

IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD

Present

Mr. Justice Abdul Maalik Gaddi
Mr. Justice Khadim Hussain Tunio

Cr. Appeal No.D-237 of 2012

Master Juman Buriro

Versus

The State.

Cr. Appeal No.D-240 of 2012

Ghulam Muhammad @ Ali Raza and others

Versus

The State

Cr. Rev. A. No.D-108 of 2012

Allahyar Khan alias Haji

Versus

Ghulam Muhammad alias
Ali Raza and others

Master Juman, appellant in Cr. Appeal No.D-237/2012 and Respondent No.7 in Cr. Rev. A. No.D-108/2012	Through Mr. Waqar Ahmed Memon, Advocate
Ghulam Muhammad and 5 others, appellants in Cr. Appeal No.D-240/2012	Through M/s Wazeer Hussain Khoso and Mian Taj Muhammad Keerio, Advocates
Allahyar Khan, applicant in Cr. Rev. A. No.D-108/2012	Through Mr. Muhammad Hashim Laghari, Advocate
Ghulam Muhammad, Muhammad Siddiq, Muhammad Khan and Liaquat Ali, Respondents No.1 to 3 and 6 in Cr. Rev. A. No.D-108/2012	Through Ms. Nasira Shaikh, Advocate
The State	Through Mr. Shahzad Saleem Nahyoon, Deputy Prosecutor General, Sindh
Allahyar, complainant in both Cr. Appeals	Through Mr. Badal Gahoti, Advocate
Date of hearing and judgment	28.01.2020

J U D G M E N T

ABDUL MAALIK GADDI, J.- By this common judgment, we intend to dispose of the above-cited criminal appeals as well as criminal revision, as they arise out of same incident, involving common question of law and facts as well as judgment (impugned herein) having been delivered by the learned trial Court on 07.08.2012.

2. Through captioned criminal appeals (Cr. Appeal Nos.D-237 and 240 of 2012), appellants Master Juman and others have assailed the legality and propriety of the judgment dated 07.08.2012, passed by learned Judge, Anti-Terrorism Court, Hyderabad in ATC Case No.44 of 2011 (Re: The State V Ghulam Muhammad Umrani and others), emanating from Crime No.24 of 2011, registered at Police Station Saeedabad, under section 365-A PPC as well as sections 109, 35 PPC r/w sections 6(2)(e) punishable under section 7(e) and 21-I of Anti-Terrorism Act, 1997 (which were added subsequently, at the time of framing of amended charge), whereby the learned trial Court after full dressed trial, convicted and sentenced the appellants as mentioned in the concluding para of the impugned judgment, which reads as under:-

“ The upshot of my above discussion is that the prosecution has successfully proved their case that the accused namely Ghulam Muhammad, Muhammad Siddique, Muhammad Khan, Wazir Ahmed, Pir Bux, Liaquat and Master Juman with their common intention had kidnapped Khan Muhammad s/o Deen Muhammad Dul on 23.03.2011, kept him in confinement and after receiving the ransom released him and they have committed the offence under Section 6(2)(e) r/w S. 365-A/34 PPC punishable under section 7(e) of Anti-Terrorism Act, 1997. No evidence however brought on record against the accused Sadaruddin alias Sadoro hence, he is given benefit of doubt and acquitted under Section 265-H(i) Cr.P.C. He is present on bail and his bail bond stands cancelled and surety discharged.

The accused Ghulam Muhammad, Muhammad Siddiq, Muhammad Khan, Wazir Ahmed, Pir Bux, Liaquat and Master Juman are thereby convicted for the offence and sentenced to undergo Life Imprisonment and their property moveable or immoveable are forfeited. They are in custody and are remanded to Central Prison Hyderabad with conviction warrant to serve their sentences. The accused however extended the benefit of Section 382-B Cr.P.C. from their date of arrest in this case i.e. 22.04.2011 of Ghulam Muhammad, Muhammad Siddiq, Wazir Ahmed, Peer Bux and Muhammad Khan. Liaquat was arrested on 5.6.2011 while Master Juman was arrested on 25.1.2012.

The case of absconding accused have already been separated during pendency of the case and it will be reactivated after their arrest.”

3. Through Cr. Rev. A. No.D-108 of 2012, Applicant (complainant) Allahyar Khan seeks enhancement in sentence already awarded to accused / respondents (appellants in both captioned criminal appeals) through impugned judgment, as per charge framed against them.

4. The facts of prosecution case, in brief, are that on 25.03.2011 at 2200 hours, the complainant Allahyar Khan alias Haji S/o Deen Muhammad Dal r/o Ward No.2, New Saeedabad lodged the report at the Police Station Saeedabad, stating that he and his brothers have jointly own agricultural lands at Deh Chattery, being looked after by his younger brother Khan Muhammad. On 23.03.2011, Khan Muhammad along with his guards Sher Muhammad S/o Shadi Khan Brohi and Rasool Bux S/o Lal Muhammad Dal went to their land in Jeep No.B.A-6217 along with licensed repeaters. At 7.00 PM., Rasool Bux informed complainant on telephone about kidnapping of Khan Muhammad by dacoits and asked to reach at Zerpir Link Road near Mangsian Huri. On such information, complainant conveyed this information to his brothers and relatives on phone and proceeded to the place of occurrence where he met with Sher Muhammad Brohi and Rasool Bux. They narrated the facts that they were coming in jeep towards Saeedabad and reached at Link Road Zerpir near Mangsian Huri, they saw three persons whose faces were open standing. One motorcycle of red color was also standing at the side of the road. The said three persons came in front of the jeep and on point of weapons stopped the Jeep. In the mean time a white color car came behind the jeep wherein five persons were boarded whose faces were open. They alighted holding weapons in their hands and on the force of said weapons got them down from jeep, robbed the repeater guns, bag containing cartridges, its licenses and took away Khan Muhammad in car along with said articles towards Chattery, asking guards to inform the brother of kidnaped to arrange ransom amount. One of their associate also took away the said Jeep towards Zerpir. The three armed persons made guards sit on the ground put their heads downwards and went away towards Chattery on motorcycle. At 7.30 PM. the village people and brothers of the abductee also came and this incident was disclosed to them. The Saeedabad police arrived and with the help of foot tracker the foot prints located which led them to by-pass and missed there. The police asked to take legal action against culprits, but the complainant party did not do so saying that they will trace the culprits and then will file the case against culprits. Later on the robbed Jeep was

found standing abandoned at Jatoi Lind Road, which was seized. After two days, the FIR was registered against eight unknown persons.

5. It appears from the record that on 25.03.2011, investigation of this crime was assigned to SIO, who inspected the place of incident on the pointation of complainant and prepared such memo in presence of mashirs Lal Khan and Peeral. He recorded the statements of PWs Rasool Bux and Sher Muhammad u/s 161 Cr.P.C. Since the culprits could not be traced he filed A-Class report on 09.04.2011. On 16.04.2011, kidnappee Khan Muhammad came at PS who disclosed the names of culprits and his statement u/s 161 Cr.P.C was recorded. On 17.04.2011, brother of kidnappee Ghulam Ali and Moula Bux appeared at P.S and disclosed that they had paid ransom for the release of kidnappee Rupees sixty lac to accused Khair Bux Bhatti. Their statements u/s 161 Cr.P.C were recorded. On 22.04.2011, I.O went at the PS Bhit Shah where he found accused Ghulam Muhammad Umrani, Muhammad Siddiq Brohi, Wazir, Muhammad Khan Bhatti and Pir Bux Umrani already arrested in an encounter case of Crime No.39/2011 of P.S Bhit Shah. He arrested them in this crime. SHO Bhit Shah told I.O that the said accused were arrested in an encounter and from them Rs.18,00,000/- were recovered. I.O brought above named accused at P.S and on 24.04.2011, during interrogation the accused Ghulam Muhammad led the police and produced repeater, bag and license, which was seized under memo in presence of mashirs. On 25.04.2011, during interrogation, accused Siddiq, Wazir and Muhammad Khan led police and produced copy of NIC of kidnappee, copy of cheque and copy of sale letter of motorcycle, which were seized under memo by I.O. thereafter, in identification parade before Magistrate Matiari, where the abductee identified the said five accused. After conclusion of investigation police submitted challan of the case as stated above.

6. On 05.06.2012, trial Court framed amended charge against accused persons at Ex.14, to which they pleaded not guilty and claimed to be tried vide their respective pleas at Exs.15 to 22.

7. In order to prove its case, the prosecution examined PW-1 Complainant Haji Allahyar S/o Deen Muhammad Dal at Ex.23, who produced F.I.R at Ex.23/A. PW-2 Rasool Bux at Ex.24. PW-3 Khan Muhammad at Ex.25, who produced copy of notice at Ex.25/A, photocopy of the license at Ex.25/B. PW-4 Muhammad Hanif at Ex.29, who produced two mashirnamas at Ex.29/A &

29/B. PW-5 Ali Muhammad at Ex.31, who produced letter at Ex.31/A and memo of identification parade at Ex.31/B. PW-6 Lal Khan at Ex.32, who produced mashirnamas at Ex.32/A to 32/C and copy of letter in the name of Khan Muhammad at Ex.32/F. PW-7 Ghulam Ali at Ex.34. PW-8 Muhammad Siddiq at Ex.36, who produced mashirnamas at Ex.36/A & 36/B, photocopies of five F.I.Rs being Crime No.39, 40, 41, 42 and 43 of 2011 at Ex.36/C to 36/G. PW-9 Muhammad Ramzan at Ex.37, who produced mashirnama of arrest of accused Muhammad Juman at Ex.37/A. All prosecution witnesses have been cross-examined at length by learned defense counsel. Thereafter, prosecution closed its side at Ex.38.

8. Thereafter, statements of the accused under section 342 Cr.P.C were recorded at Exs.39 to 46, wherein they denied all the allegations leveled against them by the prosecution and claimed their false implication in this case. In order to disprove the prosecution case accused / appellant Muhammad Juman S/o Allah Warayo Buriro examined himself on oath as DW-1 Ex.47 and has produced certified copies of orders passed in C.P No.D-2097 of 2011 at Ex.47/A.

9. Learned trial Court after hearing the learned counsel for the parties and examining the evidence available on record, convicted and sentenced the accused/appellant as stated in introductory paragraphs of this judgment.

10. Learned advocates for appellants have contended that the case registered against the appellants is false and has been registered due to malafide intention of complainant in collusion with police; that the case is highly doubtful and no incident as alleged in the F.I.R has taken place; that the impugned judgment is against the law, equity and natural norms of justice, as such is not sustainable in law; that the impugned judgment was passed on the basis of surmises, conjectures and against the principles of criminal justice; that all the prosecution witnesses are interested; that while recording the evidence all prosecution witnesses have made contradictory statements, which have not been considered by the trial Court while delivering the impugned judgments. While referring the prosecution evidence, they have contended that P.W Khan Muhammad (alleged abductee) in his evidence (Ex.25) did not implicate appellants Peer Bukhsh alias Peeral, who at that time was present before the trial Court. They further submitted that F.I.R. is delayed by 02 days for which no satisfactory explanation has been furnished as such, according to them, on this ground false implication of the appellants

in this case with due deliberation and consultation cannot be ruled out; that appellants Ghulam Muhammad, Muhammad Siddique, Muhammad Khan, Wazeer and Peer Bukhsh were arrested on 22.04.2011 but their identification parade was held on 05.05.2011 after a delay of 13 days and during this intervening period two times remand of the said appellants was obtained by I.O of the case, therefore, possibility of being seen the appellants by P.W / alleged abductee Khan Muhammad prior to identification parade cannot be ruled out. They have also submitted that identification parade of said appellants has also not been held through guards of the alleged abductee namely Sher Muhammad and Rasool Bukhsh who were natural / eye-witnesses of the alleged incident, which creates serious doubt in the prosecution case; that admittedly joint identification parade of all the aforementioned appellants was held and in the memo of identification parade names of dummies were not mentioned, therefore, entire process of conducting such identification parade had become doubtful; that Honourable Supreme Court of Pakistan in the case of **Gulfam and another V The State** (2017 SCMR 1189) has already disapproved this practice; however, the learned trial Court while passing the impugned judgment and awarding conviction to the appellants did not consider this aspect of the case; that the recovery of crime weapons allegedly made from appellants Ghulam Muhammad, Muhammad Khan, Muhammad Siddique and Wazeer Ahmed has already been disbelieved by the trial Court in separate cases which were registered against them under section 13-D Arms Ordinance and no appeal against that judgment(s) was / is filed, therefore, according to them, the orders / judgments of disbelieving such alleged recoveries has attained finality. They also submitted that the appellants are behind the bars for the last 08 years for their no fault, therefore, according to them, in view of the documents and evidence so brought on record as well as the material contradictions and discrepancies in prosecution case create serious doubt and benefit of doubt always goes in favour of accused; therefore, while extending benefit of such doubt the appellants/accused be acquitted in this case.

11. On the other hand, learned DPG duly assisted by the learned counsel for the complainant, while opposing the contentions raised by learned counsel for the appellants and supporting the impugned judgment contended that the prosecution has fully established its case against the appellants beyond reasonable doubt by producing consistent / convincing and reliable evidence

and the contradictions whatever on record are of minor in nature and are not fatal to the prosecution case; that the impugned judgment and sentences awarded to the appellants is / are result of proper appreciation of evidence brought on record which need no interference. While elaborating their arguments they submit that in this matter abductee Khan Muhammad in his evidence before the trial Court as well as during identification parade of appellants Ghulam Muhammad, Muhammad Siddique, Muhammad Khan, Wazeer Ahmed and Peer Bukhsh has fully implicated the appellants in the commission of present offence which is serious in nature. According to them, some of the ransom amount was also recovered from appellants in presence of mashirs who have also no inimical terms with them, prima facie shows the involvement of the appellants in this case; that the appellants have been rightly convicted by the trial Court, hence the appeals in hand may be dismissed.

12. Learned counsel for the applicant in Cr. Rev. A. No.D-108 of 2012, while adopting the arguments of learned D.P.G and learned counsel for the complainant, further submits that though the appellants have been rightly convicted by the trial Court but the punishment awarded to them is lesser than the quantum of allegations leveled and proved against them, therefore, the punishment awarded to the appellants may be enhanced.

13. We have heard the learned counsel for the parties at considerable length and perused the available record with their able assistance.

14. After hearing the parties, careful consideration and meticulous examination of the evidence / available record, suffice to say that mere heinousness of the offence is not sufficient to convict the accused because the accused continues with presumption of innocence until found otherwise at the end of the trial. It is the settled principle of law that burden of proof of allegation is always upon the prosecution to prove its case beyond shadow of doubt. Keeping in view the basic touch stone of criminal administration of justice, we have examined the ocular evidence as well as circumstantial and documentary evidence along with impugned judgments and come to the conclusion that prosecution has failed to prove its case against the appellants for the reasons that the alleged incident took place on 23.03.2011 at about 07.00 p.m. whereas the F.I.R. was lodged by complainant Allahyar on 25.03.2011 at 10.00 p.m, apparently with a delay of more than two days

which has not been plausibly explained by the prosecution. Further, the appellants are not named in the F.I.R. but the allegation against them is that when abductee Khan Muhammad alongwith his guards Sher Muhammad and Rasool Bukhsh duly armed with their licensed repeaters, was going to his land in Jeep bearing No.BA-6217, they kidnapped him for the purpose of ransom amount. It is alleged that he was released after paying the ransom money, this fact has been denied by the appellants in their respective statements recorded under section 342 Cr.P.C. It is noted that at the time of alleged incident abductee Khan Muhammad as well as his two guards were duly armed with repeaters but surprisingly they did not use the said weapons in their defense. There is also nothing on record that alleged abductee and his guards have made any effort to make resistance against his abduction. It is also alleged that three accused came on a red colour motorcycle whereas remaining accused came in a white colour car and on force of their weapons kidnapped Khan Muhammad but no description of any of the accused is mentioned either in F.I.R. or police investigation that who have come on red colour motorcycle and who have come in white colour car. These aspects of the case show that perhaps the incident has not taken place in a fashion as stated in the F.I.R.

15. It is also noted that as per memo of arrest appellants Ghulam Muhammad, Muhammad Siddique, Muhammad Khan, Wazeer Ahmed and Peer Bukhsh were arrested on 22.04.2011, whereas their identification parade before learned Civil Judge / Judicial Magistrate-I, Hala was held on 05.05.2011 after about 13 days of their arrest through P.W / abductee Khan Muhammad, whereas no identification parade of the remaining appellants namely Liaquat, Master Juman and Sadaruddin has been held. There is no explanation of any sort for such inordinate delay in holding identification parade. Moreover, perusal of memo of identification parade (Ex.31-B) reveals that P.W / alleged abductee Khan Muhammad during the course of identification parade, did not point out at the accused persons by scribing their role in the commission of alleged offence. Moreover, perusal of the memo of identification parade, as relied upon by learned counsel for the complainant as well as learned D.P.G, shows that it is not held in accordance with the dictum laid down by the Honourable Supreme Court of Pakistan in its various pronouncements therefore it casts serious dent upon said identification parade. On perusal of the said memo of identification, it also reveals that names of the dummies standing in the row at the time of such parade, were

not mentioned therein. We have perused the case law reported as **PLJ 2019 SC (Cr.C.) 153** wherein the Honourable Supreme Court of Pakistan has settled some guidelines for conducting identification parade. On perusal of such guidelines as stated in the said case, it reveals that the learned Magistrate while conducting said identification parade has not followed some of the necessary / relevant guidelines, therefore, in our view, the entire course of identification parade becomes doubtful.

16. Further, it is surprising to note that no identification parade has been held through P.Ws Sher Muhammad and Rasool Bukhsh though allegedly they were eye-witnesses of the incident. During the course of arguments, we have asked the question from learned counsel for the complainant and learned D.P.G that why the identification parade has not been held through the said eye-witnesses, they have no satisfactory reply / answer with them.

17. The prosecution has maintained that the appellants have correctly been picked up by P.W / abductee Khan Muhammad during identification parade conducted and supervised by Judicial Magistrate-I, Hala but we noted that the identification so conducted and held was a joint parade. Holding of joint identification parade of multiple accused persons in one go has been disapproved by the Honourable Supreme Court in many judgments and a reference in this regard may be made to the cases of **Lal Pasand v. The State** (PLD 1981 Supreme Court 142), **Bacha Zeb v. The State** (2010 SCMR 1189), **Shafqat Mehmood and others v. The State** (2011 SCMR 537) and **Gulfam and another v. The State** (2017 SCMR 1189).

18. We have also noted that in the memo of identification parade produced by the Judicial Magistrate in his evidence, a column of signature of I.O is available. In original of the same the signature(s) is not available but in the copy supplied to accused, signature of I.O is available. This lacuna / infirmity in the memo of identification parade also creates serious doubt.

19. The Honourable Supreme Court of Pakistan in the case of **Gulfam** (Supra) observed that the identification of a culprit before the trial Court during trial was also unsafe.

20. It is pertinent to mention here that co-accused Sadaruddin on the basis of same set of evidence has been acquitted by the trial Court and the appeal filed by the complainant against such acquittal has also been dismissed by

this Court, and nothing on record that complainant has filed further appeal against acquittal of said Sadaruddin before the Honourable Supreme Court of Pakistan. Perusal of record shows that the trial Court while disbelieving the evidence of the prosecution witnesses against the said co-accused, on the basis of same set of evidence, has convicted the present appellants which is in clear violation of 'rule of consistency'. Needless to emphasize that rule of consistency demands that if prosecution evidence has been disbelieved in respect of a co-accused, the same cannot be relied upon for convicting other accused. In our view, prosecution witnesses if disbelieved for co-accused person, could not be relied upon with regard to other accused / appellants unless they were corroborated by the evidence which came from the unimpeachable independent source, which is lacking in this case. In this context, it would be advantageous to refer to a judgment of Honourable Supreme Court passed in the case of **Muhammad Asif v. The State** reported in 2017 SCMR 486 wherein it was held as under:

“ It is a trite of law and justice that once prosecution evidence is disbelieved with respect to a co-accused then, they cannot be relied upon with regard to the other co-accused unless they are corroborated by corroboratory evidence coming from independent source and shall be unimpeachable in nature but that is not available in the present case.”

21. On perusal of record it also reveals that in the F.I.R complainant stated that Rasool Bukhsh (guard) has informed him about the incident but in his 161 Cr.P.C. statement said Rasool Bukhsh stated that Sher Muhammad (another guard) has informed the complainant on telephone.

22. It is also the case of the prosecution that during the period when alleged abductee was kept by the accused in their captivity, the accused have made conversation / several calls to the complainant party with regard to payment of ransom amount; however, no CDR / voice record transcript in order to prove such conversation / calls as well as to show the ownership of said mobile phone(s) has been brought on record neither from the area wherefrom the said calls were made nor from the area of their receiving. Accordingly, the prosecution has failed to prove this aspect of the case.

23. Furthermore, mashirnamas on record are in different hand writing and the I.O in his evidence could not give the name(s) of the writer of said mashirnamas.

24. It is also the case of the prosecution that after arrest of accused / appellants police also made recovery of some of the ransom amount from them. In this regard we have noted that denomination of such currency notes has not been mentioned in the memo of recovery. Not only this, there is no identification memo of recovered currency notes prepared in this case by I.O to show that the recovered notes were the same which were allegedly delivered to accused persons as ransom amount by the complainant. In absence thereof, the recovery of currency notes (alleged ransom amount) is of no avail to the prosecution.

25. It is argued by learned counsel for the appellants that the appellants, against whom alleged recovery of unlicensed weapons is shown, have been charged separately in F.I.Rs bearing Nos.40, 41, 42 and 43 of 2011, registered at Police Station Bhit Shah; however, they have been acquitted of the said charge by the trial Court. On Court query, learned counsel for the complainant as well as learned D.P.G submit that they have no record with them in this regard.

26. We have also noted several other contradictions and discrepancies in the evidence of prosecution witnesses and when these were confronted with learned D.P.G and learned counsel for the complainant they have no satisfactory reply / answer with them.

27. In view of the above, we hold that in the present case prosecution has miserably failed to prove its case against the appellants beyond any shadow of reasonable doubt and as a result thereof, the appellants are entitled to the benefit of doubt as a matter of right and not as a concession. It is also settled law that if a slightest doubt creates in the case of prosecution then it's benefit must be extended in favour of the accused. In this context, reference can be made to the case of **Tariq Pervez V The State** (1995 SCMR 1345), wherein it was observed that;

“ The concept of benefit of doubt to an accused persons is deep-rooted in our country for giving him benefit of doubt, it is not necessary that there should be many circumstances creating doubt. It there is a 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”.

28. For what has been discussed above, in our humble view, the case in hand is full of material contradictions and lacunas and the prosecution has failed to prove its case against the appellants beyond any reasonable shadow of doubt, as a result thereof appellants are entitled for their acquittal.

29. Above are the reasons of short order dated 28.01.2020, whereby after hearing the learned counsel for the parties, Cr. Appeal Nos.D-237 & 240 of 2012 were allowed and the impugned judgment dated 07.08.2012, passed by learned Judge, Anti-Terrorism Court Hyderabad @ Hyderabad was set aside. Consequently, the appellants in both captioned criminal appeals were acquitted of the charge and they were ordered to be released forthwith, if not required in any other custody case. As far as Cr. Rev. A. No.D-108 of 2012 is concerned, as a result of above reasons and thereby acquittal of the appellants (respondents in said revision), it was dismissed as having become infructuous.

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