

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

**PRESENT:**

Mr. Justice Maqbool Baqar

Mr. Justice Yahya Afridi

Mr. Justice Qazi Muhammad Amin Ahmed

**Criminal Petition Nos.1152 & 1153 of 2020**

*(Against the judgment dated 07.07.2020 passed by the Islamabad High Court Islamabad in Crl. Appeal No.8 of 2011)*

***Muhammad Makki***

*(in Crl. P.1152/2020)*

***Alam Sher & another***

*(in Crl. P.1153/2020)*

...Petitioner(s)

**Versus**

***The State, etc.***

*(in both cases)*

...Respondent(s)

For the Petitioner(s):

Ch. Afrasiab Khan, ASC  
Syed Rifaqat Hussain Shah, AOR

For the State:

Mr. Niazullah Khan Niazi,  
Advocate General, Islamabad

For the Respondent(s):

Rukhsana Kousar (*sister of complainant*)

Date of hearing:

11.01.2021.

**ORDER**

**Qazi Muhammad Amin Ahmed, J.-** Indicted for abduction for ransom, Muhammad Makki, Alam Sher, Aamir Rehman and Abdul Ghafoor, in absence of Adnan Khan, proclaimed offender, were tried through a private complaint by a learned Special Judge Anti-Terrorism Act, Rawalpindi; they were acquitted of the charge vide judgment dated 18.01.2011; barring Abdul Ghafoor, the abductee successfully assailed acquittals before the Islamabad High Court; convicted under section 365 of the Pakistan Penal Code, 1860, the remainder were sentenced to

7-years R.I. with a direction to pay fine in the sum of Rs.500,000/- each, pre-trial period inclusive, vide impugned judgment dated 07.07.2020 *vires* whereof, are being challenged on the grounds that there was no occasion for the High Court to overturn well reasoned judgment of the trial Court, that too, after maintaining acquittal of identically placed co-accused, in the absence of convincingly strong grounds as required by law. It is next argued that after High Court's refusal to accommodate complainant's plea of abduction to exact ransom, the entire case was cast away and, thus, intervention by this Court is most called for. The learned Advocate General Islamabad has supported the impugned judgment; according to him, the learned Special Judge ran into error in ignoring the overwhelming evidence that squarely established abduction and subsequent recovery beyond a shadow of doubt; he adds that prosecution's failure on coordinate charge, does not tremor its case to the extent of abduction and, thus, a partial failure must not result into denial of justice to a victim, grievously wronged.

2. The incident dates back to 15<sup>th</sup> of September 2009 during late hours within the precincts of Police Station Shalimar when Aamir Shahzad (PW-4) had taken his wife and sister to a dentist in F-11; he left the family to himself offer *Ishaa* prayer; he failed to rejoin the family in inclement weather, that returned home on its own, latter to find him gone missing. On the following night at about 9/10:00 p.m, the complainant received a call from abductee's cell phone; an anonymous caller demanded for 25 crore as ransom. The vehicle was subsequently found abandoned near a filtration plant in F-11/4; the police were taken on board. Muhammad Afzal (PW-3), residing in the United States rushed back to rescue the abductee, no other than his brother; in his struggle to locate the abductee, he was approached by Abdul Ghafoor and Muhammad Makki accused; they offered him their good offices for a negotiated settlement; deal for finally struck for rupees 10 crore; it is in this backdrop, the Investigating Officer along with the witnesses, with photostat bills, discreetly confronted Aamir Rehman accused; in pursuance to his disclosure, they recovered the detainee from Flat No.5 of a high-rise building; Muhammad Makki and Alam Sher accused were also taken into custody from the scene. Dissatisfied with the police investigation, the family preferred a private

complaint to prosecute the offenders by producing as many as eight witnesses, CWs inclusive.

3. Heard. Record perused.

4. Spreading over 32 pages, the trial Court judgment deals, at inordinate lengths, with issues primarily peripheral in nature, highlighting lapses in the investigative process; it blames the complainant and her witnesses for some delay in their disclosures as well as certain omissions regarding place of abductee's confinement in the private complaint; concomitant discordance of a crisis devastating a terror stricken family has been unnecessarily overstretched to burden the prosecution to meet misconceived and artificial standards of proof, hardly relevant to the core issue while sidelining the preponderance of evidence furnished by the natural witnesses, with no axe to grind, rightly assessed by the High Court to have successfully driven home the charge.

Peaceful equilibrium in the society essentially requires a dynamic and realistic approach in administration of criminal justice, no doubt with all procedural fairness and safeguards, essential to ensure fair trial to an accused by keeping the scales in balance. The present case starts with recourse to law by abductee's sister on the following day of former's disappearance after the vehicle last used by the family was spotted abandoned; the episode started with a script that cannot be viewed as suspect. Muhammad Afzal (PW-3) rushed back from the United States to rescue his brother and it was in this backdrop that Muhammad Makki and Abdul Ghafoor emerged from the blue as the "saviors" ; the chain of circumstances, ultimately connects itself with the abductee, latched under the surveillance of his captors; consistent and confidence inspiring, preponderance of formidable evidence is halfheartedly met by the defence with bald denials alone. Prosecution's partial failure on the charge of section 365-A of the Act *ibid* as well as acquittal of Abdul Ghafoor on account of his absence from the scene at the time of raid on the D-day, though embarrassing to the prosecution, nonetheless, does not adversely reflect upon the integrity of the charge, firmly resting in the totality of chain of circumstances, ranging from abduction, surreptitious confinement of the abductee, ultimately leading to his recovery with accused on guard from a premise under their knowledge and occupation.

Acquittal is not an immutable divine declaration of redemption; it is adjudication by a tribunal manned by individuals, susceptible to error and, thus, in order to avoid miscarriage of justice, a duty is cast upon the Appellate Court to undertake an effective and meaningful scrutiny of entire evidence; the High Court has remedied a grievous wrong, thus, no interference is called for. Petitions fail. Leave declined.

**Judge**

**Judge**

**Judge**

Islamabad, the  
11<sup>th</sup> January, 2021  
Not approved for reporting  
Azmat/-