

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

Criminal Appeal No.198/ 2016

Mitho Denter Bhatti and another
Versus
Muhammad Yousaf and another

Appellant by: Mr. Muhammad Sarfaraz Sajid,
Advocate
Respondents No. 1 by: Mr. Azhar Yousaf, Advocate.
State by: Mr. Sadaqat Ali Jahangir,

Date of Decision: 14.10.2020

Ghulam Azam Qambrani, J.:- Through this judgment, we intend to dispose-of this appeal arising out of judgment dated 11.11.2016 in case F.I.R No. 685, dated 04.10.2014 under Section 365-A/34 P.P.C, Police Station Margalla, Islamabad, whereby appellants were convicted and sentenced under Section 365-A read with Section 34 P.P.C and sentenced to life imprisonment with fine of Rs.200,000/- each and in default of payment of fine to further undergo six months S.I. Moreover, moveable and immoveable properties of both appellants were ordered to be forfeited in favor of State, however, benefit of Section 382-B Cr.P.C was extended to them.

2. Briefly stated facts of the prosecution case are that the complainant Muhammad Yousaf, PW-3, in his application, Ex.PA, alleged that on 04.10.2014 his neighbor namely Munir Ahmed PW-6 came to him and informed that his daughter namely Zarlish Jabeen aged about 7-8 years was cycling outside their house in the street, who had been abducted by two unknown persons in a car Suzuki Mehran, bearing registration No.RIV-714. It has been also alleged that at about 08:55 pm he received a telephonic call on his mobile phone No.0300-9822298 from landline phone No.051-4324252. The caller told him that his daughter had been abducted by them and asked for arrangement of one billion

rupees as ransom and further told him that they will inform him later on about the place to deliver the ransom amount. He has further narrated in the complaint that on the day of incident, his daughter was wearing purple color frock, white trouser and a locket bearing word "Allah".

3. After registration of the F.I.R, Ex.PA/1, investigation was carried out. The police inspected the place of occurrence and prepared site plan Ex.PE, an inquiry was made from the office of PTCL about the landline number 051-5323252 from where call was made to the complainant on his mobile phone number. During investigation, it came into the knowledge of police that the above said landline number was installed at Siraj Mobile Plaza Market, shop No.3, G-8/1, Islamabad. PW-7, Ghulam Muhammad, alongwith other police officials went to the above-mentioned shop. It was a PCO where PW-8 Rana Yasir was present. The statement of above-mentioned Rana Yasir was recorded under Section 161 Cr.P.C and the police started surveillance. After a few moments, Rana Yasir pointed out towards a boy, who made telephonic call from the landline, who was arrested at the spot. Later on, he disclosed his name as Khurram Shahzad. During interrogation, he further disclosed that he alongwith his co-accused namely Mitho Denter Bhatti, abducted the minor girl Zarlish Jabeen and obtained the telephone number of complainant from the abductee. During personal search of the appellant Khurram Shahzad, golden locket of the abductee was recovered and it was taken into possession vide recovery memo Ex.P2. During investigation, from the mobile phone number of A.S.I- Muhammad Anwar, a call was made at the mobile phone number of accused/ appellant Mitho Denter Bhatti and in presence of the police officers, the co-accused Khurram Shahzad conversated with the appellant Mitho Denter Bhatti that the amount of ransom in the sum of Rs.3,00,000/- has been received and asked him to reach at Al-Mansoor Market, G-8/1, Islamabad. After such conversation, the police party alongwith appellant Khurram Shahzad reached at the given address where they found

a Car No.RIV-714, which was cordoned off by the police. The appellant Mitho Denter was found on the driving seat. The abductee namely Zarlish Jabeen was recovered from the rear seat of the said car. Mobile phone of the appellant/accused was taken into possession through recover memo Ex.PC. The car was also taken in the possession through recovery memo Ex.P7 and prepared site plan of the place of occurrence Ex.PG. During investigation, mobile call record of the appellant Mitho Denter was taken into possession through recovery memo Ex.PD. After completion of the investigation, challan was submitted before the learned trial Court.

4. After taking cognizance by the learned trial Court and after fulfillment of codal formalities, charge was framed against the appellants to which they pleaded not guilty and claimed trial. In order to prove its case, the prosecution produced the following prosecution witnesses:-

- i. PW-1, Sher Ahmed Khan- S.I
- ii. PW-2, Dost Muhammad/ Head Constable, who brought the record of mobile phone.
- iii. PW-3, Muhammad Yousaf, Father of abductee (Complainant).
- iv. PW-4, Mohammad Anwar-A.S.I.
- v. PW-5, Zarlish Jabeen, Abductee.
- vi. PW-6, Munir Ahmed. Eyewitness.
- vii. PW-7, Ghulam Muhammad Baqar- SHO
- viii. PW-8, Rana Yasir Iqbal- Shopkeeper of PCO

After conclusion of the prosecution evidence, statements of appellants were recorded under Section 342 Cr.P.C wherein they categorically denied the allegation and pleaded innocence. In their statements, they have stated that infact there was a dispute of plot in between the complainant and the appellant Mitho Denter there was an oral agreement, wherein the appellant Khurram Shahzad was a witness, therefore, with mala fide intention they were falsely involved in the case just to grab the land. The appellants neither opted to record their statements on oath as envisaged under

Section 340 (ii) Cr.P.C to disprove the allegation nor led any evidence in their defence.

5. The learned trial Court after hearing the learned counsel for the parties, passed the impugned judgment dated 11.11.2016, whereby the appellants were convicted and sentenced as mentioned above. Feeling aggrieved, the appellants have filed the instant appeal.

6. Learned counsel for the appellants contended that the impugned judgment is result of misappreciation of evidence and is against the facts of the case; that the appellants are innocent, they have been falsely involved in the instant case; that no private witness has been associated by the police with regard to recovery of abductee from the clutches of the appellants; that there is no evidence to connect the appellants with the commission of the alleged offence; that there is no evidence that any ransom amount was passed to the appellants, therefore, the alleged offence does not attract in the case in hand; that there are material contradictions in the statements of the prosecution witnesses; that the abductee has stated that she had no gold locket on the alleged day of occurrence but the recovery has been foisted against the appellant Khurram Shahzad. Lastly, prayed for the acquittal of the appellants from the charge.

7. Conversely, the learned State counsel opposed the contentions of the learned counsel for appellants contending that the F.I.R was promptly lodged; that the appellants were arrested red handed; that the recovery of the abductee was affected from the appellant Mitho Denter; that record of the phones in shape of CDR is on record; that the appellants failed to produce any defence evidence in their plea, raised in their statements under Section 342 Cr.P.C; that the prosecution witnesses have no ill-will to falsely involve them in the commission of offence; that statement of abductee fully corroborates the prosecution version. Lastly, urged for dismissal of the appeal.

8. Arguments of the learned counsel for the parties have been heard and perused the record with their able assistance.

9. The facts, leading to filing of the instant petition, have been mentioned hereinabove, therefore, need not be reproduced.

10. A careful perusal of the record reveals that the case of prosecution hinges upon the statements of PW-3, PW-5, PW-6 (eyewitness of the occurrence), PW-7 & PW-8. Initially F.I.R was registered against the unknown culprits but after registration of the F.I.R, the police reached to the shop of PW-8, who pointed out towards the appellant Khurram Shahzad, who made a telephonic call from his landline number to the complainant, who was arrested on the spot was arrested. The appellant Khurram Shahzad disclosed the fact that the appellant Mitho Denter is the main accused. Then the police also arrested him and got recovered the abductee namely Zarlish Jabeen aged about 7-8 year. The evidence of complainant is supported by the PW-6, who is an eyewitness of the occurrence. Further, all the above-mentioned prosecution witnesses have supported the prosecution version about the time, mode of arrest and recovery of the abductee from the car of Mitho Denter. All the prosecution witnesses were cross-examined by the defence at length, but could not shatter their statements and failed to extract any advantageous in favour of defence and the witnesses remained firm on material aspects of the case. The statement of abductee girl Zarlish Jabeen is in line with the statements of PW-6 and other prosecution witnesses. It was proved that the appellants obtained the mobile phone numbers of the complainant from the abductee and made a phone call from the PCO of PW-8 and this fact was confirmed by PW-8. Thereafter, on the pointation of PW-8, the police firstly arrested the appellant Khurram Shahzad and thereafter, PW-7 alongwith other witnesses encircled the appellant Mitho Denter and got recovered the abductee from the car driven by the said convict/ appellant. During the trial, the appellants claimed enmity with regard to a dispute of plot but no specific plea

was raised against the remaining prosecution witnesses nor any suggestion was made that why PW-6, PW-8, who are independent witnesses had deposed against them. Even there is no evidence in their defence that the police officials have falsely involved them in the commission of the alleged offence. For the sake of convenience, Section 365-A P.P.C is reproduced hereunder for better understanding:-

""Kidnapping or abducting for extorting property, valuable security, etc. Whoever kidnaps or abducts any person for the purpose of extorting from the person kidnapped or abducted, or from any person interested in the person kidnapped or abducted any property, whether movable or immovable, or valuable security, or to compel any person to comply with any other demand, whether in cash or otherwise, for obtaining release of the person kidnapped or abducted, shall be punished with death or imprisonment for life and shall also be liable to forfeiture of property".

The complainant in his statement has stated that ransom was demanded from him through landline number and this fact was further confirmed by PW-8. Furthermore, the record of telephones, Ex.PD, is on record, which further strengthens the prosecution story. The abductee, who is a minor girl, in her Court statement has identified the appellants, who had abducted her. In our view, the ingredients for constituting the offence of kidnaping for ransom are fully attracted and proved by the prosecution. Reliance is placed on the judgment titled "Muhammad Riaz and others Vs. Bilqiaz Khan and others" (2012 SCMR 721) wherein the august Supreme Court has held as under:-

"11. A close reading of afore-referred provision would show that essential ingredients to prove the offence are twofold: (i) the act of abduction, (ii) "for the purpose of extorting from the person kidnapped or abducted, or from any person interested in the person kidnapped or abducted, or to compel any person to comply with any other demand, whether in cash or otherwise for obtaining release of the person kidnapped or

abducted".

11. In the case in hand, the complainant, the abductee and the other eyewitnesses have sufficiently explained each and every event of the occurrence and stood firm including time, mode of recovery of the abductee and place of occurrence. All the prosecution witnesses are natural and independent. They have no enmity with the appellants to falsely involve them in a heinous case. Though the appellants in their statements under Section 342 Cr.P.C have stated that they have falsely been involved by the complainant having dispute of plot with the appellants Mitho Dental. In this regard, the appellants neither examined themselves on oath nor produced any evidence in support of their claim. Merely, claiming enmity with the complainant over a plot without bringing any evidence in proof of their claim is not sufficient to believe them. During the whole trial, the appellants were even failed to suggest that where the plot is situated and when the appellant Mitho Denter entered into a deal of the disputed plot.

12. In order to proof the offence, under Section 365-A P.P.C, the prosecution has produced sufficient evidence and has proved the allegations beyond reasonable doubt; that the appellants kidnapped the minor girl Zarlish Jabeen for the purpose of ransom and had compelled the complainant to fulfill their demand of ransom amount for the release of the abductee. The statements of ocular witness and marginal witnesses of the recovery memo of arrest of the appellant were found confidence inspiring.

13. In view of above discussion, it has been proved that the prosecution has successfully established its case against the appellants. The appellants have failed to point out any material illegality or any serious infirmity committed by the learned trial Court while passing the impugned judgment, which in our view is based on proper appreciation of evidence and the same does not call for interference by this Court. Therefore, the conviction and sentence awarded to the appellants by the learned trial Court is

maintained and the appeal filed by appellants, being merit less, is hereby **dismissed**.

(AAMER FAROOQ)
JUDGE

(GHULAM AZAM QAMBRANI)
JUDGE

Announced in open Court on 17-11-2020.

JUDGE

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