

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

Mr. Justice Manzoor Ahmad Malik
Mr. Justice Sardar Tariq Masood
Mr. Justice Qazi Muhammad Amin Ahmed

Cr. Appeals No.149-L and 150-L of 2017

(On appeal from the judgment dated 4.3.2015 of the Lahore High Court, Lahore passed in Criminal Appeal No.305/2010 and CSR No.5-T/2010)

Muhammad Zubair

(in Criminal Appeal No.149-L/2017)

Mst. Kalsoom alias Sonia

(in Criminal Appeal No.150-L/2017)

... Appellant(s)

VERSUS

The State and another

(in Criminal Appeal No.149-L/2017)

The State and another

(in Criminal Appeal No.150-L/2017)

...Respondent(s)

For the Appellant(s):

Dr. Khalid Ranjha, Sr. ASC
Mr. Mazhar Ali Ghallu, ASC
(in Criminal Appeal No.149-L/2017)

Mr. Zafar Mehmood Ch., ASC
(in Criminal Appeal No.150-L/2017)

For the Complainant:

Mr. Shaukat Rafiq Bajwa, ASC
(in both cases)

For the State :

Ch. Muhammad Mustafa, DPG

Date of Hearing:

01.7.2019.

JUDGMENT

Qazi Muhammad Amin Ahmed, J.- Muhammad Zubair and his wife Mst. Kalsoom @ Sonia were tried by an Anti-Terrorism Court at Lahore; indicted for abduction of Muhammad Shahid for ransom, they were returned a guilty verdict *vide* judgment dated 29.1.2010; convicted under Sections 302(b), 365-A read with Section 34 of the Pakistan Penal Code, 1860 as well as under Section 7(a) and (e) of the Anti-Terrorism Act, 1997, they were sentenced to death and imprisonment for life respectively, upheld by the High Court *vide* impugned judgment dated 4.3.2015 *vires* whereof are being challenged through separate appeals by leave of the

Court; bound by a common thread, these are being decided through this single judgment.

2. Prosecution's case is structured on application, Ex-PC, by Muhammad Asif, PW-12 received on 7.1.2009, at Police Station A-Division, Okara. According to the complainant, his brother Muhammad Shahid, deceased, left home on 1.1.2009 to attend *Urs* of Sufi Barkat Ali; he was accompanied by some unknown friends and confirmed his presence at the mausoleum same day at 6:00 p.m.; it was during the same night that an unknown caller from his cell phone demanded ransom of Rs.50,00,000/-; he spoke himself to the family to confirm his custody; the captor set deadline for the payment of ransom as 6.1.2009. It is complainant's claim that he presented application, Ex-PC, on 2.1.2009. The captor remained in communication and the complainant, somehow, arranged a sum of Rs.30,00,000/- and as directed, went to Khanewal bypass in a car alongside Zulfiqar Ali and Muhammad Rafiq, PWs on 6.1.2009; they were diverted by the caller towards Chowk Kumharanwala near Jinnah Park to drop the amount at the designated point where, according to the witnesses, a person, supporting a beard with a girl carrying a kid took the amount; after a short while, the complainant again received a call to reach Khanewal Railway Crossing to receive the abductee, however, both of them vanished without releasing him. On 10.1.2009, from deceased's account, a cash of Rs.14,000/- was withdrawn from an ATM and it was subsequent thereto on 18.1.2009, the complainant once again received a call from the accused to pay Rs.2,50,000/- which he again paid to them near Sahiwal bypass. Both the appellants were arrested by Muhammad Rasheed Baig, SI, PW-13 and it is pursuant to a disclosure that they led to the recovery of a dead body on 29.1.2009, identified as that of the deceased; autopsy report suggested death by asphyxia. The appellants got recovered a sum of Rs.24,02,610/-, received by them as ransom as well as a *kassi* and pieces of string; they were put to a test identification parade before Muhammad Sarwar and Muhammad Rafiq, PWs, who failed to identify the appellants and seemingly for this reason they were not produced before

the Court, however, Zulfiqar Ali, PW-11, Muhammad Asif, PW-12 and Muhammad Imran, PW-15 identified the appellants. Muhammad Yaqoob, father of Muhammad Zubair, appellant, Manzoor Ahmad, father of Mst. Kalsoom, appellant and Imran @ Mani, her brother-in-law were arrayed as co-accused; they are still away from law.

3. Recovery of considerable amount accompanied by disclosure leading to the dead body from a premises statedly occupied by the appellants and the account furnished by the witnesses, supported by photo, Ex.P-5, generated by CCTV camera of an ATM, at first sight, are formidable pieces of evidence inexorably pointing towards the appellants, however, in the totality of circumstances, on a closer scrutiny, there are various intriguing aspects of the case, inescapably reflecting upon its fate. The very genesis of the case is suspect, as according to Muhammad Asif, he presented application, Ex.PC on 2.1.2009 whereas according to Sajjad Ahmad, ASI, PW-5, it was received on 7.1.2009 at 1:45 a.m. and it is so confirmed not only by an endorsement but also copy of First Information Report; it sans all the details, the complainant subsequently related in the witness box; prosecution has no explanation to reconcile the dichotomy. The manner in which the complainant, statedly, followed the appellants to pay ransom is far from being confidence inspiring; there does not appear any earthly reason as to why Muhammad Zubair, appellant would take his wife and minor son with him to accomplish a task that he could have singularly achieved; more surprising is his audacity to expose himself to the witnesses, particularly when he had planned to do away with the abductee. Subsequent demand of ransom and complainant's compliance therewith is yet another aspect that cannot be taken without a pinch of salt; otherwise conducting themselves surreptitiously, the appellants are not expected to be so reckless in execution of their plan. Test identification parade does not advance prosecution's case as well; two from amongst the witnesses failed to pick the appellants in test identification parade; both of them have been withheld. The entire exercise turns out as self destructive inasmuch as one set of witnesses cannot be

relied upon without excluding the other from consideration and *vice versa*. Photograph Ex.P-5, purportedly generated by CCTV camera of an ATM is entirely beside the mark for a variety of reasons; ATM card was never recovered; no one from the bank appeared to establish nexus between the deceased and the ATM card allegedly used by the appellant; there is no data to confirm the transaction. Ex.P-5 is a photograph simpliciter. Appellants' arrest on 29.1.2009, disclosures made by them and recovery of dead body pursuant thereto are the events coming about in a mind boggling quick succession. Rent deed produced by the prosecution as Ex.PJ on the face of it appears to be a fabricated instrument and as such does not constitute positive proof of appellants' occupancy of the premises. On the whole, prosecution case is fraught with doubts, deducible from the stated positions and thus it would be unsafe to maintain the convictions. Criminal Appeals are allowed, impugned judgment is set aside. The appellants are acquitted of the charge and shall be released forthwith, if not required in any other case.

JUDGE

JUDGE

JUDGE

Lahore, the1st July, 2019

Not approved for reporting

Ghulam Raza/*