

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

Mr. Justice Manzoor Ahmad Malik
Mr. Justice Syed Mansoor Ali Shah
Mr. Justice Qazi Muhammad Amin Ahmed

Criminal Appeal No.8-P & 9-P/2017

(On appeal from the judgment dated 30.04.2015 passed by the Peshawar High Court, Peshawar & Abbottabad Bench in Criminal Appeals No.440-P & 458-P of 2013 respectively).

Fazal Subhan

(In CrI.A.8-P/2017)

Rehmat Ullah

(In CrI.A.9-P/2017)

...Appellant(s)

VERSUS

The State

(In CrI.A.8-P/2017)

Abdul Haseeb and another

(In CrI.A.9-P/2017)

...Respondent(s)

For the Appellant(s)
(in both cases)

: Malik Haroon Iqbal, ASC

For the Respondent(s)
(in both cases)

: Mr. Mujahid Ali Khan,
Additional Advocate General,
Khyber Pakhtunkhwa

Date of Hearing

: 02.05.2019

ORDER

Qazi Muhammad Amin Ahmed, J.- Criminal Appeal No.8-P/2017 and Criminal Appeal No.9-P/2017, filed by Fazal Subhan and Rehmat Ullah, appellants herein, respectively, arisen out of judgment dated 1.8.2013 by Judge, Anti Terrorism Court, Peshawar subsequently affirmed by the learned Peshawar High Court, bear a common thread; these are being decided through this single judgment.

2. The appellants along with co-accused, Shah Jee, were tried for abducting Abdul Haseeb, PW to extract ransom with co-accused Amjad being away from law. They were convicted under Section 365-A of Pakistan Penal Code, 1898 read with Section 7(e) of the Anti Terrorism Act, 1997 and sentenced to imprisonment for

life. For a charge under Section 17(3) of the Offences against Property (Enforcement of Hudood) Ordinance, 1979, they were additionally sentenced to 10 years S.I. Sentences to run concurrently with benefit under Section 382-B of Code of Criminal Procedure, 1908. Appeals filed by the convicts met with no better fate on 30.4.2015 and it is in this backdrop, leave has been granted to re-appraise the entire evidence with a view to ensure safe administration of criminal justice.

3. According to the complainant, he needed a premises on rent and was induced by Shah Jee, accused to visit the one; he was taken to a house wherein four accomplices, subdued him; he was enchained and deprived of cell phone handset, cash Rs.10,000/- and registration book of his cab, it is alleged that the captors demanded rupees five million from his brother, Luqman. The abductee somehow managed his escape to appear before the police in person.

4. Learned counsel for the appellants contends that there was no occasion for appellants' conviction in the absence of confidence inspiring evidence to support the charge and thus the learned trial Court, as well as, the High Court ran into error in returning guilty verdicts. Contrarily, the learned Law Officer has defended the impugned judgments.

5. Upon perusal of evidence, we have found the very genesis of the prosecution case as being fraught with doubts. Various pieces of evidence collected by the Investigating Officer do not satisfactorily connect the appellants with the commission of crime. Memo of pointing out of place of occurrence cannot be equated with disclosure within the contemplation Article 40 of the Qanoon-e-Shahadat Order, 1984. How the abductee made his escape good despite being held by no less than four persons so as to appear without let or hindrance before the police is quite intriguing. Demand of ransom from abductee's brother Luqman is a verbal assertion alone with no forensic proof regarding conversation on the cell phone. Vehicle was not recovered from any of the accused and the person who produced it is not in the array. On the whole, we have found the prosecution case far from

being confidence inspiring and thus consider it unsafe to maintain the conviction. Criminal Appeals No.8-P and 9-P/2017 are allowed, impugned judgments are set aside and the appellants shall be set at liberty, if not required in any other case.

JUDGE

JUDGE

JUDGE

Peshawar, the
2nd of May, 2019
Ghulam Raza/*