

ORDER SHEET  
IN THE HIGH COURT OF SINDH AT KARACHI

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Date Order with signature of Judge

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**Spl. Cr.ATA No. 98 of 2015**

1. For hearing of case
2. For hearing of M.A. No. 62 of 2016.

**Spl. Cr.ATA No. 139 of 2015**

For hearing of case.

**10.05.2017**

Mr. Abdul Razzaq, Advocate for Appellants.  
Mr. Muhammad Iqbal Awan, APG.

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By a common judgment we intend to decide captioned appeals assailed by the appellants whereby they were convicted for life under Section 365-A/34 PPC.

2. Precisely relevant facts, *as per prosecution*, are that Muhammad Atif Shabir has filed this FIR on 31.05.2011 at about 1125 hours are that he lives alongwith his family in House No.F-56, Askari Apartment near Cantt Station having Phone No. 0321-3771347 and CNIC No.61101-6967296-5 and works as cashier in NIB Bank situated in Muhammadi House. On 30.05.2011 his real brother Najam us Saqib who is Director in the State Bank, after office hours, he alongwith his friends Nadeem Bhurgri who is employee in State Bank PRIK Marketing Head office and other Asif Shahzad who works as Senior Vice President in UBL had gone for settlement of dues in Car No. ANC-742 Maker Toyota Camery white colour, had come to the country club at about 7:30 pm and at about 9:40 pm had proceeded for home but has not reached home nor has received any information. He had been searching him on his own but could not find him and now he has come to know that the car was found on the day of the commission of crime under the bushes of area of Jungle and whereabouts of his brother and his two friends are not known, have kidnapped by unknown accused persons as such he had come to report about the abduction of his brother and his two friends against unknown persons.

3. The charge against accused persons was framed to which they pleaded not guilty and claimed their trial.

4. To substantiate its case, prosecution examined 17 witnesses including three abdcutees.

5. The statement of accused persons were recorded under section 342 Cr.P.C wherein they pleaded their innocence and contended that they were implicated falsely.

6. At the outset, learned counsel for the appellants contends that except allegation of encounter and recovery of abductees against the appellants there is no evidence that appellants abducted the abudctees or transferred them from one place to another place; no recovery was effected; encounter from the face of it is not acceptable as no one received injury from either side. He further contends that although abductees deposed against the appellants but their evidence is contrary and not credible.

7. Conversely, learned Assistant Prosecutor General for the State contends that this is a case of abduction for ransom; abductees were recovered after encounter and appellants were arrested at the spot, hence, impugned judgment is maintainable under the law.

8. The whole case rests upon the last episode i.e. on spy information police officials alongwith rangers encircled the abductors near Sukkur; firing was exchanged between the abductors and police officials, however, police succeeded to recover three abductees safely and arrested three appellants.

9. Case of the prosecution is that abductees were under the control of kidnappers and the police recovered them from one jungle where they were in captivity. Admittedly none received injury during whole encounter, three abductors were arrested at the spot but without any weapon, abductees were also not tied by any mode and were in a position to move independently when they were encircled. It is strange that how arrest was made when none has received injury. Even it is also not appealable to a prudent mind that how police officials opened direct firing when they were having knowledge that abductees are available on other side and total six persons were recovered after heavy encounter but none received any injury. Besides, no identification parade was held. This shows that this case is doubtful and alleged story of prosecution is not appealable. Accordingly, impugned judgment is set aside while extending the benefit of doubts. The appellants shall be released forthwith, if they are not required in any other custody case.

Above are the reasons of our short order dated 10.05.2017

JUDGE

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