

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

Mr. Justice Mushir Alam
Mr. Justice Sardar Tariq Masood
Mr. Justice Qazi Muhammad Amin Ahmed

Criminal Petition Nos.29-Q & 56-Q of 2015 and
Jail Petition No.306/2015 and Cr. P. 30-Q & J.P. No.305 of 2015

(Against judgment dated 25.05.2015 passed by High Court of Balochistan, Quetta passed in Cr. Appeal Nos.368, 370 & 371/2013)

Abdul Haq & Muhammad Yousaf

(in Cr.P.No.29-Q/2015)

Abdul Ghani

(in Cr.P.No.56-Q/2015)

Wali Muhammad

(in J.P. No.306/2015)

Abdul Haq

(in Cr. P. No.30-Q/2015)

Wali Muhammad

(in J.P. No.305/2015)

...Petitioner(s)

Versus

The State

(in all cases)

...Respondent(s)

For the Petitioner(s):

Mr. Ahsan Rafique Rana, ASC
Mr. Mehmood A. Sheikh, AOR
(in Cr.P.No.29-Q & 30-Q/2015)
Nemo.
(in Cr.P.No.56-Q/2015)
Mr. Abdul Rauf Lahri, ASC
(in J.P. Nos.305 & 305/2015)

For the State

Mr. Baqar Shah, Addl. Prosecutor
General Balochistan

Date of hearing:

07.11.2019

JUDGMENT

Qazi Muhammad Amin Ahmed, J.

Criminal Petition No.29-Q & Jail Petition No.306/2015: Petitioners were indicted by the learned Special Judge Anti-Terrorism Court-I, Quetta for abduction of Abdul Rahim (PW-3) to extort ransom on 1.9.2012 from the precincts of Police Station Satellite Town Quetta; the

incident was reported by abductee's brother Muhammad Ismail (PW-1) against the unknown culprits. The abductee surfaced on his own after 2/3 days of the occurrence, he implicated the petitioners for the first time on 8-10-2012 alongside four unknown co-accused, he blamed the petitioners to have abducted him for the ransom; according to him, he was enchained at an unspecified place and let off after the captors snatched Rs.20,000/- along with a cell phone handset and some revenue papers. Pursuant to the disclosure, the petitioners were arrested on different dates; nothing incriminatory was recovered during the course of investigation. Till date prosecution is clueless about the four unknown accomplices as well as the venue where the abductee was held under restraint. Petitioners alongside the demised Abdul Ghani co-accused claimed trial wherein the prosecution produced as many as 12 witnesses, Abdul Rahim (PW-3) being most prominent amongst them; the learned trial Judge *vide* judgment dated 11.12.2013 returned a guilty verdict; convicted under Section 365-A of the Pakistan Penal Code, 1860 read with section 6(2)(e) of the Anti Terrorism Act, 1997, the accused were sentenced to imprisonment for life along with fine; their appeals failed in the High Court *vide* impugned judgment dated 25.5.2015, vires whereof, are being assailed, primarily on the admitted previous acquaintance as well as animosity between the petitioners and the abductee; inherent improbability of the story is another argument addressed at the bar.

2. Heard. Record perused.

3. Abdul Rahim (PW-3), returned home on his own though with some marks of violence on his wrist and ankle joints, noted when medically examined as late as on 7-10-2012; in his statement under section 161 Cr.P.C. recorded on the following day, he disclosed to the Investigating Officer that he was let off 3/4 days before his return; in his statement before a Magistrate on 9-10-2012, he is conspicuous by his omission on the date of his return. In this background, prosecution's reliance on the injuries endured by the abductee, allegedly during his captivity fades into insignificance, particularly in the absence of duration thereof in the medico legal certificate. Complainant (PW-1) in the witness-box did not point his finger on the petitioners; being a real brother of the abductee, he was expected to bring on record the information subsequently shared with him by his brother. The abductee massively improved upon his previous

statements; he was duly confronted with his deviations; he also admitted his acquaintance with Abdul Haq petitioner, his co-villager while evasively avoiding a query regarding pendency of different civil and criminal cases instituted by Abdul Ghani petitioner against him as well as his brother. Similarly, in his examination-in-chief, the abductee did not name Muhammad Yousaf petitioner as being one of the culprits; while denying litigation between the two families, he however, admitted that both the petitioners, real brothers *inter se*, lived in the same neighbourhood. In this backdrop, no importance can be attached to the identification parade, conducted under magisterial supervision. In the totality of circumstances, the prosecution case is not free from doubt, doubts deducible from stated prosecution positions, otherwise inherently improbable. Petitioners' convictions and life time sentences consequent thereupon cannot be sustained merely on the basis of some superficial healed wounds, genesis whereof is also shrouded in the mystery of time and space. Petitions are converted into appeals; allowed; impugned judgment is set aside. The petitioners/appellants are acquitted of the charge; they shall be released forthwith, if not required in any other case.

Criminal Petition No.56-Q of 2015: With the death of Abdul Ghani petitioner, his petition stands fructified, leaving in field no adverse consequences to the detriment of his legal heirs. Dismissed accordingly.

Criminal Petition 30-Q & Jail Petition No.305 of 2015: The petitions arisen out of a different criminal case, clubbed inadvertently with Cr. P. No.29-Q & J.P. No.306 of 2015 are de-clubbed for the re-list.

Judge

Judge

Judge

Islamabad

7th November, 2019

Not approved for reporting

Azmat/-