

**JUDGMENT SHEET**  
**IN THE LAHORE HIGH COURT**  
**RAWALPINDI BENCH RAWALPINDI**  
**JUDICIAL DEPARTMENT**

**Criminal Appeal No. 952 of 2019**  
*(Aqib Javed & 3 others vs. The State)*

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

**Date of Hearing:** 28.06.2021  
**Appellants by:** Mr. Muhammad Naveed Abbas Raja  
Advocate  
**State by:** Ms. Maimoona Ehsan-ul-Haq DDPP  
**Complainant by:** Mr. Muhammad Razzaq Advocate

**SOHAIL NASIR J:** Aqib Javed, Muhammad Sadiq, Amjad Ali and Bilal Ali (*appellants*) had faced trial in case FIR No. 147 (*PQ*) recorded on 21.08.2019 under Section 365-A PPC on the complaint of Mushtaq Hussain (*Pw-5*) at police station Jalalpur Sharif, District Jhelum for the abduction of Shahbaz Hussain (*Pw-7*). Later on, Section 337-L(II) PPC was also added. On conclusion of trial, vide judgment dated 29.11.2019 passed by learned Judge Anti-Terrorism Court No. 1 Rawalpindi, all appellants were convicted and sentenced as under: -

**Section 356-A PPC** imprisonment for life  
each and forfeiture of properties each  
**Under Section 7-E of the Anti-Terrorism**  
**Act, 1997 (Act)** imprisonment for life each.

It was directed that their sentences shall run concurrently. Benefit of Section 382-B Cr.P.C was also extended to them.

2. Being dissatisfied from the judgment of learned trial Court, appellants have assailed their convictions through the instant appeal.

3. Facts of the case are that on 21.08.2019, Mushtaq Hussain (*Pw-5*) moved an application (*PC*) to SHO Jalalpur Sharif where he maintained that his son Shahbaz Hussain (*Pw-7*) aged about 25 years was running a shop under the title of 'Friend Mobiles' in a plaza Haris Center; it was his routine to close the shop at 09:30 pm

and to return to home; on that day (20.08.2019) he did not come back so he/complainant from his mobile 0302-5149012 contacted Shahbaz Hussain on his mobile 0300-5648081, but the calls were not attended; at about 11:30 pm, when he/complainant responded a telephone call, he was told that his son had been abducted; the person on other side asked to arrange Rs. 500000/- (*five lacs*); he/complainant also talked to his son who disclosed that he was abducted from the street and he was taken to an unknown place. According to complainant thereafter the cell phone of his son was switched off.

4. On the basis of above application, FIR was recorded by Muhammad Jawwad Anwar Inspector (**Pw-10**) at 04:40 am on 21.08.2019.

5. Prosecution's case is that on the same day in the morning Mushtaq Hussain (**Pw-5**) along with Muhammad Rafiq (**Pw-6**) went to Kukkar Pindi on a motorbike on the asking of unknown assailant; they arrived near mountain; on the way Muhammad Rafiq concealed himself whereas, Mushtaq Hussain having ransom money that was settled as Rs. 100000/- (*one lac*) moved ahead where Muhammad Sadiq (**appellant**) armed with pistol was present at some distance. On payment of ransom, Shahbaz Hussain was released who was produced before Raja Jawwad Inspector and he prepared a memo (**PD**).

6. Prosecution further alleged that on the same day at about 06:00 pm on receipt of secret information police party headed by Muhammad Jawwad Anwar Inspector (**Pw-10**) reached at factory road, Chak Mujahid, Link Road and arrested Aqib Javed, Muhammad Sadiq and Amjad Ali (**appellants**) who were brought to police station and confined in lockup; on 22.08.2019 all three were produced before the Court and sent to judicial lockup for their identification parade which was conducted on 24.08.2019 by Mr. Fahad Khan Sarwar Judicial Magistrate (**Pw-12**); on 25.08.2019 upon receipt of secret information, Bilal Ali (**appellant**) was also arrested from Factory Mor, Chak Mujahid,

Raja Hotel; on 26.08.2019, he was also sent to jail where on 28.08.2019 his identification parade had taken place under the supervision of Mr. Najam Ayyub Judicial Magistrate (**Pw-13**).

7. Prosecution further claims that all appellants were identified in the identification parades and during investigation the ransom amount beside 30-bore pistols were also recovered from them.

8. On conclusion of investigation, report under Section 173 Cr.P.C (**Challan**) was submitted in Court.

9. A charge under Sections 365-A/337-L(II) PPC read with Section 7 of the *Act* on 28.02.2019 was framed against all the appellants, which they pleaded not guilty and demanded their trial.

10. In support of its case, prosecution had produced Dr. Usman Aslam who medically examined the abductee (**Pw-1**), Nazar Abbas HC/Moharrar (**Pw-2**), Asif Iqbal Constable who got conducted medical examination of the victim (**Pw-3**), Adil Naseer HC who provided the CDRs of appellants (**Pw-4**), Mushtaq Hussain/Complainant (**Pw-5**), Muhammad Rafiq/witness to payment of ransom (**Pw-6**), Shahbaz Hussain/abductee (**Pw-7**), Hassan Raza ASI/witness to recoveries (**Pw-9**), Muhammad Jawwad Anwar Inspector/IO (**Pw-10**), Yaqoob Ali Shahzad Magistrate who recorded the statement of abductee under Section 164 Cr.P.C (**Pw-11**), Mr. Fahad Khan Sarwar Magistrate who supervised the identification parade of Aqib Javed, Muhammad Sadiq and Amjad Ali (**Pw-10**) and Mr. Najam Ayyub Magistrate who supervised the identification parade of Bilal Ali (**Pw-13**).

11. Hassan Hayat Constable and Dr. Rabia Tariq were given up being unnecessary by learned DPP who thereafter closed prosecution's evidence. The learned trial Court also examined Syed Hammad Abid DPO as Cw-1.

12. In their examinations under Section 342 Cr.P.C all the appellants pleaded a long story and crux of the matter was that they were involved falsely in this case. All they opted not to produce defense evidence or to appear under Section 340(2) Cr.P.C.

**13.** Learned counsel for appellants contended that prosecution's case is filled up with serious lacunas, infirmities, inherent defects and the statements of witnesses are in contrast to each other; the story that only on payment of Rs. 100000/- (*one lac*) as ransom the abductee was released after passing only a night appears to be unnatural; conduct of police in particular DPO Jhelum has been found under serious criticism and it is proved that appellants have been made escape goat.

**14.** On the other hand, learned counsel for complainant and learned DPP jointly argued that the case is serious and heinous in its nature as a young boy was abducted for ransom and the allegations leveled by prosecution were successfully proved during the trial; there was no enmity of the witnesses for false involvement of any of the appellants; in identification parades all the appellants were rightly identified by the witnesses; during investigation ransom amount was also recovered from every appellant beside fire arm weapons. They finally contended that the learned trial Court on the basis of a well reasoned judgment has rightly convicted the appellants therefore appeal is liable to be dismissed.

**15. HEARD.**

**16.** Prosecution's case is that on the same day (21.08.2019), Mushtaq Hussain (*Pw-5*) and Muhammad Rafiq (*Pw-6*) had gone to Kukkar Pindi where the ransom amount of Rs.100000/- was paid for release of Shahbaz Hussain (*Pw-7*). In cross-examination both witnesses admitted that the police officials were also with them and standing after crossing the village Kukkar Pindi at a distance of 1/2 KM. Considering these facts the question in our mind is that when Shahbaz Hussain was released and was in the safe custody of both the witnesses, why the police officials present there made no effort to apprehend any of the culprits? Having Police with complainant at the time of payment of ransom makes it clear that it was a planned move and that the police was also in the knowledge that at what place ransom had to be paid? Despite

having prior information not to proceed for apprehension of any of the criminals who were certainly within the range of police officers makes the prosecution's story doubtful.

**17.** Statement of Muhammad Jawwad Anwar Inspector (**Pw-10**) indicates that at the time of payment of ransom a considerable number of police officials/officers were present there. He in cross examination stated that: -

*“The ransom amount of Rs. 100000/- was settled in between the accused and complainant. I reached a Kukkar Pindi behind hills. I ordered the other police officials for guarding at Daulat Pur, Kukkar Pindi and Pind Baghan Wala. In the meanwhile, complainant Mushtaq Hussain along with Muhammad Rafiq reached there on motorcycle and I sent them along with ransom amount of Rs. 100000/- towards Kukkar Pindi Hills. In the meanwhile, the DPO Jhelum ordered to join CIA staff Jhelum, Elite force and officials of other P.S Jhelum with me. At about 05:55 AM, Mushtaq Hussain complainant, Muhammad Rafiq brought Shahbaz Hussain abductee before me from the clutches of three unknown accused after giving ransom amount of Rs. 100000/-. I sent the police came from the other police stations behind the accused”*

**18.** It is surprising that every event was within the view of large number of police officers, who were deputed at all relevant places but no one was able to apprehend any of the accused.

**19.** Who had arranged the ransom amount? Prosecution even on it is not confident. According to Mushtaq Hussain the money was available in the house of Muhammad Rafiq which they took and went to police station. On the other hand Muhammad Jawwad Anwar Inspector (**Pw-10**) claimed that he sent Mushtaq Hussain etc. towards Kukkar Pindi Hills along with Rs. 100000/-. Hammad Abid DPO Jhelum (**Cw-1**) in cross-examination also with regard to arranging the ransom money had stated that *“it is correct that I mentioned in the displayed video that we arranged the ransom amount”*. Although he volunteered that “we” meant the

complainant side but his version cannot be accepted because in the same statement he maintained that the currency notes which were to be given as ransom were marked, so subsequently they can be recovered to trace the accused.

**20.** When the criminals could be apprehended conveniently, they were not taken to task despite availability of considerable numbers of police officers, but on the same day when they had every chance to disappear, they were arrested with a gap of 12 hours only, from the same area on spy information. A prudent mind cannot accept this story.

**21.** Moving ahead the prosecution's story is that on 05.09.2019 at the instance of Muhammad Sadiq (*appellant*) an amount of Rs.33000/-, Aqib Javed Rs.33000/- and Amjad Ali Rs.43000/- were recovered but none of the currency notes were having any specific mark. This aspect we have deliberately referred because when Hammad Abid DPO (*Cw-I*) was examined, he added that the currency notes were marked.

**22.** Recovery of currency notes from the possession of a person shall be presumed to be belonging to him, unless there are special circumstances to hold otherwise. The cash recovered from Muhammad Sadiq, Aqib Javed and Amjad Ali were not a big amount so these cannot be considered as the one that was paid as a ransom.

**23.** It was alleged that Muhammad Sadiq (*appellant*) got recovered Rs.33000/- on 05.09.2019 and pistol 30 bore after disclosure during the investigation those were lying in his hut like house situated at Factory Mor, Chak Mujahid. It was stated that Muhammad Sadiq (*appellant*) called his wife who provided the key on the basis of which he opened an iron box and from there the currency notes and pistol were recovered. These recoveries cannot be believed for the reason that neither box, nor lock or the key were taken into possession by the investigating officer.

**24.** Aqib Javed (*appellant*) on the same day (05.09.2019) got recovered pistol 30 bore and Rs.33000/- which he kept in a room

of a deserted *Dera* of Imtiaz Shah. After digging the ground he brought out the amount and pistol 30 bore and produced before the investigating officer. The owner of the *Dera* was never joined in the investigation to establish that in what capacity appellant was having an access to that property.

**25.** Finally, on the same day, Amjad Ali (*appellant*) got recovered Rs.43000/- and a pistol from a deserted Kotha after digging the earth. This was an unattended place and within the approach everyone so here too prosecution is defeated.

**26.** Even if we believe, these recoveries are of no help for prosecution because the amount so recovered has not been proved to be the part of ransom money due to contradictory statements of the witnesses and for another very important reason that according to Mushtaq Hussain, he had saved serial numbers of currency notes in his mobile phone. If this was the position, it was quite easy for prosecution to connect the recovered currency notes from the amount of ransom after retrieving the data from mobile phone. Withholding this best evidence is another blow for prosecution.

**27.** Before reverting to identification parade we want to discuss the statement of Syed Hammad Abid DPO (*Cw-I*). It was 18.11.2019, when on behalf of appellants their learned advocate moved an application under Section 540 Cr.P.C for summoning of Syed Hammad Abid DPO Jhelum as a Court witness on the reason that soon after the incident, he made a press conference and also got recorded an interview with *SAMAA TV*, which was aired and in that press conference he had given a different story of the incident. A CD of that interview and press conference was also produced. After hearing both the sides said application was allowed and in this background Syed Hammad Abid was examined as *Cw-I*. In his examination-in-chief, he narrated the same story on which prosecution is relying but in cross-examination the picture was otherwise. When he was cross-examined by prosecution, an attempt was made to make the video clippings doubtful. The CD

was played in the Court and viewed by him. Finding him in difficulty he replied that: -

*“The source of this video cannot be ascertained, it may be made by a person planted from accused side being locals. It is not officially issued by me. This video clip is mixed with made probably by SAMAA TV and it is not authentic even my name is wrongly written in it. The video Mark-E shown to me in the Court is edited, mixed and out of context. The officials of PFSA did not summon me to verify the contents of the video at PFSA, Lahore”*

28. The above responses appear to be result of understanding between prosecution and the said witness, however in cross examination by defense the facts which came on surface are as under: -

- I. The CD has voice and picture of Hammad Abid.*
- II. In this clipping, the time mentioned by the witness was 10:00 am.*
- III. He reached at the site at about 10:15 am.*
- IV. In the video, he was describing the time of his arrival in the area as 03:30/03:45 am.*
- V. The ransom amount was recovered from the accused at spot.*
- VI. The currency notes which were to be given as ransom were marked for subsequent recovery from accused.*
- VII. The ransom money was arranged by police.*
- VIII. There was a cross firing between police party and the accused.*

29. Although while giving the answers to every question, he had been offering some volunteer portions trying to dispute what he had stated but fact was established that he made an interview and a press conference. In such state of affairs, we see no reason to acknowledge his lame excuses and we hold that facts which have been posted and presented in this case are mysterious and full of doubts.

30. We have also observed that the identification proceedings are short of required standard. Identification parade is not a



requirement of law but only one of the methods to test the veracity of evidence of an eye witness who has had an opportunity to see the accused and claims to identify him. It is to be conducted as a rule of caution. It is not a substantial piece of evidence unless supported from independent sources. Volume III, Chapter 11-G, Part-C of the Rules and Orders of The Lahore High Court Lahore, and Paragraph 26.32 Chapter XXVI of the Police Rules, 1934 prescribe a procedure for holding the identification parade. Some of the salient features are as under: -

- i. The proceedings shall be conducted under the supervision of a Magistrate.*
- ii. Identification parade shall be carried as soon as possible after the arrest of suspect.*
- iii. List of all persons included in the identification should be prepared by showing their names, parentage, addresses and occupations.*
- iv. Suspects shall be placed amongst other persons traced of the same religion and of same social status with proportion of 8 or 9 for each suspect.*
- v. They will be similarly dressed up.*
- vi. The identifying witnesses shall be kept separate from each other so they may not be in a position to have any contact with them.*
- vii. No communication which would facilitate identification is made to any witness who is awaiting his turn to identify; and*
- viii. that after making identification the witnesses do not communicate with other witnesses who have yet to do so.*

**31.** In first phase, Aqib Javed, Muhammad Sadiq and Amjad Ali (*appellants*) were placed under the identification parade on 22.08.2019 supervised by Mr. Fahad Khan Sarwar Judicial Magistrate Jhelum (*Pw-12*). It is more than surprise for us that the learned Magistrate did not consider appropriate to hold a joint identification parade of all the appellants and this has raised multiple challenges for prosecution. Appellants were three in numbers and the identification parade had to be in one go. The

learned Magistrate was under obligation to arrange three queues. In each line one appellant had to stand at a number of his choice and thereafter witnesses were to be invited one by one. Every witness had to identify the accused from each line.

32. The learned Magistrate adopted entirely a different procedure. He conducted the identification parade for each appellant independently and separately. We have noticed that three independent proceedings (**PAA, PBB and PCC**) were prepared by him. In every proceeding he recorded as under: -

- I. **First of all**, identification of suspect Aqib Javed started.
- II. **First of all**, identification parade of Muhammad Sadiq Started.
- III. **First of all**, identification of suspect Amjad Ali started.

33. If three independent identification proceedings were carried than how every proceeding was first of all. We have noticed that all identification proceedings almost are verbatim copies to each other and the only difference is with regard to names of appellant and the manners in which witnesses identified them.

34. As referred earlier that under the guiding principles a Magistrate has to ensure that after first witness is called and he is relieved from the exercise, he/she has to be kept at a place from where he/she cannot have any communication or contact with the witness who still has to come to identify the accused. In this case we have noticed that after Mushtaq Hussain had identified each appellant, he was not ordered to be kept at a place from where he could not see or communicate with the other witness. The moment Mushtaq Hussain completed his assignment, thereafter Shahbaz Hussain was called to identify the accused which means that at that occasion Mushtaq Hussain was also there.

35. Before calling the second witness, it was the duty of Magistrate to make an offer to every appellant to change his position but even here, the learned Magistrate is found to have deviated from his obligations.

36. It is also not clear that after the first identification parade was completed, where both the witnesses remained or stayed and how they assembled again. We are again astonished to see that three proceedings were shown independently, but in every proceeding the time was recorded as 11:30 am. In cross examination when Mr. Fahad Sarwar Khan (**Pw-12**) was confronted with this specific situation, he simply replied that it was a typographical error. When all the proceedings are suffering from procedural violations and under serious doubts, we cannot accept the explanation offered by the gentleman.

37. Identification parade of Bilal Ali (**appellant**) was conducted on 28.08.2019 by Mr. Najam Ayyub Judicial Magistrate Jhelum (**Pw-13**). Bilal was aged 24 years but some of dummies placed with him were of 33 years of age. Although learned Magistrate stated that all the dummies were of similar features but we are not going to hold so because of difference of ages among them. One of the conditions, that all the dummies must be similarly dressed up are also missing in these proceedings.

38. Finally coming to CDR that was taken into possession during investigation pertaining to all appellants we have observed that these documents have not been proved by the prosecution in accordance with law as these are computer generated papers secured from the system available with police department. To prove such evidence through modern device the principles have already been settled. In '**Gohar Khan & another vs. The State PLJ 2019 Cr.C (FSC) 515**' on the question of proof of CDR it was held that: -

*“As far as, the Call Data Record (CDR) (Ex.PT/1 to Ex.PT/5) is concerned, it has added nothing to the case of prosecution on many counts. Firstly, the prosecution has failed to associate and produce the concerned official of the Cellular Company who issued the CDR (Ex.PT/1 to Ex.PT/5), secondly, the CDR (Ex.PT/1 to Ex.PT/5), does not figure even the sign alone and stamp of the concerned Authority, who issued the same”*

39. Prosecution on the strength of settled principles of law in all circumstances is under obligation to prove its case at all stages of criminal trial. No license can be given to prosecution to take advantage of weakness of defense as it has to stand on its own legs. Heinousness of offence alone cannot be a consideration to record the conviction. Before an accused is sent to gallows, Court requires the evidence and that too of qualitative nature. The benefit of doubt in all situations shall be extended to accused not as a matter of concession but as a privilege.

40. Concluding the discussion made above, we finally hold that prosecution has badly failed to prove its case beyond shadow of doubt against all the appellants named Aqib Javed, Muhammad Sadiq, Amjad Ali and Bilal Ali, therefore, this criminal appeal is **allowed**. Impugned judgment dated 29.11.2019 passed by the learned trial Court is **set aside** and all the appellants are acquitted from the case. They are in custody and they shall be released forthwith if not required in any other case.

**(Raja Shahid Mehmood Abbasi)**  
Judge

**(Sohail Nasir)**  
Judge

**APPROVED FOR REPORTING**

***JUDGE***

*\*Mehboob Elahi\**