

Stereo. HCJDA-38
JUDGMENT SHEET
LAHORE HIGH COURT, LAHORE
JUDICIAL DEPARTMENT

Criminal Appeal No.1518 of 2014
(Mullazim Hussain etc. versus The State etc.)

JUDGMENT

Date of Hearing	30.11.2020
Appellants by	Mr. Zain Qureshi, Advocate for the appellants Ch. Zahid Tariq, Advocate/defence counsel at State expenses for Mullazim Hussain, appellant Mr. Muhammad Imran Sulehria, Advocate/defence counsel at State expenses for Muhammad Tariq, appellant
State by	Mr. Nisar Ahmad Virk, Deputy Prosecutor General
Complainant by	Mr. Muhammad Muzaffar Samore and Malik Muhammad Salik Awan, Advocates

Syed Shahbaz Ali Rizvi, J: - Through this appeal, Mullazim Hussain and Muhammad Tariq, appellants have assailed the judgment dated 15.07.2014 passed by the learned Special Judge, Anti-Terrorism Court, Sargodha in case FIR No.57 dated 30.04.2013, offence under Section 365-A, PPC registered at Police Station Saddar Darya Khan District Bhakkar whereby, the appellants were convicted under Section 148 PPC and sentenced to rigorous imprisonment for three years each with fine of Rs.20,000/- each and in default thereof, to undergo simple imprisonment for one month each. They were also convicted under Sections 365-A/149 PPC and sentenced to imprisonment for life each with forfeiture of their property with the direction to pay Rs.1,00,000/- each as compensation to abductee Muhammad Hashim as envisaged under Section 544-A of the Code of Criminal Procedure, 1898 and in default thereof to undergo simple imprisonment for six months each. They were further convicted under Section 7(e) of the Anti-Terrorism Act, 1997 read with Section 149 PPC and sentenced to imprisonment for life each with forfeiture of their property. All the

sentences were ordered to run concurrently and benefit of Section 382-B of the Code of Criminal Procedure, 1898 was also extended to them.

2. Per prosecution, the facts of the case, as disclosed by Rab Nawaz, complainant in his complaint (Exh-PC) on the basis of which formal crime report (Exh-PC/1) was registered, are that on 28.04.2013 at 12.30 a.m, he along with his nephew Hashim was present in his cattle shed and were having chit chat. Emergency light and lantern were lit when six unknown accused persons armed with firearms came there, apprehended them and took them towards south west where, three motorcycles were parked. The accused persons forcibly made his nephew Muhammad Hashim sit on the motorcycle and abducted him.

3. Mullazim Hussain and Muhammad Tariq, appellants were arrested on 29.09.2013 in this case by Muhammad Amin, Inspector, (PW-9). Mullazim Hussain, appellant, on 24.10.2013, while in police custody, after making disclosure, got recovered tractor bearing registration No.DIK-7313 (P-1) which was taken into possession vide recovery memo Exh-PD. He, on 28.10.2013, also got recovered .30 bore pistol (P-4) along with four live bullets (P-5/1-4) which was also taken into possession vide recovery memo Exh-PF whereas, Muhammad Tariq, appellant, on 28.10.2013, while in custody, after making disclosure, got recovered .30 bore pistol (P-2) along with five live bullets (P-3/1-5) which were taken into possession vide recovery memo Exh-PE. He, on 29.10.2013, also got recovered Rs.2,50,000/- (P-6/1-250), taken into possession vide recovery memo Exh-PG. After completion of investigation, report under Section 173 of the Code of Criminal Procedure, 1898 was submitted. The learned trial court, after observing pre-trial codal formalities, framed the charge against the appellants on 23.01.2014 to which they pleaded not guilty and claimed trial.

4. The prosecution, in order to prove its case, produced as many as nine witnesses during the trial. Sheikh Fayyaz Hussain, learned

Judicial Magistrate (PW-1) conducted the test identification parade of the appellants. Rab Nawaz (PW-2) is the complainant of the case. Muhammad Hashim (PW-8) is the abductee whereas, Ahmad Nawaz (PW-3) is the witness of payment of ransom amount to the appellants. Abdul Sattar, SI (PW-4), on receipt of complaint (Exh-PC) drafted formal crime report (Exh-PC/1) without any addition or omission on his part. Ghulam Abbas, SI (PW-5) and Muhammad Amin, Inspector (PW-9) are the investigation officers of this case whereas, rest of the witnesses are formal in nature. The learned Deputy Prosecutor General after giving up Sultan PW, closed the prosecution evidence.

5. The statements of the appellants under Section 342 of the Code of Criminal Procedure, 1898, were recorded wherein, they refuted the allegations levelled against them and professed their innocence. They further maintained that they had falsely been implicated in this case due to their political rivalry with one Nazar Abbas. They neither opted to appear as their own witness on oath as provided under Section 340(2) of the Code of Criminal Procedure, 1898 in disproof of the allegations levelled against them nor did they produce evidence in their defence.

6. The learned trial Court vide its judgment dated 15.07.2014, found the appellants guilty, convicted and sentenced them as mentioned above.

7. We have heard the arguments of learned counsel for the appellants, learned counsel for the complainant, learned Deputy Prosecutor General and also scanned the available record with their assistance.

8. According to the prosecution's case narrated in the crime report as well as canvassed by complainant Rab Nawaz (PW-2) and Muhammad Hashim, the alleged abductee (PW-8), the occurrence of this case took place on 28.04.2013 in the night at 12.30 a.m. by six unknown culprits who were armed with firearms when they were sleeping in their cattle shed. Per the stance of PW-2, he saw the

culprits in the light of lantern as well as the emergency light available in the shed but both sources of light were neither taken into possession by the investigation agency nor produced before the learned trial court. Even Ghulam Abbas, SI (PW-5), the investigation officer, during his cross examination, admits that no source of light at the place of occurrence has been shown in the rough site plan.

A very strange and unusual aspect of this case noticed by us is that abductee Muhammad Hashim (PW-8) purportedly remained in detention of his abductors for a period of about four months and they had been telephonically calling the complainant party to demand the ransom but as per complainant (PW-2), he did not remember the caller's telephone number and he did not give the same to police prior or post return of the abductee. Ahmad Nawaz (PW-3) has given the cell Phone No.0321-7783385 statedly owned by his maternal cousin Sabir on which the abductors made calls for the purpose of demanding ransom but admittedly, said Sabir neither joined the investigation nor is the PW in this case and more interestingly, the Call Data Record of his number has not even been produced in evidence. The two telephone numbers mentioned in his statement by PW-5 Ghulam Abbas, SI who investigated this case for a certain period are 928210952 and 928211289. He also mentioned a caller's Cell Phone No.0311-9096019 but admits that till the investigation remained with him, no Call Data Record of said three phone numbers could be brought on record. However, he admits that according to the record, Cell Phone No.0311-9096019 was found registered in the name of Fazal ur Rehman son of Abdullah Jan resident of Ranwal Tehsil and District Tank whose copy of Computerized National Identity Card was also procured on record but he also concedes that the said Fazal ur Rehman is neither the PW nor the accused in this case. The perusal of whole evidence produced by the prosecution makes it clear that the appellants are not connected with any of the telephone numbers used by the culprits to demand the ransom amount from the complainant party. It is also to be kept in mind that the Cell Phone Q-Mobile and two SIM cards of Muhammad Hashim, the alleged abductee (PW-8) could not be

recovered from the possession of the appellants. Likewise, Muhammad Hashim (PW-8), the alleged abductee was not recovered from the custody of the appellants. Moreover, it is the case of the prosecution that Muhammad Hashim (PW-8), the alleged abductee returned on 12.08.2013 but admittedly, he got his statement recorded to police not earlier to 17.08.2013 but no plausible explanation is rendered by the prosecution as to why his statement was recorded with such a delay and also that why he was not got medico legally examined. Similarly, the motorcycles used by the appellants for the purpose of abduction and the motorcycle allegedly used by these appellants to come to the place where they allegedly received the ransom amount from Ahmad Nawaz (PW-3) and Sultan (given up PW), could not be recovered from their possession during their extensive physical custody with the investigation agency. It has also been noticed that the investigation agency even remained fail to have disclosure from the appellants about the place where the abductee Muhammad Hashim (PW-8) remained confined for a period of about four months.

9. Ghulam Abbas, SI (PW-5), during his cross examination, admits that regarding the occurrence, rough site plan having rough notes (Exh-DB) is available on record and that Exh-DB carries the date of 28.04.2013 and according to the same, twelve foot molds related to six persons were also secured. But, the prosecution case is silent about the use of said foot molds taken from the relevant place on the day of occurrence i.e. on 28.04.2013 and in such situation inference is to be drawn against the credibility of prosecution case under Article 129 of the Qanoon-e-Shahadat Order, 1984. This also transpires that application Exh-PC actually was not the first information received by the police. At this stage, it is also to be kept into consideration that as per prosecution's case, the complainant (PW-2), for the first time, reported the matter to the police on 30.04.2013 through a written application (Exh-PC).

10. So far as the identification of the appellants, during the test identification parade, held on 07.10.2013 by Sheikh Fayyaz Hussain,

learned Judicial Magistrate (PW-1) is concerned, it has been noticed that admittedly, the age of the dummies is not given in the identification parade proceedings and similarly, both the appellants were subjected to the test identification parade jointly. Learned Judicial Magistrate (PW-1), during his cross examination, admits that no role was assigned to the appellants by the witnesses during the identification parade. He also candidly concedes that he did not resolve the objection raised by the appellants during their identification parade. We have also noticed that according to the statement of Muhammad Amin, Inspector (PW-9), he arrested Mullazim Hussain, appellant on 29.09.2013 and Muhammad Tariq, appellant, on the disclosure of Mullazim Hussain, appellant on the same day when Mullazim Hussain, appellant was in custody of Muhammad Amin, SI of the same police station in connection with another case FIR No.129/2013 registered at the same police station under Section 9(b) of the Control of Narcotic Substances Act, 1997. He also admits that as per extract given in the record of this case, the said case was registered on 09.09.2013. The investigation officer (PW-9) also remained confused regarding the date of sending both the appellants in judicial custody for the purpose of their identification parade as during his examination in chief, he maintains that they were arrested on 29.09.2013 upon the disclosure of Mullazim Hussain, appellant and they were sent to judicial custody on 30.09.2013 which shows that both the appellants remained in police station for a day but during his cross examination, he took a somersault and maintains that appellant Mullazim Hussain was sent on judicial remand on the same day i.e. on 29.09.2013. In this view of the matter, the credibility of the test identification parade of both the appellants becomes doubtful.

11. As regards the recovery of .30 bore pistols (P-2 & P-4) along with live bullets (P-3/1-5 & P-5/1-4) allegedly made at the instance of the Muhammad Tariq and Mullazim Hussain, appellants, respectively, the same were recovered from the 'Dera' of one Haq Nawaz Sial, never joined with the proceedings of this case, hence,

the said recovery does not carry any judicial certainty. As far as the recovery of tractor (P-1) is concerned, it is established on record that the same is owned by one Allah Ditta Usmani, brother in law of appellant Mullazim Hussain. Though, the investigation officer claims that the tractor was got transferred in the name of said Allah Ditta Usmani subsequently, yet Muhammad Amin, Inspector (PW-9) admits that no record of concerned office is available on record to prove the same. Similarly, it is not denied that the original owner from whom Mullazim Hussain, appellant or Allah Ditta Usmani purchased the tractor was never joined with the investigation and likewise, he has not been produced before the learned trial court to establish the case against Mullazim Hussain, appellant to the effect that the said tractor was purchased by him by using his share from the ransom money collected from the complainant party. Similarly, when we come to the recovery of cash amount of Rs.2,50,000/- from Muhammad Tariq, appellant, the prosecution case is silent about the detailed use of remaining Rs.3,00,000/- and further investigation in this regard. Another important fact regarding the recoveries from Muhammad Tariq and Mullazim Hussain, appellants is that the recovery witness Ahmad Nawaz (PW-3), during his cross examination, in very clear terms, maintains that he had been giving statements in connection with this case but has never signed any document that renders the credibility of recovery memos Exh-PD, Exh-PE, Exh-PF and Exh-PG seriously doubtful.

12. Now coming to the abscondance of the appellants, keeping in view our supra mentioned observations, we are of the opinion that an accused cannot be convicted on the basis of his alleged abscondance only when otherwise direct evidence produced by the prosecution against him is not sufficient to hold him guilty.

13. Taking stock of whole supra discussion, we have come to an irresistible conclusion that the prosecution remained fail to prove its case against the appellants beyond the shadow of a reasonable doubt. There remains no cavil about the proposition that if there is a single circumstance which creates reasonable doubt regarding the

prosecution case, the same is sufficient to give benefit of the same to the accused, whereas, in the instant case we have observed many, discussed supra.

14. In the light of above discussion, we accept **Criminal Appeal No.1518 of 2014** filed by Mullazim Hussain and Muhammad Tariq (appellants), set aside their convictions and sentences recorded by the learned trial court and acquit them of the charge levelled against them by extending them the benefit of doubt. They are in custody, be released forthwith if not required to be detained in any other criminal case.

(Asjad Javaid Ghural)
Judge

(Syed Shahbaz Ali Rizvi)
Judge

APPROVED FOR REPORTING

Judge

Judge

