

THE HIGH COURT OF SINDH AT KARACHI

Special Criminal Anti-Terrorism Appeal No.303 of 2018
Special Criminal Anti-Terrorism Jail Appeal No.310 of 2018

Present: *Mr. Justice Nazar Akbar*
Mr. Justice Zulfiqar Ahmad Khan

Appellant: Naveed Ahmed @ Genda in Spl. CrI. A.T.A No.303 of 2018, through Mr. Muhammad Nizam Khokhar, Advocate.

Appellants: (1) Aqeel Ahmed @ Shamsi
(2) Muhammad Noman @ Nomi
(3) Adnan Akhtar @ Adi
(4) Naveed @ Genda
In Special Criminal A.T.J.A No.310/2018, through Mr. Abdul Razzak, advocate.

Respondent: The State, through Mr. Muhammad Iqbal Awan, Deputy Prosecutor General Sindh.

Date of Hearing : 08.12.2020

Date of Judgment : 24.12.2020

J U D G M E N T

NAZAR AKBAR, J--- All the above named Appellants were tried by learned Judge, Anti-Terrorism Court No.XVII, Karachi in Special Case No.11/2009 (*New Spl. Case No.56/2017*), for three offences out of which one against all the accused arising out of **FIR No.59/2009, P.S. Darakhshan, Clifton Karachi**, for offences under Sections 365-A/34, PPC read with Section 7 of the Anti-Terrorism Act, 1997 and two others in **FIR Nos.67/2009 and 68 of 2009 at P.S. Gulistan-e-Johar** under section 13(d) of the Arms Ordinance, 1965, only against accused Noman and Aqeel. On conclusion of trial, the trial Court, vide common judgment dated **29.09.2018**, convicted and sentenced the appellants as under:-

“In view of the above discussion on point No.1 I am of the humble view that the prosecution has successfully proved its case Crime

No.59/2009 U/S 365-A/34 PPC r/w Section 7 ATA of 1997 P.s Darakshan against the accused persons beyond any shadow of doubt. I therefore, convict the accused persons, namely, Aqeel Ahmed @ Shamshi s/o Zahoor Ahmed, 2, Adnan Akhtar @ Addi s/o Dr. Shamshad Akhtar, 3, Muhammad Noman @ Nomi s/o Muhammad Ishaque & 4) Naveed @ Genda s/o Islamuddin u/s 265-H(2) Cr.P.C for the offence as defined in section 6(2)(e) of ATA and sentenced them U/s 7(1)(e) of ATA of 1997 r/w section 365-A/34 PPC to suffer life imprisonment.

As I have discussed in point No.2 that the prosecution has proved its cases regarding the recovery of unlicensed arms and ammunition Therefore I convict the accused persons as under:-

- i) Accused Aqeel Ahmed @ Shamshi s/o Zahoor Ahmed, for the offence u/s 13-(d) Arms Ordinance 1965 to undergo R.I for four years and to pay fine of Rs.50,000/- in case of default to undergo S.I. for one month more.
- ii) Accused Muhammad Noman @ Nomi s/o Muhammad Ishaq, for the offence u/s 13-(d) Arms Ordinance 1965 to undergo R.I for four years and to pay fine of Rs.50,000/- in case of default to undergo S.I. for one month more.

The sentences shall run concurrently. However benefit of Section 382-B, Cr.PC is given to the accused persons from the date of their arrest.

2. Brief facts of the prosecution case are that the complainant Riaz Yousuf Siddiqi in response to a phone call at PS Darakshan from one Inspector Arshad Ali as per daily diary entry No.47 visited the complainant at his residence on **27.01.2009** at **2000 hours** and recorded his statement under **Section 154** Cr.P.C. The complainant in his statement informed that he is doing his own business of garments. On **23.01.2009**, at about 10.00 hours he went with his wife to the factory unit, situated in Phase-II, DHA. At about **1250 hours** he received call from his employee Muhammad Sajjad Hussain, who informed him on his Mobile No.0333-3535353 that when he was coming to home with his son Hassan Yousuf Siddiqi after purchasing Chips and Pepsi from the General Store, in Street No.22, Khayaban-e-Shujaat at an empty plot, suddenly a white color Corolla Car XLI appeared there,

one person alighted and caught hold his son dragged his son into the car whereas other person sitting in the car pointed out a **black pistol** on his servant Sajjad and threatened him to keep quiet, three persons were sitting in the car and speeded away. Sajjad has noted the number of the car as 640. Complainant informed at 15 Police helpline at PS Darakshan and rushed to his house where police mobile and other police vehicles had already reached. They inquired from him about the facts and circumstances of the case and inspected the place of incident with him. After passing one hour, he received a call from **mobile No.0343-3318486**, the caller demanded ransom Rs.50 lacs and finally he agreed to receive **Rs.330,000/-** for release of his son. They issued threats of dire consequences in case of his failure to pay the ransom. Later on, call was received from another **mobile No.0312-2315632** of the kidnapers, place was settled for the payment of ransom, as such, complainant along with his brother-in-law, namely, Brigadier (Retd.) Mansoor Ahmed went to Chamra Chowrangi, as was chosen by the Culprits, where two persons came on motorcycle and took ransom amount from the complainant and assured that kidnappee shall be released. After passing two hours, the complainant received phone call at his house from the kidnappers that the abductee shall be released near your house, upon which the complainant requested them that his son is minor, he is unaware of the roads of the city, therefore, he may be left at any shop of KFC, McDonald or Pizza Hut so that he may easily be received. The complainant sent his relatives around different restaurants of the area and on **25.01.2009** at about **0025 hours**, maternal uncle of kidnappee, namely, Talib Sohail, present near KFC, Khayaban-e-Ittehad, Phase-II, saw one motorcycle on which one person was coming along with the kidnappee and he left the

kidnaped and speedily fled away on motorcycle. Then kidnaped was brought at home by Talib Sohail. My complaint is against four unknown persons to whom my brother-in-law (Rtd.) Bregadir Manzoor Ahmed, Talib Sohail, maternal uncle, servant and my son Hasan can identify on seeing them again, who kidnaped his 14 years' son and released him after receiving ransom.

3. On **28.01.2009** Investigation was entrusted to SIP Tahir Naseer of AVCC, who could not find any clue. However, on **16.02.2009** suddenly he received information from PS Gulistan-e-Jauhar that some culprits, namely, Aqeel Ahmed and Muhammad Noman were arrested in **Crime No.55/2009** u/s 365-A/34 PPC of P.S Gulistan-e-Jauhar. The culprits during interrogation disclosed their complicity in the instant crime with other co-accused, namely, Adnan, Naveed and Saleem Bengali. On such information, I.O SIP Tahir Naseer of AVCC went to PS Gulistan-e-Jauhar and interrogated the accused and on their disclosure, he arrested them in this case. On **17.02.2009** IO obtained police custody remand of accused from Administrative Judge, ATC. On **18.02.2009** IO visited PS Gulistan-e-Jauhar, where he came to know that accused were arrested on **13.02.2009** after police encounter and unlicensed weapons were recovered from accused Aqeel and Noman and one repeater of 12-bore was also recovered by police which was left by accused Naveed alias Genda. The police official of P.S Gulistan-e-Jauhar in their statement u/s 161 Cr.P.C informed the IO of this case that ransom amount Rs.75,000/- was also recovered by them on pointation of accused Aqeel Ahmed (**Ex.31/A**). The accused also volunteered to show the place of captivity, therefore, IO took the arrested accused persons to Korangi 100 Quarters where they pointed out the house where the kidnaped was

kept; it was alleged that it was the house of accused Saleem Bengali. Later on, IO produced the accused persons for identification parade on **21.02.2009** before Civil Judge and Judicial Magistrate-X, South Karachi. After one week, on **28.02.2009** PW-16 (Ch. Manzoor Ahmed) along with SIP Tahir Naseer, H.C Mohammad Shabbir and one Syed Afaq Hussain took in to possession Car bearing Registration No.ANH-640 allegedly used in this case from jurisdiction of PS Gulshan-e-Iqbal, as the same was seized u/s 550 Cr.PC (**Ex:29-e**).

4. After completion of investigation, on **09.03.2009** IO submitted challan before the Administrative Judge, ATCs under the above referred sections in which accused Aqeel and Noman were shown arrested whereas accused Adnan, Naveed Ahmed and Saleem Bengali were shown as absconder. Subsequently, on **28.4.2009** IO re-arrested accused Saleem Bangali already arrested in crime No.117/2009 u/s 365-A/34 PPC of P.S Korangi (Ex.33/C) and these three accused namely, Aqeel, Naveed and Saleem Bangali were challaned. The trial Court on **08.9.2009** framed formal charge against them. Then on **22.12.2009** another accused, namely, Adnan Akhtar was re-arrested while already in custody in Crime No.717/2009 of P.S Korangi (Ex:21/A). Thereafter, I.O. produced supplementary challans which was accepted by the trial Court, however, on **07.01.2010** during the trial, accused Noman after obtaining bail absconded away and, therefore, he was declared absconder. The trial court on **19.8.2010** amended the charge by adding name of accused Adnan Akhtar and dropped name of absconding accused Noman. (**Ex:16**). However, on **17.10.2012** absconder Noman alias Nomi was re-arrested and produced before trail Court and charge was second time amended by trial court on **27.04.2013**, accused Naveed was shown as confined in Central

Prison in some other case and he was also re-arrested in the case in hand. The trial court again amended charge on **03.09.2013** against accused Aqeel, Adnan, Noman and Naveed at Ex.40 and dropped name of accused from charge as by then accused Saleem Bangali had expired. They pleaded not guilty and claimed to be tried.

5. At trial, prosecution examined **PW.1** Shahid Hussain Janjua, Civil Judge & Judicial Magistrate at Ex.17; **PW.2** Adam Ishaque, Civil Judge & Judicial Magistrate at Ex.18; **PW.3** ASI Faiz Ahmed of AVCC at Ex.20; **PW.4** PC Aamir Hameed at Ex.21; **PW.5** SIP Arshad Ali of P.S Darakshan at Ex.22; **PW.6** complainant Riaz Yousuf at Ex.23; **PW.7** abductee Hassan Yousuf at Ex.24; **PW.8** Sajjad at Ex.25; **PW.9** Talib Sohail at Ex.26; **PW.10** **SIP Shakeel Ahmed** of P.S Gulistan-e-Juhaar at Ex.27; **PW.11** **Inspector Nasrullah**, SHO, P.S Gulistan-e-Jauhar at Ex.28; **PW.12** **Syed Afaq Hussain Tunio** of P.S Gulistan-e-Jauhar at Ex.29; **PW.13** **Abdul Jabbar** at Ex.30; **PW.14** **SIP Muhammad Muslim** at Ex.31; **PW.15** **Inspector Raja Muhammad Amjad** of AVCC at Ex.3; **PW.16** **SIP Chaudhary Manzoor Ahmed** of AVCC at Ex.33; **PW.17** **ASI Nawaz Brohi** P.S Gulistan-e-Jauhar at Ex.34; **PW.18** **IO Tahir Naseer** of AVCC at Ex.36. The prosecution after amendment in charge also examined **PW.19** ASI Imran of AVCC at Ex.47; **PW.20** PC Khalil-ur-Rehman at Ex.48; **PW.21** HC Ayaz Abbasi at Ex.50 and **PW.22** SIP Shahid Qureshi of P.S Gulshan-e-Iqbal at Ex.51.

6. Statements of accused were recorded under Section 342 Cr.PC at Ex.58 to 60. Accused claimed false implication in the present cases, they did not examine themselves on oath nor led any evidence in their defence.

7. Trial Court after hearing the learned counsel for the parties and assessment of evidence, by judgment dated **29.09.2018**, convicted and sentenced the appellants as stated above, hence these appeals.

8. Learned counsel for the appellants, at the very outset argued that the police has falsely implicated the appellants in the instant case for mala fide reasons; the conviction is based on presumption as, while passing the impugned judgment, learned trial court did not consider the actual facts and circumstances of the case in correct perspective; learned trial court did not evaluate the prosecution evidence on the principle of admissibility of evidence and has chosen only the parts of evidence favourable to the prosecution. The delay in registration of FIR by (4) four days was not explained and the identification parade of two accused jointly coupled with several days after their arrest by police without corroborative piece of evidence could not have been considered as enough evidence to connect the appellant. He further contended that alleged extrajudicial confession of appellant in **crime No.55/2009** had no evidentiary value and even otherwise this court in Spl. CrI. Appeal No.7 and 10 of 2013 by judgment dated **28.08.2019** has already acquitted the appellant and the State has not filed even appeal against the said appellate judgment. Lastly, it was argued that prosecution has failed to prove its case against the appellants beyond any shadow of doubt, as such, prayed for acquittal of the accused.

9. Mr. Muhammad Iqbal Awan, learned Deputy Prosecutor General Sindh sought for dismissal of instant appeals by contending that appellants were identified by the kidnapee and other PWs, therefore, prosecution has

proved its case against the appellants/accused beyond any shadow of doubt and the instant appeal be dismissed.

10. We have carefully heard the learned counsel for the parties and minutely scanned the entire evidence available on record.

11. The prosecution case in crime No.59/2009 of P.S Darakshan is based on the following preposition:-

- i. The appellants on **23.01.2009** have allegedly kidnaped son of complainant in a white corolla car in the presence of his servant Sajjad who noted only Numerical Part of said car's number plate and not the alphabetical one. The incident was reported immediately on police helpline "15".
- ii. On **24.01.2009** the complainant paid ransom amount Rs.3,30,000/- at an already settled place to two of the appellants (out of four) through his brother-in-law Brigadier (R) Manzoor Hussain.
- iii. The abductee, a 14 year boy, was dropped by a motorbike on **25.01.2009** at 0025 hours after several hours of payment of ransom near KFC at Phase-II, DHA and from there Talib Sohail brought the victim to his house.
- iv. After four days of the incident of alleged kidnaping and payment of ransom, the complainant called police station on **27.01.2009** for lodging FIR and his statement under **Section 154** Cr.P.C, however, the said statement was recorded at the residence of the complainant by PW-05 SIP Arshad Ali of P.S Darakshan.
- v. Two accused were allegedly arrested on **17.2.2009** after having admitted their guilt before police of Gulistan-e-Jauhar during interrogation of Crime No.55/2009 u/s 365-A/324/34 PPC and Crime No.67/2009 & 68/2009 u/s 23(1)(a) of Sindh Arms Act,

2013 registered on **13.02.2009** and produced later before the Magistrate for identification parade and as claimed by the prosecution they were identified. One of the other two appellants Adnan was in custody at Korangi Police Station in crime No.717 of 2009 for offence under Section 365-A/34 PPC was arrested in the case and further accused Naveed was already in the Central Prison was also arrested in this case on **27.3.2013**.

- vi. The prosecution has also claimed recovery of only Rs.75,000/- from one of the appellants namely Aqeel and on his pointation thorough mushirnama **Ex:31/A** by ASI Muhammad Nawaz Brohi during investigation in crime No.55/2009 of P.S Gulistan-e-Jauhar and even the car bearing registration No.ANH-640 was also recovered.

12. The story of the prosecution against the appellant begins with the extrajudicial confession of two accused namely Aqeel and Nouman during investigation of crime No.55/2009 registered at P.S Gulistan-e-Jauhar as claimed by the I.O Naseer Tahir of AVCC. The accused have denied the allegations of having admitted their involvement in crime No.59/2009 of P.S Darakshan, Karachi. The prosecution was under obligation to explain the circumstances of 4 days delay in the registration of FIR despite the fact that on **23.01.2009** around 1300 hours, the police has already been informed about kidnaping of the child on police helpline "15" and the police had also reached at the residence of the complainant in past. The record shows that the complainant after reporting incident on helpline "15" did not even bother to inform the police about whatever he has been doing from 0100 pm on **23.01.2009** to **27.01.009** when at around 20:00 hours he made a phone call to P.S Darakshan to express his intention to register the FIR. The complainant even did not got to the Police Station for registration of the FIR

even after four days rather ASI Arshad Ali of Darakshan P.S come to his residence to record his statement under Section 154 Cr.P.C.

13. In his statement under **Section 154** Cr.P.C complainant PW-06 Riaz Yousuf claimed that within one hour he had received ransom call on his mobile phone from mobile **No.03433318486**. Then he has also received call from another mobile **No.03122315362** to settle the payment of ransom which he paid in the presence of his brother-in-law Brigadier (R) Manzoor Ahmed somewhere at Chamra Chowrangi. The prosecution has, however, failed to prove that any of the two phone numbers were in the use of any of the four accused/appellants as the prosecution has not even able to locate the owners of the said phone numbers, nor there is any other evidence showing the said phones were in the possession of the appellants. Sole witness of alleged payment of ransom Brigadier (R) Manzoor Ahmed in whose presence the complainant had allegedly paid the ransom has not come in the witness box and, therefore, the story of payment of ransom to the appellant is devoid of sufficient evidence to support the version of the complainant. As far as the recovery of Rs.75,000/- out of total ransom of Rs.330,000/- through **Ex:31/A** is concerned, suffice is to say that this memo of recovery of ransom amount (**Ex:31/A**) is ironically the same exhibit which was produced by the prosecution before another Court during the trial of crime No.55/2009 in Special Case No.10 of 2009. The appellant in said crime No.55/2009 of P.S Gulistan-e-Jauhar was convicted but on appeal against their conviction in crime No.55/2009 learned Division Bench of this Court set aside the said conviction in Special Criminal Anti-Terrorism Appeals Nos.7 and 10 of 2013. In the said judgment this Court while discussing evidence of same witness on recovery of ransom has observed as follows: -

“15. Insofar as the recovery of ransom amount on the pointation of appellant Aqeel Ahmed @ Addi is concerned, suffice it to say that the prosecution has failed to prove that such recovered notes were the same that were delivered by the complainant to the culprits at the time of release of abductee for the reason that the complainant paid only Rs.75,000/- towards ransom whereas according to memo of seizure {Ex.26/A} the police recovered Rs.150,000/- from the house of appellant Aqeel Ahmed @ Addi on his pointation and as per deposition of I.O. the remaining amount pertains to other crime. Furthermore, the complainant did not disclose either in FIR or anywhere else the serial numbers and denominations of such currency notes, hence in view of this background of the matter it cannot be said that the said recovered currency notes were of the complainant. The recovery of weapons from the possession of appellants is also of no consequence as the same were not sent to Ballistic Expert to ascertain as to whether the same were in working condition or not, hence the same cannot be used against the appellants in this particular case. Reliance may well be made to the case of Muhammad Akram v The State {2009 SCMR 230}, wherein it has been observed as under:-

“the recovered notes were not marked and the serial number of the notes paid as ransom were not recorded. So it could not be said with certainty that the recovered amount was the same which was delivered at the time of release of Asghar Ali..... The evidence of recovery of weapons is also of no consequence and cannot be used against the petitioners for the reason that the weapons were never sent to any Expert to determine whether they were in working condition or not.”

In the case in hand neither there is any allegation of the use of two pistols which were recovered by Gulistan-e-Jauhar police in connection of crime No.55/2009 and on arrest by appellant, two FIRs bearing No.67 and 68 of 2009 under Section 13(1)(a) of SAA, 2013 were registered. The victim and his servant Sajjad were not shown the alleged pistols as case property during the evidence. Then again, even ballistic report of pistol has not been produced in Court. Likewise, the prosecution has failed to prove that the appellants have kidnaped the son of the complainant in white Corolla car, though the prosecution has introduced then notorious Corolla car in the story against the appellant through prosecution witnesses. The said car was also said to have been recovered in another crime registered at P.S Gulshan-

e-Iqbal bearing crime No.59/2009 but said car was never produced in Court to be identified by eyewitness Sajjad or the abductee son of the complainant. The story of car appears to be fairytale. There is no clue that as to how and why it was spotted by PW-16 SIP Ch. Manzoor Ahmed of AVCC in Gulshan-e-Iqbal. It was found on **28.2.2009** and it was very comfortably given by the owner to his friend who refused to return it. This fairytale was narrated by PW:12 Syed Aafaq Hussain. He deposed that on **28.02.2009**, at 07:00 pm he was called by Inspector Chaudhry Manzoor through mobile phone from police station Gulshan-e-Iqbal and asked him to bring three sets of documents of his Car No.ANH-640. He went along with documents to PS. Gulshan-e-Iqbal, where he met with Inspector Chaudhry Manzoor and Inspector Tahir Naseer. They recorded his statement and showed him **Car No.ANH-640** and enquired from him whether that car belongs to him, to which he replied in affirmative. He then produced Agreement of Rent-a-Car to them, executed with one **M/s. Abdul Jabbar Private Rent-a-Car**. He also deposed that on **12.03.2009** his car was handed over to him at AVCC under the *Superdeginama, Ex.29/B*. He had also stated that later on, on **25.05.2009** he gave his car to his brother Syed Asghar Hussain for personal use, who went to Gulshan-e-Iqbal in the same car and informed him on phone that daughter of his friend is ailing and he asked him for **de-function of tracker of car as his friend wanted to take the car to Hyderabad**, thereafter, he confirmed from the Tracker Company about the car which informed him that the car was not being located. On the next day, the friend of his brother met with him to whom he handed over the car and **he fired at his brother**. His brother informed him about the incident and he advised him not to contact with that man, such FIR was lodged at P.S. Gulshan-e-Iqbal, bearing **FIR No.383/2009**. Also why the numeric part of the number plate "640"

turned out to part of “ANH-640” is also a genius’ work as unimpteen possibilities existed conversely.

14. The same car turned out to be the case property in many criminal cases. It was located on **28.2.2009** (Ex:29-C) and within 12 days it was handed over to PW-12 Afaq Hussain on Superdiginana on **12.3.2009** (Ex:29-B) at the surety of just **Rs.10,000/-** for its production in Court or to police. This handing over of the case property was without a court order nor there was any application under **Section 516-A** of the Cr.P.C. PW-16 Inspector Ch. Manzoor Ahmed of AVCC who claimed to have recovered the car on **28.2.2009** (Ex:29-C) admitted in his cross-examinaton that *“It is correct that we did not enter the house mentioned in memo Ex32/A. It is correct that the alleged car has been shown to be recovered in three cases and only one memo has been prepared. It is correct that memo is bearing signature of two IOs. It is correct that car was not produced before the Court when my statement was recorded and it has not been produced even today. Voluntarily says that car has been stolen away.* It is correct that FIR was lodged about theft/cheating of car. The challan in the present case was submitted on **07.3.2009** and first challan was framed on **08.9.2009** and even five months prior to that as may be appreciated from above evidence, the so-called white Corolla car was stolen away in the manner as stated above, therefore, it remained out of sight of the Court, the complainant, his driver and his son and it was not ever shown even to the appellant as a case property in which they have allegedly kidnapped son of the complainant.

15. Learned counsel for the appellant has also challenged the veracity of the identification parade of the accused/appellant. It is an undisputed fact that appellants Aqeel Ahmed alias Shamsi and Noman alias Noomi were

arrested on **13.02.2009**, they were produced before Magistrate for identification parade on **21.02.2009** i.e. after 8 days of their arrest, whereas appellant Adnan Akhtar was allegedly arrested in the instant case on **24.12.2009** and he was taken to identification test before Magistrate on **04.01.2010** i.e. after 12 days of his arrest. It is a settled law that a delayed identification parade both with reference to the date of occurrence and the date when the accused were taken into custody is always looked upon with the maximum caution by the Courts of law. For this principle, we may refer to the dictum laid down by the Hon'ble Supreme Court in the case of Asghar Ali v. The State (**1992 SCMR 2088**) and the State v. Farman Hussain (**PLD 1995 SC 1**). The evidentiary value of identification of accused in the light of supra case, therefore, has lost its efficacy and cannot be relied upon. Reliance may also be placed to the case of Khadim Hussain v. The State (1985 SCMR 781). In another case of Sabir Ali alias Fauji v The State (2011 SCMR 563), the Hon'ble Supreme Court held as under:-

"6...It is also settled principle of law that role of the accused was not described by the witnesses at the time of identification parade which is always considered inherent defect, therefore, such identification parade lost its value and cannot be relied upon".

Similar view was taken by the Hon'ble Supreme Court in the case of *Muhammad Fayyaz v The State* {2012 SCMR 522}.

16. In addition to the delay in identification parade while accused were in custody of police joint identification of two or more accused simultaneously is also illegal and unsafe. In the present case during identification parade, both the accused persons were made to stand with dummies and their identification took place simultaneously in one go. The Honourable Supreme Court in the cases *Lal Pasand v. The State* (**PLD 1981 SC 142**),

Ziaullah alias Jaji v. The State (2008 SCMR 1210), Bacha Zeb v. The State (2010 SCMR 1189), Shafqat Mehmood and others v. The State (2011 SCMR 537) and Gulfam and another v. The State (2017 SCMR 1189) has clarified that identification of many accused persons in one go is not proper besides being unsafe.

17. PW-2, Adam Ishaque, Civil Judge and Judicial Magistrate-X, Karachi South, deposed that on 20.02.2009 he received application for conducting identification parade of accused (1) Aqeel Ahmed Shamsi and (2) Muhammad Noman alias Nomi in Crime No.59/2009, u/s 365-A/34 PPC of P.S. Darakshan, Karachi by IO SIP Tahir Naseer of AVCC Karachi. On 21.02.2009 victim Hassan son of Yousuf, Sajjad Hussain, Talib Sohail and Riaz Yousuf Siddiqui were produced by IO SIP Tahir Naseer. They were ordered to be seated at safe place, whereas accused Aqeel Ahmed alias Shamsi and Noman were also produced with muffled faces and they were ordered to sit on the backside of the Courtroom. He called 10 dummies and lined up them on the backside of the Courtroom, accused Aqeel Ahmed stood at serial No.3, whereas accused Noman stood at serial No.9 with their own choice. Victim Hassan Yousuf was called from backside of courtyard through peon of the Court, namely, Zahid, who after looking at dummies identified accused Aqeel Ahmed at serial No.3 and accused Noman at Serial No.9 of the row. Thereafter, said witness/victim was directed to stand on the same place. The row was reassembled and again both accused were directed to stand on their own choice and change their position. P.W. Sajjad Hussain was called through peon. Accused Aqeel Ahmed stood at Serial No.7 and accused Noman stood at serial No.9 at their choice, he identified accused Aqeel Ahmed directly who stood at Serial

No.7, whereas he **did not identify accused Noman**. **P.W. Sajjad Hussain** was directed to stand along with victim at same place. Thereafter, PW Talib Sohail was called and accused were directed to change their position at their choice. Accused Aqeel Ahmed stood at Serial No.3 whereas accused Noman stood at Serial No.9. Thereafter **PW Talib** was called through peon of the Court, **but he did not identify any of accused**. Both the accused named above were directed to change their positions at their choice, they changed their position. Accused Aqeel stood at Serial No.8 whereas accused Noman stood at Serial No.4. **PW Riaz Yousuf Siddiqui** was called through peon of the Court, who identified accused Noman who stood at Serial No.4, while saying that he is the same person who had received ransom amount of Rs.330,000/-.

18. Perusal of prosecution evidence further reveals that there are **extrajudicial confessions** of all the accused, out of whom those of Aqeel and Noman are joint one. In our legal scenario, extrajudicial confessions are received with utmost caution. Before acting upon a retracted extrajudicial confession, a Court must inquire into all material points and surrounding circumstances to satisfy itself fully that the confession cannot but be true. As, an extrajudicial confession is not a direct evidence, it must be corroborated in material particulars before being made the basis of conviction, thus as far as disclosure of the appellants before police in which they confessed their guilt is concerned, it is settled principle of law that disclosure of an accused before police is inadmissible being hit by **Articles 38 and 39** of the Qanun-e-Shahadat Order, 1984. There is no cavil to the legal proposition that extrajudicial confession is a very weak type of evidence and no conviction could have been awarded without having strong corroboration which aspect

of the matter hardly needs any comment. Reliance is placed to the cases Wazir Muhammad and another v. State (2005 SCMR 277), Liaquat ALI v. The State (1999 PCr.LJ 1469 Lahore); Tahir Javed v. The State (2009 SCMR 166) and Zafar Iqbal and others v. The State (2006 SCMR 463). Hence, no weight can be given to such disclosure of appellants before the police. Even otherwise, in case, if such extrajudicial confessions were made by the appellants during the course of investigation, it was incumbent upon the Investigation Officer(s) to get their confessional statements recorded before the Judicial Magistrate(s) concerned, which has not been done in the instant.

19. We have observed that extrajudicial confessions have almost become a norm when the prosecution cannot otherwise succeed. Rather, it may be observed with concern as well as with regret that when the Investigating Officer(s) fails to properly investigate the case, he resorts to padding and concoctions like extrajudicial confessions. Such confessions, by now, have become the signs of incompetent investigation. A judicial mind, before relying upon such weak type of evidence, capable of being effortlessly procured must ask a few questions like why the accused should at all confess, what is the time lag between the occurrence and the confession, whether the accused had been fully trapped during investigation before making the confession, what is the nature and gravity of the offence involved. Reliance is placed on the case of Sajid Mumtaz and Others versus Basharat & Others (2006 SCMR 231).

20. For the reasons discussed above, instant appeals are allowed; conviction and sentence recorded by the trial court vide judgment dated 29.09.2018 against the appellants are set aside; appellants (1) Naveed Ahmed

alias Genda son of Islamuddin, (2) Aqeel Ahmed alias Shamsi son of Zahoor Ahmed (3) Muhammad Noman alias Nomi son of Muhammad Ishaque, and (4) Adnan Akhtar alias Addi son of Dr. Shamshad Akhtar are acquitted of the charges by extending benefit of doubt. All the appellants shall be released forthwith, if they are not required in some other custody case.

J U D G E

J U D G E

Karachi,
Dated 24.12.2020.

Ayaz Gul