

IN THE SUPREME COURT OF PAKISTAN  
(Appellate Jurisdiction)

**PRESENT:**  
Justice Syed Hasan Azhar Rizvi  
Justice Musarrat Hilali  
Justice Naeem Akhtar Afghan

**Jail Petition No. 238 of 2008**  
(On appeal against the judgment dated 04.06.2008 of the  
Lahore High Court, Lahore passed in CrI. A. No.1743 of 2006)

Abdul Qadeer	Versus	<b>Petitioner</b>
The state		<b>Respondent</b>
For the petitioner:	Ms. Aisha Tasneem, ASC	
For the state:	Mr. Irfan Zia, Addl.P.G., Punjab	
Date of hearing:	15.04.2024	

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

**NAEEM AKHTAR AFGHAN, J.** The petitioner along with his brother Muhammad Ali (proclaimed offender), Muhammad Fayyaz and Muhammad Afzal both sons of Ghulam Rasool (proclaimed offenders) were indicted in case/FIR No. 80 of 2006 registered under section 365-A of the Pakistan Penal Code, 1908 (**‘PPC’**) at Police Station (**‘P.S.’**) Dhulley, District Gujranwala by Abdul Haleem (**‘the complainant’**) on 09.03.2006 for the allegation of kidnapping for ransom of his son Zubair Haleem (**‘the alleged abductee’**).

2. The learned Judge Anti-Terrorism Court II, Gujranwala (**‘the trial court’**) read over charge to the petitioner under section 365-A/34 PPC r/w section 7(e) of the Anti-Terrorism Act, 1997 (**‘Act, 1997’**). On conclusion of trial, the trial court awarded conviction to the petitioner under section 7 (e) of the Act, 1997 and sentenced him to suffer imprisonment for life and forfeiture of property vide judgment dated 14.11.2006 with benefit of section 382-B of the Code of Criminal Procedure (**‘Cr.P.C.’**).

3. The petitioner challenged his conviction and sentence before the Lahore High Court, Lahore (**‘the appellate court’**) by filing Criminal Appeal No. 1743 of 2006 which was dismissed vide judgment dated 04.06.2008.

4. The petitioner filed Jail Petition No. 238 of 2008 before this Court through Superintendent Central Jail, Lahore which was dismissed on 17.07.2009 being barred by 116 days.

5. The petitioner filed Criminal Review Petition No. 178 of 2016 before this Court on 09.11.2016 through Superintendent Central Jail, Faisalabad which was barred by time but for safe administration of justice, the same was accepted and office was directed to fix the Jail Petition No. 238 of 2008 for decision on merits after recalling the earlier Order dated 17.07.2009.

6. According to the prosecution version as per contents of FIR No. 80/2006 P.S. Dhulley, District Gujranwala, the complainant has food factory in Small Estate No. 1, Model Town, Gujranwala by the name of "*Gujranwala Food Industry*"; on 07.03.2006 at about 01:30 p.m., his son was going for some work on his Honda City Car bearing registration No.GAT/86 to his second factory situated in Small Estate-II, Gujranwala; when he took a turn near PSO Petrol Pump at Aziz Cross, two boys aged about 23/24 years, wearing marker caps of Layari Company, signaled his son to stop; while thinking that they both were factory employees, his son stopped his car; and one person sat on the front seat and the other person sat on the rear seat of the car; when the car of his son reached near Alam Chowk, both the persons took out pistols and by using their cell phone, they started talking with a third person; the car of his son was taken from Awan Chowk towards the road on the eastern side where on the way, a third person also boarded in the car; meanwhile from the cell phone of his son bearing No.0300-8643694, he received a threatening call on his cell phone No.0300-8643894 whereby he was informed that his son has been kidnapped and for the sake of his life, the accused demanded forty million; on his supplication, the accused agreed for ransom of three million; he encashed three million from Allied Bank, Model Town Branch and on the instructions of accused he reached near a bridge of Sheikhpura while going from Kamoki to Shahadra; when he reached towards Sheikhpura road, the accused contacted him on his cell phone and asked him to proceed further on Sheikhpura road and then he was asked return on Lahore road where near a bridge, one of the accused received three million and instructed him on his cell phone to return

with assurance that his son will also reach home; around Maghrib, his son reached home; he got information about reaching of his son at home whereafter he also reached home; In presence of Muhammad Jamal S/o Muhammad Rafiq and Hameed-ud-Din Awan S/o Hafiz Ahmed-ud-Din his son Zubair Haleem narrated the details of the occurrence; when he was wondering on different roads in search of his son, on his another cell No. 0333-8110850 his son Adil received calls of the accused from PCO Telephone No. 055-8300393 who insisted his son Adil to arrange for the ransom at the earliest to save his brother's life; PCO Telephone No.055-8300393 is in use of Muhammad Fahim and Muhammad Nadeem residents of House No.29, Street No.26., "Y" Block, Peoples Colony, Gujranwala which has been installed by them in their PCO and he strongly doubted that Muhammad Fahim and Muhammad Nadeem have some connection with kidnappers.

7. According to the complainant, the occurrence was kidnapping for ransom and the accused had received ransom of three million from him by issuing threats.

8. It is further the case of the prosecution that the wallet of the alleged abductee containing cash of five thousand rupees, his Indiana State Card, his University Card, Passport and Samsung mobile phone were also snatched during occurrence; on 10.03.2006 at 12:30 p.m., the alleged abductee alongwith Arshad Saleem and Sattar were going from Estate-I to Estate-II and on the way Arshad Saleem stopped at Khiali Chowk to get cigarette; while sitting in his car the alleged abductee saw four persons on motorcycles and he identified them as kidnappers; when Arshad Saleem returned after purchasing cigarette, he informed him about identifying the kidnappers and they chased the kidnappers while keeping some distance; the kidnappers turned to Nawan Pind from Awan Chowk and stopped their motorcycles in front of a house and entered therein; they inquired from shop keepers and came to know that Muhammad Afzal and Fayyaz both sons of Ghulam Rasool (proclaimed offenders) are residing in the said house while Qadeer (the petitioner) and Muhammad Ali (proclaimed offender) are their friends who used to visit them in the said house.

9. According to the prosecution, on spy information and on the pointation of informer, the petitioner was arrested on 24.03.2006 from

Alipur Chowk by-pass and on his personal search, a black color purse containing cash amount of twenty five hundred rupees, two university cards and one Samsung mobile were also recovered in respect whereof the recovery memo (Exb.PB) was prepared and the alleged abductee identified the recovered articles in police station; the identification parade of the petitioner was held on 04.04.2006 at about 12:25 pm in the premise of Central Jail, Gujranwala under supervision of Special Magistrate, Gujranwala wherein the alleged abductee identified the petitioner as co-accused; on 14.04.2006 the petitioner led to recovery of two hundred thousand rupees of his share of ransom from an iron box lying in a room of his house which were taken into custody vide recovery memo (Exb.PE) and same were identified by the complainant in police station; On 21.04.2006 the petitioner led to further recovery of forty thousand rupees from his house which were identified by the complainant in police station and on the same date a .30 bore pistol (Exb. P6) wrapped in plastic along with two live bullets (Exb.P.7/1-2) buried ten steps away from an electricity poll near Ganda Nala, Pasban Colony, Rajkot were also recovered on the pointation of petitioner.

10. We have heard learned counsel for the petitioner (appointed by the Court) as well as learned Additional Prosecutor General, Punjab and perused the available record.

11. Despite allegation of repeated contacts by the accused with the complainant and his son Adil on cell phones as well as through PCO number, no Call Data Record ('**CDR**') with regard to the alleged phone calls has been produced at the trial. Muhammad Fahim and Muhammad Nadeem using telephone No. 055-8300393 in their PCO (who were suspected by the complainant) were neither associated during investigation nor produced at the trial as witnesses or co-accused.

12. The alleged occurrence had taken place on 07.03.2006 but FIR No. 80/2006 was registered at P.S. Dhulley, District Gujranwala by the complainant on 09.03.2006. The petitioner has not furnished any explanation for inordinate delay of two days in registering the FIR.

13. In FIR No. 80/2006 as well as during narration of the alleged occurrence by the alleged abductee to the complainant in the house on

07.03.2006, the complainant as well as the alleged abductee did not mention about snatching of wallet containing cash amount of five thousand rupees, Indiana State Card, University Card, Passport or Samsung mobile. The alleged abductee as well as the complainant have fabricated/made improvement to the above extent during investigation. Possibility of foisting the above articles upon the petitioner to create incriminating circumstantial evidence cannot be ruled out of consideration.

14. PW-3 Muhammad Jamal is business partner and nephew of the complainant. His version about narration of the occurrence by the alleged abductee to his father is lacking independent corroboration. Hameed-ud-Din Awan, in whose presence the alleged abductee had narrated the details of the occurrence to the complainant, has not been produced by the prosecution at the trial. Mr. Adil (son of the complainant) who had allegedly received calls of the accused to arrange for the ransom at the earliest was neither associated during investigation nor produced at the trial as prosecution witness. On 18.09.2006 public prosecutor dropped prosecution witnesses namely Waheed-ud-Din, Abdul Sattar, Iftikhar Ali But and Muhammad Ramzan.

15. Under Article 129 (g) of the Qanoon-e-Shahadat Order, 1984 the Court may presume that evidence which could be and is not produced would, if produced, be unfavorable to the person who withholds it. Hence, adverse inference is drawn to the effect that had the above witnesses been produced at the trial, they would have not supported the prosecution case. Reliance in this regard is placed on the cases of **“Muhammad Jabran v. The State”**<sup>1</sup> and **“Mst. Shahnaz Akhtar v. Syed Ehsan ur Rehman”**<sup>2</sup>.

16. No bank record has been produced at the trial to prove encashment of rupees three million by the complainant on 07.03.2006. Recoveries of rupees two hundred million and forty thousand from the house of the petitioner on his pointation in pursuance of his disclosure after more than twenty days of his arrest is lacking independent corroboration as no notable or inhabitant of the area was associated

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<sup>1</sup> 2020 SCMR 1493

<sup>2</sup> 2022 SCMR 1398

during the alleged recoveries. The allegedly recovered cash was identified by the complainant in police station in absence of Special Judicial Magistrate. The complainant has failed to explain as to how he identified the currency notes.

17. While recording their statements at the trial the complainant (PW-6) as well as the alleged abductee (PW-7) have made dishonest improvement by stating that on the day of occurrence the accused had tied the hands of the alleged abductee whereafter he was put on the rear seat of the car.

While making the above dishonest improvement, the alleged abductee has not mentioned as to who was driving the car when he was put on the rear seat of the car after tying his hands.

18. The version of the alleged abductee and Arshad Saleem (PW-5) that the accused were identified and chased by them on 10.03.2006 to a house and from the shop keepers it revealed that the petitioner and his brother proclaimed offender Muhammad Ali being friends of the residents of the said house (i.e. proclaimed offenders Muhammad Fayyaz and Muhammad Afzal) used to visit them in the said house, is also lacking independent corroboration as the shop keepers who had allegedly furnished information were neither associated during investigation nor they have produced at the trial as prosecution witnesses.

19. The above version of the alleged abductee and Arshad Saleem is contradicted by the statement of Mansab Ali, S.I./Investigating Officer who has stated at the trial that on 09.03.2006 the complainant, along with his son Zubair Haleem, Arshad Saleem and Abdul Sattar visited police station and made supplementary statement to the effect that his son has identified the kidnappers and their names were disclosed as Muhammad Afzal, Muhammad Fayyaz, Muhammad Ali and Abdul Qadeer.

20. According to prosecution, the identification parade of the petitioner was held on 04.04.2006 in Central Jail, Gujranwala under supervision of Special Judicial Magistrate, Gujranwala Mr. Abdul Ghafoor (PW-4) wherein the alleged abductee identified the petitioner as accused.

During cross-examination Special Judicial Magistrate admitted that the petitioner had raised objection before the identification parade proceedings that he was shown to the abductee in the office of DSP.

During cross-examination Special Judicial Magistrate also admitted that the alleged abductee stated before him that he might have been kidnapped by the accused.

21. Contents of the identification parade memo reveal that during identification parade, the alleged abductee did not specify the role played by the petitioner in the alleged occurrence. It has repeatedly been held by this Court that identification of an accused person without reference to the role allegedly played by him during the occurrence is shorn of any evidentiary value. Reference in this regard is made to the cases of "**Sabir Ali alias Fauji v. The state**"<sup>3</sup>, "**Shafqat Mehmood v. The State**"<sup>4</sup>, "**Muhammad Fayyaz v. The State**"<sup>5</sup>, "**Azhar Mehmood v. The State**"<sup>6</sup> and "**Kamal Din alias Kamala v. The State**"<sup>7</sup>.

22. All the above circumstances have created reasonable doubt in the case of the prosecution but benefit of same has not been extended to the petitioner by the courts below. According to settled principle of law even if a single circumstance creates a reasonable doubt in a prudent mind about the guilt of an accused he/she shall be entitled to such benefit not as a matter of grace and concession but as of right. Reference in this regard is made to the cases of "**Tariq Pervaiz v. The State**"<sup>8</sup>, "**Ayub Masih v. The State**"<sup>9</sup>, "**Abdul Jabbar v. The State**"<sup>10</sup>, "**Sarfraz v. The State**"<sup>11</sup> and "**Barkhurdar v. The State**"<sup>12</sup>.

23. According to settled principles of law the prosecution has to stand on its own legs and if it fails to prove its case beyond reasonable doubt, the entire edifice of the prosecution would crumble down.

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<sup>3</sup> 2011 SCMR 563

<sup>4</sup> 2011 SCMR 537

<sup>5</sup> 2012 SCMR 522

<sup>6</sup> 2017 SCMR 135

<sup>7</sup> 2018 SCMR 577

<sup>8</sup> 1995 SCMR 1345

<sup>9</sup> PLD 2002 SC 1048

<sup>10</sup> 2019 SCMR 129

<sup>11</sup> 2023 SCMR 670

<sup>12</sup> 2023 SCMR 1791

24. On reappraisal of the evidence available on the record, we have come to the conclusion that the prosecution has failed to prove the charge against the petitioner beyond reasonable doubt.

25. The petition for leave to appeal was converted into appeal, same was allowed and the appellant has been acquitted of the charge vide short order dated 15.04.2024 which reads as follows:

*For the reasons to be recorded separately, this petition is converted into an appeal and is allowed, the judgment dated 04.06.2008, passed by the learned Judges of the Lahore High Court, Lahore (**the High Court**) in Criminal Appeal No.1743 of 2006 as well as the judgment dated 14.11.2006, passed by the learned Judge, Anti-Terrorism Court-II, Gujranwala (**the Trial Court**) in Trial No.30/JATC-II/GRW to the extent of the petitioner are hereby set aside. The petitioner is acquitted of the charge under Section 7(e) of the Anti Terrorism Act, 1997 in FIR No.80 dated 09.03.2006, Police Station Dhulley, Gujranwala and be released forthwith, if not required to be detained in any other case.*

The above are the reasons of our short order dated 15.04.2024.

Judge

Judge

Judge

Islamabad  
20.04.2024  
Atif/Zohaib Afzal\*  
**APPROVED FOR REPORTING**