

JUDGMENT SHEET

IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD

Cr. Spl. ATA Appeal No.D-61 of 2015

Cr. Jail Appeal No.D-62 of 2015

Before:

Mr. Justice Muhammad Iqbal Kalhoro.

Mr. Justice Adnan-ul-Karim Memon.

Date of hearing: 22.09.2022.

Date of judgment: 22.09.2022.

Appellants/accused : 1) Arshad S/o Shahnawaz Mahar,
2) Ghulam Farooq S/o Ghulam Rasool Mahar, through Mr. Mian Taj Muhammad Keerio, Advocate.

Complainant : Through Syed Tarique Ahmed Shah, Advocate.

The State: : Mr. Shawak Rathore, Deputy Prosecutor General, Sindh.

J U D G M E N T

MUHAMMAD IQBAL KALHORO, J- Appellants having been charged for abduction of Naveed Memon for ransom from Indus Highway Road near Shell Petrol Pump, Jamshoro alongwith unknown accused on 30.08.2013 at 09:30 pm. within sight of complainant and PW-2 Ali Akbar, and subsequently murdering him and dumping his body at unknown place, recovered by police on 10.09.2013, stood trial before learned Anti-Terrorism Court, Hyderabad, and have been convicted and sentenced to suffer life imprisonment under Section 6(2)(e) punishable under Section 7(e) of Anti-Terrorism Act, 1997 and 302/34 PPC, 6(2)(a) punishable under Section 7(a) of Anti-Terrorism Act 1997; and under Section 201 PPC for three years R.I, and to pay fine of Rs.20,000/-, in default, to suffer 02 months more with benefit of Section 382-B CrPC, vide impugned judgment dated 30.06.2015, have challenged the same by means of appeals in hand.

2. The prosecution in order to prove charge against appellants examined as many as 12(twelve) witnesses and has produced all necessary documents including FIR, mashirnama of place of vardat, mashirnama of arrest and recovery, site sketch, roznamcha entries, photographs of deceased and lash chakas form etc.

3. The appellants in their statements u/s. 342 CrPC have denied the allegations and pleaded their innocence without however leading evidence on oath or in defence.

4. Learned Counsel for the appellants has submitted that appellants have been falsely implicated in this case without there being any reliable evidence against them; that the alleged incident of abduction had occurred on 30.08.2013 but the complainant lodged FIR on 11.09.2013 after about 12 days without any explanation; that appellants were arrested on 12.09.2013, and on 13.09.2013 they allegedly led the Police to a place where clothes of the deceased were available and then on 24.09.2013, after about 12 days of arrest and 25 days of incident, they led police party to a gutter from where wallet and mobile phone of the deceased were recovered, which is unbelievable. More so, there is no evidence to show that the clothes or other items recovered at the pointation of accused belong to the deceased; that complainant in his evidence has admitted that he had reported the matter regarding missing of deceased to the police on the next day, although in the case, he has made a claim of witnessing incident of abduction of his brother, and identifying the accused.

5. On the other hand, learned Counsel for the complainant and Assistant Prosecutor General have supported the impugned judgment.

6. We have heard the parties and perused material available on record. Complainant, in order to justify his presence at the spot has disclosed in his evidence that on the day of incident he alongwith PW Amjad Ali, his younger brother, and brother-in-law Haji Akbar had gone to Jamshoro from Power House Colony, their residence, to buy some groceries. After which, while returning they stopped by Shell Petrol Pump, Indus Highway Road, for checking air in the tires and meanwhile spotted Naved Ahmed, their brother, the abductee, on a motorcycle, returning from his duty, passing by them. After some distance, he was intercepted by four people, who alighted from a white colour car, out of whom, they identified two accused as Arshad Mahar and Farooque Mahar, the appellants, residents of their colony in Jamshoro. They started dragging his brother to the car. They i.e. complainant party tried to rescue Naveed Ahmed but the accused desisted them for doing so on the force of weapons and disclosed that

they were kidnapping him for ransom and that they shall pay Rs.50,00,000/- for his release and sped away in the car towards Dadu. Complainant then communicated information to the police station Jamshoro but of missing of his brother and not of his abduction. Next day, he received a phone call from the culprits for ransom. Then, on 11.09.2013, after 12 days, he received information that an unknown body was found by the police, which after postmortem had already been buried by Edhi Center. He visited the Edhi Center where he was shown some photographs of a dead body which he identified to be his brother, Naveed Ahmed. Hence, he appeared at police station and registered FIR against appellants and unknown accused. The same story, more or less, has been described by PW-02 Ali Akbar in his evidence, who is originally resident of Kandiaro and has justified his presence in Jamshoro at the relevant time on account of his visit to eye specialist in Hyderabad for testing his eyes, but has not produced any document to substantiate it.

7. The complainant in his evidence has admitted that he knows two accused, the appellants, for 15 years. It is strange, therefore, although his brother was abducted by these already-known-people and he identified them at the spot, but he did not report the matter against them as it happened to the police immediately, or even tried to reach their families, living in the same colony, to protest and retrieve his brother from them. On the contrary, he lodged a report of missing of his brother instead to the police. Learned Counsel for the complainant during arguments tried to explain such idiosyncrasy by stating that complainant was fearing for life of abductee, hence, he did not report abduction but reported him to be missing. Such explanation, however, we do not find confidence inspiring, for the complainant at least could have described the incident, as it happened, without taking names of the accused, if he was expecting any backlash from them, for disclosing their names.

8. Further, the complainant claims to have received a phone call from cell number of the accused, who demanded ransom from him for release of his brother on the next date. But there is no record that he provided such information to the I.O or gave his phone for lab examination and collecting CDR to confirm such fact. Furthermore, the complainant claims to have identified his brother, Naveed Ahmed, the victim, through photographs shown to him at the Edhi Center.

Those photographs have been produced during the trial and are available on the record as Exs-12/C & 12/D. We have seen them which show a naked body of a grownup male in prone position, his face downwards and not visible, swelling all over it and appears to be decomposed to a considerable extent. It is therefore not clear as to how the complainant was able to identify the same to be body of his brother. No effort to exhume the body of deceased for the purpose of DNA report was made to establish, at least, the same body to be of victim's. PW-5 ASI Hamid Ali, who received information about presence of a dead body on the katcha road leading to the houses of Khosa, had prepared necessary formalities at the spot and brought the body for postmortem report. He has admitted in his cross-examination that in the photographs produced by him the body is unidentifiable, and further that since no one could identify the dead body, he had advised the hospital administration to keep it in cold storage but since it i.e. the body was old and in decomposed condition, hence, it was handed over to Edhi Center for burial. So, this whole discussion shows that it is not yet clear that the unknown body was actually of the brother of the complainant.

9. The other pieces of evidence which the prosecution is relying upon is recovery of clothes of the victim i.e. one black colour purse with three photographs of the deceased, one mobile phone without battery and SIM, one churri with a black handle, one broken spectacles and one flip flop. There is no evidence, however, that these articles actually belong to the deceased except, of course, the photographs. Neither identification test of these articles was held during investigation nor at the time of trial the same were shown to the complainant and other witnesses and identified to belong to the victim. The mobile phone and wallet containing three photographs of the deceased were allegedly retrieved from a flowing gutter on pointation of the accused on 24.09.2013, after about 24 days of the incident, which calls for an explanation that how from a flowing gutter after such time these articles were found present at the same place, and retrieved. Therefore, on the basis of these articles, the appellants could not be connected with the offence of abduction and murder of the deceased, when otherwise regarding which there is no evidence.

10. The evidence of the complainant, who although claims to be the eye witness, but did not report the matter truly and just simply

made it an incident of missing of his brother, and subsequently, after 10 days, changing his version and implicating the appellants in FIR, has cast a serious doubt over prosecution case. Such evidence, lacking credence, cannot be made a basis of maintaining conviction of the appellants. We, therefore, in view of discrepancies, highlighted above, are of the view that prosecution has miserably failed to establish its case against the appellants beyond a reasonable doubt. It is settled principle of law that for extending benefit of doubt, presence of multiple circumstances creating doubt is not necessary and if there is a single circumstance, creating a reasonable doubt in prudent mind about the guilt of an accused, the accused will be entitled to its benefit as a matter of right. The guidance in this respect may be taken from the decision of the Hon'ble Supreme Court in case of *TARIQ PERVEZ v. The STATE (1993 SCMR 1345)*.

11. For foregoing reasons, by a short order passed on 22.09.2022 these appeals were allowed. Consequently, impugned judgment dated 30.06.2015 passed by learned Judge, Anti-Terrorism Court, Hyderabad, was set aside and the appellants were acquitted of the charge and were ordered to be released forthwith if their custody was no more required by jail authorities in any other case. These are the reasons for arriving at such conclusion.

12. The appeals in hand are accordingly disposed of.

JUDGE

JUDGE

Shahid