

JUDGMENT SHEET
IN THE PESHAWAR HIGH COURT,
PESHAWAR
 (Judicial Department)
Cr.A. No.583-P/2012

Date of hearing: **25.02.2015**

Appellant (s) : Saif ur Rehman alias Safoor etc by Mr. Ishtiaq Ibrahim, Advocate.

Respondent (s) : Shahid Ullah complainant by Mr. Hussain Ali, Advocate and the State Mr. Rab Nawaz Khan, AAG.

JUDGMENT

ASSADULLAH KHAN CHAMMKANI, J.- This common

judgment shall dispose of the instant criminal appeal as well as connected Cr.A. No.592, as both are arising out of one and the same judgment dated 28.11.2012, passed by learned Judge Anti-Terrorism Court-I, Peshawar, whereby appellants (1) Saif ur Rehman alias Safoor (2) Gul Raza (3) Sajid Ullah and (4) Hameed Gul alias Naveed, have been convicted and sentenced under section 365-A PPC read with S.7 (e) of Anti Terrorism Act, 1997, to undergo life imprisonment each. Benefit of S.382-B Cr.P.C. has been extended to them.

2. The prosecution case is that 29.12.2011, one Shahid Ullah went missing, regarding which, his son Abdul Haseeb, lodged a report in Police Station Daud Zai on 01.01.2012, to the effect that on 29.12.2010 at 0330 hours, his

father left house for city, but did not return home till date; that today at 0740 hours, he received call on his cell phone No.0344-9825463, from cell phone number of his father i.e. 0315-5250507, vide which demand of rupees sixty lacs as extortion money/ransom for release of his father, was made by a stranger who also threatened him of dire consequences in case of non-payment of ransom; that having no enmity he did not charge anyone. Report of the complainant was reduced in Daily Diary No.33 dated 01.01.2011. According to author of the report, the alleged abductee being a doubtful character, involved himself in abduction case vide FIR No.239 dated 27.04.2009 under sections 365-A/368/148/149 PPC, PS Daud Zai, the matter seems to be self initiated, therefore, inquiry was sought.

3. Later on, on recovery of the abductee, on the basis of direction of the learned Justice of Peace on the application of the alleged abductee under section 22-A Cr.P.C., FIR No.72 dated 03.03.2012, was registered under section 365-A PPC read with S.7 ATA, 1997, at Police Station Daud Zai, Peshawar, wherein it has been alleged by Shahid Ullah abductee that on 28.12.2011, he was contacted by his friend Shaukat on his

mobile phone to visit his house, situated near General Bus Stand Kohat so as to offer "Fatiha" on the cemetery of his deceased son buried in Halala grayard Banda Daud Shah Karak, on which he on 29.12.2010, left his house at 1530 hours to see his above named friend, but he contacted him again that he was waiting for him in Hashtnagri, so he reached there; that in Hashtnagri, they both boarded a Flying Coach bound for Teri Banda Daud Shah Karak and at 2030 hours, reached Banda Daud Shah. After deboarding from the Flying Coach and covering a little distance on foot, seven armed persons namely, Saif ur Rehman alias Saifoor, Raza Khan, Khattak, Qismat Ali, Naveed and Iftikhar, present there caught hold of him and took him to the nearby hills, where he was kept in captivity for six days; that on 01.01.2011, the accused contacted from his cell phone inmates of his house demanding rupees sixty lacs as ransom for his release and threatened them of dire consequence, in case of failure; that he was then shifted to the house of accused Saif ur Rehman and kept there for fifty four days. On 26.02.2011, his brother Noor Ahmad and brother-in-law Zahoor Ahmad paid rupees five lacs as ransom in his presence to the accused, as a consequence whereof, he was

set free. Statement of the abductee was also recorded under section 164 Cr.P.C. before the learned Judicial Magistrate.

4. After arrest of the accused and completion of investigation, challan was submitted against them before the learned Trial Court, where they were formally charge sheeted to which they pleaded not guilty and claimed trial. To prove its case, prosecution examined as many as nine witnesses. After closure of the prosecution evidence, statements of the accused were recorded under section 342 Cr.P.C., wherein they denied the prosecution allegations and professed their innocence. They, however, declined to be examined on oath or to produce evidence in defence. On conclusion of trial, learned Trial Court, after hearing both the sides, convicted and sentenced the appellants-accused, as mentioned above, hence, this appeal.

5. Learned counsel for the appellant argued that impugned judgment of the learned Trial Court is against the law, facts and evidence on record; that no tangible evidence whatsoever has been brought on record to prove the alleged abduction for ransom; that as evident from the very first report of complainant Abdul Haseb incorporated in daily diary, the alleged abductee having doubtful character being involved in

abduction cases himself, the matter was held to be self initiated, therefore, inquiry was sought; that in his statement the alleged abductee has charged by names all the accused along with their parentages and addresses, which seems very strange as none of them was known to him, which smells mala fide on his part; that abductee has not been recovered from the custody of the accused; that the entire episode of abduction and payment of ransom is just an imaginary drama for getting ill gotten gain; that statement of the alleged abductee being suffering from material contradictions and discrepancies creating serious doubts in the prosecution case, has wrongly been believed and relied upon by the learned Trial Court, therefore, the impugned judgment is liable to be reversed.

6. Conversely, learned AAG assisted by learned counsel for the complainant contended that prosecution has successfully established the guilt of the accused through cogent and confidence inspiring evidence, particularly, through the testimony of Shahid ullah abductee as in such like cases, solitary statement of abductee is sufficient for recording

conviction. They while supporting the impugned judgment sought dismissal of the appeal.

7. We have heard the arguments and perused the record carefully.

8. According to the very first report of Abdul Haseb complainant, incorporated in D.D. No.33 dated 01.01.2001 , his father Shahid ullah, left house for city on 29.12.2010, but did not return home till 01.01.2011. It was on 01.01.2011, when he lodged report about his missing, which seems very strange being against the natural human conduct as a son or other inmates of a person cannot be expected to keep mum for three days about non-return of his father/elder of the family, who left for local city, especially, taking into consideration the worst law and order situation in the country, particularly, in this province (Khyber Pakhtunkhwa), where everyone always remain conscious about inmates of his/her house, who left house for outside/city. We being member of the same society are mindful of the fact that in the eventuality of even little delay in return of an inmate of the house proceeded outside, the other members of the house contact him/her about his whereabouts and cause of his being late. The unnatural

conduct of the complainant to know about non-return of his father till evening of the same day is even does not appeal to a prudent mind what to say of three days. It also does not appeal to a our mind that a father will left for Karak from Peshawar with his friend and he will not inform inmates of his house about the same. Complainant has not stated anything in his report that during these three days he was searching for his father, that's why the author of his report in the concluding part of report rightly mentioned the episode to be self initiated as such inquiry was sought in the matter. Later on, abductee Shahid Ullah appeared and recorded his statement before the learned Judicial Magistrate on 10.03.2011 i.e. after more 2 months 9 days of the incident wherein he while narrating the entire episode of his abduction till his release on alleged payment of ransom charged accused Raza Khan, Sajid, Khattak, Asmat Ali residents of Teri Banda Daud Shah, Naveed and Iftikhar residents of Matta Daman and Shabqadar, respectively. His statement in ditto recorded under section 164 Cr.P.C. is reproduced below for ready reference.

**"On 28.12.2010 at morning time (about 10.00 a.m), I
was present at my house, when I was called by my**

friend Shaukat son of Samar Gul, resident of Halala, Banda Daud Shah Teri District Karak, from his mobile phone No.03465585173, on my mobile phone No.0315525057, and asked me to come on the next day to his house situated near General Bus Stand, Kohat for Fatiha on the grave of his son buried in the graveyard of village Halala. On this I came out of my house on 29.12.2010 at about 1530 hours and boarded a Suzuki of passengers for Hashtnagri, Peshawar, when in the mean while Shaukat again called me on phone and told me that he was waiting for me at Hashtnagri. When I reached Hashtnagri, Shaukat was present there and I met him. We boarded a flying coach for Teri Banda Daud Shah District Karak. When we reached Teri, Banda Daud Shah at about 2030 hours, we got down from the Flying Coach and started on foot. After covering some distance, seven persons emerged duly armed with fire arms from the hills situated on the road side and their names I knew later on, as 1. Saifur Rehman alias Saifur son of unknown 2. Raza Khan 3. Sajid son of Saifur 4. Khattak son of Shaukat Ali 5. Asmat Ali son of Shaukat Ali, residents of Teri Banda Daud Shah 6. Naveed son of Qadeer Gul, resident of Matta Daman, Shabqadar and 7. Iftikhar son of unknown, resident of

Ring Road Patang Chauk Peshawar. They caught hold of me and took me to the nearby hills and kept me there in illegal confinement for 6 days. During this period the aforesaid accused contacted my family members on my mobile phone on 01.01.2011 and directed me to tell my family members to pay the amount of Rs.60,00,000/- (sixty lacs) to the aforesaid accused as ransom for my release. The accused told me that in case the aforesaid amount is not paid to them, they will kill me and also threatened my family members with dire consequences. The accused then shifted me to the house of accused Saifur Rehman mentioned above situated at village Kool and confined me there in a room and kept me there in illegal confinement for 54 days. During this period the accused were making different kind of demands from my family members. On 26.02.2011 my brother Noor Ahmad and my brother in law Zahoor Ahmad son of Muqem Khan resident of Kula Dher, Charsadda paid the amount of Rs.5,00,000/- (five lacs) as ransom for my release in my presence to accused Shaukat and Saifur Rehman alias Saifur mentioned above and thereafter I was released and I came to my house.

Hence I charge all the accused mentioned above for my abduction for the purpose of ransom”.

9. During trial the alleged abductee appeared as PW.9 wherein he introduced some new events that after 6 days he was brought to the house of accused Saif ur Rehman from Halala mountains, where he was kept for 54 days and then again shifted to Halala mountains, where rupees five lacs were paid by his brother Noor Ahmad and brother-in-law Zahoor Ahmad to the accused/abductors and he was thus released. He has not stated about his re-shifting to Halala mountain from the house of Saif ur Rehman in his statement u/s 164 Cr.P.C., thus this stance of the alleged abductee amounts to dishonest improvement, just to bring in line his statement with Zahoor Ahmad (PW.7) who deposed about payment of the ransom amount in Halala mountain. In his statement abductee has charge all the accused by names along with their parentages and addresses. In cross-examination he deposed that prior to occurrence he did not know the names of other accused except Shaukat and that during his captivity he learnt the names of the accused as they used to perform duty of guard on him. He however, admitted that during his captivity the accused were not carrying names plates showing their parentages and addresses. It does not appeal to a prudent

mind that abductors involved in such like offences would commit any such foolishness to call each other by names. Even we have observed that criminals of such like offences, usually never come in front of the abductee, rather keep the abductee in the captivity in seclusion. The criminals of such like offences even call each other with fake names which they only know, therefore, disclosing the correct names alongwith parentages of the accused and their addresses by the abductee in his statement under section 164 Cr.P.C. smells mala fide on his part about involvement of the accused in the commission of offence. Admittedly, the abductee has not been recovered by the local police either from direct or indirect custody of the accused nor on their pointation. The abductee even did not appear before the police on the very first day of his alleged release as admitted by him that after his release he went home and as he was not feeling well so he after two/three days went to Police Station and recorded his statement under section 161 Cr.P.C. Thus, this belated statement of the alleged abductee cannot be held free of consultation, deliberation and concoction. The abductee has neither pointed out to the police that place of Halala

mountains where he was allegedly confined nor the place of payment of ransom, as no site plan has been prepared of these places. Besides, no site plan of the house of accused Saif ur Rehman has been prepared, where the alleged abductee allegedly spent fifty four days in captivity.

10. Zahoor Ahmad who appeared as PW.7 and deposed about payment of ransom amount is the real brother of the alleged abductee, so he will definitely depose in favour of his brother/abductee. He has also not pointed out the place of the payment of alleged ransom amount to the police. In cross-examination while contradicting the version of the abductee he deposed that at the time of payment Haseeb Ullah son of abductee was also present with them. Whereas according to abductee the ransom was paid only by PW Zahoor and Noor Ahmad. He has not shown presence of his son Haseeb Ullah at the time of payment. PW Noor Ahmad, who allegedly participated in the proceeding of payment of ransom amount to the abductors/accused, has been abandoned by the prosecution for no good reason. Apart from above all, no data of phone number of the abductee on which

demands had been made has been collected to support the version of the prosecution.

11. The above discussed evidence being pregnant with doubts and contradictions, by no stretch of imagination would be sufficient for recording conviction, therefore, the learned Trial Court by not appreciating the same in its true perspective reached to an erroneous conclusion by holding the appellants guilty of the offence. According to golden principle of benefit of doubt; one substantial doubt would be enough for acquittal of the accused. The rule of benefit of doubt is essentially a rule of prudence, which cannot be ignored while dispensing justice in accordance with law. Conviction must be based on unimpeachable evidence and certainty of guilt and any doubt arising in the prosecution case, must be resolved in favour of the accused. The said rule is based on the maxim "it is better that ten guilty persons be acquitted rather than one innocent person be convicted" which occupied a pivotal place in the Islamic Law and is enforced strictly in view of the saying of the Holy Prophet (PBUH) that the "mistake of Qazi (Judge) in releasing a criminal is better than his mistake in punishing an innocent". Wisdom in this regard can also be derived from

the judgments of the apex court in case titled, "**Muhammad Khan and another Vs the State**" (1999 SCMR 1220) and case titled, "**Muhammad Ikram Vs the State**" (2009 SCMR 230).

12. Resultantly, both these appeals are allowed. Convection and sentences of the appellants recorded and awarded by the learned Trial Court vide impugned judgment dated 28.11.2012, are set aside and they are acquitted of the charges leveled against them. They be set at liberty forthwith, if not required in any other case.

13. These are reasons of our short order of even date.

Announced.
25.02.2015

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maintained that the learned Trial Court has the jurisdiction to entertain the suit and in case of decision of issue of the jurisdiction in favour of the petitioners, after conclusion of trial, it would be respondent to suffer and she is ready to face the consequences of such scenario. He while supporting the impugned orders, sought dismissal of the instant petition.

5. Come what may, the issue raised, being a mixed question of law and fact, can properly be resolved, after recording pro and contra evidence of the parties by the learned Trial Court. In view of the above, the impugned orders of both the courts below are set aside and the matter is remanded to the learned Trial Court with the direction to frame a specific issue (qua) jurisdiction, if already not framed, to afford an opportunity to the parties for leading their evidence and then to decide the suit on merits in accordance with law. The learned Trial Court shall

conclude the trial as early as possible, but not later than 4 months, on receipt of the record. Office shall ensure

