

IN THE HIGH COURT OF SINDH AT KARACHI

PRESENT:

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

Special Criminal Anti-Terrorism Appeal No.163 of 2021
Special Criminal Anti-Terrorism Appeal No.167 of 2021

Appellants in Appeal : 1. Muhammad Zeeshan S/o
No.163/2021 Ghulam Sarwar
2. Muhammad Raheel S/o Javed
Iqbal
3. Adnan S/o Muhammad Hanif
through Mr. Insaf Ahmed Shaikh,
Advocate.

Appellant in Appeal : Muhammad Adnan S/o Muhammad
No.167/2021 Hanif through Mr. Ali Gohar
Masroof, Advocate.

Respondent : The State
Through Mr. Ali Haider Saleem
Addl. Prosecutor General Sindh.

Date of Hearing : 17th October, 2022

Date of Order : 24th October, 2022

J U D G M E N T

ZULFIQAR ALI SANGI, J.— Being aggrieved and dissatisfied with the judgment dated 28.09.2021 passed by learned Judge, Anti-Terrorism Court No.XV, Karachi in New Special Case No.18/2019 (Old Special Case No.AJ-217/2015) arising out of FIR No.309/2015 for the offences punishable U/s 365-A, 302, 34 PPC R/w Section 7 ATA, 1997 at PS Shah Faisal Colony, Karachi whereby the appellants were convicted and sentenced to suffer imprisonment for life under Sections 365-A PPC, 302(b) PPC and 7(1)(e) ATA, 1997 the appellants have moved these appeals. All sentences were ordered to run concurrently however the benefit of Section 382-B Cr.P.C. was extended to the appellants.

2. Brief facts of the case are that complainant Abdul Ghaffar son of Talib Hussain lodged FIR No.309/2015 at PS Shah Faisal Colony on 26.09.2015 at 2130 hours for offences under Sections 365-A, 302 and 34 PPC wherein he stated that he was residing at House No.MC-423 A, Street No.6, Green Town, Shah Faisal Colony Karachi and was retired from the Head Office of Pakistan State Oil as a Security Guard. On 14.09.2015 his son Uzair Hassan aged about 10/11 years left his house at about 04:00 pm for seeking tuition but did not turn up. The complainant searched for his son without success and therefore got the report of missing his son registered at PS Shah Faisal Colony. On 15/16 of September 2015 the complainant started to receive calls on his cell phone bearing number 0301-2808053 from cell numbers 0304-2436726, 0306-3030212, 0331-2562706 and 0301-2844961 whereby thirty lacs were demanded as extortion. The complainant replied to the callers that he was a poor person and had no such amount on which the callers demanded twenty lacs. The cousin (Phupizad Bhai) of the complainant namely Shahbaz also received a call on his cell number 0302-2661156 from cell number 0302-2823134 whereby he was threatened that in case he approached the police then the son of Abdul Ghaffar will be murdered (full fried). The complainant party was terrified as such did not come into contact with the police again. The complainant party was searching on their own, in the meanwhile, it was unearthed that accused Zeeshan son of Ghulam Sarwar along with his accomplices Adnan son of Hanif and Raheel son of Javed kidnapped son of the complainant in furtherance of their common intention, who were demanding extortion and because of non-payment of extortion, they took the son of the complainant to district Naushahro Feroze and committed his murder within the remit of Bhiria City police station. The complainant after consultation arrived at the police station for reporting the matter. The complainant claimed that accused Zeeshan son of Ghulam Sarwar, Adnan son of Hanif and Raheel son of Javed kidnapped his son Uzair Hassan aged 10/11 years and because of non-payment of extortion money they murdered him. Hence, the instant FIR.

3. After completing the usual investigation, the challan was submitted before the Court having jurisdiction. After completing all legal formalities which included supplying of copies of papers to the accused, the charge was framed against them, to which they pleaded not guilty and claimed to be tried.

4. The prosecution in order to prove its case examined 13 Prosecution Witnesses and exhibited various documents and other items. The statement of the accused was recorded under Section 342 Cr. P.C in which they denied all allegations leveled against them. After appreciating the evidence on record, the learned trial court convicted the appellants as mentioned above; hence, the appellants have filed these appeals against their convictions.

5. The facts of the case as well as evidence produced before the trial court find an elaborate mention in the impugned judgment dated 28.09.2021 passed by the learned trial court and, therefore, the same may not be reproduced here so as to avoid duplication and unnecessary repetition.

6. Learned counsel for the appellants have contended that the appellants are innocent and have been falsely implicated in this case; that the prosecution has miserably failed to prove the charges against the appellants; that the learned trial court while pronouncing the judgment did not assess the evidence properly; that the whole story has been concocted by the complainant in connivance with the investigating officer; that there are so many doubts and doubts in the prosecution case, therefore, the benefit of the doubt should be given to the appellants; that there are many contradictions in the statement of PWs. They lastly prayed for the acquittal of the appellants. They have placed reliance on the cases of *Abdul Manan vs. Abdul Hadi and 7 others (PLD 2019 Balochistan 59)*, *Muhammad Ishaque Khan and others vs. The State and others (PLD 1994 Supreme Court 259)*, *Sanaullah vs. The State (2020 MLD 659)*, *Naseer Khan vs. The State (2021 YLR 940)*, *Muhammad Safeer and another vs. The State and others (2017 PCRLJ 1435)*, *Riaz Ahmed vs. The State and another (2019*

PCRLJ 46), *Muhammad Ashraf vs. The State* (2016 SCMR 1617), *Naveed Asghar and 2 others vs. The State* (PLD 2021 Supreme Court 600), *Khalid Mehmood and another vs. The State and others* (2021 SCMR 810), *Gul Muhammad and another vs. The State* (2021 SCMR 381), *Najaf Ali Shah vs. The State* (2021 SCMR 736), *Akhtar Muhammad alias Ghani and others vs. The State and others* (2020 PCRLJ 533), *Muhammad Din vs. The State* (2021 PCRLJ 839) and *The State through P.G. Sindh and others vs. Ahmed Omar Sheikh and others* (2021 SCMR 873).

7. On the other hand, learned Addl. P.G. Sindh has fully supported the impugned judgment by contending that the prosecution has successfully proved its case by examining the P.Ws, who had no enmity or ill-will with the appellants; that there is sufficient evidence available on record to connect the appellants with the commission of the offence; that appellant Zeeshan confessed to the offence before the Judicial Magistrate; that the witnesses identified the appellant to be the accused at the time of their evidence before the trial Court. He has placed reliance on the cases of *Mehmood Ahmad and 3 others vs. The State and another* (1995 SCMR 127), *Said Muhammad vs. The State* (1999 SCMR 2758), *Muhammad Amin vs. The State* (PLD 2006 Supreme Court 219), *Muhammad Siddique and others vs. The State* (2020 SCMR 342) and *Ghulam Nabi vs. The State* (2007 SCMR 808).

8. We have heard the learned counsel for the appellants in both the appeals as well as learned Addl. P.G. Sindh and perused the material available on record with their able assistance.

9. The incident in respect of missing child Uzair Hassan occurred on 14.09.2015 and as per evidence of complainant Abdul Ghaffar entry of the said incident was made at PS Shah Faisal Colony on the same date however none of the prosecution witnesses has exhibited the same entry in respect of the missing of the child. Thereafter on information the dead body was surfaced on 23.09.2015 and as per evidence of the complainant he has received the last call for ransom on 19.09.2015 however,

the FIR was registered on 26.09.2015; that as per evidence of the complainant the last call was received from accused Zeeshan who demanded ransom amount and the same call was received by his brother Faisal, who as per complainant did not narrate the same facts to the complainant. The delay in FIR has not been explained as to why after receiving the dead body on 23.09.2015, FIR was not registered on the same day but was registered on 26.09.2015 after a delay of three days and on enquiry the complainant who was present in Court stated that he was busy in consultation with his relatives as he had suspected that the offence would have been committed by accused Zeeshan and others. Normally the delay in the cases of abduction for extortion of money/ransom is not fatal to the case of the prosecution as the relatives of the abductee are giving preference to first searching for the abductee but in the present case the delay is caused as the complainant party was consulting with each other and mainly searching for accused persons. It is also stated by the complainant before this Court that they mainly suspected accused Zeeshan as they have been informed that Zeeshan is not available in the province of Punjab and he is available in the province of Sindh therefore they had suspected that he might have murdered his son. However, it is pertinent to mention here that neither the complainant disclosed the source of information in respect of the involvement of accused persons as to how he came to know that these accused persons have committed the offence of kidnapping his son and thereafter murdered him nor anything is mentioned in the FIR in this respect.

10. From the re-assessment of evidence produced by the prosecution, it appears that the incident of the present case is of two versions; **first**, set out by the prosecution and **second** introduced through the confessional statement of accused Zeeshan. As per evidence of PW-2 Ali Asghar, who was a taxi driver whose taxi was hired by the accused persons at Tando Adam railway station for Nawab Shah having a child with them. The child was in a happy mood, completely conscious and reciting Naat while travelling and one accused was in contact

with someone else; however, when they reached Nawab Shah, the accused persons requested him to drop them at Mehrabpur as the car of a person who was coming to pick them at Nawab Shah had broken down; however, he refused to go to Mehrabpur but when the child sitting in the car also requested him then on his request he agreed to proceed for Mehrabpur. On reaching Mehrabpur one person was available in black colour Honda City Car bearing No.LEE-323 who on seeing the child hugged him and both of them seemed to be very happy; whereas PW-3 Imran Ahmed, who was the owner of the showroom rent-a-car who handed over the car Honda City bearing LEE-323 to the accused persons while taking a blank cheque and copy of CNIC against the payment of said car and as per his evidence after 8 to 10 days when the car was not returned he contacted with accused Zeeshan. It has come in the evidence that all three accused persons belong to the province of Punjab and had no relatives in Sindh except the complainant who is the father-in-law of accused Zeeshan. All three accused persons are not previously known to PW-2 and PW-3 nor did these PWs give any description/hulia to the police when they saw them. As per the evidence of PW-2, he took the two accused persons to Mehrabpur with a child where one more accused came with a black colour car which reflects that when the car was obtained from the owner of the rent-a-car, he was alone; however, as per evidence of PW-3 who in his cross-examination stated that "It is correct to suggest that accused Adnan Raheel and Zeeshan came to my showroom for obtaining the car for rent." If we believe the evidence of PW-3 then we can conclude that PW-2 was telling a lie or vice versa. It is also a fact to be considered that after the arrest of the accused persons they were not put to an identification parade through PW-2 and 3 to confirm that these are those accused who travelled and hired both the car and the taxi.

11. PW-7 Noor Rehman, who was clerk of the guest room/Musafir khana. As per his evidence, on 14.09.2015 at about 08:00 or 08:15 a.m. Muhammad Raheel and Muhammad Zeeshan came there to book a room and after staying one night

left the room at 04:25 p.m.; however, on 12.10.2015 police came to investigate to whom he had shown the relevant register of the guest room, as such, we are reluctant to believe the version of PW-7 in which presence of accused Adnan had not been disclosed. The prosecution has also not collected any evidence in respect of accused Adnan whether he was in Karachi at the relevant time. This witness also had not stated a single word that when both the accused left the Musafir khana they had their third person or kid with them. In our opinion, his evidence is also not helpful as after the arrest of the accused person identification was not conducted before the Magistrate through this witness to testify that these accused persons were the same persons who booked the room at Musafir khana.

12. The other piece of evidence is the confessional statement of accused Zeeshan. As per his confessional statement he brought the kid to the railway station Landhi where he mixed some intoxicating medicine in juice and gave the same to the kid and when he was completely unconscious then he brought him in the train along with other accused persons and he got off at Tando Adam station and asked the others to come at Mehrabpur station. After taking the car on rent he took them from Mehrabpur when the child was completely unconscious and when he was coming to semi-conscious then again he injected chloroform which lead to the kid passing urine and after a few minutes he died and then they threw the dead body in the canal. Again if we presume that the confessional statement of accused Zeeshan is true then we cannot believe the evidence of PW-2, 3 and 7 as PW-2 in his evidence stated that the child was completely in senses and happy mood and reciting Naat on the way to Mehrabpur and after seeing accused Zeeshan at Mehrabpur, he happily hugged him.

13. It has also come in evidence that accused Zeeshan was arrested while in injured condition and he received firearm injury but the said injury has not been investigated as to where and at what place he received firearm injury; however, looking to the confessional statement accused Zeeshan stated that they have

managed one drama and accused Raheel brought the pistol from Punjab and made a fire at him but the same version has not been investigated. The second aspect in respect of receiving injury has also come on record that while cross-examining the investigating officer wherein the defence plea of accused Zeeshan is that firstly he was arrested by the Rangers personnel and maltreated then they fired at his leg and handed over his custody to the local police who then brought him in injured condition before the Magistrate where his confessional statement was managed and he was booked in the present case.

14. On careful consideration, we are giving the same weight to the plea taken by accused Zeeshan while cross-examining the investigation officer and in his statement on oath because of the reason that if the plea taken by the accused is incorrect then why the I.O. had bothered to collect the evidence that wherefrom he received firearm injury and this entire fact had been concealed during the investigation by only mentioning that he was arrested in injured condition; however, no FIR in respect of any encounter or dacoity or otherwise for receiving said injury during committing any offence or otherwise was brought by the prosecution on record.

15. No ransom demand has been proved by the prosecution through any tangible evidence. For instance, there is no CDR to link the appellants to the offence. No one saw the appellants throw the body of the deceased in the canal and the last seen evidence without proper identification of the appellants cannot be relied upon which in any event is only circumstantial evidence and is to be viewed with extreme caution. No toxicology report was produced to show that the child had even been drugged.

16. On reassessment of the entire evidence as discussed above we find no substance against the appellants which connects them with the commission of the offence and the story set-up by the prosecution has become doubtful. 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 (peace be upon him) 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.**"

17. The upshot of the above discussion is that the prosecution has miserably failed to bring home the guilt of the appellant beyond a reasonable doubt and it is a settled proposition of law that giving the benefit of doubt to an accused is not by way of concession but by way of right and that there need not be many circumstances creating doubts and if there is a single circumstance which creates reasonable doubt about the guilt of the accused then the accused will be entitled to the benefit. In this respect, reliance can be placed upon the case of **Muhammad Mansha v. The State (2018 SCMR 772)**, wherein the Hon'ble Supreme Court of Pakistan has held that:

"4. 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 be 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 than one innocent person be convicted". Reliance in this behalf can be made upon the cases of Tarique Parvez v. The State (1995 SCMR 1345), Ghulam Qadir and 2 others v. The State (2008 SCMR 1221), Mohammad Akram v. The State (2009 SCMR 230) and Mohammad Zaman v. The State (2014 SCMR 749)."

18. Keeping in view the said golden rule of giving the benefit of doubt to an accused person for the safe administration of criminal justice we are firm in the opinion 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 Spl. Criminal A.T.J. Appeals No.163 and 167 of 2021 are allowed and the Judgment dated: 28.09.2021 passed by learned Judge, Anti-Terrorism Court No.XV, Karachi in New Special Case No.18/2019 (Old Special Case No.AJ-217/2015) under FIR No.309/2015 for the offence punishable U/s 365-A, 302, 34 PPC R/w Section 7 ATA, 1997 at PS Shah Faisal Colony, Karachi is set aside and the appellants are acquitted of the charges. They shall be released forthwith if they are not required to be detained in some other custody case.

19. Both appeals are disposed of in the above terms.

JUDGE

JUDGE