

**IN THE HIGH COURT OF SINDH AT KARACHI**

PRESENT:

***Mr. Justice Mohammad Karim Khan Agha  
Mr. Justice Amjad Ali Bohio.***

**(1). Spl. Criminal A .T. Appeal No.34 of 2022**

Appellant : Ammar Assad S/o Syed Hafeez-ur-Rehman, Through Mr. Moula Bux Bhutto, Advocate

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

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**(2). Spl. Criminal A .T. Appeal No.35 of 2022**

Appellant : Arsalan @ Muno S/o Shahnawaz Through Mr. Raj Ali Wahid Kunwar, Advocate

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

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**(3). Spl. Criminal A .T. Appeal No.36 of 2022**

Appellants : Ammar Assad S/o Syed Hafeez-ur-Rehman, Through Mr. Moula Bux Bhutto, Advocate  
Arsalan @ Muno S/o Shahnawaz Through Mr. Raj Ali Wahid Kunwar, Advocate

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

Complainant : Through Ms. Shama Parveen, Advocate

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**(4). Confirmation Case No.03 of 2022**

Date of Hearing : 16.08.2023

Date of Judgment : 22.08.2023

## **J U D G M E N T**

**AMJAD ALI BOHIO, J:** Through this judgment, we intend to decide above mentioned Spl. Cr. A.T Appeals arising out of single judgment passed by Special Judge, Anti-Terrorism Court No. XVI, Karachi in Crime No.29/2009 for offence U/S 13(d) Arms Ordinance, 1965, against appellant Ammar Assad, Crime No.31/2009 for offence U/S 13(d) Arms Ordinance, 1965 against appellant Arsalan @ Mano and Crime No.524/2009 for offence U/S 302/365-A & 34 PPC R/W Section 7(e) of Anti-Terrorism Act, 1997 against both the appellants and Confirmation Case No.03/2022. The appellants were convicted and sentenced vide impugned judgment dated 31.01.2022 in the following manner:-

“

- a. *For offence of abduction for ransom, punishable under section 365-A r/w 34 PPC both the present accused 1.Ammar Asad S/o Syed Hafiz-ur-Rehman and 2.Arsalan @ Manno S/o Shahnawaz are sentenced to death; both the accused shall be hanged by neck till death and property of both accused is ordered to be forfeited.*
- b. *For offence of Qatl-i-Amd, punishable under section 302 r/w 34 PPC all the present accused 1.Ammar Asad S/o Syed Hafiz-ur-Rehman and 2.Arsalan @ Manno S/o Shahnawaz are sentenced to death; both the accused shall be hanged by neck till death.*
- c. *Accused Ammar Asad S/o Syed Hafiz-ur-Rehman is hereby also convicted for the offence u/s 13-D Arms Ordinance and sentence him to suffer simple imprisonment for seven years with fine of Rs.30,000/- and in case of failure to pay the fine, he shall suffer SI for six (06) months more.*
- d. *Accused Arsalan @ Manno S/o Shahnawaz is hereby also convicted for the offence u/s 13-D Arms Ordinance and sentence him to suffer simple imprisonment for seven years with fine of Rs.30,000/- and in case of failure to pay the fine, he shall suffer SI for six (06) months more.*

*e. Both the present accused are also directed to pay an amount of Rs.20,000/- (two lacs) each to the legal heirs as compensation, as provided under Section 544-A Cr.P.C and in default of such payment the accused shall undergo SI for six months.”*

2. All the sentences awarded to the appellants/accused with benefit of Section 382-B Cr.P.C.

3. The brief facts of the case are that complainant Shahid Adil S/o Muhammad Yaseen Adil lodged FIR on 07.05.2009 at 2130 hours at P.S Ferozabad wherein he stated that his son Shoaib Adil aged about 18 years was student of first year who used to take tuition for 2/3 days in a week at Gulshan-e-Iqbal and thereafter helped the complainant in his business. Shoaib Adil went to Gulshan-e-Iqbal at the tuition center in his Car bearing Registration No. AML-109 on 07.05.2009 at 08:00 a.m. but he did not come back till 1000 hours then the complainant made phone call to his son on his cell phone number 0321-2310105 which was attended by someone else who told him that they have kidnapped his son and asked to arrange Rs. 50,00,000/- (Rupees Fifty Lacs) and they were available at Lyari. The complainant contacted tracker company who informed about the said car as parked near Tahir Villa and the vehicle was found switched off from 0830 hours. Accordingly he delivered extra key of said car to his driver Gul Naseem to bring the same from aforesaid place. Later on the complainant's wife received a phone call from landline phone number 4541553 at 01:15 p.m. from the mobile phone of their son who talked to his mother and disclosed that he was fine then a person came on line who asked her to fulfil

their demand. Thereafter the complainant went to P.S and lodged the above FIR.

4. During investigation Sub-Inspector Tahir Naseer alongwith other staff, as well as, the members of CPLC alongwith arrested accused Rashid S/o Muhammad Hussain Baloch left P.S who brought them at Lyari Naddi opposite Teen Hatti Bridge, Angara Goth, 'B' Area, Liaquatabad, Karachi, where on his pointation, they apprehended two persons namely Ammar Assad S/o Syed Hafiz-ur-Rehman (appellant) and Masroor Ali @ Mansoor S/o Ateeq Ahmed. An unlicensed pistol of 30 bore without number was recovered from accused Ammar Asad whereas, a pistol of 30 bore from accused Masroor Ali and thereby the case of U/s 13(d) of Arms Ordinance was registered against accused / appellant Ammar Asad bearing Crime No. 29/2009.

5. During investigation the I.O. alongwith arrested accused Rashid S/o Muhammad Hussain Baloch left P.S and arrived at International Parking in front of A-O Clinic, Nazimabad, Karachi, where on pointation of accused, they apprehended a person who disclosed his name as Arsalan @ Mano S/o Shahnawaz and on his personal search, they recovered an unlicensed pistol of 30 bore without number thereby, the case of U/s 13(d) of Arms Ordinance was registered against accused / appellant Arsalan @ Mano bearing Crime No.31/2009.

6. During investigation Inspector Tahir Naseer conducted raid at a house situated at Angara Goth, Baloch Para, B-Area, Liaquatabad for recovery of abductee when a person made his escape good and they recovered a pistol of 30 bore alongwith

magazine containing 5 live bullets. The name of said person was later on disclosed as Rasheed Baloch. The pistol was seized and such FIR was lodged against the said accused for offence U/S 13(e) of Arms Ordinance. Thereafter the complainant disclosed that PWs Aziz-ur-Rehman and Noman Sadiq paid an amount of Rs.500,000/- (Rupees Five Hundred Thousands) to accused persons. He recorded their statements U/S 161 Cr.P.C wherein they disclosed that as a result of conversation between the culprits and PW Noman Sadiq Rs.500,000/- (Rupees Five Lacs) were paid on 14.05.2009 and the culprits assured to release their abductee but they did not release him. During investigation call data and record of tracker company was obtained. Thereafter accused Rasheed Baloch was arrested on 20.05.2009 from Baloch Para who received injuries due to fall from the wall at the time of his arrest. Consequently he was treated at Civil Hospital. During interrogation accused Rasheed Baloch admitted that he alongwith his companions abducted Shoaib Adil and obtained ransom amount of Rs. 50,00,000/- (Rupees Fifty Lacs) in order to release him and later on they have committed murder of abductee Shoaib Adil and thrown his dead body in Lyari Naddi. Accordingly he was arrested and on his pointation accused Mansoor and Ammar Asad were also arrested from whose possession pistols of 30 bore were also recovered as mentioned earlier. On pointation of above named arrested accused dead body of Shoaib Adil was recovered from Lyari Naddi on 21.05.2009 which was shifted for postmortem. DNA test was also conducted which confirmed the dead body of Shoaib Adil being

son of the complainant. Thereafter the identification parade of three accused persons namely Rasheed Baloch, Ammar Asad and Arsalan @ Mano was held before the Civil Judge/J.M XII Karachi (East) on 27.05.2009 by witnesses Noman Sadiq and Khalil-ur-Rehman. Subsequently accused Sikandar Baluch S/o Faiz Muhammad already confined at P.S Chakiwara in another offence was also arrested in Crime No.524/2009.

7. After concluding investigation, the report U/S 173 Cr.P.C was submitted against the appellants and others in Crime No.524/2009 as well as in Crime No.29/2009 against accused / appellant Ammar Asad and in Crime No.31/2009 against appellant/accused Arsalan @ Mano. During trial accused Amjad Baloch, Saqib and Bhutto Bangali were declared proclaimed offenders and the cases of accused Masroor Ali in Crime No.524/2009 in Crime No.30/2009 U/S 13(d) of Arms Ordinance were separated vide order dated 09.10.2009 being juvenile offender. On 14.01.2012 the remaining offences were amalgamated for joint trial vide order dated 14.01.2012 at Exh-9.

8. Consequently, the trial court framed charge against the appellants/accused in all amalgamated cases alongwith acquitted accused Sikandar Baloch and absconding accused Rashid Baloch on 14.01.2012, to which they did not plead guilty and claimed trial as indicated in Exh-10 to 14.

9. At the trial prosecution examined Shabir Ahmed (PW-1), complainant Shahid Adil (PW-2), Muhammad Haroon Bari (PW-3), Khail-ur-Rehman (PW-4), Noman Sadiq (PW-5), Naseer Ahmed (PW-6), M.O. Doctor Zeeshan Haider (PW-7), Rub Nawaz (PW-8),

Shahid Mehmood (PW-9), Muhammad Sher (PW-10), Fareed (PW-11), Amir Hameed (PW-12), Ishrat Rana (PW-13), I.O/SIP Tahir Nasir (PW-14). Thereafter prosecution side was closed vide statement Ex.46.

10. During trial accused Rashid Baloch being in custody was admitted in Ward No.12 of Jinnah Postgraduate Medical Centre Karachi for his treatment made his escape good from Court Police custody and inspite of issuance of NBW, the police could not arrest him and he was declared as proclaimed offender and the case was ordered to be proceeded in his absence U/s 512 Cr.P.C vide order dated 22.10.2012 at Page No.233 of the paper book.

11. The statements U/S 342 Cr.P.C of the appellants/accused were recorded on 20.01.2015 wherein, they have denied allegations leveled against them; claimed themselves to be innocent and have been falsely implicated. Accused/appellant Ammar Asad and Arsalan @ Mano claimed to have been shown to the witnesses prior to holding their identification parade before the Magistrate. Neither examined themselves on oath U/S 340(2) Cr.P.C nor, led any evidence in their defence.

12. After hearing the parties, the trial court acquitted accused Sikandar Baloch.

13. Hence the appellants have preferred Spl. Cr. Anti-Terrorism Appeals No.21, 22, 26 & 27 of 2015 a/w Spl. Cr. A.T Jail Appeal Nos. 77 & 78 of 2015, vide which the case was remanded back to

the trial court for re-examination of appellants to the requirement of Section 342 Cr.P.C vide order dated 18.02.2019.

14. After hearing the parties the trial court vide judgment dated 30.07.2019 convicted accused/appellant Ammar Assad for offence U/S 302(c) PPC U/S 265-H(2) Cr.P.C to suffer R.I for 14 years, and diyat payable to legal heirs of deceased. He further convicted appellant Ammar Asad for offence U/s 13(d) of Arms Ordinance U/S 265-H(2) Cr.P.C to suffer R.I for 7 years. He also convicted accused/appellant Arsalan @ Mano for offence U/S 302(b) PPC U/S 265-H(2) Cr.P.C to punish him with death as Tazir that he shall be hanged by neck till he is dead subject to confirmation of his death sentence by this Court. He further convicted accused Arsalan @ Mano for the offence U/s 13(d) of Arms Ordinance U/S 265-H(2) Cr.P.C to suffer R.I for 7 years.

15. The appellants have preferred Spl. Cr. Anti-Terrorism Appeals No.234 & 235 of 2019 and also Reference was made for confirmation of the death penalty bearing Conf. Case No.09/2019 which were decided vide judgment dated 28.09.2021 by vide which the impugned judgment dated 30.07.2019 was set-aside to the extent of appellant Arsalan @ Munno and Ammar Assad as offence of abduction for ransom had been proved however no sentence had been passed in respect of this conviction and so also no separate conviction and sentence had been recorded in respect of Section 7(e) of ATA, 1997, therefore, the matter was remanded back with direction to assign the same to another trial court for the purpose of re-writing the judgment and confirmation reference was decided in negative.



16. Later, the trial court issued the contested judgment on January 31, 2022, which led to the conviction and sentencing of the appellants/accused as mentioned earlier. As a result of this judgment, these appeals have been lodged.

17. We have attentively listened to Mr. Moula Bux Bhutto, Advocate for Appellant Ammar Asad, and Mr. Raj Ali Wahid Kunwar, Advocate for appellant Arsalan @ Muno.

18. The learned counsel for the appellants presented the following primary arguments:

- 1) The appellants have been wrongly implicated in this case due to a delay of over eleven (11) hours concerning unidentified culprits.
- 2) The appellants' implication is based on the statement of co-accused Rashid Baloch, which is not admissible under Qanun-e-Shahdat Order, 1984.
- 3) The ransom was supposedly paid at midnight by PWs Khalil-ur-Rehman and Noman, who failed to mention the source of light and neglected to give description / features of the culprits in their statements given to the Investigating Officer.
- 4) During the examination-in-chief, PW Noman Sadiq did not positively identify the appellants, therefore, evidence of PW Khalil-ur-Rehman is not sufficient to maintain the sentence awarded to the appellants.
- 5) Significant contradictions exist in the testimonies of PWs, undermining their credibility.

- 6) Despite the presence of independent witnesses, all PWs are biased, and their statements lack corroboration.
- 7) No concrete evidence has been collected regarding the ownership of the place of incident being residence of accused Rashid Baloch, and call data records from the deceased Shoaib Adil's cell phone are scarce with regard subsequent conversation with PW Noman, failing to support the alleged abduction incident as described by complainant Shahid Adil.
- 8) The location of the incident, from which a pistol empty was purportedly recovered, displayed no traces of blood.
- 9) Although the police left the police station for the arrest of co-accused and the recovery of the deceased's body, no independent witness was involved in observing these events on May 21, 2019. The arrest memo of appellant Ammar Asad and co-accused Masroor, along with the recovery memo of the deceased Shoaib Adil's body, lacks pertinent departure details.

19. Lastly, it is contended that it was unseen incident and the appellants have been unjustly entangled in the case. The circumstantial evidence presented by the prosecution is wholly insufficient to establish a connection between the appellants and the commission of the offense. The trial court's reliance on the questionable testimonies of PW Khalil-ur-Rehman and Noman, as well as the dubious recovery of alleged weapons, is misguided. In support of their contentions they have relied upon the case of (1) *Hashim v. The State and another* (2020 P Cr L J 895), (2)

*Hayatullah v. The State* (2018 SCMR 2092), (3) *Abdul Sattar v. The State* (PLD 1976 SC 404), (4) *Syed Mehroz Mehdi Zaidi v. The State* (2020 P Cr. L J 1609 Sindh), (5) *Amir Muhammad Khan v. The State* (2023 SCMR 566), (6) *Kashif Ali alias Kalu v. The State* (2022 SCMR 1515), (7) *Fayyaz Ahmed v. The State* (2017 SCMR 2026), (8) *Allahdad v. The State* (2022 YLR 2047 Sindh), (9) *Riaz Ahmed v. The State* (2010 SCMR 846), (10) *Nasir Javaid & another v. The State* (2016 SCMR 1144), (11) *Muhammad Jumman Brohi and another v. The State* (2021 P Cr. L J 1042 Sindh), (12) *Muzamil Arif v. The State* (2021 YLR 1841 Sindh), (13) *Azeem Khan and another v. Mujahid Khan and others* (2016 SCMR 274), (14) *Noor Ahmed alias Ahmed Agha v. The State* (2022 P Cr. L J 1126), (15) *Kaleemullah v. The State and another* (2018 YLR 2363 Federal Shariat Court), (16) *Rashid Khan v. The State and another* (2019 MLD 675), (17) *Kanwar Anwar Ali v. Special Judicial Magistrate: in Cr. Misc. No.183/2019 and Cr. Appeal No.259/2018* (PLD 2019 SC 488), (18) *Fazal Subhan and another v. The State and others* (2019 SCMR 1027), (19) *Fazal Hussain alias Faqeera and others v. The State* (2020 P Cr. L J 311 Sindh), (20) *Sardar Bibi and another v. Munir Ahmed and others* (2017 SCMR 344), (21) *Wajeeh-ul-Hassan v. The State* (2019 SCMR 1994), (22) *Javed Khan alias Bacha and another v. The State and another* (2017 SCMR 524) and (23) *Syed Riffat Hussain and others v. The State* (2022 P Cr. L J Note 108).

20. In contrast, the Additional Prosecutor General of Sindh has offered only lukewarm support for the trial court's judgment, making it apparent that it does not warrant interference.

21. The prosecution's case is allegedly established on the following pieces of evidence according to learned APG:

- (a) Circumstantial evidence
- (b) Identification of the culprits at midnight time
- (c) Verification of the ransom payment
- (d) Conducting an identification parade

22. We have heard the parties, considered the record and the case law cited at the bar. It is very important to note that names of accused were not mentioned in the FIR and all the witnesses were unfamiliar with the accused prior to this incident. According to the complainant his son did not return till 10:00 a.m. then he made call on his mobile phone number 0321-2310105 twice but the same not attended and then thirdly his call was picked up by one stranger who disclosed about his son being kidnapped and demanded Rs.50,00,000/- (Rupees Fifty Lacs) for his release. The complainant gave the key of the car to his driver Gul Naseem to bring the car but he was not produced as witness in this case to connect the chain and corroborate such evidence. It has not come in evidence about the calls made thrice by the complainant either from cell phone or PTCL number after 10:00 a.m. and no such call data recording is collected by I.O. during investigation except the call received at PTCL Number 01:00 p.m. as mentioned above. The mother of alleged abductee who also received the alleged ransom demand was also not called

as PW. Thus, no reliable circumstantial evidence to connect the link with the appellants for committing of above offence has been brought on record. The reliance in this regard was rightly placed upon 2021 YLR 1841, 2016 SCMR 274 and 2022 P. Cr. L J 1126. The CDR recording in respect of only call received on PTCL Number is produced in shape of Photostat copy and it does not bear even a single signature of authorized officer of the said Company. As per the complainant's statement, PW Noman also handled calls on his cell phone No.0300-2150941 from the culprits who demanded the ransom but no such call data recording of their conversation in connection with negotiation collected by I.O during investigation. Accordingly, it cannot be safely relied upon in any manner as held in 2018 YLR 2363 as under:-

“Importantly, another piece of evidence is CDR, whereupon the prosecution relies the most. The same is also of no importance on various counts. Initially, it was the duty of the prosecution to have had received the C.D.R with an endorsement of the Cellular Company concerned, having stamp and signature thereupon of the concerned authorized officer, then while taking into possession the CDR, through a recovery memo, at least a mushir should have been associated from the Cellular Company to independently prove the recovery or at least, recorded the statement of representative of the Cellular Company to the effect of issuance and receipt of C.D.R. but no such evidence have been collected and pre-cautions observed. The perusal of CDR also demonstrate that there is not even a single signature of authorized officer of the said Company, thus, it cannot be safely relied upon in any manner. It can be doubted that the investigating officer has

himself generated such CDR or the same have been issued by the Company concerned.“

23. The incident took place in between 0800 to 1000 hours on 07.05.2009 whereas the complainant lodged the FIR at 2130 hours i.e. after more than eleven (11) hours of the occurrence whereas the distance between the place of incident and police station was only one kilometer. The prosecution has failed to explain reasons of such delay as the complainant was in knowledge that his son was kidnapped and ransom was also demanded. In such circumstances deliberation and consultation before lodging such FIR with such delay cannot be ruled out. The reliance was rightly placed upon 2023 SCMR 566. In such like cases the quick reporting of the matter without any undue delay is essential otherwise the prosecution story could become doubtful as held in 2017 SCMR 2026. It does also not appeal to normal human behavior that after receiving the ransom demand the complainant before lodging the FIR collected his abandoned car.

24. The evidence of two witnesses, PW-04 Khalil-ur-Rehman and PW-05 Noman Sadiq, constitute the ocular evidence in this case. Both witnesses openly recounted the events surrounding the delivery of the ransom to the accused at midnight. As per the complainant's statement, PW Noman also handled calls from the culprits who demanded the ransom. After negotiations, PW Noman managed to reduce the ransom to Rs.500,000/-and the complainant handed over this amount to him. On the night of May 14, 2009, PW Noman and Khalil-ur-Rehman went to Nayab

Masjid to deliver the ransom. There, they encountered four culprits, one of whom appeared to be of Baloch descent. Khalil-ur-Rehman handed over the ransom to this individual, and all four culprits departed. The testimony of both PWs does not mention any details about a potential source of light during such night time when it was dark.

25. PW Khalil-ur-Rehman has acknowledged during his testimony that he did not describe features of the culprits who received ransom from him and he stated that the payment was made to the accused around 01:30 or 1:45 a.m. It was revealed in the evidence that the house where the abductee was purportedly held belonged to the absconding accused Rashid Baloch. However, the investigating officer (I.O.) Inspector Tahir Naseem failed to collect evidence as regards ownership of house by said accused Rashid Baloch's or even possession thereof. PW Khalil-ur-Rehman during his cross-examination admitted that SP Office and Police Station Liaquatabad were situated in front of Nayab Masjid where the ransom money was delivered to the culprits. It is very strange to believe that the culprits would have selected such place, therefore, the evidence with regard the place where the ransom amount was paid does not appeal to a prudent mind.

26. The complainant further deposed that he paid ransom of Rs.5,00,000/- to his son in law Noman Sadiq who went alongwith Khalil-ur-Rehman to pay the same to the culprits at night time whereas, PW Khalil-ur-Rehman deposed that the complainant had given cash of Rs. 5,00,000/- wrapped in paper

envelope to him for giving the same to the culprits. Thus, the complainant and PW Khalil-ur-Rehman contradict the mode of payment of ransom amount by the complainant to PWs. Both PWs deposed that ransom was delivered to the culprits who was looking Baloch from his appearance, whereas, according to evidence of Magistrate, they both had stated that ransom amount was paid to all four culprits.

27. It is not a case of prosecution witnesses that they had opportunity to see the appellants prior to the occurrence. The identification parade conducted before the Magistrate, seven days after their arrest, as such the same cannot be treated as trustworthy or to be treated as credible evidence. Moreover, witnesses did not specify about appearance of the culprits to whom they handed over the ransom amount at midnight. Furthermore, no evidence was produced or deposed as regards availability of light at location where ransom amount was delivered. Magistrate admittedly did not mention the ages of dummies. PW Khalil-ur-Rehman also admitted that he did not disclose the role of accused Ammar Asad. Thus, both PWs admittedly not disclose features of unknown culprits in their statements recorded by I.O; the Magistrate did not mention age of dummies and it is well settled law that delay in holding identification test would reduce its value. Consequently, the identification parade, marred by these deficiencies, holds no legal validity. The reliance in this regard is placed on the case of *AYAZ AND 2 OTHERS vs. THE STATE* (2020 P. Cr. L.J. Note 44).



28. Moreover, the recovery of empty from the residence of the absconding accused Rashid Baloch is also questionable. The prosecution has mainly relied upon the disclosure of said accused to connect the present appellants in the commission of offence. Said accused even if disclosed the involvement of the appellants in the commission of the offence then too under the law, his confessional statement should have been got recorded before the Judicial Magistrate. But absence of such confessional statement and solely relying upon the statement of accused before police and connecting the appellants with commission of an unseen offence cannot be treated as sufficient to prove the charge. It has been a settled principle of law that sole statement of one accused cannot advance the prosecution case to warrant the conviction of other accused. No details as regards involvement of appellants have been brought on record by prosecution. Even their connection, association or relationship with said accused Rashid Baloch has not been brought on record. It has been settled law that even the statement of one of assailants recorded under Section 164 Cr.P.C. in all fairness is a statement of co-accused, hence, no deviation can be made against the established principle of law that statement of one accused cannot be used against the other in absence of any attending material produced by the prosecution. But in this case even there is no such statement U/S 164 Cr.P.C. to connect the present appellants with the commission of offence. Even otherwise this statement is not corroborated with material

evidence to connect the appellants with the commission of offence.

29. PW Noman Sadiq, in his initial examination-in-chief, stated that he recognized three accused individuals Ammar Asad, Masroor and Arsalan. However, later in his testimony, he retracted his identification and asserted that the accused present in the court was not same to whom he had identified before the Magistrate. This contradiction raises serious doubts about the reliability of the evidence and vitiate the whole process of identification parade. Consequently, relying solely on testimony of PW Khalil-ur-Rehman for conviction specially when he admitted that he did not provide physical descriptions of the culprits in his statement recorded under Section 161 of Cr. P.C. by the Investigating Officer, becomes questionable.

30. Moreover, the evidence of both PWs is inconsistent and compromised. They are not even eyewitnesses of the occurrence but are alleged to have delivered the ransom money to four accused persons. Their failure to mention about the presence of a light source during the midnight incident, along with the absence of descriptions of the appellants' whom they had never seen or known before, further weakens their testimonies especially in terms of correct identification of the appellants. These deficiencies lead to a substantial doubt in the prosecution's evidence. It is well settled that it is not necessary that there should be many circumstances which create doubt in the prosecution case. Even a single circumstance which creates reasonable doubt in a prudent mind about the guilt of an

accused would entitle him to acquittal. In this regard, reliance is placed on the case of *Ahmed Ali and another v. The State* (2023 SCMR 781) which reveals as under:-

*“12. Even otherwise, it is well settled that for the purposes of extending the benefit of doubt to an accused, it is not necessary that there be multiple infirmities in the prosecution case or several circumstances creating doubt. A single or slightest doubt, if found reasonable, in the prosecution case would be sufficient to entitle the accused to its benefit, not as a matter of grace and concession but as a matter of right. Reliance in this regard may be placed on the cases reported as Tajamal Hussain v. The State (2022 SCMR 1567), Sajjad Hussain v. The State (2022 SCMR 1540), Abdul Ghafoor v. The State (2022 SCMR 1527 SC), Kashif Ali v. The State (2022 SCMR 1515), Muhammad Ashraf v. The State (2022 SCMR 1328), Khalid Mehmood v. The State (2022 SCMR 1148), Muhammad Sami Ullah v. The State (2022 SCMR 998), Bashir Muhammad Khan v. The State (2022 SCMR 986), The State v. Ahmed Omer Sheikh (2021 SCMR 873), Najaf Ali Shah v. The State (2021 SCMR 736), Muhammad Imran v. The State (2020 SCMR 857), Abdul Jabbar v. The State (2019 SCMR 129), Mst. Asia Bibi v. The State (PLD 2019 SC 64), Hashim Qasim v. The State (2017 SCMR 986), Muhammad Mansha v. The State (2018 SCMR 772), Muhammad Zaman v. The State (2014 SCMR 749 SC), Khalid Mehmood v. The State (2011 SCMR 664), Muhammad Akram v. The State (2009 SCMR 230), Faheem Ahmed Farooqui v. The State (2008 SCMR 1572), Ghulam Qadir v. The State (2008 SCMR 1221) and Tariq Pervaiz v. The State (1995 SCMR 1345).”*

31. The recovery of dead body of deceased at the pointation of accused persons is also inadmissible for the reason that it is alleged that such recovery was made on joint pointation by more than one accused. The Honourable Supreme Court of Pakistan in this regard has held in case *Muhammad Mushtaq v/s Mustansar Hussain* (2016 SCMR 2123) that joint recovery of dead body on pointation of several accused is inadmissible evidence. In that case, there was also last seen evidence available but in this case there is no evidence if the deceased was lastly found in the company of appellants. Moreover, it is not the recovery of dead body on the pointation of accused but as is observed that it is

only alleged that the appellants pointed towards place of disposal of dead body i.e. Malir Naddi and from there the dead body was recovered by the drivers of Edhi. The evidence of such drivers is not available to support the contention that the appellants were readily available there to point out the exact location of disposal of the dead body. In fact it is a case of no evidence against the appellants.

32. Testimony regarding the retrieval of a pistol and a spent cartridge, which, according to the report from the Forensic Science Laboratory Expert (Exhibit 44/D), though were found to be linked to one of the recovered pistols. But to consider the evidence it is to be noted that the recovery of unlicensed pistol of 30 bore was allegedly made from appellant Arsalan on 21.05.2009 which was delivered at Forensic Lab on 03.06.2009 with delay of 13 days. On 21.05.2009 the police party headed by Inspector Tahir Naseer had left P.S alongwith arrested accused Rashid Baloch on whose pointation appellant Arsalan was arrested in presence of police officials but despite of such advance information for arrest, no independent person was associated to witness the arrest and recovery and Mashir SIP Shahid Mehmood admitted during his evidence that Inspector Tahir did not call private person to act as Mashir and, therefore, reliance in this regard was rightly placed upon [2020 P.Cr.L.J 311]. Therefore, recoveries of such incriminating evidence without proof cannot be believed to warrant conviction.

33. Consequently, we find that the evidence against the appellants lacks credibility and cannot be relied upon to uphold the conviction and sentences impugned in these appeals. The doubts cast upon the prosecution's evidence are significant, prompting us to allow the appeals and set aside the impugned judgment convicting the appellants. Therefore, these appeals are allowed and the confirmation reference is answered in negative. The appellants are acquitted of the charge and shall be released forth with if not required in any other custody case.

**JUDGE**

**JUDGE**

*imran*