

IN THE HIGH COURT OF SINDH, KARACHI

Spl. Criminal A.T.A. No.215 of 2019.
Spl. Criminal A.T.A. No.216 of 2019.

Present:

*Mr. Justice Mohammad Karim Khan Agha
Mr. Justice Khadim Hussain Tunio,*

Appellant:	Aijaz @ Vicky S/o. Muhammad Saleem through Syed Kashif Ali, Advocate.
Respondent:	The State through Mr. Muhammad Iqbal Awan, Additional Prosecutor General.
Date of hearing:	08.02.2022.
Date of Announcement:	15.02.2022.

JUDGMENT

MOHAMMAD KARIM KHAN AGHA, J:- The appellant Aijaz @ Vicky S/o. Muhammad Saleem has preferred these appeals against the judgment dated 23.07.2019 passed by Learned Anti-Terrorism Court No.VI, Karachi in Special Case No.81 of 2009 arising out of Crime No.919/2009 u/s. 365-A/109/ 34 PPC read with section 7 of ATA, 1997, and in Special Case No.85 of 2009 arising out of Crime No.100/2009 u/s. 13-D of Arms Ordinance registered at Police Station Saeedabad (AVCC), Karachi whereby the appellant was convicted and sentenced to imprisonment for life along with forfeiture of his property for offence under section 6(1)(b), (2)(e) and (2)(n) of 7 ATA 1997 r/w section 365-A PPC and also R.I. for 7 years along with fine of Rs.10,000/- under Section 13-D of Arms Ordinance. The benefit of section 382-B Cr.P.C. was also extended to the appellant.

2. The brief facts of the prosecution case are that on 13.11.2009 at 1320 hours the complainant Nasir Mahmood S/o. Mohammad Ashraf got registered FIR with PS Korangi Industrial Area about an incident that took place on 29.10.2009 and stated therein that one Farhan Ali S/o. Chaman

was kidnapped by the accused Abdul Ghaffar Ansari, Rana Khalid Mahmood and Aijaz @ Vicky from Chamra Chowrangi for ransom. They demanded ransom of Rs.20 lacs from the complainant on his mobile cell No.0321-2094643 from mobile No.03332132455 and on 30.10.2009 after receiving ransom amount of Rs.2,50,000/- from Chaman at Paracha Chowrangi Sher Shah they released the abductee. On 13.11.2009 at 0200 hours, Inspector Moenuddin of AVCC along with police party on spy information intercepted a blue colour car No.AMR-582 across Rubi Cinema, Saeedabad and he arrested accused Abdul Ghaffar Ansari, Rana Khalid Mahmood and Aijaz @ Vicky. From personal search of accused Aijaz @ Vicky one repeater 12 bore with three cartridges an amount of Rs.600/- and one mobile phone insert with Zone SIM was recovered. From personal search accused Abdul Ghaffar Ansari, PI Moenuddin recovered one unlicensed 12 Bore Repeater No.A4463FAC loaded with 3 live cartridges and from personal search of accused Rana Khalid Mahmood alias Rana, PI Moenuddin recovered an unlicensed 12 Bore Repeater No.A-4284FAC, loaded with 4 cartridges and thereafter, PI Moenuddin registered two separate FIRs against them.

3. After registration of the FIRs and after completion of usual investigation I.O. submitted charge sheet against the accused person.

4. The prosecution in order to prove its case examined 10 witnesses and exhibited various documents and other items. The statement of accused was recorded under Section 342 Cr.P.C in which he denied the allegations leveled against him. He did not give evidence on oath or call any DW in support of his defence case.

5. After hearing the parties and appreciating the evidence on record the trial court convicted the appellant and sentenced him as stated above, hence, the appellant has filed these appeals against conviction.

6. The facts of the case as well as evidence produced before the trial court find an elaborate mention in the impugned judgment dated 23.07.2019 passed by the trial court and, therefore, the same may not be reproduced here so as to avoid duplication and unnecessary repetition.

7. Learned counsel for the appellant after reading out the evidence stated that under instructions he did not press the appeal on merits but only sought that the ATA sections of the convictions should be set aside as based on the particular facts and circumstances of the case this was a case which did not attract the provisions of the ATA. In support of his contentions he placed reliance on the case of **Ghulam Hussain V State** (PLD 2020 SC 61).

8. Learned APG contended that the prosecution had proved its case against the appellant beyond a reasonable doubt however based on the particular facts and circumstances of the case and guided by the case of **Ghulam Hussain** (Supra) he conceded that the ATA was not attracted in this case.

9. We have gone through the evidence and find that the prosecution has proved its case against the appellant beyond a reasonable doubt based on reliable, trust worthy and confidence inspiring witness evidence including that of the abductor who identified the appellant as one of the persons involved in his kidnapping for ransom; that a part of the ransom was paid and the SIM recovered from the appellant linked him to the ransom calls; that he was arrested red handed by the police with an unlicensed weapon who had no enmity with the appellant and no reason to falsely implicate him in a false case and that even the appellants co-accused Rana Khalid Mahmood who had the same role as the appellant had his conviction maintained up to the Supreme Court level and as such the convictions of the appellant are maintained subject to what is set out below.

10. We find however that based on the particular facts and circumstances of the case that the ATA is not attracted to this case. In the recent case of **Hadi Bux V State** (Criminal Appeal No.348 of 2020) dated 29.11.2021 which also concerned a case u/s 365 (A) PPC (kidnap for ransom) as the instant case the Supreme Court whilst hearing an appeal against conviction passed by an ATC and upheld by this court upheld the conviction under section 365 (A) PPC but acquitted the appellants under the ATA in the following terms at para's 2, 3 and 4 as set out hereunder in material part;

"2.....Both the courts below had rightly appraised and reappraised the entire evidence and found that prosecution had proved the case against the appellants and also concurrently concluded regarding the guilt of the appellants. We on our independent evaluation of the evidence available are not able to differ with the said conclusion so far offence under section 365-A PPC is concerned. **Consequently, this appeal to the extent of conviction under section 365-A PPC read with section 34 PPC is maintained and sentence of imprisonment for life and forfeiture of property to the extent of rupees fifty thousand each and in case of default to further undergo six months rigorous imprisonment with benefit of section 382-B, Cr.P.C., is maintained and the appeal to this extent is dismissed.**

3. However, we observe that there is nothing on record to prove that this occurrence has any nexus with terrorism nor any witness said so. In that eventuality, in view of a larger Bench judgment of this Court reported as *Ghulam Hussain v. the State* (PLD 2020 SC 61), the conviction under section 7(e) of the Act 1997 is not sustainable. Consequently, the said conviction and sentence under section 7(e) of the Act, 1997 is set aside and the appellants are acquitted only to the extent of 7(e) of the Act 1997. However, as already stated their conviction and sentence under section 365-A PPC is maintained.

4. With the above modification in the conviction and sentence, this appeal is **partly allowed**".(bold added)

11. As such the ATA convictions are set aside and the appellant stands convicted and sentenced as under:

- (a) Convicted u/s 365 A PPC and sentenced to imprisonment for life and forfeiture of his property and
- (b) Convicted u/s 13 D Arms Ordinance and sentenced to 7 years RI and fine of RS10,000 and in default of payment of fine he shall suffer RI for a further 6 months.

The appellant shall have the benefit of S.382 (B) Cr.PC and any remissions applicable to him under the law. The sentences shall run concurrently.

12. The appeals are dismissed save as modified in terms of convictions and sentences.