

# THE HIGH COURT OF SINDH AT KARACHI

Special Criminal Anti-Terrorism Jail Appeal No.86 of 2019

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

Appellant: Nadir Khan son of Abdul Ghafoor through  
Mr. Fawad Ali Khichi, Advocate

Respondent: The State through Mr. Hussain Bux Baloch,  
Additional Prosecutor General Sindh.

Date of Hearing : 16.12.2020

## JUDGMENT

NAZAR AKBAR, J.--- Appellant Nadir Khan son of Abdul Ghafoor along with Anwar Ali son of Mehmood Ali and Usman Ali son of Mehmood Ali, were tried by learned Judge, Anti-Terrorism Court-XVIII, Karachi in Special Case No.697/2018 and 697-A/2018, arising out of FIRs Nos.146 and 147 of 2018, registered at P.S. SITE-A, Karachi, for offences under section 365-A, PPC read with section 7(e) of the Anti-Terrorism Act, 1997 and section 23(1)(a) of the Sindh Arms Act, 2013. On conclusion of trial, vide judgment dated 27.02.2019, learned trial court acquitted co-accused Anwar Ali and Usman Ali, whereas, the present appellant was convicted under section 365-A, Cr.PC read with Section 7(e) of the Anti-Terrorism Act, 1997 and sentenced him to **imprisonment for life** and also ordered for forfeiture of his property. Appellant was also convicted under section 23(1)(a) of the Sindh Arms Act, 2013 and sentenced to R.I. for seven years with fine of Rs.5000/-, in default whereof, he shall further undergo S.I. for three months. All the sentences were ordered to run concurrently, benefit of section 382-B, Cr.PC was extended to accused.

2. Facts of the prosecution case as disclosed in the FIR are that on **02.05.2018** at about 1515 hours complainant Muhammad Zahid lodged FIR No.146/2018 at Police Station SITE-A, stating therein that he alongwith his brother resides in same house and deals in the business of catering. On 02.05.2018 at about 07:00 am, his nephew Suleman son of Rahmat Ali went to purchase milk but he did not return back. Complainant party started search of the boy but found no clue. It was about 01:45 pm, when complainant received message from mobile phone No.0311-2249325 on his cell No.0345-806575, wherein the caller sent text message to him that his nephew is in his captivity, who demanded ransom Rs.100,000/-for his release, to be delivered at Habib Chowrangi SITE Karachi. In the meanwhile, complainant received phone call from the kidnaper, who demanded ransom Rs.100,000/- for release of abductee. Complainant came to know that caller was his distant relative Nadir son of Abdul Ghafoor, who was a drug addict and already received *Bhatta* twice from him. Complainant proceeded towards Habib Chowrangi with his brother Rahmat Ali, in the meanwhile, he called "15 Madadgar" for help. Subsequently, they reached near Habib Chowrangi where mobile officer ASI Muhammad Shahid came who had already contacted with the complainant through phone. Complainant narrated the facts to the mobile officer, thereafter he took complainant and his brother Rehmant Ali to the pointed place, where ASI Muhammad Shahid arrested Nadir and rescued his nephew Suleman from his captivity. ASI took personal search of accused and recovered one 30 bore pistol loaded with four live bullets. From his further personal search one mobile phone of Telego was recovered. Accused failed to produce license of recovered arms and ammunition, therefore, memo of arrest and recovery was prepared at the spot. The pistol and bullets were sealed. Thereafter accused, abductee

and recovered arm and ammunitions were brought to Police Station SITE-A Karachi where complainant lodged the FIR of main case against the accused, while ASI Muhammad Shahid lodged separate FIR bearing FIR No.147/2018 under section 23(1)(a) of the Sindh Arms Act, 2013 being offshoot case for keeping illegal possession of arms and ammunitions.

3. After usual investigation, challan was submitted against the accused under sections 365-A, PPC and Section 23(1)(a) of Sindh Arms Act, 2013. Both the cases were amalgamated by the trial court under section 21-M of the Anti-Terrorism Act, 1997 vide its order dated 08.08.2018.

4. Trial court framed joint charge against accused persons at Ex.4, to which the accused pleaded not guilty and claimed to be tried.

5. In order to prove its case, prosecution examined 6 witnesses. PW.1 Muhammad Zahid at Ex.7, PW.2 Rahmat Ali at Ex.8, PW.3 Suleman at Ex.9, PW.4 ASI Muhammad Shahid at Ex.10, PW.5 Inspector Nazar Abbas at Ex.11, PW.6 Inspector Akhtar Aziz at Ex.12. Thereafter, prosecution side was closed vide statement at Ex.13.

6. Statements of accused were recorded under Section 342 Cr.PC at Ex.14, 15 and 16, wherein they denied the prosecution allegations and claimed their innocence. Accused Nadir further stated in his statement that, *"Sir, abductee is my relative, therefore, he deposed falsely against me at the instance of his parents. I have no cell phone. My CNIC was lost, therefore, may be someone got issued SIM card in my name and used it, hence, entire prosecution case is false. Complainant and private PWs are my relatives, therefore, they falsely deposed against me, there appears a dispute over matrimonial affairs, hence, they deposed against me. I am innocent and falsely implicated by complainant in this case. I am*

*also disturbed as to why a false story was concocted by complainant against me. I never abducted the child, nor demanded any ransom for his release. The abductee was never recovered from my captivity but complainant party given illegal gratification to police, therefore, with their collusion I was implicated in these cases. The pistol was foisted upon me, hence not recovered from my possession. I pray for justice."*

7. After hearing the learned counsel for the parties and assessment of evidence, vide judgment dated **27.02.2019** trial court acquitted co-accused Usman Ali and Anwar Ali by holding that prosecution failed to establish its case against them, whereas convicted and sentenced the present appellant as stated above.

8. Learned counsel for appellant, at the very outset argued that the police has falsely implicated the appellant in the instant case for mala fide reasons; the conviction is based on presumption as, while passing the impugned judgment, learned trial court did not consider the actual facts and circumstances of the case; learned trial court did not evaluate the prosecution evidence in its true perspective and has chosen only the parts of evidence favourable to the prosecution; complainant party and the present appellants are relatives and at their instance the police has falsely implicated the appellant in the instant case with ulterior motives. Lastly, it has been argued that prosecution has failed to prove its case against the appellant beyond any showed of doubt, as such, prayed for acquittal of the accused.

9. Learned Deputy Prosecutor General Sindh sought for dismissal of instant appeals by contending that the kidnappee was released from the captivity of the appellant, arms and ammunitions were recovered from his

possession, therefore, prosecution has proved its case against the appellant beyond any shadow of doubt. He fully supported the impugned judgment.

10. We have carefully heard learned counsel for the parties and examined the prosecution evidence minutely.

11. PW.1 Muhammad Zahid had deposed that on 02.05.2018 at 07:00 a.m., son of his brother Rahmat Ali, namely, Saleman, aged about 13 years went to nearby market in order to purchase milk, however, he did not return, therefore, his mother went to the shop at about 08:00 am and disclosed about missing Suleman. Search was started for the missing child but no clue was found. It was about **01:45 pm**, he received a message on his cell phone No.0345-8006575 from cell No.0311-2249325, whereby kidnapper demanded ransom Rs.100,000/-, to be delivered at Habib Chowrangi SITE area Karachi, for the release of Suleman and stated that he has kidnapped him. Kidnapper again called from the same cell phone number to him and directed him to comply with the direction for payment of ransom, otherwise abductee would be killed. Thereafter, he arranged ransom Rs.100,000/- and proceeded towards the pointed place for handing over the ransom for the release of his nephew. While proceeding towards pointed place, he called 15 police emergency number and narrated the entire incident to police. His brother Rahmat Ali also accompanied him. He along with his brother was standing at Habib Chowrangi Karachi SITE. In the meanwhile, police mobile of "15" headed by ASI Shahid came there, who had already contacted with him on the phone. Police party proceeded ahead and hide themselves as such, he along with his brother were standing on the road, when he saw abductee Suleman standing along with accused Nadir Khan. He along with Rahmat Ali at once proceeded towards the kidnapper and abductee, where

they kept kidnapper busy. In the meanwhile, police party headed by ASI Shahid encircled them and subsequently accused Nadir in his presence rescued abductee Salemam from his captivity. In his presence ASI Shahid conducted personal search of accused Nadir and recovered one unlicensed pistol loaded with four bullets in its magazine. Besides pistol one Telegon cell phone was also recovered from his possession. ASI Shahid took in possession all the above things and prepared memo of arrest and recovery at the spot, which was read over to him, hence he and his brother Rahmat Ali acted as mashir to such memo, Ex.7/A. The pistol with bullets was sealed at spot. Accused along with recovered property and abductee were brought to Police Station SITE, where he narrated the incident to police officer who lodged FIR on my narration and obtained my signature on it. On same day at about **2300 hours** he along with IO Inspector Nazar Abbas and Ameen Dad proceeded to the place of incident. On his pointation IO visited the place of recovery and prepared such memo to which he and Ameen Dad acted as mashir. After release, abductee disclosed to them as well as police that he was kidnapped by accused from Haider Chali near their house. He further told that after kidnapping he was shifted to unknown place and subsequently brought at Habib Chowrangi. Inspector Akhtar Aziz of CIA Police visited the place of abduction on **30.05.2018** at about 1300 hours, where he prepared such memo, Ex.7/D, he as well as Rahmat Ali acted as mashirs. On **22.06.2018**, IO Akhtar Aziz arrested accused Anwar Ali and Usman Ali from their house situated at Qasba. Such memo of arrest, Ex.7/E, was prepared to which he and Ameen Dad acted as mashirs. In his cross-examination he stated that, *"It is correct that from 08:00 am to 02:30 pm, I did not inform the police about the incident. I was going to pay the ransom amount at Habib Chowrangi I called "15" from way. It is correct*

*that I had not recognized the voice of caller. It is incorrect to suggest that police reached after our arrival at Habib Chowrangi. It is correct that place of abduction is a thickly populated area. I am illiterate, therefore, cannot read and write. It is incorrect to suggest that no private witness was called by IO to associate as mashir of site Inspection of recovery. Vol. says that one Ameen Dad acted as private mashir. It is correct that accused Nadir is my relative. **It is correct that accused Anwar and Usman have nexus and connectivity with the abduction of Suleman or demanding of ransom from me. It is correct that both the accused Anwar and Usman are brothers-in-law of accused Nadir.***"

12. PW.2 Rahmat Ali in his deposition had narrated the same story as stated by PW.1. In his cross-examination he stated that, *"I do not remember that who read out the text message sent by accused to complainant on the day of incident for ransom. We were going by foot towards the pointed place Habib Chowrangi when police party reached, hence we boarded in police mobile and proceeded ahead. I do not know that why police involved accused Anwar and Usman in this case, however, I think that there is no connectivity of both accused with the commission of kidnapping of my son."*

13. PW.3 Suleman (Abductee) had deposed that incident took place 7/8 months back. Early in the morning at about 06:30 or 07:00 am, his mother gave him Rs.100/- for purchase of milk from nearby shop. He was going towards the milk shop, suddenly accused Nadir came, who **kidnapped and blind folded him. Accused Nadir was alone, who brought him to Habib Chowrangi by foot**, which later on he came to know about the name of that place. **He made no cry because accused fixed a cloth around his mouth.** At noon time, his father and uncle Zahid came at Habib Chowrangi where one police mobile also came. Police got released him from the captivity of

accused at Habib Chowrangi. Accused Nadir was already known to him as their relative. Accused called his uncle on phone and demanded ransom of Rs.100,000/- for his release, and in case of nonpayment of ransom he threatened for committing his murder. **Remaining two accused Anwar and Usman are also known to him but they were not present or accompanied with accused Nadir on the day of abduction.**

14. PW.4 ASI Muhammad Shahid deposed that on **02.05.2018** he received information from Control, whereby a number 0345-8006575 was communicated to him with the name of caller as Zahid, who informed to 15 that his nephew has been kidnapped, as such, the abductors demanded ransom for his release at Habib Chowrangi. Upon receipt of such information he contacted Zahid on above numbered cell phone, who stated him the facts of the case, therefore, it was settled that they will meet near Habib Chowrangi where reportedly kidnapper was present with the abductee. Accordingly, he along with police party arrived at the pointed place, picked complainant and went towards pointed place. Complainant proceeded towards his nephew/abductee standing with accused, as such, police party advanced and arrested the accused at the spot thereby abductee Suleman was released from captivity of accused and handed over to his uncle and father Rahmat Ali. On Inquiry, accused disclosed his name as Nadir. His personal search was conducted in presence of Muhammad Zahid and Rahmat Ali, resulting into recovery of one 30 bore pistol loaded with four live bullets. He also secured one cell phone of Telego company from his possession. On demand accused failed to produce license of recovered arms and ammunition. He sealed pistol and bullets and prepared memo of arrest and recovery at the spot and obtained signatures of Muhammad Zahid and



Rahmat Ali. Thereafter, he brought the accused, recovered property, complainant and abductee to Police Station SITE-A Karachi, where on narration of complainant FIR bearing crime No.146/2018, u/s 365 A PPC was registered. Besides above another FIR bearing crime No.147/2018 Under Section 23(1)(a) of Sindh Arms Act, 2013 registered against accused by him on behalf of State pertaining to the recovery of unlicensed pistol. After registration of FIRs, investigation was handed over to Inspector Nazar Abbas of Police Station SITE-A Karachi West who recorded his 161 Cr.PC statement as well as inspected the site on their pointation. Accused Nadir present before the court is same who was arrested by him on the relevant day on the spot **while remaining two accused are not known to him**. In his cross-examination, he stated that **“It is correct that the place of arrest of accused was a thickly populated area. It is correct that the colour of recovered cell phone is not mentioned in Ex.7/A. It is correct that I have not mentioned in memo Ex.7/A about the SIM card in cell phone. It is correct that the colour of pistol is not mentioned in memo Ex.7/A.**

15. PW.5 Inspector Nazar Abbas deposed that on 02.05.2018 investigation of Crime No.146/2016, u/s 365-A PPC along with its offshoot case bearing crime No.147/2018 under section 23(1)(a) of Sindh Arms Act, 2013 of Police Station SITE-A Karachi was entrusted to him. Later on, the cases were transferred to AVCC Karachi and further investigation was carried out by Inspector Akhtar Aziz of AVCC. In his cross-examination, he stated that, *“It is correct that PWs ASI Muhammad Shahid, Rahmatullah and Muhammad Zahid stated in their 161 Cr.PC Statements that **pistol allegedly recovered from accused was without number. It is correct that except the complainant and his brother no other private witness was called by me to act as mashir of site inspection. Vol. says that since both the private witnesses were available with***

*me therefore, I made no effort to call any private witness to act as mashir of site inspection. It is correct that accused was already arrested by ASI Muhammad Shahid, as such his custody was handed over to me for purpose of investigation."*

16. PW.6 Inspector Akhtar Aziz had deposed that he submitted charge sheet before concerned Court, however, absconder accused could not be arrested prior to submission of charge sheet, therefore, their names were placed in Column No.2 as absconders. Later on, both accused were arrested by him on **22.06.2018** at 2320 hours in presence of complainant and PW Ameen Dad, thereafter both the accused were produced before learned Administrative Judge, ATCs, Karachi Division along with supplementary charge sheet and both the accused were remanded to jail custody. In his cross-examination, he stated that, *"It is correct that I have not produced separate CDR of complainant's cell number. It is correct that I have not collected any evidence from cell number of accused Nadir to his accomplice Anwar and Usman. Vol. says that both accused Usman and Anwar had no cell phone numbers. It is correct that both accused Usman and Anwar were not produced by me before any Magistrate for recoding their confessional statement as provided under section 164 Cr.PC. It is correct that 164 Cr.PC statement of abductee could not be recorded. Vol. says that the previous IO failed to produce him before the concerned Magistrate, later on the abductee wan shifted to KPK..... Evidence against Usman and Anwar is that co-accused Nadir confessed before police about their involvement. It is correct that not a single word has been stated by Mehmood Ali in his 161 Cr.PC statement that both the accused are involved in the instant case. It is correct that ransom amount was not paid to the accused. Vol. says that only*

*accused demanded from complainant on cell phone who was arrested at the spot, hence no chance was given to him for receiving the ransom amount."*

17. Perusal of prosecution evidence reveals that the alleged victim **PW.3** Suleman, who is aged about 13 years at the relevant time, he came from Swat to record his evidence. He stated in his cross-examination that *"At present I am studying in Class III Noor-ul-Huda Academy, Swat"*. He deposed that on the day of incident at about 06:30 or 07:00 a.m when he was going to purchase milk from nearby shop, suddenly accused Nadir came, kidnapped and blindfolded him. Accused Nadir was alone, **who brought him to Habib Chowrangi by foot**. He made no cry because accused fixed a cloth around his mouth. Prosecution story as narrated apparently is totally unbelievable for the single reason that how is it possible that one can kidnap a child, aged about 13 years, from a thickly populated area in day time, blindfolding him and fix a cloth around his mouth and then took him to Habib Chowrangi, that too, by foot from where the abductee was allegedly got released. Story of recovery of abductee is very sweet, the alleged abductee Suleman was standing with accused Nadir Khan on the road when complainant and father of abductee Rahmat Ali proceeded towards the kidnapper and abductee and kept kidnapper busy. In the meanwhile, police party encircled them and got released the abductee who was standing. Can a 13 years boy be considered to be in custody while standing at bus stop and watching his father and uncle taking to him kidnapers. Prosecution case is totally unbelievable, as the accused, who allegedly kidnapped a boy of 13 years age, brought him on foot at a thoroughfare in a broad day light, to collect ransom and to hand over the abductee to his relatives and

surprisingly neither the abductee tried to run away nor did even the abductor/kidnaper resisted his arrest by the police.

18. Admittedly, the place from where the alleged abductee was recovered and accused was arrested was a thoroughfare and heavy traffic used to ply on it, but not effort was made to associate any independent witness to act as mashir of arrest and recovery. Evidence of recoveries did not inspire confidence as the witnesses attesting them being closely related to the alleged abductee were highly interested witnesses. We have also noted that no ransom was paid to the accused, demand of ransom from abductee's uncle Zahid/complainant, is a verbal assertion alone, with no forensic proof regarding conversation on the cell phone. Imprisonment for life awarded to accused could not be maintained on the highly doubtful evidence produced by the prosecution in the instant case. Prosecution's case against the accused cannot be viewed as beyond a reasonable doubt and thus his conviction cannot be maintained without potential risk or error. It is now well settled that benefit of a single circumstance, deducible from the record, intriguing upon the integrity of prosecution case, is to be extended to the accused without reservations. The case in hand is fraught with many doubts from time of alleged abduction to the recovery in the afternoon. 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), GhulamQadir 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)."

19. For the reasons discussed above, instant appeal is allowed; conviction and sentence recorded by the trial court vide judgment dated **27.02.2019** against appellant Nadir Ali son of Abdul Ghafoor are aside, he is acquitted of the charge by extending benefit of doubt. He shall be released forthwith, if they are not required in some other custody case.

20. These are the reasons for our short order dated 16.12.2020.

J U D G E

J U D G E

Karachi, dated  
January 05, 2021

*Gulsher/PS*