

JUDGMENT SHEET
ISLAMABAD HIGH COURT, ISLAMABAD,
JUDICIAL DEPARTMENT

Criminal Appeal No.22/2018

Mst. Haleema Bibi

versus

Arshad Khan & another

Appellant by: Syed Zafar Ali Shah, Advocate.

Respondents by: Ch. Talat Mehmood Anjum, Advocate for
respondent No.1.
Mr. Sadaqat Ali Jahangir, State Counsel.

Date of Decision: 24.06.2021.

JUDGMENT

MOHSIN AKHTAR KAYANI, J: Through the instant criminal appeal, Mst. Haleema Bibi (appellant) has called in question judgment of the learned Senior Civil Judge-II (East), Islamabad, dated 15.01.2018, whereby Arshad Khan (respondent No.1) has been acquitted of the charges in case FIR No.240, dated 13.08.2013, under Section 365/342 PPC, P.S. Koral, Islamabad.

2. Succinctly, the appellant submitted a complaint (Exh.PH) alleging that on 01.08.2013, at about 4 p.m., about 10/11 armed persons entered into the complainant's house, snatched four mobile phones (01 BlackBerry, 03 Nokia) along with cash amount of Rs.47,000/- and abducted the complainant along with her mother, Mst. Naseem Akhtar. While taking the complainant along with her mother to unknown place, the complainant's mother had been exchanging hot words with one of the abductors i.e. Arshad Khan (respondent No.1) regarding return of a vehicle, as such, the abductors released the complainant in a midway

asking her to arrange the amount of Rs.1,000,000/- for the release of her mother. After completion of investigation, respondent No.1 was indicted on 13.05.2017, but he pleaded not guilty and claimed trial. The learned trial Court pursuant to recording of seven (07) prosecution witnesses and statement of respondent No.1 under Section 342 Cr.P.C., acquitted respondent No.1 of the charges vide the impugned judgment dated 15.01.2018. Hence, instant criminal appeal.

3. Learned counsel for appellant contends that respondent No.1 has committed the offence in a broad daylight; that the appellant has produced independent witnesses available at the relevant time sufficient to connect respondent No.1 with the commission of offence, per se, evidence produced by the prosecution witnesses fully establishes the guilt of respondent No.1, as such, the learned trial Court has misread the evidence while passing the impugned judgment, which is liable to be set-aside.

4. Conversely, learned State Counsel being assisted by learned counsel for respondent No.1 contend that the learned trial Court has rightly appreciated each and every aspect of the case and acquitted respondent No.1 of the charges; that the appellant has failed to bring on record incriminating evidence to link respondent No.1 with the commission of offence; that the complainant's mother having been allegedly abducted by respondent No.1 was not produced during the trial, as such, withholding of best evidence leads to adverse inference, per se, the prosecution case suffered from various doubts, benefit of which has rightly been extended in favour of respondent No.1 vide the impugned judgment.

5. Arguments heard, record perused.

6. Perusal of record reveals that appellant PW-5 Haleema Bibi submitted the complaint (Exh.PH) to S.H.O. Police Station Koral, Islamabad, which has been converted into FIR No.240, dated 13.08.2013, under Section 365, 342 PPC, Police Station Koral, Islamabad with the allegations that she along with her mother, Mst. Naseem Akhtar, was present in their house, when at about 4 p.m., 10/11 armed persons entered into their house, searched the house, took over four mobile phones (01 Blackberry & 03 Nokia) along with cash amount of Rs.47,000/-, whereafter they abducted the complainant along with her mother and took them to unknown place in a vehicle, as such, they alighted the complainant in the midway and took away her mother asking the complainant to arrange an amount of Rs.1,000,000/- for release of her mother. The complainant further alleged that her mother had been exchanging hot words with one of the abductors i.e. Arshad Khan (respondent No.1) qua a dispute of vehicle.

7. The case has been investigated by the police and respondent has been challaned under Section 173 Cr.P.C., whereafter charge was framed on 13.05.2017 in terms of Sections 365/342 PPC only against respondent No.1, whereas no other accused person has been arrested or referred by the Investigating Officer in the final report. The respondent has been acquitted by the learned Trial Court vide impugned judgment dated 15.01.2018.

8. I have gone through the record, which reveals that the appellant is the star witness and her mother being the alleged abductee is the key person available to the prosecution to prove the case in terms of Article 117

of the Qanun-e-Shahadat Order, 1984 but, surprisingly the mother (alleged abductee) had neither been produced in the Court nor had any effort been made by the prosecution to produce the said abductee, such aspect discloses adverse inference in terms of Article 129(g) of the Qanun-e-Shahadat Order, 1984, as had the abductee been produced in the Court, she could have damaged the case of prosecution.

9. That apart, the appellant acknowledged that she has no proof qua the dispute of vehicle between her mother with respondent No.1 and even Sher Khan and Sajjad are also witnesses in other case registered against the appellant's mother by P.S. ANF RD (North), Rawalpindi i.e. FIR No.36, dated 01.08.2013, under Section 9-C CNSA, P.S. ANF RD (North), Rawalpindi, who has been convicted and sentenced to 30 days along with fine of Rs.15,000/-, by the learned Special Court (CNS), Rawalpindi vide judgment dated 23.12.2014. As such, Mst. Naseem Akhtar filed Criminal Appeal No.17/2015, which was also dismissed by the learned Division Bench of the Lahore High Court, Rawalpindi Bench, Rawalpindi, vide judgment dated 16.05.2016, per se, the said judgment attained finality as same was not further assailed before the apex Court.

10. PW-2 Malik Akhtar/Inspector also confirmed that FIR has been lodged by the order of the learned Sessions Court passed on application filed under Section 22-A Cr.P.C., as such, PW-2 searched for the recovery of alleged abductee and finally he came to know that she was taken into custody by ANF authorities in case FIR No.36, dated 01.08.2013, under Section 9-C CNSA, 1997, for having possession of 1100 grams of charas, who has been sent to judicial custody on 02.08.2013. PW-2 Malik Akhtar

confirmed that he after thorough investigation recommended cancellation of the instant FIR and prepared *Qalandara* under Section 182 PPC against the complainant. The witness has been declared hostile and has been cross examined, who confirmed that respondent No.1 is the official of ANF.

11. The prosecution has also produced PW-3 Muhammad Younis/Naib Moharrar, ANF who confirmed that respondent No.1 remained on duty on the fateful day i.e. 01.08.2013 from 7 a.m. to 7 p.m. but, his statement under Section 161 Cr.P.C. is not available on record.

12. The other Investigating Officer i.e. PW-1 Fawad Khalid/ASI, who submitted challan under Section 173 Cr.P.C., while appearing in the Court confirmed that the appellant was unable to submit any incriminating evidence during the investigation and respondent No.1 has been declared innocent by the ANF in their own investigation, whereafter respondent No.1 has been referred in Column No.2 of the challan, per se, he has been declared innocent without any pressure. Even otherwise, the prosecution has also confirmed the presence of accused respondent within his duty area as confirmed by PW-4 Muhammad Zulqarnain.

13. On the other hand, the accused recorded his statement under Section 342 Cr.P.C. with the clear stance that complaint (Exh.PH) is false and concocted as he was on duty at ANF Academy performing his official duty as Signal Operator, whereas the appellant's mother was arrested in case under Section 9-C CNSA, 1997 by ANF officials at the same day, who has been convicted by the learned Special Court (CNS), Rawalpindi and the judgment of conviction has been confirmed by the Hon'ble Lahore High Court, Rawalpindi Bench, Rawalpindi vide judgment dated 23.12.2014. He

has produced the judgment of the learned Special Court (CNS) Rawalpindi as Exh.DA, judgment of the Hon'ble High Court as Exh.DB, statement of Naseem Bibi recorded under Section 342 Cr.P.C. as Exh.DC and statements of other witnesses as defence version.

14. It now becomes crystal clear that Naseem Akhtar i.e. alleged abductee has never been the part of prosecution case and withholding of such best evidence in terms of Article 129(g) of the Qanun-e-Shahadat Order, 1984, it affects the very foundation of the entire case as presumption arises if any party withholds a piece of evidence then it can fairly be presumed that such party has sinister motive behind it. Reliance is placed upon 2010 SCMR 385 (Muhammad Rafique vs. The State) and 2017 P.Cr.LJ 25 Peshawar (Shah Izzat alias Shahzad v. Adnan). In such situation, adverse inference could safely be drawn against the prosecution that if the said witness had been produced in the witness box, she would not have supported the prosecution case as held in 2016 P.Cr.LJ 380 Lahore (Najaf Khan vs. The State) and 2017 P.Cr.LJ 605 Karachi (Pirzada alias Peer vs. The State).

15. There is another aspect of the matter that the alleged abductee was arrested in criminal case under Section 9-C CNSA, 1997 on the same day and she has been convicted by the learned Special Court (CNS) Rawalpindi, whereafter her sentence has been maintained by the Hon'ble Division Bench of the Lahore High Court, Rawalpindi Bench, Rawalpindi, which has not further been assailed, hence the same attained finality, even the ANF officials, including the Investigating Officer, while appearing before this Court confirmed that the alleged abductee was taken into

custody by the ANF authorities on the alleged day of occurrence in case FIR No.36, dated 01.08.2013, under Section 9-C CNSA, P.S. P.S. ANF RD (North), Rawalpindi. Such overwhelming evidence in favour of respondent No.1 confirmed that the entire prosecution case is scrambled with doubts having been lodged in order to settle some private score with the respondent No.1, even the Investigating Officer has declared respondent No.1 innocent in his investigation and placed him under Column No.2 of the challan when the learned Trial Court has not agreed with the reports submitted by the Investigating Officer.

16. Poles apart, another serious defect surfaced on record is the conduct of the appellant, who never agitated before the learned Trial Court to produce her real mother to strengthen her case for no justified reason. I have confronted the learned counsel for appellant for such a blatant defect in this case, whereby it has been argued by the learned counsel that Investigating Officer has not arrayed the alleged abductee as a witness nor the Court put any such effort but, a request through an application had been filed before the learned Trial Court. With the able assistance of learned counsel for parties, this Court is unable to get a single order for production of the alleged abductee in the Court, although she appeared before the Court on some dates of hearing as her attendance has been marked but, despite that there is no request on her behalf for recording of her statement.

17. In such eventuality, considering the entire background of the case and testimony of appellant, it appears that entire case has been built on false structure, which could not be corroborated through any independent

source, rather the instant FIR has been lodged in order to create a benefit in favour of alleged abductee, who has been convicted in FIR No.36/2013.

18. Lastly, perusal of the impugned judgment depicts that the learned Trial Court has rightly acquitted respondent No.1 of the charges by extending benefit of doubt, therefore, the instant criminal appeal is not made out and same is hereby **DISMISSED**.

(MOHSIN AKHTAR KAYANI)
JUDGE

Khalid Z.