

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

MR. JUSTICE MANZOOR AHMAD MALIK
MR. JUSTICE SAJJAD ALI SHAH
MR. JUSTICE QAZI MUHAMMAD AMIN AHMED

Criminal Appeal No.185/2006
and Jail Petition No.694/2018

(On appeal from the judgment dated 13.6.2005 of the High Court of Sindh, Karachi passed in ATA No.3/2004)

Waqar A. Shamsi
(Criminal Appeal No.185/2006)
Muhammad Arshad
(Jail Petition No.694/2018)

... Petitioner(s)

Versus

The State
(in both cases)

... Respondent(s)

For the Petitioner(s)

Syed Rifaqat Hussain Shah, AOR
(in Criminal Appeal No.185/2006)
Nemo.
(in Jail Petition No.694/2018)

For the State

Ch. Aamir Rehman,
Additional Attorney General

Mr. Khadim Hussain,
Additional Prosecutor General, Sindh

Date of Hearing

14.10.2019.

JUDGMENT

QAZI MUHAMMAD AMIN AHMED, J.- Hafiz Muhammad Umar, 18, resident of Phase-VI, D.H.A. Karachi, a student of *Saint Andrew School*, left home in the morning of fateful day i.e. 16-9-2003 to attend the school; he did not return at the expected point of time whereupon his brother Muhammad Faisal (PW-1) inquired from his friend Waqar Ali Shamsi, appellant herein, on a cell phone, albeit with no information; in the meanwhile, the complainant received a phone call; the anonymous caller claimed custody of Hafiz Muhammad Umar while demanding ransom for his release. CPLC, (Citizen Public Liaison Committee) was taken on board whereafter the incident was formally reported at 8:00 p.m. A supplementary statement, on the following day, divulged further details of communication between the captor and the abductee on the

basis whereof, the appellants were arrayed as suspects alongside Imran Masih *alias* Raja, since absconder. Waqar Ali Shamsi appellant was taken into custody; pursuant to a disclosure, he led the police party alongside witnesses to a premises, occupied by the absconder under rent, wherefrom the dead body of Hafiz Muhammad Umar was found, bundled in a sack; as the investigation progressed, Muhammad Arshad petitioner was arrested on 20-9-2003; the accused were finally sent to trial as juveniles; the trial culminated into their conviction vide judgment dated 15.1.2004; they were sentenced for homicide, abduction for ransom and terrorism, findings upheld by the learned High Court with extension of benefit of section 382-B of the Code of Criminal Procedure 1898, vide impugned judgment dated 13-6-2005, being assailed by the convicts; leave has been granted in Criminal Appeal No.185 of 2016 filed by Waqar Ali Shamsi, clubbed with Jail Petition No.694 of 2018 filed by Muhammad Arshad; with a common thread, these are being decided through this single judgment.

2. For convicts, it is argued that prosecution failed to adduce sufficient evidence to positively link them with the crime and that entire case is structured upon a misplaced and misconceived suspicion, aspects that escaped notice by the courts below. The learned Additional Attorney General assisted by Additional Prosecutor General Sindh faithfully defended the impugned judgments; by referring to various pieces of evidence, they maintained that there existed sufficient evidence, usually procurable in the cases of like nature, to frame the accused with the charge by excluding every hypothesis of their innocence.

3. Heard. Record perused.

4. Calamity strikes by surprise; people seldom fall prey to crimes under ideal circumstances, therefore, it would be unrealistic to insist for or expect choice uniform pieces of evidence in every criminal case; what is to be essentially seen is that whether prosecution was able to come forward with the available evidence, possible under the circumstances of the case and that whether such a volume or nature of evidence is sufficient to sustain the charge. In the present case, the complainant, deceased's brother, unsuspectingly sought information from Waqar Ali Shamsi appellant, being a fast friend, expected to know the whereabouts; as the investigation geared up, he made his breast clean, reaching out to the deceased and, thus prosecution was able to constitute a chain of circumstances, link by link, through last seen evidence, occupation of premises, recovery of electric wire and ropes,

employed by the culprits to cause death confirmed as asphyxial and, thus argument that there was no evidence for a guilty return does not hold much water. Devastated family residing in an affluent neighbourhood had no axe to grind against the appellant, deceased's best friend, to swap him with the real offender; his exclusive knowledge is a piece of evidence inexorably pointed upon his culpability; web of circumstances is equally hovering over the guilt of Muhammad Arshad petitioner as well; they cannot escape the consequences of deceased's murder on the strength of bald denials, supported by inconsequential defence furnished by their well-wishers; their convictions as well as sentences consequent thereupon for an offence under Section 302 (b) of the Pakistan Penal Code, 1860 are maintained, however, we have not been able to find out any piece of evidence to frame them with the charge of abduction for ransom, even obliquely, as there is no proof that communication by the anonymous caller demanding ransom was actually made by the convicts; phone data sans positive proof about the caller or subscriber of cell phone handset as the calls were made, according to prosecution's own case, from a public calling booth; ransom was never transacted, therefore, prosecution case to the extent of abduction for ransom is on a stumbling ground; they are acquitted from the charge under section 365-A of the Code *ibid*. Concomitantly, their conviction under section 7 (e) is set aside and they are acquitted from the charge as well; sentence shall be commuted with the benefit provided under Section 382-B of the Code of Criminal Procedure 1898. With the above modification, Criminal Appeal is allowed and the Jail petition is converted into appeal with the same consequence.

JUDGE

JUDGE

JUDGE

Islamabad, the
14th October, 2019
Ghulam Raza/*