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BEFORE THE PESHAWAR HIGH COURT PESHAWAR.

Cr. Appeal No 268-P/2016

Ihsanullah s/o Muhammad Asif
R/o Afghanistan Present'y residing at
Sethi Town Peshawar.....Appellant

V E R S U S

- 1) The State
2) Rab Nawaz Khan s/o Mir Mat Khan
R/o Moh: Sheikhan Amir Abad Yakatoot, Peshawar
.....Respondents.

Case FIR No 54 Dated 3/11/2014
U/S 365-A-PPC/7-ATA
P.S CTD (Peshawar)
=====

Appeal against the judgment and order dated
9/4/2016 passed by JSC/ATC Peshawar
wherein His impugned order and judgment the
appellant is awarded punishment of LIFE
imprisonment u/ 365-A PPC
and LIFE imprisonment u/s 7 (e) of the Anti-
Terrorism Act 1997 .
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PRAYR IN APPEAL.

For setting aside the impugned judgment and
order and for the acquittal of the appellant.
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GROUND OF APPEAL.

- A. That the impugned judgment is against law and facts on the file,
hence deserves to be set aside .
- B. That the prosecution has miserably failed to prove the case
beyond shadow of doubts. The learned trial court while not
extending the benefit of doubts has acted against the law and
canon of justice.

FILED TODAY

Genl Registrar

10 APR 2016

JUDGMENT SHEET
IN THE PESHAWAR HIGH COURT,
PESHAWAR.
(Judicial Department)

Criminal Appeal No.268-P/2016

JUDGMENT

Date of hearing: 13.11.2017

Appellant (s): (Ihsanullah) by Mr. Hussain Ali Advocate

Respondent(s): (State) by Mr. Rabnawaz Khan, AAG

MOHAMMD IBRAHIM KHAN, J.- Accused

appellant Ihsanullah was jointly put to trial along with co-accused Idrees, Salman and Sheraz Afridi in case FIR No.54 dated 03.11.2014 u/s 365-A/7-ATA, P.S CTD, Peshawar, whereby charge was framed against them on 21.04.2015 that on 03.10.2014 from thoroughfare of Afridi Ghari, falling within the jurisdiction of Police Station, CTD, Peshawar, they along with the co-absconding accused Muhammad Khan alias Maley, Zubair, Niaz Muhammad and Alam Gul shared their common intention to abduct Waqas Khan for ransom. This offence falls within the purview of Section 365-A PPC read with Section 7(e) of ATA 1997 under common charge of Section 34

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For the Court
Peshawar
13.11.2017

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PPC. Out of the accused Salman died during trial and proceedings against him went abated. Accused Sheraz and Idress were acquitted from the charges and accused Ihsanullah was convicted vide impugned judgment in case No. 37/2015 announced on 09.04.2016. The sentences passed by the learned Judge, ATC are punishments for life imprisonment u/s 365-A PPC and 7(e) ATA, 1997 on two counts. Both the sentences were to run concurrently. Benefit of Section 382-B Cr.P.C was extended to the accused appellant.

2. According to the charge framed all the accused named in the FIR giving them specific role are said to have abducted Waqas Khan for ransom. The prosecution then examined PW-1 Yahya Shah, SI, PS CTD, Peshawar, PW-2 Asif Nawaz, PW-3 Kareem Dad, PW-4 Farah Zada, PW-5 Ayaz Constable, PW-6 Muhammad Fiaz Khan, Judicial Magistrate, Swat, PW-7 Gul Muhammad, PW-8 Muhammad Ibrahim, SI, Police Lines, Pesahwar, PW-9 Rabnawaz Khan (father of abductee), PW-10 Waqas Khan (abductee) and PW-11 Hastam Khan, Inspector, PS, CTD, Peshawar. All

these accused facing trial including the present accused were examined u/s 342 Cr.P.C. The accused appellant negated the answers and posed innocence.

3. Having heard arguments of learned counsel for the appellant and learned AAG, the record has gone through with their valuable assistance.

4. The prime consideration for conviction or acquittal would squarely rest with the statement of PW 10 Waqas Khan, the abductee together with the statement of his father PW-9 Rabnwaz Khan. These statements are to be followed in view of the statement of PW-6 Muhammad Fiaz Khan, Judicial Magistrate, Swat functioning as Judicial Magistrate-VI, Peshawar during the days when identification parade of the accused was made. The rest statements of PWs are also of significance but the most important statement is of the PW:11 Hastam Khan, Inspector, PS, CTD, Peshawar. PW 10 is Waqas Khan, the abductee who has stated that on the day of occurrence at 11:00 P.M he came out of his house as was called by his friend Gul Muhammad on mobile phone. He went along with him to the cattle market and after taking meal they

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For the

Public Prosecutor, Bench
Swat.

Amjad Ali PS

were on the way back when reached to Masjid near Afridi Ghari, they were being chased by a motorcar. There two persons were deboarded from the said car and they were forcibly picked up and taken away towards Ring Road. On reaching to Kohat Pull on Ring Road the eyes of P'W-1 Waqas Khan (abductee) were tightened, both of them travelled for an hour and thereafter shifted to a house having many rooms.. One of the person by the name of Alam Gul disclosed that it was the centre of Taliban. PW 1 was asked for the mobile number of his father and at their instance he contacted his father and placed a demand of Five crore rupees to him. Later on the ransom amount for the abduction of co abductee was distributed amongst the abductors including the accused appellant. His friend Shahbaz was set free and he was shifted to another place. After spending 12/13 days his father was again contacted for ransom, he got over escaped from the house where he was kept by jumping over the wall and ran away. This abductee in his cross examination has squarely admitted that it is correct that till today i.e. on the day of examination in the Court he has not

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Examiner

First Deputy Court Bench
District Court, Swat.

mentioned the names of the person who abducted him from the sport. There was a business deal in between the father of the abductee and father of Sheraz and they had friendly terms sharing their business proceeds. The abductee was never in the knowledge of name of accused appellant alongwith his other partners who are the other accused in this case but it has been admitted that the names of all the culprits were disclosed by the local police and thereafter they were charged. The abductee was never in the knowledge that the accused appellant alongwith his co-accused were being charged with consultation and deliberation with all other family members including his father and paternal uncle. Later this abductee has also been re-examined on 16.02.2016 where this witness is cross-examined, stated that he has not seen the accused namely Ihsanullah and Sheraz during the identification parade in the police custody.

During recording of his statement in the trial he has previously said that he had seen the accused appellant in police custody before identification parade. Now coming to the statement of the father of abductee

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Period of Court Bench Waqas Khan as PW-9 Rab Nawaz Khan. He admits

that he is not the eye witness of the occurrence, that the abductee himself came to his house and he has not paid any ransom to any one. This witness has categorically admitted this fact that since he was not the witness to the occurrence therefore, he cannot say with certainty that whether the accused Ihsanullah is involved in the offence or not and that he has charged him at the instance of local police. All those who have been charged alongwith the accused appellant are named to him by the local police. The most important admission has so far been that it is a fact that after the arrest of accused appellant the local police informed him regarding their arrest. He then alongwith his son visited the police station and there they saw the accused who were in the police custody. Now coming to the statement of PW-6 Muhammad Fiaz Khan, Judicial Magistrate, he has also been cross-examined at length who has also admitted certain facts which are detrimental holding the identification parade to have not been conducted in accordance with law. This witness has also categorically admitted that he has not mentioned the ages of the accused; that he has not

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By

Deputy Commissioner Bench
District Court Swat.

mentioned names, parentages of the dummies persons even volunteered that he has mentioned their similar getups in his report. There is no prescription in the report regarding the specification of colours of the garments of the accused as they are dummies persons. It is further correct that that this Judicial Magistrate has not recorded statements of identifier to the extent of the role played by the accused during the commission of the offence. No such statement of the identifier was recorded. In order to confirm the identification parade in the jail premises neither the statement of the jail authorities have been recorded nor even the certificate to that effect has been furnished. Last but not least is the statement of the important witness PW 11 Hastam Khan, Inspector, PS. CTD, Peshawar, who has conducted entire investigation. He has also come out with admission like that it is correct that the instant case, according to available record, is that the report was lodged after one month of the occurrence. It is further correct that during investigation period between the date of occurrence and date of report no report in shape of DD or otherwise has been made to the police.

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The CDR data has also not been made available regarding the calls being received by the abductee and whether it pertains to any calls on behalf of the accused appellant. Rather the sim No. 03059002439 has not been found with any contact on the mobile sim of the complainant in the light of CDR data. The Investigation Officer is totally ignorant of the fact regarding any ransom communication so much so that he even does not know that the abductee has returned his house with or without payment of any ransom. The Investigation Officer has admitted that there were four (4) persons who abducted the abductee (Waqas Khan) and his friend Sheraz whereas the abductee statement PW-10 is by saying that only two (2) persons have abducted him. The Investigation Officer has in his cross-examination admitted that no ransom has ever been paid as per version of the complainant even the site plan was prepared after one month of making of the report. At all the Investigation Officer has failed to recover or discover from the accused appellant any clue. This important witness being the Investigation Officer unable to recover any threatening demand from

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the accused appellant and that is why the accused appellant has not made any confession.

5. The abductee is said to be a drug addict using 'Charas' as intoxication according to the statement of PW-7 Gul Muhammad. The prosecution evidence on reappraisal of the evidence is quite silent to the fact that the accused appellant has any involvement in the crime for abduction for the purpose of ransom and where the witnesses PW-9 & 10 (father and son) have utterly stated that they have been named at the instance of police officials where the identification parade was also doubtful without a certificate required to be furnished by the learned Judicial Magistrate and even recording of the proceedings in the jail by recording statements of Jail Authorities.

6. we are of the consistent view that the accused appellant has wrongly been sentenced to life imprisonment on each count whose case is even beyond the scope of a singular doubt rather the prosecution version is densely doubted.

7. For what has been discussed above, this criminal appeal is allowed, thereby setting aside the

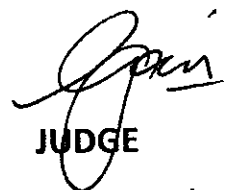
impugned judgment of learned trial Court and acquitting the appellant from the charges leveled against him. He is in custody, be released forthwith if the case registered against him u/s 14 Foreigners Act 1946, has also been decided, acquitted accordingly and is not required in any other case.

8. The above are the reasons of our short order of today reproduce here:

"For the reasons to be recorded lateron, this criminal appeal is allowed, the impugned judgment of conviction & sentence dated 9.4.2016 rendered by learned trial Court/ Judge, Anti Terrorism Court-III, Peshawar is set aside and the appeilant/convict involved in case FIR No.54 dated 3.11.2014 u/s 365-A PPC/ 7 ATA, Police Station CTD, Peshawar, is acquitted of the charges leveled against him. He is in custody, be released forthwith if the case registered against him u/s 14 Foreigners Act 1946, has also been decided, acquitted accordingly and is not required in any other case."

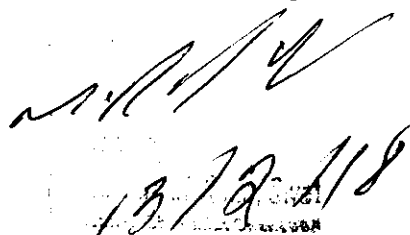
Announced
13.11.2017.

Certified to be true copy


JUDGE


JUDGE

Peshawar
Sustained


13/12/18