

THE HIGH COURT OF SINDH AT KARACHI

Spl. Crl. Anti-Terrorism Jail Appeal No.01 of 2010.
Spl. Crl. Anti-Terrorism Jail Appeal No.305 of 2016.

Present:

Mr. Justice Mohammad Karim Khan Agha
Mr. Justice Muhammad Saleem Jessar.

Appellants: 1) Masood Alam S/o. Shabbir Ahmed
2) Muhammad Shamim S/o. Saeed-ur-Rehman, through Mr. Muhammad Farooq, Advocate

For State: Through Mr. Muhammad Iqbal Awan, Deputy Prosecutor General who was also representing the complainant.

Date of hearing: 12.02.2020.
Date of Judgment: 18.02.2020.

JUDGMENT

MOHAMMAD KARIM KHAN AGHA, J:- Accused Masood Alam S/o. Shabbir Ahmed and Muhammad Shamim S/o. Syed Saeed-ur-Rehman were tried by learned Judge, Anti-Terrorism Court No.III, Karachi in Special Case No. 30/2006 arising out of Crime No.191/2006 U/s. 365-A/34/PPC r/w Section 7 of ATA, 1997 at P.S. Pakistan Bazar, Karachi vide judgment dated 02.04.2008 the appellants were convicted and sentenced to suffer imprisonment for life respectively. Their moveable and immovable properties were ordered to be forfeited to the Government. Benefit of section 382-B PPC was also extended to the appellants/accused.

2. Being aggrieved and dissatisfied by the judgment passed by learned Judge, Anti-Terrorism Court No.III, Karachi, the aforesaid appeals have been preferred by the appellants

3. The brief facts of the case as narrated by the complainant in the FIR are that on 18.09.2006 when the complainant Ishtiaq Ahmed was at work

he received a phone call from his wife that their son Fawad aged 3½ years had gone to take some sweets from mohallah shopkeepers at 12:30 noon but as yet he had not returned. On receiving such information the complainant rushed at once to his house and then the complainant started the search of his son along with mohallah people and relatives but was unable to find him. Thereafter a cousin of the complainant namely Parvez Ahmed went to PS at about 7:00 p.m. and gave such entry of missing of son of complainant in roznamcha of PS Peerabad on 18.09.2006. The FIR further states that on 19.09.2006 at about 12:00 noon the mother of PW Mehtab namely Mst. Hameeda came in the house of complainant and informed that she received unknown telephone calls and caller called the complainant at his house for providing him some information about missing son of complainant. The complainant therefore, went to the house of PW Mehtab and Mst. Hameeda and waited their for the call of the culprits and ultimately after some time the complainant received the call at the house of PW Hameeda whereby the caller demanded contact number of complainant which was given to him as 0300-2489422. About 30 minutes after the complainant had received the call another call was received from the same caller who informed the complainant that his son was kidnapped by them for ransom of Rs.200,000/- (Two Lac) for the release of his minor son. According to the FIR since the demand of ransom amount was very large the complainant initially refused to pay but the culprits threatened the complainant that in case of non-payment, his son will be killed. Since it was a matter of the life and death of his son the complainant on their second call agreed to pay the said amount to the kidnappers and as a result of such agreement the complainant was directed to reach Muhajir Chowk along with the ransom amount. The complainant Ishtiaq Ahmed reached there and waited for the call of the kidnappers and after waiting a long time the complainant received a call from the kidnappers wherein the complainant was directed to reach the Ghaziabad graveyard near hills of Orangi Town. The complainant reached Ghaziabad graveyard, where complainant received another call from the kidnappers wherein the complainant was directed to wait and after sometime a person came from the hills and inquired about the ransom amounting to Rs.200,000/- which was paid by the complainant to one of the kidnappers. Thereafter the person who received the ransom amount gave signals to some other person and after receiving signal the said

person called the minor abductee and handed over his custody to the complainant. Thereafter the complainant along with his son returned to his house but did not lodge FIR for two to three days due to harassment but finally FIR was lodged on 24.09.2006. However, during the course of interrogation by the SHO/Inspector Irfan Ahmed Khan the accused namely Masood Alam and Muhammad Shamim already arrested in Crime No.171/2006 and 172/2006 of PS Pakistan Bazar u/s 13(d) of Arms Ordinance disclosed about kidnapping of two children, out of them one was abductee namely Fawad who was abducted on 18.09.2006 from the front of the house of the complainant Ishtiaq Ahmed, House No.365/E, Sector 5/E, Orangi Town, Karachi of PS Peerabad. While confirming the registration of FIR No.191/2006 u/s. 365-A the SHO Irfan Ahmed and P.I. Babar went to PS Pakistan Bazar to take the custody of the accused namely Masood Alam and Muhammad Shamim. After taking the custody of the accused Inspector Babar carried out the interrogation of accused at P.S. Pakistan Bazar during which the accused admitted about the crime of kidnapping of the minor child Fawad before PI Babar.

4. The accused were brought before Administrative Judge for ATC's and obtained remand for further investigation. During the period of remand the Judicial Magistrate-IV, Karachi West carried out the identification parade of the accused on the application of SHO Babar through PW Ishtiaq Ahmed in accordance with law and after completing the investigation SHO Babar submitted the challan of the accused before Administrative Judge, wherefrom the trial court received the above case for trial.

5. After compliance of Section 16 of Anti-Terrorism Act, 1997 and Section 265(c) Cr.PC the charge was framed against both the accused persons to which they pleaded not guilty and claimed trial.

6. In order to prove its case, the prosecution examined 11 witnesses and thereafter the side of the prosecution was closed. The statements of the accused persons were recorded u/s 342(1) Cr.P.C. The appellants/accused persons claimed false implication in the present case. They did not examine themselves on oath or call any DW in support of their defense case.

7. Learned Judge, Anti-Terrorism Court No.III, Karachi after hearing the counsel for the parties and assessment of evidence available on record, vide the impugned judgment dated 02.04.2008, convicted and sentenced the appellants as stated above, hence this appeal has been filed by the appellants against their conviction.

8. The facts of the case as well as evidence produced before the trial court find an elaborate mention in the impugned judgment, therefore, the same are not reproduced here so as to avoid duplication and unnecessary repetition.

9. After the reading out of the evidence and the impugned judgment learned counsel for the appellants candidly conceded that the prosecution had proved beyond a reasonable doubt that this was a case of kidnapping u/s 365 PPC by the appellants but that there was no evidence whatsoever that the appellants had made any kidnapping for ransom and as such the appellants should only be convicted and sentenced for an offense u/s 365 PPC and not S.365 A PPC and that it was not a case which fell within the purview of the ATA. In support of his contentions he placed reliance on **Orangzaib V The State** (2018 SCMR 391) and **Shahid alias Kaloo V The State** (2009 SCMR 558).

10. Learned DPG conceded that the prosecution had failed to prove the ransom element of the case but had proved beyond a reasonable doubt that this was a case of kidnapping u/s 365 PPC and he had no objection to the conviction and sentences being modified accordingly. The complainant who was also present in court after discussing the case with the DPG also had no objection to this proposition. The DPG was also of the view that this case did not fall within the purview of the ATA.

11. Having gone through the evidence on record we are of the view that the prosecution has proved its case against the appellants beyond a reasonable doubt in respect of the offense u/s 365 PPC through the evidence of the complainant, other PW's and the appellants themselves pointing out where they abducted the appellants son from and where they kept him in captivity which was information which only they could have

known. With regard to the evidence that the appellants had kidnapped the complainant's son for ransom we find that the prosecution has not been able to prove this aspect of its case beyond a reasonable doubt in that there is no evidence that any ransom demand was made, no CDR was exhibited, no voice recordings for the ransom demand were exhibited and no ransom was recovered. The child was also recovered unharmed and it may also be observed that the appellants have already spent almost 13 years in jail.

12. We are of the view that this case does not fall within the purview of the ATA since according to the evidence there was no design, object or intent to cause terror and thus the provisions of the ATA will not apply

13. Thus, based on our reassessment of the evidence on record and whilst taking into consideration the above cited case law, the arguments of the appellants, and the no objection given by both the DPG and the complainant to the appellants only being convicted under S.365 PPC we hereby by exercising our judicial discretion under S.423 Cr.PC hereby modify the convictions and sentences of the appellants as under:

"Both the appellants stand convicted U/s. 365/34/PPC and are **both** sentenced to under go RI for 7 years and **both** are ordered to pay compensation of Rs.100,000 to the complainant failing which if any appellant is in default he shall undergo SI for a further 6 months".

Both the appellant shall have the benefit of S.382-B Cr.PC.

14. The appeals stand dismissed **except** as modified above.