

**JUDGMENT SHEET
IN THE PESHAWAR HIGH COURT,
PESHAWAR
JUDICIAL DEPARTMENT**

Cr.A.No.386-P/2013

J U D G M E N T

Date of hearing: 26.09.2017

Appellant (by): M/S Shabbir Hussain Gigyani
and Farmanullah Sailab, advocates.

State (by): Syed Sikandar Hayat Shah, AAG.

Complainant (by): Mr. Akbar Khan, advocate.

LAL JAN KHATTAK, J.- Through this judgment, we shall also decide Cr.A.No. 394-P of 2013 as both the appeals have arisen out of common judgment dated 16.07.2013 passed by the learned Judge Anti-Terrorism Court-II, Peshawar in case FIR No.817 dated 10.09.2012 u/s 365-A PPC of Police Station Shaheed Gulfat Hussain, Peshawar, whereby on conviction, the appellants have been sentenced to imprisonment for life with benefit u/s 382-B Cr.P.C.

2. Brief facts of the case are that on 30.8.2012, Muhammad Ishfaq (PW-9) reported to S.I. Naqeeb Shah (PW-2) in the Police Station, regarding the missing of his brother Riaz Ahmad (PW-10). In the report

(Ex.PW 2/1), it was alleged by the complainant that he and his brother i.e., the abductee, went together for *Maghrib* prayer in the nearby mosque when in the meantime his brother received a call on his cell phone No.0300-5907997, who responded that he was offering prayer. After the prayer, both came out of the mosque. The complainant saw a 2D motorcar parked there alongside the road, wherein, four persons including the driver were sitting, who made his brother seated in the car and then drove away. According to the FIR, the complainant could not know the purpose for which his brother went with the aforesaid persons. Likewise, he could not guess whether his brother on his own went with the four persons or was forced to go with them. He entreated that his brother be traced out and recovered. On the basis of ibid information, enquiry u/s 156 (3) Cr.P.C was initiated. It happened that on 25.10.2012, abductee Riaz Ahmad appeared before the local police and charged the appellants for his abduction for ransom.

3. After completion of investigation, the case was put in court, which indicted the

accused for the crime to which they pleaded not guilty and claimed trial. In order to prove its case, prosecution examined 13 witnesses whereafter statements of the accused were recorded, wherein, they professed their innocence. The learned trial court, after conclusion of the trial, found the accused guilty of the charge and while recording their conviction sentenced them as mentioned above whereagainst they have preferred their separate appeals.

4. Arguments heard and record gone through.

5. Noticeable aspect of the case is that the abductee was recovered on 06.10.2012 but neither he nor complainant of the case reported to the local police about his release from the captivity till 25.10.2012. Though the prosecution has attempted to justify the delay caused in charging the accused by stating that after recovery the abductee went to Punjab for his medical treatment but ibid delay does not seem to be justifiable. True that after recovery from captivity, an abductee remains upset and mentally disturbed for sometime but if the disturbance continues up to 19 days, then such duration

will create reasonable doubt on subsequent implication of the accused, therefore, the delay caused in charging the accused at a belated stage is fatal to the prosecution for safe administration of justice. As the prosecution has not given a plausible explanation for the delay caused in implicating the accused, therefore, no safe reliance could be placed on the testimony of the prosecution witnesses.

6. Of course, there is an identification parade of the appellants by identifier Muhammad Abbas (PW-11) but such identification parade has no evidentiary worth as same had taken place on 22.11.2012 and prior to holding the identification parade, the appellants were produced before the learned Judge Anti-Terrorism Court-II, Peshawar on 01.11.2012 and the possibility of their showing to the identifier cannot be ruled out, therefore, no importance could be attached to the identification parade. Besides, the identifier did not point out the specific role played by the appellants in the crime. It is by now well settled that in order to make an identification parade reliable one, the

identifier must assign the specific role, which the perpetrator has played in the crime. As the identification parade is silent on the ibid aspect and had taken place at a belated stage of the appellants' arrest, therefore, no explicit reliance could be placed upon it for the safe administration of justice.

7. The prosecution has also relied upon the ransom amount recovered from the appellants but this aspect of the case too is of no help to it as PW-11 has not named any specific accused to whom he had paid the ransom. Moreso, one Malik Adeel, who had produced Rs.2,00,000/- to the police being ransom though Ex.PW 4/1, was not produced by the prosecution before the court and likewise the recovery of amount of Rs.2,00,000/- on pointation of the appellant Javed Akhtar on 31.10.2012, being ransom, too is not believable as said amount was statedly buried in ground by the appellant, which fact does not appeal to mind as now-a-days no person would ever bury currency notes in ground.

8. Another pronounced aspect of the case is that on same set of evidence, the learned trial court has acquitted co-accused

Murad Khan etc, vide judgment dated 28.11.2015, whereagainst neither the complainant nor the State has filed any appeal. Acquittal of the co-accused cannot be ignored as the evidence against the present appellants and the acquitted accused is almost one and the same. As there is no significant difference in the roles of all the accused, therefore, acquittal of the four co-accused vide judgment dated 28.11.2015 and its non-challenging has caused colossal damage to the prosecution.

9. Thorough and careful examination of the case record would show that the prosecution has not proved its case against the appellants beyond any reasonable doubt, which is hallmark of criminal jurisdiction. It has been held umpteenth times by the superior courts that in order to convict an accused for a crime, the prosecution has to prove its case beyond reasonable doubt and through trustworthy evidence and if a single doubt accrues in the prosecution case benefit of that will be given to the accused being a century old principle of criminal law. It appears to us that the learned trial court

has not appreciated the case evidence in its true perspective and in line with the settled principle of criminal law and has fallen in error by convicting the appellants for which the impugned judgment cannot be countenanced.

13. For what has been discussed above, this and the connected appeal are allowed, conviction and sentence of the appellants are set aside and they are acquitted of the charges leveled against them.

14. Above are the reasons of our short order of even date, which is reproduced as under:-

"For the reasons to be recorded later, this appeal is allowed, conviction and sentence recorded by learned Judge Anti-Terrorism Court-II, Peshawar vide impugned judgment dated 16.07.2013 is set aside. The appellant is acquitted of the charge leveled against him and he be set free forthwith, if not required in any other case".

JUDGE

JUDGE

Announced
26.09.2017.

