

# THE HIGH COURT OF SINDH AT KARACHI

Special Criminal Anti-Terrorism Jail Appeal No.115 of 2018

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

Appellant: None present for Appellant Rajab Ali alias Nadeem son of Muhabat Ali

Respondent: The State through Mr. Muhammad Iqbal Awan, Deputy Prosecutor General Sindh.

Date of Hearing : 03.12.2020

## JUDGMENT

ZULFIQAR AHMAD KHAN, J.--- Appellant Rajab Ali alias Nadeem son of Muhabat Ali was tried along with Saindad son of Mir Muhammad by learned Judge, Anti-Terrorism Court-VI, Karachi in Special Case No.195 of 2011, arising out of FIR No.09/2010, registered at P.S. Landhi, AVCC, Karachi, for offences under section 365-A/34, PPC read with Section 7 of the Anti-Terrorism Act, 1997. On conclusion of trial, vide judgment dated 27.02.2018, learned trial court acquitted co-accused whereas 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 extended benefit of Section 382-B, Cr.P.C.

2. Brief facts of the prosecution case as disclosed in the F.I.R. are that complainant Aqeel Ahmed Kazi lodged report at PS Landhi, AVCC Karachi, stating therein that his son Faizan Aqeel aged 28 years works as small contractor. On 03.01.2010 at about 1430 hours, Mistri Nadeem came at his house and called his son to accompany him for the purpose of shuttering work at Majeed Colony as he was working with him. His son proceeded with him but did not return till evening. He made call to his son on his

mobile No.0307-2595085 from mobile No.0300-2267842 but could not get any reply. Subsequently, at 06:00 p.m. from the number of his wife 0322-2367748 contact was made, someone else attended the call my wife asked him to give phone to Faizan, to which he replied that Faizan was in their custody, his companion had been finished by them, if you did not pay ransom Rs.2,000,000/- within two days, Faizan will also be finished. Place of collecting ransom will be informed later, however, if they informed the police or any agency then they will lose Faizan. They also demanded ransom on complainant's phone number. Complainant lodged F.I.R. at P.S. Landhi, it was recorded vide Crime No.09/2010 under section 365-A, PPC read with section 7 of the Anti-Terrorism Act, 1997.

3. After registration of case, initial investigation was assigned to SIP Ali Muhammad, who inspected the place of incident and prepared such mushimama in presence of Kamran Aqeel and Muhammad Saqib, he recorded statements u/s 161 Cr.PC of PWs. On 16.01.2010, on the pointation of abductee/victim in presence of Muhammad Saqib and Inspector Muhammad Babar, he inspected the place where ransom was paid to culprits viz. Juma Goth, Railway Station, he prepared such mushimama in presence of Kamran Aqeel and Inspector Babar. On 25.1.2010, he obtained CDR of mobile phone 0307-2595085 of abductee from CPLC. He submitted report before the Court u/s 173 Cr.PC in "A" Class.

4. On 14.11.2010 SIP Ali Muhammad interrogated accused Rajab and Saindad in the instant case, who were under arrest in Crime No.256/2011 u/s 365-A, PPC of PS Airport where abductee Muhammad Faizan identified accused persons before the police. On 21.11.2011, he moved application for holding identification parade of accused by complainant. On 22.11.2011

identification parade was held before Judicial Magistrate-XV, Karachi East, in which Muhammad Kamran and Saqib identified only accused Rajab Ali to be the same who received ransom as well as committed abduction of abductee but they did not identify accused Saindad. Thereafter, Investigation was transferred to Inspector Niaz Ahmed Farooqui for further investigation. On completion of investigation, final report/challan was submitted before learned Administrative Judge, ATCs, Karachi Division on 03.01.2010 under the above referred sections.

5. Trial court framed charge against accused persons at Ex.5. They pleaded not guilty and claimed to be tried.

6. In order to prove its case, prosecution examined 9 witnesses. PW.1 abductee/victim Muhammad Faizan Aqeel at Ex.6, PW.2 Saqib Raza at Ex.10, PW.3 Kamran Aqeel at Ex.11. PW-4 complainant Muhammad Aqeel Ahmed Qazi at Ex.12, PW.5 Mst. Rahat-un-Nisa at Ex.13, PW.6 Malik Muhammad Akhtar Civil Judge & Judicial Magistrate, South Karachi at Ex-14, PW.7 PI Bashir Ahmed at Ex.15, PW.8 SIP Ali Muhammad at Ex.16, PW.9 Muhammad Junaid at Ex.29. Thereafter, prosecution side was closed vide statement vide statement at Ex.17.

7. Statements of accused were recorded under Section 342 Cr.PC at Ex.18 and 19. Both the accused denied the prosecution allegations and claimed their innocence. Accused Rajab Ali has further stated that he was confined at PS AVCC, during which the police brought persons at AVCC Police Station and informed them that he was the culprit, identify him during identification parade and evidence. Accused Rajab Ali has further stated that he does not know accused Saindad. Both the accused stated that they did not kidnap the abductee nor they had collected any ransom from

anyone for release of abductee. Both the accused neither examined themselves on oath nor led any evidence in defence.

8. After hearing learned counsel for the parties and assessment of evidence, by judgment dated **27.02.2018** trial court acquitted accused Saindad of the charges whereas convicted and sentenced the present appellant as stated above.

9. The facts of the case as well as evidence produced before the trial Court find an elaborate mention in the judgment dated 27.02.2018 passed by the trial Court and, therefore, the same are not reproduced here so as to avoid duplication and unnecessary repetition.

10. Grounds taken by the appellant in the instant appeal are 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; the police has falsely implicated the appellants in the instant case with ulterior motives. Lastly, it has been agitated that prosecution has failed to prove its case against the appellant beyond any showed of doubt.

11. Learned Deputy Prosecutor General Sindh sought for dismissal of instant appeals by contending that appellants were identified by the kidnapee and other PWs, therefore, prosecution has proved its case against the appellant/accused beyond any shadow of doubt.

12. We have carefully heard learned counsel for the parties and perused the evidence minutely.

13. PW.1 Muhammad Faizan Aqeel, has deposed that on 03.01.2010, accused Nadeem took him to Shah Latif Town on account of business of construction. He showed him a plot by saying that it belongs to a lady doctor but she didn't come. Therefore, he took him to another house where he took him to a room for showing construction work. As soon as he entered the room, accused persons overpowered him with dagger and pistols. They snatched his mobile phone and other belongings and said that they had already committed murder of Nadeem. He provided them cell number of his mother, accused contacted her from his mobile phone, he also talked with her. His mother told him that culprits had demanded ransom. He also noted that accused Nadeem used to come in the evening in the house where he was confined and saw him through door's hole. On 15.01.2010, he was brought out by accused, putting a chaddar around him and released him at Railway Station of Juma Goth. On getting released, he went home where his father informed him that they had paid ransom Rs.350,000/- for his release. On 16.01.2010, IO visited the place of his captivity and prepared such memo in his presence. On 14.11.2011, he went to the office of Anti Violent Crime Cell, where accused, namely, Nadeem and Saindad were in custody. In his cross-examination, he stated that, *"When I reached at Shah Latif Town, accused Rajab told me that I have been abducted by him then I came to know that I have been abducted by him. It is a fact that in my statement u/s 161 Cr.PC this fact has not been mentioned, I remained in the captivity of accused for 14 days, throughout 14 days no conversation took place between myself and my relatives..... It is a fact that in my statement u/s 161 Cr.PC it has been mentioned that during my captivity with accused persons I was talking with my family. It*

*is a fact that at the time of my release I was not able to see the place where I was released. Police prepared memo of place of my release on my pointation on 03.01.2010 again says on 16.01.2020. I was called by Inspector Ali Muhammad at AVCC on 14.11.2011, I was alone there. It is incorrect to suggest that Kamran Aqeel and Saqib Raza came at P.S. Vol. states that after my arrival at P.S. Saqib Raza came there. Both accused Rajab and Saindad were confined at lockup of AVCC."*

14. PW.2 Muhammad Saqib Raza disclosed that ransom amount was fixed as Rs.350,000/- and was to be delivered at about 04:30 to 04:45 pm. While sitting in the last bogi of Mehran Train. This PW in his cross-examination has stated that, *"It is a fact that we thrown the ransom amount to culprits while train was running and at the consumption of 5/7 minutes Juma Goth Junction came and train stopped. He further stated in his cross-examination that during identification parade abductee Faizan and this PW.2 were separately called and they both identified accused persons."* We have observed that admittedly the present appellant was known to the whole family of the abductee as he was working with him, as such, holding of identification parade, where accused is already a known person, duly seen at AVCC Police Station as well, has no legal sanctity in the eyes of law and, as such, the same cannot be relied upon.

15. PW.3 Kamran Aqeel, brother of abductee deposed that he reported the incident to the police, who kept them on hope that abductee will be set free by the culprits and suggested to continue talks with the culprits. **They paid ransom Rs.350,000/- to accused Nadeem and present accused at Juma Goth Junction when train stopped there.** His brother-in-law Saqib Raza also accompanied him at that time. On the next day morning they were called by culprits at Railway Crossing at Bhains Colony, where they found

Faizan, they took him to the house. After lapse of about one year of occurrence, they received call from the police that accused were arrested by them in the instant case. **Abductee Faizan was also accompanied with us at AVCC Police Station and were directed to appear in City Court for holding identification parade of accused,** where accused were identified by them. In his cross-examination he stated that, *"It is a fact I handed over ransom amount to accused Rajab alias Nadeem and one person having beard, whose half face was muffled at Jumma Goth Junction. It is a fact I disclosed about payment of ransom to Railway Police which was patrolling at the time of paying the ransom to culprits. We were also prevented by CPLC police not to disclose the fact of payment of ransom until and unless abductee is set at liberty. It is a fact I have not pointed out in my statement u/s 161 Cr.PC or in memo of identification parade prepared by Judicial Magistrate that to which person I handed over the ransom amount. It is a fact that it has not been mentioned in both the documents that what was the time and what was the railway station."*

16. PW.4 complainant Muhammad Aqeel Ahmed Kazi deposed that conversation with regard to settlement of ransom continued for 13 days, which was finally fixed at **Rs.300,000/-**, he handed over the same to his son Kamran and son-in-law Saqib who handed over the same to culprits for release of his son Faizan. In his cross-examination he stated, *"that my son was on his motorcycle AE-5835, Honda 125 and till date the same has not been recovered. It is incorrect to suggest that I have wrongly stated that cash Rs.300,000/- was fixed to be paid to culprits. It is a fact that I had given Rs.300,000/- to my son Kamran. It is a fact that time of arrest of accused was after lapse of one year of occurrence, victim Faizan, PW Kamran and Saqib Raza had gone to AVCC on call of police."* This PW was again cross-

examined on 25.03.2014, in his cross-examination he stated that, *"It is a fact that ransom was paid by me to accused persons on the direction of CPLC and ransom paid was Rs.350,000/-."*

17. PW-6 Malik Muhammad Akhtar, Civil Judge and Judicial Magistrate deposed that on application of IO Ali Muhammad of AVCC identification parade of accused was held on 22.11.2010, dummies of the same description and height as that of suspects were arranged. PWs Saqib Raza and Kamran Aqeel identified accused Rajab Ali alias Nadeem.

18. PW.7 PI Bashir Ahmed of AVCC, deposed that on 14.11.2011 accused Saindad and Rajab Ali were arrested in FIR No.256/2011 u/s 365-A, 34 PPC of P.S. Airport, during interrogation they admitted the guilt of abducting Faizan. He informed such disclosure of accused to Inspector Ali Muhammad IO of the instant case, who also interrogated the accused, who admitted their guilt of abduction of Faizan, IO arrested them in the instant case, such memo was prepared. In his cross-examination, he stated that, *"It is a fact that I did not bother to get recorded statement of accused before any Judicial Magistrate. It is a fact when Inspector Ali Muhammad was interrogating accused persons, kidnaped Faizan had reached there."*

19. PW-8 SIP Ali Muhammad deposed that on 4.01.2010, investigation of instant crime was entrusted to him. In connection with instant case he went to the complainant at Landhi, who showed him the place of occurrence, wherefrom abductee was abducted, he prepared such memo. On 14.01.2010, complainant paid ransom to culprits, subsequently on 15.01.2010 abductee was released and on 16.1.2010, on pointation of abductee/victim he visited the place of captivity viz. House No.L-560, Sector 16/B, Shah Latif Town, prepared such memo in presence of Saqib and inspector Muhammad Babar.



He had also deposed that he inspected the place of release of abductee on his pointation viz. Railway Crossing Bhains Colony, Karachi. On the same day, he visited the place where complainant party had paid the ransom to culprits. On 25.01.2010, he collected call data record of mobile No.0307-2595085. On 22.11.2011 identification parade of accused persons was held before Judicial Magistrate Court-XV, East Karachi, in which Muhammad Kamran and Saqib identified accused Rajab Ali but they did not identify accused Saindad to be the same who received ransom as well as committed abduction of abductee.

20. PW-09 Muhammad Junaid deposed that on 25.01.2010, CDR was received by him in the instant case, Ex.15/B. He has further stated that he resigned from CPLC on 05.05.2017 and that he had no record regarding such location.

21. Perusal of prosecution evidence reveals that Rajab Ali alias Nadeem was working with PW.1 and his all family members also knew him. PW.1 in his cross-examination had stated that he was called by Inspector Ali Muhammad at P.S. AVCC on 14.11.2011 and **after his arrival at P.S., Saqib Raza also came there.** PW-3 Kamran deposed that after lapse of about one year of occurrence, they received call from police that accused Rajab and Saindad were arrested by them in the instant case and were confined at lockup of AVCC. **Abductee Faizan also accompanied with them at AVCC and were directed to appear in City Court for holding identification parade of the accused.** PW.4 Aqeel Ahmed Kazi in his cross-examination has stated that, *"It is a fact that time of arrest of accused was after lapse of one year of occurrence, victim Faizan, PW Kamran and Saqib Raza had gone to AVCC on call of police."* PW.7 Inspector Bashir Ahmed, who arrested the accused

persons in his cross-examination, has stated that, *"It is a fact when Inspector Ali Muhammad was interrogating accused persons, kidnaped Faizan had reached there."* After perusal of prosecution evidence we are of the view that plea raised by present appellant in his 342, Cr.PC statement that, *"he was confined at PS AVCC, during which the police brought persons there, informed them that he was the culprit, identify him during identification parade and evidence"* appears to be true, the same has not been appreciated and taken into consideration by learned trial court while evaluating the prosecution evidence and passing the impugned judgment.

22. We have also noted that PWs 1, 2 and 3 deposed that ransom was fixed as Rs.350,000/- and was accordingly paid to the culprits, whereas PW.3 complainant Muhammad Aqeel Ahmed Qazi, deposed that ransom was finally fixed as **Rs.300,000/-**, he handed over the same to his son Kamran and son-in-law Saqib who handed over the same to the culprits for release of his son Faizan. PW.4, the complainant, in his cross-examination had stated, *"It is incorrect to suggest that I have wrongly stated that cash Rs.300,000/- was fixed to be paid to culprits. It is a fact that I had given Rs.300,000/- to my son Kamran."* Difference of amount of ransom as afore-stated creates doubt in the prosecution version, which also favours the case of the appellants in such circumstances.

23. With regard to mode of payment of ransom, evidence of PW.2 Muhammad Saqib Raza and PW.3 Kamran Aqeel contradict with each other. PW.2 Saqib Raza in his cross-examination has stated that, *"It is a fact that we thrown the ransom amount to culprits while train was running and at the consumption of 5/7 minutes Juma Goth Junction came and train stopped"* whereas PW.3 Kamran Aqeel deposed that **they paid ransom Rs.350,000/- to accused Nadeem and present accused at Juma Goth Junction when train**

**stopped there.** His brother-in-law Saqib Raza was also accompanied him at that time.” We have noted that such major contradiction in the prosecution evidence with regard to mode of payment of ransom, which is the base of the instant case, has not been considered by the trial court while evaluating the prosecution evidence and passing the impugned judgment. Rightly it has been argued by the learned counsel for the appellant that 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.

24. We have also noted that PW.3 Kamran Aqeel also stated in his cross-examination that, *“We were also prevented by CPLC police not to disclose the fact of payment of ransom until and unless abductee is set at liberty. It is a fact I have not pointed out in my statement u/s 161 Cr.PC statement or in memo of identification parade prepared by Judicial Magistrate that to which person I handed over the ransom amount. It is a fact that it has not been mentioned in both the documents that what was the time and what was the railway station.”* All such admissions on the part of prosecution witness create doubt about and highlight the conduct of the investigating officer in investigating such a heinous offence of kidnapping for ransom.

25. Perusal of memo of arrest, Ex.6/C, reveals that accused persons Rajab Ali alias Nadeem and Saindad were under arrest at P.S. AVCC/CIA, Karachi in Crime No.256/2011 under section 365-A/34, PPC of P.S. Airport and during interrogation they disclosed that they were involved in various cases of same nature, including the present one. Upon such disclosure IO of that FIR informed the IO of the case in hand, who contacted the alleged abductee, who reached there and identified present appellant and that co-accused was present at the house during his captivity. Thereafter, the IO of

the instant case arrested both the accused such memo was prepared in the Investigation Room, AVCC, Karachi on 14.11.2011.

26. We have come to the conclusion that present appellant was implicated in the instant case only on account of his extrajudicial confession before the police, therefore, witness and victim of the instant case were called at P.S., accused was shown to them at P.S. and was identified by PW.1 as well as by PWs Saqib and Kamran. Perusal of prosecution evidence reveals that there is joint extrajudicial confession of both the accused. In our country, extrajudicial confession must be received with utmost caution. Before acting upon a retracted extrajudicial confession, the Court must inquire into all material points and surrounding circumstances to satisfy itself fully that the confession cannot but be true. As, an extrajudicial confession is not a direct evidence, it must be corroborated in material particulars before being made the basis of conviction.

27. As far as disclosure of the appellants before police in which they confessed their guilt is concerned, it is settled principle of law that disclosure of an accused before police is inadmissible being hit by Articles 38 and 39 of the Qanun-e-Shahadat Order, 1984. There is no cavil to the legal proposition that extrajudicial confession is a very weak type of evidence and no conviction could have been awarded without having strong corroboration which aspect of the matter hardly needs any comment. Reliance is placed to the cases Wazir Muhammad and another v. State (2005 SCMR 277), Liaquat ALI v. The State (1999 PCr.LJ 1469 Lahore); Tahir Javed v. The State (2009 SCMR 166) and Zafar Iqbal and others v. The State (2006 SCMR 463). Hence, no weight can be given to such disclosure of appellants before the police. Even otherwise, in case, if such extrajudicial confessions were made by the

accused during the course of investigation, it was incumbent upon the Investigation Officer(s) to get their confessional statements recorded before the Judicial Magistrate(s) concerned which, admittedly, has not been done in the instant case.

28. We have observed that extrajudicial confessions have almost become a norm when the prosecution cannot otherwise succeed. Rather, it may be observed with concern as well as with regret that when the Investigating Officer(s) fails to properly investigate the case, he resorts to padding and concoctions like extrajudicial confessions. Such confessions, by now, have become the signs of incompetent investigation. A judicial mind, before relying upon such weak type of evidence, capable of being effortlessly procured must ask a few questions like why the accused should at all confess, what is the time lag between the occurrence and the confession, whether the accused had been fully trapped during investigation before making the confession, what is the nature and gravity of the offence involved. Reliance is placed on the case of SAJID MUMTAZ and Others versus BASHARAT & Others (2006 SCMR 231).

29. It is, by now, settled principle of law that it is the prosecution, which has to prove its case against the accused by standing on its own legs and it cannot take any benefit from the weaknesses of the case of defence. In the instant case, the prosecution failed to discharge its responsibility of proving the case against the appellants, hence there remains no cavil to the proposition that if there is a single circumstance which creates reasonable doubt in the prosecution case, the same is sufficient to extend the benefit of the same to the accused, whereas the instant case is replete with several circumstances which have created serious doubts about the prosecution

story. Even as per saying of the Holy Prophet (P.B.U.H), the mistake in releasing a criminal is better than punishing an innocent person. Same principle has also been followed by the Hon'ble Supreme Court of Pakistan in the case of AYUB MASIH v. The STATE (PLD 2002 SC 1048), it has been held as under:--

"...It will not be out of place to mention here that this rule occupies a pivotal place in the Islamic Law and is enforced rigorously in view of the saying of the Holy Prophet (P.B.U.H) that the "mistake of Qazi (Judge) in releasing a criminal is better than his mistake in punishing an innocent".

"...The rule of benefit of doubt, which is described as the golden rule, is essentially as rule of prudence which cannot be ignored while dispensing justice in accordance with the law. It is based on the maxim, "it is better that ten guilty persons be acquitted rather than one innocent person be convicted."

30. It is also a cardinal principle of administration of criminal justice that prosecution is bound to prove its case against accused beyond any shadow of any doubt. If any reasonable doubt arises in the prosecution case, the benefit thereof must be extended to the accused not as a matter of grace or concession but as a matter of right. Likewise, it is also well settled principle of criminal justice that there is no need of so many doubts in the prosecution case rather any single reasonable doubt arising out of the prosecution evidence, pricking the judicious mind, is sufficient for acquittal of the accused. 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), Ghulam Qadir 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)."

31. For the reasons discussed above, instant appeal is allowed; conviction and sentence recorded by the trial court vide judgment dated **27.02.2018** against appellant Rajab Ali alias Nadeem son of Muhabat Ali are set aside.

32. These are the reasons for our short order dated 03.12.2020.

J U D G E

J U D G E

Karachi,  
Dated 08.06.2021  
Barkat Ali/PA\*