

IN THE HIGH COURT OF SINDH, KARACHI

**Present:**

**Mr. Justice Mohammad Karim Khan Agha J.  
Mr. Justice Zulfiqar Ali Sangi J.**

**Special Criminal Anti-Terrorism Appeal No. 85 of 2021**

Appellant: Muhammad Ameer through M/s  
Aamir Mansoob Qureshi and Iftikhar  
Ahmed Shah, Advocates.

Respondent : The State through Mr. Ali Haider  
Saleem, Addl. P.G, Sindh.

Date of Hearing: 05.10.2022

Date of Judgment: 12.10.2022.

**J U D G M E N T**

**ZULFIQAR ALI SANGI-J.**, Appellant was tried by learned Anti-Terrorism Court No.XVI, Karachi in Spl. Case No.47/2021 arising out of crime No.307/2020 U/s 365-A, 170, 171, 34 PPC r/w section 7 ATA, registered at P.S. Landhi, Karachi and after the trial was convicted for an offence under section 365-A, 34 PPC and was sentenced to suffer imprisonment for life and his properties were ordered to be forfeited to the government. The appellant was further convicted for an offence under section 170 r/w section 34 PPC to suffer R.I. for 02 years with a fine of Rs.50,000/-, in default thereof to suffer SI for six months more vide impugned judgment dated 24.05.2021. Both the sentences were ordered to run concurrently with the benefit of section 382-B Cr.P.C. By means of this appeal he has impugned his conviction and sentence as stated above.

2. Brief facts of the prosecution case are that on 16.06.2020 at 0150 hours, four persons in police uniform in Toyota Corolla Car No.BEJ-641 came to the house of complainant Muhammad Jameel situated at Landhi No.1, Karachi, one of them introduced himself as Manzoor Memon and called the complainant's son Shoaib aged 26 years, took him into custody and told him that he was teasing a daughter of one brigadier on WhatsApp number. He asked the complainant to come to FIA Cybercrime at Gulistan-e-Johar near

Darul Sehwaat Hospital, Karachi. On the next day, when the complainant visited there he was informed that there was no complaint in this regard. Later on, complainant received SMS of dire consequences from Cell phone No.03112563759, 0311-4620707, UN No.0012894603741 and 13158248398 with the demand of Bhatta/ransom of Rs.30 Lacs else his son would be killed by extending him time till 19.06.2020 at 0500 hours. Accordingly, complainant Muhammad Jameel lodged FIR at the police station on 19.06.2020 against unknown persons.

3. After registration of the FIR investigation was started by AVCC police and during the investigation appellant was arrested on 12.09.2020. After completing the investigation case was challaned in the court having jurisdiction. The formal charge against the appellant was framed to which he pleaded not guilty and claimed trial. At the trial the prosecution examined in all 09 witnesses including the complainant, eyewitness, Abductee, mashir of arrest and recovery, the Judicial Magistrate who conducted the identification parade and Investigating Officer who produced various documents in support of the case.

4. The statement of appellant u/s 342 Cr. P.C was recorded wherein he denied prosecution allegations and pleaded his innocence. He, however, neither examined himself on oath nor led any evidence in his defence. At the conclusion of the trial and after hearing the parties learned trial Court convicted and sentenced the appellant through the impugned judgment as stated above. Hence the appellant had filed this appeal against his conviction.

5. Learned counsel for the appellant mainly contended that the appellant is innocent and has been falsely implicated in this case; that the prosecution has solely relied upon Identification parade which was held after three months and hence had lost its sanctity; that P.W.2 Muhammad Awais Jameel who allegedly participated in identification parade has not signed memo of identification parade; that P.Ws 1 and 2 deposed that after arrest of appellant he was brought to their house for identification as such the identification parade has no value in the eyes of law and conviction cannot be based thereon; that per prosecution case there is no allegation of demand or its payment

against the appellant and only allegations against him of abduction which could not be proved; that P.Ws did not depose that they had given any description/hulia of the culprits to the police; that none of the IMEI numbers matched with the cell phones allegedly recovered from the appellant; that the abductee himself did not identify the appellant in the court. In support of his arguments, learned counsel has relied upon the cases of *Mursal Kazmi alias Qamar Shah & another v. The State* (2000 SCMR 1410), *State/Govt. of Sindh v. Sobharo* (1993 SCMR 585), *Ghulam Shabir Ahmed & another v. The state* (2011 SCMR 683), *Haider Ali & others v. The State* (2016 SCMR 1554), *Nazir Ahmed v. Muhammad Iqbal and another* (2011 SCMR 527), *Majeed @ Majeedi & others v. The State* (2019 SCMR 301), and *Kamal Din @ Kamala v. The State* (2018 SCMR 577).

6. On the other hand, learned Addl. P.G has contended that the prosecution has successfully proved its case against the appellant by examining the P.Ws, who had no enmity with the appellant; that the appellant was arrested and was put to the identification parade wherein he was rightly identified by the eye-witness. There is no major contradiction in the evidence of the complainant and the P.Ws, thus the impugned judgment does not call for any interference by this court. He prayed for the dismissal of the appeal. Learned Addl. P.G has relied upon cases of *Ashfaq Ahmed v. The State* (2007 SCMR 641), *Muhammad Siddique & others v. The State* (2020 SCMR 342), *Tariq Hameed Paracha and others v. Danish Ahmed & another* (2019 YLR 2246) and *Farmanullah v. Qadeem Khan and another* (2011 SCMR 1474).

7. We have heard learned counsel for the appellant as well as learned Addl. P.G and have examined the record with their able assistance including the case law cited by them in support of their arguments.

8. No doubt the cases of abduction for ransom are increasing day by day in Karachi therefore such cases are to be dealt with by an iron hand to deter the same and even if there were minor discrepancies and deviations in evidence or minor shortfalls on part of the investigation agency the courts were always to be dynamic and pragmatic in approaching true facts of the case and drawing correct

and rational inferences and conclusions arising out of facts and circumstances of each case. Reliance can be placed on the case of **Ghulam Hussain Soomro v. The State (PLD 2007 SC 71)**. In kidnapping for ransom cases, the courts need to take a dynamic approach to assess the evidence. In the case of **Advocate General Sindh, Karachi v. Farman Hussain and others (PLD 1995 SC 1)**, in a kidnapping for ransom case it was observed by the Honourable Supreme Court of Pakistan that "It is a matter of public knowledge that in Sindh on account of kidnapping for ransom, commission of dacoities and other offences, the people are feeling unsecured. The learned trial court has dilated upon these aspects in detail. I am inclined to subscribe to the view found favour with it. The approach of the Court in matters like the case in hand should be dynamic and if the Court is satisfied that the offence has been committed in the manner in which it has been alleged by the prosecution the technicalities should be overlooked without causing any miscarriage of justice". It is also noted that in cases of abduction for ransom, it is not necessary that all the culprits must have collectively done all the criminal acts together from the stage of abduction to extortion of money. In such cases mostly the work is divided. Abduction is done by a few of them, the place of confinement is guarded by the others and ransom is extorted by one or two of them. This is done through planning. The object of all is to extort money. Therefore, the punishment would be the same irrespective of the role played by each of them. For example, in a case where the accused only told the main abductors on the way that the passage is clear and did not play any other role in the abduction he was tried and the death sentence was awarded to him by the trial court and was confirmed by the High Court and Honourable Supreme Court commuted the sentence of death to imprisonment for life in case of **Said Muhammad v. The State (1999 SCMR 2758)**. Reliance is also placed on the case of **Khawaja Hasanullah v. The State (1999 MLD 514)** wherein it was held that "In cases of abduction for ransom, it is not necessary that all the culprits must have collectively done all the criminal acts together from the stage of abduction till extortion of money. In such cases mostly, the work is divided. Abduction is done by a few of them, place of confinement is guarded by others and ransom is extorted by one or two of them. This is done under a planning. The

object of all is to extort money. Therefore, the punishment could be the same irrespective of the role played by each of them". However, each case is to be decided on its own particular facts and circumstance. To maintain the conviction the court (s) must be satisfied that the evidence produced by the prosecution is reliable, trustworthy and confidence-inspiring.

9. On the other hand it is also an established principle of law that an accused person is presumed to be innocent till the time he is proven guilty beyond a reasonable doubt and this presumption of his innocence continues until the prosecution succeeds in proving the charge against him beyond a reasonable doubt on the basis of legally admissible, confidence-inspiring, trustworthy and reliable evidence. It is well-settled law that the prosecution is bound to prove its case against the accused beyond any shadow of reasonable doubt, but no such duty is cast upon the accused to prove his innocence. It has also been held by the Superior Courts that conviction must be based and founded on unimpeachable evidence and certainty of guilt and any doubt arising in the prosecution case must be resolved in favour of the accused. The rule of giving the benefit of doubt to an accused person is essentially a rule of caution and prudence and is deep-rooted in our jurisprudence for the safe administration of criminal justice. In common law, it is based on the maxim, "**It is better that ten guilty persons be acquitted rather than one innocent person be convicted**". While in Islamic criminal law it is based on the high authority of sayings of the Holy Prophet of Islam (Peace Be Upon Him): "**Avert punishments (hudood) when there are doubts**" and "**Drive off the ordained crimes from the Muslims as far as you can. If there is any place of refuge for him [accused], let him have his way, because the leader's mistake in pardon is better than his mistake in punishment.**" The Hon'ble Supreme Court has quoted probably the latter part of the last-mentioned saying of the Holy Prophet (PBUH) in the case of *Ayub Masih v. State (PLD 2002 SC 1048)* "**Mistake of Qazi (Judge) in releasing a criminal is better than his mistake in punishing an innocent.**" The same principle has also been followed by the Honourable Supreme Court of Pakistan in the recent Judgment in the

case of ***Naveed Asghar and 2 others v. The State (PLD 2021 SC 600)***.

10. Turning to the case in hand the incident of abduction took place on 16-06-2020 at about 0130 hours and as per the evidence of PW-1 Muhammad Jameel (complainant) the father of the abductee and PW-2 Muhammad Awais the brother of abductee four people on corolla car came at their house and took Shoaib in the said car by showing themselves to be FIA personnel and informing Shoaib that he is wanted in an inquiry. The complainant approached the FIA who denied the arrest and any knowledge about Shoaib. Later on Awais received calls for a ransom amount of Rs.3000000/= for the release of the abductee and after that complainant, Muhammad Jameel went to the police station and lodged the FIR on 19-06-2020. The complainant deposed that he finally settled with the accused person an amount of Rs. 1 million and took 975000/= which he handed over to a person sitting on a motorcycle at Shakra-e-Faisal down the Baloch bridge who introduced himself as a Brigadier and also showed him a card. After one hour he again received a call from the accused person who demanded one lac more which the complainant arranged and handed over to the accused at Natha Bridge and after one hour his son was released by them. He informed the CIA police that his son has been released. PW-2 who is the real son of the complainant and the real brother of the abductee narrated a different story in respect of the abduction and handing over the ransom to the accused persons. He disclosed the time of the incident to be at about 0030 hours on 16-06-2020. He was on the second floor of the house when the door was knocked and his sister responded to the same. The accused asked for Shoaib his elder brother and Shoaib came down and opened the door whereafter the accused caught hold of Shoaib by the neck to which his sister shouted to which all house inmates came down. PW-1 though claiming to be present has not deposed a single word about the said narration of PW-2. Awais also deposed that he inquired from the accused persons who had shown him some documents relating to cybercrime and they further disclosed to him that Shoaib is harassing the daughter of a Brigadier and also showed him some screenshots of WhatsApp in which the name of Shoaib was visible. This narration is also not supported by PW-1 who was also claiming to be available at

the same time. PW-2 gave further details in respect of the demanding amount by the accused persons sending him to live location to handover the amount to them, directing him to come here and there and ultimately he handed over the amount of Rs. 975000/- to the accused. This PW and the PW-1 claimed to be with each other during the entire relevant time and places they went to but PW-1 did not depose a single word as narrated by PW-2 in this regard which creates very serious doubt about their evidence. Both witnesses claimed to be the eye-witness of each movement start from abduction to bargaining and finally to payment of ransom amount to the accused but they both gave different stories of each movement which suggest that they are telling untruthful witness and are not to be relied upon as they are trying to improve the case of the prosecution to bring it with conformity to the evidence of police personal who arrested the accused in the present case without having any material/evidence against the accused which connected him with this crime at the time of his arrest.

11. PW-1 and 2 saw the accused persons who abducted Shoaib only once and the accused were not known to them previously. The description/Hulia is not mentioned by them to the police at the time when FIR was registered or at the time when their statements under section 161 Cr. P.C were recorded. They saw the person twice who collected the ransom amount from them but the present accused was not the same. PW-2 stated during the examination-in-chief that "The accused present in the court is same, one of the kidnapers who was armed with pistol at the time of kidnaping of my brother." This witness did not depose a single word that he was the person who collected the ransom amount from them. The only evidence against the accused/appellant is that of an identification parade conducted before the magistrate. PW-2 had identified the accused during the identification parade but the identification parade was not conducted through the abductee Shoaib who as per the case of prosecution remained with the accused persons for about 25 days. The identification parade held before the Magistrate has also no value in the eyes of law as the accused before the identification parade was shown to the witness who identified him in the parade. An identification Parade was conducted through PW-2 Muhammad Awais the real brother of the Abductee who during cross-examination

admitted and stated that **“The present accused was brought at our house for identification. Thereafter, we went to CIA for recording the statement. Thereafter, identification parade was conducted.”** This witness also stated that **“It’s true that the present accused had not taken the ransom amount from my father.”** The evidence offered through identification proceedings is not a substantive piece of evidence but is only corroborative of the evidence given by the witnesses at the trial as has been held in the case of ***Muhammad Bashir v. The State PLD 1958 SC (Pak.) 1***. It has no independent value of its own as per the dicta laid down by the Honourable Supreme Court in the case of ***Muhammad Afzal and another v. The State 1982 SCMR 129*** and cannot, as a rule, form a sufficient basis for conviction though the same may add some weight to the other evidence available on record as per the case of ***Sudhindranath v. The State AIR 1952 Cal. 423***. Therefore in our view, the identification parade in the present case is not helpful to the prosecution to maintain the conviction of the accused.

12. Importantly in the cases of abduction/kidnapping normally the case would depend upon the evidence of the abductee. In such cases, the abductee shall always be regarded as the ***star witness*** while the other evidence would be that of a corroborative piece of evidence. In the instant case, the star witness of the case is PW-3 Shoaib as per his evidence on 16-06-2020 he was sleeping in the house when at about 0100 hours the door was knocked, he peeped from the window and saw the car available at the side of the house, he came out and open the door who asked him his name and they kept gun on him and took him towards the car. He was blindfolded and after a 15/20 minute drive they stopped the car and shifted him to the house which was on the first floor. He has not deposed a single word that when the door was knocked his sister responded the same and when he was arrested his sister shouted on which other PWs came there. The abductee has also not supported PW-2 that the accused persons at the time of abduction showed some screenshots of WhatsApp etc. The abductee also in his evidence claimed that he was tortured by the accused persons but on his release he was not examined by the doctor nor was referred to any doctor and none of the other PWs disclosed that he was



tortured. This witness has also deposed that on 25-06-2020 he was released and on the second day AVCC police came to his house and showed him the picture of the accused to which he identified to be the same. If we believed it to be true then again we doubt the PW-7 the first investigation officer deposed that on 01-07-2020 he wrote letters to all SHOs of Karachi city regarding the abduction of Muhammad Shoab, demanding ransom amount. Further, this witness during cross-examination admitted that his statement under section 161 Cr. P.C is silent regarding the description of the accused which also suggests that he had not identified any accused after his release on seeing the photographs etc. The important fact is that this star witness had not identified the accused at the time of recording evidence and from the chief examination it does not transpire as to whether he had identified the accused present in the court to be the same. This witness also changed his stance from his earlier stance taken in the statement under section 161 Cr. P.C and made dishonest improvements which renders his evidence unreliable.

13. Keeping in view the above-discussed golden rule of giving the benefit of doubt to an accused person for the safe administration of criminal justice we find that all the evidence discussed above is completely unreliable and utterly deficient to prove the charge against the appellant beyond a reasonable doubt. Resultantly, the Special Anti-Terrorism Appeal No. 85 of 2021 is allowed and the impugned judgment dated 24.05.2021 passed by learned Judge, Anti-Terrorism Court No.XVI, Karachi in Special Case No.278/2020, (New Special Case No. 47 of 2021) arising out of FIR No. 307/2020 for the offences punishable U/s 365-A/170/171/34 PPC r/w Section 7 ATA, 1997, registered at PS Landhi, Karachi is set aside and the appellant Muhammad Ameer s/o Momin is acquitted of the charges. He shall be released forthwith if he is not required to be detained in some other custody case.

14. The above Appeal is disposed of in the above terms.

JUDGE

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