

THE HIGH COURT OF SINDH AT KARACHI

Special Criminal Anti-Terrorism Appeal No.317 of 2018

Present: *Mr. Justice Nazar Akbar*
Mr. Justice Zulfiqar Ahmad Khan

Appellant: Muhammad Imran son of Muhammad Ismail
through Mr. Muhammad Nizar Tanoli, Advocate

Respondent: The State through Ms. Seema Zaidi, Deputy
Prosecutor General Sindh.

Date of Hearing : 07.12.2020

J U D G M E N T

NAZAR AKBAR, J.--- Appellant Muhammad Imran has preferred instant appeal against judgment dated 16.10.2018 passed by learned Judge, Anti-Terrorism Court-VIII, Karachi, whereby he convicted the appellant under section 7(1)(e) of the Anti-Terrorism Act, 1997 read with section 365-A, PPC, and sentence him to imprisonment for life; his property was also ordered to be forfeited. Benefit of Section 382-B, Cr.PC was however extended to him.

2. The appellant was challaned and sent up for trial in case F.I.R. No.521/2017 dated 17.12.2017, registered at P.S. Kharadar under section 365-A, PPC. The charge was framed against the appellant on 08.03.2018 under section 365-A/34, PPC to which the appellant pleaded not guilty and the prosecution was directed to produce its evidence. The prosecution produced 8 witnesses in support of its version. P.W.1 Rizwan Akhtar, who is the victim/complainant, PW.2 Junaid Akhtar, is brother of the victim, PW.3 SIP Riaz Ahmed, who recorded FIR, PW.4 Arfat, shopkeeper, PW.5 HC Ghous Bux of AVCC, PW.6 Muhammad Faheem owner of easypaisa shop, PW.7 ASI Waseem Ellahi of AVCC, PW-8 SIP/PI Ghulam Mustafa, investigating officer. Thereafter, side of prosecution was close vide statement dated 28.09.2018 at Ex.33.

3. After concluding the prosecution evidence, appellant was examined under section 342, Cr.PC, who denied the prosecution allegations and claimed his false implication in this case. In reply to a question, why the PWs have deposed against him, he replied that no PW has deposed against him, except complainant, who identified him under the pressure of IO, although he had not identified him in AVCC. Appellant neither examined himself on oath nor led any evidence in his defence.

4. The learned trial Court after hearing the arguments of learned counsel for the parties and assessment of evidence, passed the judgment dated 16.10.2018 and convicted and sentenced the appellant as statement above.

5. Feeling aggrieved of his conviction the appellant has assailed the judgment dated 16.10.2018 on the grounds that the story concocted by the complainant and his brother PW.2, without any corroboration, was quite unnatural and unbelievable; appellant was arrested by PW.7 Waseem Ellahi of AVCC, for offence u/s 23(1)(a) of the Sindh Arms Act, 2013, however, he found him involved in the present case but no identification parade was held before any Magistrate although he remained in police custody from 20.12.2017 to 03.01.2018; despite issuance of notice u/s 160, Cr.PC, the complainant did not appear before the IO, who at the first time identified him during trial, such identification is always disbelieved by the superior Courts. He further argued that complainant at the first instance contracted his employer, namely, Aijaz Klawar but the prosecution failed to examine him at trial. He also argued that Cell No.03337189199, allegedly used in commission of offence, belongs to one Saeed Akhter Meher, but the said person has not been examined by the prosecution. It has also been argued that the complainant was abducted on motorcycle bearing registration

No.KGM-8066, registered in the name of one Naseeruddin, who was also not been examined by the prosecution in order to unearth whether at the relevant time said motorcycle was in the use of the appellant; rickshaw driver to whom complainant remain calling was also not brought before the court; memo of pointation of place of payment bears date 05.01.2018 with overwriting, which creates doubt about its authenticity and makes the prosecution case doubtful. Lastly argued that the appellant has been acquitted in Case No.98/2017 registered at P.S. AVCC Karachi for offence under section 23(1)(a) of the Sindh Arms Act, 2013, in which he was initially arrested and later falsely involved in this case. In support of his contention, learned counsel for appellant placed on record certified copy of judgment dated 11.08.2020 passed in the above case.

6. Learned DPG has vehemently opposed the appeal and argued that in the light of evidence on the record the prosecution has successfully proved its case regarding abduction of complainant Rizwan Akhtar for the purpose of ransom, which was duly paid through *Easypaisa* on Cell No.03337189199. Learned DPG while defending the judgment of conviction argued that sole statement of the abductee was enough to convict the appellant, learned trial court has rightly convicted and sentenced him and the impugned judgment warrants no interference by this Court as the same suffers from no legal infirmity.

7. We have considered the arguments advanced from both the sides and perused the entire evidence available on record.

8. The question appears to us to be based on the particular facts and circumstances of this case whether the prosecution has been able to prove beyond a reasonable doubt through the evidence on record that Muhammad

Imran kidnapped the abductee **and** demanded a ransom for his release and what role, if any, as per the evidence has played in the offense.

9. P.W.1 Rizwan Ahmed (complainant/abductee) deposed that on instructions of his employer Aijaz Kalwar, he left the office to collect some articles from rickshaw driver, which are coming from Noorani and deliver the same at Shahid Traders, he reached at the pointed place, called rickshaw driver, who advised him to come firstly at Habib Bank Plaza, then to Sindh Maddressah and later at Tower Clock, thereafter he switched off his cell number. In the meanwhile, one young person came on motorcycle No.KGM-8066, black colour, Supper Power, called his name 'Rizwan Bhai' and asked him what are you doing here, he let him know for the purpose of his being there. The said person took his mobile phone and talked to rickshaw driver, thereafter, he forcibly made him to sit on motorcycle and took him towards Jubilee streets and at a *Kholi*/hut, said person made a phone call from his aforesaid cell number to Aijaz's cell No.0333-3638646 and inquired, "*Why haven't you got the card prepared for your employee? He has no identity! You come to P.S Preedy, we'll talk there.*" He kept roaming in different streets and kept talking to Aijaz, he also talked to his brother Junaid Akhtar on his Cell No.0333-3565441, and demanded rupees Rs.30,000/-, asked him to send money through Easy Paisa, then he demanded Rs.40,000/- through Easy Paisa and threatened to cut his fingers. Junaid Akhtar sent Rs.30,000/- through Mobicash and Rs.10,000/- through Easy Paisa. He then took him to Machar Colony on motorcycle and set him free at 07:30 p.m., after receiving the money. He reached at G-Allana Road Nakhuda Masjid by a Rickshaw where his motorcycle was parked. Thereafter, he went his office at Clifton, which was closed, then he reached at his cousin's house at Garden where his family members were present. He accompanied with his brother and arrived

at PS to report regarding afore-stated offence against aforesaid unknown accused, identifiable by face. We are surprised to note that, according to his statement, he was forcibly made to sit on motorcycle by an unknown person in daytime by the accused, who driven the motorcycle for many hours on thoroughfare roads/streets, allegedly went to the *Easipaisa* shops twice, received the amount allegedly sent by his brother on his CNIC through *Easipaisa* as ransom, during such a long journey, despite availability of thousands of people, the complainant never resisted or informed anyone with regard to his abduction by a single young aged accused, while sitting behind the accused on the motorcycle, nor did he signal any police personnel or traffic sergeants freely deployed at every road of the city.

10. Perusal of contents of FIR reveals that complainant/victim had not identity card at the time of alleged abduction whereas PW-2 Juanid Akhtar deposed that he sent the ransom through *easy paisa / modi-cash* on the CNIC of Rizwan Akhtar, who also deposed that accused had given CNIC and phone number of complainant, who received the said amount after biometric system. PW-2 deposed that the caller informed him that his brother's employer Aijaz had taken Rs.30,000/- from him, unless the said amount is paid, Rizwan would not be released, whereas, deposition of PW.1 as well as FIR are silent with regard to such statement of PW.2. Perusal of memo of inspection of place of incident shows overwriting whereby date of inspection i.e. 05.01.2018 has been changed to 16.01.2018.

11. Prosecution had failed to examine Aijaz Kalwar, on whose instructions PW.1 left the office, contacted rickshaw driver, whose number was statedly given to PW1 by Aijaz, in order to take the articles and to deliver the same at Shahid Traders. Despite having registration number and

rickshaw owner/driver's phone number with the complainant as well as his employer Aijaz, no effort was made by the investigating officer to locate the rickshaw driver to whom the complainant called several time on his mobile phone before the alleged incident occurred, to examine and to produce him at trial. Admittedly, no identification parade of the accused was held before any Judicial Magistrate. PW-4 Arfat, owner of Arfat communication, from where alleged amount was received by the complainant himself as ransom and allegedly delivered the same to the appellant, did not identify the appellant before the trial court, who deposed that, *"It will be difficult for me to identify the accused present in Court and to say with conformity that he has come to my shop or not, as I deal with several customers in a day."*

12. During scrutiny of prosecution evidence we have noted that neither Saeed Akhtar Mahar, in whose name Sim No.03337189199 was issued, which had allegedly been used in the instant crime, was examined nor prosecution examined had examined Naseeruddin who is owner of motorcycle bearing registration No.KGM-8066, which allegedly been used by the appellant while abducting the complainant. Failure on the part of the prosecution to examine Saeed Ahmed Mahar, Naseeruddin, Aijaz Kalwar and Richshaw Driver also causes dent in the prosecution case.

13. Furthermore, if someone is kidnapped there is usually a motive for such kidnapping. In cases of kidnapping for ransom the motive is the ransom money. In this case, however, there seems to be very little evidence that any ransom demand was in fact made. The only evidence on this aspect of the case is the uncorroborated account of the abductee whose evidence in the light of not identifying by PW-4, Arfat, as discussed above, is now in our view to a certain extent in doubt. Thus, in our view there is hardly any

evidence to show that demand of ransom was made let alone by whom. Apart from the ransom money no other motive has been shown as to why appellant or any of the other accused may want to kidnap the complainant.

14. With regard to the kidnapping let alone the ransom aspect we are acutely aware that it is a well settled principle of criminal law that it is for the prosecution to prove its case against the accused beyond a shadow of doubt and if there is any doubt in the prosecution's case the benefit of such doubt, as set out in the case of **Tariq Pervez v. The State** (1995 SCMR 1345) must go to the appellant as of right as opposed to concession. However in considering this aspect of the case we are also guided by the case of **Faheem Ahmed Farooqui V State** (2008 SCMR 1572) where it was held as under at P.1576:

"It needs no reiteration that for the purpose of giving benefit of doubt to an accused person, more than one infirmity is not required, a single infirmity creating reasonable doubt in the mind of a reasonable and prudent mind regarding the truth of the charge makes the whole case doubtful. Merely because the burden is on the accused to prove his innocence it does not absolve the prosecution from its duty to prove its case against the accused beyond any shadow of doubt."

15. In this case for the reasons discussed above primarily being the failure of the prosecution to examine the employer of complainant, namely, Aijaz, owner of Sim No.0333718199, namely, Saeed Akhtar Mahar and owner of motorcycle KGM-8066, namely, Naseeruddin as well as rickshaw driver who asked the complainant at three different places, comes in the definition of hearsay evidence, which fact has been ignored by the trial court and had not appreciated the same while evaluating the prosecution evidence. We are of the view that when the evidence is read and considered in totality there would be a reasonable doubt in a reasonable and prudent person's mind that appellant Muhammad Imran was not guilty of the offense of

kidnapping let alone kidnapping for ransom for which he has been convicted by the trial court.

16. We have also noted that appellant Muhammad Imran son of Muhammad Ismail, who was also booked in Crime No.98 of 2017, registered at P.S. AVCC/CIA Kalri, Karachi for offence under section 23(1)(a) of the Sindh Arms Act, 2013, and was later arrested in the instant crime, after facing trial in Sessions Case No.280/2018, arising out of foresaid FIR, was acquitted of the charge by extending the benefit of doubt.

17. In the light of the above discussion, we have reached an irresistible conclusion that the prosecution has miserably failed to prove its case beyond any shadow of doubt against the appellant and the conviction recorded by the trial Court through the impugned judgment is not sustainable in the eye of law. The prosecution case, was full of material discrepancies and fatal contradictions so keeping in view the facts and circumstances of the case the instant appeal is allowed, the impugned judgment dated **16.10.2018**, passed by learned Judge, Anti-Terrorism Court-VIII, Karachi in Special Case No.5/2018, arising out of FIR No.521/2017, registered at P.S. Kharadar, Karachi for offence under sections 365-A/34, PPC read with section 7 of the Anti-Terrorism Act, 1997 is set aside and appellant Muhammad Imran son of Muhammad Ismail is acquitted of the charge, he shall be released forth, if not required in some other custody case.

18. These are the reasons for our short order dated **07.12.2020**.

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Karachi, dated
Dec. , 2020

Gulsher/PS