Kidnap for ransom - dynamic approach 546

IN THE HIGH COURT OF SINDH AT KARACHI

Present:
Mr. Justice Mohammad Karim Khan Agha
Mr. Justice Khadim Hussain Tunio,

SPL. CR. A .T. JAIL APPEAL NO.180 OF 2020

Appellant:	Soomar son of Nawaz Ali Palari through Mr. Iftikhar Ahmed Shah, Advocate
Respondent:	The State through Mr. Muhammad Iqbal Awan, Additional Prosecutor General, Sindh.
Date of Hearing:	27.04.2022
Date of Announcement:	09.05.2022

JUDGMENT

Mohammad Karim Khan Agha, J. Appellant Soomar son of Nawaz Ali Palari was charge sheeted to face his trial in Special Case No.249 of 2015 (New Special Case No.204 of 2015) arising out of FIR No.179 of 2014 under sections 365-A/34 PPC r/w Section 7 ATA, 1997 registered at PS Memon Goth, Karachi. Appellant vide impugned judgment dated 26.02.20218 passed by the learned Anti-Terrorism Court No.VIII, Karachi was convicted and sentenced to imprisonment for life for the offence punishable under section 7(1)(e) of ATA, 1997 r/w Section 365-A/34 PPC. Appellant/accused Soomar was convicted for the offence for kidnapping for ransom, he is also liable to forfeiture of his property, if any, as provided u/s.7(2) of ATA, 1997. However, the appellant was extended benefit of section 382-B Cr.P.C.

2. The brief facts of the prosecution case are that on 22.12.2014 at about 2200 hours, complainant Muhammad Afzal appeared at PS Memon Goth, AVCC/CIA, Malir, East Zone and lodged FIR alleging therein that he along with his son Abu Baker owns a cattle pond at main Super Highway, Qureshi Colony near Radio Pakistan. He disclosed that on 22.12.2014 at about 3-00 a.m. his son Abu Baker left his house in Car No.AWZ-877 for going to his cattle pond. The complainant further stated that in the morning one Shah Nawaz Jatoi, whose cattle pond is also situated in the same colony informed him on

telephone that Car No.AWZ-877 was standing near the colony check post and no person was available there. The complainant informed him that said car was with his son Abu Baker, who left the house at 3-00 a.m. for going to his cattle pond. The complainant reached at the pointed place but his car was already taken by police at PS Memon Goth. The complainant further alleged that in the evening at about 6-00 p.m. he received a telephone call from cell No.0305-8096454 on his cell No.0300-2028313 and the caller informed him that his son was with them and he demanded ransom amount of Rs.4,00,00,000/- for his release and the complainant was also allowed to talk with his son. Hence this FIR.

3. After usual investigation the matter was challaned and the appellant was sent up to face trial. He pleaded not guilty and claimed trial.

4. The prosecution in order to prove its case examined 09 PWs and exhibited various documents and other items. The statement of accused was recorded under Section 342 Cr.P.C in which he denied all the allegations leveled against him. The accused neither examined himself on oath nor produced any DW in his defence.

5. After hearing the parties and appreciating the evidence on record the trial court convicted the appellant and sentenced him as set out earlier in this judgment. Hence, the appellant has filed the instant appeal against his conviction.

6. The facts of the case as well as evidence produced before the trial court find an elaborate mention in the impugned judgment dated 26.02.2018 passed by the trial court and, therefore, the same may not be reproduced here so as to avoid duplication and unnecessary repetition.

7. Learned counsel for the appellant has contended that the appellant is completely innocent and has been falsely implicated in this case by the police in order to show their efficiency as he was in fact arrested from his house prior to the incident and fixed in this false case; that the abductee had not been abducted at all and had been with the persons whom he owed money on account of his cattle business; that the abductee did not sign any memo or mashirnama which indicated that he was not actually abducted especially as he claimed to have been tortured but had not even gone for a medical check up; that no recovery was made from the appellant at the time of his alleged

arrest; that there was no evidence that any ransom demand had been made and no ransom was in fact paid; that the abductee was not in a position to identify any of his kidnappers as he was blind folded and as such for any or all of the above reasons the appellant be acquitted of the charge by extending him the benefit of the doubt. In support of his contentions, he placed reliance on the cases of **Aurangzeb v The State** (2010 PCr.LJ 1281), **Muhammad Asif v The State** (2017 SCMR 486), **Orangzaib v The State** (2018 SCMR 391), **Hayatullah v The State** (2018 SCMR 2092), **Fazal Subhan v The State** (2019 SCMR 1027) and **Nadeem Hussain v The State** (2019 SCMR 1290).

8. On the other hand learned Additional Prosecutor General Sindh has fully supported the impugned judgment and in particular has contended that the appeal of the co-accused arising out of the same offence has already been dismissed by this court and the only difference in the case of the appellant is that no pistol was recovered from him when all the accused were arrested on the spot with the abductee in their detention; that the appeal is hopelessly and deliberately time barred as the appellant wanted to await the out come of the appeal of his co-accused before lodging an appeal; that the prosecution had proved that a ransom had been made and the abductee had identified the appellant as one of the persons who played a role in his kidnapping for ransom and as such the appeal should be dismissed. In support of his contentions, he placed reliance on **Shiraz-ul-Haq v The State** (2010 SCMR 646), **Javed Iqbal v The State** (2012 SCMR 140), **Athar Naeem alias Waqas Chaudhry v The State** (PLD 2007 Karachi 277), **Muhammad Riaz v Bilqiaz Khan** (2012 SCMR 721) and **Rajab Ali v The State** (2021 YLR Note 13).

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

10. At the outset it is significant to observe that the appellants co-accused have already been convicted on the same set of evidence except that a pistol was recovered from them on their arrest on the spot where they were caught red handed with the abductee in their captivity in Special AT Appeals No's 107,108 and 109 all of 2018 in the case of Rajab Ali V The State vide judgment of this court dated 20.05.2020 in which one of us (Mohammed Karim Khan

Agha J) was the author judge with the appeals being reported in 2021 YLR Note 13.

11. We have once again reassessed the evidence on record in light of the submissions made by learned counsel and find the prosecution has proved its case against the appellant beyond a reasonable doubt for the same reasons which prevailed upon us in the aforesaid appeals of the co-accused which reasons we set out below;

> (a) That the FIR was filed with promptitude on the same day against unknown persons and as such the there is no question of the complainant cooking up a false case against the appellant. Importantly the complainant states in the FIR the mobile phone number which was used to contact him for the ransom demand which later tied in with the CDR of one of the kidnappers and his story is corroborated by PW 3 Shahnawaz Jatoi who is named in the FIR and is not a chance witness as he also had a cattle pond in the same area as the complainant and is an independent witness who had no reason to falsely implicate anyone as well as the abductee. His FIR is also in consonance with his later evidence at trial as PW 1 being the complainant before the court. Even otherwise the complainant had no enmity with the appellant and had no reason to falsely implicate him in this case. In the FIR he nominates unknown persons which would not have been the case if he wanted to fix the appellant through a false case.
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> (b) **In our view the key prosecution witness is eye witness abductee PW 2 Muhammed Abu Bakar.** According to his evidence he left his house at 03am to go to his cattle pond situated in Quershi Colony in car bearing Registration No.AWZ 877 which was his father's car. His car was stopped near a check post and he was taken out of his car by three men with muffled faces with weapons. Initially he was made to sit on a motor bike and was then put in a car where he was taken to a hut type house and confined in a room for some days. He was tied with a chain and made to speak to his father and demand Rs.4 crore for his safe release. Three days before his recovery he was taken to a ditch type place where he was made to sit where 3 persons with firearms guarded him. According to his evidence some other persons also used to come there with weapons. On 28.12.2014 in the evening time he was rescued by the police who arrested on the spot the 3 persons guarding him and he was then taken to AVCC police station. On 04.02.2015 he was informed by the police that one of his abductors had been killed in a police encounter and he was asked to identify the body. He identified the dead body as one of his kidnappers as Abdul Raheem. He identified the appellant in court as a person who used to guard him whilst he was in captivity and bring him food. **In his evidence he states that the blind folds were removed when he was given his meal and that the appellant used to remain with**

him in and around the ditch and they were also with him in the hut where he was initially detained. In this case the abductee remained with the appellant for 6 days and at close quarters and was not blind folded the whole time and as such would have got a good look at the appellant during day light hours for a considerable period of time. He recognized the appellant in the court as being one of the persons who guarded him whilst he was kidnapped and held in captivity who was arrested on the spot by the police and thus he would have been able to easily correctly identify his abductors. In such facts and circumstances in a kidnapping for ransom case the superior courts have held that identification parades are not mandatory. In this respect reliance is placed on the case of **Zakir Khan and others v. The State** (1995 SCMR 1793) which held as under;

> *"A clear distinction was drawn between the circumstances where the witness only gets a glimpse of the accused who happened to be a stranger to him and where although the witness had met the accused for the first time but he had seen him several times. It was held that in the latter case the necessity of holding an identification parade could be dispensed with and the accused could even be identified in the Court for the first time. In the present case the kidnapee had remained with the accused sufficiently long not only to identify them by their faces but to identify them even by their names.* ***This is not a case where a witness had only gotten a glimpse of the accused but in this case, admittedly he had remained with them during his captivity and had clearly seen their faces. Therefore, in our opinion, holding of an identification parade was not a mandatory requirement in the present case. The contention raised by the learned counsel for the appellants therefore, has very little force."*** *(bold added)*

Like wise the same was held by the supreme court in **the case of Muhammad Akbar vs. The State** (1998 SCMR 2538) .With regard to an abductee identifying his captors it was held as under in the case of **Muhammad Rasool vs. The State** (2015 P.Cr.L.J 391) at P.339 Para.13

> *"Now what remains to be seen is whether there is any evidence against the appellants/convicts which could justify that they were the culprits who abducted the abductees. It is settled principle of law that evidence of the abductees regarding identification of culprits/abductors is always safe to be believed if same qualifies the test of being natural and confidence inspiring."*

The abductee had no enmity with the appellant and had no reason to falsely implicate him in this case. He was not shattered despite a lengthy cross examination and thus we believe the evidence of the **eye witness abductee PW 2 Muhammed Abu Bakar which we find reliable, trust worthy and confidence inspiring and find that he has correctly identified the**

appellant as one of the three kidnappers involved in his kidnapping for ransom by guarding and feeding him

It is settled law that we can convict if we find the direct oral evidence of **one eye witness** to be reliable, trust worthy and confidence inspiring. In this respect reliance is placed on **Muhammad Ehsan V The State** (2006 SCMR 1857). The supreme court in the case of **Niaz-Ud-Din V The State** (2011 SCMR 725) has also held as under in respect of the ability of the court to uphold a conviction for murder even based on the evidence of **one eye witness** provided that it was reliable and confidence inspiring and was substantiated from the circumstances and other evidence since it is the quality and not the quantity of evidence which matters;

> *"11. The statement of Israeel (P.W.9) the eye-witness of the occurrence is confidence inspiring, which stands substantiated from the circumstances and other evidence.* ***There is apt observations appearing in Allah Bakhsh v. Shammi and others (PLD 1980 SC 225) that "even in a murder case conviction can be based on the testimony of a single witness, if the Court is satisfied that he is reliable." The reason being that it is the quality of evidence and not the quantity which matter.*** *Therefore, we are left with no doubt whatsoever that conviction of Niaz-ud-Din was fully justified and has rightly been maintained by the High Court."* (bold added)

As mentioned above in this case we find the abducted eye **witness abductee PW 2 Muhammed Abu Bakar**'s evidence to be reliable, trust worthy and confidence inspiring and we believe his evidence in its entirely **including** his correct identification of the appellant as being one of his guards/feeders during his captivity.

Never the less by way of abundant caution we will consider below whether any corroborative/supportive evidence is available in respect of the direct oral eye witness evidence.

(c) **The appellant was arrested on the spot at the time when the abductee was recovered by the police** being PW 5 Muhammed Anwar and PW 6 Ghulan Asghar whose evidence corroborates each other in all material respects and also that of the abductee regarding his rescue. It is also **significant that CPLC officials who are independant persons** were also present at the time of the arrest of the appellant and rescue of the abductee. 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 witnesses and as such the police had no reason to implicate the appellant in a false case. Even in his section 342 Cr.PC statement the appellant admits that he has no enmity with the police. Thus we believe the police evidence which is corroborative in all material respects. Reliance in this respect is placed on the

unreported recent Supreme Court case of **Mushtaq Ahmed V The State** dated 09-01-2020 in Criminal Petition No.370 of 2019 where it was held in material part as under at para 3;

> *"Prosecution case is hinged upon the statements of Aamir Masood, TSI (PW-2) and Abid Hussain, 336-C (PW-3); being officials of the Republic, they do not seem to have an axe to grind against the petitioner, intercepted at a public place during routine search. Contraband, considerable in quantity, cannot be possibly foisted to fabricate a fake charge, that too, without any apparent reason; while furnishing evidence, both the witnesses remained throughout consistent and confidence inspiring and as such can be relied upon without a demur."*

(d) That at the time of arrest on the spot of the appellant and the rescue of the accused the police also recovered the lock and chain which fits in with the abductees story as to how he was tied up during captivity.

(e) That all the PW's are consistent and corroborative in their evidence and even if there are some contradictions in their evidence we consider these contradictions as minor in nature and not material and certainly not of such materiality so as to effect the prosecution case and the conviction of the appellant. In this respect reliance is placed on **Zakir Khan V State** (1995 SCMR 1793). Their evidence provides a believable corroborated unbroken chain of events from the kidnapping of the complainant in his car on the way to the cattle pond, to the demand for ransom, to his captivity, to his rescue by the police and the arrest of the accused on the spot.

(f) The car which was being driven by the abductee and which belonged to his father was recovered where the abductee claims he was kidnapped from which is corroborated by PW 3 Tariq Nawaz and the complainant.

(g) It is well settled by now that once a demand for ransom is made then this fulfills the legal ingredients under S.365 A PPC of kidnapping for ransom whether or not any ransom is paid. In this respect reliance is placed on **Sh.Muhammed Amjad V The State** (PLD 2003 SC 704). In this case the abductee states that he informed the ransom demand to his father as instructed by his captors whose evidence we believe having already found it to be trust worthy reliable and confidence inspiring which is corroborated in both the FIR and his father's evidence which we also believe having found the same to be trust worthy reliable and confidence inspiring. Such demand is also corroborated by the fact that the abductee identified the dead body of one of his kidnappers as Abdul Raheem whose mobile phone number as per the recovered CDR was used to call the complainant for the ransom demand which is the same number as is mentioned at the very beginning in the FIR which provides a direct link to the appellant who was also part of the kidnapping gang albeit his role was as guard/feeder of the abductee. It also does not appeal to reason, logic or commonsense that a person would be abducted by others who had no enmity with him and was

simply held in captivity for 6 days in miserable conditions and being fed and guarded at the expense of that some body else for no reason until he was released during a police raid **unless** those persons wanted something for his return. The only reasonable inference is that such person (abductee) based on the particular facts and circumstances of this case was held in captivity until a ransom of some kind was paid for his safe return.

(h) It is settled by now that any person who plays a role in a kidnapping for ransom case, **however minor,** is equally as liable as the other co-accused. In this respect reliance is placed on **Khawaja Hasanullah v. The State** (1999 MLD 514), where it was held as under at P.524;

> *"In cases of abduction for ransom, it is not necessary that all the culprits must have collectively done all the criminal acts together from the stage of abduction till extortion of money. In such cases mostly, the work is divided. Abduction is done by a few of them, place of confinement is guarded by others and ransom is extorted by one or two of them.* ***This is done under a planning. The object of all is to extort money. Therefore, the punishment could be the same irrespective of the role played by each of them****".* (bold added)

Likewise in the case of **Said Muhammad vs. The State** (1999 SCMR 2758), it was held as under at page 2759 paras-2 and 3:-

> *"Three persons were abducted namely, Ghulam Mohyuddin, Khalid Mahmood and Abdur Rehman on 25.4.1991. After a few days, two of the abductees namely, Abdur Rehman and Ghulam Mohyuddin were released but abductee Khalid Mahmood was not released and, till the disposal of the case, the whereabouts of Khalid Mahmood were not known.* ***Appellant Said Muhammad was not present at the time of actual abduction had taken place. The main culprits were Ghulam Muhammad and Faiz Muhammad who were tried in absentia,*** *as observed earlier, and three others namely, Dost Muhammad, Abdul Khalid and Aziz Ullah who could not be apprehended but some time later they were killed in a police encounter.*
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> ***The role assigned to appellant Said Muhammad is that, after the main culprits had abducted the three abductees and were taking them in a vehicle, on the way, Said Muhammad was stationed who told the abductors that the passage was clear. From the evidence the involvement of Said Muhammad in the offence is established as has been found by the trial Court and confirmed by the High Court.*** *In the circumstances of the case, Ch. Muhammad Akram, learned counsel for the appellant,* ***has not pressed this appeal on merits but only argued the appeal on the question of sentence.*** *According to learned counsel, it was a*

fit case where appellant Said Muhammad should have been awarded the lesser sentence.

In present case it would appear from the evidence that the leading part in the abduction was that of the co-accused and compared to their role, the role of appellant Said Muhammad was minor in nature. *In the facts and circumstances of this case, we are of the view that a distinction can be made in the case of the present appellant in so far as the question of sentence is concerned. Reference in this regard can be made to a judgment of this Court in the case Shafoo v. State (1968 SCMR 719).*(bold added)

(i) The evidence of the prosecution witnesses corroborates each other in all material respects. Even the evidence of police witnesses can be safely relied upon since no allegation of enmity, bias or ill will has been made against any of them and as such they had no reason to falsely implicate the appellants in this case. In this respect reliance is placed on **Zafar V State** (2008 SCMR 1254)

(j) Although we have found that the prosecution has proved its case against the appellant beyond a reasonable doubt we have also considered the defence case of the appellant. According to appellant his defence is essentially two fold. Firstly that the abductee was kidnapped but this was by other persons whom he owed money too (and as such the appellant has not disputed the kidnapping) and secondly that he was arrested from his house and not from the spot and was not part of the kidnapping gang. The appellant did not give evidence on oath or call any defence witness in support of his defence case. The CDR does not show that the appellant was in Thatta when he was arrested and since he admitted in his S.342 Cr.PC statement that he had no enmity with the police as such the police had no reason to implicate him in a false case, that the appellant was only kept in a ditch part of the time and the rest of the time he was kept in a hut which appeals to reason and as such we disbelieve the defence case.

(k) In kidnapping for ransom cases courts need to take a dynamic approach in assessing the evidence. In the case of **Advocate General Sindh, Karachi v. Farman Hussain and others** (PLD 1995 SC 1), in a kidnapping for ransom case it was observed as under:-

"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).

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12. Thus, based on the above discussion especially in the face of reliable, trust worthy and confidence inspiring eye witness evidence of the abductee and other corroborative/supportive evidence mentioned above we find that the prosecution has proved its case against the appellant beyond a reasonable doubt and as such the appeal against conviction filed by the appellant is dismissed and the impugned judgment is upheld.

13. The appeals are disposed of in the above terms.

MAK/PS