

IN THE HIGH COURT OF SINDH AT KARACHI

Special Criminal Anti-Terrorism Acquittal Appeal No.41 of 2014
Special Criminal Anti-Terrorism Jail Appeal No.58 of 2014
Special Criminal Anti-Terrorism Jail Appeal No.59 of 2014
Special Criminal Anti-Terrorism Jail Appeal No.60 of 2014
Special Criminal Anti-Terrorism Jail Appeal No.61 of 2014

CONFIRMATION CASE NO.07 OF 2017

Present:

Mr. Justice Naimatullah Phulpoto
Mr. Justice Mohammad Karim Khan Agha

Appellant: Tariq Hameed Paracha through Mr. Habib Ahmed, Advocate in Spl. Cr. A.T Acquittal Appeal No.41/2014

Respondent No.1 Danish Ahmed through Mr. Irshad Ahmed Jatoi, Advocate

Appellants Muhammad Murad Mateen, Adeel Ahmed, Muhammad Aqeel and Danish Ahmed through Mr. Irshad Ahmed Jatoi, Advocate

The State Through Mr. Muhammad Iqbal Awan, DPG.

Dates of hearings: 01.11.2018, 08.11.2018 and 20.11.2018

Date of announcement: 04.12.2018

JUDGMENT

Mohammad Karim Khan Agha, J.- Appellants Muhammad Murad Mateen son of Muhammad Mateen, Adeel Ahmed son of Jameel Ahmed, Muhammad Aqeel son of Jameel Ahmed and Danish Ahmed son of Ahmed Khan have preferred these appeals against the impugned judgment dated 10.05.2014 passed by the learned Special Judge Anti-Terrorism Court No.II, Karachi in Special Case No.B-71/2012, F.I.R. No.86/2012 u/s. 365-A/302/34 PPC r/w section 7 of ATA, 1997, PS North Nazimabad, Karachi, FIR No.27/2012 u/s. 13-(d) Arms Ordinance, PS (AVCC) Karachi, FIR No.28/2012 u/s. 13-(d) Arms Ordinance, PS (AVCC) Karachi whereby the appellants have been convicted and sentenced as under:-

- (i) The accused Muhammad Murad Mateen son of Muhammad Mateen, Adeel Ahmed son of Jameel Ahmed, Muhammad Aqeel son of Jameel Ahmed are convicted under Section 7(a) & (e) of ATA, 1997 on two counts of kidnapping for ransom and murder u/s.365-A and 302 of PPC. They are to be hanged by neck till death subject to confirmation by the Hon'ble High Court of Sindh, Karachi, with fine of Rs.2-lacs each, to be paid to the legal heirs of Uzeyfa as compensation. As to the recovery of unlicensed pistol from accused Muhammad Murad and Adeel Ahmed is proved. Accused Muhammad Murad is convicted R.I. for 07 years and accused Adeel is also convicted R.I. for 07 years.
- (ii) The accused Danish Ahmed son of Ahmed Khan is convicted Rigorous Imprisonment for 10 years under Section 7(e), sub-Section (2) of ATA, 1997 as amended by Gazette Notification dated 26th of March, 2013 Act No.XX of 2013 Anti Terrorism Act, 1997. He is given benefit of Section 382 (B) Cr.P.C. He is also fined with Rs.20000/- to be paid to legal heirs of Uzeyfa in failure to do so to undergo Rigorous Imprisonment for 06 months more.

2. The facts of the case as per FIR No.86/2012 were that the complainant lives with his family in House No.A-499 Block-H, North Nazimabad, Karachi and does private business alongwith his brother Aamir. On 27.01.2012 at about 7:15 pm when the complainant reached home his brother and sister-in-law (bhabhi) told him that his nephew Uzeyfa Aamir Paracha aged 11 years had gone out of the house at about 5 pm but has not returned home. Upon which he called the family members and started looking and searching for the missing Uzeyfa amongst the relatives and friends but there was no clue of his whereabouts. In the evening at about 7:50 pm the complainant went to Hyderi Market Police post and by entry No.18 registered the missing report of his nephew. The same night his Bhabhi had received a phone call on her mobile phone from phone No.021-38231443 demanding Rs.15-Lacs as ransom for the release of Uzeyfa. Since then they had contacted CPLC and thereafter lodged FIR. His case was against the unknown accused person for kidnapping his nephew Uzeyfa Aamir Paracha for ransom.

3. The investigation was referred to AVCC Garden for investigation which was given to I.O. Tahir Naseer. During investigation he found out that maternal uncle Muhammad Ismail of abductee Uzeyfa had given Rs.6-lacs ransom amount on 07.02.2012 within the jurisdiction of PS Alfalah to 3 accused persons. He had prepared the memo of place of giving ransom amount and was in constant touch with CPLC people as well as the complainant. The accused persons were demanding more

ransom amount from Muhammad Ismail the maternal uncle of the kidnapped child Uzeyfa on mobile No.0333-3085478 which was in the use of mother of Uzeyfa. Muhammad Ismail dealt with the ransom negotiations with the accused from the mobile number of his sister. As the accused could not be arrested therefore report u/s 168 Cr.PC under A class was approved by the Court on 15.03.2012. On 17.03.2012 ASI Iftikhar and members of CPLC had arrested two accused Muhammad Murad and Adeel who had come to take more ransom from Muhammed Ismail and at the time of their arrest from each of the accused person 30 bore pistol was recovered whereas from accused Murad the mobile phone Nokia from which SIM number 0323-2498124 was recovered and from this very SIM the accused had demanded ransom amount from Muhammad Ismail the maternal uncle of kidnappee Uzeyfa. A case u/s 13-(d) of Arms Ordinance was registered against the two accused persons. These two accused were interrogated and both of them admitted during investigation that they had kidnapped Uzeyfa Aamir Paracha and on 28.01.2012 and had killed him by suffocating him by putting a pillow over his face and had put the dead body in a suitcase and had thrown the dead body under the bushes in waste at a vacant plot in Ahsanabad double road Gulshan-e-Maymar. On their pointation the dead body of Uzeyfa Aamir and his shoes were recovered on 17.03.2012. The dead body of Uzeyfa was sent to Jinnah Hospital for postmortem whereafter it was handed over to his legal heirs. On 19.03.2012 at the pointation of accused Adeel, the memo of place of kidnapping and thereafter memo of place of murder was prepared. Arrested accused nominated Muhammad Aqeel and Danish Ahmed as being there accomplices and both these accused Muhammad Aqeel and Danish were arrested on 26.03.2012 and motorcycle No.KES-4744 used in the crime was taken into custody. On 29.03.2012 the identification parade was held before the 12th J.M Central, where Muhammad Ismail had identified the three accused Danish, Muhammad Murad and Muhammad Aqeel who had taken the ransom amount from him. After completing the investigation challan was submitted before the Court on 17.04.2012.

4. Thereafter charge was framed against the four accused namely Muhammad Murad, Adeel Ahmed, Muhammad Aqeel and Danish Ahmed on 19.07.2012 in which they pleaded not guilty and claimed trial of the case.

5. In order to prove its case the prosecution examined 11 PW's who exhibited various documents in support of the prosecution case where after the prosecution closed its side.

6. **PW-01** is SI Muhammad Razak at Ex.P/1, had produced FIR as Ex.P/2 and the entry No.61 by which he had entered FIR in the roznamcha as Ex.P/3. **PW-02** is J.M. Asghar Ali of District Central at Ex.P/4. He produced sealed envelop containing identification parade as Ex.P/5 and the identification parade itself as Ex.P/6. **PW-03** is Tariq Hameed Paracha at Ex.P/7, he produced entry No.18 through which he reported the missing of his paternal nephew at the PS as Ex.P/8. **PW-04** is Muhammad Ibrahim at Ex.P/9. He has produced memo of recovery of dead body of Uzeyfa as Ex.P/10, inquest report as Ex.P/11 and memo of inspection of dead body as Ex.P/12 and receiving of dead body of Uzeyfa as Ex.P/13. **PW-05** is Aamir Hameed at Ex.P/14 who is the father of the kidnapped Uzeyfa. **PW-06** is Muhammad Ismail Paracha at Ex.P/15 who paid the initial ransom and identified 3 of the accused at the identification parade. He has produced the memo of place of abduction as Ex.P/16, memo of payment of ransom as Ex.P/17, memo of place of kidnapping and place of murder and recovery by which Uzeyfa was murdered as Ex.P/18, he had produced notices given to him for identification parade of the accused persons as Ex.P/19. **PW-07** is ASI Rizwan Akram at Ex.P/20, he has produced memo of arrest of two accused Murad and Adeel as Ex.P/21, he had produced Ex.P/22 memo of arrest of accused Aqeel and Danish. **PW-08** is ASI Iftikhar Hussain at Ex.P/23. He produced departure entry No.60 as Ex.P/24 produced FIR No.27/2012 as Ex.P/25 against accused Muhammad Murad and FIR No.28/2012 against accused Adeel Jameel as Ex.P/26, he has produced his arrival entry No.66 at AVCC as Ex.P/27. **PW-09** is SIP Ashraf Ali at Ex.P/28, he produced memo of receiving call detail report as Ex. P/29 and the call detail itself as Ex.P/30. **PW-10** is Jagdesh Kumar medicolegal Officer at Ex.P/31 he has produced postmortem report as Ex.P/32 of Uzeyfa and he produced final medical opinion as Ex.P/33. He also produced the application given to him for conducting postmortem as Ex.P/34. **PW-11** is SIP/IO Tahir Naseer at Ex.P/35. He has produced the order for conducting investigation as Ex.P/36. He has produced departure entry from AVCC as Ex.P/37. He has produced his arrival entry as Ex.P/38. He produced departure entry No.96 from AVCC for recovery of dead body as Ex.P/39

and arrival entry which was entered by ASI Rasheed when he brought the two accused persons back at AVCC as is Ex.P/40. He has produced his arrival entry No.16 at AVCC as Ex.P/41. He has produced departure entry No.58 which he produced as Ex.P/42 when he went to Flat No.603 Snober Heights, he has produced arrival entry No.64 at AVCC as Ex.P/43, he has produced his entry No.44 by which he departed from AVCC as Ex.P/44 alongwith accused Adeel. He has produced arrival entry No.46 of the arrest of the two accused Danish and Aqeel at AVCC as Ex.P/45. He produced the order of JM-12 as Ex.P/46. He has produced the notices given to 3 accused Aqeel, Danish and Murad as Ex.P/47, Ex.P/48 and Ex.P/49 respectively for their identification parade. He had deposited the last worn clothes to the chemical examiner which he produced as Ex.P/50. He had produced the application given to the Court as Ex.P/51 seeking more time to submit challan. He had filed an application for call detail report which he produced as Ex.P/52 to CPLC. He has produced departure entry No.17 as Ex.P/53 and his arrival entry at Ex.P/54. He had produced report of chemical examiner as Ex.P/55. Prosecution closed its side as Ex.P/56.

7. Thereafter, accused persons recorded their statements under S.342 Cr.PC whereby they claimed their false implication in the case. However, statement on oath of accused Danish Ahmed was recorded at Ex.D/1. He has produced the attendance of Mamji Hospital at Ex.D/2. The statement of accused Muhammad Murad recorded on oath as DW-2 at Ex.D/3. Statement of accused Muhammad Aqeel was recorded on oath as DW-3 at Ex.D/7 as well as statement of Adeel Ahmed on oath was recorded as DW-4 at Ex.D/8. Accused Adeel Ahmed also produced one witness namely Amjad Ahtesham whose statement was recorded as DW-5 at Ex.D/10.

8. Learned Judge, Anti-Terrorism Court-II, Karachi, after hearing the learned counsel for the parties and assessment of evidence available on record, by the impugned judgment convicted and sentenced the appellants as stated above, hence these appeals have been separately filed by each of the accused. By this common judgment we intend to decide the same.

9. At this juncture it is worth mentioning that Tariq Hameed Paracha the complainant in the FIR under which the appellants were convicted has filed an appeal against acquittal of the appellant Danish under S.7 (a) ATA 1997 read with S.302 PPC and has also sought the enhancement of Danish's sentence from 10 years RI to the death penalty like the other appellants. This judgment shall also decide this appeal against conviction and enhancement of sentence in the case of Danish.

10. The facts of the case as well as evidence produced before the trial Court find an elaborate mention in the impugned judgment, therefore, the same are not reproduced here so as to avoid duplication and unnecessary repetition although we shall discuss some of the key aspects of the same in deciding these appeals.

11. In a nutshell the case of the prosecution is that on 27.01.2012 Amir Hameed (PW 5) the father of 11 year old Uzeyfa came home at about 6.15pm and was told by his wife that Uzeyfa had gone out to play but had not returned home. Whereupon he went searching for his son along with some relatives but without success. His elder brother Tariq Hameed (PW 3) and the complainant) then went to the PS and lodged the missing report of Uzeyfa on the same day. At about 10.30pm on the same day the wife of Tariq Hammed received a call on her mobile 0333 3085478 which was received by Tariq's brother in law Muhammed Ismail (PW6) who was informed that Uzeyfa had been kidnapped by the accused who had demanded 15 lacs as ransom for his safe return. After negotiations between Ismail and the kidnapers a final ransom of RS 6 lacs was agreed and on 07-02-2012 Ismail delivered the ransom amount of RS 6 lacs at a railway track near Malir Halt where the kidnappers had told him to come (later identified by Ismail as accused Aqeel, Murad and Danish) who told him Uzeyfa would be released. Uzeyfa was not released and the accused started to demand more ransom where upon Tariq Hameed lodged the FIR at PS Hydri on 16-02-2012. On 17-02-2012 IO Tahir Nasir (PW 11) started to investigate the case along with the assistance of the CPLC who were assisting in the ransom negotiations. He received information that the accused had arranged to receive further ransom. A police party lead by ASI Iftikhar Hussain (PW 8) along with representatives of CPLC lay in wait near Ziauddin Hospital chowrangi and when the two accused Murad and Adeel reached the appointed place to collect the further ransom they

were arrested and an unlicensed pistol was recovered from each of them. From Murad a mobile phone and SIM No.0323 2498124 was also recovered. On interrogation before the police Murad and Adeel confessed that they had kidnapped Uzeyfa for ransom on 27-01-2012 and had also received 6 lacs in ransom money. During further interrogation before IO Tahir, Murad and Adeel confessed that they had kidnapped Uzeyfa and killed him. Murad and Adeel then took IO Tahir Nasir to the place where they had hidden the dead body of Uzeyfa after killing him. PW 4 Muhammed Ibrahim who was an uncle of Uzeyfa identified Uzeyfa's dead body and his post mortem was carried out by MLO Jagdesh Kumar (PW 10) who found the cause of death to be suffocation but also found that the dead boy had been sodomised (for which the accused have not been charged). During further interrogation by IO Tahir Nasir the accused Murad and Adeel disclosed their accomplices as Aqeel and Danish. Adeel also took IO Tahir Nasir to the place from where Uzeyfa was kidnapped from, to flat 603 Snober heights where Uzeyfa was held hostage and was murdered and the pillow which he, Murad and Aqeel had used to suffocate him to death before removing his dead body in a suit case. At 26.03.12 at 2am IO Tahir arrested the accomplices Aqeel and Danesh on the pointation of Adeel (who was Aqueel's brother) who confessed their guilt in the crime. Aqeel, Murad and Danesh were identified at an identification parade carried out by JM Asghar Ali by Muhammed Ismail as the persons who he gave 6 lacs to and thus the prosecution had proved through its PW's, documentary evidence including CDR records that all the accused were guilty of the offense of kidnapping for ransom and murder of Uzeyfa.

12. In a nutshell the plea of all the accused was that they were innocent and had been falsely implicated in the case. In particular Danish claimed that he was working at Mamji hospital on the date that the 6 lac ransom was allegedly paid by him and two other of the co-accused to Ismail. Brothers Adeel and Aqeel claimed that they used to work in partnership with Ismail and that Ismail was now attempting to fix them with the help of the police because they refused to leave the partnership on Ismail's demand.

13. This court issued show cause notice to accused Danish as to why his sentence of 10 years RI may not be enhanced. Danish furnished his reply to the same.

14. Learned advocate for appellants contended that there was a delay of about 20 days in registering the FIR which indicated that the whole story had been concocted; that when the first ransom call was made it was from a landline but no CDR was collected in respect of this telephone number and as such the accused could not be linked to it; that it was 03am in the morning of 07-02-2012 when the ransom of 6 lacs was allegedly paid by PW Ismail to the accused at which time it was dark and as such Ismail would not have been able to see or identify any of the accused; that no ransom amount was recovered from any of the accused; that with regard to accused Murad and Adeel their confession to the crime of kidnapping and murder of Uzayfa could not be relied upon as it was an extrajudicial confession before the police and had no value in the eyes of the law; likewise Murad and Adeel allegedly taking the police to the dead body of Uzeyfa could not be safely relied upon as there were material contradictions in the witnesses who were present when the body was recovered as to whether it was simply in the bushes, covered by leaves or had to be dug up and even otherwise the body had been found on their joint pointation and as such could not be relied upon; that the identification of the body could also not be safely relied upon as the body was decomposed and it was not possible to recognize Uzeyfa; that the identification parade where the accused were picked out by PW Ismail could not be relied upon as PW Ismail had not seen any of the kidnappers in the dark when he paid over the ransom and as such he could not identify any of them; that even otherwise the identity parade was defective as all the accused were part of the same parade rather than independent parades being conducted for each accused and the dummies in the identification parade were not as per the relevant rules for carrying out identification parades; that all PW's were related and as such could not be safely relied upon; that accused Danish and Aqeel had been dragged into the case through the value less extra judicial confessions of the co-accused Murad and Adeel made before the police; that with regard to accused Danish he submitted that the only evidence against him was that he had been picked out as one of the kidnappers in the identification parade by PW Ismail and since this identification parade as mentioned

earlier was defective it had no legal value and as such all the accused should be acquitted. Lastly he submitted that if on merit the convictions against Murad, Adeel and Aqeel were upheld by this court then he would be satisfied if their sentences were reduced from the death penalty to life imprisonment. In support of his contentions he placed reliance on **Hakeem and others v. The State** (2017 SCMR 1546), **Azeem Khan and another v. Mujahid Khan and others** (2016 SCMR 274), **Muhammad Tufail v. The State** (2013 SCMR 768), **Mst. Mehboob Bibi and others v. The State** (2017 SCMR 1835), **Waqar Zaheer v. The State** (PLD 1991 Supreme Court 447), **Muhammad Asif v. The State** (2017 SCMR 486) and unreported judgment of D.B. of this Court dated 13.11.2018 in the case of **Muhammad Bilal and others v. The State**.

15. Mr. Muhammad Iqbal Awan, Deputy Prosecutor General, contended that there were no legal infirmities in the impugned judgment and as such the convictions and sentences should be upheld with respect to all the accused; that with respect to Murad and Adeel they were arrested coming to collect the further ransom from PW Ismail whereupon they immediately admitted their guilt before the police and took the police to where the dead body of Uzeyfa was and that such evidence was admissible based on Article 40 of the Qaunoon-e-Shahdat Order 1984. He conceded that there may have been some contradictions about how the body was covered but contended that these were only minor in nature and were not fatal to the prosecutions case; that the body of Uzeyfa was not completely decomposed and PW 4 Muhammed Ibrahim who was the uncle of Uzeyfa was able to recognize him from a part of his face and his clothes and chapples; that the medical report had found that Uzeyfa had died an unnatural death through suffocation which tied in with Adeel's extra judicial confession that the accused had murdered Uzeyfa by suffocating him with a pillow case; that Adeel took them to where they kidnapped Uzeyfa; the flat in snober heights where he was held and killed by the accused; where the recovery of the pillow used to suffocate Uzeyfa was made and the suit case used to carry Uzeyfa's body to the waste ground where he was dumped; that the accused were linked to the kidnapping by the SIM recovered from Murad which had been used to make contact with Ismail as shown through the CDR data; that Danish had clearly been identified by Ismail when he dropped off the 6 lacs first ransom and that all the accused had been identified by Ismail at the

identification parade which had been conducted in accordance with the law; that Adeel was the real brother of Aqeel who was working with the mother of Uzafya at her boutique and hence they knew that she had money and as such the impugned judgment should be upheld and the convictions and sentences against all the accused should be maintained because the prosecution had proved its case against each of the accused beyond a reasonable doubt. In support of his contentions he placed reliance on **Muhammad Anwar alias Lalu v. The State** (2003 YLR 300), **Aurangzeb v. The State** (2010 P. Cr.LJ 1281), **Ali Imran v. The State** (PLD 2006 Supreme Court 87), **Sh. Muhammad Amjad v. The State** (PLD 2003 Supreme Court 704), **Ahmed Hussain alias AMI and others v. The State** (PLD 2008 Supreme Court 110), **Hamid Mahmood and another v. The State** (2013 SCMR 1314) and **Nazir Shehzad and another v. The State** (2009 SCMR 1440).

16. Learned counsel for the Respondent/complainant contended that (in respect of Danish) that u/s 7(e) and sub section (2) of the ATA the appellant Danish as a matter of law could only have been sentenced to death or life imprisonment rather than for 10 years and as such Danish should be awarded the death penalty like the other co-accused especially as this was a very heinous crime involving the kidnapping and murder of a 11 year old boy

17. We have heard the learned counsel for the parties, gone through the entire evidence which has been read out by the appellants counsel, the impugned judgment with their able assistance and have considered the relevant law.

General

18. Before embarking on our appraisal of the evidence we thought it useful to set out how we regard kidnapping for ransom cases and those involved in the same. In our view kidnapping for ransom cases can be compared for instance with a bank robbery. For a bank robbery to be successful a number of persons may have different roles. For example, A may act as a look out, B may go into the bank and threaten the customers and bank staff, C may carry the money out of the bank and D may drive the getaway car for the others but in such a case importantly whatever the role of each person they all have the same objective i.e. to rob the bank

and without each of them playing their own independent role the object of robbing the bank could not be achieved and thus they are all liable for the same offense of robbery and the same punishment.

19. The same is the case for kidnapping for ransom. kidnapping for ransom these days is very often not a simple affair. For example, A does not simply kidnap B, take him to his home and calls B's father demanding a ransom on B's landline. Now a days kidnapping for ransom is very often carried out in a highly sophisticated and planned manner by highly organized gangs. For example, A may kidnap B, B is then handed to C, C then hands B to D at a new location, E makes the ransom call, F collects the ransom money, G hands over the ransom money to the leader of the gang. Disposable phones may be used, different vehicles and locations may be used to shift and detain the abductee and some or none of the gang members may not even know each other by face. One gang may even sell on the abductee to another gang in a different part of the country, but ultimately as with the example of the bank robbery mentioned above in such a case importantly whatever the role of each person they all have the same objective i.e to kidnap the abductee for ransom and without each of them playing their own independent role the object of kidnapping the abductee for ransom could not be achieved and thus they are all liable for the same offense of kidnapping for ransom and the same punishment.

20. In this respect reliance is placed on **Khwaja Hasanullah V The State** (1999 MLD 514) at P.524 where it was held as under;

"In cases of abduction for ransom, it is not necessary that all the culprits must have collectively done all the criminal acts together from the stage of abduction till extortion of money. In such cases mostly, the work is divided. Abduction is done by a few of them, place of confinement is guarded by others and ransom is extorted by one or two of them. This is done under a planning. The object of all is to extort money. Therefore, the punishment could be the same irrespective of the role played by each of them." (bold added)

21. In considering this case of kidnapping for ransom we have been guided by the finding of the Supreme court in another kidnapping for ransom case being **State V Farman Hussain** (PLD 1995 SC1) which was

cited with approval by the Supreme court in the later case of **Noor Muhammed V State** (1999 SCMR P.2722) at P.2725 in the following terms;

"However, we may observe that the people are losing faith in the dispensation of criminal justice by the ordinary criminal Courts for the reason that they either acquit the accused persons on technical grounds or take lenient view in awarding sentence. It is high time that the Courts should realize that they owe duty to the legal heirs/relations of the victims and also to the society. Sentences awarded should be such which should act as a deterrent to the commission of offences. One of us (Ajmal Mian, C.J., as he then was) has highlighted this aspect, inter alia in the case of State through the Advocate-General Sindh, Karachi v. Farman Hussain and others (PLD 1995 SC 1), relevant portion whereof at page 19 reads as follows:-

*(3) It is matter of public knowledge that in Sindh, on account of kidnapping for ransom, commission of dacoities and other offences, the people are feeling insecure. The learned trial Court has dilated upon these aspects in detail. I am inclined to subscribe to the view found favour with it. **The approach of the Court in matters like the case in hand should be dynamic and if the Court is satisfied that the offence has been committed in the manner in which it has been alleged by the prosecution the technicalities should be overlooked without causing any miscarriage of justice".** (bold added)*

22. Before proceeding further in our view it would be of assistance if a brief overview of the Citizens Police Liaison Committee (CPLC) is given as throughout this case of kidnapping for ransom and murder members of the CPLC were involved from the initial reporting of the missing child, the arrest of accused Murad and Adeel, the recovery of the dead body of Azeyfa and the provision of CDR data. The CPLC is an independent body as established through Sindh Government Notification NO.VIII(3)SOJ/90 dated 15.04.1990 by invoking section 46 of the Police Act 1861 to make amendments in the Police Rules, 1934 as applicable whereby a new rule 1.21-A(1) was added to constitute the Citizens Police Liaison Committee and its functions.

23. The CPLC's mission is to eradicate crime by bridging the gap between citizens and law enforcement agencies. One of the many functions which the CPLC performs is assisting the complainants and the police in recovering persons who have been kidnapped for ransom

especially through there numerous data bases and their ability to trace owners of mobile phones through their SIMS and calls made to and from such phones which is often the key means of communications in kidnap for ransom cases. This is an independent body which although assisting the police the public has confidence in through its independence and up right approach.

Turning to the evidence and legal aspects of the case against each accused

24. Dealing with the issue of the alleged 20 day delay in lodging the FIR. Ordinarily such lengthy delay would be fatal to the prosecutions case. In this case Uzefya went missing on 27-01-2012 and after searching for him with his family his uncle Tariq Hameed Paracha (PW3) who is also the complainant on the same day at about 7.50pm lodged a missing report at Police Chowki Hyderi Market. **Thereafter** at about 10.30pm his Bhabi received a call on her mobile no.0333 3085478 which was received by Mohammed Ismail (PW 6) demanding 15 lacs for the return of his nephew. This was corroborated by PW 6 Mohammed Ismail who then negotiated with the kidnappers over a number of days when the ransom amount of RS 6 lacs was settled. On 07-02-2012 after a long train journey during which PW 6 Mohammed Ismail was in contact with the kidnappers using his wife's mobile 0333 3085478 he handed over the 6 lacs ransom to three of the accused near Malir Halt who told him that his nephew Uzeyfa would be released. Uzeyfa however was not released and Muhammed Ismail received a call two days later from the kidnapers demanding a further ransom for the return of Uzeyfa. During this period PW 6 Mohammed Ismail was in contact with the CPLC who had encouraged him to continue the negotiations so that they could try and trace the cell numbers of the kidnappers. Finally on 15-02-2012 at 11.45pm PW 6 Mohammed Ismail told the complainant to register the FIR which he did about 30 minutes later without knowing that PW 6 Mohammed Ismail had already paid 6 lacs to the kidnappers as PW 6 Ismail's attempts to recover Uzeyfa by paying the ransom had failed. In our view the early missing report indicates little chance of the FIR being concocted and the delay thereafter was caused by the family through PW 6 Muhammad Ismail trying to negotiate for the return of Uzeyfa for which they even paid a ransom. Under these circumstances where the family of the

abducted boy had tried with the assistance of the CPLC to secure the return of the abducted boy on their own and only once this failed registered the FIR in our view gives sufficient explanation as to why there was such along delay in registering the FIR and as such we do not find the 20 day delay in registering the FIR to be fatal to the prosecution's case especially as the missing report was lodged on the very first day which lessens the chance of any concoction and the fact that the CPLC were involved who are an independent body who often work with the police in kidnapping for ransom cases due to their expertise in tracing phone numbers and assisting the complainant in coping with the ordeal.

25. From the evidence on record even after the FIR was lodged the kidnappers were negotiating with PW 6 Muhammad Ismail to pay a further ransom and that the police and PW 6 Muhammad Ismail were still in contact with the CPLC in trying to track down the kidnappers through there mobile phone conversations. From the evidence PW 7 ASI Rizwan Akram along with PW 8 ASI Iftikhar on 17-03-2012 along with a police party and members of the CPLC went to Ziauddin Hospital Chowranghi to await for accused persons who had come to receive the additional ransom from PW 6 Muhammad Ismail who had been communicating with them where to go and meet him on his mobile phone. As a result of such communications Murad and Adeel arrived to collect the additional ransom at the appointed place and were accosted by the police party including PW 7 ASI Rizwan and PW 8 ASI Iftikhar who corroborate each other whereupon the accused disclosed their names as Murad and Adeel. From each of them an unlicensed pistol was recovered and from Murad a SIM bearing No. 0323 2498124 was also recovered. Since members of the CPLC were present on the spot we do not doubt these recoveries. Both Murad and Adeel confessed on the spot to the police to kidnapping Uzeyfa for ransom on 27-01-2012 and receiving 6 lacs in ransom money whereupon they were arrested in the kidnapping case and a further FIR was registered against each of them u/s 13 D of the Arms Ordinance. On further interrogation by IO Tahir Naseer PW 11 both accused informed him that after kidnapping Uzeyfa they had killed him and dumped his dead body.

26. These are clearly extra judicial confessions made before the police by Murad and Adeel. It is settled law that for an extrajudicial confession

to be relied upon extreme caution must be exercised and that it must be supported by some unimpeachable corroborative evidence in order to bring home a conviction. In the case of **Sajid Mumtaz V Basharat** (2006 SCMR 231) it was held as under at P.238 Para 17

"17. Last but not the least are the extra-judicial confessions of all the accused, out of whom those of Basharat and Mst. Naghma are joint one. This requires somewhat detailed discussion. This Court and its predecessor Court (Federal Court) have elaborately laid down the law regarding extra-judicial confessions staring from Ahmed v. The Crown PLD 1951 FC 103-107 up to the latest. Extra-judicial confession has always been taken with a pinch of salt. In Ahmed v. The Crown, it was observed that in this country (as a whole) extra-judicial confession must be received with utmost caution. Further, it was observed from time to time, that before acting upon a retracted extra-judicial confession, the Court must inquire into all material points and surrounding circumstances to "satisfy itself fully that the confession cannot but be true." As, an extra-judicial confession is not a direct evidence, it must be corroborated in material particulars before being made the basis of conviction.

18. It has been further held that the status of the person before whom the extra-judicial confession is made must be kept in view, that joint confession cannot be used against either of them and that it is always a weak type of evidence which can easily be procured whenever direct evidence is not available. Exercise of utmost care and caution has always been the rule prescribed by this Court.

19. It is but a natural curiosity to ask as to why a person of sound mind should at all confess. No doubt the phenomenon of confession is not altogether unknown but being a human conduct, it had to be visualized, appreciated and consequented upon purely in the background of a human conduct.

20. Why a person guilty of offence entailing capital punishment should at all confess. There could be a few motivating factors like; (i) to boast off, (ii) to ventilate the suffocating conscience and (iii) to seek help when actually trapped by investigation. Boasting off is very rare in such like heinous offences where fear dominates and is always done before an extreme confident as well as the one who shares close secrets. To make confession in order to give vent to ones pressure on mind and consciences is another aspect of the same psyche. One gives vent to ones feelings and one removes catharses only before a strong and close confident. In the instant case the position of the witnesses before whom extra-judicial confession is made is such that they are neither the close confident of the accused nor in any manner said to be sharing any habit or

association with the accused. Both the possibilities of boasting and ventilating in the circumstances are excluded from consideration.

21. *Another most important and natural purpose of making extra-judicial confession is to seek help from a third person. Help is sought firstly, when a person is sufficiently trapped and secondly, from one who is authoritative, socially or officially. The witnesses in hand before whom the confessions are said to have been made are of no social or official status. One Falak Sher (P.W.16) is a junior clerk in the office of the Deputy Commissioner, the other Noor Mohammad (PW.17) is a petty fodder-seller and the third Ahmed Taqi (PW.19) is a teacher in a private school. It is yet to be answered as to what help could they have rendered to the accused when involved in a heinous case of murder as well as abduction for ransom". (bold added)*

27. If these extra judicial confessions made before the police are to be believed then they must be supported by some unimpeachable corroborative evidence in order to bring home a conviction. The corroborative evidence in this case is that the accused Murad and Adeel led the police to where the murdered body of the child had been placed which was uncovered on their pointation. The place where the body was recovered from is undisputed although there are some contradictions as to how the body was covered. In our view these contradictions are of a minor nature and are not material and as such can be ignored especially as often at night different witnesses see matters from different angles, position, proximity and locations. In this respect reliance is placed on the case of **Zakir Khan & others v. The State** (1995 SCMR 1793).

28. Thus, the extra judicial confessions made before the police have been corroborated. In our view this piece of corroboration is important as logically speaking only the persons who kidnapped and or murdered Uzeyfa could have known where the body was hidden. The reason the accused Murad and Adeel made the extra judicial confessions in our view is similar to one of the reasons mentioned in **Sajid Mumtaz's case** (Supra) namely that the accused Murad and Adeel had been trapped. They had been caught red handed coming to collect the second ransom knowing well that they could be recognized from the collection of the first ransom and their calls traced through the SIM recovered from Murad whilst arranging the meeting point with Ismail and they may have hoped that the police officials could have helped them for instance by making them approvers.

29. According to learned counsel for the defense since the body of the abducted boy was made on the **joint pointation** of the accused this piece of evidence cannot be used against them. We disagree. In our view plurality of information received before discovery shall not necessarily take any of this information out of Article 40 of Qanun-e-Shahadat Order, 1984. Discovery of the dead body on the pointation of the accused is admissible under Article 40 of Qanun-e-Shahadat Order, 1984 which reads as under:-

"40. How much of information received from accused may be proved. When any fact is deposed to as discovered in consequence of information received from a person accused of any offence, in the custody of a police-officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved."

30. In the case of **Nazir Shehzad V The state** (2009 SCMR 1440) the Supreme Court held as follows:-

"7. Having rejected, above noted pieces of evidence, we have considered and scrutinized the remaining prosecution evidence, in depth. P.W. 13 stated in clear terms that, after arrest of the accused he firstly interrogated Samar Jan and later on, he interrogated Nazir Shehzad. Both the appellants, who were separately interrogated, informed the Investigating Officer about the place i.e. Rohi Nala in the area of Police Station Kahna, where they had thrown the dead body. This discovery based on the information furnished by the appellants led to the recovery of dead body from the Nullah. There is no doubt about it that prior to information furnished by the appellants the whereabouts of dead body were not known to anyone. The information furnished by the appellants to the Investigating Officer can be used against them under Article 40 of Qanun-e-Shahadat Order, 1984. As in a case of circumstantial evidence where there has been discovery as a result of confession made under Article 40 of the Qanun-e-Shahadat Order, 1984, it is expected to find the discovery of something which can be associated with the deceased."

The mere plurality of information received before discovery shall not necessarily take any of these information out of the section. In a suitable case it is possible to ascribe to more than one accused the information which leads to the discovery, so was held in the case Naresh Chandra Das and another v. Emperor AIR (29) 1942 Cal. 593.

It was held by this Court in the case of Sher Muhammad v. The State 1968 PCr.LJ 221 as follows:-

"In the absence of any explanation by the accused as to how he came to have knowledge of the dead body in the disused well, it may fairly be presumed that he was the person who had thrown the body in dismembered state into the well."

The medical evidence supports the prosecution case that Junaid Jabbar was done to death and his death was not natural. The statement of the doctor also reveals that the dead body was that of an 18 years old boy which was duly identified by P.W. 9 father of the deceased. P.W.9 himself stated that he identified the dead body of his son after seeing the shoes, belt, and trouser of the deceased. The statements of both these witnesses were not challenged on this point. Hence it could not be said that the dead body was not identified.

The motive behind the occurrence is proved through overwhelming evidence, P.W.9, P.W. 10, P.W. 12 and P.W.13 have stated that the deceased was abducted for ransom. It is in evidence that complainant and his wife received telephone calls demanding ransom. It is also in evidence that the accused issued threats to the complainant that in case ransom was not paid his son would be done to death. It is also in the evidence that the ransom amount was put in envelop and delivered to Nazir Shehzad on the demand of the accused. The ransom amount was subsequently recovered from appellant Nazir Shahzad after his arrest. No other motive is available on record of the case. There is no reason disbelieve the P.Ws on this regard. The shooter belonging to the deceased was being used by both the appellants and was recovered at the time of the arrest of the accused. Both the accused also led to various recoveries of articles which fully implicated them and fully corroborated the prosecution case."
(bold added)

31. In the peculiar circumstances of this case, mere plurality of information received before discovery would not necessarily take information out of Article 40 of the Qanun-e-Shahadat Order, 1984. The appellants had failed to furnish explanation as to how they had knowledge of dead body of Uzeyfa lying in the waste land and as such it can fairly be presumed that the appellants were the persons who had thrown the dead body of Uzeyfa onto the waste land.

32. With regard to the identification of the dead body this was done by PW 4 Muhammed Ibrahim the uncle of Uzeyfa who identified the dead body on the spot through his clothes, his sandals and one side of his face.

PW Dr.Jagesh Kumar who carried out the post mortem on Uzefya confirmed that the features were not easily identifiable which indicates to a certain extent some features like the side of the head were identifiable. Also Uzfaya's sandals and clothes helped in the identification. The condition of the body as described by the PW 10 Dr.Jagesh Kumar as being decomposed also fits in with the fact that the Uzafya was killed around 6 to 8 weeks before his discovery which according to accused Adeel was on 28-01-2012 being the day after he was kidnapped and the ransom demand was made. In the case of **Muhammed Abid V The State** (PLD SC 2018 813) whilst discussing the condition of a dead body after 10 days the Hon'ble Supreme Court cited Modi Medical Jurisprudence and Toxicology in the following terms at P.818

"According to Modi's Medical Jurisprudence and Toxicology", the process of putrefaction and its time frame is described as:

"In three to five days or more, the sutures of the skull, especially of children and young persons, are separated, the bones are loosened, and the liquefied brain runs out. The teeth become loose in their sockets and may fall of.

The next stage of putrefaction is known as colliquative putrefaction, which begins from five to ten days or more after death. During this stage, the walls of the abdomen becomes softened, and burst open, protruding the stomach and intestine. The thorax, especially in children burst. The diaphragm is pushed upwards.

If the putrefactive processes still go on, the issues become soft, loose and are converted into a thick, semi-fluid, black mass. They ultimately separate from the bones, and fall of. The bones are consequently exposed, and the orbits are empty. The cartilages and ligaments are similarly softened, and ultimately the bones are destroyed, so that after some years no trace of body is left. The time taken up these changes varies considerably with temperature and the medium in which the body lies."

33. Even other wise it does not appeal to reason, logic or commonsense that the accused could have taken the police to any other dead body apart from the one which they had murdered and had hidden.

34. PW 10 Dr.Jagesh Kumar found the cause of death of Ulayfa as being obstruction to respiratory passages from mouth and nose and neck leading to cardio aspiratory failure. Namely suffocation which ties in with Adeel's further extra judicial confession that Uzeyfa was suffocated by

using a pillow at the flat where he was taken which we shall come to later.

35. Another importance piece of evidence in our view is that PW 6 Ismail when he was delivering the 6 lacs ransom to the kidnappers as per his own evidence was unable to follow the precise instructions for delivery of the ransom since at the time when he was meant to throw the ransom down the train's toilet the toilet was being used by another passenger and as such alternative arrangements had to be made. During this whole period as per PW 6 Ismail's evidence he was in constant contact with the kidnappers on his sisters mobile phone in arranging the drop point for the ransom and then re arranging the meeting to hand over the ransom once the original plan to throw the ransom down the toilet of the moving train failed. This fact is corroborated by the CDR records which shows that his sisters phone which he was using 0333 3085478 was in constant contact on the day of the ransom drop from 2.31pm on 06-02-2012 to 3.08 am in the early hours of the next day being 07-02-2012 with mobile no.0315 8792482 which was located in Malir which was the area where the ransom amount was finally handed over to 3 of the accused which ties in with his evidence. The fact that the accused did not hide their faces is probably because they were not planning to meet Ismail in person but rather to collect the ransom from the railway tracks after it had been dropped through the traveling trains toilet but had to improvise when it was not possible to throw the ransom amount down the toilet of the train and thus had to arrange a meeting place in person.

36. Another piece of evidence linking Adeel, Murad and Danish to the offence of kidnapping for ransom is the evidence of PW 6 Muhammad Ismail who delivered the initial 6 lacs ransom to three kidnappers who he was able to see by virtue of the street lights as per his own evidence. In our view he did not know any of the kidnappers before the incident. He has denied such knowledge and we regard him as a truthful reliable and trustworthy witness who identified three of the accused in the identification parade conducted by PW 2 Asghar Ali JM posted at District Central. Namely, Adeel, Murad and Danish. Although there may have been some defects in the identification parade we are not inclined to reject it in its entirety but rather give lesser weight to it keeping in view the principles in **Noor Muhammed's** case (Supra) that by ignoring some technical defects it will not lead to a miscarriage of justice which we do

not believe will be the case in this case if all the pieces of evidence against the accused are tied together and considered in a holistic manner. Adeel, Murad and Danish were also recognized by PW 6 Ismail in court.

37. Again Murad and Adeel are linked to the kidnapping by the recovery of Murad's SIM No.03232498124 at the time of Murad and Adeel's arrest, in the presence of the CPLC, when they came to collect the additional ransom from PW 6 Ismail at Ziauddin Hospital chorangi. The CDR of Murad's SIM indicates that on the evening of his arrest when he had come to collect the additional ransom from PW 6 Ismail he was in contact with PW 6 Ismail on 0333 3085478 through PW 6 Ismail's sisters mobile which was in PW 6 Ismail's use as Murad and Adeel were guided to the proposed meeting point by PW 6 Ismail. The time prior to the arrest the calls were made in the North Nazimabad area which was near the place of arrest.

38. Accused Adeel also took PW 11 IO Tahir Nazeer to the place where Uzeyfa was abducted, the flat where he was kept prior to his murder and showed him the pillow which was used to suffocate Uzeyfa which was recovered and the suit case which was used to carry the dead body of Uzeyfa from the flat to the waste ground where he was dumped which was also recovered.

39. Adeel and Murad through their extra judicial confessions made before the police admitted that there accomplices in the kidnapping for ransom and murder were Adeel's brother Aqeel and Danish.

40. **Significantly** it was Aqeel the brother of Adeel in his own evidence in chief who admits that he knows the Piracha family because he used to work for Iram Piracha who owned a boutique. Thus, he would have known that Iram Piracha had money, knew her mobile number (which was used to make the ransom demands) and would have been aware that she had an 11 year old son who could be kidnapped for ransom who would have recognized Aqeel and hence the need to kill Uzeyfa even if the ransom in full was received. Aqeel is also implicated in the offense by his brother Adeel who states that his brother Aqeel was present in the flat when Uzeyfa was killed. Aqeel was also present when PW 6 handed over the initial 6 lacs ransom and was identified by PW 6 Ismail in the identification parade as well as the court. Aqeel himself also made an

extra judicial confession to the crime to the police and although this is of little legal value as mentioned earlier when it is considered in the holistic scheme of the crime and all the other evidence on record in our view it can be believed based on the other pieces of evidence surrounding Aqeel's case. For instance, as mentioned his relationship with the abducted boys mother enabled him to have knowledge about her financial status, her mobile number and the fact that she had a young son. In our view it would also not appeal to reason that Adeel would implicate his brother Aqeel for the sake of it. Usually one brother's natural reaction is to protect the other brother rather than give him up. It also appears from the defense run by both the two brothers Adeel and Aqeel that their fate is intertwined. Both brothers have taken the defense that they had a partnership agreement with PW 6 Ismail and because they refused to leave the partnership on PW 6 Ismail's demand PW 6 Ismail falsely implicated them in this case. Although we appreciate that it is for the prosecution to prove its case we cannot completely ignore the fact that this defense was not put to any of the PW's and as such in our view is a complete after thought.

41. So far as the role played by Danish is concerned we are of the view that the evidence shows that he was involved in the kidnapping for ransom and murder of Uzeyfa based primarily on the identification evidence of PW 6 Ismail who identified him as being one of the persons who was present when the 6 lacs ransom was collected. Furthermore no PW had any enmity towards Danish and has had no reason to falsely implicate him in this case. Danish claims that he had no relationship with any of the co-accused and did not know them. If this was the case then how could Adeel have known that he was working at the Mamji Hospital and suggested the police to look for him around the hospital. Likewise, how was it possible for Adeel to point out both his brother Aqeel and Danish as they approached the hospital on a motor bike and even more strange is why Danish was on a motorbike with Aqeel if he did not know him.

42. In the case of **Said Muhammed V State** (1999 SCMR 2758) the Supreme Court upheld the conviction of the accused in another kidnapping for ransom case (albeit it reduced his sentence from death to life imprisonment) where his only role was to give directions from the

road to the driver of the car of the abductees in the following terms at P.2759 Para 2

"The role assigned to appellant Said Muhammad is that, after the main culprits had abducted the three abductees and were taking them in a vehicle, on the way, Said Muhammad was stationed who told the abductors that the passage was clear. From the evidence the involvement of Said Muhammad in the offence is established as has been found by the trial Court and confirmed by the High Court. In the circumstances of the case, Ch. Muhammad Akram, learned counsel for the appellant, has not pressed this appeal on merits but only argued the appeal on the question of sentence. According to learned counsel, it was a fit case where appellant Said Muhammad should have been awarded the lesser sentence." (bold added)

43. In the case in hand each of the accused played a role in the kidnapping for ransom of Uzeyfa and in the case of Murad, Adeel and Murad his murder as well. For example, Aqeel identified Uzeyfa as the person to be kidnapped through his work with his mother at the boutique, was present when the initial 6 lacs ransom was paid and played a role in the murder of Uzeyfa; Murad was present when the initial 6 lacs ransom was paid, was caught red handed when he came to collect the additional ransom in person and through his CDR data, took the police to the location of the dead body; Adeel, the brother of Aqeel, was caught red handed when he came to collect the further ransom, took the police to the location of the dead body, took the police to the location where Uzeyfa was kidnapped from and the flat where he was murdered; Danish came to collect the initial 6 lacs ransom for the return of Uzeyfa who at that time had already been murdered.

44. We also take into account that by and large all the PW's have corroborated themselves and the prosecutions case and that any contradictions are minor and are not of a material nature which can be ignored. That although some of the witnesses are related since the defense has not shown that they have any personal enmity towards the accused or any reason to falsely implicate any of them we are of the view that such relationship is not relevant in assessing the reliability of their evidence. In this respect reliance is placed on **Aurangzeb V The State** (2010 P.Cr.LJ 1281).

45. That most of the relevant and required police entries in the various registers have been made and duly exhibited. **Importantly** at the time of the arrest of Murad and Adeel when they came to collect the additional ransom the evidence shows that members of the CPLC were present who are independent persons who have expertise in kidnapping for ransom and would have no interest in falsifying anything; likewise when Murad and Adeel took the police to the location of the dead body. PW 9 SIP Ashraf Ali collected the CDR data from the CPLC's HQ in Governors House and PW 11 IO Tahir's application to the CPLC for such data is also on record and as such the involvement of the independent CPLC cannot be doubted especially as the presence of the CPLC has not been challenged by any of the accused and their involvement in assisting the police in our view bolsters the prosecution case by giving it greater credibility and reliability.

46. We do not consider the fact that no ransom money was recovered to be of any significance as we are of the view that the prosecution has proved its case against all the accused through other evidence on record. In this respect reliance is placed on **Muhammad Anwar V State** (2003 YLR 300)

47. For the proposition that because all the accused played a role in the kidnapping for ransom and murder of the boy to a lesser or greater extent with the same goal and therefore are equally liable as in the bank robbery example given earlier in this judgment reliance is placed on another kidnapping for ransom case especially in terms of greater and lesser roles being the case of **Ahmed Hussain V The State** (PLD 2008 SC 110) which held as under at P.113 at para 5

*"the abductee in his statement in the examination in chief, has categorically stated that Shahzad Ali and Abdul Jabbar, petitioners abducted him in a car from Boat Basin whereas Ahmed Hussain alias Ami, petitioner used to visit the place of his detention to provide him food and they all were active members of the gang of culprits. Learned counsel for Ahmed Hussain, petitioner, when confronted that the above portion of the statement of abductee was not challenged by the defence and so much so, no suggestion was put to him in the cross-examination that petitioner was not an active partner of the accused. **The law is that if a person subsequently associates himself with the accused in the crime, he may have same liability and learned counsel has not been able to satisfy***

us that Ahmed Hussain petitioner was not privy to the crime. In the light of the circumstances leading to the occurrence and the subsequent events, an inference could safely be drawn that the petitioners having participated in the crime, have incurred equal responsibility of commission of the offence. (bold added)

48. Thus, pursuant to the above discussion we find that the prosecution has proved its case beyond a reasonable doubt against all the appellants being Murad, Adeel, Aqeel and Danish and as such there convictions as per the impugned judgment are upheld.

49. The next issue relates to that of the sentence to be handed down to the appellants. Three of the appellants Murad, Adeel and Aqeel had been awarded the death penalty subject to confirmation by this court where as the appellant Danish had been awarded Rigorous Imprisonment for 10 years under Section 7(e), sub-Section (2) of ATA, 1997 as amended by Gazette Notification dated 26th of March, 2013 Act No.XX of 2013 Anti Terrorism Act, 1997.

50. In this case it is unclear which of the appellants out of Murad, Adeel and Aqeel actually murdered the kidnapped for ransom Uzeyfa. In the case of **Ali Imran V State** (PLD 2006 SC 87) under similar circumstances the death sentence was reduced to life in the following terms at P.93 para 8;

"Para 8. The upshot of the above discussion is that since charge against the appellant stood proved beyond reasonable doubt, therefore, no exception can be taken to the finding of the trial Court as well as High Court regarding his guilt. However, it being not known that who was individually responsible for the murder of deceased, the extreme penalty of death to the appellant may not be justified. Consequently, we while maintaining the conviction of appellant under section 302(b), P.P.C., convert the sentence of death awarded to him into imprisonment for life with direction to pay rupees one lac as compensation to the legal heirs of the deceased. He will also be entitled to the benefit of section 382-B, Cr.P.C."

51. Like wise in the recent Supreme Court Case of **Ghual Mohy-Ud-Din V State** (2014 SCMR 1034) it was held that where the judges entertain some doubt albeit not sufficient for acquittal, judicial caution must be exercised to award the alternative sentence of life imprisonment at P.1043 Para 20 and 21 in the following terms;

"20. Albeit, in a chain of case-law the view held is that normal penalty is death sentence for murder, however, once the Legislature has provided for awarding alternative sentence of life imprisonment, it would be difficult to hold that in all the cases of murder, the death penalty is a normal one and shall ordinarily be awarded. If the intent of the Legislature was to take away the discretion of the Court, then it would have omitted from clause (b) of section 302, P.P.C. the alternative sentence of life imprisonment. In this view of the matter, we have no hesitation to hold that the two sentences are alternative to one another, however, awarding one or the other sentence shall essentially depend upon the facts and circumstances of each case. There may be multiple factors to award the death sentence for the offence of murder and equal number of factors would be there not to award the same but instead a life imprisonment. It is a fundamental principle of Islamic Jurisprudence on criminal law to do justice with mercy, being the attribute of Allah Almighty but on the earth the same has been delegated and bestowed upon the Judges, administering justice in criminal cases, therefore, extra degree of care and caution is required to be observed by the Judges while determining the quantum of sentence, depending upon the facts and circumstances of particular case/case.

21. A single mitigating circumstance, available in a particular case, would be sufficient to put on guard the Judge not to award the penalty of death but life imprisonment. No clear guideline, in this regard can be laid down because facts and circumstances of one case differ from the other, however, it becomes the essential obligation of the Judge in awarding one or the other sentence to apply his judicial mind with a deep thought to the facts of a particular case. If the Judge/Judges entertain some doubt, albeit no sufficient for acquittal, judicial caution must be exercised to award the alternative sentence of life imprisonment, lest an innocent person might not be sent to the gallows. So it is better to respect the human life, as far as possible, rather to put it at end, by assessing the evidence, facts and circumstances of a particular murder case, under which it was committed. (Bold added)

52. Thus, keeping in view the above authorities of the Supreme Court based on the particular facts and circumstances of this case and last submission by learned defense counsel that the death sentence may be converted to imprisonment for life each death sentence awarded to appellants Murad, Adeel and Aqeel is converted to that of imprisonment for life and the confirmation references in respect of Murad, Adeel and Aqeel are all answered in the negative and to this extent only are Murad, Adeel and Aqeel's sentences in the impugned judgment altered. The compensation which is payable shall remain in tact.

53. With regard to appellant Danish we uphold his conviction in the impugned judgment and enhance his sentence to that of imprisonment for life with compensation of Rs.2-lacs to be paid to the legal heirs of Uzeyfa keeping in view the legal position that for a conviction under Section 7(e), sub-Section (2) of ATA, 1997 as amended by Gazette Notification dated 26th of March, 2013 Act No.XX of 2013 Anti Terrorism Act, 1997 the only legal sentence is either death or imprisonment for life and none other.

54. In view of the above the appeals against conviction and for the enhancement of the sentence of Danish are disposed of in the above terms.