IN THE HIGH COURT OF SINDH AT KARACHI

Present

Mr. Justice Omer Sial
Mr. Justice Dr. Syed Fiaz ul Hassan Shah

Spl. Crl. Anti-Terrorism Appeal No.04 of 2025
Spl. Crl. Anti-Terrorism Appeal No.06 of 2025

Appellant [in Appeal No.04/2025]	:	Nawazish Akbar (Rtd. Major) S/o Meer Akbar through Mr. Raj Ali Wahid Kunwar, Advocate
Appellant [in Appeal No.06/2025]	:	Naveed Hafeez S/o Muhammad Hafeez Khan through Mr. Abdul Baqi Lone, Advocate
Complainant	:	Dil Nawaz S/o Ameer Azam Khattak through Mr.Muhammad Fahad, Advocate
State	:	through Mr. Muhammad Iqbal Awan, Addl. Prosecutor General, Sindh.
Date of Hearing	:	12.08.2025
Date of Judgment	:	25.08.2025

J U D G M E N T

Dr. Syed Fiaz ul Hasan Shah, J – By this common order, we intend to dispose of both the Spl. Crl. Anti-Terrorism Appeals filed by the appellants, who were aggrieved and dissatisfied with the Judgment dated 31.12.2024 passed by learned Judge, Anti-Terrorism Court No.XVI, Karachi **[Trial Court]** in New Special Case No.10/2022 under FIR No.280/2007 registered U/s 365-A, 392, 506-B, 34 PPC R/w Section 7 ATA, 1997 of PS Al-Falah, Karachi, whereby the appellants were convicted and sentenced under Section 265-H(2) Cr.P.C, as under:-

a) For offence of abduction for ransom, punishable under section 365-A r/w 34 PPC both the appellants Naveed Hafeez S/o Muhammad Hafeez Khan and Nawazish Akbar S/o Meer Akbar are sentenced to

imprisonment for life and their properties are ordered to be forfeited to the Government.

b) For the offence of wrongfully confining the abductee Sher Bahadur for a period of 5 to 6 months for ransom amount and for transfer of shares/property, and committing an offence punishable under section 347 r/w 34 PPC both the appellants are awarded imprisonment for three years each and to pay fine of Rs.100,000 (Rupees one lac) each.

c) For the offence of kidnapping of the abductee Sher Bahadur for ransom, and committing an offence punishable under section 7(e) of the Anti-Terrorism Act, 1997, both the appellants are sentenced to imprisonment for life and their properties are ordered to be forfeited to the Government.

d) For the offence of robbery of car AJD-211 Honda of complainant party (at the time of kidnapping) both the accused found guilty for committing an offence punishable under section 397 PPC are sentenced to imprisonment for seven years.

e) All the property of both the accused persons as defined in section 02(p)(a) of ATA 1997 are also directed to be forfeited as provided under section 7 (2) of ATA 1997.

f) Benefit of Section 382-B Cr.P.C is, however, extended to the appellants and the sentences awarded to them are ordered to run concurrently.

2. Brief facts of the case are that on 08.12.2007 at about 1840 hours, the complainant Dil Nawaz lodged the instant FIR stating that his brothers namely Sher Bahadur the owner of Ocean Construction Company, had admitted accused Nawazish Akbar (Rtd Major) as a 5% partner in his company. Later on, differences arose between them. Eventually, they reached a compromise, in which the accused, Nawazish Akbar, provided a written condonation (Iqrarnama) with an assurance to settle the outstanding amounts. Despite this, he failed to honour the agreement and allegedly began threatening Sher Bahadur with dire consequences. On 19.06.2006, when the complainant and his brothers including Sher Bahadur were returning from Malir Court, Karachi, in their Honda VTI car No.AJD-211; at around 12:00 noon, the accused Nawazish

Akbar, Haji Zaman, Amir Khan, Fareed Ahmed, Naveed, and Nadeem came there in jeeps, intercepted them and they pulled them out from their car and took his brother Sher Bahadur along with the above car, stating that they had financial disputes with him and would release him after resolving the issues (*Hisab Kitab*). They also threatened to kill the complainant and his brother if they attempted to follow them. Subsequently, their mother moved multiple applications to various stakeholders including superior courts regarding the incident of kidnapping. The kidnappers continued to issue threats to them over the phone. Subsequently, on the directions of the court, the FIR was lodged against the accused persons for the above crimes, accordingly.

3. After completing the investigation, charge sheet was submitted against the Appellants. The trial Court framed the Charge against the Appellants as Exh.4 to which they pleaded not guilty and claimed trial vide their pleas as Ex.4/A to Ex.4/B. At the trial, the prosecution has examined complainant PW-1 Sher Bahadur Khan, a businessman at Ex.5, who produced memorandum and relevant certificates at Ex-05/P-01 to P-18, NOC from Gawadar Development Authority at Ex-05/P-19 to P-21, FIR No.489/2005 of PS Ferozabad at Ex-05/P-22, Iqrarnama of accused at Ex-05/P-23, letter and application for FIR No.284/2016 at Ex-05/P-24 to P-27, newspapers cutting at Ex-05/P-28 to P-29, FIR of the instant crime at Ex-05/P-30, bank statement at Ex-05/P-31 to P-39, memo of Suit No.1605/2007 at Ex-05/P-40 to P-207, notice published in Daily Intakhab at Ex-05/P-208, petition filed in year 2008 at Ex-05/P-209 to P-283, order of High Court dated 17.04.2014 at Ex-05/P-284 to P-285, copy of CP No.2837/2014 at Ex-05/1-286 to P-341, cutting of newspapers for accused at Ex-05/P-342, agreement of partnership of Nawazish (Accused) and his wife at Ex-05/P-343 to P-354, mutation of record for land transfer as Ex-05/P-355 to P-358, bank statement regarding encashment of fake cheque at Ex-05/P-359, civil suit for cancellation of agreement at Ex-05/P-360 to P-568, CP for order for transfer of case to ATC at Ex-05/P-569 to P-719, letter to Incharge Security

Exchange, SECP, Karachi for verification of the documents of the company at Ex-05/P-720 to P-727, photographs of place of abduction at Ex-05/P-729 to P-732. PW-02 Dil Nawaz Khattak (brother of abductee) at Ex-07 who produced applications to different stackholders with TCS receipts at Ex-07/P-01 (20 leafs), FIR No.280/2007 at Ex-07/P-02, memo of inspection of place of abduction/occurrence at Ex-07/P-03. PW-03 Nadeem Khan (Rickshaw driver/brother in law of abductee) at Ex-08, who produced memo of place of occurrence (payment of ransom amount) at Ex-08/P-01 and photographs at Ex-08/P-02. PW-04 Inspector Rana Waqeel Ahmed at Ex-09, who produced departure entry of place of occurrence at Ex-09/P-01. PW-05 Shahzad Khan, businessman/brother of abductee at Ex-10. PW-06 Inspector Amjad Yameen at Ex-12, who produced entry of recording statement of abductee at Ex-12/P-01, order of investigation at Ex-12/P-02, entry of adding section of ATA at Ex-12/P-03, entry of departure at Ex-12/P-04, memo of arrest of accused Naveed Hafeez at Ex-12/P-05 and misc. entries at Ex-12/P-06 to P-09. APG for the State submitted an application to give up PW Umer Zada at Ex.11 and thereafter the prosecution closed its side vide statement at Ex.13. The Appellants have recorded statement being accused persons under Section 342 Cr.P.C. at Ex.14 and 15. Both the Appellants/Accused have denied the allegation levelled against them and stated to be innocent and prayed for justice. However, neither the appellants examined themselves on oath nor led any evidence in their defence. The learned trial Court, after hearing the parties and appraisal of the evidence, convicted and sentenced both the appellants vide Judgment dated 31.12.2024.

4. We have heard the learned counsel for the appellants, learned counsel for the complainant as well as the learned Addl. P.G. and with their assistance meticulously perused the record.

5. The pivotal legal issue for determination in the present appeal revolves around the validity of the conviction awarded under Section 7(e) of the Anti-Terrorism

Act, 1997 (ATA) by the learned trial court, and whether such conviction is sustainable in law. It is imperative to examine whether the essential ingredients of Section 365-A of the Pakistan Penal Code, 1860 (PPC) have been duly satisfied to warrant a **simultaneous conviction under both statutes**. Upon careful scrutiny of the evidence and record, it is to be assessed whether the trial court was legally justified in convicting and sentencing the Appellants under **two distinct legal provisions of different statutes** based on the same set of facts, circumstances and evidence. The determination of this question requires a harmonious interpretation of the legislative intent behind both statutes, the nature of the offence committed, material brought before the trial Court during evidence and the applicability of the ATA in light of the facts established during trial.

6. From the perusal of the record, it transpires that the Appellants, the complainant, and the victim (PW-1) were known to each other and had prior business dealings. The testimony of PW-1 further reveals that the Appellants were engaged as his servants. In adjudicating the present criminal appeals, we confine our consideration strictly to the material on record relevant to the alleged criminal intent, acts, and the commission of the offence. We consciously refrain from making any observations on the inter se affairs of the parties which are the subject matter of independent civil litigation, reportedly pending adjudication before the competent civil forum.

7. We have also noticed that learned Anti-Terrorism Court has passed the sentence against abduction for ransom under Section 365-A PPC, 1860 as well as under Section 7(e) of the ATA, 1997 in absence of ingredients as required by Section 6 of ATA, 1997, which is appropriate to reproduce hereunder:

> **"6. Terrorism.** – (1) In this Act, "terrorism" means the use or threat of action where:
>
> (a) the action falls with the meaning of sub-section (2), and

(b) the use or threat is designed to coerce and intimidate or overawe the Government or the public or a section of the public or community or sect [or a foreign government or population or an international organization] or create a senseof fear or insecurity in society; or

(c) the use of threat is made for the purpose of advancing a religious, sectarian or ethnic cause [or intimidating and terrorizing the public, social sectors, media persons, business community or attacking the civilians including damaging property by ransacking, looting, arson or by any other means, government officials, installations, security forces or law enforcement agencies]."

(2) An "action" shall fall within the meaning of sub-section (1), if it:

(a) ……
(b) ……
(c) ……
(d) ……
(e) involves kidnapping for ransom, hostage-taking or hijacking

8. Upon a plain and harmonious interpretation of Section 6 of the Anti-Terrorism Act, 1997, it is evident that sub-section (2)(e) is not self-executing and must be read in conjunction with the foundational elements set out under Section 6(1). The legislative intent embedded in Section 6(1) ATA is to define the foundational elements or qualify as a "terrorist act," when it is committed with the specific intent or design to terrorize, intimidate, or coerce the public, state institutions, or sections of society and only where those elements are satisfied the provisions of Section 6(2)(e) for kidnapping for ransom can be invoked. Mere commission of a scheduled offence such as Section 365-A PPC—criminalizing kidnapping for ransom—does not, by itself, attract the penal consequences under Section 6(2)(e) of the ATA unless the requisite mens rea defined in Section 6(1) is clearly established and therefore, the provision of section 7(2)(e) cannot be enforced. In light of the foregoing analysis, the invocation of the Anti-Terrorism Act, 1997, particularly Section 7(e), is contingent upon the act qualifying as a terrorist offence under Section 6(1). The

Schedule to the ATA serves only to confer jurisdiction upon the Anti-Terrorism Courts but does not obviate the statutory requirement of proving intent or design to terrorize. In the present case, there is no cogent evidence to demonstrate that the offence was committed with the objective of spreading terror or coercion in the manner contemplated by Section 6(1). Furthermore, the dispute appears to be rooted in commercial dealings between the parties, which have already been subjected to civil litigation. Therefore, the attempt to prosecute the appellants under the ATA framework is legally misconceived and unsupported by the factual matrix. Accordingly, sentencing under Section 7(e) ATA is not sustainable in law and cannot be upheld. In ***Ghulam Hussain v. State*** **(PLD 2020 SC 61)**, the larger bench of Hon'ble Supreme Court held at paragraph No.13 that:

> "…For the purpose of further clarity on this issue it is explained for the benefit of all concerned that the cases of the offences specified in entry No. 4 of the Third Schedule to the Anti-Terrorism Act, 1997 are cases of those heinous offences which do not per se constitute the offence of terrorism but such cases are to be tried by an Anti-Terrorism Court because of their inclusion in the Third Schedule. It is also clarified that in such cases of heinous offences mentioned in entry No. 4 of the said Schedule an Anti-Terrorism Court can pass a punishment for the said offence and not for committing the offence of terrorism. **It may be pertinent to mention here that the offence of abduction or kidnapping for ransom under section 365-A, P.P.C. is included in entry No. 4 of the Third Schedule and kidnapping for ransom is also one of the actions specified in section 7(e) of the Anti Terrorism Act, 1997. Abduction or kidnapping for ransom is a heinous offence but the scheme of the Anti Terrorism Act, 1997 shows that an ordinary case of abduction or kidnapping for ransom under section 365 A, P.P.C. is merely triable by an Anti-Terrorism Court if kidnapping for ransom is committed with the design or purpose mentioned in clauses (b) or (c) of subsection (1) of section 6 of the Anti-Terrorism Act, 1997 then such offence amounts to terrorism attracting section 7(e) of that Act. In the former case the convicted person is to be convicted and sentenced only for the offence under section 365-A, P.P.C. whereas in the latter case the convicted person is to be convicted both for the offence under section 365-A, P.P.C. as well as for the offence under section 7(e) of the Anti-Terrorism Act, 1997….**"
>
> (Emphasis added)

9. Another dilemma what we find is that the trial Court has convicted the Appellants under ATA and PPC. It is a settled principle of constitutional and criminal jurisprudence that no individual shall be prosecuted or punished more than once for the same offence. This protection is firmly embedded in Article 13(a) of the Constitution of the Islamic Republic of Pakistan, 1973 which guarantees that "no person shall be prosecuted or punished for the same offence more than once." This constitutional safeguard is reinforced by Section 403 of the Code of Criminal Procedure, 1898 which bars retrial for the same offence or upon the same facts once a person has been acquitted or convicted. Additionally, Section 26 of the General Clauses Act, 1897, provides that although a single act may constitute offences under multiple enactments, the offender may be prosecuted under any one of those enactments but "shall not be liable to be punished twice for the same offence."

10. We have already observed that the offence of kidnapping for ransom under Section 365-A PPC is a schedule offence for the purposes of jurisdiction and exclusively triable by the Anti-Terrorism Court which read as under:

> "365-A. Kidnapping or abduction for extorting property, valuable security, etc. Whoever kidnaps or abducts any person for the purpose of extorting from the person kidnapped or abducted, or from any person interested in the person kidnapped or abducted, any property, whether movable or immovable or valuable security, or to compel any person to comply with any other demand, whether in cash or otherwise for obtaining release of the person kidnapped or abducted, shall be punished with (death or) imprisonment for life and shall also be liable to forfeiture of property".

11. Now moving towards the factual aspects and the requirement of prove for the offence of kidnapping for ransom, first we refer the relevant portion of deposition of PW-1 Sher Bahadur Khan, who has deposed:

> "In year 2004 I was suggested by the Gawadar Development authority to establish a builder company. I accordingly developed Ocean Builder Private Builder worth of Rs. 100,000/- (One Hundred Thousands) and I gave share to my employee accused Nawazish Akbar to the extent of five percent share, I produce memorandum alongwith the relevant certificates as Ex-05P1 to P18 (original seen and returned). NOC from

Gawadar Development Authority was issued which I produce as Ex-05P19 to P21 (original seen and returned). While I was in Dubai one Nadeem who intruded in my office at Karachi and ransacked therein for which FIR was registered which I produce as Ex-05P22 (carbon copy seen and returned at the request of the PW). I returned to Pakistan in year 2005 and audit of the business was conducted which surfaced that my employees accused Nawazish Akbar and Naveed Hafeez had committed some misappropriation. Both the accused gave their undertaking in black and white that they would not repeat such misappropriation and apologize me I accordingly forgave. I produce Iqrarnama of the accused as Ex-05P23 (original seen and returned). After some months accused Naveed Hafeez prepared my cheque and issued to accused Nawazish of Rs. 5 million and got it bounced, thereafter, they lodged FIR at P.S Sohrab Goth, one Nadeem was also with them in the conspiracy/Drama. I was arrested and was physically tortured at the P.S by the then DSP Hafeez Junejo at the instance of the present accused. I was forced to get the amount of Rs. 5 million arranged which I did and thereafter some documents were got forcibly signed. After my judicial remand in jail the accused took over all of my five offices illegally. I dispatched the letter from the jail on the basis FIR at P.S Ferozabad was lodged. I produce copy of application, letter of jail FIR bearing crime No.284/2006 as Ex.05P24 to P27. The accused are absconder till today in the FIR. I terminate both the employees and got such notice published in the newspaper Daily Jirat and Daily Jisarat, cutting of the same photocopy is produce as Ex.05P28 to P29 (original seen and returned). **I had gone to Malir Court on 19.06.2006 in terms of hearing of a case when I was intercepted at the back side premises of the court by both the accused alongwith absconding accused namely Haji Zaman, Amir, Fareed and Nadeem and abducted me in my car No. ADI-211 VTI Oriel Black and drove away, they had got my brothers down from my car. After one and half year my brother lodged the FIR**. I produce the FIR as Ex-05P30, I was made captive in a room at first floor of the bungalow by the accused where Haji Zaman and Amir would make me pray Namaz and give me training of vein suicide bomber. Both the absconding accused Haji Zaman and Amir would take me to different meeting of Taliban where they would conduct the JIRGAS (arbitration). In the period of six/seven months accused major Nawazish would also come where I came to know that accused Nawazish has transferred 95% share of the company in the name of absconding accused haji Zaman Mehsood. **Two times present accused alongwith absconding accused Amir had sent for the ransom in the shape of cash of Rs. 3500,000/- (3.5 millions) and jewelry worth of Rs. 9 million from my wife.** Thereafter, the accused got opened a bank account in Suneri Bank Badar commercial branch in DHA and got amount of installments of the plots from my clients deposited in the account, I produce bank statement of the account as Ex-05P31 to P39. The accused also sold out some of my files of worth Rs. 20 million. Due to growing psychology syndrome I was released."

(Emphasis added)

12. We have carefully reappraised the evidence. The victim in his examination-in-chief has deposed that on two different occasions, the wife of the victim has paid Rs.35,00,000/- in cash and jewelry having worth of Rs.90,00,000/- on account of ransom amount for the release of the victim. The testimony of PW-3 (Nadeem Khan) introduces a materially divergent account regarding the alleged payment of ransom. He deposed: ***"Thereafter I reached the house of my sister and took a car alongwith my sister and went to the Nawazish and pay cash amount Rs.3500000/- twicely. Due to shortage of money my sister also gave her jewelery to accused Nawazish in this regard."*** This statement not only presents a different figure of the alleged ransom amount but also fails to corroborate the version of PW-1, thereby creating inconsistency in the prosecution's narrative. Moreover, PW-3 has offered no explanation as to why he did not inform the police or any law enforcement authority while proceeding to pay the purported ransom—particularly when, according to his own account, the payment was made on two separate occasions. This omission raises serious doubts about the credibility and reliability of his testimony. It is observed that the testimony of PW-5 lacks consistency and clarity regarding the alleged ransom amount and jewelry. He deposed ***"It is a fact that in my statement u/s 161 Cr.P.C. recorded on 27.12.2007 I had not disclosed that my brother was returned back at home. I have no mentioned regarding payment of any ransom amount in statement u/s 161 Cr.P.C. as well as in my examination-in-chief before this court. Vol says that the ransom amount was demanded from my Bhabhi and her brother. Rs.70 to 80 lacs amount alongwith jewelry of our family members were received by the accused from my Bhabhi and her brother. It is incorrect to suggest that the above said amount of Rs.70 to 80 lacs received from my brother and Bhabhi alongwith jewelry. No ransom amount was paid before me."*** During examination-in-chief, PW-5 did not categorically disclose the exact amount of ransom or mention any payment by

selling jewelry thereof. However, in cross-examination, he introduced a substantially different version, stating that an amount ranging from Rs.70 to 80 lacs along with family jewelry was received by the accused from his Bhabhi and her brother. He further admitted that his statement under Section 161 Cr.P.C., recorded on 27.12.2007, did not contain any reference to the return of his brother or the payment of ransom. He voluntarily added that the ransom demand was made to his Bhabhi and her brother, but clarified that no ransom amount was paid in his presence. This contradiction between his examination-in-chief and cross-examination, coupled with the absence of such details in his earlier recorded statement, casts doubt on the credibility and reliability of his deposition.

13. Upon meticulous examination of the evidence adduced by the prosecution, particularly the depositions of PW-1 (victim), PW-3 and PW-5 (relatives), it is evident that the quantum of ransom amount alleged to have been demanded and paid is inconsistent and at variance across the testimonies. The learned counsel for the appellant in Spl. Crl. A.T.A. No.06/2025 has rightly drawn attention to the complaint filed by the victim before the Investigating Officer, wherein he voluntarily stated that Rs.10,000,000/- was demanded by the accused, leading to registration of FIR No.49/2005. However, the accused was not arrested in connection with that FIR. Subsequently, the victim alleged that on 19.05.2005, he was abducted while proceeding to the Sessions Court, Malir, and under coercion transferred Rs.30,00,000/- in cash, $1,000 USD, and 25,000 AED, including further ransom payments through M/s. Ocean Builders (Pvt.) Ltd. and by opening an account in Soneri Bank, Badar Commercial Branch, DHA Karachi. This led to the registration of FIR No.280/2007 at P.S. Al-Falah. However, when PW-1 appeared before the Court, he did not confirm the contents of his own complaint or the quantum of ransom amount stated therein. Instead, he introduced a contradictory version, stating that his Wife paid

Rs.35,00,000/- and jewelry worth Rs.90,00,000/-. This glaring contradiction

undermines the credibility of his testimony. Moreover, PW-1 voluntarily produced the complaint during his evidence but failed to affirm its contents, thereby negating the occurrence of ransom demand set forth in the final police report based charge. The statements of PW-3 and PW-5 also differ significantly regarding the amount and mode of payment, further compounding the inconsistencies.

14. We have further noticed that the PW-2 (Dilnawaz Khattak), who is the complainant of the case, he has not deposed about demand or payment of amount of ransom during his evidence. Conversely during cross-examination, he has admitted ***"It is a fact that neither in the FIR nor in my 161 Cr.P.C. statement I have stated regarding any demand of ransom amount. Vol. says that Nawazish and Naveez Hafiz continuously collecting ransom amount from my our bhabi Nasreen and (brother of bahbi) Nadeem. It is a fact that the said facts were not disclosed during lodging the FIR or in my 161 Cr.P.C. Statement."*** The purported voluntary statement regarding the alleged continuous payment of ransom by the wife of PW-1 (the victim) and his brother Nadeem is found to be untenable, being vitiated by the doctrine of improvement. Firstly, PW-2 has neither deposed to this fact in his examination-in-chief nor corroborated the assertion made by PW-1 regarding the payment of

any amount as ransom. Secondly, the said allegation finds no mention in the First Information Report (FIR) nor in the statement of the Complainant/PW-2 recorded under Section 161 Cr.P.C. before the Investigating Officer. A significant deficiency in the prosecution's case is the consistent claim by its witnesses that the ransom amount was paid by the wife of the victim; yet, the prosecution failed to produce her as a witness before the trial court to substantiate this claim or to establish the essential ingredients required under Section 365-A PPC. In case of non-production of witness by the prosecution during the trial which give rise to an adverse inference that had he been entered the witness-box he would have deposed against the prosecution. Reliance is placed upon ***"Nadeem alias Kala v. The State"*** **(2018 SCMR 153),** ***& "Haroon Shafique Vs. The State and others"*** **(2018 SCMR 2118),** ***"Lal Khan v. The State"*** **(2006 SCMR 1846),** ***"Riaz Ahmed v. The State"*** **(2010 SMCR 846),** ***"Abdul Qadeer v. The State"*** **(2024 SCMR 1146)** and ***"Riasat AU v. The State"*** **(2024 SCMR 1224).** This omission leaves no room for the Court but to draw an adverse inference under Article 129(g) of the Qanun-e-Shahadat Order, 1984 that in case she appeared she would not confirm the case of prosecution.

15. The prosecution has failed to bring on record any memorandum of captivity place or illegal confinement or its identification by any of the prosecution witness or even exact duration of such captivity when as per claim of prosecution, the PW-1 was kept in confinement for six to seven months. Learned trial Court at paragraph 14 of its Judgment impugned before us has given observation that the captivity of the abductee/victim (PW-1) has not been proven. Undoubtedly, both the essentials of Section 365-A PPC i.e. demand or ransom and illegal confinement or captivity have no reference nor any justification for it non-disclosure was given by prosecution. It is an established principle in jurisprudence that for an offence under Section 365-A PPC—kidnapping for ransom—the essential ingredients are: (i) the act of kidnapping or illegal confinement**,** and (ii) a demand or extortionate purpose for ransom,

property, or compliance. The Supreme Court has held in ***Muhammad Nabi & Others v. The State*** **(2006 SCMR 1230) and** ***Sh. Muhammad Amjad v. The State*** **(PLD 2003 SC 704)** that even a mere demand for ransom suffices**,** and actual payment or release is not necessary. Likewise, in ***Junaid Rehman & Others v. The State*** **(PLD 2011 SC 1135)**, it was held that an intent to extort or a demand constitutes the offence regardless of ransom paid. In contrast, the absent a ransom demand or failure to prove, the offence under section 365-A PPC cannot be established.

16. The prosecution has conspicuously failed to provide any cogent explanation or lawful justification for the omission of any reference to the demand or payment of ransom in the FIR or in the statements recorded during the investigation or before Court by the complainant. It has not established with requisite clarity or certainty the specifics of the alleged ransom amount, which appears to have been introduced belatedly during the investigative process and remained unsubstantiated during trial proceedings. Notably, when the prosecution witnesses testified under oath—alongside the complainant himself, produced by the alleged victim—the narrative diverged significantly from the contents of the formal charge. This divergence has resulted in two conflicting versions: one reflected in the charge, FIR, final report, evidence of complainant and the other emerging from the complaint produced by PW-1 (victim). Such inconsistency not only constitutes a failure to discharge the evidentiary burden under Article 122 of the Qanun-e-Shahadat Order, 1984, but also undermines the assertion of any demand or payment of ransom, a legal burden as required under Article 117 of ibid Order. The material contradictions and lack of corroboration among prosecution witnesses—an indispensable requirement for establishing the offence under Section 365-A PPC—remain unproven, thereby casting serious doubt on the prosecution's case.

17. Furthermore, as per contents of the FIR, the victim PW-1 was abducted on 19.06.2006 at about 1200 hours within territorial jurisdiction of PS Al-Falah

and the FIR was registered on 08.12.2007 after considerably delay of 18 months. The prosecution has failed to give any plausible explanation or valid justification about such delay and possibility of due deliberation and improvement cannot be ruled out and such delayed F.I.R. on the part of the complainant shows dishonesty and that it was lodged with deliberation and consultation. In ***"Amir Muhammad Khan versus The State", (2023 SCMR 566)*** a delay of only five hours and ten minutes in reporting the matter to and lodging the FIR by the police was considered indicative of dishonesty on the part of the complainant. In the present, the statement of material prosecution witnesses recorded with delay as much as of 14 years which make the case of prosecution fatal. In the case reported as ***"Muhammad Asif v. The State"*** **(2017 SCMR 486)**, the Supreme Court of Pakistan discarded the evidence of a material witness of homicide incident on the ground that his statement under Section 161 Cr.P.C. was recorded with unexplained delay of one or two days, with the following observation:

> "There is a long line of authorities/precedents of this court and the High Courts that even one or two days unexplained delay in recording the statement of eye-witness would be fatal and testimony of such witnesses cannot be safely relied upon."

18. As far as sentences on account of robbery of car bearing Registration No.AJD-211 is concerned, the same is also not sustainable because of simple reason that neither the vehicle was recovered by the Investigation Officer nor the prosecution had produced it before the trial Court and in absence of case property or any direct evidence, sentence cannot be given. While giving the benefit of doubt to the Appellants /accused, it is not necessary that there should be many circumstances creating doubt. If there is a circumstance which creates reasonable doubt in a prudent mind about the guilt of the accused, then the accused would be entitled to the benefit of such doubt, not as a matter of grace and concession, but as a matter of right. It is based on the maxim, "it is better

that ten guilty persons be acquitted rather than one innocent person be convicted". Reliance can be placed on the cases of ***Tajamal Hussain v. the State*** **(2022 SCMR 1567),** ***Sajjad Hussain v. the State*** **(2022 SCMR 1540),** ***Abdul Ghafoor v. the State*** **(2022 SCMR 1527 SC),** ***Kashif Ali v. the State*** **(2022 SCMR 1515),** ***Muhammad Ashraf v. the State*** **(2022 SCMR 1328),** ***Khalid Mehmood v. the State*** **(2022 SCMR 1148),** ***Muhammad Sami Ullah v. the State*** **(2022 SCMR 998),** ***Bashir Muhammad Khan v. the State*** **(2022 SCMR 986),** ***The State v. Ahmed Omer Sheikh*** **(2021 SCMR 873),** ***Najaf Ali Shah v. the State*** **(2021 SCMR 736),** ***Muhammad Imran v. the State*** **(2020 SCMR 857),** ***Abdul Jabbar v. the State*** **(2019 SCMR 129),** ***Mst. Asia Bibi v. the State*** **(2019 PLD 64 SC),** ***Muhammad Mansha v. the State*** **(2018 SCMR 772),** ***Hashim Qasim v. the State*** **(2017 SCMR 986),** ***Muhammad Zaman v. the State*** **(2014 SCMR 749 SC),** ***Khalid Mehmood v. the State*** **(2011 SCMR 664),** ***Muhammad Akram v. the State*** **(2009 SCMR 230),** ***Faheem Ahmed Farooqui v. the State*** **(2008 SCMR 1572),** ***Ghulam Qadir v. the State*** **(2008 SCMR 1221),** ***Riaz Masih alias Mithoo v. The State*** **(1995 SCMR 1730),** and ***Tariq Pervaiz v. the State*** **(1995 SCMR 1345)**.

19. Consequently, the impugned Judgment dated 31.12.2024 passed by learned trial Court in New Special Case No.10/2022 under FIR No.280/2007 registered U/s 365-A, 392, 506-B, 34 PPC R/w Section 7 ATA, 1997 of PS Al-Falah, Karachi is set aside while allowing both the appeals. Resultantly, the appellants are acquitted from the charge. They are directed to be released forthwith, if not required in any other custody case.

20. Both the listed Special Criminal Anti-Terrorism Appeals are disposed of.

JUDGE

JUDGE

Kamran/PS