

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

Before:

Mr. Justice Naimatullah Phulpoto  
Mr. Justice Mohammad Karim Khan Agha

Cr. Spl. ATA Appeal No.D-19 of 2013.

Abdul Razzaq and another

Versus

The State

and

Cr. Spl. ATA Jail Appeal No.D-20 of 2013.

Wazir Ali and another.

Versus

The State

Appellants : Abdul Razzaq and another in Cr. Spl. ATA Appeal No.D-19 of 2013	Through Mr. Amjad Ali Sahito, Advocate
Appellants : Wazir Ali and another in Cr. Spl. ATA Jail Appeal No.D-20 of 2013	Through Mr. Muhammad Hashim Laghari alongwith Mr. Hussain Bux Solangi, Advocate
Respondent : The State	Through Mr. Shahzad Saleem Nahiyoan A.P.G.
Date of hearing	03.05.2017.
Date of judgment	03.05.2017.

**J U D G M E N T**

**MOHAMMAD KARIM KHAN AGHA, J.-** By this judgment we intend to decide both the aforementioned Cr. Spl. ATA Appeals, as both arise out the same judgment.

2. Appellants Abdul Razzaq, Ghulam Hyder, Ali Hassan and Wazir Ali were tried by learned Judge, Anti-Terrorism Court, Hyderabad, in ATC Case No.36/2011, arising out of crime No.76/2011, registered at Police Station Naseem Nagar for offence under sections 365-A PPC, 6/7 ATA Act, 1997. Appellants were found guilty by Judgment dated





19.03.2013 (the impugned judgment) and were convicted under section 7(e) of Anti-Terrorism Act, 1997 and sentenced to undergo life imprisonment and forfeiture of their moveable and immoveable property. Benefit of Section 382-B Cr.P.C. was also extended to the appellants. The appellants have challenged the impugned Judgment through the instant appeals.

3. The brief facts of the prosecution case as disclosed in the F.I.R. are that on 22.03.2011, complainant Muhammad Ayoub S/o Misbahuddin R/o Bungalow No.A-36 Abdullah Blessing Qasimabad, Hyderabad lodged FIR at the Police Station Nascem Nagar that he resides at the above address with his family and was Assistant Engineer, Liaquat Medical University. On 18.03.2011, his servant Razzaq Mallah took the son of the complainant Muzammil aged about 2½ or 3 years out of the house, but did not come back despite lapse of time. Complainant then tried to search his son and servant, but not succeeded. The matter was reported to the police on "15" and they continued to search for them. On 21.03.2011, a phone call was received on the mobile phone of the complainant, the caller told the complainant that his son was kidnapped and one crore rupees are required for his release otherwise his son would be killed. Such type of call was repeated and then he became sure that his son was kidnapped by his servant Razzaq Mallah with the help of dacoit for ransom. Thereafter, he went to Police Station and lodged report of the incident.

4. During investigation, on 30.03.2011, on spy information a raid was conducted at a grave yard within the limit of P.S. Hatri and the abductee was recovered and the appellants were arrested. Later on co-accused Hyder Bux and Ali Nawaz surrendered themselves and were admitted on bail by this Court, whereas accused Imam Bux was sent up for trial under a supplementary challan.

5. After completion of usual investigation, police submitted the challan against above named accused.

6. Formal charge against the accused was framed by trial Court. Accused all pleaded not guilty and claimed to be tried.

In order to prove its case prosecution examined 07 witnesses (PW's) and thereafter learned DDPP closed the side of prosecution vide statement Ex.25.





8. Statements of accused were recorded under section 342 Cr.P.C. at Ex. 26 to Ex.32, in which they have denied the allegations of prosecution and have claimed that they have been falsely involved in this case. They however neither examined themselves on oath nor led any evidence in their defence.

9. The learned trial court after hearing the learned counsel for the parties and on the assessment of the entire evidence convicted and sentenced the accused / appellants as stated above in the impugned judgment.

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

11. Learned counsel for the appellants Abdul Razzaq and Ghulam Hyder contended that the impugned judgment is based on a misreading and non reading of the evidence; that there is no evidence that Abdul Razzaq and Ghulam Hyder had any thing to do with the kidnapping; that there was no evidence that any ransom demand was made; that the prosecution evidence contained major contradictions; that in their S.342 statements no question was put to them in respect of the demand for ransom and as such for all the above reasons the prosecution had failed to prove its case against the appellants Abdul Razzaq and Ghulam Hyder beyond a reasonable doubt and thus for all the above reasons the impugned judgment should be set aside and the appellants Abdul Razzaq and Ghulam Hyder acquitted.

12. In support of his contentions, learned counsel for the appellants Abdul Razzaq and Ghulam Hyder placed reliance on the case of **Muhammed Akram V State** (2009 SCMR 230)

13. Learned counsel for the appellants Ali Hassan and Wazir Ali adopted the arguments of appellants Abdul Razzaq and Ghulam Hyder and further contended that there was a delay in lodging the FIR; two other co-accused had been acquitted on the same evidence and there was less evidence against them; that the only allegation against Ali Hassan was that he provided meals to the co-accused and there was no evidence against Wazir Ali; no recovery was made from Ali Hassan and Wazir Ali had been acquitted of the offense under





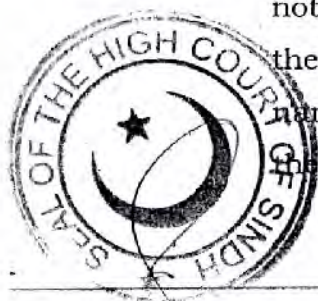
S.13 (d) of the Arms Ordinance and as such for all the above reasons the prosecution had failed to prove its case against the appellants Ali Hassan and Wazir Ali beyond a reasonable doubt and thus for all the above reasons the impugned judgment should be set aside and the appellants Ali Hassan and Wazir Ali acquitted.

14. In support of his contentions, learned counsel for the appellants Ali Hassan and Wazir Ali placed reliance on the cases of **Azeem Khan and another v. Mujahid Khan and others** (2016 SCMR 274), **Faheem Ahmed Farooqui v. The State** (2008 SCMR 1572), **Abdul Jabbar and others v. The State** (2017 PCr.LJ 160), **Muhammad Tufail v. The State** (2013 SCMR 768), **Nooral alias Nooro v. The State** (2015 YLR 1911), **Khalid and others v. The State** (2016 YLR 2589), **Muhammad Akram v. The State** (2009 SCMR 230), **Muhammad Dawood and 8 others v. The State** (2015 PCr.LJ 316) and **Ghulam Qasim and others v. The State and others** (2016 YLR 687).

15. The learned A.P.G. fully supported the impugned judgment and contended that based on the evidence on record the prosecution had proved its case against the all the appellants beyond a reasonable doubt and as such both of the aforementioned appeals should be dismissed.

16. We have considered the arguments of learned counsel, perused the record and the case law cited by them at the bar.

17. At the outset we are of the view that in a kidnapping for ransom case a delay of a few days in registering the FIR is not fatal to the prosecution case as usually in such cases the parents are frantically looking for their missing child before deciding to register an FIR as a last resort once the realization finally sets in that their child is not with a friend or relative and is missing. In this case the FIR was registered promptly once the complainant received the alleged ransom calls. It is also in our view not relevant that two of the other co-accused were acquitted. This is because their case is on a different footing to the appellants especially Abdul Razzaq. They were not named in the FIR and were not arrested during the recovery of the abductee at the grave yard. Apparently they escaped and their names were provided by the other then arrested co-accused and there is little, if any, evidence to connect them to the offense for





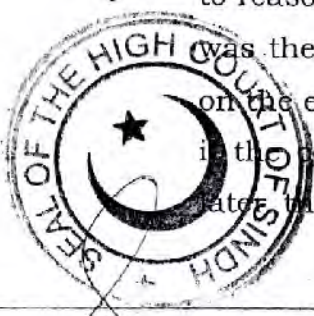
which they were charged let alone to prove it against them beyond a reasonable doubt.

18. Out of the 4 who were convicted in this case (Abdul Razzaq, Ghulam Hyder, Wazir Ali and Ali Hassan) in our view the most evidence for kidnapping rests against Abdul Razzaq. This is because he was named in the FIR, the complaint's own evidence is that according to his wife it was his servant Abdul Razzaq who left the house with the minor abductee to get juice and he was allegedly found and arrested with the abducted minor boy.

19. The question therefore appears to us to be based on the particular facts and circumstances of this case whether the prosecution has been able to prove beyond a reasonable doubt through the evidence on record that Abdul Razzaq kidnapped the boy **and** demanded a ransom for his release and what role, if any, as per the evidence the other appellants may have played in the offense.

20. It is true that the complainant states that it was his servant Abdul Razzaq who left his house with the abductee however this was hearsay evidence provided by his wife who did not give evidence at trial. It may be true that he was not challenged about this aspect of his evidence during cross examination and as per the finding of the trial court he is deemed to have accepted the allegation even then however it seems strange to us that if Abdul Razzak did kidnap the abductee why did he allow himself to be the last person seen with the abductee especially as he was known to the complainant and his wife and must have known that in such circumstances the suspicion would fall on him. Surely, an abductor as a matter of simple common sense would try to conceal his identity or at least ensure that he was not readily linked to the abducted child. For example, if Abdul Razzak did in fact play a role in the abduction why did he not return home and simply say that someone else had taken the child by force or that the child had disappeared while he was busy gossiping with friends. In our view his action of leaving with the child, if he abducted the child, in plain sight of the complainant's wife does not seem to appeal to reason or common sense. At best in our view it can be said that he

was the last person seen with the minor before his abduction based on the evidence of the complainant who was not an eye witness. Even if the complainant's evidence is to be accepted as we will come to later there appears to us to be a major contradiction in it. Other





things which do not seem to appeal to reason or common sense are the fact that the grave yard was surrounded by from anything between 15 and 50 police officers as per the evidence of the police witnesses (PW 3, 4, 5, 6, and 7) yet 6 out of the 10 accused managed to escape without a shot being fired by either side. In this respect reliance is placed on **Muhammad Asif v. The State** (2017 SCMR 486). The number of the police officers at the scene also greatly varies between PW's 3 to 7. It is also noticeable that no entry was made at PS Hatri of the raiding party despite the raid being carried out in the jurisdiction of PS Hatri. Appellant Wazir also had a firearm but did not attempt to discharge it at the police while trying to escape. Some of the eye witness police who made the recovery of the abductee and were present when the appellants were arrested were not able to recognize the appellants in court (PW 3 and 6). Although the abductee did not give evidence since he was only about 2 and a half to 3 years old in our view this puts an added onus on the prosecution to ensure that the kidnappers were correctly identified. A part from Abdul Razzaq according to the evidence none of the other alleged abductors were known to the complainant, his wife or brother and no identification parade was made of them since it was **assumed** that Abdul Razzaq acting alone abducted the minor boy.

21. Turning to the major contradiction mentioned earlier. In his evidence the complainant specifically states that,

"I was called by Inspector Javed at Qasimabad PS and was told that my son was recovered and I should take him. I went to PS Qasimabad and received my child. I produce such receipt as is Ex.130-B, it is same and bears my signature. Inspector did not tell me as to how he had recovered my child saying that I should be happy that my son recovered"

22. This statement is contradictory to all the official police PW's who were a part of the team involved in the recovery of the abductee and the memo of arrest and recovery which specifically states that the complainant and his brother were both present at the time of the arrest and recovery of the abductee. According to PW's 3,4,5,6 and 7 the complainant accompanied them to recover his abducted son who recognized him. It is settled law that minor contradictions between witnesses which is natural over the course of time will not effect the prosecution case but major one's will damage the prosecution case and in our view this is a major contradiction. In this respect reference





may be made to the case of **Zakir Khan & others v. The State** (1995 SCMR 1793)

23. Furthermore how can we believe the entirety of the complaint's evidence in the face of such a material contradiction especially as he is in effect an uncorroborated non eye witness to the abduction of his son by Abdul Razzaq.

24. In addition, all the aforesaid official respondents state that the complainant's brother accompanied them along with the complainant to the grave yard where the abductee was recovered however he was not called as a prosecution witness. The question therefore arises whether he would have supported the police version of the abductee being found with the active involvement of the complainant and in his presence or if he would have supported the complainants version that both he and the complainant had no role to play in the police recovering and being present when the abductee was recovered. It thus cannot in our view be ruled out that no such police operation took place at the grave yard and the abductee was not recovered at the grave yard and the appellant's role in the kidnapping may have been foisted on them by the police especially as there was no independent mushir. This was despite according to some PW's there were some public nearby and even otherwise whilst acting on spy information the police had more than enough time and opportunity to take independent Mushir's with them as the recovery was allegedly made in day light hours and in this respect according to some PW's they even had taken the informant with them at the time of the recovery thus there was a clear violation of S.103 Cr.PC in this respect.

25. It is true that police witnesses are as good as any other witnesses and that in this case they are largely corroborative of each other but when we look at the facts and circumstances of this case in its entirety we consider as discussed below that the benefit of the doubt is likely to come into play.

26. Furthermore, if someone is kidnapped there is usually a motive for such kidnapping. In cases of kidnapping for ransom the motive is the ransom money. In this case however there seems to be very little evidence that any ransom demand was in fact made. The only evidence on this aspect of the case is the uncorroborated account of the complainant whose evidence in light of the major contradiction in





his evidence, as discussed above, is now in our view to a certain extent in doubt. For example, regarding the ransom, the complainant did not state that he recognized the voice of any of the appellants (not even Abdul Razzaq) during the telephone conversations when the ransom demands were allegedly made, there is no telephone CDR data to show that any call was actually made to his mobile phone by any of the appellants, no mobile phone was recovered from any of the appellants at the time of their arrest, there is no confessional statement from any of the appellants and apparently no money was being arranged by the complainant let alone exchanged hands after the alleged ransom demand. Thus, in our view there is hardly any evidence to show that a ransom demand was made let alone by whom. Apart from the ransom money no other motive has been shown as to why Abdul Razzaq or any of the other appellants may want to kidnap the complainant's son.

27. With regard to the kidnapping let alone the ransom aspect we are acutely aware that it is a well settled principle of criminal law that it is for the prosecution to prove its case against the accused beyond a shadow of a doubt and if there is any doubt in the prosecution's case the benefit of such doubt, as set out in the case of **Tariq Pervez v. The State** (1995 SCMR 1345) must go to the appellant as of right as opposed to concession. However in considering this aspect of the case we are also guided by the case of **Faheem Ahmed Farooqui V State** (2008 SCMR 1572) where it was held as under at P.1576 at Para D

"It needs no reiteration that for the purpose of giving benefit of doubt to an accused person, more than one infirmity is not required, **a single infirmity creating reasonable doubt in the mind of a reasonable and prudent mind regarding the truth of the charge makes the whole case doubtful.** Merely because the burden is on the accused to prove his innocence it does not absolve the prosecution from its duty to prove its case against the accused beyond any shadow of doubt." (bold added)

28. In the recent supreme Court case of **Hashim Qasim V State** (Criminal Appeals No.115 and 116 of 2013) dated 12<sup>th</sup> April 2017 the Hon'ble supreme Court in respect of the benefit of doubt held as under at Para 20:



"Even a single doubt, if found reasonable, would entitle the accused person to acquittal and not a combination of several doubts is bedrock principle of justice. Reference may be made to the case of **Riaz Masih @ Mithoo v. The State** (NLR 1995 CrI. 694)."



29. In this case for the reasons discussed above primarily being the major contradiction in the complainant's story that he played no role in the recovery of his son and was not present when his son was recovered which was the opposite of the police version, the lack of appeal ability to reason of some aspects of the police case, the failure of the prosecution to call the brother of the complainant we are of the view that when the evidence is read and considered in totality there would be a reasonable doubt in a reasonable and prudent person's mind that the appellant Abdul Razzaq was not guilty of the offense of kidnapping let alone kidnapping for ransom for which he has been convicted by the trial court.

30. Once we have reached this conclusion in respect of appellant Abdul Razzaq it follows that the same conclusion must apply to the other three appellants (Ghulam Hyder, Hassan Ali and Wazir Ali) against whom there is hardly any evidence. In essence it seems that the only evidence against them is that they happened to be with appellant Abdul Razzaq when he was arrested. No one saw them play a role in abducting the minor boy and there is no evidence that any ransom demand was even made let alone by them. Thus, the benefit of the doubt is also applicable to their case.

31. Thus, for the reasons discussed above we find that the prosecution has failed to prove its case beyond a reasonable doubt against the appellants (Abdul Razzaq, Ghulam Hyder, Ali Hassan and Wazir Ali) and that the said appellants are entitled to the benefit of the doubt and as such set aside the impugned judgment and up hold the appeals.

32. As such the appellants (Abdul Razzaq, Ghulam Hyder, Ali Hassan and Wazir Ali) are all hereby acquitted and are ordered to be immediately released by the concerned jail authorities in the aforesaid cases unless they are in custody in respect of some other case.

33. These are the reasons for our short order dated 03-05-2017 acquitting all the aforesaid appellants in this case.



Karachi:

Dated: 03-05-2017