

ORDER SHEET
IN THE HIGH COURT OF SINDH,
CIRCUIT COURT, HYDERABAD.

Criminal Jail Appeal D- 146 of 2010

DATE	ORDER WITH SIGNATURE OF JUDGE
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09.02.2023.

Mr. Parvez Tarique Tagar, Advocate for appellant.
Mr. Shahzad Saleem Nahiyoan, Additional P.G for State.
Complainant Muhammad Siddique present in person.
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In this old appeal of 2010 where the appellant was arrested about 15 years ago and remained in custody. Initially Mr. Ayaz Hussain Tunio, Advocate was appointed as learned counsel for the appellant on pro bono basis but on the last so many dates Mr. Parvez Tarique Tagar, Advocate / Associate of Mr. Tunio has been appearing in this case and as such he is appointed as counsel on pro bono on behalf of the appellant as he is well prepared in this matter and is ready to proceed today. It is noted that complainant Muhammad Siddique on the last date of hearing had shown full faith and confidence in learned A.P.G. Today he is present and reiterates the same fact.

We have heard learned counsel for the appellant, learned Additional Prosecutor General for State and perused the entire material available on record. Reserved for judgment.

Tufail

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

Present:-

Mr. Justice Mohammad Karim Khan Agha
Justice Mrs. Kausar Sultana Hussain

Cr. Jail Appeal No.D- 146 of 2010

Appellant : Muharram Ali Brohi	through Mr. Pervez Tarique Tagar, Advocate
Respondent : The State	through Mr. Shahzad Saleem Nahiyoan, Additional Prosecutor General, Sindh
Complainant Muhammad Siddique	Present in person and reposed confidence in APG
Date of hearing	09.02.2023
Date of judgment	23.02.2023

J U D G M E N T

MOHAMMAD KARIM KHAN AGHA, J.-Appellant Muharram Ali S/o Sher Ali Brohi along with other co-accused Ghulam Qadir alias Qadoo, Ghulam Nabi alias Khabar, Dost Ali and absconding accused Ashraf and one unknown accused was tried by the learned Special Judge, Anti-Terrorism Court, Shaheed Benazirabad in Special Case No.19 of 2009 (re: State V Muharram Ali and others), culminating from Crime No.165 of 2008, registered at Police Station Sakrand, under sections 365-A, 395 PPC and section 7 of Anti-Terrorism Act, 1997; and, vide judgment dated 04.05.2010, (the impugned Judgment), convicted under section 365-A PPC and sentenced to suffer life imprisonment and to pay fine of Rs.200,000/-, in default whereof he was directed to suffer R.I. for 03 years more. He was also convicted u/s 395 PPC and sentenced to suffer R.I for 10 years and to pay fine of Rs.100,000/-, in case of default thereof he was also directed to suffer R.I for 01 year more. He was further convicted and sentenced u/s 7(e) of A.T.A 1997 to suffer life imprisonment and his

immovable and moveable property worth of Rs.200,000/- was ordered to be confiscated to State. All the sentences were ordered to run concurrently. Benefit of section 382-B Cr.P.C was extended to him; whereas the other co-accused namely Ghulam Qadir alias Qadoo, Dost Ali, Ghulam Nabi alias Khabar as well as absconding accused and one unknown accused were acquitted of the charge while extending them benefit of doubt.

2. The brief facts of the prosecution case as stated in the FIR, are as under:-

*"That complainant Muhammad Siddique lodged FIR on 16.07.2008 at about 1630 hours at P.S Sakrand u/s 365-A, 395 PPC r/w Section 7 ATA 1997, stating therein that he and his brother-in-law Muhammad Mubeen Lashari, driver Ghulam Ali Oatho were going to priesthood namely Pir Mushtaque Ahmed Shah in order to meet with him at Dargah Khanyaro Sharif Taluka Sakrand in a Datsun bearing Registration No.KG-5410. When they reached near link road from Sakrand to Nawabshah at about 0930 hours near turn of Village Bahadur Jokhio, they saw that one Alto Suzuki car of white colour without number crossed their datsun and stood in front of their datsun. Out of them six persons alighted from the said car being armed with deadly weapons such as K.Ks. **The complainant party claimed to have identified them clearly on the headlight of vehicle and can identify them if seen again,** they overpowered the complainant party and on the pointation of deadly weapons robbed original copy of CNIC and duplicate, original documents of motorcycles No.HDX-7250, receipt of account, cash of Rs.2000/- in shape of different currency notes, mobile phone of Nokia company of 1100 from complainant Muhammad Siddique, one mobile phone Sony Ericson, Photostat copy of CNIC and cash of Rs.1000/- from Muhammad Mubeen and mobile phone of China Nokia, Photostat copy of CNIC, copy of Medical Certificate of Farooque and one currency note of Rs.500/- from driver Ghulam Ali and then forcibly dragged out complainant and Muhammad Mubeen Lashari and tied their hands and closed their eyes and forcibly boarded in their car and out of six persons, three persons were seated with complainant and Muhammad Mubeen and kidnapped them and went away. The complainant further stated that after journey of about three hours they stopped the car near Sim Nala and alighted them from car and opened their eyes and they crossed the Sim Nala and after that they entered in a house which was constructed with straws and bushes and detained them wrongfully. **The three persons who kidnapped them on the pointation of deadly weapons disclosed their names as Muharram Ali** and his son Ashraf Ali, Ghulam Qadir alias Qadroo Waggan and two persons who were guarded upon them disclosed their names as Dost Ali Khoso and Ghulam Nabi Khoso. They were detained in the said house for about 22 days. The accused party snatched their mobiles and made contact*

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with their relative namely Muhammad Juman Lashari for the arrangement of ransom amount. On 23rd day at about 04-00 a.m the complainant had to make water and he called to the accused but did not receive any response. The complainant party tried his best efforts and opened their eyes they saw that three / four persons were sleeping on their cots. The complainant and his companions succeeded in un-roping themselves and thereafter they made their escape good from the place of wardat and made journey by foot for about five to six kilometers which took about two hours time and thereafter they reached at the road side where they saw one bus / transport going towards Moro side. They gave signal to stop and boarded on said bus and reached at Moro stop and thereafter they went to their houses and tried their best level to search the remaining abductees as well as Datsun at their own level but did not succeed. The complainant thereafter informed to his nekmard Raees Karim Dino to whom he narrated the full facts of the incident who advised him to lodge the FIR and on the advice of said Nekmard complainant went to P.S and lodged the FIR. **The complainant further stated in his FIR that accused Muharram Ali alongwith his other co-accused with common intention jointly committed the offence by kidnapping them for the purpose of ransom amount.** The complainant has also disclosed in his FIR about the robbed articles which were robbed by the accused persons."

3. The investigation of the crime was conducted by the I.O, who recorded the statements of the P.Ws as well as prepared other formal documents and after completing the same, challaned case before the Court having jurisdiction.
4. The charge against the accused was framed to which except absconding accused, all pled not guilty and claimed to trial. In order to substantiate its case, the prosecution examined 10 witnesses and exhibited numerous documents and other items. The statements of the accused were recorded u/s 342 Cr.P.C, wherein they have denied the prosecution allegations and claimed their false implication in this case. However, they neither examined themselves on oath in order to disprove the prosecution case nor led any evidence in defense.
5. Learned trial Judge after hearing the learned counsel for the parties and examining the evidence available on record, convicted and sentenced the accused/appellant Muharram Ali and acquitted the co-accused as set out earlier in this judgment.
6. Learned trial court in the impugned judgment has already discussed the facts and the evidence in detail and there is no need

to repeat the same here, so as to avoid duplication and unnecessary repetition.

7. Learned counsel for the appellant has contended that the prosecution has failed to prove its case against the appellant for the following reasons; that there was an unexplained delay of 13 days in lodging the FIR; that the abductees had wrongly identified the appellant as one of the abductors; that no identification parade was conducted; that there is no proof that any ransom demand was made or any ransom paid; that the learned trial Judge at the time of recording 342 Cr.P.C statement of the appellant has only put up stereo type questions and did not place each and every substantial piece of evidence brought on record to be confronted or answered and a such this evidence had to be excluded from consideration; that no recovery was made from the appellant who was already in police custody in another case and for any or all of the above reasons the appellant should be acquitted by being extended the benefit of the doubt. In support of his contentions, learned counsel for the appellant placed reliance on the cases of **Muhammad Jumman Brohi and another V The State** (2021 PCr.LJ 1042), **Fazal Subhan and another V The State and others** (2019 SCMR 1027) and **Suleman Shah alias Sunny and another V The State** (2020 YLR 2226).

8. On the other hand, learned A.P.G, as well as the complainant (present in person) fully supported the impugned judgment and contended that the appellant belongs to a gang of dacoits; that he is a habitual offender and also remained involved in similar type of cases; that prosecution witnesses have fully supported the case against the appellant; that if there was any contradiction in the evidence of the prosecution witnesses the same was only a result of passage of time and only of minor in nature hence cannot be taken as a ground for acquittal of the appellant. In support of his contentions, learned A.P.G has placed reliance on the cases of **Ahmed Hussain alias AMI and others V The State and others** (PLD Supreme Court 110), **Muhammad Yousuf Zai V The State** (PLD 1988 Karachi 539), **Muhammad Afzal and another V The State** (1982 SCMR 129) and **Asim and another V The State and another** (PLD 2004 Quetta 123).

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9. We have considered the arguments of learned counsels as well as the complainant in person, scanned the entire evidence available on record with their assistance and considered the relevant law including the case law cited at the bar.

10. Based on our reassessment of evidence we find that the prosecution has **NOT** proved beyond a reasonable doubt the charge against the appellant for which he was convicted keeping in view that each criminal case must be decided on its own particular facts and circumstances for the following reasons;

(a) In kidnapping for ransom cases it is not unusual for there to be a delay in lodging the FIR as the families are initially concerned with tracing out the missing person or in fear of the persons demanding ransom. In this case the FIR was lodged after a delay of 21 days **after** the release of the abductees (who had already been in captivity for 22 days) without any explanation during which time the complainant consulted with the nekwards of his area which seems to us to be an inordinately long delay even in a kidnapping case especially where the abductees were adults and not children. Furthermore, it is some what astonishing that during the abductees 22 days of detention the police or any other authority remained completely uninformed about the matter even **after** the ransom demand was made and only came to know of the incident 21 days after the abductees returned home when the complainant came to lodge the FIR. These circumstances caste severe doubt on the prosecution case as there are chances that the FIR and whole incident was concocted.

(b) All the three abductees (PW 1 Muhammed Siddique, PW 2 Ghulam Ali and PW 3 Muhammed Mubeen) state in their evidence that they saw the appellant and other co-accused whilst in captivity for 22 days however rather surprisingly they were only able to pick out the appellant at trial amongst all the co-accused and failed to pick out any of the other co-accused who they got an equally good look at, if not better, especially in respect of the co-accused guards Dost Ali and Ghulam Nabi who they definitely saw whilst in the case of the appellant their evidence suggests that they might only have heard the name of the appellant being called along with other names of the co-accused. Although two of the abductees recognized the appellant when they came to record their S.164 Cr.PC statements this evidence is discarded as such question was not put to the accused when he recorded his S.342 Cr.PC statement which statement seems to have been recorded in a

very slipshod manner and hardly meets the requirements of S.342 Cr.PC whereby every piece of incriminating evidence against the accused must be put to him for his comment. Thus, although it is true that usually in kidnapping for ransom cases no identification parade is required when the abductee has been in captivity for a long time based on the particular facts and circumstances of this case we have doubts that the abductees have been able to correctly identify the appellant or that the incident even took place as we will further elaborate in this judgment.

(c) Despite knowing the area well none of the abductees were able to point out the place where they were kept for 22 days which does not appeal to reason logic or commonsense.

(d) The place of vardat was not visited and as such it cannot be proved where the abductees were kept for these 22 days. They could even have been at a relative's house or some other place.

(e) With regard to the ransom demand only the abductees and PW 4 Muhammed Juman state that a ransom demand was made. However according to PW 4 Muhammed Juman the amount was for only 5 lacs which seems an unbelievably low amount for the return of 3 abductees.

(f) Even otherwise PW 4 Muhammed Juman was declared hostile by the prosecution where he allegedly gave in his S.161 Cr.PC statement a list of mobile phone numbers. However no mobile phones were recovered from the appellant or the co-accused; no CDR was exhibited to prove the ransom demands or IEMA to show the location of where the ransom demands were made and no voice recording was ever made of the alleged ransom demands.

(g) It does not appeal to logic, reason or commonsense that kidnappers would keep 3 abductees for 22 days for a ransom of only 5 lacs keeping in view that they would have to guard them, feed them and generally spend time and money looking after their well fare for a measly ransom amount RS 5 lacs. After 22 days surely the abductees would have been released or killed.

(h) No other witness deposed about any ransom demand apart from the abductees and PW 4 Muhammed Juman failed to tell the police when he received the demands or anyone else let alone lodge an FIR. In this respect reliance is placed on the case of **Fazal Subhan** (Supra)

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(i) No money was taken out to pay the ransom, despite it being an allegedly relatively low amount, and no ransom was recovered and as such we find that the prosecution has **not** proven that a demand for ransom was made.

(j) None of the alleged stolen/robbed goods from the abductees were ever recovered including the datsun car.

(k) No weapon was recovered from the appellant or any of the other co-accused.

(l) That the appellant was not caught on the spot and was already in jail in another case when he allegedly confessed his involvement in this case and was arrested in this case. Again it does not appeal to logic, common sense or reason that the appellant would confess to his involvement in this case when he did not even know that there was any evidence against him especially as this offence carried the death penalty.

(m) That how could all 3 abductees have escaped in one night after untying their ropes when all appellants and co-accused were all asleep without waking them up despite being carefully guarded for 22 days. This escape does not appeal to logic, reason or commonsense especially as when the abductees reached home they were unable to find the place vardat again. In this respect reliance is placed on the case of **Fazal Subhan** (Supra)

11. Thus, we find based on the reasons mentioned above that the prosecution case does not ring true and that there are many doubts in the same and as a matter of law the accused is entitled to the benefit of a single doubt as a matter of right and not by way of concession and as such by extending the benefit of the doubt to the appellant we set aside the impugned judgment, acquit the appellant of the charge and allow his appeal. The appellant shall be released unless wanted in any other custody case.

12. The appeal stands disposed of in the above terms.