

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD.

Criminal Jail Appeals No.D-84, 108 & 128 of 2021

Present:-

Mr. Justice Muhammad Iqbal Kalhoro.
Mr. Justice Amjad Ali Sahito.

Date of hearing: 29.03.2023
Date of decision: 29.03.2023
Appellants: Gulzar Ali, Muhammad Ismail and Mushtaque Ali, through Mr. Om Parkash advocate.
The State: Through Mr. Shahid Ahmed Shaikh, Addl. P.G and Mr. Abdul Waheed Bijarani, APG.

JUDGMENT

MUHAMMAD IQBAL KALHORO, J:- We have heard the parties at length. Learned defense counsel after arguing the case at some length has submitted that in view of kind of evidence available on record, at the most, the case is made out u/s 364-A PPC: and not u/s 365-A PPC: abduction / kidnapping for ransom. According to him, nothing is available to show that the appellants had demanded ransom from the complainant namely Muhammad Hashim for releasing his kidnaped son Din Muhammad aged about 06 years old. According to him, although in his evidence Ex.14 the complainant has stated that on 12.09.2016 he had received mobile call from appellant Mushtaque Lakho who had demanded ransom of Rs.40,00,000/- for release of his son; but first investigating officer namely Sub-Inspector Muhammad Bux in his evidence has not supported factum of such phone call or even the disclosure by the complainant of having received such phone call. No Call Data Record (CDR) or transcription of the phone call has been brought on record to support this fact. The number i.e. 03063924004 from which the phone was received by the complainant is not registered in the name of appellant Mushtaque Lakho, nor the said SIM was recovered from him. Therefore, insofar as applicability of section 365-A PPC is concerned, in the given facts and circumstances, it is not made out.

2. On the other hand learned Additional Prosecutor General and Assistant Prosecutor General although have supported the impugned judgment but have conceded that this case at the most falls within the ambit of section 364-A PPC, as there is no tangible evidence showing

that ransom amount was demanded by the appellants as alleged by the complainant and therefore, applicability of section 365-A PPC is not attracted in the case.

3. As per brief facts, complainant Muhammad Hashim was present in his house on the night of 03/04.09.2016 and was watching TV inside the room. At about 02:00 a.m. he found his son namely Din Muhammad who was sleeping on a cot in the courtyard was not available. He alarmed his family and found foot prints of two persons going outside. He tried to search his son but in vain and finally on 06.09.2016, he reported the matter of abduction of his son to Police Station Kazi Ahmed where FIR bearing crime No.190/2016 was registered accordingly. After registration of FIR, usual investigation started, place of incident was inspected by the Investigating Officer and statements of the witnesses u/s 161 Cr.P.C were recorded by him.

4. On 17.09.2016, acting on a tipoff, the IO left Police Station along with mashirs Wazir Ali and Ghulam Nabi and came in the sugarcane crop near Mashaikh stop, where they spotted appellant Mushtaque Lakho armed with a kalashnikov, appellant Ismail Mari with a repeater and appellant Gulzar Mari armed with a pistol along with two unknown persons armed with guns surrounding the kidnaped boy. They seeing the police party left the boy and made their escape good. The kidnaped boy Din Muhammad was recovered and later on his custody was handed over to his father complainant. Record reflects that on 20.09.2016 appellant Ismail Mari and Gulzar Mari were arrested in some other crime and were sent to District Jail Shaheed Benazirabad fromwhere on 24.09.2016 they were arrested in the present case; and on their pointation a repeater from accused Ismail Mari and a 30 bore pistol from accused Gulzar Mari were recovered.

5. The complainant in his evidence has stated that he had received phone call from Mushtaque Lakho who had demanded from him ransom amount of Rs.40,00,000/- for release of his son. However, during the investigation the police had failed to collect any evidence to support such factum. Neither the number from which the complainant had received such phone call is registered in the name of appellant Mushtaque Lakho nor the SIM of that number was recovered from him. Even the transcription of the phone call has not been collected by the Investigating Officer to support the allegations of demand of ransom by appellant Mushtaque Lakho from the complainant.

6. It appears that after due formalities the trial was commenced against appellant Gulzar Mari and Ismail Mari and by that time appellant Mushtaque Lakho had not been arrested. In the evidence the complainant and other witnesses identified appellant Gulzar Mari and Ismail Mari to be the culprit in the case. And after a full-dressed trial, appellant Gulzar Mari and Ismail Mari were convicted and sentenced to suffer imprisonment for life u/s 365-A PPC vide judgment dated 08.04.2019. They filed the appeal No.S-63 of 2019 against the judgment before this court which was decided vide order dated 07.04.2021 whereby the impugned judgment was set-aside and the case was remanded back to the trial court for rewriting the judgment. However, meanwhile absconder accused Mushtaque Lakho had been arrested, therefore, the trial court held a de novo trial and convicted and sentenced the appellants vide impugned judgment dated 16.07.2021 to suffer, among others, imprisonment for life u/s 365-A PPC and u/s 7(1)(e) of Anti-Terrorism Act 1997, which judgment has been impugned by the appellants by means of listed appeals.

7. We have gone through evidence of the parties and perused the material available on record. The record reflects that no reliable evidence by the investigating officer has been collected indicating that any demand for ransom from the complainant was made by the appellants. No record regarding the so called phone call received by complainant on 12.09.2016 is available, nor transcription of the phone call.

8. Moreover, in the investigation it was found that the SIM from which the complainant had received the call actually belonged to one Abdul Ghafoor Mallah, who in his statement had claimed that his SIM had been stolen. But surprisingly in the trial said Abdul Ghafoor Mallah was not examined by the prosecution to support such fact about theft of his SIM or the circumstances behind it to justify reposing confidence over him qua theft of SIM by the investigating officer. In such circumstances, we agree with the assertion of the defense counsel that evidence regarding demand of ransom amount is not trustworthy and this case is not made out u/s 365-A PPC. When we arrive at such a conclusion, the natural corollary is that section 7(1)(e) of Anti-Terrorism Act 1997 is also not attracted in the case.

9. Notwithstanding, since the appellants were identified by the complainant party to be the accused in court and the police officers who

have apparently no enmity with the appellants have given evidence that they had found kidnapped minor boy in the custody of appellants at the time of his recovery, we are of the view that the case u/s 364-A PPC has been made out. No defense has been put up before us as far as recovery of an unlicensed 30 bore pistol from appellant Gulzar Mari and a repeater from Ismail Mari is concerned, these weapons were recovered from the appellants on their pointation and such recovery has been attested by the witnesses. In the cross-examination over this point nothing favourable to the appellants has come on record either.

10. The punishment provided u/s 364-A PPC is death or imprisonment for life or rigorous imprisonment for a term which may extend to 14 years and shall not be less than 7 years. Jail Roll of the appellants reflects that they have remained in jail for 06 year 06 months and 09 days and have earned remission of 10 months and 11 days. Total sentence they have suffered is 07 year, 04 months and 20 days. As such there is no legal impediment or otherwise in accepting the request of learned defence counsel for reduction of sentence. We, therefore, in such circumstances while dismissing the appeals convert the conviction of the appellants from section 365-A to section 364-A PPC and sentence them to the period already undergone by them. The conviction awarded to the appellants Gulzar Mari and Ismail Mari u/s 23(i)(a) Sindh Arms Act 2013 is maintained, however their sentence is reduced to the period already undergone by them. Appellants shall be released forth with if not required in any other custody case. All the appeals are disposed of in the above manner.

JUDGE

JUDGE