

IN THE HIGH COURT OF SINDH AT KARACHI

**PRESENT: MR. JUSTICE SALAHUDDIN PANHWAR, &
MR. JUSTICE MUHAMMAD SALEEM JESSAR**

SPL. CR. A.T. APPEAL NO.264/2016

Appellant : Wajahat,
through Mr. Hussain Bukhsh Saryo, advocate.

Respondent : the State,
through Mr. Muhammad Iqbal Awan, APG.

SPL. CR. A.T. JAIL APPEAL NO.270/2016

Appellant : Sohail Khan,
through M/s. Irshad Ali Jatoi and Muhammad
Qasim advocates.

Respondent : the State,
through Mr. Muhammad Iqbal Awan, APG.

Date of hearing : 14.04.2017.

Date of order : 14.04.2017.

ORDER

SALAHUDDIN PANHWAR, J. Through instant appeals, appellants have challenged impugned judgment dated 17.10.2016 passed by Anti-Terrorism Court No.VIII, Karachi, in Special Case Nos.219, 220, 221 and 222 of 2015 whereby appellants were convicted and sentenced to undergo R.I. for seven years with fine of Rs.1 lac each.

2. Precisely, relevant facts are that on 18.02.2015 complainant alongwith his brother when reached at *Malir Nadi* bridge, three persons came behind him, showed their identity as CID

officials and caused abduction of complainant alongwith car. Subsequently brother of complainant received phone call of his brother that his car is damaged therefore he needs Rs.50,000/- for repair; accordingly he arranged the same and paid on given time. He also received further demand of Rs.50,000/- and Rs.2 lacs made by the accused to complainant's brother was informed to arrange the same; thereafter accused person left abductee in *Malir Nadi* wherefrom he reached home hence FIR was lodged; thereafter all three accused persons were arrested, abductee identified them hence they were arraigned.

3. Formal charge was framed under section 7(1)(e) of ATA, 1997 and 23(1)(a) of Sindh Arms Act, 2013 against accused Nisar Khan, Wajahat and Sohail Khan to which they did not plead guilty and claimed trial.

4. To substantiate the charge, cross examination of material witnesses including abductee, statement of accused under section 342 Cr.P.C. was recorded and appellants were convicted as stated above.

5. At the outset learned counsel for appellants contends that all witnesses are set up by the prosecution; this case is based on enmity; complainant party failed to identify accused Wajahat during the course of evidence; prosecution story is full of material contradictions hence it is a case of acquittal.

6. In contra, learned APG contends that sufficient evidence was available with the prosecution and judgment recorded by the trial Court is in accordance with law.

7. Heard and perused record.

8. In the instant case, the prosecution was not only required to establish *alleged* abduction but also *payment* of the ransom amount, so as make the conviction *tenable* in law. Prosecution story states that three persons were all along with the abductee in the car of abductee, therefore, the evidence of the *abductee* was *vital* but perusal thereof shows that the abductee in cross examination has stated that:

“The accused did not receive the amount in my presence. I do not know as to how much time passed till first ransom was paid as I was under fear of death. The accused drove the car for about 4/5 hours during which they also stopped the car for about half an hour before I was thrown by them.”

From this, it is quite evident that the *abductee* nowhere claimed to have been parted during period of 4/5 hours yet he did not claim that *ransom* was received in his presence or that he *ever* saw any of prosecution witnesses to have come for payment of *ransom*. The brother of *abductee* however deposed that he paid Rs.50,000/- to one of the accused at a different place.

Further, the said *abductee* admitted was released after 4/5 hours but surprisingly he did not intimate to anybody including to his (*abductee's*) own brother who is serving as ASI at same police station. The abductee admitted as:

“It is a fact that till I reached in the house my brother did not inform police about my abduction.”

“It is a fact that the place where I was thrown by the accused persons was not recognized by me nor I showed the same to the police.”

The PW-2 Irshad Ahmed Khan contends that:

“My brother Nisar works in police department as ASI. He is posted at P.S. Model Colony.”

However, there came no *explanation* as to why the abductee, complainant and their brother (ASI) did not report the matter with police rather waited for two days as is evident from evidence of PW-2 i.e

“On 20.02.2015 my brother Nisar and complainant went to P.S. for lodging of FIR but I was not with them at that time.”

It is also not appealable to a prudent mind that when all accused were with the abductee then how amount of ransom was received at a different place which creates dent upon the prosecution's case. Further, as per abductee three accused were all along with him whereas fourth accused joined at later stage but admittedly accused Wajahat was not identified by complainant nor by the PW Irshad, who paid the ransom amount, hence he was acquitted by the trial Court. Since, the *fourth* accused Wajahat was not claimed to be one of receiver of *ransom* then there remained *three* accused persons who were not claimed by *abductee* to have gone away for collecting ransom during the *total* period of captivity i.e 4/5 hours. It is settled principle of law that benefit of doubt tilts in favour of defence. We have minutely examined the evidence of witnesses. Admittedly despite prior knowledge police failed to join private witnesses for recovery hence this case is not free from doubt; accordingly impugned judgment is not maintainable. Thus, *prima facie* the prosecution never established the *abduction* as well payment of *ransom* through natural and confidence inspiring evidence rather

number of *questions* remain **un-answered**. Reference may be made to the case of *Muhammad Tufail v. The State* (2013 SCMR 768) wherein in an *identical* situation the prosecution evidence was held to be not sufficient to hold conviction. The operative part is as follows:-

“7. The abduction for ransom is, no doubt, a very serious charge. There are many actors on, off and behind the scene. In any case the actor who is already known and takes caution and pre-caution to conceal his identity. Else he has to face the scourge of charge after release of the abductee on payment of ransom. The story that the appellant identified the abductee so called as the person desired to be abducted neither agrees to truth, nor conforms to common human experience and observations nor fits in with the surrounding circumstances. Who paid the amount of ransom, who received it, what evinced and who mentioned the complicity of the appellant in the crime are the questions which find no answers from the evidence on the record. The complainant or for that matter any other person, may have suspicion as to the complicity of the appellant in the crime but suspicion however strong it may be cannot take the place of truth.

8. Alright the abductee so called extricated himself from the clutches of the persons abducting and keeping him in unlawful confinement on 7.1.2004 but what restrained him from reporting the incident for two days is another mystery which never came to light. The complainant was abducted on October 18,2003 yet neither his father nor his first cousin who subsequently appeared in the court as P.ws reported so important an incident. Nor did they put forth any explanation for not doing so. Even the complainant did not breathe even a single word about this unnatural conduct of his father and cousin. All this sounds to be more of a cock and bull story as far as the implication of the appellant is concerned. His conviction and sentence, therefore, cannot be maintained on this quality and quantity of evidence.”

These are the reasons for the short order dated 14.4.2017 whereby conviction was set-aside and appeals were accepted and the appellants including accused Nisar Khan were acquitted.

J U D G E

Imran/PA

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