

Judgment Sheet

IN THE PESHAWAR HIGH COURT
ABBOTTABAD BENCH.

JUDICIAL DEPARTMENT

J.Cr.Appeal.No.165-A/2012.

JUDGMENT

Date of Hearing

13.12.2017

*Appellant (Pir Nouroz Ali Shah)
by*

*M/S Munir Hussain and Javed Iqbal
Gulbela, Advocates.*

Respondent (State) by

Mr. Yasir Zahoor Abbasi, AAG.

Complainant By:

*Sardar Nasir Aslam Khan & Mr.
Ghulam Mustafa Khan Swati,
Advocates.*

SYED ARSHAD ALI, J:-

Through this

single judgment we intend to dispose of Jail Cr. Appeal No. 165-A of 2012, Cr. Appeal No. 166-A of 2012 and Cr. Appeal No. 3-A of 2013, as all the three said appeals are the outcome of single judgment passed by the learned Judge Anti-Terrorism Court, Hazara Division, at Abbottabad on 21.12.2012 in case FIR No. 988 dated 29.10.2010 under Section 365-A/34 PPC and 13 AO of Police Station Mirpur, District Abbottabad whereby the learned Judge Anti-Terrorism Court, convicted the appellants under Section 365-A PPC

and sentenced them to undergo Rigorous Imprisonment for life, ordered confiscation of their movable and immovable property in favour of the state and also ordered confiscation of motorcar bearing registration No. LZJ-0808 used in the commission of crime, in favour of the state. Benefit of Section 382-B Cr.P.C. was extended in favour of the appellants-convicts.

2. Precise facts of the case are that Aurangzeb Asad Advocate, the complainant on 29.10.2010, through a written application addressed to SHO Police Station Mirpur, Abbottabad lodged report Ex PW-16/1 wherein he has narrated that on the fateful day, he alongwith his family came from Mansehra to Abbottabad to meet his relative Abdur Rasheed Tanoli whose house is situated at Jinnah Abad, Javed Shaheed Road, Abbottabad. At 07:00 PM, his son TalalAsadwho was then aged about 16/17 years and student of 1st Year in Abbottabad Public School, told him that he was going to meet his friend. Hence, he left to meet his friend in Suzuki Jimny Jeep unregistered (applied for). When till 08:30 PM, his son did not return, then he tried to

contact him on his mobile No. 0300-9118800 but found the same not responding. Resultantly, he along with Abdur Rasheed Tanoli went out to find him and when they reached at Iqbal Road, and went to the house of his friend Ibrahim Rana, who told them that TalalAsad (abductee) had come to see him but then had left at 07:30 PM and even he forgot to collect his mobile phone from the dashboard of the Jeep, he disclosed his mobile No.as 0331-5743008. He further disclosed that he had been calling him on his mobile, however, the same was not responding. They then decided to search him out. When they reached near Sethi Mosque, they found their Jeep parked there abandoned on the road side. There were some people and cart carriers (labourer) who told them that a boy who was driving the jeep was abducted by some people in a corolla car. He found the keys of the jeep on the road.

3. His report was incorporated in the FIR Ex PW-11/1. The investigation was assigned to Fazal-ur-Rehman Khan Inspector (PW-20). The investigating officer visited the spot, where he found the Jeep driven by the abductee. On the

pointation of complainant, he prepared site plan Ex PW-20/1 and took the Jeep in his possession through recovery memo Ex PW-8/1 in presence of the marginal witnesses. On the same day he handed over the vehicle to the complainant vide Sapurd Nama Ex PW-16/2.

4. On the following day, i.e. 30.10.2010, the complainant recorded his statement under Section 161 Cr.P.C. wherein he disclosed that the abductor had demanded Rs. 50 million as ransom for the release of his son TalalAsad from Cell No. 0300-9118800 which was in use of TalalAsad. In view of such a statement, investigation Officer added Section 365-A PPC in the FIR vide memo Ex PW-20/2.

5. On 02.11.2010, two teams were constituted for the search of abductee TalalAsad headed by Additional SHO Tariq (not produced as a Prosecution Witness). The purpose behind constitution of the teams was to conduct inquiry about the persons who were residing as tenants in the vicinities of Small Industrial Estate, Iqbal Town etc. In this connection when they were conducting door to door inquiry, when reached

street No. 2, Iqbal Town near Small Industries, they knocked at the door of a house. A boy opened the door and when they were inquiring about the owner of the house, Abdul Hafeez SI (PW-14) noticed three persons on the roof of the house who were trying to escape. Accordingly they chased them and succeeded to apprehend one of them namely accused PirNoroz Ali while the other two fled away. On search of accused PirNoroz Ali, he recovered a 30 bore pistol bearing No. 3140 FF along with a magazine loaded with six live rounds (P-4) from his trouser fold. He also recovered a keychain (P-5), having two keys from his pocket. He prepared recovery memo Ex PW-2/1 in presence of the marginal witnesses. The team then took the accused to that house and on his pointation found/recovered the abductee TalalAsad confined therein and chained with an iron *cot*. Accordingly abductee TalalAsad was recovered and in this regard, he prepared recovery memo Ex PW-2/2. According to the said recovery memo, abductee TalalAsad was fastened with a *cot* in a room of the house which was in possession of accused (absconding) AbidAfridi. There was no

female inmate in the house. The abductee was found blind-folded. The arrested accused PirNorozi Ali Shah was having swelling on his left hand and ankle, therefore, he was also taken to hospital and was medically examined by doctor Waqar Iqbal CMO, DHQ Hospital, Abbottabad PW-19.

6. Investigation officer Fazal-ur-Rehman reached at the spot and accused PirNorozi Ali Shah along with pistol and live rounds were handed over to him, which were already sealed in a parcel. He prepared the Card of arrest of accused PirNorozi Ali Shah Ex PW-20/3. On the pointation of Abdul Hafeez ASI, he also prepared the sketch Ex PW-20/4 of the house from where the abductee was recovered. He also recovered household articles, Nikah Nama P-19 Beenish Sajid from the house.

Since, the Section of law was changed to 365-A PPC from 365 PPC, therefore, the investigation was transferred to Ali Akhtar Khan Inspector, Counter Terrorism Department. He recorded the statement of abductee Talal Asad under Section 161 Cr.P.C at the police Station. Vide application Ex PW-21/1, he produced accused PirNorozi Ali

before the Court on 03.11.2010 and obtained his five days police custody. During investigating accused PirNorozi Ali disclosed the names of co-accused involved in the commission of offence. According to the rent agreement, (recovered from the house) the house from which the abductee was recovered was rented out to ZahidHafeezAbbasi (absconding accused), on 05th September, 2007. On 08.11.2010, on expiry of the custody of accused PirNorozi Ali, he vide his application Ex PW-21/2 requested for further police custody of the accused and consequently obtained seven days further custody of the accused.

7. On 11.11.2010, accused AttiqueUllah was arrested as depicted from his card of arrest Ex PW-21/5. He was produced before the Judicial Magistrate on 12.11.2010 with request for police custody. The learned Judicial Magistrate was pleased to grant 11 days of police custody of accused AttiqueUllah. Accused PirNorozi Ali Shah was produced before Judicial Magistrate for recording his confessional statement on 12.11.2010 and on the said date, he made a confession. Accused AttiqueUllah was again

produced before the Judicial Magistrate on 22.11.2010 for his further custody which was granted by the learned Judicial Magistrate and ultimately on 26.11.2010, accused AttiqueUllahalso confessed his guilt before Judicial Magistrate.

8. On 21.11.2010, accused Adam Khan alias Faisal was arrested who was produced before the Judicial Magistrate on 22.11.2010 and the investigation officer requested for 15 days physical custody of the said accused which was granted by the judicial Magistrate vide order dated 22.11.2010. On 05.12.2010, the said accused Adam Khan alias Faisal was again produced before the Judicial Magistrate for further custody. The learned Judicial Magistrate was pleased to grant further custody of 03 days. On 08.12.2010, accused Adam Khan alias Faisal also confessed his guilt before the Judicial Magistrate. It is also the case of prosecution that the aforesaid accused had also made pointation, while in police custody, of the place of occurrence and the manner and mode through which the offence was committed by them. On 23.12.2010, the identification parade of

accused AttiqueUllah and Adam Khan alias Faisal was conducted by the learned Judicial Magistrate in the jail premises. In the said Identification Parade, the abductee PW-18, identified accused AttiqueUllah and Adam Khan alias Faisal as accomplice in the crime.

9. After completion of investigation, complete challan was submitted through Public Prosecutor before the learned Judge Anti-Terrorism Court, Hazara Division, Abbottabad. Accordingly the accused were summoned from jail. After compliance of Section 265-C Cr.P.C. the learned Court framed charge on 30.10.2011, to which all the accused did not plead guilty and claimed trial. The prosecution produced 21 witnesses whereas Sher Dil Mad Moharrir appeared as CW-1 who produced the daily diary pertaining to report No. 10 dated 21.10.2010 showing the departure of Ali Akhtar Khan Inspector PW-21. After conclusion of the trial, the statement of the accused was recorded under Section 342 Cr.P.C. wherein they again denied the charges, retracted from the confession recorded by

them and stated that the same was the result of torture and was not voluntary.

10. After hearing arguments of learned counsel for the parties, the learned trial Court vide impugned judgment dated 21.12.2012, convicted the appellants under Section 365-A PPC and sentenced them to undergo Rigorous Imprisonment for life, ordered confiscation of their movable and immovable property in favour of the state and also ordered confiscation of motorcar bearing registration No. LZJ-0808 used in the commission of crime, in favour of the state. Benefit of Section 382-B Cr.P.C. was extended in favour of the appellants-convicts.

11. Learned counsel appearing on behalf of the appellants-convicts has argued that the prosecution has failed to connect the appellants-convicts with the commission of offence. Indeed the present appellants-convicts were made scapegoat. The alleged confession of the appellants-convicts is neither voluntary nor true as evident from the contents of the alleged confession coupled with other evidence of the prosecution on which they have made out their case against the

present appellants-convicts. He has further argued that the appellants-convicts were twice given in the custody of police and at the time of alleged confession, no notice was given to the appellants-convicts that if they do not confess their guilt, their custody will not be given to the police. The appellants-convicts remained in the custody of police for more than fifteen days and the learned Magistrate has recorded the confession in haste and in slipshod manner without fulfilling the legal and procedural requirement for obvious reasons. Regarding the identification parade, the learned counsels for the appellant-convicts have argued that since the appellants-convicts remained in police custody for more than fifteen days in the police station and it is also evident that the lockup where they were kept was exposed to the persons visiting the police station and it is also in the evidence that the complainant as well as the abductee had also visited the said police station during the investigation of the case, hence, the appellants-convicts were seen by the complainant and abductee before the identification parade, therefore, the identification parade which was

conducted after considerable delay, was meaningless. Even otherwise, in the identification parade, no role was specified regarding the accused so identified. They lastly argued that the circumstantial evidence do not support the case of prosecution and prayed for acquittal of the appellants-convicts.

12. M/S Mustafa Khan Swati and learned Additional Advocate General, while controverting the arguments of the learned counsel for the appellants-convicts have argued that the prosecution has established the involvement of the appellants-convicts in the case and since there was no enmity or malafide of the complainant to substitute the present appellants-convicts for the alleged real culprits, therefore, their conviction in the present case are based on proper evidence. They further argued that the prolonged custody with the police of the appellants-convicts will not vitiate the confession, which was otherwise established to be true and voluntary.

13. Heard: The entire edifice of the prosecution case against the appellants-convicts rests on the raid conducted by the police officials

on the house which was in possession of Abid Afridi (absconding accused) wherefrom not only the abductee Talal Asad was recovered but the accused Pir Noroz Ali was also arrested who during investigation disclosed the names of co-accused. In support of the raid which was conducted on 02.11.2010, the prosecution has produced PW-2 Mazhar Khan and Abdul Hafeez SI PW-4. PW-2 while appearing in the Court has stated that on 02.11.2010, two teams were constituted for the search of abductee Talal Asad. Both were headed by Additional SHO and when they reached street No. 2 Iqbal Town, they knocked at a door belonging to Abid Afridi (absconding accused). There they saw three persons, who were running from the house and were chased as a result of which Pir Noroz Ali Shah accused was arrested, whereas Abdul Hafeez Khan SI who was also the member of raiding party appeared as PW-14. He has narrated in his statement that on 02.11.2010, the SHO constituted a police party for the recovery of abductee Talal Asad. He was member of the said team and the purpose of this team was to conduct inquiry about persons who were residing as tenants

in the locality of Small Industrial Estate Town. When they reached street No. 2 Iqbal Town near Small Industries, they knocked at the door of a house. A boy opened the door and when they inquired from him about the owner of the house, he (the PW) noticed that three persons on the roof of the same house were trying to escape. On being chased, only accused PirNorozi Ali was arrested, whereas the other two co-accused made good their escape. He has also stated in his report that the raiding party was headed by Tariq Khan SI whereas the member of the said raiding party was Mazhar LHC, Fangraish constable, Mir Afgan LHC, Amir constable and Zohra lady constable. The prosecution neither produced Tariq Khan Additional SHO who was allegedly leading the team nor the SHO of the police station to establish that indeed a team was constituted for the said purpose. Even the lady constable was not produced to record her statement regarding entry into the house. What has irked this Court that despite the fact that daily diary regarding the departure of Akhtar Ali on 05.05.2011, was produced, but the daily diary of the Police Station Mirpur has not

been produced to establish the constitution and departure as well as arrival of the raiding team. In order to establish the movement of police officials through confidence inspiring evidence, the production of daily diary of the police Station showing the departure, constitution of raiding team, its members and subsequent arrival, was a material piece of evidence in favour of prosecution. Indeed the daily diaries are maintained under the erstwhile Police Rules 1934. Under Rule 28.48 it is mandatory for every police official to make entry of his departure, arrival and all proceedings conducted between the intervening period of departure and arrival. Non-production of the daily diary has caused serious doubts in the prosecution case regarding the mode and manner of raid. (*Abdul Sattar & others Vs. The State* 2002 PCr.LJ 51, *Atta Ullah Vs. The State* 2017 PCr.LJ 1992). Apart from that, irreconcilable contradictions are floating on the surface of record and are evident from the statements of PWs regarding the mode and the manner of the raid. PW-14 Abdul Hafeez SI has stated that when they knocked at the door of the house, a boy opened the

door and at that time he noticed three persons on the roof of the house. What happened to the said boy, whether he was arrested and interrogated or he also escaped from the spot, is a mystery. Although the said witnesses have stated that they chased the escaping accused, however, the lady constable was there and the natural reaction of the police party would have been to first arrest the boy who opened the door. Likewise, PW-2 disclosed in his statement that TalalAsad abductee, at the time of recovery was blind folded with black coloured cloth, he unfolded the cloth and upon inquiry he disclosed his name as TalalAsad. Similarly, PW-2 in his statement has also stated that one black coloured piece of cloth which was tied on the eyes of the abductee was also taken into possession. However, when the abductee himself appeared as PW-18, he has stated in his cross-examination that at the time when he was recovered by the police, his eyes were not covered. The sketch Ex PW-20/4 shows that accused PirNoroZ Ali was arrested from place "F" which is a street at the back of the house, whereas on the left and right of the raided house, there are further houses and no street has been

shown connecting the street from frontside of the raided house with the street falling at the back of the said house from where accused PirNorozi Ali was arrested. It has not been mentioned that how did the police reach at point "F" to arrest accused PirNorozi Ali. Although the prosecution has stated that accused PirNorozi Ali was arrested because while jumping from the house, he sustained injury on his ankle and left hand, therefore, he was unable to run and was apprehended. In this regard they have also produced doctor Waqar Iqbal CMO DHQ Hospital, Abbottabad who has stated that on 02.11.2010, he examined accused Norozi Ali Shah brought by Abdul Hafeez ASI and he found swelling on his left ankle with scratches on the left ankle joint and scratches on the back of left hand with swelling. However, in his cross examination, he has stated that he has examined PirNorozi Ali accused at 10:00 PM and he has not given the duration of the injuries. He has also confirmed that there is a possibility that the injuries might have been caused with blunt weapon/object. Hence, the injury on the body of accused PirNorozi Ali Shah,

is of no help for prosecution. It is also on the record that the raiding party remained on spot for sufficient time, they waited for the arrival of the investigating officer, however, during this entire time period, they have not associated anyone from the neighborhood as a marginal witness to the search of the house and the pointation allegedly made by PirNoroz Ali Shah leading to the recovery of abductee. True that insisting upon the prosecution that in all circumstances, while conducting search of a house, association of independent witnesses from public is not warranted, as association of private witnesses during search depends upon the varying circumstances of the case. It would be unrealistic to say that the provision of Section 103 of Cr.P.C. should be complied with in all circumstances, irrespective of the fact whether it is practically possible to apply, however, it does not absolve the prosecution to at-least come forward with reasonable justification that an effort was made to cite the private witnesses from the locality which is thickly populated. Even in this case, the prosecution has not bothered to produce Tariq

Khan Additional SHO who was allegedly heading the raiding party and the lady constable who was present on the spot to ensure that the search and recovery was made in the manner and mode as narrated by the prosecution. In view of the above facts the prosecution has remained unsuccessful in establishing the manner and mode of the recovery of the abductee as a result of search conducted by a team and arrest of the accused PirNorozi Ali Shah.

14. Now advertent to the confession of the appellants-convicts. The confession which has been retracted by the appellants-convicts must be established by the prosecution that the same was true, voluntary, inculpatory and in line with the other prosecution evidence and in cases where there are more than one accused who have made the confession, the said confession is not mutually contradictory. It is also well settled that mere long custody of the accused making confession with the police per-se is no ground to disbelieve their confession when otherwise the said confession on the face of it appears to be true, voluntary and is supported by the circumstantial evidence. In the present case, accused PirNorozi Ali Shah was

arrested on 02.11.2010. Initially five days custody was given to police and he was produced on 08.11.2010 for further custody of seven days and it was on 12.11.2010, when he made the confession. In his confessional statement, he has stated that accused Mushtaq (absconding) and AttiqueUllah de-boarded the abductee from his jeep. Similarly, accused AttiqueUllah was arrested on 11.11.2010. He was produced before the Magistrate on 12.11.2010 and the learned Magistrate granted 11 days police custody. After completion of custody, he was again produced on 22.11.2010 before the learned Magistrate who was pleased to grant further custody of seven days and it was on 26.11.2010, he made the confession. In his confessional statement, he stated that he and Khanzaib (absconding accused) de-boarded abductee TalalAsad from his Jeep. Accused Adam Khan alias Faisal was arrested on 21.11.2010. He was produced before the magistrate on 22.11.2010 for physical custody, who was pleased to grant 15 days custody of the accused to the police. On completion of said period of custody, he was again produced for further custody on 05.12.2010 which

was again granted and finally he confessed his guilt on 08.12.2010. He has stated that Mushtaq and AttiqueUllah had de-boarded abductee from the vehicle. Abductee TalalAsad appeared before the Court as PW-18. Despite the fact that he had identified the accused in Court as well as in the identification parade which was conducted on 23.12.2010, however, he did not utter a single word about the role of accused AttiqueUllah, who according to his confessional statement de-boarded him from his jeep at the time of his abduction. In the circumstances when the accused PirNoroz Ali, before making confession remained in the custody of police for 10 days, accused AttiqueUllah remained in custody for 15 days and accused Adam Khan alias Faisal remained in police custody for 18 days. Hence, the judicial Magistrate was duty bound to have provided sufficient time to the aforesaid accused before recording their confession. The certificates provided by the judicial officer along with the confession statement of the accused shows that only 30 minutes were given to each accused for thinking before recording their confessional statement. In such

circumstances, when the accused remained in the custody of police and at two occasions they were produced before the Magistrate who granted their further custody to the police, 30 minutes time to the accused for thinking does not appear to be sufficient time as the record is completely silent that earlier when the accused were produced before the Judicial Magistrate, under what circumstances further custody was given to police and why they did not confess their guilt at that occasion. In such like situation the august Supreme Court of Pakistan in “Azeem Khan Vs. Mujahid Khan (2016 SCMR 274)” while disbelieving the confession has laid that:-

“Keeping in view the High Court Rules, laying down a binding procedure for taking required precautions and observing the requirements of the provision of section 364 read with section 164, Cr.P.C. by now it has become a trite law that before recording confession and that too in crimes entailing capital punishment, the Recording Magistrate has to essentially observe all these mandatory precautions. The fundamental logic behind the same is that, all signs of fear inculcated by the Investigating Agency in the mind of the accused are to be

shedded out and he is to be provided full assurance that in case he is not guilty or is not making a confession voluntarily then in that case, he would not be handed over back to the police. Thereafter, sufficient time for reflection is to be given after the first warning is administered. At the expiry of that time, Recording Magistrate has to administer the second warning and the accused shall be assured that now he was in the safe hands. All police officials whether in uniform or otherwise, including Naib Court attached to the Court must be kept outside the Court and beyond the view of the accused. After observing all these legal requirements if the accused person is willing to confess, then all required questions formulated by the High Court Rules should be put to him and the answers given, be recorded in the words spoken by him. The statement of accused be recorded by the Magistrate with his own hand and in case there is a genuine compelling reason then, a special note is to be given that the same was dictated to a responsible official of the Court like Stenographer or Reader and oath shall also be administered to such official that he would correctly type or write the true and correct version, the accused stated and dictated by the Magistrate. In case, the accused is illiterate, the confession he makes, if recorded in another language i.e. Urdu or English then, after

its completion, the same be read-over and explained to him in the language, the accused fully understand and thereafter a certificate, as required under section 364, Cr.P.C. with regard to these proceedings be given by the Magistrate under his seal and signatures and the accused shall be sent to jail on judicial remand and during this process at no occasion he shall be handed over to any police official/officer whether he is Naib Court wearing police uniform, or any other police official/officer, because such careless dispensation would considerably diminish the voluntary nature of the confession, made by the accused.”

15. Only providing 30 minutes to the accused to think over about their voluntary decision to make confession is highly insufficient as it does not appeal to a prudent mind that in 30 minutes time, fear of police which has engrained in their mind due to the prolonged and repeated custody of police had vanished just in 30 minutes

We have also before us the press clipping (though not established) that accused Adam Khan alias Faisal had voluntarily surrendered before the police and has stated in press conference that he was compelled to surrender as their women folk

were arrested by the police. In our considered view, we are not convinced that the confession of all accused(s) is voluntary and true, resultantly the confessions of all the appellants-convicts have no evidentiary/legal worth to be relied upon and accordingly excluded from consideration, more particularly when the appellants-convicts have not only retracted the confession at the trial but the same are also self-contradictory on material points.

16. Now moving to the identification parade of the accused. Holding of identification parade indeed is not the requirement of law but one of the method to test the veracity of the evidence of an eyewitness who has had an occasion to see the accused and claims to identify him. The sole purpose of identification is to ensure that an innocent person, either deliberately or by mistake is not involved in a case. Although identification process is not a legal requirement, however, when necessary, it is the duty of the Court to examine that all possible steps were taken for holding fair identification parade and the witness at their own correctly picked up the culprit. In the present case, accused AttiqueUllah

was arrested on 11.11.2010. He remained in police custody till 26.11.2010 and during this period he was produced before the Magistrate for custody. Similarly accused Adam Khan alias Faisal was arrested on 22.11.2010 and remained in police custody till 08.12.2010. It is also in the evidence of the prosecution that the lock up was exposed to the public who would visit the police station. Although the investigation officer has stated that he had given notice to the accused to cover their faces, however, there is no record that the accused had actually covered their faces and they were not seen by the abductee during their custody with police. Why their identification parade was postponed till 23.12.2010, is an unanswered query which indeed has irked the conscious of this Court. The abductee TalalAsad in his examination-in-chief has stated that he was called in police station after two days of his recovery for identification of the accused, whereas in cross examination he has stated that after 25/26 days, he was called by the police for identification of accused in jail. As per record, the abductee was recovered on 02.11.2010, whereas the accused Atiq was arrested on 12.11.2010 and

Adam was arrested on 02.10.2010 and the identification parade was conducted on 23.12.2010 after the delay of one month. In the identification parade (which was reduced into writing by the judicial Magistrate Ex PW-5/4) no role of the accused have been specified. It is by now settled law that during identification parade, if the accused was identified without reference to any role played by him in the incident the same was of no evidentiary value (Hakeem Vs. The State, 2017 SCMR 1546, Muhammad Yameen Vs The State 2009 SCMR 84, ArifMasih Vs. The State PLD 2001 SC 398, Lal Pasand Vs The State PLD 1981 SC 142).

17. It is for that reason, that when abductee appeared before the Court as a witness as PW-18, he has assigned role of each of the three accused in his statement which indeed is an improvement and otherwise inadmissible in evidence (Javed Khan Vs. The State 2017 SCMR 524). Thus the identification parade is of no legal worth to connect accused AttiqueUllah and Adam Khan alias Faisal in the alleged commission of offence.

18. Regarding the pointation of scene of occurrence by the accused, suffice it to mention that alleged places of occurrence were already known to the police and during the said process nothing new has been recovered or discovered. Even otherwise, when we have disbelieved the confession and the manner and mode of recovery of the abductee, then pointation of the crime scene by the accused during custody and that too without any further incriminating recovery or discovery is of no legal consequence.

19. The demand of ransom by the accused/ appellants-convicts or on their behalf has also not been established at the trial. The complainant had informed the police on the following day of occurrence that from the cell phone No. 0300-9118800 which was in use of his son, a demand of Rs. 50 million as ransom was made, however, the police has failed to collect the call data from the relevant cellular company to establish telephonic call from the mobile number which was in use of abductee to the mobile number of the complainant. In this regard, even the abductee TalalAsad has also confirmed/admitted in

his cross examination that in his presence the accused did not call his father for ransom, however, he has stated that they did mention many times to him in clear words that he was abducted for ransom. The lapse on behalf of the prosecution to have retrieved/collected the call data is sufficient to disbelieve the demand of ransom. (Mst. Mehboob Bibi & others Vs. The State-2017 SCMR 1835)

20. In view of the above, and the established principle of law of evidence that benefit if so creeps from the evidence must be given to the accused as a matter of right and not as a matter of grace and thus the doubts as stated above in the prosecution evidence being enough to discard the whole prosecution case, (Mohammad Akram Vs State 2009 SCMR 230, Muhammad Zaman Vs The state and others 2014 SCMR 749), Cr. Appeal No. 03-A of 2013, J. Cr. A. no. 165-A of 2013 and Cr. A No. 166-A of 2012 are allowed and conviction and sentence of the appellants-convicts recorded by the learned Judge Anti Terrorism Court, Abbottabad dated 21.12.2012 is set aside and they are acquitted of

the charge/charges leveled against them and be set at liberty forthwith, if not required/wanted in any other case. While Cr. R No. 05-A of 2013, stands dismissed.

21. These are the reasons for our short order of even date.

Announced.
Dt.30.11.2017.

J U D G E

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*Tufail/**

Hon'ble Justices Lal Jan Khattak&Syed Arshad Ali.