

# HIGH COURT OF SINDH AT KARACHI

Special Anti-Terrorism Jail Appeals Nos.45, 46 and 47 of 2010

**Present:** Sajjad Ali Shah, J.

Naimatullah Phulpoto, J.

Appellants: Waheed Kalhoro, Niaz Hussain alias Nazir Fauji and Muhammad Saleem Chandio through M/s. Abdul Hafeez Lakho and Manzoor Ahmed Junejo, Advocates.

Respondent: The State through Mr. Ali Haider Saleem, Assistant Prosecutor General Sindh.

Date of hearing: 06.03.2013

Date of announcement: 10.04.2013

## **JUDGMENT**

**NAIMATULLAH PHULPOTO, J.-** Appellants Muhammad Saleem Chandio son of Nawaz Chandio, Niaz Hussain Chandio alias Nazeer Fauji son of Hidayatullah and Waheed Kalhoro son of Qadir Bux Kalhoro were tried by learned Judge, Anti-Terrorism Court No.I, Karachi, under Sections 7(e) Anti-Terrorism Act, 1997 read

with sections 365-A/34 PPC. The learned Trial Court vide judgment dated 30.09.2010 convicted accused Muhammad Saleem Chandio son of Nawaz Chandio, Niaz Hussain Chandio alias Nazeer Fauji son of Hidayatullah and Waheed Kalhoro son of Qadir Bux Kalhoro u/s 7(e) of the Anti-Terrorism Act 1997 read with section 365-A/34 PPC and sentenced them to imprisonment for life and forfeiture of their property to the extent of Rs.2 lacs each. The benefit of section 382-B Cr.PC was also extended to appellants.

2. Brief facts of the prosecution case, as disclosed in the FIR are that, on 23.08.2008 complainant Mohammad Abdullah Nagori lodged report at P.S. Sukhan, alleging therein that on 19.08.2008 at 2130 hours he along with his son Mohammad Junaid aged 23 years left their cattle pan for house. At 09:30 p.m. they reached at a plot adjacent the cattle pan of Mushtaq, four persons appeared there, out of them two accused were armed with weapons, and they took them by show of weapons to a vacant plot. Complainant has alleged that he identified one person namely, Mirza son of Yousuf Balouch, and he told co-accused about complainant and his son and culprits blindfolded the eyes of complainant, after a short while, when complainant untied strip from eyes, he saw that his son was not there, but Mirza Balouch was present there, the complainant rushed for any help on his motorcycle. He came to know that his son has been kidnapped at the behest of Mirza Baloch son of Yousuf Baloch and Abdul Sattar Chandio son of Kamaluddin Chandio and three unknown persons. Complainant Abdullah Nagori lodged FIR No.215/2008 under section 365/109 PPC at P.S. Sukhan, Karachi.

3. Mohammad Ameer Gondal, investigation officer, after receipt of FIR, started investigation, inspected the place of incident, on the pointation of complainant,

prepared mashirnama in presence of mashirs and recorded 161 Cr.PC statements of PWs. On 04.09.2008, investigation was transferred to Inspector Mohammad Babar of AVCC. Investigation officer contacted the complainant. He told him that the culprits have demanded ransom of Rs.1 Crore by using mobile phone No.0322-3483003, I.O. added section 365-A/34 PPC read with section 7 of the Anti-Terrorism Act, 1997. On 20.10.2008, complainant told the I.O. that upon payment of rupees twenty seven lac as ransom, his son has been released and he has reached home. On 21.10.2008 investigation officer went to complainant and his son, he prepared memo of place of release of his son and on the pointation of complainant he prepared memo of place of payment of ransom and recorded 161 CrPC statements of PWs. On 09.06.2006 Inspector Khuda Bux informed I.O. of the case that accused Mohammad Saleem Chandio, Niaz Hussain Chandio alias Nazeer Fauji, Waheed Kalhorro and Ali Raza, were under arrest in Crime No.34/2009 under sections 353/324/34 PPC of P.S. AVCC, and they had admitted before I.O. that they had kidnapped Muhammad Junaid Nagori. Investigation officer arrested accused in this case in presence of mashirs. On 17.06.2009, the I.O. produced the accused for identification parade before the Judicial Magistrate-VI, Malir, Karachi. Complainant Abdullah Nagori identified accused Muhammad Saleem Chandio, Niaz Hussain Chandio, Waheed Kalhorro and accused Ali Raza. After completing the investigation, submitted challan against accused Mohammad Saleem Chandio, Niaz Hussain Chandio and Waheed Kalhorro. Learned Administrative Judge, Anti-Terrorism Court, Karachi transferred the case to the Anti-Terrorism Court-I for disposal according to law.

4. Trial Court framed charge against appellants at Ex-04. They pleaded not guilty to the charge and claimed to be tried.

5. In order to substantiate the charge, prosecution has examined the following witnesses:-

- (1) PW-1 Mr. Muhammad Aslam Shaikh, Civil Judge & Judicial Magistrate-VI, Malir, Karachi.
- (2) PW-2 Alya Anwar Shaikh, Judge, Family Court No.VI, Malir, Karachi.
- (3) PW-3, Complainant Muhammad Abdullah Nagori, complainant
- (4) PW-4 Muhammad Junaaid.
- (5) PW-5, SIP Riaz Hussain.
- (6) PW-6 Akhtar Zaman, PC
- (7) PW-7 Muhammad Sikandar.
- (8) PW-8 Muhammad Ameer Gondal (First I/O).
- (9) PW-9 Muhammad Babar, I.O./Inspector AVCC.

6. The statements of appellants/accused Mohammad Saleem Chandio, Niaz Hussain Chandio alias Nazeer Fauji and Waheed Kalhoro were recorded under section 342 Cr.P.C. they have denied all the prosecution allegations and have raised the plea that they have been implicated falsely due to enmity with Lashari Group. The appellants declined to give statement on oath in disproof of the prosecution allegations. Appellants Muhammad Saleem and Waheed Kalhoro examined DW-1 Abdul Shakoor, DW-2 Jaffar Ali, DW-3 Mushtaq Ahmad and DW-4 Niaz Ali. No evidence in defence was led by appellant Niaz Hussain. DW-1 Abdul Shakoor has stated that his cattle pan (*bara*) is situated at Cattle Colony Landhi, Karachi. About 50 employees are working in his cattle pan, Appellant Waheed Kalhoro was also working in his *Bara* since last 3/4 years. He was working from 09:00 a.m. to 11:00 a.m. and from 09:00 p.m. to 11:00 p.m. On 08.06.2009 he came to know in the morning that Waheed Kalhoro has been taken by Sukhan Police. In the cross-examination, he denied the suggestion that he has given evidence in favour of Waheed Kalahoro as he was his employee. DW-2 Jaffer has deposed that on 19.08.2008 Waheed Kalhoro was at Cattle Pan from 09:00 p.m. to 11:00 p.m. On 08.06.2009 at 04:00 a.m. police took

him from Cattle Pan. In the cross-examination he has denied the suggestion that he was deposing falsely at the instance of Seth Abdul Shakoor as Waheed Kalhoro was his employee. DW-3 Mushtaq Ahmed had deposed that accused Saleem Chandio was his driver and on 19.08.2008 he was with him at Hyderabad. He has denied the suggestion that accused Saleem is his co-villager and relative. DW-4 Niaz Ali had deposed that on 07.06.2009 he came to appellant Saleem to Karachi and police arrested Saleem on 07.06.2009 from Karachi. He has denied the suggestion that appellant Saleem was involved in this case.

7. Trial Court, after assessment of the entire evidence, convicted and sentenced appellants Mohammad Saleem Chandio son of Nawaz Chandio, Niaz Hussain Chandio alias Nazeer Fauji son of Hidayatullah and Waheed Kalhoro son of Qadir Bux Kalhoro, through the impugned judgment.

8. M/s. Abdul Hafeez Lakho and Manzoor Ahmed Junejo, learned counsel for appellants argued that prosecution case is highly doubtful, on same set of evidence some accused were declared innocent during investigation and on same evidence appellants have been convicted by trial Court. Trial Court has failed to appreciate the evidence according to law. It is also argued that there was delay in holding identification parade. It is further argued that identification parade was not conducted in accordance with law. No role has been assigned to appellants. There are major contradictions in prosecution evidence. There was 4 days' delay in lodging F.I.R. Lastly, it is argued that appellants have been involved in this case due to enmity. Prosecution case is highly doubtful. In support of their contentions, they have relied upon the following reported cases:

1. The State versus Tariq Mehmood (1987 PCrLJ 2173)
2. Tariq Pervez Vs. The State (1995 SCMR 1345)

9. In the case of Tariq Mehmood (supra) it has been observed as follows:

“The principle that it is better to acquit guilty persons than to punish an innocent one had been proclaimed by the Prophet of Islam 14 hundred years ago has now become the guiding principle for the safe administration of justice.

For the above reasons we do not uphold the conviction of the appellant and allow the appeal of Ghulam Ali Shah, appellant, set aside his conviction and sentences and acquit him of the charge. The suo motu notice issued to Tariq Mehmood is also recalled.”

10. In the case of Tariq Pervez (supra) it has been held as follows”

“The concept of benefit of doubt to an accused person is deep-rooted in our country. For giving him benefit of doubt, it is not necessary that there should be many circumstances creating doubts. If there is a circumstance which creates reasonable doubt in a prudent mind about the guilt of the accused, then the accused will be entitled to the benefit not as a matter of grace and concession but as a matter of right.”

11. Mr. Ali Haider Saleem, learned Assistant Prosecutor General Sindh argued that the prosecution witnesses have fully supported the prosecution case, they had no enmity or motive for false implication of the appellants in this case. It is further argued that enmity of the appellants with Lashari Group has no concern whatsoever with this case. Regarding identification parade it is submitted that it was held by the Civil Judge and Judicial Magistrate concerned while adopting the legal procedure. It is

argued that in cases of kidnapping for ransom it is immaterial to assign role to each and every accused in the commission of offence. Learned A.A.G. has submitted that the appellants were rightly picked up by witnesses in identification parade, delay in holding identification parade would not be fatal to prosecution case and holding of identification parade was not mandatory, ransom was paid for the release of the abductee, there was huge evidence against the appellants and trial Court has rightly convicted the appellants. Delay in lodging FIR has been fully explained. There was no major contradiction in the evidence of prosecution witnesses. In support of his contentions, he relied upon the case of Ghazanfar Ali alias Pappu and other Vs. the State 2012 SCMR 215.

12. We have carefully heard the learned counsel for the parties and scanned the entire evidence brought on record.

13. Complainant Muhammad Abdullah Nagori, has stated that on 19.08.2008 at about 09:30 p.m. he along with his son Muhammad Junaid were going on motorcycle from their cattle pan, situated at Cattle Colony when reached near Bara of Mushtaq Khawaja, four persons came in front of them, out of them, two persons were carrying weapons in their hands and they stopped them. They took complainant and his son to an open plot in front of Bara of Mushtaq, that plot had little boundary wall. The culprits asked complainant and his son to hands up and heads down, they searched their pockets and took complainant's mobile phone as well as cash and folded his eyes with cloth. After some time, complainant removed cloth from his eyes and found his son was missing from there. He saw one person there with folded eyes, complainant started his motorcycle and went outside the plot for police help. On the way, he saw police mobile, he informed ASI Fida about the incident. ASI Fida took him to place

of incident in his mobile, where a person with folded eyes was present, whose name was Mirza son of Yousuf Baloch. ASI Fida inquired from Mirza Baloch about complainant's son to which he disclosed that accused had taken him to the left side. Thereafter, ASI took him to Sukhan police station in his mobile, where ASI Fida narrated incident to SHO who took the complainant in his car with two police constables to the place of incident. Complainant asked SHO to call Mirza Baloch, who might give some clue about his son. SHO asked him to go home as it was night time but Mirza Baloch was sitting at police station that time. Thereafter complainant lodged FIR on 23.08.2008 at 01:00 a.m. at police station Sukkun. Complainant further stated that on 02.09.2008 he received telephone call from mobile No.0322-3483003 on his younger son's mobile phone No.0334-3878619 and caller wanted to talk to him but due to his non-availability caller demanded Rs.1,00,00,000/- for release of Muhammad Junaid, as he was under their captivity. On next day, complainant received telephone call on his mobile Phone No.0300-3217763 from mobile No.0322-3483003 caller demanded ransom of Rs.1,00,00,000/- for release of his son, he showed his inability to pay such a huge amount but prepared to pay Rs.200,000/- to which appellants did not agree. Thereafter, investigation of the case was transferred from PS Sukhan to AVCC and investigation was assigned to Inspector Muhammad Babar. Complainant was negotiating with accused for two months and lastly deal was finalized in Rs.27,00,000/- for release of his son. On 19.10.2008 applicants/accused asked complainant to pay ransom to them at Hub, he was asked to go there along with driver of the car. He went in Suzuki with cash of Rs.27,00,000/- with driver, they reached Hub at about 12:00 noon, he was asked on phone by culprits to go to Sadam Hotel on Sakran Road and take tea, while sitting in the said hotel he received another call and was directed to go on Sakran Road, at the instructions of the culprits they reached at the pointed place where they saw two young persons standing there, they took the ransom from him and asked him to go home and his son would come at



night hours. He returned to his home and his son reached at house before Magahrib in taxi, who remained in captivity of culprits for about 61 days. Upon inquiry his son told that he was released near new Sabzi Mangi, who further told that he was brutally treated by the culprits. On 20.10.2008 he informed Inspector Babar that his son has returned home. On 21.10.2008 Inspector Babar came at his house in morning with two police officials. He accompanied the police officials in police mobile along with his son and one Mushtaq Solangi, to place where his son was released. Regarding identification parade he replied that he had identified appellants Niaz Ahmed and Saleem Chandio and Waheed Kalhoro.

14. Abductee Muhammad Junaid has clearly deposed that on 19.08.2008 at about 09:30 p.m. he along with his father Muhammad Abdullah Nagori were going on motorcycle from their cattle pan, situated at Bhains Colony to his house at Malir City. He was driving motorcycle while his father was sitting on back seat. After leaving the bara when they reached near Bara of Mushtaq Khawaja, four persons came in front of them, out of them two were armed with weapons and they stopped them. They asked Muhammad Junaid and his father to get down from motorcycle and took them in an open plot in front of Bara of Mushtaq, that plot was having little boundary wall. The culprits said them to keep hands up and heads down and culprits folded his eyes and the eyes of his father with cloth. He has deposed that accused put him in car and drove it for one hour. Accused were receiving calls on the mobile phone and they were replying that they would reach soon and the car stopped at one place. He was asked to get down from car, one accused held his hand and accused were taking him by foot, after some distance PW Muhammad Junaid exhausted and fell down, accused unfolded his eyes and he saw that two persons, one motorcycle came there after some time and accused took him on motorcycle. After drive of 20 to 30 minutes the

motorcycle was stopped, his eyes were folded, his two mobile phones, driving license, NIC and papers of motorcycle snatched by accused. After getting down from motorcycle he was kept sitting there for some time, he was served food. Thereafter, accused took him on foot to one hut, where he was kept and his hands and feet were tied with ropes, one of the accused inquired from him that how many buffalos he owned in their bara. One person came there and saw that hands and feet of abductee were tied closely, he asked other culprits that he has been tied in cruel manner. There after the culprits inquired from him mobile number of his father and brother, he informed them numbers. He was kept there for 8 to 10 days and on one night they put cloth on his face and asked him to move to some other place where he was kept in a ditch, there was no other person, he was kept in it for 8 to 10 days and he was again shifted to the place where he was brought first time. His feet were chained and put something in his ears so that he could not listen their talk. PW Junaid stated accused arranged his talk to father for payment of ransom otherwise culprits would kill him, meanwhile they were maltreating him. Accused kept him for 61 days, in captivity and one day they informed him that his father had paid them the ransom and they would release him. He was put in a car and after about ½ hour drive they got him down and put a note of Rs.500/- in his pocket, told him that it was his fare. He was left on side of road, PW Muhammad Junaid found that it was barren place and at some distance there was Chandna Water Park. He hired the taxi and reached home on 19.10.2008 and narrated entire story to his family members. On 21.10.2008 Inspector Babar came at his house in morning with two police officials. He accompanied the police officials in police mobile along with his father and one Mushtaq Solangi, and pointed out to them the place where he was released. PW Junaid identified accused in trial Court.

15. After arrest of appellants Niaz Ahmed and Muhammad Saleem Chandio and Waheed Kalhoro, they were put to identification parade. Learned Civil Judge and Judicial Magistrate, Malir, Karachi, deposed that she conducted the identification parade of accused Niaz Ahmed and Muhammad Saleem Chandio and Waheed Kalhoro on 17.06.2009, by observing all the formalities. Accused Niaz Ahmed and Muhammad Saleem Chandio and Waheed Kalhoro were identified by complainant Abdullah Nagori in the identification parade.

16. From the close scrutiny of the prosecution evidence available on record this Court is satisfied that prosecution has proved its case against appellants and the trial Court had appreciated the evidence in accordance with law. Complainant and abductee have fully implicated the appellants Mohammad Saleem Chandio, Niaz Hussain Chandio alias Nazeer Fauji and Waheed Kalhoro in this case and stated that abductee was kidnapped for ransom. In the identification parade held before the Civil Judge and Judicial Magistrate, Malir, appellants were identified by complainant. Abductee Muhammad Junaid identified appellants in Court and stated that appellants had stopped their motorcycle, appellant Niaz Ahmed and Muhammad Saleem were armed at that time and appellant Waheed folded his eyes and took him in car detained him at different places and after getting ransom released him after 61 days. Evidence of abductee inspires confidence for the reasons that he had no enmity or motive to falsely implicate the appellants in this heinous crime. It is settled law if the accused is identified in the Court and evidence inspires confidence it is sufficient to record the conviction. Reliance can be placed upon the case reported as Ghazanfar Ali alias Pappu and other Vs. the State (2012 SCMR 215). Relevant portion is reproduced as under:-

“Even otherwise the holding of identification parade is not mandatory and it is merely a corroborative piece of evidence. If the statement of a witness qua the identity of an accused even in Court inspires confidence, if he is consistent on all material particulars and there is nothing in evidence to suggest that he is deposing falsely, the absence of holding of identification parade would not be fatal to the prosecution.”

17. After assessment of evidence trial Court rightly came to the conclusion that prosecution has proved its case against the appellants. There is no legal force in the contention of learned defence counsel that some accused were let off by police during investigation and on the same set of evidence appellants have been convicted by the trial Court for the reason that Court has to sift the grain from chaff at trial. Delay in lodging FIR has been fully explained by complainant by deposing that he hoped for the return of his son within 2 of 3 days. Delay in holding identification parade in this case would not be fatal to prosecution case for the reasons that holding of identification parade is not requirement of law and it is merely corroborative piece of evidence. Evidence of complainant and abductee Muhammad Junaid is consistent on all material particulars, there is no reason to suggest that they have deposed falsely. As regards to contradictions in evidence, no major contradiction has been pointed out, minor contradictions would not be fatal to the prosecution case. As regards to defence version, Appellant Waheed Kalhoro was employee of DW Abdul Shakoor, who runs the cattle pan. Police arrested accused Waheed Kalhoro but DW Abdul Shakoor remained calm, did not complain against the police. DW-2 Jaffer has stated that he had seen accused Waheed in the cattle pan at the time of incident. Police took Waheed from cattle pan on 08.06.2009 at 04:00 a.m. DW-3 Mushtaq Ahmed has stated that appellant Saleem Chandio was his driver and at the time of incident he was at Hyderabad. DW-4 Niaz has stated that appellant was not involved in this case and

he was arrested by the police on 07.06.2009 at Karachi in this case. We have several reasons to disbelieve the defence theory for the reasons that defence plea was not raised by the appellants during investigation. Defence plea has not been put up to the prosecution witnesses in cross-examination nor it was specifically raised at the time of recording the statements of accused under section 342 Cr.PC. Even otherwise, defence version is not supported by some cogent evidence. On the other hand, there is huge and trustworthy evidence to connect the appellants in this case. Appellants have been implicated by abductee Muhammad Junaid, who was in the captivity of Appellants for 61 days. How abductee would forget the faces of accused who confined him in a ditch and chained him. We have no reason to disbelieve prosecution evidence. Therefore, defence theory is discarded being improbable and afterthought. In the case of kidnapping for ransom technicalities of procedural nature, lapses on the part of investigation officer and minor contradictions should be overlooked to curb such heinous crimes. The approach of Court should be dynamic. Case law relied upon by learned defence counsel is not applicable to the circumstances of the case.

17. For the afore-stated reasons, we have come to the conclusion that prosecution had proved its case against the appellants and the trial Court had rightly believed the prosecution evidence. There is no reason for us to disagree with the findings recorded by the trial Court. Judgment of trial Court is based on sound reasons. We do not find any merit in the appeals, which are dismissed.

JUDGE

JUDGE

*Gulsber/PA*