

IN THE HIGH COURT OF SINDH CIRCUIT COURT LARKANA

Criminal Acquittal Appeal No. D- 19 of 2011

PRESENT:**Mr. Justice Khadim Hussain M. Shaikh,
Mr. Justice Amjad Ali Sahito,**Appellant: Mst. Hameeda Khokhar through Mr.Ahsan Ahmed Quraishi, Advocate.Respondents: Zahid Panhiyar & others through Mr.Ghayoor Abbas Shahani, Advocate.Respondent No.8. The State through Mr.Khadim Hussain Khoonharo, Additional Prosecutor General.

Date of hearing: 15.05.2018.

Date of Decision: 15.05.2018.

J U D G M E N T**Amjad Ali Sahito, J.** - Through this appeal, the appellant/complainant

Mst. Hameeda has challenged the judgment of acquittal, recorded by learned Anti-Terrorism Court, Larkana, dated 28.04.2011, in case F.I.R No. 143 of 2009 registered under sections 365/A, 506/2, PPC read with Section 6/7 of Anti Terrorism Act, 1997 at Police Station Darri, Larkana.

2. The resume of the facts forming the background of instant appeal is that on 21.03.2008, complainant Mst. Hameeda Khokhar lodged F.I.R at Police Station Darri, Larkana, stating therein that on 09.08.2009, she along with her son Ghulam Raza, aged about 14/15 years, was present in her house, when her brother-in-law, namely, Muhammad Juman Khokhar came to her house as a guest. It was about 7-00 p.m., when eight persons, having open faces armed with weapons, intruded into the house. They were identified to be Zahid armed with Klashnikov, 2.Mumtaz armed with Rifle,

3.Wazir Ali, 4.Khan Muhammad, 5.Atta Muhammad, all three armed with guns, by caste Panhiyar, residents of village Khan Wahan, Taluka Kandiyaro, District Naushehro Feroze, 6.Awais Panhiyar resident of Gerello Taluka Bakrani, 7.Bashir Panhiyar resident of village Nazar Muhammad Panhiyar, Nandhi Therhi, Taluka Kotdiji, District Khairpur Mirs and one unknown person, both armed with pistols; the unknown person was seen by them very well and can be identified on seeing again. All the accused persons after pointing their weapons towards the complainant party overpowered them. Accused Zahid forcibly dragged Ghulam Raza, son of the complainant, towards outer gate of the house, whereupon the complainant party raised cries, which attracted neighbourers namely, Mashoq Ali and others, who also saw and identified the accused persons. After that accused Zahid and others kidnapped complainant's son Ghulam Raza and made him to sit in a car available outside the house of complainant. Accused Mumtaz while leaving asked for contacting accused Wazir for getting Ghulam Raza released on payment of ransom amount of Rs.200,000/-. Thereafter all the accused persons went away along with complainant's son Ghulam Raza, in the said car by issuing threats that in case of any complaint made by the complainant, her son will be murdered. Thereafter to such effect F.I.R was lodged at Police Station Darri, Larkana.

3. After registration of F.I.R, the police conducted investigation and on completion thereof, the case was challaned, showing all the accused persons as absconders. However, later on, respondents No.1 to 7 joined the trial proceedings.

4. On completion of investigation, the accused/respondents were indicted, wherein they did not plead guilty and claimed trial. Prosecution in order to prove its case against the accused produced as many as 10 witnesses and closed its evidence. Accused in their statement under section 342, Cr.P.C professed their innocence and termed the prosecution case, as concocted and frivolous. They did not wish to produce defence evidence, nor opted to be examined on oath.

4. After hearing arguments of learned counsel for the respective parties, learned Anti-Terrorism Court, Larkana, vide its judgment dated 11.12.2010, acquitted all the accused by extending benefit of doubt in their favour. Hence this appeal.

5. Mr. Ahsan Ahmed Quraishi, learned counsel for appellant contends that the kidnappee Ghulam Raza has been kidnapped by the respondents No.1 to 7 who, at the time of abduction left message for arrangement of ransom amount of Rs.200,000/- (Rupees Two lacs). He further argued that P.W Muhammad Juman has supported the version of complainant while the kidnappee Ghulam Raza and complainant Mst. Hameeda have fully supported the case of prosecution. He also argued that though present case was disposed of in 'C' class by the police but the opinion of police is not binding upon the Court. He also argued that the accused/respondents have committed a heinous offence and the prosecution has established its case against the respondents No.1 to 7 beyond shadow of doubt. He lastly submitted that the learned trial Court has erred in law while acquitting the accused/ respondents by extending benefit of doubt in their favour.

6. Mr. Ghayoor Abbas Shahani, learned counsel for the respondents No.1 to 7 submitted that there is delay of eleven days in lodging the F.I.R. He further contended that there are material contradictions in between the evidence of complainant and other private witnesses as well as police officials. He further argued that prosecution has miserably failed to prove the case against all the accused persons. He also contended that ransom amount was not demanded by the accused nor the same has been received by them. He further contended that police has not visited the place where-from the abductee was recovered nor such mashirnama was prepared. He further contended that no any independent witness was examined by the prosecution. He lastly contended that during the investigation the SIO has recommended disposal of the case under 'C' class and prayed for acquittal of the accused.

7. Mr. Khadim Hussain Khooharo, Addl. PG for the State has submitted that the complainant and Prosecution witnesses have fully supported the case before the trial Court, hence he supported impugned judgment.

8. Having heard the counsel for the respective parties and perused the record. Perusal of the record reveals that the incident of this case took place on 09.8.2009 while the F.I.R was lodged on 20.8.2009 whereas the distance between the place of occurrence and the police station is about one kilometer. The complainant in the F.I.R stated that on the day of incident i.e. 21.8.2008 she was available in the house when accused/respondents, namely, Zahid 2.Mumtaz, 3.Wazir Ali, 4.Khan Muhammad, 5.Atta Muhammad, 6.Awais Panhiyar, 7.Bashir Panhiyar and one unknown person, duly armed with weapons, came there and abducted away her son Ghulam Raza and while

leaving the place of incident, accused Mumtaz asked that the complainant should arrange ransom of Rs.200,000/-. On her cries, Mashooque Ali Khokhar and others came running. On the next day i.e. 21.08.2009 the complainant got recorded further statement in which she narrated another story stating therein that the same set of accused persons forcibly intruded into her house and abducted away her son Ghulam Raza and on the cries neighbourers namely Gulab and Haji Bahadur Shaikh and others came running. In her further statement, the complainant has not uttered a single word about demand of ransom by the accused. However she has stated that in fact about four months prior to the incident, one Mst. Afsana had contracted love marriage with Dhani Bux Panhiyar, therefore, accused Khan Muhammad alleged that since his daughter Mst. Fareeda used to visit her house for praying purpose, therefore, they had abducted away son of the complainant. So far as the change of motive of the incident was concerned, it must be at the back of the mind of the complainant as to how and under what circumstances she improved upon her earlier version under section 154, Cr.P.C. It has been held by the apex Court, time and again, that supplementary statement is a recent innovation, not recognized by law, which has been devised by incompetent, incapable and dishonest police officers/I.Os to cut short the process of investigation without hearing in mind that such a short cut is generally destructive to the case of the prosecution.

9. The incident is said to have taken place in the thickly populated area at about 07.00 p.m. and at the time of incident on the cries of complainant party, the neighbourers namely Haji Bahadur Shaik and Gulab Bhutto and others

were gathered there, to whom, the complainant disclosed the facts of incident, but the police failed to examine them during the investigation. Reliance in this respect be made to the case reported in 2009 SCMR 230 wherein the Honourable apex Court held that not a single witness was produced from the locality to support the story of abduction. The benefit of doubt must be given to the accused as a matter of right and not as a matter of grace.

10. It is also worthwhile to mention here the complainant had admitted in her evidence that there are matrimonial affairs in between the accused and complainant party as they are closely related to each other. The abductee Ghulam Raza has solemnized marriage with the daughter of respondent Khan Muhammad when he was absconding in some case. Prior to registration of instant case, the niece of complainant namely Mst. Afsana has solemnized marriage with one Dhani Bux, the close relative of accused persons, who have also filed harassment petition before the Bench of this Court at Sukkur against the complainant party of this case. There is another aspect of the case, that, during the investigation of this case, the SIO has come to the conclusion, after recording the statements of witnesses, that the accused/respondents are innocent, therefore, he recommended the case for its disposal under cancel 'C' class. Such report was submitted by him before the trial Court.

11. We have evaluated the record and found that the prosecution has neither produced the trustworthy and reliable evidence nor the prosecution story appeals to a prudent mind. All the prosecution witnesses in their

depositions have tried to prove their version but they have not been able to prove the same beyond shed of reasonable doubt.

12. It is also a settled law that after earning the acquittal from the trial Court, double presumption of innocence is acquired by an accused. The Court sitting in appeal against acquittal always remains slow in reversing the judgment of acquittal, unless it is found to be arbitrary, fanciful and capricious on the face of it or is the result of bare misreading or non-reading of any material evidence. In the case of Muhammad Mansha Kousar v. Muhammad Asghar and others (2003 SCMR 477) the Honourable apex Court observed as under:-

“that the law relating to reappraisal of evidence in appeals against acquittal is stringent in that the presumption of innocence is doubled and multiplied after a finding of not guilty recorded by a competent court of law. Such findings cannot be reversed, upset and disturbed except when the judgment is found to be perverse, shocking, alarming, artificial and suffering from error of jurisdiction or misreading, non reading of evidence...law requires that a judgment of acquittal shall not be disturbed even though second opinion may be reasonably possible”.

Similar view was reiterated by the Honourable apex Court in the case of Muhammad Tasaweer v. Zulkarnain and 2 others (PLD 2009 SC 53), in the following words:-

“Needless to emphasize that when an accused person is acquitted from the charge by a Court of competent jurisdiction then, double presumption of innocence is attached to its order, with which the superior courts do not interfere unless the impugned order is arbitrary, capricious, fanciful and against the record.”

13. In the instant case, no such infirmity has been found in the impugned judgment. The learned trial Court has rightly acquitted the respondent No.1 to 7, by extending the benefit of doubt, after proper appraisal of evidence for no exception can be taken.

14. In the light of principles laid down by the apex Court in the above cited judgments, we see no illegality committed by the learned trial Court, while acquitting the respondent No.1 to 7 with cogent reasons, therefore, the appeal has no merits and is dismissed being without any substance.

Judge

Judge

Abid H.Qazi/**