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## IN THE HIGH COURT OF SINDH, KARACHI

Present: **Mr. Justice Ahmed Ali M. Sheikh**  
**Mr. Justice Mohammed Karim Khan Agha**

**Spl. Cr. A. T. Jail Appeal Nos. 17, 18, and 19/2009**

1. Hadi Bux
2. Allahdino @ Dino Mallah
3. Murtaza Pathan

V

The State

Date of hearing	19.02.2016
Date of judgment	14.04.2016
Appellants	Through Mr. Waqarullah Korejo, advocate
State	Through Ms. Rahat Ahsan, DPG.

### JUDGMENT

**MOHAMMED KARIM KHAN AGHA, J:** By this common judgment, we propose to dispose of the above appeals filed by Hadi Bux, Allah Dino alias Dino Mallah and Murtaza Pathan (the appellants). The appellants being aggrieved and dissatisfied with the judgment dated 31.03.2009, passed by the learned Anti-Terrorism Court No.1, Karachi in Special Case No. 48 of 2007 whereby the appellants Hadi Bux son of Dost Muhammad Khaskheli, Allah Dino @ Dino Mallah son of Muhammad Moosa Mallah and Murtaza Pathan son of Fazal Khan were convicted under Section 365-A read with section 34 PPC r/w section 7(e) Anti-Terrorism Act, 1997, and were awarded imprisonment for life and forfeiture of property to the extent of Rs.50,000/- each and in case of default the accused/appellants will further undergo R.I. for 6 months imprisonment and benefit of section 382-B Cr.P.C. was extended to them (the impugned judgment) have filed these appeals against the same.

2. The facts of the case are that Haji Muhammed Ishaque (the complainant) lodged FIR No.77/2007 under section 365/337 A-1 at PS Memon Goth, Malir Karachi, alleging therein that he is doing private business of Hardware and Sanitary with his son Pervaiz Ahmed and Shahzad Ahmed in Haji Ahmed Mohallah, Murad Memon Goth, Malir Karachi. On 22.07.2007 complainant was

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present along with his sons Pervaiz Ahmed and Shahzad Ahmed at his shop and at the time of Maghrib prayer he left the shop for prayer to his house leaving his sons Pervaiz Ahmed aged 28 years and Shahzad Ahmed aged 15 years and one younger son Hasnain aged 10 years. After Maghrib prayer he received telephone call from Shahzad Ahmed who informed him that at 7.45 p.m. one Alto Car of red colour came with four armed persons at their shop, out of them three culprits came down from the car and entered in their shop, one culprit was with muffled face, while the remaining faces of two persons were open whereas one culprit was sitting on the seat of the car. The above three persons entered in the shop and caught hold Pervaiz Ahmed and dragged him towards the car. On the intervention by Shahzad Ahmed they gave him blow of butt of weapon on his head. He after receiving injury became unconscious. Meantime the culprits on the pointation of weapons kidnapped Pervaiz Ahmed in the above car and took him to some unknown place. The accused while kidnapping the kidnappee dropped there one magazine and 24 live round at the place of incident. The accused persons were wearing Shalwar and Kamiz and they were speaking in Sindhi language. His son further informed him that he can identify the culprits involved in the crime. The complainant produced magazine and live bullets to the police at the time of lodging the FIR.

3. Later on the complainant received a ransom demand for the return of his son at which time S.365(A) PPC and 7(e) ATA were made a part of the offense and the case was transferred from the local police to the police of the AVCC for investigation. After investigation the appellants were arrested in respect of the offense.

4. The learned trial court framed the charge against the appellants on 10.10.2008 in the following terms:

#### **"CHARGE**

I, Syed Hassan Shah Bukhari, Judge, Anti-Terrorism Court No.1, Karachi, do hereby charge you:-

1. Hadi Bux son of Dost Muhammad Khaskheli.
2. Allah Dino @ Dino Mallah son of Muhammad Moosa Mallah.
3. Murtaza Pathan son of Fazal Khan.

as follows:-

V/V

That on 22.07.2007 at 1945 hours, you all and absconding co-accused Ameer Bux @ Molloo son of Ramzan Brohi, Allah Bachaio @ Bachaio Noohani son of Yaqoob, Meero son of Wariyo Noohani, Peer Ali son of Sharif Noohani and deceased accused Ghulam Qadir Noohani son of unknown in furtherance of your common intention kidnapped Pervaiz Memon son of Haji Muhammad Ishaque, on gunpoint from his Hardware and Sanitary shop, situated at Memon Goth, Karachi in red coloured Alto Mehran Car and made him hostage at Hills of District Jamshoro and thereafter shifted him from there to the fields near Kotri and lastly confined the victim Pervaiz Memon son of Haji Muhammad Ishaque in subterranean (Tehkhana) and demanded ransom of Rs. 1 Crore from Complainant Haji Muhammad Ishaque son of Haji Bhario on his Mobile Telephone No:0321-2523969 and PTCL No:021-4560229 by using Mobile Telephone No:0300-3185723 for the safe release of victim Pervaiz Memon son of Haji Muhammad Ishaque and lastly the deal was done to the tune of Rs.19 lacs and after payment of ransom amount of Rs.19 lacs, the victim Pervaiz Memon son of Haji Muhammad Ishaque was released on 18.08.2007 and thereby you have committed offence as defined in section 2(n), section 6 sub-section 2(e) of ATA-1997 and made punishable u/s 7(e) ATA-1997 r/w section 365-A/34 PPC, with the cognizance of this Court;

And I hereby direct that you be tried by this Court on the aforesaid Charges.

Dated: 10.10.2008.

Sd/-10.10.08  
(SYED HASSAN SHAH BUKHARI)  
Judge  
Anti-Terrorism Court No.1,  
Karachi."

5. The appellants pleaded not guilty and claimed trial.
6. In order to substantiate the charge, the prosecution had examined in all 13 witnesses and produced certain relevant documents which had been exhibited and thereafter the learned prosecutor had closed the side of prosecution vide statement dated 25.02.2009.
7. Thereafter the statement of the appellants were recorded u/s 342 Cr.P.C. The appellants did not examine themselves under oath nor did they call any witnesses in their defense
8. After hearing the learned counsel for the parties, the learned trial court had pronounced the impugned judgment.

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9. Learned counsel for the appellants through his oral and written submissions drew attention to the fact that initially the FIR bearing No.77 of 2007 was lodged at PS Memon Goth on 22.07.2007 at about 2030 hours u/s 365, 337-A(i) against four unknown persons which was later on after 7/8 days converted into S.365-A read with section 7(e) ATA and was shown in charge sheet without giving any reason as such this showed the malafide intention on part of the prosecution.

10. Learned counsel further submitted that the prosecution examined 13 witnesses in all but there is no direct evidence against the accused/appellants and the whole evidence is based on hearsay. Furthermore, there was a dispute over property situated in District Thatta with one Anwar Shah who is good friends and co-sharer of complainant Haji Muhammad Ishaq with the father of the appellant Haji Bux which was the motive behind the complainant filing the false FIR against Hadi Bux on the instigation of Syed Anwar Shah who is resident of Murad Memon Goth and his land is adjacent to the accused Hadi Bux's father.

11. He next contended that the learned trial judge failed to appreciate facts and law involved in the case, therefore, the impugned judgment is bad in law, perverse, capricious, therefore, not sustainable under the law and also learned trial judge is in error in convicting the appellants on the basis of most unreliable, unconvincing, untrustworthy, contradicting evidence of witnesses. The charge framed against the appellants was vague, defective and in violation of law, as such failure of justice has occurred and the error has seriously prejudiced the appellants which is not curable under the law.

12. He further submitted that the learned trial judge was also not justified in convicting the appellants as there is no iota of evidence against them and that most of the PW's were interested witnesses whose evidence could not safely be relied upon.

13. He therefore contended that for all the above reasons the impugned judgment may be set aside.

14. In support of his contentions learned counsel relied upon the following case law. **Muhammad Tufail v. The State** 2013 SCMR 768, **Muhammad Ramzan & 3 others v. The State** 2011 YLR

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2379, **Fazal Haq v. The State & another** 2014 YLR 2109, **Abdul Ghaffar v. The State** 2011 MLD 239, **Muhammad Saleem v. The State** 2014 YLR 794 and **Muhammad Akram v. The State** 2009 SCMR 230.

15. On the other hand, the learned Deputy Prosecutor General for the State submitted in his oral and written submissions as under:

- a. That the prosecution has examined as many as 15 P.Ws including abductee Pervaiz Ahmed and injured Shahzad in order to prove the case of prosecution against the accused named above.
- b. That PW Pervaiz Ahmed had fully implicated the present appellants/accused in the commission of offence and he narrated the entire episode of his abduction and finally he is the star witness who had identified the accused before the concerned Judicial Magistrate during the course of investigation.
- c. PW 7 Shehzad who is real brother of abductee who received injuries at the time of incident at the hand of appellants/accused who was an injured/eye witness had deposed against the accused before the Trial Court.
- d. That there is no mala fide or ill will on the part of complainant party to involve the accused persons who have created terror and fear in the mind of the general public, therefore, act of the accused/offence may be dealt with iron hands and they are not entitled for any kind of leniency.
- e. That this case is fully established against the accused persons as such the place of captivity was shown and identification of the accused was held before the concerned Judicial Magistrate and delivery of ransom amount was also paid to the culprits and finally the cassette of conversation between the accused and complainant was also cited as the case property and it was produced in evidence during the course of trial.
- f. Not a single question regarding false implication of accused in the instant matter was raised at trial.
- g. That defense council did not point out any material contradiction in the evidence and failed to shatter the prosecution evidence.

16. Thus according to State Counsel for all the above reasons the impugned judgment had been decided correctly based on the evidence and the law and should be upheld.

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17. Learned State counsel in support of his contentions relied upon the following case law. **Qasim & 4 others v. The State** (1999 SCMR 2841), **State v. Haider Zaidi & 2 others** (2001 SCMR 1919), **Abdul Hameed @ Hameed v. The State** (1999 MLD 752). **Usman Ali & another v. The State** (2007 P Cr.L.J.1097), **Zakir Khan & others v. The State** (1995 SCMR 1793), **State through Advocate-General, Sindh Karachi v. Farman Hussain & others.** (P.L.D SC 01).

18. We have considered the submissions raised by the learned counsel for the parties (both oral and written), minutely gone through the evidence and the record and considered the law and the authorities cited by them at the bar.

19. The appellants have in essence been charged with kidnapping for ransom which also falls under the purview of the ATA.

20. PW 1 Ghulam Hussain ASI of Police recorded the statement of the complainant Haji Muhammed Ishaque almost immediately after the kidnapping incident on 22-07-2007 at 2030 hrs vide FIR 77/2007 u/s 365 and 337A(i) PPC. No one by name was nominated in the FIR although it was stated that his sons Shezad Amjad and Hasnain Amjad could recognize the kidnapper who was unmuffled which indicated that the kidnappers were not known to Shezade and Husnain at the time of the kidnapping.

21. PW 2 Manzoor Ahmed held the identification parade on 4-8-2008 whereby the **abductee Pervaiz Ahmed picked out appellant Murtaza Pathan** as one of the accused who played a role in his kidnapping and produced the identification parade memo.

22. PW 3 was Haji Muhammed Ishaque (the complainant) who was the father of the abductee Pervaiz Ahmed who narrated the same incident as per his FIR however he further stated that after 7 to 8 days of the incident he received a call from one of the kidnappers informing him that he would release his son in return for a ransom of RS one crore otherwise his son would be murdered. The ransom amount was finally agreed to as 19 lacs. Approx 28 days after 18-08-2007 he was directed to go to Hyderabad with the ransom amount. One of the kidnappers directed him through

mobile phone where to go by car. He was accompanied by his nephew Younus and had the ransom amount with him. He made the ransom payment and was told that he would get his son soon. **He identified appellant Allah Dino as the person to whom he paid the ransom.** He was then directed by phone to collect his son at Jamshoro Bridge which he did where his son told him further details about the kidnapping. **He had recorded his conversation on the phone with the kidnappers on a cassette which was given to him by CPLC and which was exhibited.** On cross examination he was not seriously damaged. Importantly no questions were put to him during cross examination of any enmity which existed between Anwar, himself and Appellant Hadi Bux concerning a land dispute. **The Appellants used this enmity as the reason for the complainant filing the false FIR against them in their S.342 statements. If this was true it is incredible that they did not put this to the complainant during cross examination which smacks of an after thought. Nor was he challenged about the cassette on which he had recorded the kidnappers conversation**

23. PW 4 Mohammed Ashfaq carried out the **ID parade of Appellants Hadi Bux and Allah Dino who were both identified by Abductee Pervaiz Ahmed** as persons who were giving him meals and guarding him during his time in captivity following his kidnapping. PW Shezade Ali could not identify any of the accused. Husnain could also not identify the accused. This in our view is of little consequence as it appears from the evidence that the appellants were not the four persons who originally abducted him from the shop but were a part of the kidnap gang who performed other roles in achieving the successful kidnap for ransom. **So far abductee Pervaiz Ahmed positively identified Murtaza (was present when he was transferred from the car to the truck), Hadi Bux (who used to guard him and bring him meals) and Allah Dino (who also told him that the ransom had been agreed). Allah Dino was also identified by Complainant as the person to whom he handed over the ransom money but not at an ID parade as he was absent in Lahore when the ID parade was held.**

24. PW 5 Ali Mohammed was SIP who along with police officers Muhammed Babar and Ishrat Rana collected the cassette from the

offices of CPLC. The seizure memo of the cassette was prepared by Inspector Mohammed Babar and as mentioned earlier was exhibited. He was not damaged during cross examination

25. PW 6 was Pervaiz Ahmed the abductee who corroborated the complainant's version of events and also added that he was initially taken from his shop by alto car and then later transferred into a truck before later being transferred back in to the alto car as they proceeded towards Hyderabad. **Whilst being shifted from the truck he identified Murtaza Pathan.** He was kept for 10 days near Dadu and after 5 or 6 days of the incident he was then under threat asked to call his father asking for a ransom of Rs ten million in order to ensure his release. After about 10 days he under threat called his mother and one of the kidnappers told her to tell his father to pay ransom of Rs ten million as her son was in a death cell. **He was then shifted near Kotri in a sugar cane area where he recognized one of his guards as Hadi Bux who used to bring him food.** He was then moved underground where he recognized a new person **who he identified as Allah Dino.** After a further 10 days detention **Allah Dino disclosed to him that they were going to take ransom from his father** (this ties in with his father's evidence that he paid the ransom to Allah Dino). **Allah Dino and Hadi Bux brought him by truck to Jamshoro Bridge where they released him and he was collected after 10 to 15 minutes by his father and his cousin Younas who informed him that they had paid 19 lacs for his release. He picked out Hadi Bux and Allah Dino from an identity parade and picked out Murtaza Pathan from another identity parade.** (Thus, all 3 of the appellants have been positively identified by him) He was not damaged during cross examination but was asked whether he knew Anwar Shah and Nadeem Memon had a dispute over lands but he did not know.

26. PW 7 was Shezade Ali who was the brother of the abductee who was hit over the head by the Kalashnikov when he went to stop the abduction of his brother Pervaiz. He corroborated his father and brother Pervaz concerning the abduction and was not seriously damaged on cross examination.

27. PW 8 was Dilawar Hussain who was the initial IO who investigated the case who visited the crime scene and during the

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course of the investigation changed the section of the offense from S.365 to S.365 A PPC before handing over the case to AVCC on 30-7-2007 as by this time the complainant had informed him of the ransom demand. He was not damaged during cross examination

28. PW 9 was Abbass Raza ASI of AVCC who accompanied Inspector Babar to Hyderabad Central Jail where he took custody of Hadi Bux and Allah Dino and at which time memo of arrest and recovery was prepared. He was not damaged during cross examination

29. PW 10 was Atiq Rehman who was Inspector AVCC who on transfer of the case to AVCC became the first IO and took custody of accused Murtaza Pathan from Tando Allayer from where he had been arrested by PW's 11 and 12. He was not seriously damaged during cross examination

30. PW's 11 and 12 were Shahid Ali who was a police constable posted at Tando Allayer and Shamsuddin who was an SHO (SIP) posted at Tando Allayer who originally arrested accused Murtaza Pathan at Tando Allayer and later handed him over to PW 10 Atiq Rehman. They were not seriously damaged during cross examination

31. PW 13 was Mohammed Babar who became the IO of the case after Dilawar (PW 8) and Atiq (PW 10) when it was transferred to AVCC. He recorded further statements of complainant and abductee and received interrogation report from office of SSP which was received from DDO Matiyari which disclosed that after the arrest of Hadi Bux and Allah Dino in crime No.99/07 they had admitted their role in the kidnapping of Pervaiz Ahmed. He went to Hyderabad Jail to arrest them and take them into custody in the instant kidnapping case. He prepared memo of arrest and recovery and brought them back to Karachi. He collected the cassette from CPLC and mobile phone data of the complainant. He arranged Identification parades where Hadi Bux, Allah Dino and Murtaza were picked out by the abductee. However Shezad (PW 7) and Hassnain failed to pick out the appellants probably for reasons explained earlier. He was not seriously damaged during cross examination but conceded that the appellants were not directly involved in the kidnapping i.e. they did not originally go to the



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shop and kidnap Pervaiz Ahmed. He also stated that accused Murtaza told him that he had committed the offense at the instance of Anwar Shah

32. EX 21 J is call data which shows the calls to complainants mobile on 28-7-2007, 2-8-2007 and 4-8-2007 from kidnappers mobile. This connection between the complainant and the kidnappers in our view would be extremely difficult to explain (and was not explained by the appellants at trial) if the complainant was not telling the truth. It tends to corroborate his version of events.

33. In their S.342 statements all the appellants denied any involvement in the crime and claimed that they had been falsely implicated due to an enmity which Anwar Ali Shah had with Hadi Bux over disputed land.

34. At the outset we do not find any of the authorities cited by the appellants as being of much, if any, assistance to them based on the facts and circumstances of this case. Generally they deal with the benefit of the doubt being given to the accused, the value of common sense and the surrounding circumstances, and the appreciation of evidence (which all tend to be of assistance to the State when the evidence is viewed in a holistic manner).

35. There appears to us to be three main issues.

- (a) Whether Pervaiz was kidnapped and if so did the appellants play a role in his kidnapping
- (b) Whether any ransom was demanded or paid for the return of the abductee.
- (c) Whether any procedural or other defects are so glaring as to vitiate the trial.

**Firstly dealing with whether Pervaiz was kidnapped and if so did the appellants play a role in his kidnapping.**

36. As was held in the case of **Pahlwan V State** (2000 P.Cr.LJ P.299) in cases of kidnapping for ransom the evidence of an abductee is material and conviction can be based on his testimony alone if it inspires confidence. In this case we found that the

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abductees (Pervaiz's) evidence did inspire confidence as mentioned later. Even other wise from the evidence of the PW's mentioned above in our view it has been proven that Pervaiz Ahmed the abductee was taken by force from his shop. The abductee who was the star witness in the case was corroborated in this respect by PW 7 Shezade who although was his brother was an eye witness to the incident. Further corroboration comes from the complainant (the abductees father) who was told about the incident over the phone by his son Shezade shortly after the incident and by PW 4 Mohammed Ashfaq who carried out the ID parade of the appellants Hadi Bux and Allah Dino and was narrated the same version of events by the abductee.

37. It is true that Shezade did not recognize the appellants as the persons who took his brother from the shop. However, as mentioned earlier, this was in our view on account of the fact that the persons who snatched the abductee in one case wore a muffler, in another case sat away in the car and in any event the appellants did not actually snatch the adductee. This act was most likely done by one of the 4 absconders and one of the accused who has expired.

38. The role of the appellants as per the evidence of the abductee was to guard him, provide him meals and also to transport him. Hence although the appellants may not have played a role in actually snatching the abductee they played a role in the overall scheme of the kidnapping and later release of the abductee and are therefore liable for kidnapping.

39. As regards to the identity of the appellants all three were picked out in legally conducted identification parades by the abductee and again in the Court room. The appellant Murtaza Pathan was also identified by the complainant as the person who he met at the time of handing over the ransom money and who as mentioned earlier had informed the abductee that his father had agreed to pay the ransom. The fact that the abductee had spent around 28 days in the company of the appellants who were guarding him, bringing him food and driving him further in our view adds to the reliability of the identification of the appellants by the abductee. He did not see them only once in a fleeting manner but quite regularly as they were around during his time in captivity



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40. There appears to be no enmity between the abductee and the appellants and thus there would be no reason for him to falsely implicate them. The enmity was apparently between Anwar Hussain who was a friend of the complainant and a relative of appellant Hadi Bux however as mentioned earlier the complainant was not even cross examined on this point which suggests that it was an afterthought. Furthermore, no evidence was produced by the appellants to show that such enmity existed. It was only a bald allegation on their part which was largely confined to their S.342 statements

41. We must also be alive to the fact that 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.

42. The facts and circumstances of this case as narrated by the abductee and complainant in their evidence fit in with such modus operandi. Each member of the gang may play a different role in the kidnapping, to a greater or lesser extent, but a successful kidnapping for ransom could not be carried out without the active participation of all members of the gang. As such in our view they are all liable in this joint criminal enterprise of kidnapping for ransom whether they actually snatched the abductee, drove him, guarded him, collected the ransom etc. As such through their respective roles of driver, guard, cook, accepting the ransom etc the appellants are a part of the kidnapping gang who all participated in the kidnapping of Pervaiz

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43. With regard to the Complainant, the abductee and one other PW being closely related effecting the reliability of their evidence reliance is placed on the case of **Ameer Ali V State** (1999 MLD 758 (Lahore)) which held as under:

18. Learned counsel for the appellant has vehemently contended that these P.Ws being closely related to the deceased are interested and partisan witnesses and their evidence is not worthy of any credence without corroboration. I do not see any force in this connection, because it is now well settled that mere relationship is no ground to discard the evidence of a witness unless it is shown that he was actuated with a motive or malice to falsely implicate the accused, and there is nothing on the file which may tend to show that these two witnesses, namely, Faazil and Khushi Muhammad were actuated with some ulterior motive, enmity or ill-will against the appellant Amir Ali."

44. Thus in our view based on the evidence before him the learned Judge has rightly found that the 3 appellants were involved in the kidnapping of the abductee.

**Secondly whether any ransom was demanded or paid for the return of the abductee.**

45. The complainant in his evidence specifically states that a ransom was demanded and that after negotiation he paid it. He also **specifically states that he paid the ransom money to the appellant Allah Dino**. It was however not directly put to him in cross examination that he did not pay any ransom. Rather it was suggested that he had lost his money and was now blaming the accused. It was also not specifically put to him that he did not pay the ransom to Murtaza. The complainant also told the abductee that he had paid the ransom immediately after his release which was corroborated by the abductee in his evidence. Likewise the Complainant informed the police that a ransom had been demanded which lead to S.365-A being added to the FIR. He also informed the CPLC of the ransom who gave him a tape to record the conversation between himself and the persons demanding the ransom which was exhibited in the Court and was not challenged by the appellants

46. It is true that the payment of ransom was not corroborated by, for example, any withdrawal slip of 19 lacs from any bank or

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anyone else who saw the complainant with the money and saw him hand over the ransom to any one or by the recovery of the ransom amount from any of the appellants. Though it is an admitted position that two of the Appellants were already in Hyderabad central jail pursuant to an FIR in respect of S.402 (Assembling for the purpose of committing dacoity) and 399 PPC (making preparation to commit dacoity) so they could not possibly have had any ransom money on them at the time of their arrest.

47. However we must consider all the pieces of evidence. The first most obvious one is the direct evidence of the complainant which was corroborated by his son. Furthermore, initially no ransom was demanded hence only a case under S.365 PPC was lodged. The ransom demand came 7-8 days later which was when S.365 (A) was added to the FIR. This fits in with the evidence.

48. The next issue was whether there was any motive to kidnap the abductee. No compelling evidence of any motive or enmity was adduced to account for the kidnapping.

49. The question arises therefore why anybody would keep a person in captivity for around 28 days and then release him. The only reasonable inference was that the abductee was released after the payment of the ransom. The direct, reliable and trustworthy evidence of the complainant, the CDR records clearly show that the complainant was contacted by one of the members of the kidnappers gang on 3 separate occasions during the period of the abduction the first such call being 7 to 8 days after the kidnapping which tends to corroborate the evidence of the complainant on the time when he first received a ransom demand. Likewise the tape of the alleged conversation between the kidnappers and the complainant was never challenged.

50. In case of **Zakir Khan & others v. The State** (1995 SCMR 1793) it was held as under:-

"The evidence required for corroboration need not be similar evidence. But any significant evidence leading support to the fact required to be proven would constitute sufficient corroboration"

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51. Even otherwise in the case of **Ameer Ali V State** (1999 MLD 758 (Lahore)) it was held as under:

13. In any case, it is not a sine qua non in the success of the prosecution that the motive must be proved. So long as the other evidence remains convincing and is not open to reasonable doubt, the conviction may well be based on it. It was observed in the celebrated judgment reported as **Abdul Rashid v. Umid Ali** PLD 1975 SC 227 at 237 that

"Weakness of motive or its complete absence would be wholly immaterial when the prosecution case stands proved through the ocular account of unimpeachable character."

52. Taking all the above into account we are of the view that the learned Judge rightly held that the abductee had been kidnapped for ransom by the appellants and other members of the kidnapping gang and that a ransom demand was made by one of the kidnappers and the ransom was paid by the complainant to the gang through the appellant AllahDino.

**Thirdly whether any procedural or other defects are so glaring as to vitiate the trial.**

53. The fact that the offense was changed from S.365 to 365 (A) PPC is entirely logical as the ransom demand did not come until 7 to 8 days after the abduction and as such at the time when the FIR was registered it was a case of simple kidnapping. When the ransom demand was later made S.365 (A) PPC was added and the case was handed over to the AVCC to further investigate. There was no significant delay in lodging the FIR bearing in mind the facts and circumstances of the case where the father must have been worried, confused and afraid. Even otherwise in the case of **Rahat Ali V State** (2001 P.Cr.LJ P.98) in the presence of other cogent evidence regarding the guilt of the accused delay in lodging the FIR could be ignored. In this case the FIR was lodged not more than an hour or so after the incident and there is other cogent evidence as discussed above to show the guilt of the appellants

54. In our view none of the procedural irregularities pointed out by the appellants are of a major nature, and have been largely satisfactorily explained through the evidence and common sense,

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and are insufficient to vitiate the trial or lead to a miscarriage of justice. For example the delay in filing the FIR by an hour or so, the change in offense from S.365 to S.365 (A), the lack of mushirs when Murtaza was arrested etc. In fact the prosecution version of events has been fully supported by the prosecution witnesses none of whom were damaged let alone shattered on cross examination. The few inconsistencies which did arise from the PW's was minor in nature and in our view was in no way so material so as to effect the outcome of the case.

55. In this respect reliance is placed on case of **Zakir Khan & others v. The State** (1995 SCMR 1793) which held as under:-

"The rule is now well established that only material contradictions are to be taken into consideration by the Court while minor discrepancies found in the evidence of witnesses, which generally occur, are to be overlooked.

56. Reliance is also placed on **Ameer Ali V State** (1999 MLD 758 (Lahore)) which held as under;

19. Learned counsel for the appellant also pointed out a few contradictions between the statements of these two witnesses, which are minor in nature and so insignificant that these deserve no comment. Even otherwise, it is well settled rule of law that some discrepancies are inevitably bound to occur in the statements of the eye-witnesses on account of lapse of memory owing to intervening period of their appearance before the police and their entry in the witness box during the trial. In the absence of any material discrepancies, the rejection of their testimony on this score is wholly unwarranted. On this point, the Supreme Court of Pakistan held in a case reported as Abdul Rashid v. Umid Ali and 2 others PLD 1975 SC 227, the relevant reproduced hereunder, finds mention at page 239;

"Of course, there have been cases where thoroughly drilled and well-tutored witnesses after going through several rehearsals made statements which were almost verbatim repetitions of their police statements as well as those of each other at the trial and the Courts have been very rightly skeptical about such parrot-like reproductions. It is only the material discrepancies coming into conflict with the natural probabilities that militate against the credibility of witnesses justifying the rejection of their testimony".....

57. In any event in our view there seem to be no major discrepancies in the prosecution case. None of the PW's was damaged on cross examination. The prosecution evidence which is

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corroborated in large part depicts a chain of events which involved the kidnapping of the abductee for ransom in which process the appellants all played a role.

58. In conclusion we find that the impugned judgment has been rightly decided based on the evidence and the case against the appellants has been proved beyond a reasonable doubt and as such the impugned judgment is upheld and the appeals of all the appellants are hereby dismissed.

Dated: 14-04-2016