

Form No: HCJD/C-121.

JUDGEMENT SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

Crl. Appeal No. 88 of 2011

Shehzad Ahmed
Vs
Zafar alias Zafri and 4 others

DATE OF HEARING: 15-05-2019.

APPELLANTS BY: Raja Ghaneem Aabir Khan, Qausain Faisal
Mufti and Raja Bilal Asif Advocates.

RESPONDENTS BY: Rao Abdul Raheem Advocate, for the
complainant.
Malik Awais Haider, State Counsel.

ATHAR MINALLAH, CJ.- Through this consolidated judgment we will decide the instant appeal alongwith Crl. Appeals No. 87-T/2011, titled "Shoukat Iqbal v. The State", 89/2011, titled "Shahzad Ahmed v. Muhammad Naeem and 3 others", 101/2011, titled "Malik Muhammad Naeem and another v. The State" and answer the Capital Sentence Reference no. 03 of 2011.

2. The facts, in brief, are that Shahzad Ahmed (PW-11) [hereinafter referred to as the "**Complainant**") was watching television with his family members at about 9.30 pm in his house i.e. house no. 199-B, street no. 33, Sector F-10/1, Islamabad [hereinafter referred to as the "**House**"]. The family members who were present at the time of occurrence were his wife, namely, Ms Sabahat (PW-12) and two daughters, namely, Nida and Shafa Ahmed [hereinafter referred to as the "**Victim**"] respectively. The domestic help, namely Shah Zain, went out when the bell rang and on his return informed the Complainant that someone had brought a package of mangoes. The Complainant went out and saw two men who forced their entry into the House. The two men were armed with fire arm weapons. Some other persons also followed the two armed men. The wife of the Complainant, namely, Ms Sabahat panicked which led one of the armed intruders to hit her with a glass on the head and as a result she started bleeding. The person who had hit the wife of the Complainant with the glass and injured her was later identified as Sodagar, son of Ameer Ali, while the other as Zafar alias Zafri, son of Zulfqiar. They forcibly abducted one of the daughters of the Complainant i.e. the Victim. The Victim was pushed into a car parked outside and the perpetrators of the crime fled in the said car. The Complainant tried to follow the perpetrators in his car but could not see them. The Complainant returned to the House and informed the Police Station regarding the occurrence. The

wife of the Complainant, namely Ms Sabahat, was rushed to the Pakistan Institute of Medical Sciences [hereinafter referred to as the "**Hospital**"] for medical treatment. Dr Muhammad Furrukh Kamal, Medical Officer (PW-1) examined the Complainant's wife on 06-06-2009 and recorded his findings in a medical report (Exh.PA). On receiving information Javed Awan, Sub Inspector (PW-14), accompanied by other police officials, reached the House. The events were reduced into writing and the complaint (Exh.PB) was sent to the Police Station pursuant whereof FIR No. 264, Dated 07-06-2009 (Exh.PB/1) was duly registered. It is noted that the Victim was abducted from the House around 9:30 p.m. on 06-06-2009. Javed Awan, Sub Inspector (PW-14), prepared a rough site plan (Exh.PCC). While leaving, the perpetrators also took with them the cell phones belonging to the Complainant and his family members. The latter received a call from one of the cell phones belonging to a member of the family. The caller demanded payment of ransom amounting to rupees seven million. The Complainant informed the Investigating Officer and the other police officials. After negotiations, the perpetrators reduced the ransom amount to rupees 1.5 million. The Complainant arranged the amount and on 09-06-2009, the currency notes were marked and a list (Exh.PY) thereof was prepared by Javed Awan, Sub Inspector (PW-14). The Complainant was told to deliver the ransom amount at Katchery Chowk, Rawalpindi. When he reached there he was given a different address. The ransom

amount was, thereafter, left at the place identified by the caller. The police officials were monitoring the delivery of the ransom amount which enabled them to identify the persons involved in the crime and follow them to their destination i.e. House no. 7, Street no. 7A, Sector F-10/3 [hereinafter referred to as the "**Crime Scene**"]. The police officials raided the Crime Scene and recovered the Victim and the marked currency notes as well which were left at the identified place as the ransom amount. Three persons present at the Crime Scene at the time of the raid i.e. Malik Muhammad Naeem, son of Muhammad Fiaz, Malik Muhammad Yasin, son of Muhammad Fiaz and Shoukat Iqbal, son of Arshad Iqbal were arrested by the Investigating Officer. On 12-06-2009 Sodagar, son of Ameer Ali, Zafar alias Zafri, son of Zulfqiar and Ghulam Murtaza, son of Ghulam Mustafa were also arrested. On 25-06-2009, Malik Muhammad Naeem, son of Muhammad Fiaz, Malik Muhammad Yasin, son of Muhammad Fiaz and Shoukat Iqbal, son of Arshad Iqbal separately led the Investigating Officer to the recovery of fire arm weapons and live cartridges which were taken into possession vide recovery memos Exh.PF, Exh.PG and Exh.PH. On 28-06-2009, the other accused i.e. Sodagar son of Ameer Ali, Zafar alias Zafri, son of Zulfqiar and Ghulam Murtaza, son of Ghulam Mustafa also led police to the recovery of 30 bore pistols which were taken into possession vide respective recovery memos. On 29-09-2009, Ashfaq Zaman, son of Sakhi Zaman was also arrested. Initially a charge was framed vide order, dated 29-

07-2009, against all the accused except Ashfaq Zaman, son of Sakhi Zaman. However, an amended charge was later framed on 30-09-2009. After the Victim was recovered her statement under section 164 of the Code of Criminal Procedure, 1898 [hereinafter referred to as the "**Cr.P.C.**"] was recorded on 13-06-2009, by Mr Khalid Yasin, City Magistrate, Islamabad. The accused were identified by conducting an identification parade which was supervised by Mr Muhammad Liaqat Abbasi, Magistrate, Islamabad pursuant to an application filed by the Investigating Officer on 13-06-2009. The prosecution had produced fourteen witnesses, while one witness entered the witness-box on behalf of the defense. The seven accused who were tried pursuant to the framing of the charge, dated 30-09-2009, preferred not to be examined under oath and, therefore, their statements were recorded under section 342 of the Cr.P.C. After the recording of evidence and affording an opportunity of hearing to the parties, the learned trial Court, vide judgment dated 14-09-2011, convicted and handed down the sentence of death to Malik Muhammad Naeem, son of Muhammad Fiaz, Malik Muhammad Yasin, son of Muhammad Fiaz and Shoukat Iqbal, son of Arshad Iqbal under section 365-A of the Pakistan Penal Code, 1860 [hereinafter referred to as the "**PPC**"] and section 7 of the Anti Terrorism Act, 1997 [hereinafter referred to as the "**Act of 1997**"]. In exercise of powers conferred under the Act of 1997, the learned trial Court ordered forfeiture of the properties of the convicts/accused. However, the other

accused, namely Sodagar, son of Ameer Ali, Zafar alias Zafri, son of Zulfqiar, Ghulam Murtaza, son of Ghulam Mustafa and Ashfaq Zaman, son of Sakhi Zaman, were acquitted of the charges by extending the benefit of doubt.

3. The learned counsel for the convicts/appellants have contended that; the prosecution had failed in proving its case beyond a reasonable doubt; the prosecution could not prove that the Victim had been abducted; the ocular evidence and the deposition of the Victim are not consistent and thus cannot be relied upon; it is settled law that on the basis of same evidence the persons alleged to have been involved in the crime could not have been treated differently; the ownership of the House where the raid was conducted and the Victim had been kept in confinement could not be proved by the prosecution; the demand regarding payment of ransom could not be proved by the prosecution; likewise, payment of ransom could also not be established by the prosecution; the witnesses had mentioned contradictory dates in their respective depositions; the recovery of the Victim is also not free from doubt; the identification parade was illegal because the accused were presented jointly; the evidence against all the accused persons was the same.

4. The learned counsel for the Complainant, on the other hand, has argued that the prosecution had established its case beyond a reasonable doubt; the acquitted accused

were not implicated by way of a wider net; one of the accused, namely Malik Muhammad Naeem, son of Muhammad Fiaz, had remained employed in the House for a short period i.e. about two weeks and that too seven or eight years prior to the commission of the offence; there was no relationship whatsoever between the Victim and the said accused; the witness, who had appeared in support of the defense version, contradicted the statements which were recorded under section 342 of the Cr.P.C; the fact that all the accused were not identified by each witness was of no consequence in the facts and circumstances of the instant case.

5. The learned State Counsel has adopted the arguments raised by the learned counsel for the Complainant.

6. The learned counsels for the parties and the learned State Counsel have been heard and the record perused with their able assistance.

7. The Victim was abducted from the House in the presence of the Complainant (PW-11), Ms Sabahat (PW-12) and their youngest daughter. The latter did not enter the witness box as a witness. The Victim was recovered from the Crime Scene pursuant to a raid conducted by the Investigating Officer and other police officials. The currency notes which were left at the place identified by the perpetrators as the ransom amount were signed and duly

marked. The said currency notes were later recovered from the Crime Scene and three accused who were present at the time of the raid were also arrested. The accused who were arrested from the Crime Scene on 09-06-2009 were Malik Muhammad Naeem, son of Muhammad Fiaz, Malik Muhammad Yasin, son of Muhammad Fiaz and Shoukat Iqbal, son of Arshad Iqbal. The Victim had recorded her statement under section 164 of the Cr.P.C. and had also deposed under oath by entering the witness-box as PW-13. Despite being exposed to lengthy cross examination her statement remained consistent and inspired confidence which was corroborated by the trust worthy depositions of Ms Sabahat (PW-12) and the Complainant (PW-11). The prosecution also brought on record evidence which established the guilt of the accused with certainty, who were handed down convictions and sentences. The defense had attempted to twist the facts but could not support the stance which was specifically taken regarding the purported relationship between one of the accused Malik Muhammad Naeem and the Victim. We are, therefore, satisfied that the prosecution had established its case to the extent of the three convicted appellants beyond reasonable doubt.

8. It is settled law that a conviction can be handed down on the basis of the deposition of even a solitary witness and that quality of evidence and not quantity is required to be considered by a trial court. Reliance is placed on the case

titled "Riaz Hussain v. The State" [2001 SCMR 177]. It depends upon the facts and circumstances in each particular case whether a solitary witness should be believed or not and reference in this regard may be made to the case titled "Muhammad Siddique alias Ashraf alias Achhi and 3 others v. The State" [1971 SCMR 659]. Reliance is also placed on the case titled "Allah Bakhsh v. Shammi and others" [PLD 1980 S.C. 225]. Moreover, the august Supreme Court in the case titled "The State v. Nazir Ahmed and others" [1999 SCMR 610] has observed and held that in cases involving the commission of the offence of kidnapping or abduction, unless there were strong reasons to discredit the testimony of the abductee/kidnappee, the latter's statement carries substantial evidentiary value. We have carefully perused the evidence and have examined the facts and circumstances of the case in hand and in the light of the settled principles and law we have no hesitation in concluding that the confidence inspiring deposition of the Victim stood corroborated by other reliable evidence to the extent of the guilt of Malik Muhammad Naeem, son of Muhammad Fiaz, Malik Muhammad Yasin, son of Muhammad Fiaz and Shoukat Iqbal, son of Arshad Iqbal. We, therefore, see no reason to disbelieve the consistent and confidence inspiring, trust worthy deposition of the Victim to their extent. Moreover, to the extent of the other accused, though we have no reason to disbelieve the testimony of the Victim, nonetheless the prosecution could not bring sufficient evidence on record for the purposes of corroboration. Keeping

in view the principles of safe administration of justice, we are not inclined to interfere with the findings of the learned trial court. We, therefore, confirm the convictions and sentences handed down by the learned trial Court vide judgment dated 14-09-2011 under section 365-A of PPC. However, we are of the opinion that in the facts and circumstances of the case in hand and on the touchstone of the law down by the august Supreme Court in the cases titled "Shahbaz Khan alias Tippu and others v. Special Judge Anti-Terrorism Court No. 3, Lahore and others" [PLD 2016 S.C. 1], "Malik Muhammad Mumtaz Qadri v. The State and others" [PLD 2016 S.C. 17], titled "Khuda-e-Noor v. The State" [PLD 2016 S.C. 195], "Kashif Ali v. The Judge, Anti-Terrorism, Court No. II, Lahore and others" [PLD 2016 S.C. 951] and "Waris Ali and 5 others v. The State" [2017 SCMR 1572] the prosecution could not establish all the ingredients required to prove the commission of the offence that would have attracted section 7 of the Act of 1997. To the extent of the convictions and sentences handed down under section 7 of the Act of 1997, they are hereby set aside and only to this extent Crl. Appeals no. 87/2011 and 101/2011 are partially allowed while convictions and sentences handed down under section 365 A of the PPC are upheld.

9. For the above reasons we answer the Capital Sentence Reference no. 03/2011 in the affirmative to the extent of convictions and sentences handed down under

section 365-A of the PPC. The appeals, whether against convictions or acquittals/enhancement of sentences under section 365-A of the PPC, have been found to be devoid of merit. Consequently, appeals preferred against acquittal and for enhancement of sentences i.e. Crl. Appeal Nos. 88/2011 and 89/2011 are dismissed. As noted above, appeals against convictions i.e. Crl. Appeal Nos. 87/2011 and 101/2011 are partially allowed in the above terms. The sentences handed down under section 365-A of the PPC are hereby confirmed.

(CHIEF JUSTICE)

(MIANGUL HASSAN AURANGZEB)
JUDGE

Announced in open Court on 07-07-2019.

JUDGE

CHIEF JUSTICE

Tanveer Ahmed.

Approved for reporting