in-chief that on 04 November 2009 he came to know that accused Suleman Shah and Naveed were arrested by the police for investigation, he further deposed that on 06-11-2009 he went to Inspector Babar along with Sultan and other relatives and they proceeded toward Badshahi Road from AVCC, police officials were on two mobiles, one accused got down from the mobile and led the police towards the place inside the Soap Factory of deceased where he pointed out the drum which was lying surrounded by the empty boxes. Thereafter other accused Suleman Shah @ Sunny got down from the police mobile and he voluntarily led the police party to the soap factory of deceased and also pointed out the drum. Police removed the boxes and recovered one drum, the head of the drum was covered with plastic sheets when the drum was open immediately a bad smell spread over there and thereafter I.O Babar gave the masks to 10 or 12 people and he also sprayed perfume. During cross-examination, he admitted that the dead body of his brother was recovered after two months and four days. **PW-4** Sultan gave contradictory version in respect of the recovery of the dead body and deposed that on 06-11-2009 he went to the house of complainant Saleem who informed him that the dead body of his

brother will be recovered and asked him to accompany him to that place as such he went with the complainant to the factory of his brother where there one accused came in the police vehicle and he got down from that vehicle and pointed out that wooden boxes are lying near the wall of the factory. He informed that there is a drum under the boxes and the dead body is lying in that drum. He further deposed that after 15 minutes another accused came in another police vehicle there. The accused was handcuffed and his face was muffled and he also disclosed that where 100 or 150 boxes are lying and one drum is under these boxes where there is the dead body of deceased. **PW-6** an **independent person** who works with Edhi Welfare has given another version and stated about only one accused who pointed out the dead body. He deposed in his examination-in-chief that on 06-11-2009 he was performing his duties in Edhi Trust as Volunteer/EMS Manager at Civil Hospital Karachi. He was directed from his office to accompany with inspector Babar of AVCC at his office in respect of recovery of one old dead body. He along with his driver in Edhi mobile went to AVCC office along with the required material for the purpose and met with inspector Babar at AVCC office. He further deposed that after Jumma prayer he went with two police mobiles to Badshahi road in a soap factory with two vehicles and on the pointation of the accused who disclosed that there is drum under the boxes where the dead body of Seth Naeem is lying. They removed about 80/90 boxes lying on the drums and saw that one drum was covered with plastic and tied with a Dori from which they recovered the dead body. These contradictions make the pointation of the dead body doubtful and even otherwise in our view it would not be safe to convict the appellants on this sole piece of evidence.

16. The recovery of the Iron rod on the pointation of the appellant was also doubtful. According to the prosecution case the dead body was recovered on the pointation of the accused from the Soap Factory on

06-11-2009 and all the drums were taken out by the witnesses to reach the drum wherein dead body was lying and at that time the said iron rod was not recovered but the same was recovered on 15-11-2009 (11 days later) from the same place of such recovery of the dead body. This fact of not finding the iron rod and the dead body which was at the same place at the same time after an exhaustive search does not appeal to logic, reason or common sense and creates very serious doubt and suggests that it was managed and was foisted to strengthen the case of the prosecution. Even otherwise the iron rod is not blood-stained and the accused fingerprints were not on the iron rod.

17. Once again the complainants evidence concerning the payment of the ransom amount does not appeal to reason, logic or common sense regarding the approach to accused persons at different places and at different times continuing for about two months and is simply not believable.

18. We also note from the medical evidence that a number of injuries were caused by incised wounds as opposed to blows which indicates the use of a knife yet only an iron rod was recovered.

19. Furthermore, the details of those numbers of the PCOs used for the demand of ransom are not investigated nor brought before the trial court at the time of recording the evidence of the witnesses. The complainant though admitted during his cross-examination that he was receiving the calls of accused from different PCOs on his mobile phone but he did not disclose a single number of any of the PCOs where from the accused called and demanded ransom.

20. Besides the above material contradiction, we found several others but deem it not necessary to discuss the same here while following the settled principle of law that for giving the benefit of the doubt there does not need to be many circumstances creating doubts. If there is a single

circumstance which creates reasonable doubt in a prudent mind about the guilt of the accused then the accused will be entitled to the benefit not as a matter of grace and concession but as a matter of right as has been held by the Honourable Supreme Court of Pakistan in case of **Tariq Pervez v. The State (1995 SCMR 1345)**.

21. Based on the above discussion and our reassessment of the evidence on record we are of the view that the prosecution has failed to prove its case against the appellants beyond any reasonable doubt and therefore, we allow the instant appeal and set aside the conviction and sentences awarded by the trial court vide judgment dated 28-08-2012 and acquit the appellants of the charge by extending to them the benefit of the doubt and they shall be released forthwith unless wanted in any other custody case.

22. As regards to the Criminal Revision No.D- 34 of 2012, Since we have acquitted the appellants from all the charges therefore the same is dismissed being infructuous.

23. The Appeals and Criminal Revision Application are disposed of in the above terms.

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