

JUDGMENT SHEET
ISLAMABAD HIGH COURT, ISLAMABAD,
JUDICIAL DEPARTMENT

Criminal Appeal No.08/2011

Ch. Amir Shahzad

versus

Muhammad Makki & 6 others

Appellant by: Mr. Mudassar Hussain Malik, Advocate.

Respondent by: Ch. Gulfam Ashraf Goraya, Advocate for
Respondents No.1 to 5
Mr. Muhammad Atif Khokhar, State Counsel

Date of Hearing: 05.05.2020.

MOHSIN AKHTAR KAYANI, J: Through the instant criminal appeal, the appellant has called in question judgment of the learned Special Court (Anti-Terrorism Court-I), Rawalpindi, dated 18.01.2011, whereby Respondents No.1 to 5 have been acquitted in private complaint under Section 365-A/34, 149, 109 PPC read with Section 7 of the Anti-Terrorism Act, 1997.

2. Brief facts referred in the instant criminal appeal are that on 15.09.2009, at about 09:00/09:15 p.m., when Ch. Aamir Shahzad/appellant was going towards his vehicle after offering Isha prayer in F-11 Markaz, he was abducted by two already known accused persons to appellant namely Abdul Ghafoor and Muhammad Makki along with three unknown accused persons to appellant namely Alam Sher, Amir Rehman and Adnan. The appellant was then taken in his own vehicle and after travelling for a while; he was shifted to another vehicle and taken blindfolded to some unknown place for the purpose of demand of ransom. Accordingly, appellant's sister namely Shabana Kausar got registered FIR No.455/2009 at P.S. Shalimar, Islamabad and during investigation of the matter, on 03.10.2009, Aamir Rehman/accused was arrested while in possession of the ransom amount handed over to him by PW-3 Ch. Muhammad Afzal. On the pointation of said accused person, a raid was conducted at Flat No.5, Al-Safa Heights, Sector F-11, Islamabad, wherefrom the appellant was recovered from

the illegal confinement of Muhammad Makki and Alam Sher/accused persons (Respondents No.1 and 2). However, after the recovery of appellant, his statement was not recorded by the police and the appellant having apprehension that police is not properly investigating the matter filed an application to Assistant Commissioner, Islamabad for recording of his statement under Section 164 Cr.P.C., whereafter his statement was recorded along with statements of four others and consequently respondents/accused persons were summoned, though Respondent No.5 for being absconder was proceeded under Section 19(10) of the Anti-Terrorism Act, 1997, while the four accused persons were formally charged under Section 7(e) of the Anti-Terrorism Act, 1997 read with Section 365-A/149 PPC, who pleaded not guilty and claimed trial. After recording of pro and contra evidence/statements of the parties, the learned trial Court vide impugned judgment dated 18.01.2011 acquitted respondents/accused persons. Hence, the instant criminal appeal.

3. Learned counsel for appellant contends that the learned trial Court while taking into account minor discrepancies had ignored material facts of the case that the respondents/accused persons themselves admitted during the course of trial that they abducted the appellant; that the learned trial Court had also ignored to appreciate the factum of raid and ransom money recovered from the accused person; that the learned trial Court has not appreciated the evidence brought on record by the appellant side and acquitted the respondents/accused persons of the charge in whimsical manner; that the learned trial Court has relied upon defective material produced by the defence while passing the impugned judgment, which is illegal, arbitrary and against the settled principles of law.

4. Conversely, learned counsel for respondents No.1 to 5 contended that the appellant has miserably failed to prove the charges against the said respondents/accused persons and the learned trial Court has rightly appreciated all these facts while passing the impugned judgment; that no fact regarding any

enmity on the part of respondents/accused persons has been shown or proved by the appellant; that the case as established by the appellant suffers from doubts and the evidence produced by the appellant side is not consistent, which has rightly been declared inadmissible by the learned trial Court while passing the impugned judgment; that a direct appeal against judgment of acquittal in complaint case is not maintainable in terms of Section 25(4) of the ATA, 1997 read with Section 417(a)(ii) Cr.P.C.; that Ch. Amir Shahzad/appellant i.e. alleged abductee is absconder in another case FIR No.74, dated 27.02.2014, under Sections 420, 468, 471, 406/34 PPC, P.S. Shalimar, Islamabad and as such, he loses his normal right of audience and instant appeal is not maintainable. Similarly, learned State Counsel contended that instant appeal is not maintainable as there is no direct appeal provided under the law and special leave to appeal was not obtained by the appellant at the first instance, whereas this defect is not clarified.

5. Arguments heard, record perused.

6. Perusal of record reveals that on 15.09.2009, appellant was allegedly abducted from F-11 Markaz when he dropped his family members including his sister Mst. Shabana Kausar/PW-1, Mst. Ruhsar Kausar and his wife Mst. Tayyaba at Irfan Dental Clinic situated in F-11 Markaz for medical treatment, when he never returned back, his sister Shabana Kausar lodged the FIR No. 455/2009 at P.S. Shalimar, Islamabad for his abduction. However, Mst. Shabana Kausar/PW-1 received a call on her mobile No.0322-5509009 from mobile number of her brother Aamir Shahzad/appellant i.e. No.0333-5777794, whereby the caller told her that her brother is in safe custody and his car No.PG-237 has been parked near greenbelt Filtration Plant, F-11, the said caller demanded Rs.25 crore as ransom for release of appellant. The said caller also extended threats not to inform the police and granted two days time for arranging the ransom. Complainant Mst. Shabana Kausar got submitted the complaint Ex.PA, which was converted into FIR No.455, dated 16.09.2009, U/S

365-A/34 PPC P.S. Shalimar, Islamabad. After initial investigation the alleged abductee has been recovered and three accused persons were arrested, however, appellant being dissatisfied with the investigation conducted by police filed private complaint U/S 365-A/149/109/34 PPC read with Section 7 ATA, 1997, which was admitted for regular hearing by the Anti-Terrorism Court, Islamabad. Whereafter, the respondents were acquitted by the learned Trial Court vide judgment dated 18.01.2011. Hence, the instant criminal appeal.

7. Learned counsel for respondents has raised two objections regarding maintainability of instant criminal appeal, which are as under:

- a) Ch. Aamir Shahzad/Appellant i.e. complainant/abductee filed the instant criminal appeal against judgment of acquittal, who himself is an absconder in case FIR No.74, dated 27.02.2014, under Sections 420, 468, 471, 406/34 PPC, P.S. Shalimar, Islamabad and as per the respondent's objection, the instant appeal is not competent as the absconder loses his normal right of audience as held in cases reported as PLD 1981 SC 265 (Hayat Bakhsh vs. The State) and 2005 P.Cr.LJ 1789 Lahore (M. Saleem Akhtar vs. S.H.O. P.S. Chotiana).
- b) A direct appeal has been filed by the appellant against judgment of acquittal, which is a violation of Section 417(a)(ii) Cr.P.C. and Section 25(4) of the ATA, 1997.

Before going into merits of the case, we have to decide the above referred two objections raised by the respondent side at first instance.

8. To controvert the aforementioned objections, the learned counsel for appellant contends that the objections of the respondent side are related to those accused persons who absconded in any criminal case, whereas in this case, the appellant having been declared fugitive offender in criminal case FIR No.74/2014, which has no nexus with the instant case, even otherwise, the appellant was not declared absconder at the time of filing of instant appeal on

25.01.2011, while the appellant was declared absconder on 12.01.2016 i.e. after five years of filing of the instant appeal, therefore, judgments relied upon by the respondent side are not applicable to the present case. There is no cavil to proposition that a person fugitive from law has no right of audience and even the case law cited by respondent side confers this aspect, but the proposition in hand is different, whereby the fugitive offender loses his concession of bail as well as joining of court proceedings, but the respondent side has failed to justify the right of representation earlier available to the appellant under the law, which could not be curtailed due to subsequent event in another FIR after six years of filing of appeal. The Constitution of the Islamic Republic of Pakistan, 1973 ensures and provides guarantee for equal protection of law to every individual and as such, the case in which the appellant is an accused has no nexus with this case, even the presence of appellant is not required in this case. The legal questions and arguments could only be addressed by his counsel whose power of attorney is still intact, the Court can decide the appeal even without appellant in terms of Section 423 Cr.P.C. Reliance is placed upon PLD 1971 SC 223 (Asif Ali Vs. The State), PLD 1961 Dhakka 78 (Hafiz & another v. The State) and PLD 1961 Karachi 709 (Muhammad, etc. vs. The State), therefore, the objection raised by respondent side regarding maintainability of instant criminal appeal on abscondance of appellant is misconceived and same is hereby rejected.

9. Similarly, regarding the second objection raised by the respondent side, learned counsel for respondent contends that when an accused person is acquitted pursuant to dismissal of criminal complaint, the complainant has to seek a *special leave to appeal* in terms of general law i.e. Section 417(2) Cr.P.C. and this aspect was specifically provided in Section 25(4-B) of the ATA, 1997, which is as under:

25. Appeal. (1) *An appeal against final judgment of an Anti Terrorism Court shall lie to a High Court.*

(2)

(3)

(4)

(4-A)

(4-B) *If an order acquittal is passed by an Anti-terrorism Court in any case instituted upon complaint and the High Court, on an Application made to it by the complainant in this behalf, grant Special leave to appeal from the order of acquittal, the complainant may within thirty days present such an appeal to the High Court.*

Learned counsel for respondent while arguing his case contended that the appellant has not filed any application for special leave before this Court, rather directly filed an appeal, which is not maintainable and as such, leave could not be granted at this belated stage.

10. Conversely, learned counsel for appellant contended that instant appeal was directly filed on the wrong advice of the counsel, the office of this Court had not raised any objection at the time of filing of instant appeal, even this Court has issued notices to the respondents vide order dated 04.04.2011 while considering the law and the facts in the judgment of the acquittal and as such, at this stage the appellant should not be burdened for the mistake and act of the Court. He further contended that criminal appeal has been filed within prescribed period and this Court in the interest of justice can convert one kind of proceedings into another while exercising inherent powers in terms of Section 561-A Cr.P.C. which are meant to cater such exceptional circumstances in which the Court shall not look into the technicalities at the time of admission of instant appeal.

11. We have gone through the arguments advanced by both the parties and in order to resolve the controversy we are fortified with the view taken by the apex Court in cases reported as 2017 SCMR 56 (Muhammad Akram vs.DCO Rahim Yar Khan), 2017 SCMR 118 (Mian Asghar Ali vs. Government of Punjab through Secretary), PLD 2018 SC 449 (Sher Alam Khan vs. Abdul Munim) and PLD 2012 SC 421 (Mst. Gul Jan vs. Naik Muhammad), whereby the apex Court, while relying upon the principle of *Ex Debito Justitiae* (from what is due to justice), has converted one type of proceedings into another by holding that an appeal has to

be converted into revision and vice versa and constitution petition could be converted into an appeal and vice versa. The Courts not only can exercise the powers to advance the cause of justice but also to prevent injustice, no fetters or bars could be placed on the High Court or on the Supreme Court to convert and treat one type of proceedings into another and proceed to decide the same. Reliance is placed upon 2020 SCMR 500 (Commissioner of Income Tax (Legal) RTO v. ED-Zublin AG Germany).

12. In view of above principles, laid down by the apex Court, the provisions of Section 561-A Cr.P.C. rescue the appellant in order to meet the ends of justice and this Court is of the view that appellant should not be burdened due to mistake of his counsel as well as of the office of this Court, who have not considered the law in its true perspective at the initial stage, although the appeal was filed within time, but no special leave was obtained, nor any such order was passed. However, there is no bar to consider the instant appeal as an application for special leave at this stage and allow the same while giving effect from the date of admission of instant appeal i.e. 04.04.2011, as the Court shall not sit as a silent spectator and to watch that who has committed the mistake. Reliance is placed upon 1981 SCMR 294 (Abdur Rahim vs. The State). Every Court has inherited powers to ensure justice is done and if foul play is visible, the Judge has to rectify the same, whereas this Court committed a mistake while entertaining the instant appeal directly at its initial stage, which could not be considered against the appellant although he has also not applied the law in a proper manner, therefore, relying upon the principle of "*Actus Curiae Neminem Gravabit*" that no one should be prejudiced by the act of Court. Reliance is placed upon 2016 SCMR 834 (Muhammad Ijaz vs. Muhammad Shafi), 2013 SCMR 1419 (Lanvin Traders, Karachi v. Presiding Officer) and PLD 2016 SC 872 (Khushi Muhammad vs. Mst. Fazal Bibi). The objection of respondent side regarding non-filing of application for special leave stand condoned, the appeal is

maintainable while invoking the inherited powers in terms of Section 561-A Cr.P.C. in order to meet the ends of justice.

13. In order to decide the case on evidence available on record, it has been observed that the appellant has nominated Muhammad Makki, Alam Sher, Aamir Rehman, Abdul Ghafoor and Adnan Khan as accused persons in a private complaint, however, accused Adnan Khan did not appear and absconded during the trial, who has been tried in absentia.

14. The initial statement was recorded by PW-1 Mst. Shabana Kausar/complainant of case FIR No.455/2009 (Ex.PA/1), wherein no accused was nominated by name. She did not identify the caller who made call for the purpose of ransom, however, she acknowledged that she knew accused Muhammad Makki and Abdul Ghafoor prior to the said occurrence as she and her brother purchased several properties from them valuing about Rs.15 crore. She also acknowledged that her brother/alleged abductee was also known to accused persons prior to said occurrence and she recorded supplementary statement regarding nomination of accused persons.

15. The appellant has produced his other sister i.e. Mst. Rukhsar Kausar as PW-2, who narrated the entire story of the alleged occurrence, however, she further stated that she along with her sister went to airport to receive her other brother namely Afzal Cheema, who was in USA at the time of alleged incident and was informed by Mst. Shabana Kausar. She also acknowledged that she was informed by her sister that caller demanded Rs.25 crore for release of her brother and she also did not nominate any accused person in her statement before the police.

16. The appellant has produced his brother i.e. Ch. Muhammad Afzal as PW-3, who stated that he was in USA on 15.09.2009 when he was informed by her sister regarding kidnapping of Aamir Shahzad/appellant, where-after he came to Pakistan on 16.09.2009. He further stated that he has also received a call

from the abductor who demanded Rs.25 crore for the release of his brother and in default, abductor threatened to kill his brother. Ghafoor and Makki accused present in the Court used to meet him and told him that they would help him tracing out his brother as both the said accused persons called him in their office and told him that they would settle the issue with alleged abductor for release of his brother for the sum of Rs.10 crore, whereupon he replied that he needs some time for arranging the ransom amount, they also assured him that they will arrange ransom amount of Rs.5/7 crore for him. PW-3 told all these facts to the police and on the instructions of police, he confirm the accused persons for delivery of ransom amount, upon which he was informed that amount would be received at Jungle Hotel Kashmir Highway by the abductor. After receiving this information, the police has arranged a bag containing notes Ex.P1, which were photocopies of the original currency notes. PW-3 reached at Jungle Hotel at about 04/4:30 p.m. along with police party headed by DIG and when he saw a white colour Corolla car, from which accused Aamir alighted, came towards him and received the bag Ex.P1, he was arrested by the police, who during interrogation at spot disclosed about the place of confinement of Aamir Shahzad (alleged abductee) as Flat No.5, Al-Safa Heights, F-11, Islamabad. Police party on pointation of Aamir Rehman raided the said flat and arrested the accused Makki and Alam Sher while in possession of pistol Ex.P-2 (black colour) while Aamir Shahzad/appellant was tied up with ropes Ex.P3/1-2.

17. During the course of cross-examination, PW-3 Ch. Muhammad Afzal acknowledged that police did not record his statement during entire investigation despite the fact that police party visited him at his house and he also joined investigation 5/6 times, while he visited the police station for 8 times. He did not recognize the voice of caller who called for ransom amount, nor he remember exact number on which he received the call, but he handed over the SIM to police. PW-3 did not give the original currency notes of Rs.10 crore, rather

police told him that they have arranged the photostat currency notes, however, he did not remember the name of said police officer who arranged the same. He also acknowledged that his brother/appellant filed a private complaint after four months of recovery. He purchased flats from accused persons and he came to know about the names of Aamir Rehman and Alam Sher in the police station, he handed over the bag to accused Aamir Rehman.

18. Appellant/Ch. Aamir Shahzad Cheema (abductee) appeared as PW-4 and recorded his statement in the following manner:-

On 15.09.2009, I took my sister Rukhsar Kausar and my wife Tayyba Aamir to dental clinic in F-11 Markaz Islamabad. The time was 7/7:30 P.M. I dropped them at the clinic when they asked me to go to say prayer as they will take some time for their check up. I did not go to say prayer and remained sitting in my car there. Meanwhile I received a telephone call of my friend Rashid for seeing the flats. I went to see the flats at the place where he called me. After visiting the flats, I came back to the above said clinic but I did not see my family outside the clinic and then I went to mosque to offer prayer. Meanwhile a heavy rain and storm started, when I came outside the mosque, there was heavy rain outside and nobody was present. When I was going to open the door of my car through key, five persons including accused Makki and Abdul Ghafoor, now present in Court, came there and tried to snatch key of car from me on gunpoint. At my resistance, accused forcibly got me seated in the rear seat of my car and one of the accused namely Maki sat with me on one side while the other accused namely Abdul Ghafoor sat with me on other side. Two accused sat on front seats. The accused drove the car and after passing some distance accused boarded me in another vehicle like Hiace. They covered my eyes with a piece of cloth and got me laid on the back seat of above said vehicle. After travelling for about 1-1/2 hours, accused confined me in a room and removed the cloth from my eyes. After some time, both accused Makki and Abdul Ghafoor came to me and told that they have abducted me for ransom and if my family pays ransom to them, they would release me otherwise, they would kill me. They were demanding ransom after every 2/3 days and were also telling me that my family was not fulfilling their demand. After 5/6 days, the accused shifted me during night to some other place. They again shifted me to previous place on 01.10.2009. On 03.10.2009, police recovered me. My brother Afzal was also accompanying the police at that time. At the time of recovery, my hands and feet were tied with ropes, P3/1-2. At the time of my recovery, accused Maki and Alam Sher were arrested from place of my recovery. I do not know whether police was accompanied by any accused. Again said accused Aamir Rehman was also present at the time of recovery but I do not know whether accused Aamir Rehman came alongwith police or he was already there.

19. After recording of above referred statement, the appellant further stated that he was not satisfied with the investigation and he filed private complaint Ex.PB and verified his signature as Ex.PB/1.

20. Basharat Hussain/ ASI of P.S Shalimar appeared as CW-1, who stated that on 03.10.2009, he was posted at P.S. Shalimar, Islamabad and at about 03:30 p.m., he alongwith Ghulam Muhammad Shah, S.I, Javid Awan, S.I, Habibullah, ASI, and other HCs/constables together with Muhammad Afzal Cheema went to Jungle Hotel situated at Kashmir Highway, Islamabad, where at about 04:20 p.m. whereby PW-3 Ch. Muhammad Afzal Cheema was holding a black colour bag containing the ransom money and Ghulam Muhammad Shah, S.I. assigned them different positions, PW-3 Ch. Muhammad Afzal Cheema went behind Jungle Hotel, where a Corolla car was parked at some distance, in which accused Aamir Rehman, now present in the Court, was sitting and when PW-3 Ch. Muhammad Afzal Cheema proceeded towards said accused Aamir Rehman, he alighted from his car and proceeded towards PW-3 Ch. Muhammad Afzal Cheema, who handed over the black colour bag containing ransom amount to the said accused Aamir Rehman, whereafter Aamir Rehman was apprehended by the raiding party and the amount of Rs.10 crore was recovered, which consisted of 200 bundles in the denomination of Rs.5000/- having two colour copies of 5000 currency notes in which there are 98 blank papers. The bundles are referred as Ex.P5/1-200. The amount was taken into possession vide recovery memo Ex.PC, signed by him and Javid Awan S.I./I.O also took into possession car bearing registration No.RLD-369, vide recovery memo Ex.PD. On the personal search of accused Aamir Rehman two mobile phones (Exh.P6/1-2), NIC (Exh.P7) and cash of Rs.5010/- (Exh.P8) were recovered, taken into possession vide recovery memo Ex.PE. On spot investigation, accused Aamir Rehman disclosed that abductee has been detained in Al-Safa Heights, Sector F-11/1, Islamabad, whereupon raiding party reached at the said place on pointation of accused Aamir Rehman,

door of Flat No.5 was knocked, whereby accused Alam Sher was arrested on opening the door. Muhammad Makki present in the Court was also present inside the flat, who was also arrested and Aamir Shahzad/alleged abductee was recovered from the said flat, who was tied up with ropes referred Ex.P3/1-2. From personal search of accused Alam Sher and Makki pistols .30 bore were recovered. From accused Makki his I.D card, driving license, two bank cards, one metro card, a cheque valuing Rs. One Lac, Nokia mobile phone and cash Rs.12,000/- were also recovered and taken into possession vide Ex.PF, whereas pistol was separately taken into possession as Ex.PG. Pistol recovered from accused Alam Sher was taken into possession vide recovery memo Ex.PH, Honda car PG-237 was also taken into possession by I.O through Ex.PJ and car has been presented as P-10.

21. CW-1 Basharat Hussain/ASI acknowledged that PW-3 Ch. Muhammad Afzal Cheema brought the dummy notes to Police Station. At the time of arrest of accused Aamir Rehman, 15/20 persons were present at Jungle Hotel and except PW-3 Ch. Muhammad Afzal Cheema, no private person was with police at Jungle Hotel. He also stated that no pistol was recovered from accused Aamir Rehman at the time of his arrest. The flat from where abductee was recovered is situated in the basement of Al Safa Heights. He acknowledged that there is no mention of number of flat/room in the recovery memo, which was prepared on spot and the raiding party was consisted upon Ghulam Muhammad Shah, S.I., Javid Awan, S.I, Habib Ullah, ASI, Ghulam Shabbir, HC, Akhtar Munir Constable. He further stated that he heard a news regarding recovery of abductee from Peshawar by DIG Binyamin. He did not know who is owner of Al Safa Heights, but the key was recovered from personal search of accused Makki and the door was opened by accused Alam Sher on knocking of police. He also stated that pistol was recovered from accused Makki upon his personal search

and pistol of accused Aamir Rehman was recovered on his pointation from Almirah in flat.

22. Habib Ullah, ASI appeared as CW-2, who was posted in P.S. Shalimar on 03.10.2009 and was member of raiding party alongwith Ghulam Muhammad Shah, S.I, Javid Awan, S.I and others, who went to Jungle Hotel from where they arrested accused Aamir Rehman and on his pointation, he got recovered pistol Ex.P11 vide recovery memo Ex.PK from Al-Safa Heights and separate FIR was lodged under Sections 13/20/65 of the Arms Ordinance, 1965.

23. Ghulam Shabbir HC appeared as CW-3, who was also member of raiding party on 03.10.2009 and went to Jungle Hotel and arrested accused Aamir Rehman, who led the police party to Al Safa Height, F-11 Markaz, Islamabad and on the knocking of door of Flat No.5, accused Alam Sher opened the door and accused Makki was also present there, who was apprehended and upon his personal search a black colour pistol alongwith four live bullets were recovered from his right dub, which were taken into possession vide recovery memo Ex.PM. The pistol has been produced as Ex.P2 and live bullets have been produced as Ex.P2/1-4. Recovery memo was also signed by him and Munir Akthar Constable. Accused Aamir Rehman also disclosed and led to recovery of pistol from Almirah of the said flat, which was separately taken into possession vide recovery memo Ex.PK, six live bullets were also recovered from that pistol and at the same time pistol was also recovered from accused Alam Sher.

24. The appellant side has produced CW-4 Ghulam Muhammad Shah, S.I who lodged the FIR Ex.PA/1 on 16.09.2009 on the complaint of Mst. Shabana Kausar Ex.PA and prepared rough site plan Ex.PN, recorded statement of PWs U/S 161 Cr.P.C. and on pointation of Mst. Shabana Kausar took into possession car (PG-237) from greenbelt filtration plant between F-10/1 and F-11 and also prepared the site plan, submitted application for constitution of JIT and also applied for CDR of mobile phone number of abductee and recorded statement of

PW-2 brother of abductee. Supplementary statements of Mst. Shabana Kausar were recorded on 02.10.2009 and 03.10.2009, he alongwith Javid Awan, S.I, Habib Ullah ASI, Basharat Mehmood ASI and six constables conducted raid in the Jungle Hotel area and stationed different police parties at different places and when accused Aamir Rehman received ransom amount, he apprehended him and on spot investigation got recovered the dummy notes amounting to Rs.10 crore vide recovery memo Exh.PC, cash of Rs.5010/-, USB, two mobile sets, visiting cards, etc. vide recovery memo Ex.PE. Accused Aamir Rehman disclosed the presence of alleged abudctee in the Al Safa Heights upon which raid was conducted and on knocking of door accused Alam Sher opened the door, who was apprehended and accused Makki was also present in the flat and pistol .30 bore was recovered from accused Alam Sher alongwith three live bullets. A pistol alongwith four live bullets was recovered from accused Makki from his right dub. On pointation of accused Aamir Rehman, pistol alongwith six live bullets were recovered from Almirah and taken into possession together with the rope, plate, glass, bottle and a mask, regarding which separate FIRs U/S 13/20/65 of Arms Ordinance were registered after recovery of three pistols. On personal search of accused Alam Sher, cash of Rs.22,000/- was recovered, site plan Ex.PR was prepared and on supplementary statement of Mst. Shabana Kausar he arrested accused Abdul Ghafoor in this case on 13.10.2009. He also obtained non bailable warrants of arrest of accused Adnan, which was not executed, hence submitted the challan.

25. During the course of cross-examination, CW-4 Ghulam Muhammad Shah/S.I. acknowledged that PW-3 Ch. Muhammad Afzal Cheema possessed all the dummy notes and he did not record his statement at Jungle Hotel or at Al-Safa Heights at the time of recovery. He acknowledged that 15/20 private persons were present at Jungle Hotel at the time of raid, but none of those private persons were ready to become witness of proceedings. He apprehended the

accused Aamir Rehman with the help of police officials. CW-4 Ghulam Muhammad Shah further acknowledged that he had not taken into possession the mobile set recovered from flat No.5 and accused Abdul Ghafoor was implicated in this case in terms of Section 109 PPC and except the statement of Mst. Shabana Kausar no incriminating material was available against accused Abdul Ghafoor. CW-4 denied the factum of recovery of alleged abductee Aamir Shahzad from area of P.S. Pahari Pura, Peshawar as per the news item published in newspaper Jang, dated 03.10.2009. He also denied that police of Islamabad headed by DIG Binyamin took the abductee from there. He also acknowledged that he did not take into possession the mobile set of Mst. Shabana Kausar, nor the SIM and the Flat No.5 containing 03 bedrooms and a kitchen separately referred in the Ex.PR and all the bedrooms of flat No.5 were open and key of flat No.5 was with accused Makki, who was present inside the flat at the time of raid.

26. While considering the entire evidence discussed above, following facts came on record:-

- i. The appellant Ch. Aamir Shahzad Cheema was abducted on 15.09.2009, from Islamabad in the territorial jurisdiction of P.S. Shalimar and complaint Ex.PA was filed by her sister Mst. Shabana Kausar, which was converted into FIR No.455/2009 Ex.PA/1.
- ii. No accused person was nominated by the complainant (sister of abductee).
- iii. Supplementary statement of Mst. Shabana Kausar was recorded alleging therein that ransom call was received from unknown caller who claimed the amount of Rs.25 crore on her mobile No.0322-5509009 from the mobile number of her abducted brother/Ch. Aamir Shahzad Cheema i.e. 0333-5777794.

- iv. The vehicle of the abductee/appellant i.e. No.PG-237 was recovered from greenbelt area near filtration plant on the information of unknown caller.
- v. Two of the accused persons namely Makki and Abdul Ghafoor met the abductee's brother namely Ch. Muhammad Afzal/PW-3 and assured him that they will arrange the release of his brother for the sum of Rs.10 crore and asked him to arrange the ransom amount.
- vi. The time and place for payment of ransom amount has been fixed at Jungle Hotel, Kashmir Highway by PW-3 Ch. Muhammad Afzal, who arranged Rs.10 crore ransom amount comprising of 200 packets with white pages in shape of currency notes with cover of Rs.5000/- note as referred in Ex.PC, recovery memo, dated 03.10.2009.
- vii. The ransom amount has been delivered in bag Ex.P-1 at Jungle Hotel, at about 04/4:30 p.m., when accused Aamir Rehman came at spot in white colour Corolla car and received a bag, who was taken into custody and his car RLD-369 Toyota Corolla XLI was also taken into possession vide recovery memo Ex.PD, dated 03.10.2009.
- viii. Accused Aamir Rehman discloses the whereabouts of alleged abductee on spot to the police near Jungle Hotel and on his pointation raid was conducted at flat No.5 Al Safa Heights, F-11 Markaz, Islamabad on 03.10.2009.
- ix. The abductee Aamir Shahzad was recovered from flat No.5 Al Safa Heights, F-11 Markaz, Islamabad by the police and taken into custody the accused Muhammad Makki and Alam Sher who was armed with .30 bore pistol, recovered through recovery memo Ex.PH with three live bullets.

- x. Abductee Aamir Shahzad was found in one of the room of the flat tied with white ropes length four feet approximately lying on cot which was taken into possession vide recovery memo Ex.PQ.
- xi. The raid was conducted by Basharat Hussain, ASI/CW-1, Habib Ullah, ASI/CW-2, Ghulam Hussain, HC/CW-3 and Ghulam Muhammad Shah, S.I/CW-4.
- xii. The accused Aamir Rehman got recovered his pistol alongwith 06 live bullets vide recovery memo Ex.PK and separate FIR U/S 13/20/65 AO was registered against him.
- xiii. Accused Aamir Rehman was arrested on 03.10.2009 from jungle hotel, while receiving the ransom amount by police.
- xiv. Accused Muhammad Makki was arrested on 03.10.2009 from flat No.5 Al Safa Heights, F-11 Markaz, Islamabad the place of abduction of alleged abductee Ch. Aamir Shahzad Cheema and also found in possession of .30 bore pistol alongwith live bullets by the police.
- xv. The site plan for recovery of vehicle PG-327-ICT referred as Ex.PO shows that vehicle was recovered from an open place.
- xvi. The site plan of place of abduction of Aamir Shahzad Cheema has been referred as Ex.PN shows it is situated in F-11 Markaz.
- xvii. The site plan Exh.PB for payment of ransom amount Rs.10 crore shows that it is in Jungle Hotel, Kashmir Highway when accused Aamir Rehman was arrested while receiving ransom amount.
- xviii. The site plan of recovery of the abductee Aamir Shahzad i.e. Flat No.5 Al Safa Heights, F-11 Markaz, Islamabad.
- xix. The site plan for recovery of pistol on the pointation of accused Makki alongwith 04 live bullets has been referred as Ex.DC.

- xx. No CDR has been placed on record by the I.O of this case.
- xxi. The amount of Rs.10 crore recovered from bag Ex.P-1 through recovery memo Ex.PC containing 200 bundles in denomination of Rs.5000/-. All the bundles containing two colour copies of Rs.5000/- notes in which 98 blank papers. Bundles have been placed as Ex.P5/1-200 by CW-1 Basharat Hussain ASI, there was not a single real currency note used to pay the ransom.
- xxii. As per the prosecution evidence of PW-3 Ch. Muhammad Afzal Cheema, the police had arranged the currency notes.
- xxiii. CW-1 Basharat Hussain/ASI stated that PW-3 Ch. Muhammad Afzal Cheema has arranged the currency notes for payment of ransom. As per site plan of recovery of alleged abductee, the place of recovery is Flat No.5, 1st Floor, Al-Safa Heights, F-11, Islamabad, whereas CW-2 Habib Ullah/S.I. contended that abductee was recovered from Flat No.5, Ground Floor, F-11, Islamabad.
- xxiv. The alleged abductee Ch. Amir Shahzad Cheema has never referred the place of recovery in his complaint or in his statement.
- xxv. The unknown caller claiming the ransom amount has not been verified by the I.O, nor has any voice test been conducted for the verification of the person amongst the accused persons in this regard by the I.O.
- xxvi. Abductee was recovered on the pointation of accused Aamir Rehman from Flat No.5 Al-Safa Heights, F-11 Markaz, Islamabad alongwith accused Makki and Alam Sher on 03.10.2009.
- xxvii. No independent evidence has been brought on record to verify that Abdul Ghafoor, brother of Muhammad Makki/respondent has been involved in this case except statement of the alleged abductee.

27. We have attended to the proposition in terms of Section 365-A PPC as to whether the ingredients of said offence have been justified by the prosecution in this case or otherwise on the basis of above factual position, therefore, it is necessary to reproduce Section 365-A PPC, which is 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 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.

28. While considering the above referred requirements of kidnapping for extorting property, it is necessary to prove that extortion has been made from any person who has been kidnapped or abducted and at least some person has to comply with the demand whether in cash or otherwise in order to obtain the release of the abductee, whereas in this case Muhammad Afzal Cheema/PW-3 the real brother of alleged abductee came from USA on 16.09.2009 after receiving information of kidnapping of his brother and he also met with accused Makki and Abdul Ghafoor who ensured him for release of his brother and suggested to make arrangement of ransom amount, although Muhammad Afzal Cheema informed the police parallel to these meetings and on 03.10.2009 he on the instructions of unknown caller reached at jungle hotel Kashmir Highway by arranging the ransom amount of Rs.10 crore in Ex.P1 (photocopy of original currency notes) which were handed over to accused Aamir Rehman, who was taken into custody by the raiding party comprising of CW-1 to CW-4 police officials, while receiving the amount. The handing over of ransom amount as alleged by the prosecution has been proved, although passing of ransom amount is not pre-requisite to prove the offence of Section 365-A PPC. Reliance is placed upon 2012 SCMR 721 (Muhammad Riaz Vs. Bilqiaz Khan).

29. Even though the recovered amount has been produced on record in the testimony of CW-4 Ghulam Muhammad Shah, S.I which was also confirmed by

CW-1 Basharat Hussain, ASI being the witness of recovery memo Ex.PC. It is also settled that non-recovery of ransom amount has no adverse effect on the case of prosecution. Reliance is placed upon 2003 YLR 300 (Muhammad Anwar alias Lahu Vs. The State). The offence of abduction or kidnapping for the purpose of ransom has to be considered in the light of evidence recorded by the complainant in this case namely Mst. Shahbana Kausar/PW-1 who has lodged the FIR with promptitude vide FIR No.455/2009 Ex.PA/1 and her stance was corroborated by the alleged abductee Aamir Shahzad Cheema/PW-4, who narrated the entire story in his statement referred in Para 18 of the instant judgment and confirmed that he was recovered on 03.10.2009 by the police in presence of his brother Muhammad Afzal, who accompanied the police. He also confirmed that his hands were tied up with rope and accused Makki and Alam Sher were arrested from the place of recovery along with incriminating articles, which fact further substantiated through recovery of .30 bore pistols. The statement of appellant/abductee remained consistent with the testimony of complainant/PW-1, his brother PW-3 as well as CW-1/Basharat Hussain, ASI and CW-4/Ghulam Muhammad Shah, S.I.

30. The most important aspect of this case is the exclusive knowledge of accused Aamir Rehman regarding the place of captivity of abductee Aamir Shahzad, which falls within the concept of Article 122 of *Qanun-e-Shahadat* Order, 1984 as on his pointation the abductee was recovered from Flat No.5 Al Safa Heights, F-11 Markaz, Islamabad and this aspect was also confirmed by the police officials/CWs appeared in this case. The exclusivity of knowledge of accused regarding different aspects of the occurrence was a piece of evidence inexorably pointing upon his culpability. Reliance is placed upon 2019 SCMR 2039 (Waqar A. Shamsi Vs. The State), wherein it has been held that "what was to be essentially seen was whether prosecution was able to come forward with the available evidence, possible under the circumstances of a case and that whether such volume or nature of evidence is sufficient to sustain the charge."

31. We have considered the chain of evidence from the point of disclosure by the accused Aamir Rehman on 03.10.2009 when he received the ransom amount of Rs.10 crore through Ex.P1 from brother of abductee/PW-3 Ch. Muhammad Afzal Cheema and was arrested by police, who disclosed the location of abductee to police, and the said disclosure in terms of Article 40 of the *Qanun-e-Shahadat* Order, 1984 has to be considered as an information received from accused which has been discovered in consequence of such information during the course of investigation of the offence and such information lead to a discovery of a new fact which was not earlier known to the I.O i.e. the place of abduction of the alleged abductee/appellant Aamir Shahzad i.e. Flat No.5 Al Safa Heights, F-11 Markaz, Islamabad. The information supplied by the accused Aamir Rehman in police custody under Article 40 of the *Qanun-e-Shahadat* Order, 1984 would be admissible only to the extent that it relates to the disclosure of a new fact. Reliance is place upon 2003 YLR 110 (Sher Dil Vs. The State). This aspect has been considered by the Apex Court in judgment reported as 2019 SCMR 1330 (Muhammad Azad Vs. The State) in the following manner:-

Events, though few, however taking place in quick succession, inexorably, revolve around the appellant's culpability; most important being disclosure within the contemplation of Article 40 of the Qanun-e-Shahadat Order, 1984 pursuant where to he led to the discovery the corpse on the basis of his exclusive knowledge; given the briefest timeframe, to the exclusion of any other hypothesis, it can be safely inferred, without being conjectural, that he alone knew what befell upon the child and where he was dumped. Cell phone data, generated through automated system, operating beyond human interference confirmed conversation between the appellant and the complainant. There was hardly any time or occasion for the family to concoct or cook up a story on suspicions or consultations. Investigative conclusions point towards the appellant as well. Complainant and his brother, with no axe to grind, cross-examined at length, left the witness box unscathed; recoveries have been proved by the witnesses, equally steadfast. There is no earthly reason to suspect appellant's identity or entertain theory of substitution. Appellant's guilt is proved to the hilt on the basis of chain of circumstances though few in number, nonetheless, well synchronized with one another, intrinsically confidence inspiring; he has rightly been convicted.

32. While considering the above approach settled by the Apex Court, we are of the considered view that abductee remained consistent with the prosecution version despite lengthy cross-examination and as such, the defense absolutely failed to shatter his testimony, even otherwise, the abductee and police officials/CWs have no ill will to falsely involve the accused persons in this case, whereas in similar situation the conviction has been maintained by the superior courts in case reported as 2017 YLRN 278 (Zeeshan Vs. State).

33. We have gone through the statements of respondents/accused person recorded U/S 342 Cr.P.C. whereby accused Aamir Rehman denied his involvement in the abduction of appellant, who while answering Question No.20 took a specific stance and has also taken a similar stance in answer to Question No.23, which is as under:-

I was involved in this case falsely by the police in connivance with the complainant party on account of enmity and PWs have also deposed against me through falsely concocted, cooked up, baseless, self contradictory story. My co-accused Abdul Ghafoor and his brother Abdul Shakoor have business dispute as complainant party had purchased 17 Flats from them valuing Rs.15 Crore and complainant party wanted that they should take those Flats back and pay the money to complainant party in form of Dollars. Because at the time of purchasing, the value of Dollar was lower, Abdul Ghafoor and his brother Abdul Shakoor refused and complainant party bore grudge and in connivance with police concocted, false and baseless story relating to recovery of abductee (PW-4) from afore mentioned flat just to defame us.

34. Similarly, principal accused Muhammad Makki has also denied his involvement and given a similar stance recorded by accused persons namely Alam Sher and Aamir Rehman in questions No.20, 22 and 23. For ready reference, the answer to of Question No.20 given by Muhammad Makki/accused is reproduced as under:-

"It is incorrect. The alleged abductee (PW-4) was not recovered from Flat No.5, Al Safa Heights. In fact the abductee (PW-4) was reportedly abducted by some Pathans and was recovered from Peshawar by Binyamin D.I.G. Operation Police Islamabad who brought him to Islamabad. This fact has been published/reported in various news papers and as well as lectronic media such as Nawa-e-waqat Islamabad, Subah News

Peshawar, Daily Jang, Geo News, etc. The photo state copies of news published in afore mentioned news papers are produced as Mark "A" to Mark "D". After the alleged recovery of abductee (PW-4) from Peshawar, police in connivance with complainant party, who are very influential person and with whom I and my brother Abdul Ghafoor and Abdul Shakoor have business dispute as complainant party had purchase 17 flats from us valuing Rs.15/- Crore and they wanted that we should take those flats back and pay them money according to Dollar. Because at the time of purchasing the value of Dollar was lower, we refused due to which they bore grudge concocted, a false and baseless story relating to recovery of abductee (PW-4) from aforementioned flat just to defame us and lower down the value of Al-Safa Heights. I along with my brother Abdul Ghafoor, my driver Alam Sher and my Manager Aamir Rehman was arrested by C.I.D. Police Party in the night between 2/3 October 2009 at about 02:30 AM from Al Safa Heights F-11/1 Islamabad. The police party headed by Khalid Masood D.S.P. C.I.D. took us to C.I.D. Centre Baharakahu, Islamabad, where police searched me and from my personal search Rs.12,000/- cash, Driving Licence, ID Card, Metro Card, ATM Card, Cheque valuing Rs.1,00,000/- and Mobile phone Nokia were recovered. The police plained on me Pistol P-2, just to strengthen the complainant/prosecution case and recovery memo Exh.PF is forged and false. Khalid Masoud D.S.P. CID Centre Bhara Kahu Islamabad, demanded from me illegal gratification for our release from illegal detention and compelled me to pay bribe amounting to Rs.5/- lac to him and as a consequence of his compellation and for our him to pay the afore mentioned bribe amount to him, resultantly I have paid him a sum of Rs.5/- Lac as bribe and then my brother Abdul Shakoor reported the matter to I.G. Police Islamabad and enquiry was ordered by I.G. Police Islamabad. During the course of enquiry the complaint was found true and as a result of that D.S.P. Khalid Masuod was dismissed from service by the order of I.G. Islamabad. Copy of his dismissal order dated 23.10.2009 is produced as Mark "E". However, I don't know about the personal search of Alam Sher. The police as mentioned above in connivance with complainant party prepared false recovery memos of dummy notes, recovery of alleged detenu from Al-Safa Heights and prepared all other memos of recovery of pistols from myself, my manager and my driver and conducted illegal investigations and involved me, my brother Abdul Ghafoor and driver Alam Sher and manager Aamir Rehman falsely through concocted and baseless story of complainant and the versions of the complainant and the police are false, concocted and self contradictory and mutually destructive and all the versions are absolutely untrue and false."

35. We have gone through the defense version highlighted in the statements of accused/respondents under Section 342 Cr.P.C. in which it was referred that Abdul Ghafoor and Abdul Shakoor have some business dispute with

complainant's party regarding purchase of flats worth of Rs.15 crore but no such evidence has been brought on record, even another aspect was broadly highlighted that accused Alam Sher driver of Abdul Ghafoor and Muhammad Makki alongwith manager Aamir Rehman were arrested by CID police in the night between 2/3 October, 2009, at about 02:30 a.m. from Al-Safa Heights, F-11/1, Islamabad and they have been taken by Khalid Masood DSP CID who planted pistols upon them and has received an amount of Rs.5,00,000/- as illegal gratification and in consequence of this illegal action Khalid Masood, DSP was dismissed from service vide order dated 23.10.2009. They have also taken another plea that the alleged abductee Ch. Amir Shahzad was recovered from Peshawar by Islamabad Police and this news was published in different newspapers, and in this regard, they have produced copy of Daily Subah Peshawar edition, dated 04.10.2009, Mark 'A' to Mark 'D', Daily Nawa-i-Waqt Rawalpindi/Islamabad, dated 04.10.2009, in which DIG Operations, ICT Muhammad Binyamin has recovered the abductee who was abducted for ransom of Rs.25 crore.

36. The above referred stance was confronted to CW-1 Basharat Hussain, ASI, CW-2 Habib Ullah, ASI and CW-4 Ghulam Muhammad Shah, S.I but all police officials have categorically denied this fact and despite their denial the defense has not opted to call DIG Binyamin, whose press conference has been referred in this case.

37. We have meticulously gone through the judgment of learned trial Court and observed that the learned trial Court has passed order of acquittal on the following grounds:-

- (a) Complainant has not alleged in his private complaint that he was confined in or recovered from Flat No.5, Al-Safa Heights, Islamabad and even this fact was not referred in his

application Ex.DA and affidavit Ex.DB filed before Assistant Commissioner/Magistrate.

- (b) No statement U/S 161 Cr.P.C. of the alleged abductee was recorded by the police at the time of alleged recovery from Al-Safa Heights, Islamabad, rather his statement of affidavit was received later on as Exh.DB.
- (c) CW-1 acknowledged that Afzal Cheema was not present at the time of recovery of abductee and recovery memo of the abductee was prepared inside flat.
- (d) CW-2 & CW-3 were present at the time of alleged recovery of abductee, have not stated in their examination-in-chief that abductee was recovered from Al Safa Heights, Islamabad.
- (e) No private person of locality was associated in the recovery proceedings despite availability of private persons.
- (f) The documents, news items/press clipping, Mark A to Mark D, (Daily Subah, Peshawar, Nawa-e-Waqt and Jang) disclose that abductee Aamir Shahzad was recovered from Peshawar by the DIG Operations Islamabad namely Binyamin.
- (g) The learned Trial Court has heavily relied upon judgments reported as PLJ 1998 SC 27 (Muhtarma Benazir Bhutto vs. Farooq Ahmad Khan Leghari, etc.), PLD 1976 SC 57 (Islamic Republic of Pakistan vs. Abdul Wali Khan), PLD 1993 SC 473 (Mian Muhammad Nawaz Sharif v. President of Pakistan) and 2008 MLD 1442 Karachi (Umair Ashraf vs. The State).

38. The above referred factors have heavily been relied by the trial Court by considering them as dent in the prosecution case, whereas all these factors are just defence pleas taken by the respondents/accused side which have not been substantiated through any mode or manner. However, if the defense version

fails, even then the prosecution has to stand on its own legs. The trial court has relied upon the above pleas, therefore, it is the duty of this court while considering the matter in appeal to thrash out each and every aspect while considering the principle of law in terms of Articles 117 to 122 of *Qanun-e-Shahadat* Order, 1984, whereby concept of burden of proof has been explained in the manner that, "where any person desires any court to give judgment as to any of legal right or a liability dependent on the existence of fact which he assert must prove that those facts exists" and in this regard the initial burden lies upon the prosecution, but the respondent/defense side is also under obligation to bring evidence on record qua their pleas, therefore, it was necessary to call Binyamin, DIG Operations, ICT as a witness or reporters of Daily Jang newspaper, Nawa-i-Waqt newspaper or Daily Subah newspaper, but no such effort has been made by the defense side for the reasons best known to them. It has usually been observed from general conduct of the senior police officers that they do not participate in the investigation, but subsequently take credit and same has been observed from this case, where Binyamin/DIG got published some news in the newspaper referred by the defense side regarding recovery of alleged abductee but not a single news discloses that the alleged abductee was recovered from Peshawar, even the entire police record is silent to that extent. The respondents/accused have been confronted with this aspect to the CWs/police officials who were unanimous that DIG Binyamin has never investigated this matter nor any JIT conducted raid for recovery of alleged abductee and they remained consistent to this aspect, hence the view taken by the trial Court regarding news items on the strength of statements of CW-1 & CW-4 was wrongly conceived as both these witnesses have denied this factum in the following manner:

"It is not in my knowledge that a news item was published in the newspaper Jang dated 3.10.2009 that the abductee Aamir Shahzad was recovered from Peshawar by a police party of Islamabad headed by

Binyamin DIG Islamabad. It is not in my knowledge that the abductee Aamir Shahzad Cheema was found roaming in the area of P.S Baharipura Peshawar from where he was taken by police of P.S Baharipura and shifted him to P.S. Baharipura".

All these aspects clearly establish that CW-1 & CW-4 had no knowledge of news items or press clipping and it is not the duty of police witness to answer a publication/news items in any manner.

39. The trial Court has heavily placed its reliance upon press clippings/news items on the touchstone of PLJ 1998 SC 27 (Muhtarma Benazir Bhutto vs. Farooq Ahmad Khan Leghari, etc.), which in fact relates to a different proposition, which is as under:

(LXXVII) Press Clippings--

"Press Clippings – Legal Status – Contention that reportings from foreign and local newspapers, should not be relied upon as their authenticity cannot be vouchsafed and mostly one side version of incidents is described therein – Supreme Court is not impressed by his contentions for reason that presently we are in era where journalism has also taken great strides in the field of investigative reporting and general impression is that such reports are made after proper verification of facts and figures from reliable and dependable sources and relevant quarters – Contention repelled."

(LXXXI) Press Clippings--

"Press Clippings-Legal Status-In the present day media revolution, accessibility and investigative nature of reporting, unless report is immediately contradicted or is palpably false and is contradicted by some similar contemporaneous reports, Courts and Tribunals and persons, who are not required to form an opinion on the basis of strictly proved evidence as required by law of evidence, can rely upon such reports."

We have also considered the other judgment relied upon by the learned trial Court i.e. PLD 1976 SC 57 (Islamic Republic of Pakistan vs. Abdul Wali Khan), whereby it has been settled that:

(q) *Evidence Act (I of 1872)*

"S. 3-Newspaper-Reports of contemporaneous events in news papers- Admissible in evidence, particularly when such events of local interest or of such public nature as would be generally known throughout community and testimony of eye-witness not available- Person not availing of opportunity to contradict or question truth fulness of

statement attributed to him and widely published in news papers- Cannot complain of use of such publication against him -Such user, held, not hit by rule of hearsay. It cannot be denied that so far as newspaper reports of contemporaneous events are concerned. they may be admissible, particularly where they happen to be events of local interest or of such a public nature as would be generally known throughout the community and testimony of an eye witness is not readily available. The contemporary newspaper account may well be admitted in evidence in such circumstances as has often been done by Courts in the United States of America not because they are 'business records' or 'ancient documents' but because they may well be treated as a trustworthy contemporaneous account of events or happenings which took place a long time ago or in a foreign country which cannot easily be proved by direct ocular oral testimony. Thus, if a person does not avail of the opportunity to contradict or question the truthfulness of the statement attributed to him and widely published in newspapers he cannot complain if that publication is used against him. Such an user would not be hit by the rule of hearsay."

(v) Evidence Act (I of 1872)

"Ss. 35 & 21-Press Notes and White Paper issued by Government regarding certain incidents in country-Not such official records as prove themselves or presumed to be factually true-Such documents bind Government as admissions but could not be used against a third party."

40. Likewise, the learned trial Court has also relied upon judgment reported as PLD 1993 SC 473 (Mian Muhammad Nawaz Sharif v. President of Pakistan), wherein it has been held that:

"Evidence--Press reports--Evidentiary value:

It is true that Press reports are not to be accepted as proof of facts stated therein but where such reports were not contradicted by' the concerned authority or person at the relevant time and are subsequently relied by either side in a case, these may be taken into consideration for forming an opinion generally as to the prevailing state of affairs at the relevant time."

It has been observed from the aforementioned judgment that the evidentiary value of press report has been discussed by the apex Court after the removal of Mian Muhammad Nawaz Sharif from the office of Prime Minister on the issue related to resignation of MNAs, which is as under:

"The resignations produced before us are to be considered in the wake of events which preceded the dissolution of National Assembly on 18-4-1993. Both sides have filed large number of press cuttings and relied on

them to show the prevailing political climate in the country during pre-dissolution period. It is true that press reports are not to be accepted as proof of facts stated therein but where such reports were not contradicted by the concerned authority or person at the relevant time and are subsequently relied by either side in a case, these may be taken into consideration for forming an opinion generally as to the prevailing state of affairs at the relevant time. The press reports for the period immediately preceding the dissolution of National Assembly do show, that elements hostile to petitioner's Government were being entertained regularly at the President's House and after their meeting at the Presidency these elements gave the impression that the petitioner's Government was going to be dissolved very soon. In this background, receipt of these resignations, addressed to the Speaker of National Assembly, by the President and not forwarding them to the Speaker, even after passage of considerable time appears not only an unusual course but also lends support to the contentions of the petitioner that these resignations were not given to the President by the members of National Assembly but only to provide a leverage for bargaining with the petitioner and for destabilizing the Government of petitioner."

Perusal of the judgments referred supra reveals that the same are related to press reports, which were taken into account by the apex Court for the purpose to settle a political question in the cases of *Abdul Wali Khan, Muhtarma Benazir Bhutto and Mian Muhammad Nawaz Sharif supra*, wherein the contents have not been denied by the Government on certain pretext and there is chain of events noted in these cases, like in the case of *Abdul Wali Khan supra*, there are reports from Qabul Times, where his speeches were referred and in some matters the Government's point of view has been published, although no record has been produced. Similarly, in the case of *Mian Muhammad Nawaz Sharif supra* it was settled that the press reports are not to be accepted as proof of facts stated therein, but where such reports were not contradicted by concerned authority or person at the relevant time and are subsequently relied upon by either side, these may be taken into consideration for forming an opinion generally regarding prevailing state of affairs at the relevant time.

41. The meticulous study of the aforementioned case laws reveals that the same relates to entirely a different connotation and principle of law, which have

no relevancy in this case, but the trial Court has wrongly appreciated the point of law, which otherwise renders the impugned judgment as perverse, illegal and based upon wrong appreciation of law, benefit of which having been extended by the trial Court to the accused persons is considered to be illegal and nullity in the eye of law. The conduct of the trial Judge seems to be that he lacks the basic information and knowhow of the admissibility of any publication of news and press clipping of the media. The learned Trial Court heavily relied upon these judgments and made basis of acquittal of respondent as referred at Page-25 of the impugned judgment, but surprisingly the learned Trial Court has not gone through the judgment reported as 1996 SCMR 1747 (Muhammad Ashraf Tareen vs. The State, etc.) wherein it was held that, "*newspaper cuttings in criminal case, cannot be used either in favour of prosecution or in favour of defence, unless author of the same is examined in the court as a witness.*"

42. In view of the case of *Muhammad Ashraf Tareen supra*, the findings of the learned Trial Court based in Para-25 of the impugned judgment are declared to be illegal having no effect and stand excluded, hence the said findings are discarded as the press clippings could not be relied in criminal cases, especially when no author, editor or reporter of the said newspaper was called as a witness by the accused side in their favour.

43. The record further reflects that the respondent/accused side has filed an application on 21.12.2010 for summoning of four witnesses namely (i) Muhammad Fayyaz Khan, the then S.H.O. P.S. Pahari Pura, (ii) Fazal Sher Khan, S.I. P.S. Pahari Pura, (iii) Javed Siddique, Resident Editor, Nawa-e-Waqt Newspaper and (iv) Zafar Iqbal, Management Director of Al-Safa Heights-I, F-11, Islamabad as defence witnesses, which was allowed by the learned trial Court vide order dated 22.12.2010, whereby the respondent/accused side undertook to

pay traveling expenses of those witnesses, but on 06.01.2011, the respondents recorded their stance before the learned Trial Court that;

"Accused submit that except bail order dated 22.10.2009, they do not want to produce any defence evidence. The statement in this regard has been recorded separately in which they after producing the above said bail order has closed their defence evidence. To come for final arguments on 10.01.2011."

The above referred order clearly spells out the adverse inference against the respondent/accused persons, who intentionally withdrew from their defence evidence despite the fact that the same was called by the learned Trial Court, hence the adverse inference in terms of Article 129(g) of the Qanun-e-Shahadat Order, 1984 comes on record against the respondent /accused. This Court assumes that if those witnesses could have been summoned, they would not support the case of respondent/accused, therefore, the defence version on the basis of Mark 'A' to Mark 'D' relating to newspaper clippings/items lost their evidentiary value.

44. We are of the view that the facts and the law have not been appreciated in a manner required in such type of cases, especially when the abduction is proved from record and even wrongful confinement is apparent as subsequent to the registration of FIR, the alleged abductee i.e. PW-4 Ch. Aamir Shahzad Cheema was recovered handcuffed on the pointation of accused Aamir Rehman from Flat No.5, Al-Safa Heights, F-11 Markaz, Islamabad in presence of accused Makki and Alam Sher.

45. The offence U/S 365-A PPC abduction or kidnapping for ransom has been mentioned in Section 6(2)(e) of the Anti-Terrorism Act, 1997, whereby in order to prove this offence, it is necessary for the prosecution to prove that such offence was committed with design or purpose referred in Section 6 of the ATA, 1997, in which allegation made in the FIR, material collected, surrounding circumstances, intention and *mens rea* has to be considered for the purpose of culminating into

intimidation, awe, fear and insecurity in the public or society. Reliance is placed upon 2017 P.Cr.L.J 505 (Shah Sim Khan Vs. The State), PLD 2016 SC 1 (Shahbaz Khan alias Tippu Vs. Special Judge Anti Terrorism Court 3 Lahore), PLD 2020 SC 61 (Ghulam Hussain vs. The State). However, in this case the element of insecurity in a general public or a society has not been reflected from the evidence collected by the prosecution or brought by the appellant side, even the evidence does not reflect that the requirements laid down in the case of *Ghulam Hussain supra* are met.

46. We have considered all these aspects in detail with the element of fear in society or public at large with reference to the concept of Section 6 & 7 of the ATA, 1997, which is missing, even the unknown caller who asked for ransom amount was not identified nor the ransom demanded was proved independently, but on the other side the simple abduction in terms of Section 365 PPC with intent to cause that person "to be secretly and wrongfully confined", has been proved on record which has been justified from the recovery of alleged abductee PW-4 Aamir Shahzad from Flat No.5, Al Safa Heights, F-11 Markaz, Islamabad and in such situation the Apex Court while deciding the matter in case reported as 2009 SCMR 558 (Shahid alias Kaloo vs. The State) has converted the offence under Section 365-A PPC to Section 365 PPC only as doubt emerges to the extent of ransom in the following manner:

7.there is some doubt as to whether or not any demand of ransom was made from the complainant the benefit of which must be given to him. Consequently, the offence committed by the appellant as well as co-convict Asif would be covered under section 365, P.P.C. viz. abduction simpliciter for which the maximum punishment is seven years.

47. The view rendered by the Apex Court while appreciating the facts on record resulted into new situation that the prosecution has successfully proved the charge of abduction as well as of wrongful confinement or secretly confining

the appellant in Flat No.5 Al-Safa Heights, F-11 Markaz, Islamabad by the respondents/accused Muhammad Makki, Alam Sher and Aamir Rehman. Hence, they are held guilty of the charge of offence U/S 365 PPC and liable to be convicted.

48. It is the duty of appellate Court to consider the evidence on the touchstone of principle of law and where the trial Court has committed serious illegality on the basis of wrong appreciation of law and facts, the appellate court is empowered to rectify those mistakes, although in such eventuality cases would have to be remanded to the trial Court to rectify such discrepancies as highlighted in 2017 MLD 1981 (Ansar Ali Vs. State), whereby the Hon'ble High Court held that the case was registered in the year 2009 and it was not justified to remand the case only to rectify discrepancy, rather the High Court had taken into account the evidence together with the discrepancies and convicted the accused person on the charges of offence under Sections 365-A, 392, 411 PPC and Section 7 ATA, 1997. Similarly, we are also fortified with the view and approach adopted by the apex Court in case reported as PLD 2019 SC 261 (Khadija Siddiqui vs. Shah Hussain), whereby the apex Court has held that:

"18. We have noticed that some downright misreading of the evidence had been committed by the High Court and for some of the reasons prevailing with it the High Court had ignored many critical aspects of the case available in the evidence brought on the record. The exercise of appreciation of evidence in this case by the High Court has, thus, been found by us to be laconic and misreading and non-reading of the record by the High Court has been found by us to have led the said Court into a serious error of judgment occasioning failure of justice and clamouring for interference in the matter by this Court. A judgment of acquittal suffering from serious misreading or non-reading of the evidence materially affecting the final outcome of the case is nothing short of being perverse and, hence, not immune from interference. Apart from that the High Court ought to have appreciated that it was only seized of revision petitions and not an appeal and in exercise of its revisional jurisdiction the High Court ought to have confined itself to correctness, legality, regularity or propriety of the proceedings of the courts below rather than embarking upon a full-fledged reappraisal of the evidence, an exercise fit for appellate jurisdiction."

49. While considering the entire background as well as the evidence in the light of case laws discussed above, it has been proved that the learned trial Court has committed a serious error while not relying upon the evidence of CW-1 to CW-4, who are official witnesses of recovery of ransom amount, arrest of accused Aamir Rehman, who disclosed the place of recovery of the alleged abductee Ch. Aamir Shahzad and as such all the CWs are independent witnesses having no grudge or motive to falsely implicate the respondents in this case. The prosecution witnesses remained consistent upon the recovery of appellant (abductee), weapons used in the said crime and ropes with which appellant was tied up in flat No.5, Al Safa Height, F-11 Markaz, Islamabad, whose key was recovered from the principal accused Muhammad Makki. Similarly the trial Court has relied upon the press clipping contrary to the provisions of *Qanun-e-Shahadat* Order, 1984 and even disregarded the case law settled by the Apex Court in the case of *Muhammad Ashraf Tareen* supra, whereby newspaper cutting in criminal case cannot be used either in favour of prosecution or in favour of defense, unless author of the same is examined in the Court as witness, such blatant illegality by the trial Court resulted into the judgment of acquittal of the respondents, hence, this Court is fully competent to reappraise the evidence, to pass the judgment of conviction while exercising the powers U/S 366 read with Section 376 Cr.P.C.

50. In view of above, instant criminal appeal is ALLOWED and judgment dated 18.01.2011, passed by the learned Special Judge, Anti Terrorism Court Rawalpindi/Islamabad is hereby SET ASIDE and respondents namely Muhammad Makki, Alam Sher and Amir Rehman are hereby CONVICTED and sentenced to undergo R.I. for 07 years with fine of Rs.5,00,000/- each to be paid to the appellant/Aamir Shahzad Cheema. In default of payment of fine, respondents/accused shall further undergo simple imprisonment for 06 months.

They be taken into custody and sent to jail to serve their remaining sentence. All the accused persons are also entitled to benefit of Section 382-B Cr.P.C., which is extended. However, the acquittal of accused Abdul Ghafoor is MAINTAINED as no role or participation to his extent has been seen in the entire case nor any evidence by the prosecution has been brought on record. The status of Muhammad Adnan, who remained as (P.O.) shall be the same as referred by the Learned Trial Court.

(LUBNA SALEEM PERVEZ)
JUDGE

(MOHSIN AKHTAR KAYANI)
JUDGE

Announced in open Court on 07 July 2020.

JUDGE

JUDGE

Khalid Z.