

*Judgment Sheet*  
**IN THE PESHAWAR HIGH  
COURT, PESHAWAR**  
*Judicial Department*

**Cr. A No. 27-P/2014**  
Ali Raza Vs Abdul Wahab & another

Date of hearing: 03.10.2019.

Mr. Muhammad Fakhr-e-Alam Jhagra, Advocate,  
for the appellant.

Syed Sikandar Hayat Shah, AAG, for the State.

Mr. Hussain Ali, Advocate, for the complainant

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

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**AHMAD ALI, J.** Through this common judgment we would propose to decide the connected appeals bearing No.31-P/2014 titled Yasir Shahzad Vs Abdul Wahab & another and Cr.A No.32-P/2014 titled Bakhtiar alia Kala Vs Abdul Wahab & another, being the outcome of one and the same FIR.

2. In all the above mentioned appeals, the appellants have questioned the judgment dated 11.01.2014, recorded by the learned Judge, Anti-Terrorism Court-I, Peshawar, in case FIR No.301 dated 18.04.2013, under sections 365-A/302 PPC, 7-ATA, police Station Shaheed Gulfat Hussain, Peshawar, whereby each of the appellant was convicted and sentenced u/s 365-A to life

imprisonment; and u/s 302 to life imprisonment as well. Both the sentences were directed to run concurrently.

3. Brief facts of the case are that the accused-appellants alongwith co-accused abducted the minor Muhammad Shoaib son of the complainant Abdul Wahab for ransom and due to fear of exposure of their identify put the minor to death, hence the instant criminal case vide FIR ibid.

4. After completion of investigation, complete challan against the appellants was submitted before the learned trial Court where they were formally charged, to which they did not plead guilty and claimed trial. The prosecution, in order to prove its case against the appellants, examined 23 PWs. Thereafter, the appellants were examined under section 342, Cr.P.C, wherein they professed innocence and false implication. After hearing the arguments, the learned trial Court convicted and sentenced the appellants as mentioned above vide impugned judgment dated 11.01.2014.

5. Arguments heard and record gone through.

6. After the case is argued at some length, it revealed from the record that there were two charges framed in the instant case by the learned trial Court. First charge was framed against the

accused Bilal (minor of 14 years age) on 20.06.2013 whereas the 2<sup>nd</sup> charge was framed on 23.07.2013 against accused Bilal (already charged on 20.06.2013), Ali Raza and Bakhtiar alias Kalay, while co-accused Yasir Shahzad (major) appellant in Cr.A No.31-P/2014 and one other, initially have become fugitive of law.

7. Formal charge framed by the learned trial Court on 23.07.2013 against Bilal, does not indicate the age of accused-appellants, while the charge framed on 20.06.2013 against accused Bilal indicates his age to be 14 years. Similarly perusal of impugned judgment reveals that one of the acquitted accused was a child and the other three convicted co-accused/appellant are of the ages of 17 to 21. Report of Standing Medical Board also transpires the age of one of the accused (Bakhtiar i.e. appellant in Cr.A No.32-P/2014) to be 17-18 years. Section 2(b) of Juvenile Justice System Ordinance, 2000 defines a child as a person who at the time of commission of an offence has not attained the age of eighteen years. In such circumstances, the learned trial Court was required to first determine exact ages of the other accused-appellants before proceeding with the case, because if found below the age of eighteen

years, the juvenile could not be tried together with their adult co-accused Yasir Shahzad in view of the provisions contained in section 5 of the Ordinance *ibid*, reproduced below for ready reference:--

**"No joint trial of a child and adult person...**

**(1) Notwithstanding anything contained in section 239 of the Code, or any other law for the time being in force, no child shall be charged with or tried for an offence together with an adult.**

**(2) If a child is charged with commission of an offence for which under section 239 of the Code, or any other law for the time being in force such child could not be tried together with an adult, the Court taking cognizance of the offence shall direct separate trial of the child by the Juvenile Court."**

Section 7 of the Ordinance *ibid* deals with determination of age which is reproduced as under:--

"If a question arises as to whether a person before it is a child for the purposes of this Ordinance, the Juvenile Court shall record a finding after such inquiry which shall include a medical report for determination of the age of the child."

8. The learned trial Court lost sight of above provisions of law and tried both the appellants jointly, thus the judgment is not sustainable in the eye of law.

9. For the reasons mentioned above, we accept the instant and connected criminal appeals (Cr.A No.31-P/2014 & Cr.A No.32-P/2014), set aside the impugned judgment of conviction and

sentence dated 11.01.2014 and remand the case to learned Judge, Anti-Terrorism Court-I, Peshawar, with the direction to first determine that what were the ages of accused-appellants at the time of commission of offence and then to proceed with the case de-novo in the light of above observations to be commenced on 12.10.2019 and complete the same within two months, positively. Till then the appellants shall remain as under-trial prisoners. Office is directed to transmit the record to the learned trial Court forthwith.

***SENIOR PUISNE JUDGE***

***J U D G E***

***Announced on;***  
***03.10.2019***