

**IN THE SUPREME COURT OF PAKISTAN**  
(Appellate Jurisdiction)

**PRESENT:**

Mr. Justice Mushir Alam  
Mr. Justice Sajjad Ali Shah  
Mr. Justice Qazi Muhammad Amin Ahmed

**Jail Petition Nos.24, 69, 215, 486 of 2016 & 682 of 2017**

*(Against judgment dated 10.12.2015 of the High Court of Sindh, Karachi passed in Special Criminal Anti-Terrorism Appeal Nos.5,6 & 36 of 2005 with Confirmation Case No.1 of 2005)*

***Muhammad Siddique***

*(J.P. No.24/2016)*

***Ali Muhammad***

*(J.P. No.69/2016)*

***Syed Bilal Ali***

*(J.P. No.215/2016)*

***Fateh Muhammad***

*(J.P. No.486/2016)*

***Arshad Parvez & another***

*(J.P. No.682/2017)*

...Petitioner(s)

**Versus**

***The State***

*(in all cases)*

...Respondent(s)

For the Petitioner(s):

Mr. Mahmood Akhtar Qureshi, ASC  
*(in J.P. No.215/2016)*  
Dr. Raana Khan, ASC  
*(in J.P. Nos.24,69,486/2016 & JP No.682/2017)*

For the State

Mr. Hussain Bux Baloch,  
Additional Prosecutor General Sindh.

Date of hearing:

2.1.2020.

**JUDGMENT**

**Qazi Muhammad Amin Ahmed, J.-**Kamran-ud-Din

(PW-3) was on way after dropping his sister at a school on 24.5.2004; at about 7:30 a.m. he was whisked away, within the remit of Police Station Shah Faisal Colony Karachi, in a white car by six assailants; information was laid by Ashiq Hussain (PW-2) with

abductee's father Ikram-ud-Din (PW-1) who reported the incident to the police same day. An anonymous caller demanded Rs.2 millions as ransom for abductee's release; after protracted negotiations, the amount was settled as Rs.500,000, finally paid on 16.6.2004 by Zain-ul-Abideen (PW-10) at the designated place; the abductee was released soon thereafter. As the investigation progressed, on a tip off, Jamil Akhtar, Inspector/SHO (PW-11), arrested Syed Abdul Kaleem, Fateh Muhammad and Arshad Parvez on 2.9.2004 followed by Syed Bilal Ali, Muhammad Siddique, Muhammad Hassan and Ali Ahmed on 3.9.2004. Pursuant to a disclosure, Muhammad Siddique, petitioner got recovered a part of ransom in the tune of Rs.100,000 on 8.9.2004. Vehicle P-2, conveying the abductee into captivity, was also secured by the Investigating Officer. Muhammad Siddique, Arshad Parvez, Bilal Ali, Abdul Kaleem and Fateh Muhammad were rightly picked by the witnesses in the test identification parade held under magisterial supervision on 9.9.2004; Muhammad Hassan and Ali Ahmed were identified on 11.10.2004; it is in this backdrop that they were nominated as the six culprits who took away the abductee whereas Syed Abdul Kaleem was blamed to have provided premises to confine him. Upon indictment, the accused claimed trial, resulting into their conviction with penalty of death for each, accompanied by fine and forfeiture of properties. The High Court of Sindh vide judgment dated 10.12.2015 maintained the convictions, however, altered penalty of death into imprisonment for life, *vires* whereof are being impugned by Fateh Muhammad, Arshad Parvez, Syed Bilal Ali, Muhammad Siddique, Muhammad Hassan and Ali Ahmed through captioned petitions; bound by a common thread, these are being decided through this single judgment.

2. Learned counsel for the petitioners, in a unison with vehemence, contend that there was no occasion for the courts below to return and uphold a guilty verdict, in a case, according to them, inherently flawed inasmuch as initially four persons were alleged to have committed the crime whereas the number was graduated to seven during the trial; it is next argued that test identification parade, conducted in violation of judicial guidelines, without assigning specific roles, reliance thereon was beside the mark. Recoveries being fractional as well as inconsequential were liable to be excluded from consideration, concluded the learned counsel. The

learned Law Officer, contrarily, defended the impugned judgment; he argued that prosecution produced the best evidence available under circumstances to successfully drive home the charge by excluding every hypothesis of innocence; he submits that the petitioners have already been dealt with leniently, therefore, scales being in balance, interference is not called for.

3. Heard. Record perused.

4. Prosecution case is primarily structured upon three statements furnished by Ikram-ud-Din (PW-1), Ashiq Hussain (PW-2) and Kamran-ud-Din (PW-3). PW-1 being complainant is not an eye witness of the occurrence; he was informed by Ashiq Hussain (PW-2) that his son was taken away by the assailants mentioned as four in number in the crime report; in the witness-box, however, he blamed six accused as privies to the crime. Surprisingly despite the lengthy cross-examination, he is not confronted with his departure from the crime report; as he is not an eye witness, therefore, an apparent discrepancy does not adversely impact the prosecution, particularly in the face of defence's failure to impeach the witness in terms of procedure contemplated under Article 140 of the *Qanun-i-Shahadat Order*, 1984 mandatorily requiring the attention of a witness to the impugned portion of his statement. On the contrary, while responding to a question, during cross-examination, the witness stated as under:-

*"PW Ashiq Hussain had informed me that he had seen that 6 culprits came there in a car, out of whom, 4 persons who were sitting in the car taken away my son and remaining two had taken away his motorcycle."*

Even attention of Muhammad Nadeem ASI (PW-5), who recorded the complaint, was not solicited to explain the actual number of assailants, narrated by the complainant; Ashiq Hussain (PW-2) and the abductee (PW-3) are consistent on the number of assailants; nothing contrary is suggested to them in their statements, otherwise found by us as confidence inspiring; the argument cannot be viewed more than a far cry.

5. Castigating severely the evidence of test identification parade, the learned counsel relied upon the guidelines laid down in the

case of Kanwar Anwaar Ali (PLD 2019 Supreme Court 488) to urge exclusion thereof. The supra case, indeed a fine piece of juridical literature, nonetheless, does not extend much help to the convicts; it mainly addressed laconic approach adopted by a Magistrate in holding the test identification parade in the said case while highlighting general principles of law on the subject.

Test identification parade is a method of proof contemplated by Article 22 of the *Qanun-i-Shahadat Order*, 1984, reproduced below for the convenience of reference:-

*"Facts necessary to explain or introduce a fact in issue or relevant fact, or which support or rebut an inference suggested by a fact in issue or relevant fact, or which establish the identity of anything or person whose identity is relevant, or fix the time or place at which any fact in issue or relevant fact happened, or which show the relation of parties by whom any such fact was transacted, are relevant in so far as they are necessary for that purpose."*

The above framework provides enough space to admit evidence in prosecution of offenders previously unacquainted with the victims or the witnesses; appraisal of such evidence is subject to same principles as are universally applicable to any piece of evidence, under consideration in a criminal trial; there are no additional barricades as is evident from the plain reading of the Article *ibid*; without prejudice to the safeguards available to an accused at each stage of trial, essentially fair as guaranteed under the Constitution, nonetheless, it does not cast an artificially heavier onus on the prosecution to meet standards of proof beyond human capacity. Each criminal case is to be decided having regard to its own peculiar facts and circumstances. A test to be essentially applied in one case may absolutely be irrelevant in another, as the crimes are seldom committed in identical situations; there may be cases wherein prosecution must assign distinct roles played during the occurrence by the culprits for determination of their guilt as well as consequences thereof, however, there are cases in which totality of transaction may not warrant separability for such determination, like the one in hand. Cases involving abductions, dacoities and sudden assaults, more often than not, constitute episodes wherein different

roles played by the culprits merge into integral totality of the crime, thus, it would be too harsh as well as unrealistic to demand exact reenactment of roles by the witnesses. Capacities even intellectually most sharp dwindle drastically in calamitous situations, therefore, the administration of criminal justice, in such peculiar situations, has to be dynamically balanced upon fair trial without prejudice to the accused as well as due weightage to the prosecution evidence without being swayed by illusory notions, subjectively structured upon hypothetical beliefs.

6. Having found the witnesses, with no axe to grind, in a comfortable unison on all the salient features of the prosecution case as well as events collateral therewith, we do not feel persuaded by the arguments, couched on hyper technical premise. Petitions fail. Dismissed.

**Judge**

**Judge**

**Judge**

Karachi, the  
2<sup>nd</sup> January, 2020  
Approved for reporting  
*Azmat/-*