

532

## IN THE HIGH COURT OF SINDH KARACHI

Present:

*Mr. Justice Mohammad Karim Khan Agha*  
*Mr. Justice Khadim Hussain Tunio,*

SPL. CR. A.T. APPEAL NO. 151 OF 2021

SPL. CR. A.T. APPEAL NO. 152 OF 2021

SPL. CR. A.T. APPEAL NO. 153 OF 2021

Appellant: Abdul Waheed son of Muhammad Bachal through Mr. Ghulam Rasool Rind, Advocate.

Respondent: The State through Mr. Abrar Ali Khichi, Additional Prosecutor General, Sindh.

SPL. CR. A.T. APPEAL NO. 154 OF 2021

Appellant: Mushtaq Ahmed son of Muhammad Ismail through Mr. Ghulam Rasool Rind, Advocate.

Respondent: The State through Mr. Abrar Ali Khichi, Additional Prosecutor General, Sindh.

Date of Hearing: 21.04.2022

Date of Announcement: 29.04.2022

### JUDGMENT

Mohammad Karim Khan Agha, J. Appellants Abdul Waheed and Mushtaq Ahmed were charge sheeted to face their trial in four Special Cases No.28 of 2019 arising out of FIR No.178 of 2019 under section 356-A/392/34 PPC r/w section 7 of ATA 1997 registered at PS Gulshan-e-Maymar, Karachi, Special Cases No.28-A of 2019 arising out of FIR No.195 of 2019 under section 4/5 Explosive Substance Act r/w section 7 of ATA 1997 registered at PS Gulshan-e-Maymar Karachi, Special Cases No.28-B of 2019 arising out of FIR No.196 of 2019 under section 23(i)(a) Sindh Arms Act registered at PS Gulshan-e-Maymar Karachi and Special Cases No.28-C of 2019 arising out of FIR No.197 of 2019 under section 23(i)(a) Sindh Arms registered at PS Gulshan-e-Maymar,

Karachi. The appellants vide impugned judgment dated 31.08.2021 passed by the learned Judge, Anti-Terrorism Court No.III, Karachi were convicted and sentenced as under:-

- i) Both the appellants/accused persons were convicted u/s. 265-H Cr.P.C. and sentenced in crime No.178/2019 of PS Gulshan-e-Maymar for offence u/s. 365-A PPC to undergo R.I. for life and their properties shall stand forfeited to the Government. The offence of abduction for ransom within the meaning of Section 6(2) ATA is not established therefore, no conviction is awarded u/s. 7(e) of ATA.
- ii) Appellants/accused persons Abdul Waheed and Mushtaq Ahmed were also convicted u/s.265-H(2) Cr.P.C. for offence u/s.392 PPC and sentenced in crime No.178/2019 of PS Gulshan-e-Maymar to undergo R.I. for ten years.
- iii) Appellant/accused Abdul Waheed also convicted u/s.265-H(2) Cr.P.C. in crime No.195/2019 of PS Gulshan-e-Maymar for offence u/s.7(1)(ff) of ATA 1997, r/w section 4/5 Explosive Substance Act and sentenced to undergo R.I. for period of 14 years, and to pay fine of Rs.10000/- and in default thereof to undergo SI for six months more.
- iv) Appellant/accused Abdul Waheed also convicted u/s.265-H(2) Cr.P.C. in crime No.196/2019 of PS Gulshan-e-Maymar for offence u/s.23(1)(a) Sindh Arms Act, 2013 and sentenced to undergo R.I. for period of 07 years, and to pay fine of Rs.5000/- and in default thereof to undergo SI for six months more.
- v) Appellant/accused Mushtaq Ahmed also convicted u/s.265-H(2) Cr.P.C. in crime No.197/2019 of PS Gulshan-e-Maymar for offence u/s.23(1)(a) Sindh Arms Act, 2013 and sentenced to undergo R.I. for period of 07 years, and to pay fine of Rs.5000/- and in default thereof to undergo SI for six months more.

All the sentences shall run concurrently. The appellants/accused were also extended the benefit of Section 382-B Cr.P.C.

2. The brief facts of the prosecution case are that on 08.07.2019, complainant Muhammad Jibran in his car bearing No.BH-2745 Toyota Model-2019 along with his son Muhammad Talal aged about 10 years, went to Nooristan Super Store for purchase of grocery. At about 2230 hours the complainant stopped his car outside Nooristan Super Store and he alighted from the car. In the meantime, two young persons in shalwar kameez who were looking to be Sindhi and on the show of weapon the accused snatched the key of the car from the complainant, out of them one accused sat with his son in the car while other accused pointed his pistol towards the complainant and he also sat in the car. The complainant due to fear remained silent and the



culprits took away his car along with his son. The complainant therefore, lodged the report against unknown persons in respect of abduction of his son and robbing his car.

3. After registration of the FIR investigation of the case was entrusted to SIP Zafar Iqbal who visited the place of occurrence and prepared sketch as well as recorded statement u/s.161 Cr.P.C. of PWs. On 14.07.2019 ASI Muhammad Saleem Abbasi of PS Gulshan-e-Maymar along with subordinate staff was on patrolling duty when the complainant contacted the ASI and informed him that he has received a call on his cell phone No.0300-9210270 from cell phone No.0300-2883636 who demanded ransom of Rs.50-lacs for the release of his son and his car No.BH-2745. The complainant also informed the ASI that the culprits are in contact with him and they have called him on 14.07.2019 at about 0030 hours to reach at Afghan Cut near Sawan Village, MDA double Road Gulshan-e-Maymar. The complainant went to the pointed place along with the police party where the police surrounded the area and took positions. The complainant contacted the culprits and asked them that he has reached outside the door. As soon as the door opened, the police party entered and apprehended one accused who disclosed his name as Mushtaq Ahmed s/o Muhammad Ismail. His search was conducted and a 30 bore pistol without number along with 04 rounds, one wallet containing his CNIC & cash Rs.300/- and Q- mobile were recovered from his possession which was secured by the police and inquired from the accused about abductee Muhammad Talal and the vehicle upon which accused disclosed that his accomplice Abdul Waheed is present in the room with the abductee while the vehicle is available at the backside of the room. The police also apprehended accused Abdul Waheed who was present in the room and asked his particulars. The police conducted his search and recovered a hand-grenade and a 30 bore pistol without number along with 05 rounds, mobile phone Vigo-Tel and one wallet containing his CNIC, some visiting cards, 02 blank cheques of Bank Al-Habib in his name, one online complaint and cash Rs.500 from his possession which were secured by police. Abductee Muhammad Talal was released by the police. The accused could not produce the license for the weapons. The police inquired about the car of complainant. The car was parked behind the room having fake number plate AMC-273 which was searched and found that the original number plate of the car was lying in the diggi BH-2745, which was secured by the police. The abductee child was

MAK/PS



identified by complainant as his son Muhammad Talal. The accused were arrested in crime No.178 of 2019 and so also in respect of arms and ammunition under memo of arrest.

4. After completion of usual investigation report u/s.173 was submitted before the Administrative Judge, ATC Karachi. Thereafter trial was commenced, oath in terms of section 16 of ATA, 1997 was took. The cases were amalgamated for joint trial of the accused. A consolidated charge against the accused persons was framed to which they pleaded not guilty and claimed trial.

5. The prosecution in order to prove its case examined 8 PWs and exhibited various documents and other items. The statements of the accused were recorded under Section 342 Cr.P.C in which they denied all the allegations leveled against them and claimed false implication. The accused however neither examined themselves on oath nor produced any DW in their defence.

6. After appreciating the evidence on record the trial court convicted the appellants and sentenced them as set out earlier in this judgment. Hence, the appellants have filed these appeals against their conviction.

7. The facts of the case as well as evidence produced before the trial court find an elaborate mention in the impugned judgment dated 31.08.2021 passed by the trial court and, therefore, the same may not be reproduced here so as to avoid duplication and unnecessary repetition.

8. Learned counsel for appellants contended that the appellants were completely innocent in this case and had been falsely implicated in this case by the police in order to show their efficiency; that the abductee and the complainant were not in a position to safely identify the appellants especially as they had not even been put before an identification parade; that there were major contradictions and improvements in the evidence of the PW's which rendered their evidence unreliable and as such both the appellants should be acquitted by being extended the benefit of the doubt.

9. On the other hand learned Additional Prosecutor General Sindh has fully supported the impugned judgment. In particular he has contended that the abductee eye witness and complainant have correctly identified the



appellants as the persons who kidnapped the abductee and held the abductee for ransom; that the abductee was recovered from the appellant's custody during a police raid where unlicensed pistols, a hand grenade as well as the complainants car were recovered from them; that a ransom demand had been made for the safe return of the abductee; that although there are some minor contradictions and improvements in the evidence of some PW's these are not so material as to effect the prosecution case and as such the prosecution had proved its case against the appellants beyond a reasonable doubt and the appeals should be dismissed. In support of his contentions, he placed reliance on the cases of **Rajab Ali versus The State** (2021 YLR Note 13), **The State v Farman Hussain** (PLD 1995 SC 1), **Muhammad Siddique v The State** (2020 SCMR 342), **Muhammad Ehsan v The State** (2006 SCMR 1857), **Niaz-Ud-Din v The State** (2011 SCMR 725) and **Khawaja Hasanullah v The State** (1999 MLD 514).

10. We have heard the arguments of the learned counsel for the appellants and learned Additional Prosecutor General Sindh and have gone through the entire evidence which has been read out by the learned counsel for the appellants, and the impugned judgment with their able assistance and have considered the relevant law including the case law cited at the bar.

11. After our reassessment of the evidence **we find that the prosecution has proved beyond a reasonable doubt** that on 08.07.2019 at about 2300 hours at Noorstan Superstore, Sector X-I Gulshan Maymar Karachi the appellants kidnapped Talal from the custody of his father on the show of weapons along with vehicle number BH-2745 Toyota corolla whilst extending threats to the complainant. That the appellants then demanded RS 50 lacs from the complainant as ransom for the safe release of his son abductee Talal but later on 14.07.2019 at about 0300am the appellants were arrested near Afghan cut near Sawan Goth MDA where the abductee was recovered along with aforesaid stolen car and one pistol and hand grenade was recovered from appellant Abdul Waheed and one pistol from appellant Mustaq Ahmed for the reasons set out below keeping in mind that each criminal case must be judged on its own particular facts and circumstances.

(a) The FIR was lodged by the complainant with promptitude which gave no time for the complainant to cook up a false case against the appellants. That the FIR was also against unknown persons and as such there was no attempt by the complainant to falsely implicate any body



and even other wise the complainant had no reason to falsely implicate the appellants as there was no enmity or will between them.

(b) We find that the prosecution's case primarily rests on the eye witnesses to the incident and whether we believe their evidence especially in terms of correctly identifying the appellants as the kidnappers whose evidence we will discuss in detail below;

(i) **Eye witness PW 1 Muhammed Jibran** who is the complainant in the case and is the father of the abductee states in his evidence that on 08.07.2019 he and his son Talal drove to superstore Nooristan at Gulshan-e-Maymar in his car bearing registration No.BH-2745 at 10.30pm. That when he stopped his car outside the superstore two young men armed with pistols snatched his car keys and then whilst pointing the pistol at him jumped in his vehicle and drove off the same whilst abducting his 10 year old son Talal. He then went to PS Gulshan-e Mymar and lodged his FIR which was not improved on in respect of the incident which had occurred during his evidence and is corroborated by PW 3 Muhammed Atif and PW 6 Muhammed Ghori who respectively recorded his FIR and were present at the PS when he gave his verbal account for recording his FIR. According to his evidence he was receiving ransom calls and a demand of 50 lacs was made for the safe return of his son and he remained in contact with the kidnappers in order to arrange payment of the ransom. He reported the calls to PW 4 Muhammed Saleem who was the contact person who had been appointed by PW 6 SHO Muhammed Ghori in order to trace out his son. When the place for the ransom drop had been finalized the complainant co-ordinated with PW 4 Muhammed Saleem so that the police would be present at the place where he went to pay the ransom in order to recover his son and arrest the kidnappers. This is corroborated by the evidence of PW 4 Muhammed Saleem. According to the complainant's evidence when he knocked the door of the place where he was sent to deliver the ransom PW 4 Muhammed Saleem apprehended appellant Mustaq from whom he recovered a pistol who admitted making the ransom calls and told them that the abductee was in another room with another culprit which appellant Mushtaq lead them to. In that room appellant Abdul Waheed was arrested along with a pistol and a hand grenade and his son was also rescued by the police from that room. The appellants told him that his vehicle was present in the compound which he found with fake number plates with the genuine number plates being hidden in the boot of the vehicle. He was mashir of memo of arrest and recovery. He recognized both the accused in the court as the persons who abducted his son and who were arrested by the police at the time when his son was recovered.

The complainant would have got a good look at the appellants at the time when they abducted his son along with his car. He stated that he would be able to identifiable them again although he gave very little hulia. He was present only 5 days later when the appellants were arrested in his presence and as such there



could not be an identification parade never the less we are of the view that he has correctly identified the appellants as the kidnappers as he saw them from close up for a reasonable period of time especially when his evidence is read along side that of the abductee. He had no reason to falsely implicate the accused and no enmity has been suggested against him. He gave his evidence in a straight forward manner and was not dented despite a lengthy cross examination and as such we find his evidence to be trust worthy, reliable and confidence inspiring and believe the same especially as it is corroborated by the evidence of so many PW's as mentioned above and we can convict on his sole eye witness evidence alone. In this respect reliance is placed on **Niaz-uu-din's case** (Supra)

(ii) **Eye witness PW 5 Muhammed Talal is the star witness being the abductee.** In his evidence he fully corroborates his father's/complainant's evidence with regard to his kidnapping from outside the superstore. According to his evidence after his kidnapping he was blind folded in his father's car and slapped and warned that he would be shot dead if he cried out. According to his evidence he was driven in his stolen father's car to a compound and tied to a chair in a room where he gave the kidnappers his father's/complainant's cell number. He was warned about being shot dead again and he was provided breakfast by the kidnappers whilst he was **not blind folded**. According to his evidence he was kept captive for about 6 days. One day the kidnappers told him that they had contacted his father who was coming with the ransom money and thereafter he would be released. The police then came in the room and rescued him and he was handed over to his father. He identified the appellants in court as the person's who had kidnapped him and threatened to kill him and would release him when his father paid the ransom money. He remained with the kidnappers for at least 5 to 6 days. During this period he would have had plenty of opportunity to see and recognize the kidnappers as he would have seen them over a long period of time at close quarters and even knew what names they called each other. He identified the appellants in court as his kidnappers. Since the kidnappers were arrested on the spot at the time of his rescue by the police there was no need for an identification parade as he had already seen the appellants and in such type of cases an identification parade is not necessary. Thus, we find that this abductee eye witness correctly identified both the appellants as the persons who kidnapped him and demanded ransom for his release. In this respect his evidence corroborates that of his father in terms of identification and events surrounding his initial kidnapping and final release on being rescued by the police. In respect of no identification parade being required in such like cases reliance is placed on the case of **Khawaja Hasanullah** (Supra)

Furthermore, he had no ill will or enmity with the appellants and had no reason to falsely implicate the appellants. He gave his evidence in a straight forward manner and was not unduly



damaged during his cross examination and as such we believe his evidence which we find to be trustworthy, reliable and confidence inspiring and that he has correctly identified the two appellants as the persons who kidnapped him for ransom.

It is relevant that it was held in the case of **Pahlwan V State** (2000 P.Cr.LJ P.299) in cases of kidnapping for ransom the evidence of an abductee is material and conviction can be based on his testimony alone if it inspires confidence. In this case we find the evidence of abductee PW 5 Talal to inspire confidence and we believe the same

It is true that there are some improvements in his evidence from his S.161 Cr.PC statement but based on the particular facts and circumstances of this case we find such improvements not to be of great significance especially as the abductee gave his S.161 Cr.PC statement in his own words shortly after his release when he was *under tension and terror and was not able to give a proper statement to the police* which is quite understandable given his tender age and the traumatic experience which he had just been through. Furthermore, being only 10 years old he would not have known how detailed his S.161 Cr.PC statement had to be.

Thus, based on our believing the evidence of the PW eyewitnesses what other supportive/corroborative material is there against the appellants? It being noted that corroboration is only a rule of caution and not a rule of law. In this respect reliance is placed on the case of **Muhammad Waris v The State** (2008 SCMR 784).

(c) The abductee was recovered on the spot in the custody of the appellants at the time when the appellants were arrested when he had no reason to be with them especially as he was tied to a chair.

(d) The complainant's car which had been stolen from him and used to abduct his son was recovered from where the abductee was being held by the appellants and the appellants pointed it out in the compound to the police and the complainant. The number plates on the car had already been changed to fake ones with the originals in the boot which indicate that the car was stolen.

(e) The police witnesses evidence fully corroborates the evidence of the complainant and the abductee in all material respects concerning the registration of the FIR, the plan to free the abductee, the raid on the house where the abductee was found in the captivity of the appellants with unlicensed fire arms and even a grenade and the evidence of such police witnesses was not at all damaged during their cross examination. It is well settled by now that the evidence of a police witness is as reliable as any other witness provided that no enmity exists between them and the accused and in this case no enmity has been suggested against any of the police PW's and as such the police had no reason to falsely implicate the appellants in a false case. Thus we believe the evidence of the police officials which corroborates the prosecution case. In this respect reliance is placed on the case of **Mustaq Ahmed V The State** (2020 SCMR 474).



(f) The complainant and the abductee claim that the abduction took place at gun point. On the arrest of the appellants on the spot two pistols and a grenade was recovered from them which all produced positive FSL reports/clearance certificates. The Bomb disposal expert also gave evidence which tied in with the police evidence.

(g) The CDR proves that calls were made from the telephones recovered from the appellants at the time of their arrest to the complainant during the period in question. Logic and commonsense dictate that since the complainant did not know the appellants and they were illegally detaining his son the calls must only have been to demand a ransom for the release of his son as corroborated by the complainant and the abductee whose evidence we have already believed. It is well settled by now that in kidnapping for ransom cases the offence is proved if a ransom demand is made and it is not necessary for any ransom to be actually paid.

(h) It is true that there are some discrepancies/contradictions in the evidence of the PW's and abductee but we do not regard these as material enough to effect the prosecution case especially as the abductee was having to endure a very traumatic experience over a long period of time where discrepancies were bound to slip in. In this respect reliance is placed on the case of **Zakir Khan V State** (1995 SCMR 1793).

(i) The prosecution evidence provides an unbroken corroborated chain of events from the abduction of the boy outside the superstore on gun point whilst stealing in his father's car to the prompt lodging of the FIR to the ransom demands to the pre arranged police raid to the arrest of the appellants with the abductee in their captivity with the recovery of pistols, grenade and even car of the complainant at the time of the arrest of the appellants on the spot.

(j) We have also considered the defence case which is the old chest nut of being picked up by the police and falsely implicated in a case on the failure to pay a bribe. None of the appellants gave evidence on oath to prove this or even produced a DW relative or neighbor to show the appellants had been illegally taken away and not even a single application was made on behalf of either of the appellants in this respect by their family or neighbour and as such we disbelieve the defence case as an after thought especially in the face of reliable, trust worthy and confidence inspiring prosecution evidence.

(k) In cases concerning kidnap for ransom there is a need to take a **dynamic approach**. The Supreme Court in **Noor Muhammad v. State** (1999 SCMR 2722) has also adverted to this aspect of the matter and has observed as under:-

*"However, we may observe that the people are losing faith in the dispensation of criminal justice by the ordinary criminal courts for the reason that they either acquit the accused persons on technical grounds or take a lenient view in awarding sentence. It is high time that the Courts should realize that they owe duty to the legal heirs/relations of the*



victims and also to the society. Sentences awarded should be such which should act as a deterrent to the commission of offences. One of us (Ajmal Mian, C.J., as he then was) has highlighted this aspect, inter alia in the case of *State through the Advocate General Sindh, Karachi v. Farman Hussain and others* (PLD 1995 SC 1), relevant portion whereof at page 19 reads as follows:-

(3) It is a matter of public knowledge that in Sindh, on account of kidnapping for ransom, commission of dacoities and other offences, the people are feeling unsecured. The learned trial Court has dilated upon these aspects in detail. I am inclined to subscribe to the view found favour with it. The approach of the Court in matters like the case in hand should be dynamic and if the Court is satisfied that the offence has been committed in the manner in which it has been alleged by the prosecution the technicalities should be overlooked without causing any miscarriage of justice". (bold added).

12. We do not however find that this case falls within the purview of the ATA as defined by a larger bench of the Supreme Court in the case of *Ghulam Hussain V State* (PLD 2020 SC 61) where in essence for there to be an act of terrorism there had to be an object, intent, purpose and design to create terror on account of the act in question. Whether people were terrorized as a by product of the act did not convert the act into one of terrorism nor the fact that it may have been of a particularly brutal nature. Based on the particular facts and circumstances of this case it appears that there was no such design, intent or purpose to create terror and as such all offences under the ATA are dismissed.

13. Thus, for the reasons mentioned above the convictions and sentences are maintained except in respect of any offence under the ATA and the appellants stand convicted and sentenced only for the offences under the PPC. Subject to this modification the appeals are dismissed.