

# IN THE HIGH COURT OF SINDH AT KARACHI

## Criminal Appeal No. 69 of 2022

Appellants : Yousuf Shah & 3 others  
through Mr. Rehman Ali Khan, Advocate

Respondent : The State  
through Mr. Talib Ali Memon, A.P.G.

Date of hearing : 19<sup>th</sup> September, 2022

### JUDGMENT

**Omar Sial, J.:** Yousuf Shah, Bilal Shah, Abdullah and Hakeem Shah are all accused of kidnapping Qasim Khalid, beating him, tearing of his clothes and putting red chillies in his rectum. F.I.R. No. 98 of 2018 was registered on 14.07.2018 under sections 367, 355, 337-A(i) and 34 P.P.C. at the Bahadurabad police station on the complaint of Qasim Khalid.

2. The accused all pleaded not guilty to the charge against them and claimed trial. The prosecution examined the victim **Qasim Khalid as PW-1** (he was the complainant). **Khalid Khan as PW-2** (he was father of the victim). **S.I. Shakeel Ahmed as PW-3** (he was the investigating officer). **Dr. Sheeraz Ali as PW-4** (he was the doctor who medically examined the victim). In their respective section 342 Cr.P.C. statements the accused denied the allegations against them but admitted that they had only slapped Qasim.

3. The learned 10<sup>th</sup> Additional Sessions Judge, Karachi East, on 05.01.2022, found the accused guilty as charged and sentenced them as follows:

Rs. 15,000 each as daman for an offence under section 337-A(i) P.P.C. (or one month imprisonment upon default)

Rs. 3,000 each as fine for an offence under section 355 P.P.C. (or 15 days imprisonment upon default)

Rigorous imprisonment of 6 months and a fine of Rs. 2,000 each (or 10 days in prison in default)

4. Being aggrieved by the learned trial court's judgment, the accused have filed this appeal.

5. I have heard the learned counsel for the accused who argued that there is no independent witness and that the case property was not produced at trial. He therefore prayed that the appeal be allowed. To the contrary the learned Additional Prosecutor General supported the impugned judgment and further submitted that the sentence awarded to the accused should be enhanced. My observations and findings are as follows.

6. The incident, at least to the extent of the accused interacting with the victim and slapping him are not denied. Qasim was a minor when the incident occurred. According to his testimony, he was on his way to school when the accused intercepted him and took him from close to Al-Khidmat Park to Tabba Chowk where they beat him and inserted red chillies in his rectum. The F.I.R. however shows both addresses to be basically the same place. It appears that the incident occurred at the place where Qasim was intercepted. That Qasim was not moved from one place to another is also supported by the memo of inspection of place of incident, which by the way, has a different version than that stated in the F.I.R. The memo made on 14.07.2018 made at 4:00 p.m. records that Qasim was sitting in his shop when the accused came and beat him. The version given by Khalid Khan does not reconcile with it either. According to Khalid Khan, he was told by some boys that the boys outside his home had told him that accused Yousuf and his 3 sons had taken Qasim in a Suzuki. It also is unbelievable that Khalid Khan would go and randomly sit at a roundabout waiting for the Suzuki when he had no clue as to where the accused had taken his son. I also do not believe Khalid Khan when he said that he stood and watched the accused maltreat his son and did nothing to intervene as he was a "heart patient". This was simply not the reaction of a father seeing his son in danger. Khalid Khan's testimony becomes further doubtful when he denied, contrary to what the other witnesses stated, that there was no police station close to where the incident occurred and that the place of incident was not a crowded one. I do not believe that Khalid Khan was an eye witness. The remaining two supposed eye witnesses, Zubair and Jahangir, who apparently the victim knew so well as that he identified them looking on when he was being maltreated were not examined at trial. While it was claimed that Jahangir could not be found as his address was not complete, no explanation was provided for the absence of Zubair. One would think that if the victim knew both Zubair and Jahangir so well, his family would

have helped the police to locate at least one of them. Their absence leads to the presumption that had they testified they would have not supported the prosecution case. Further, the clothes that the victim wore which were allegedly torn were not produced at trial. Absolutely no reason was given as to why they were not. One shalwar and kameez allegedly worn by the victim at the time of the offence were sent to the chemical analyst however the chemical analyst reported that blood stains were found on them. The prosecution had not even alleged that the victim had bled nor did the doctor who examine Qasim record the same. The doctor could also not recollect whether the clothes were torn or not.

7. Keeping the above in mind I am of the view that the prosecution had failed to prove a case of kidnapping or causing hurt against the accused. In view of the fact that red chillies were found on the body of the victim when he went for his medical examination and it is something which I find difficult for a person to self-inflict, coupled with the acknowledgment of the accused that they had only slapped Qasim, I find them guilty of an offence under section 355 P.P.C. The impugned judgment is modified to the extent that the conviction and sentence under section 367 and 337-A(i) P.P.C are set aside however the conviction and sentence under section 355 is maintained. The appellants are on bail. Their surety will not be discharged until the fine amount is paid.

8. The appeal stands disposed of in the above terms.

JUDGE