

HIGH COURT OF SINDH AT KARACHI

PRESENT:

Mr. Justice Aftab Ahmed Gorar
Mr. Justice Amjad Ali Sahito

Spl. CrI. Anti-Terrorism Jail Appeal No. 119 of 2014
Spl. CrI. Anti-Terrorism Jail Appeal No. 09 of 2015
Spl. CrI. Anti-Terrorism Jail Appeal No. 10 of 2015
Spl. CrI. Anti-Terrorism Jail Appeal No. 11 of 2015

Appellants : (i) Mst. Yasmeen wife of Gulzar Ahmed
Through M/s. Mehmood-ul-Hassan
& Khaleeq Ahmed, Advocates
(ii) Asghar Ali son of Chiraghuddin
(iii) Fateh Muhammad son of
Muhammad Villari
(iv) Dilbar Hussain son of Muhammad
Anwar
Through Mr. Nasrullah Korai,
Advocate

Respondent : The State
Through Mr. Ali Haider Saleem
Deputy Prosecutor General, Sindh

Date of Hearing : 26.02.2019 & 07.03.2019

Date of Judgment : .03.2019

J U D G M E N T

AMJAD ALI SAHITO, J: - Appellants mentioned above were tried by the learned Judge, Anti-Terrorism Court No.V, Karachi vide judgment dated 27.10.2014 in Special Cases No. (1) B-38/2009, (2) B-39/2009, (3) B-40/2009 & (4) B-41/2009 arising out of the Crime No.83 of 2009 for offence under Section 365-A PPC read with Section 7 of Anti-Terrorism Act, 1997 registered at Police Station Pak Colony (AVCC) Karachi, whereby the learned trial Court after full dressed trial, convicted the appellants as under:-

Section	Conviction
Section 365-A/34 r/w Section 6(2)(e) of ATA, 1997	All the accused mentioned above were convicted and sentenced to undergo R.I. for life imprisonment.
Section 13-D of Arms Ordinance	Accused Asghar Ali & Fateh Muhammad are convicted and sentenced to undergo R.I. for

seven years.

Section 23(I)-A SAA

All the accused persons are acquitted in Case No.39/2009 under Section 353/324/34 PPC.

All the sentences shall run concurrently. However, the benefit of Section 382-B, Cr.P.C. was extended to them.

2. Brief facts of the prosecution case as depicted in the FIR are that on 25.03.2009 at about 12 noon one Muhammad Zahid son of Complainant Abdul Samad resident of House at Chittagong Colony Manghopir Road as a routine proceeded from his house towards his shop situated at Haider Market but he did not reach there. The complainant then reported the matter at police station Pak Colony at about 1715 hours which was entered in the Station Diary of the police station. On the next date, the complainant received a call on the mobile of his elder son Rashid from the mobile phone number of Zahid that Zahid was in possession of the caller and Rs.2 Crore as ransom was demanded his release. Then the complainant referred the matter to CPLC who provided the complainant a phone and directed him to remain in contact with the culprit on the said phone and FIR was also lodged bearing No.83/2009 on 28.03.2009 at PS Pak Colony which was registered u/s 365-A PPC. He then received a telephone call from one Inspector and he was called at PS Jamshed Quarters. He reached there and found that his son was sitting there. He was told that as a result of one raid in Ayoub Goth his son was recovered. The complainant then brought the

kidnaped son at his house. On 29.03.2009 Inspector Babar approached him and directed to bring Zahid for recording his statement but the said Zahid was mentally disturbed and complainant sought time. On 03.04.2009 complainant, his elder son Rashid and kidnaped Zahid went to AVCC Garden and met with Inspector Babar. The kidnaped pointed out the place of his kidnapping and narrated the facts to the police that on that day as routine he was going to Haidri Market by Bus when he alighted at Haidri Bus Stop at about 1230 noon, one Alto Car of white colour intercepted him and one of the occupant of the Car alighted who claimed to be a CID official and took him in that car, contending that his finger print and identification were required. But at some distance two persons also sat on the rear seat and pushed his head down. After journey of 15 minutes they took him in a house and confined in a room. The culprits inquired about his family members and their phone numbers. He was blind folded and his hands and legs were tied with rope. In that house he found that a family was residing. From his mobile phone they contacted with his family members. One lady and two persons continued kept guard upon him. On 28.03.2009 police entered into the room where he was captivated, removed strips from his eyes and untied him. Two persons and one lady namely Asghar, Fateh Muhammad and Mst. Yasmeen were apprehended. Police brought all of them at police station Jamshed Quarters and his father was called there. On 28.03.2009, ASI Zulfiqar Ali, ASI Raza Shaheed, ASI Faisal

Hamza, HC Dilbar Hussain, Ahmed Hayat and PC Muhammad Ali belonged to SIU Jamshed Quarters were patrolling in the area. At Sohrab Goth they received spy information that a person was confined at Lassi Goth by some culprits. The police team reached at Street No.3 Lassi Village and on the pointation of spy informer raided the House No.R-62. On knocking the door fire opened upon them from inside the house. However, police party succeeded to enter the house and captured two persons who disclosed their names as Asghar Ali and Fateh Muhammad. Asghar Ali was holding 30 bore pistol and Fateh Muhammad was holding 30 bore pistol which were seized and they were apprehended. One lady Mst. Yasmeen @ Madam was also found in another room and one boy blind folded was also found tied in that room who disclosed his name as Zahid and told that he was kidnapped on 25.03.2009 from Haidri Bus Stop. ASI Zulfiqar arrested three culprits and seized the weapons under mashirnama of arrest and recovery. Three FIRs bearing Crime Nos.207, 208 & 209 of 2009 were registered at PS Sohrab Goth. The investigation was assigned to ASI Faisal Jafri and three separate challans filed as Special Case No. 39, 40 & 41 of 2009. The investigation of Crime No.83/2009 under Section 365-A/34 PPC was being conducted at AVCC and Inspector Babar arrested the said accused in said crime also. Accused Dilbar Hussain was arrested on 29.07.2009, who was shown absconder in the charge-sheet.

3. Initially, four separate charge-sheet were filed before ATC-III Karachi where all four above-cited cases were ordered to be tried jointly and three accused Ali S/o Gulzaman, Mama and Irfan were declared as absconders u/s 512 Cr.P.C. A joint charge was framed on 15.03.2010 on which the accused pleaded not guilty and claimed to be tried.

4. At the trial, in order to establish the accusation against the appellants, the prosecution has examined the following witnesses:-

- (i) PW-1 Complainant Abdul Samad at Ex.15, who produced roznamcha at Ex.15/A, FIR at Ex.15/B and Mashirnama at Ex.15/C.
- (ii) PW-2 Muhammad Ibrahim, Vth Judicial Magistrate, Karachi West at Ex.16, who produced an application for identification parade of accused at Ex.16/A, memo of identification parade and appended his certificate at Ex.16/B.
- (iii) PW-3 Abductee Muhammad Zahid at Ex.17, who produced notice to appear before the Court for identification parade at Ex.17/A.
- (iv) PW-4 Mehmood Ali, Owner of the House from where abductee was recovered, at Ex.18, who produced memo of the scene of offence at House No.R-62 at Ex.18-A.
- (v) PW-5 Abdul Razak, brother-in-law of landlord, at Ex.19.
- (vi) PW-6 ASI Aslam Javed, author of the FIR, at Ex.20.
- (vii) PW-7 Inspector Ishrat Rana at Ex.21, who produced mashirnama of the arrest of accused at Ex.21/A.

- (viii) PW-8 ASI Zulfiqar Ali at Ex.22, who produced mashirnama of seized weapon at Ex.22/A, 154 Cr.P.C. statement at Ex.22/B, memo of arrest and search in the person of accused at Ex.22/C.
- (ix) PW-9 Head Constable Ahmed Hayat at Ex. 24, who produced memo of the scene of offence at Ex.24/A
- (x) PW-10 SIP Raja Tariq at Ex.28, who produced order at Ex.28/A, examination of recovery of pistol 2, two empties at Ex.28/B, FSL report at Ex.28/C, memo of arrest of absconded accused at 28/D, a daily diary of SIU Jamshed Quarters, CCP Karachi at Ex.28/E.
- (xi) PW-11 Head Constable Akhtar Zaman at Ex.29, who produced memo of re-arrest of the accused persons from SIU at Ex.29/A to Ex.29/B, mashirnama of mobile phone calls data audio cassette at Ex.29/C to Ex.29/D.
- (xii) PW-12 Investigating Officer Muhammad Babar at Ex.30, who produced copy of entry No. 25 at Ex. 30/A and order of investigation assigned to him at Ex.30/B, station diary at AVCC No.11 at Ex.30/C, entry No.11 at SIU at Ex./D, Entry No.17 at SIU Ex.30/E, entries No.10 & 11 at Ex.30/F, Station diary entries of PS AVCC No.36 & 41 at Ex.30/G & Ex.30/H, entry No.42 at AVCC at Ex.30/I.

5. Thereafter, the side of prosecution was closed by learned DDPP vide statement at Ex.31.

6. Statements of the above named accused/appellants were recorded under Section 342, Cr.P.C. at Ex, in which they have denied the allegations leveled by the prosecution. However, none of the appellants examined themselves on Oath nor produced any witness in their defence.

7. The learned trial Court after hearing the parties counsel and on the assessment of evidence, convicted and sentenced the appellants as stated above which has given rise to the instant appeals.

8. Learned counsels for the appellants have argued that the appellants have falsely been implicated in this case; that the evidence of prosecution witnesses is full of contradiction and discrepancies which are fatal to the prosecution case; that the ransom has not been proved as the prosecution miserably failed to produce any recovery effected from the appellants; that the place of incident is thickly populated area but the investigating officer has failed to associate any independent person from the locality to believe that the appellants are involved in the commission of offence; that neither the SIM has been recovered nor any ransom amount has been paid to the appellants, hence it is a case of only detention which falls under Section 365 PPC; that the appellants are poor persons, and have falsely been implicated in this case. Lastly, it was argued that the prosecution has failed to prove its case against the appellants beyond reasonable doubts and according to them, under the above-mentioned facts and circumstances, the appellants are entitled to their acquittal. In support of their contention, they have relied upon the case of MUHAMMAD AKRAM Vs. THE STATE (2009 SCMR 230), MOHSIN RAZA AND OTHERS VS. THE STATE (2019 YLR 03), HASHIM QASIM AND OTHERS VS. THE STATE (2017 SCMR 986), HAKEEM AND OTHERS

VS. THE STATE (2017 SCMR 1546), SHAHBAZ MASIH VS. THE STATE (2007 SCMR 1631), MEHMOOD AHMAD VS. THE STATE (1995 SCMR 127), KHADIM HUSSAIN VS. THE STATE (1985 SCMR 721), AJAB alia AJAB VS. THE STATE (2004 MLD 180), SAMANDR alias QURBAN AND OTHERS VS. THE STATE (2017 MLD 539), ABDUL GHAFAR VS. THE STATE (2011 MLD 239), MISRI VS. THE STATE (2012 PCRLJ 1218), AMIR AND ANOTHER VS. THE STATE (PLD 1968 LAHORE 49) & one unreported case of Criminal Miscellaneous Application No.183/2019 (in Criminal Appeal No.259/2018).

9. Learned Deputy Prosecutor General, Sindh has argued that the evidence of the abductee is sufficient for maintaining the conviction in this case as it is a reliable and trustworthy for the reason that said abductee has remained in the captivity of the appellants for about (03) days; that the appellants were arrested from the house wherefrom the abductee was recovered; that the appellants have demanded ransom amount of Rs.2 Crore for the release of the abductee through his mobile phone; that the complainant has also supported the prosecution case in this regard as well as police officials; that the trial Court after appreciating the evidence has convicted and sentenced to the appellants in accordance with law.

10. We have heard the learned counsel for the appellants as well as learned Assistant Prosecutor General, Sindh and have gone through the evidence with their assistance. From the evidence, we find that the prosecution case rests upon two

pieces of evidence viz. ocular testimony and recoveries. The ocular testimony consists upon evidence of the witnesses i.e. PW-1 Abdul Samad, father of the abductee PW-2 Muhammad Ibrahim, Civil Judge & Judicial Magistrate, PW-3 Abductee Muhammad Zahid, PW-8 Zulfiqar Ali, who has arrested the accused persons and supported by the other witnesses.

11. We would add that in case of abduction/kidnapping normally the case would depend upon the evidence of the abductee. In such cases, the abductee shall always be regarded as star witness while the other evidence would be that of a corroborated piece of evidence. In the instant case, the star witness of the case is abductee Muhammad Zahid. Let's examine what the prosecution has brought on record to prove the case of abduction for ransom, (PW-3) Muhammad Zahid/abductee, who used to sit at cloth's shop of his father situated at Haidri Market and used to go to the shop at about 12 noon by bus. On the day of incident viz. 25.03.2009 as per routine, the abductee alighted from the bus and it was about 12:30 noon a person alighted from the white colour Alto car and he caught hold him and disclosed his identity as CID official and stated that he wanted to go for finger prints and identification parade. After covering some distance, one person alighted from the rear seat whereas two other occupied the said seat. His head was pushed down and after 15 minutes, again the car was stopped. At that time, one lady occupied the rear seat of the car. They brought him in a house and confined in a room. They put a *chaddar* upon him

and inquired from him the details of his family then informed him that they have kidnapped him for ransom. They had taken his mobile phone through that mobile phone they started contact with his family members. The lady remained in the house during that time but went out from the house at the night time. Apart from above, another person also visited the house. On 28.03.2009, the abductee heard fire noises at that time two persons were keeping a guard upon him and a lady was also available in the house. After 10 minutes police entered the house. Police removed the strip from his eyes and untied his hands and legs. Police apprehended both persons and one lady in his presence who disclosed their names as Asghar, Fateh, and Mst. Yasmeen. The accused were brought at the police station. Meanwhile, his father was called, who then recorded the FIR. On 20.07.2009, the abductee was called for identification of the accused. On the same day, he arrived in the Court and in the presence of the Magistrate; he identified accused Dilbar with a specific role that the said accused opened the door when other accused brought him in the said house and he (Dilbar) used to collect information from him in respect of his family members. In cross-examination, he admitted that **“it is incorrect to suggest that during my captivation all the time I was blind folded. Voluntarily says, time and again they removed strip from my eyes and I used to go to wash room. I had seen the faces of culprits at the moment when they removed cloth strip from my eyes. It is correct to suggest that I had**

clearly seen the face of lady. It is correct to suggest that in my statement dated 03.04.2009 it has been mentioned that, I have suspicious that a lady arrested from the house is same who was sitting in car at the time of my kidnapping. It is correct to suggest that during use of wash room I did not make any vociferation. Voluntarily says, the accused were kept guard upon me and not closed the door of wash room. It is correct to suggest that my parents were not in position to pay the ransom of Rs.2 Crore. It is incorrect to suggest that I was not kidnapped by any person for ransom purpose not confined me at any place and I am giving evidence on the direction of I.O. Babar” In order to support the contention of the abductee Muhammad Zahid, the prosecution examined father of the complainant Abdul Samad, who has lodged the FIR and deposed in his evidence that my son regularly used to go at his shop situated Haidri Market. On an eventful day at about 12 noon, he has left the house for the shop but he did not reach there. He waited for him till evening then he found him missing and reported the matter to police station Pak Colony. His N.C. was registered at PS which he produced as Ex.15/A. At about 3 PM he received a missed call on the mobile phone of his elder son Rashid from the mobile phone of his missing son Muhammad Zahid. He made a call on the mobile phone of his missing son Muhammad Zahid, which was attended by a person who informed his elder son that Muhammad Zahid is in their possession and demanded Rs.2

Crore as a ransom for the release and thereafter the said caller switched off the mobile phone of his son Muhammad Zahid. The said caller time and again made a telephone call and inquired in respect of arrangement of money then he went to the Governor House and reported the matter to CPLC. They provided him a telephone and directed him to remain in contact with the culprits on the said phone. On 28.03.2009 he registered the FIR at PS Pak Colony. On the same day, at about 3 PM he received a call from Inspector Rao Zaheer, who inquired about the kidnapping of his son and called him at PS Jamshed Quarter. He went to PS Jamshed Quarter and sat in the upper portion of the building where he saw his son along with certain police officials, who informed him that during a raid conducted at Ayoub Goth, they recovered his son. In cross-examination, he admitted that previously his son Muhammad Zahid was kidnapped and he has expressed his suspicious on Kamran Chief, Haneef, and Junaid. After the arrest of accused Dilbar Hussain, he was produced before the learned Magistrate for identification parade and PW-2 Muhammad Ibrahim was performing his duty as Vth Civil Judge and Judicial Magistrate. In his presence, the abductee clearly identified the accused Dilbar Hussain along with his role. In his cross-examination, he has denied the suggestion that the accused Dilbar Hussain during identification made a complaint in respect of his access to abductee at AVCC police station by I.O. In support of the contentions of the complainant as well as abductee, prosecution examined

PW-4 Mehboob Ali, owner of the house from where abductee was recovered, who in his evidence deposed that on 13.03.2009 Aslam Plumber along with a person met with Abdul Razak for taking the ground floor of my building on rent and rent was decided Rs.4,000/- per month and he has given said portion to one Dilbar Hussain, who started residing in the house along with his family since 15.03.2009. On 28.03.2009 police conducted the raid and arrested certain persons from the ground floor of the house which was given to Dilbar Hussain. On inquiry from the parents of Dilbar Hussain, they informed him that there was a dispute on a plot and same has been decided. They themselves called the police. He has identified the accused Dilbar Hussain in the Court. In cross-examination, he admitted that he has noted down fire mark at walls of his building. The prosecution also examined PW-5 Abdul Razak private person, who in his evidence deposed that on 28.03.2009 at about 12 noon he was available at his shop situated near the building of Mehboob, heard fire voices and saw police in uniform and civil dress took two male, one female, and a child from the ground floor. He further informed that on the place of recovery, the police have recovered minor abductee from the house. In cross-examination, he admitted that there is a single entrance to the ground floor flat. The prosecution also examined PW-7 Inspector Ishrat Rana, who deposed that in his presence accused Dilbar Hussain was arrested and he has identified the accused in the Court room. Another star

witness of the case is PW-8 ASI Zulfiqar Ali, who was posted in SIU Jamshed Quarter. On 28.03.2009 he was on patrolling along with subordinate staff reached Sohrab Goth where they received spy information that a person has been kept in the captivity at Lassi Road by some culprits. He along with his informer reached the pointed house and knocked on the door. Meanwhile, the accused persons started firing upon them from inside the house. In retaliation, police official also made aerial firing. After some time police officials entered into the house and arrested accused Asghar Ali, Fateh Muhammad along with 30 bore pistol. The lady Mst. Yasmeen was also arrested from the front room. A boy blindfolded with tied legs and hands noticed in the said room. His legs and hands were untied and strip removed from his eyes. The sad boy disclosed his name as Muhammad Zahid and further disclosed that he was kidnapped on 25.03.2009 from Haidri Bus Stop and confined him in the said house. The recovered weapons were sealed on the spot. Such memo of arrest and recovery was prepared and persons belonging to accused and their property were brought to the police station where separate FIRs were registered. In order to support the contention of ASI Zulfiqar Ali, prosecution examined PW-9 Ahmed Hayat in whose presence the accused persons were arrested and recovery was made and he has acted as mashir and he has confirmed the contention of ASI Zulfiqar Ali and thereafter the prosecution examined PW-10, I.O. of the case in Crime No. 207, 208 & 209 of 2009, who has recorded the

statement of witnesses. The prosecution also examined Head Constable Akhtar Zaman through whom the learned DDPP produced audio cassette, which was recorded at the office of CPLC, Governor House. Lastly, the prosecution examined PW-12 Inspector Muhammad Babar, who has submitted the supplementary challan against the accused Dilbar Hussain.

12. First of all, we will discuss the case of a lady accused Mst. Yasmeen the allegation against her is that at the time of abduction she was accompanied with the accused persons and remained in the house of the accused, from the evidence of the owner of the house PW-4 Mehboob Ali, who in his evidence deposed that he has given his house to Dilbar Hussain, who started residing in the said portion of the house along with his family members. The star witness of this case admits that **“it is correct to suggest that in my statement dated 03.04.2009 it has been mentioned that, I have suspicious that the lady arrested from the house is the same who was sitting in a car at the time of kidnapping.”**

Further, during the course of the investigation, nothing has been brought on the record that appellant Mst. Yasmeen has actively participated in the commission of offence or she has demanded ransom amount from the father of the abductee, mere presence has been shown in the house of the accused, otherwise, the abductee has only shown his suspicious upon her and it is settled principle of law that suspicious cannot take place of proof. In the case of Muhammad Mansha Vs.

The State (2018 SCMR 772) the Hon'ble Supreme Court of Pakistan has held as under:-

“4. Needless to mention that while giving the benefit of doubt to an 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 in this behalf can be made upon the cases of Traique Parves Vs. The State (1995 SCMR 1345), Ghulam Qadir and 2 others Vs. The State (2008 SCMR 1221), Mohammad Akram Vs. The State 2009 SCMR 230) and Mohammad Zaman Vs. The State (2014 SCMR 749)”.

13. In view of the above, if any reasonable doubt arises in the prosecution case the benefit of the same must be extended to the appellant. The conviction and sentence awarded to the appellant by the learned trial Court (Anti-Terrorism Court No.V, Karachi) to the extent of appellant Mst. Yasmeen is set aside and the appellant is acquitted of the charge levelled against her in this case. The Special Criminal Anti-Terrorism Jail Appeal No. 119 of 2014 filed by appellant Mst. Yasmeen is hereby allowed. The appellant is in jail. She is directed to be released forthwith, if not required in any other custody case.

14. Reverting to the case of the rest of accused, it is evident that the abductee narrated manner his abduction, demand of ransom and recovery by police which is apparently natural and confidence inspiring. The abductee also disclosed that in his presence, the ransom was demanded and identified all accused persons in the Courtroom that they all are the same

who abducted him and demanded ransom amount. In absence of enmity, the abductee has fully implicated the appellants except for Mst. Yasmeen in the commission of the offence. In this context, reliance can be placed on the case **MUHAMMAD RIAZ AND OTHERS V. BILQIAZ KHAN AND OTHERS (2012 SCMR 721)** wherein it is held as:-

“9. ...These prosecution witnesses particularly the abductees had neither any enmity with the appellants-convicts nor was so alleged with specific proof to warrant as inference that they had falsely implicated them....”

15. Furthermore, the version of the abductee Muhammad Zahid for abduction and demand for ransom has been corroborated/confirmed by the PW-1 Abdul Samad as he has received the telephone call from the appellant for the demand of Rs.2 Crore as a ransom for the release of his son.

16. As far as the contention of learned counsel for the appellants that payment/demand for ransom has not been proved, hence, the case is not made out, is misconceived and has no force. For the sake of convenience relevant provision i.e. Section 365-A PPC is reproduced here, which reads 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.”*

Section 2(n) of Anti-Terrorism Act, 1997 provides as under:-

“2(n) *“kidnapping for ransom” means the action of conveying any person from any place, without his consent, or by force compelling or by any deceitful means inducing him, to go from any place, and unlawfully detaining him and demanding or attempting to demand, money, pecuniary or other benefit from him or from another person, as a condition of his release;*

17. From the bare perusal of Section 365-A, PPC and Section 2(n) of Anti-Terrorism Act, 1997, it is obvious that in order to constitute an offence of kidnapping for ransom, the proof of payment of money or even demand thereof is not *sine qua non* and said offence also stands constituted if there is an abduction for the purposes of extortion of money or the ransom is demanded. PW-3 Muhammad Zahid has deposed that he was abducted for ransom and demand of Rs.2 Crore for his release was made by the abductors. It is pertinent to mention here that PW-3 Muhammad Zahid abducted on 25.03.2009 and was recovered from the custody of the appellants on 28.03.2009 after his remaining in captivity of the abductors for about three (03) days. In our humble view, the ingredients of the offence of kidnapping for ransom are fully satisfied and proved in this case. In this regard, reliance can be placed on the case of **Muhammad Riaz and others supra**, wherein the Hon’ble Supreme Court of Pakistan has held that:

“11. A close reading of the afore-referred provision would show that essential ingredients to prove the offence are twofold: (i) the act of abduction, (ii) “for the purpose of extorting from the person Kidnapped or abducted, or from any person interested in the person Kidnapped or abducted,...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”. In Muhammad Amjad v. State

(PLD 2003 SC 704), ambit of this provision came up for consideration and the Court held as follows:-

“38. Section 365-A P.P.C. deals with kidnapping or abduction for extorting property, valuable securities etc. while committing above crime various acts are done i.e. capturing the victim and then detaining him under captivity. Normally thereafter, demand is made for ransom. More often than not these acts are done by more than one person, but in this case everything was done by the appellant himself. To constitute an offence under this section it is not necessary that the money must have passed on to the culprit, nor it is necessary that the victim must have been released. Abduction/kidnapping may be by force or by deceitful means.”

12. The evidence led proved beyond reasonable doubt that the appellants had abducted the two abductees for the purpose of extorting ransom and had compelled the complainant to comply with the demand for cash/ransom for releasing the abductees.”

18. The minor discrepancies in statements of all the witnesses are not enough to demolish the case of prosecution because these discrepancies always occurred on account of lapse of time which can be ignored. It is not a discrepancy or discrepancies which could be pressed for an acquittal but the defense has to bring on record the contradictions which too should be of a nature to cut at the root of the prosecution towards their presence and manner of the incident. It is settled principle that the variations in the statements of witnesses which are neither material nor serious enough to affect the case of the prosecution adversely are to be ignored by the court. It is also a settled principle that statements of the witnesses have to be read as a whole and the court should not pick up a sentence in isolation from the entire statement and ignoring its proper reference, use the same against or in favour of a party. The contradictions have to be material and substantial so as to adversely affect the case of

the prosecution. The father of the abductee Abdul Samad (PW-1) reported the matter to CPLC on 25.03.2009 who advised him to engage the kidnappers in talks and linger on the negotiation about the settlement of the ransom, hence the delay of lodgment of FIR has properly been explained by the complainant.

19. The case law relied on Mr. Nasrullah Korai, learned counsel for appellants namely Asghar Ali, Fateh Muhammad, and Dilbar Hussain are distinguishable from the facts and circumstances of the case.

20. The upshot of the above discussion is that the prosecution has successfully proved its case against the appellants except for Mst. Yasmeen. Learned counsel for the appellants have failed to point out any material illegality or serious infirmity committed by learned trial court while passing the impugned judgment, which is in our humble view is based on an appreciation of the evidence and same does not call for any interference by this court. Thus, the convictions and sentences awarded to appellants Asghar Ali, Fateh Muhammad & Dilbar Hussain by the learned trial Court are hereby maintained and the appeals Spl. CrI. ATJA Nos. 09, 10 & 11 of 2015 filed by the above-named appellants merits no consideration, which are dismissed. However, all the convictions and sentences awarded to the appellants shall run concurrently.

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