

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

Before:

Mr. Justice Abdul Maalik Gaddi

Mr. Justice Mohammad Karim Khan Agha

Cr. Acq. Appeal No.D-16 of 2018

Syed Sadam Hussain

Vs.

Faisal Shah and others

Appellant : Syed Sadam Hussain	Through Mr. Kashif Ali Lakho, Advocate
None present for respondents No.1 to 3 :	
Respondent No.4 : The State	Through Syed Meeral Shah Bukhari, Additional Prosecutor General
Date of hearing :	10.10.2018
Date of judgment :	10.10.2018

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

**MOHAMMAD KARIM KHAN AGHA, J.-** This criminal acquittal appeal under Section 417(2-A) Cr.P.C. has been filed by the appellant against the judgment dated 15.05.2018, passed by the learned Special Judge, Court of Anti-Terrorism, Hyderabad, in ATC Case No.140/2015 (re-The State Vs. Faisal Shah and others), arising out of Crime No.224/2015, under sections 365-A, 392, 511, 504(2) and 34 PPC, registered at Police Station Jamshoro, whereby the learned trial Court after full dressed trial acquitted the private respondents by giving them the benefit of the doubt.

2. Precisely, the facts of the prosecution case are that;

"On 16.11.2015 complainant Syed Sadam Hussain Shah lodged FIR at Police Station Jamshoro, alleging therein that on 09.11.2015, he and his father Taj Muhammad Shah were present in their house when at 02:00 pm Syed Faisal Shah made phone call to him asking to come



at "T Morr" super highway for some work. The complainant after informing his father reached at "T Morr" at 02:45 pm and saw Faisal Shah, Syed Qurban Shah and their friend Shamsheer Ali Khoso. Faisal Shah asked the complainant that since he had asked for job, and further asked him to accompany them for providing duty and took him in a rickshaw and brought him to a house at Sikandarabad Kotri where they confined the complainant. Qurban Shah and Faisal Shah took out pistols and asked the complainant to keep quiet and not to disclose anything to anyone or else they will murder him, thereafter, accused tied arms and legs of complainant and taped his mouth and went away. It is further alleged that after sometime they again came and from the phone of complainant talked with his father and demanded ransom for release of the complainant. Thereafter, on 12.11.2015, complainant while taking advantage of absence of accused slipped away and came to his house and disclosed the facts to his father who reported the matter to Nekmard, but to no avail, therefore, on 16.11.2015 complainant went to P.S and lodged his FIR in the manner as stated above further disclosing therein that his phone etc is still with the accused."

3. After usual investigation, challan of the case was submitted before the concerned court. At trial, learned trial court framed charge against the accused named above at Ex.14, to which they pleaded not guilty and claimed to be tried vide their respective pleas at Exs.15 to 17.

4. The prosecution in order to prove its case against the accused persons examined 07 witnesses. Then prosecution side was closed at Ex.26.

5. Thereafter, statements of the accused persons were recorded under section 342 Cr.P.C at Exs.27 to 29, wherein they denied the allegations of the prosecution. Accused Syed Faisal Shah stated that he has dispute on matrimonial affairs and over a plot with Syed Taj Muhammad Shah who has falsely got registered present F.I.R. through his son. While accused Shamsheer Ali Khoso stated that he has been falsely implicated by the complainant at the instance of his father as he is friend of co-accused Syed Faisal Shah who is close relative of the complainant and have dispute with them. Accused Qurban Ali Shah stated that he has been involved in this case due to enmity. However, neither they examined themselves on oath nor led any defense evidence.

6. The trial court after hearing the learned counsel for the parties and assessing the evidence available on record, by the impugned judgment acquitted the accused / private respondents as stated in the concluding paragraph of the impugned judgment. Hence, this acquittal appeal has been filed by the appellant.



7. Learned counsel for the appellant contended that the judgment passed by the learned trial court is opposed to law, facts, equity and the reasons for acquitting the private respondents are artificial, vis-à-vis the evidence on record; that the prosecution has fully proved its case against the private respondents by producing evidence on all material points; that the trial court has passed the impugned judgment in a hasty manner without applying its judicial mind; that the grounds on which the trial court proceeded to acquit the private respondents are not supportable from the evidence on record. He submitted that the private respondents have been directly charged with the commission of the offence and that the discrepancies in the statements of witnesses are not so material on the basis of which respondents could be acquitted. He further contended that the learned trial court has based its findings of acquittal merely on the basis of minor contradictions on non-vital points in the statements of prosecution witnesses and that the prosecution evidence has not been properly appreciated. Lastly, he prayed that this criminal acquittal appeal may be allowed as prayed.

8. On the other hand the learned Additional Prosecutor General has supported the impugned judgment passed by learned trial court by arguing that the impugned judgment has been passed after due appreciation of evidence on record; that the incident was allegedly committed on 09.11.2015 whereas it was reported at police station on 16.11.2015 with a delay of 07 days for which no satisfactory explanation has been furnished, as such, according to them, false implication of the private respondents with due deliberation and consultation on this ground alone cannot be ruled out; that as per F.I.R, the complainant was called and confined in captivity by the private respondents for about 03 days and on 12.11.2015, he while taking advantage of the absence of accused / respondents slipped away and came to his house, however, he lodged the present F.I.R. on 16.11.2015, with a delay of 04 days, which has not been explained satisfactory. During course of arguments the learned APG has read the entire evidence of the prosecution witnesses. He further contended that the learned trial court while rendering the acquittal judgment has attended to all the aspects involved in this case and as such the appeal against acquittal should be dismissed.

9. We have heard the learned Counsel for the parties and perused the evidence so brought on record alongwith impugned judgment with their able assistance.



10. It is settled law that judgment of acquittal should not be interjected until findings are perverse, arbitrary, foolish, artificial, speculative and ridiculous as held by the Honorable Supreme Court in the case of **The State v. Abdul Khaliq and others** (PLD 2011 Supreme Court 554). Moreover, the scope of interference in appeal against acquittal is narrow and limited because in an acquittal the presumption of innocence is significantly added to the cardinal rule of criminal jurisprudence as the accused shall be presumed to be innocent until proved guilty. In other words, the presumption of innocence is doubled as held by the Honourable Supreme Court of Pakistan in the above referred judgment.

11. The main reasons that the trial court in the impugned judgment acquitted the respondents are as under:

"Prosecution case mainly rests upon evidence of complainant/abductee Syed Sadam Shah Ex.8 and his father P.W. Syed Taj Muhammad Shah Ex.19. Complainant in his statement deposed that on 09.11.2015, accused Faisal Shah, Qurban Shah and Shammsher Ali had abducted him from "T Morr" and took him in Kotri and confined in a room, and thereafter accused made phone call and demanded Rs.800,000/- ransom for his release and finally ransom was settled to Rs.150,000/-. His father brought said amount at house where he was detained by the accused and his father asked the accused to receive ransom amount and release him, but accused did not agree and one day when accused Faisal Shah and Qurban Ali Shah were outside the house while accused Shamsheer was sleeping, he took advantage and slipped away and came at his house. Complainant in his statement has exaggerated the facts by deposing that accused demanded Rs. eight lacks as ransom for his release and finally Rs.150,000/- were settled as ransom and that his father brought amount to the house where the (complainant) was detained by accused, as it is not mentioned by the complainant in his FIR that accused had demanded Rs. eight lacks as ransom which was finally settled to Rs.150,000/- and that his father had brought said amount at house where he (complainant) was detained by the accused. Even otherwise, it is not believable that despite knowing and visiting the place of captivity of his son which was situated in the heart of the town, the father of complainant did not inform the police so as to recover his son, and remained mum till his son returned home at his own. PW Taj Muhammad Shah in his statement has contradicted the complainant. Complainant deposed that his father PW Taj Muhammad brought Rs.150,000/- for his release at place of his captivity i.e. a house situated at Kotri Town, however, PW Taj Muhammad in this regard deposed that after many talks Rs.150,000/- ransom was settled and accused after calling him at different places including back side of Jamshoro Court finally settled at place near petrol pump where a person appeared with muffled faces on motorcycle and introduced himself as Faisal Shah and asked him to pay ransom. He asked him to show his son first but he went away. Thereafter, accused Shamsheer Khoso also came at same place and asked for ransom but he asked



him to first hand over his son and thereafter, he received a phone of his son that he has been released. He asked him to come at home by hiring rickshaw and then his son came at his home. In his cross examination, PW Taj Muhammad admitted that accused Qurban Ali Shah is his real cousin while accused Faisal Shah is son of his cousin and that being very close relatives they had visiting terms with each other. He deposed that however, there was dispute between him and accused Faisal Shah and Qurban Shah over giving education to his daughters which has annoyed the accused.

Another witness examined in this case is PW Muhammad Mithal Ex.24. According to prosecution case, this witness had rented out the premises to accused where the accused kept complainant after kidnapping him. In his cross examination, he stated that on the ground floor of the said premises he was residing with his family members and some women were also residing with accused on upper floor. He further stated that there is only one room on the upper floor which was rented out by him and during the stay of accused he or any member of his family never heard cries from upper floor and that he is chowkidar of his mohalla and had not seen accused bringing the complainant in the said premises as it is not believable that in a room where accused were residing with women abductee was also confined in the same room and that too without knowledge of PW Muhammad Mithal Ex.24 who was not only residing with his family on ground floor of the said premises but also was working as chowkidar of his mohalla. Beside complainant/abductee has not stated that beside accused some women were also residing in the room/premises when he was confined.

Above evidence of this witness falsify the complainant.

Although PW Taj Muhammad, father of abductee neither in his 161 Cr.P.C. statement nor in his deposition Ex.19 have stated that he recorded talks made between him and accused on phone, during captivity of his son but after a month of registration of FIR, 162 Cr.P.C. statement of PW Taj Muhammad Shah was recorded wherein he stated that he had recorded conversation between him and accused regarding demand of ransom and such USB and its transcript and CDR are also produced by the I.O. Inspector Ghulam Akbar Chandio Ex.21. At first place it may be mentioned that such belated further statement have no evidentiary value in the eyes of law and at second place it may be mentioned that complainant has not depose a single word that he recorded such conversation and then handed over his mobile phone to I.O. Even otherwise nothing is brought on record to establish that USB produced or its transcripts are in fact talks between accused and PW Taj Muhammad Shah as admittedly neither mobile phone of complainant Sadam Shah from which accused had allegedly talked with PW Taj Muhammad Shah was recovered nor mobile phone of Taj Muhammad Shah was recovered. In such a situation, USB its transcript, CDR etc are of no help to the prosecution. Apart from that FIR is also belated for about seven days of incident and four days after the recovery of abductee Sadadm Hussain Shah for which no plausible explanation is furnished"



12. It transpires from the evidence that the abductee (complainant) was 24 years of age however when he managed to escape he waited 4 days before registering the F.I.R. which has remained unexplained thus since it has come on record there was dispute and enmity between the complainant, the complainants father and the accused the chance that he made a false case cannot be ruled out; this is more so since both the father and son who were the main witnesses in there case made dishonest improvements in their initial statements by making supplementary statements a month after the event and as such there evidence cannot be safely relied on. In this respect reliance is placed on the case of **Mohammed Mansha V State** (2018 SCMR 772); that the complainant and the other main eye witness were also closely related being father and son and there are major contradictions in their evidence which means that it cannot be safely relied upon. For example, the abductee states that the ransom money was brought to the house where he was detained whilst his father states that he took the ransom money to a petrol pump. In this respect reliance is placed on **Basharat Ali v Muhammed Safdar** (SCMR 2017 1601); that the father could not prove how he obtained the ransom money which was not paid; that the abductee some how managed to escape despite being tightly bound; that the abductee was allegedly kept in a room with some women but he did not mention this in his statement and even the landlord who lived in the bottom part of the house was not aware of his presence; that no CDR records were produced to link the ransom calls to any of the accused or mobile phones recovered; that the important tape evidence was not mentioned by the father in his S.161 statement and in essence the whole of the prosecution case and evidence does not appeal to reason. In this respect reliance is placed on **Haq Nawaz v State** (2018 SCMR 95); that in our view the trial court has rightly found the prosecution evidence not to be either reliable, trust worthy or confidence inspiring.

13. Thus, keeping in view the extremely narrow scope of appeals against acquittal as a matter of law as mentioned above, the fact that the respondents are entitled to the benefit of the doubt and the double presumption of innocence having again reviewed the evidence against the respondents for what has been discussed above we consider that the respondents are entitled to the benefit of the doubt and that the impugned judgment is based upon valid and sound reasons and has rightly acquitted



them on this basis and as such the appeal against their acquittal is dismissed.

14. These are the reasons for our short order which was announced to day in open court and reads as under:

"Learned counsel for the parties have been heard at length. They have concluded their arguments. For the reasons to be recorded later on, this criminal acquittal appeal is dismissed alongwith pending application(s)."