

Criminal Appeal No.S-38 of 2024

Criminal Appeal No. S-39 of 2024

Criminal Appeal No. S-40 of 2024

Criminal Appeal No. S-41 of 2024

Date	Order with signature of Judge
Appellant	Arz Muhammad @ Arzoo son of Ali Murad bycaste Bhayo (Now confined in Central Prison Khairpur. Through Mr. Shabbir Ali Bozdar, Advocate.
Criminal Appeal No. S-39 of 2024	
Appellant	Abdul Wahid @ Adloo son of Allah Rakhio by caste Bhayo (Now confined in Central Prison Khairpur). Through Mr. Shabbir Ali Bozdar, Advocate.
Criminal Appeal No. S-40 of 2024	
Appellants	1. Ashiq Hussain son of Ghous Bux. 2. Ghous Bux son of Punhal Both by caste Bhayo (Now confined in Central Prison Khairpur). Through Mr. Sajjad Ahmed Khokhar Advocate.
Criminal Appeal No. S-41 of 2024	
Appellants	1. Allah Rakhio son of Khuda Bux. 2. Khuda Bux son of Allah Rakhio Both by caste Bhayo (Now confined in Central Prison Khairpur). Through Mr. Rukhsar Ahmed Junejo Advocate.
The Complainant	Through Mr. Munwar Ali Shaikh advocate.
The State	Though Mr. Mansoor Ahmed Shaikh, Deputy Prosecutor General.
Date of hearing.	24-03-2025.
Date of decision.	24-03-2025.

J U D G M E N T.

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Ali Haider 'Ada',J:-The appellants named above through the captioned appeals assailed the judgment Dated 30-04-2024 passed by learned IVth Additional Sessions Judge/Gender Based Violence Court Khairpur(**Trial Court**) in Sessions Case No. 01/2018 Re. (*The State Vs. Ashiq Hussain & others*), under Crime No. 54/2017, for offences punishable u/s 365-B, 148, 149 PPC registered at Police Station Kumb, whereby the appellants named above were convicted and sentenced to suffer rigorous imprisonment for life and to pay compensation amount of Rs. 50,000/- (fifty thousand) each to the victim Gul Bano, in case of default in payment whereof, they shall suffer S.I for six months more with benefit of section 382-B Cr.P.C.

2. Brief facts of the prosecution case are that Complainant Khan Muhammad lodged the FIR on 08-05-2017 alleging therein that Gul Bano aged about 27/28 years is his unmarried daughter. On the day of report at about 1500 hours she went in the neighborhood but did not came back, hence complainant along with his son Zahid Hussain and brother Muhammad Hassan went to search Gul Bano by a motorcycle. At about 4-00 pm when they reached near village Jindal Juno situated at link road leading from Nangreja to Ranipur, where they saw that accused Muhammad Qabil s/o Moula Bux along with two other male persons and one woman were forcibly restrained Gul Bano and made to sit in the car, but she was crying, but accused persons abducted away Gul Bano in the car. The complainant party was searching of his daughter and also contacted accused Muhammad Qabil through his mobile numbers 0303-2946386 and 0303-3720181 but failed. Ultimately appeared at Police Station and lodged the above said FIR. After recovery of victim her statement u/s 164 Cr.PC was recorded, wherein she disclosed the names of other culprits as Adloo, Arzoo, Wahidoo, Ghous Bux and Ashiq Hussain. The PW Zahid Hussain recorded his further statement and nominated accused namely Allah Rakhio, Ashiq Hussain, Khuda Bux, Adloo and Arzoo.

3. After completion of usual investigation, the I.O submitted the challan before the Court of law. Learned Judicial Magistrate-II, Kotdiji,

after completing formalities against absconding accused (Exh. 1 to 3), sent up the case to the Learned Sessions Judge, Khairpur, wherefrom it was entrusted to Trial Court for disposal. It is pertinent to mention here that the learned Judicial Magistrate during proceedings against absconding accused, in his order dated 23.10.2017 passed on the statement of process server HC Liaquat Ali, observed and treated the accused Adloo and Wahid are one and same person and his complete name is Abdul Wahid alias Adloo s/o Allah Rakhio.

4. After supplying the case papers to accused Ashiq Hussain, Allah Rakhio, Khuda Bux, Adul Wahid @ Adloo and Arz Muhammad @ Arzoo a formal charge against them was framed at Ex.4, to which they pleaded not guilty and claimed their trial. Thereafter, accused Ghous Bux joined trial, therefore, case papers were supplied to him and then amended charge was framed against accused, to which they pleaded not guilty and claimed to be tried vide their pleas recorded at Ex.12 to 17.

5. During trial, the prosecution examined PW/1 SIP Loung Khan at Exh.18, he produced mashirnama of site inspection and roznamcha entries No.14 and 21. PW/2 complainant Khan Muhammad examined at Exh.19, who produced FIR, PW/3 victim Gul Bano at Exh.20, she produced her statement u/s 164 Cr.PC. PW/4 Zahid Hussain Juno at Exh.21/A, he produced his further statement, PW/5 ASI Ameer Ali Shar at Exh.22, he produced mashirnama of arrest of accused, PW/6 ASI Dattar Dino Shar at Exh.23, PW/7 Muhammad Hassan Juno at Exh.24, PW/8 Abdul Hakeem Sangi, learned Judicial Magistrate (through video link) at Exh.25, he produced letter of SIO at Exh.25/A. Thereafter, learned ADPP for the State closed the side of prosecution vide his statement at Exh.26.

6. Statements of accused as provided u/s 342 Cr.PC were recorded at Ex.27 to 32, wherein they denied the allegations of prosecution and prayed for justice. Accused neither examined themselves on oath U/s 340(2) Cr.P.C nor produced any witness in their defense. Accused took plea that they have not abducted Mst. Gul Bano but she has contracted Nikah with accused Ashiq Hussain with her own wish and will; accused Ashiq during his statement produced some documents at Exh.27/A to 27/E. They prayed for acquittal.

7. On 21-08-2024 the complainant along with alleged abductee appeared before this Court through their counsel and has sworn their affidavits that they have no objection if the said appeals are hereby allowed.

8. Learned counsel for appellants argued that appellants are falsely implicated while alleged abductee of her own free will performed Nikah with one co-accused namely Ashiq Hussain and they were produced before Learned Lahore High Court Bench at Bahawalpur and alleged abductee filed petition against father who was complainant in this case but later on after returning home she changed her version. They further argued that FIR was lodged after delay of 15 days without any explanation and alleged abductee appeared before police on 17-07-2017 while her 164 statement was recorded after delay of 05 days. The reliance placed by the parties on the case of **Faiz Muhammad alias Faiz vs The State**, reported in **2023 P.Cr.L.J. 121**, **Fida Hussain & Others vs The State & Others**, reported in **2023 P.Cr.L.J. 1546**, and **Ahsan vs The State**, reported in **2024 YLR 578**. Finally, prayed for acquittal.

9. On the other hand Learned State Counsel opposed the appeals and supported the impugned verdict and further contended that statement recorded under section 164 Cr.P.C is fully supported and abduction is proved against the appellants and she sworn affidavits before Lahore High Court Bench in Bahawalpur under pressure according to her deposition, finally he prays to maintain the conviction of the appellants.

10. Heard Arguments and perused the material available on record.

11. From the very outset, the prosecution case becomes doubtful due to material contradictions in the identification of the accused persons. The Investigating Officer, who recorded the statement of the abductee, deposed that she disclosed the names of the accused as Allah Rakhio, Adloo (Abdul Wahid), Khuda Bux, and Arzoo (Arz Muhammad), but did not mention the names of Ashiq Hussain, GhousBux, or Qabil. In contrast, the complainant, in her testimony, stated that her daughter (the abductee) disclosed the names of the accused as Allah Rakhio, Qabil, Khuda Bux, and Ghous Bux. Furthermore, another prosecution witness, the brother of the abductee, deposed that his sister named Allah Rakhio, Ashiq, Khuda

Bux, Adloo, and Arzoo as the accused. These glaring inconsistencies raise serious doubts about the veracity of the prosecution's version. It is evident that the abductee did not consistently or correctly identify the accused persons. Even before the trial court, she failed to make any statement identifying accused Ashiq, from whom her alleged *Nikah* was performed.

12. The second significant aspect casting doubt on the prosecution case is the statement of the complainant, who deposed that her daughter had left the house to visit a relative. When a considerable time had passed and she did not return, then they began searching for her. This version was also affirmed by the abductee herself, who stated that she had set out to meet a relative but was subsequently kidnapped. A prosecution witness, namely Hassan, disclosed that the name of the said relative was Zahida. However, what raises serious doubt is the surprising fact that when the abductee did not return, the family, did not immediately approaching Zahida's house to confirm her whereabouts, it creates a significant gap in the prosecution story and cast doubt on its credibility.

13. Another serious point that undermines the credibility of the prosecution's case is the admission made by the abductee in her deposition. She categorically admitted that she did not implicate accused persons KhudaBux and Allah Rakhio in the commission of the alleged offence. Furthermore, she also admitted that she had filed a constitutional petition before the Hon'ble Lahore High Court, Bahawalpur Bench, against her own father and brother. This admission not only creates doubt on her version but also indicates a false implication or manipulation of facts.

14. Now, coming to the factual array of the case, there is an unexplained delay of approximately 15 days in the registration of the FIR. Despite the serious nature of the allegation that a young lady was kidnapped by the accused party and one of the accused was allegedly identified by the complainant. Whilst no immediate report was made to the police. This inordinate and unexplained delay in lodging the FIR forms serious doubt about the genuineness of the prosecution story. Furthermore, the abductee herself claimed that she managed to escape from the custody of the accused, which in itself raises a significant question that under what circumstances she able to escape unassisted, if

she had indeed been kept under forceful confinement. Adding to this doubt is the fact that although she appeared before the police on 17-07-2017, her judicial statement under Section 164 Cr.P.C was recorded after delay of five days. This sequence of delays, both in FIR registration and in recording of the statement under Section 164 Cr.P.C casts serious doubt upon prosecution case.

15. As per the contents of the FIR, the complainant disclosed that he had obtained the mobile numbers of accused Qabil, specifically 0303-3720181 and 0303-2946386, but despite attempts, he could not make contact. A important point of concern arises here, once these mobile numbers came into the knowledge of the police, there is no explanation or record of any concrete steps taken by the investigating agency to trace the culprits through geo-location, Call Data Records (CDRs), or by approaching the concerned Mobile Service Providers to determine the location or ownership details of said numbers. The conduct of the police gives the impression that no proactive investigation was undertaken and that they merely waited for the abductee to reappear, rather than making timely and serious efforts to recover her or apprehend the alleged accused. Moreover, it is also noteworthy that even the complainant did not make any serious or effective efforts to locate the accused by utilizing modern means of communication and investigation, despite being in possession of the mobile numbers allegedly used by the accused. In the present digital age, where location tracking, call record analysis, and mobile surveillance are readily available investigative tools, the complainant's failure to initiate or request any such steps further weakens the prosecution's stance.

16. According to the FIR, the complainant specifically alleged that one woman, along with accused Muhammad Qabil and two unidentified persons, abducted his daughter in a car. However, entire prosecution story thereafter remains silent regarding the presence of any woman among the accused, the abductee herself, stated that she was kidnapped by five male accused persons; and she did not mention the involvement or presence of any woman during the commission of the alleged offence. This material contradiction between the FIR and the statement of the abductee strikes at the root of the prosecution case and creates serious doubt regarding the truthfulness and consistency of the allegations.

17. A new fact emerges in the prosecution case from the statement of the abductee recorded under Section 164 Cr.P.C, wherein she stated that when she was presented before the Hon'ble Lahore High Court, Bahawalpur Bench, she was in an unconscious state. She specifically deposed, *"I was produced and made to appear before the Honourable Judge of the Court in an unconscious condition."* However, a bare perusal of the order of the Lahore High Court, Bahawalpur Bench revealed that no such observation or indication that the abductee was unconscious at the time of her appearance. On the contrary, the order clearly records that the learned counsel along with the petitioner (abductee) appeared before the Court, as it directly pertained to the mental and physical capacity of the abductee to appear and be heard. This inconsistency strongly suggests that the abductee's claim of unconsciousness was an afterthought, seemingly designed to discredit or discard the legal effect of the judicial proceedings and documents recorded in that case.

18. The prosecution also relies upon the testimony of Witness Zahid Hussain, the brother of the abductee. In his deposition, he stated that immediately after the incident, his father (the complainant) informed the police within one and a half hours and the police visited the place of occurrence and recorded his statement. He further deposed that his initial statement was recorded by the police on 08-05-2017, the date of the incident, and that his further statement was recorded two days later. However, this version is entirely contradictory to the main prosecution case. Firstly, neither the complainant nor the investigating officer has corroborated the claim that the police were informed on the day of the incident. In fact, the FIR itself was lodged after a delay of 15 days, Secondly, Zahid Hussain's statement that his further statement was recorded two days after the incident is belied by the prosecution record. The further statement, as exhibited in court, bears the date 17-07-2017, which is a delay of more than 52 days from the date of the FIR. This significant flaw indicates fabrication of evidence and lack of truthful testimony.

19. During the statement under Section 342 Cr.P.C., accused Ashiq Hussain produced substantial documentary evidence in his defence, including a free will affidavit executed by the abductee (Mst. Gul Bano), wherein she categorically affirmed that she had contracted marriage with

Ashiq Hussain of her own free will and without any pressure or coercion, the Nikah-Nama evidencing the said marriage was also produced on record. Furthermore, a Constitutional Petition filed by the abductee before the Honourable Lahore High Court, Bahawalpur Bench, titled *Mst. Gul Bano vs. District Police Officer, Rahim Yar Khan, etc.*, was submitted by the defence. In this petition, the abductee herself had arrayed her father (the complainant), her brother Zahid Hussain, and others as respondents, alleging harassment at their behest. The Hon'ble High Court passed the following order Dated 11-05-2017, which is crucial to reproduce here for its evidentiary and legal value:-

Mr. Muhammad Imran Pasha, Advocate for the Petitioner alongwith Petitioner. Learned Counsel for the Petitioner submits that the petitioner, being sui juris, contracted marriage with Ashiq Hussain from her own free will and consent; further submits that respondent No.2 on the behest of respondents No.4 to 12 is harassing the petitioner without any reason; further submits that respondent No.2 may kindly be restrained from harassing and humiliating the petitioner and her husband as well.

2. In view of the above, the instant writ petition is disposed of with the direction to respondent No.2 not to harass and humiliate the petitioner as well as her husband in any manner whatsoever. However, if any legal proceedings are pending before him, he shall proceed in accordance with law."

20. This order of the Hon'ble Lahore High Court established that at the relevant time, the abductee had not only appeared before the Court consciously and voluntarily, but had also affirmed her marriage with the accused, and sought protection from her own family members. This documented judicial proceeding seriously undermines the prosecution's later narrative and points towards a deliberate attempt to suppress material facts and manipulate the course of justice.

21. It is also worth noting that the abductee herself, as an applicant, filed a petition before the learned Sessions Judge / Justice of Peace, Ghotki and seeking protection. This petition was duly filed and an order was passed on 07-07-2017. Upon perusal of the entire judicial record, it clearly transpires that the abductee swore to the contents of the petition voluntarily and without any duress or coercion. If a person is truly under threat or has a genuine fear from the accused side, it is highly improbable

that she would approach the court on her own, present her sworn affidavit, and seek relief and if, there had been any real and immediate danger, the court would have certainly granted her protective measures, including the arrest of any person threatening her. This aspect significantly undermines the prosecution's subsequent claim that the abductee acted under threat or was coerced by the accused. It is implausible that an individual who is under fear or pressure from the accused would voluntarily file a legal petition before a competent court. Thus, the filing of such an application for protection, in her own name, and the absence of any claim of coercion in that proceeding, further weakens the prosecution case and lends support to the defense that the case has been falsified at a later stage.

22. In the present case, the charge was framed under Section 365-B of the Pakistan Penal Code (PPC), which reads as follows:

Section 365-B PPC: *"Whoever kidnaps or abducts any woman with intent that she may be compelled, or knowing it to be likely that she will be compelled, to marry any person against her will, or in order that she may be forced or seduced to illicit intercourse, shall be punished with imprisonment for life and shall also be liable to fine."*

23. The prosecution's narrative appears to rest upon the assumption that the Nikah between the abductee and the accused was forged; and that the accused induced the abductee to believe he was lawfully married to him. However, such an allegation falls within the purview of Section 493-A PPC, which is reproduced hereunder for reference:

Section 493-A PPC: *"Every man who by deceit causes any woman who is not lawfully married to him to believe that she is lawfully married to him and to cohabit or have sexual intercourse with him in that belief, shall be punished with imprisonment of either description for a term which may extend to ten years and shall also be liable to fine."*

24. It is crucial to highlight that the prosecution has failed to challenge the validity of the Nikah through proper legal means rendering the application of Section 365-B PPC highly questionable and instead, shifting the discussion, if at all, towards Section 493-A PPC, which also lacks proper evidentiary support in this case.

25. In support of the above-mentioned contentions, I am fortified by the judgment rendered in the case of *Ahsan vs. The State*(2024 YLR 578), wherein it was held by this Court that:-

33. *In criminal cases, the evidence produced by the prosecution should be in chain and if the chain is not complete or any doubt which occurred in the prosecution's case that is sufficient to demolish the structure of evidence the benefit thereof must go to the accused especially when the accused had taken a stance of his false implication on account of enmity, which cannot be brushed aside in view of contradictions and discrepancies, referred herein above. In appeal against conviction, the Court is under heavy obligation to access by thinking and rethinking, lest an innocent person fall a prey to my ignorance of facts and ignorance of law. The Court must not close its eyes to human conducts and behavior while deciding criminal cases, failing which the result will be drastic and impacts will be far from repair. The cardinal principle of justice always laid emphasis on the quality of evidence which must be first degree and sufficient enough to dispel the apprehension of the Court with regards to the implication of innocent persons along with guilty one by the prosecution, otherwise the golden principle of justice would come into play that even a single doubt if found reasonable would be sufficient to acquit the accused, giving him/them benefit of doubt because bundle of doubts are not required to extend the legal benefit to the accused. In this regard, reliance is placed on a view held by the Hon'ble Supreme Court in the case of Riaz Masih alias Mithoo v. The State (1995 SCMR 1730) and Sardar Ali v. Hameedullah and others (2019 PCr.LJ 186). Likewise, it is a well settled principle of law that accused continues with presumption of innocence until found guilty at the end of the trial, for which the prosecution is bound to establish its case against the accused beyond shadow of any reasonable doubt by producing confidence inspiring and trustworthy evidence. It is a cardinal principle of administration of justice that in criminal cases the burden to prove its case rests entirely on the prosecution. The prosecution is duty bound to prove the case against accused beyond reasonable doubt and this duty does not change or vary in the case in which no defence plea is either taken or established by the accused and no benefit would occur to the prosecution on that account and its duty to prove its case beyond reasonable doubt would not diminish. The prosecution has not been able to bring on record any convincing evidence against appellant to establish his involvement in the doubt, rather, there are so many circumstances, discussed above creating doubts in the prosecution case and according to golden principle of benefit of doubt one substantial doubt would be enough for acquittal of the accused. The rule of benefit of doubt is essentially a rule of prudence, which cannot be ignored while dispensing justice in accordance with law. Conviction must be based on unimpeachable evidence and certainty of guilt and any doubt arising in the prosecution case, must be resolved in favour of the accused. The*

said rule is based on the maxim "it is better that ten guilty persons be acquitted rather than one innocent person be convicted" which occupied a pivotal place in the Islamic Law and is enforced strictly in view of the saying of the Holy Prophet (PBUH) that the "mistake of Qazi(Judge) in releasing a criminal is better than his mistake in punishing an innocent".

26. Even in legal maxim, it is clearly laid down that:-

" Melius est ut decem nocentes evadant quam ut unus innocens pereat." *It is better that ten guilty persons go free than that one innocent perish".*

This principle is a foundational concept in criminal jurisprudence and supports the idea that the presumption of innocence must be protected, and doubt must benefit the accused.

27. Further, I am benefited by the judgment rendered in the case of *Faiz Muhammad alias Faiz vs. The State* reported in **2023 PCr.LJ 121**, wherein this Court; observing that:-

13. It has come to the light during the course of arguments that the complainant party has not tried to falsify the alleged marriage of prosecutrix with Manthar by filing a suit for jactitation of marriage. In the circumstances, although claimed it false by the complainant party but the said registered marriage certificate (Nikahnama) is still intact, which is also sufficient to throw the clouds of doubt upon the prosecution's story regarding the involvement of appellant in the alleged offence. In these circumstances, it is evident that there is sufficient material available within the record which creates doubt regarding the prosecution case. It is alleged by the complainant party that appellant is a teacher but it has come on the record that he was not teaching the prosecutrix as admitted by the complainant in his statement that the appellant/convict was not an employee of a government school. Now question arises, how the prosecutrix came to know about the name of the appellant with his profession but the same remains undeciphered during the trial."

28. Further, Reliance is placed on the case of *Muhammad Siddique vs. The State*, reported in **2019 SCMR 1048**, is also very clear and directly applicable to the present facts. In that case, the Honourable Supreme Court of Pakistan acquitted the accused on the ground that there was unexplained delay in the lodging of the FIR and the defence had successfully brought on record a harassment petition filed by the alleged

abductee against her father/complainant; and as the prosecution failed to prove its case against the accused beyond reasonable doubt.

29. In view of the foregoing discussion, the prosecution's case is riddled with material contradictions, unexplained delays, and lacks corroborative evidence to substantiate the charges beyond reasonable doubt. The failure to challenge the alleged marriage through proper legal channels, coupled with the judicial record supporting the accused, further weakens the prosecution's stance. As such, the case of the prosecution loses its sanctity and fails to inspire judicial confidence. Accordingly, the appellants are hereby acquitted of the charge by extending them the benefit of doubt.

30. These are the reasoning of my short order dated 24-03-2025 whereby the instant appeals were allowed.

J U D G E

Ihsan/PA.