

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

**PRESENT:**

Mr. Justice Mushir Alam  
Mr. Justice Yahya Afridi  
Mr. Justice Qazi Muhammad Amin Ahmed

**Criminal Appeal No.475 of 2019**

*(Against the judgment dated 27.05.2015 passed by  
the Lahore High Court Lahore in CrI.A. No.158/2009)*

***Muhammad Kamran***

***...Petitioner(s)***

**Versus**

***The State***

***...Respondent(s)***

For thePetitioner(s): Ch. Muhammad Rafique Jathol,  
ASC

For the State: Mirza Abid Majeed,  
Addl. Prosecutor General Punjab

Date of hearing: 30.09.2019.

**JUDGMENT**

**Qazi Muhammad Amin Ahmed, J.-** Hamza Shahzad, 11, went missing along with his friend Hassan, 12, at 4:00 p.m. on 4.5.2006 from his house located within the precincts of Police Station City Satellite Town Sargodha; they were searched by the family without recourse to law, however, after receipt of an anonymous call on the following day at 3:00 p.m, his father Iftikhar Ahmad (PW-9) laid information with the police. The anonymous caller, without raising demand, assured the complainant children's safe conduct, however, subsequently he demanded ransom, finally settled as Rs.20,00,000/- paid by the complainant at the designated venue, situated within the area of Dera Ismail Khan on

11.5.2006; it was received by two persons with muffled faces riding a car soon whereafter the children were brought at the scene by an unknown person. The accused surprisingly returned a sum of Rs.31000/- to the complainant. Despite registration of a criminal case and return of abductees, the complainant opted to stay silent as late as till 21.8.2008 when he through a supplementary statement named the appellant alongside three others as the culprits; Waqar, Shahzad and Umair, named as privies to the transaction, were, however, let off by the police whereas the appellant was formally arrested on 01.9.2008; he was identified by the PWs in a test identification parade, held under magisterial supervision on 13.09.2008. Pursuant to disclosures, the appellant got recovered the car used in the occurrence, a .30-caliber pistol and a sum of Rs.700,000/-, secured vide inventories; he was alone to claim trial before the learned Special Judge Anti-Terrorism Court, Sargodha who returned him a guilty verdict vide judgment dated 16.01.2009; convicted under section 365-A of the Pakistan Penal Code, 1860 as well as section 7(a) of the Anti-Terrorism Act 1997, he was sentenced to imprisonment for life on both heads with concurrent commutation, pre-trial period inclusive with forfeiture of his property, upheld by the High Court vide impugned judgment dated 27.05.2015, *vires* whereof, are being assailed through leave of the Court.

2. Learned counsel for the appellant contends that prosecution story, inherently flawed, fails to inspire confidence and as such there was no occasion for the High Court to maintain the conviction; that complainant's silence despite registration of a case for an inordinate period, exceeding two years is a circumstance most intriguing with no explanation whatsoever; that non association of police despite knowledge and opportunity during the alleged delivery

of ransom amount is yet another aspect clamouring explanation. Rejection of appellant's supplementary statement qua three out of four nominated accused demolished the entire case, concluded the learned counsel. The learned Law Officer has defended the impugned judgment by arguing that the complainant had no axe to grind against the appellant, hounded by a criminal history. It is argued that since the appellant was arrested after having been found in custody in some other case, there was no occasion for the complainant to furnish information with the police. Regarding non association of the police, the learned Law Officer cited safety of the children as paramount consideration to outweigh legal formalities.

3. Heard. Record perused.

4. Though it is rather hard to contemplate a false accusation of abduction, bracketing one's own kith and kin, nonetheless, appellant's belated nomination as the central figure in the episode warrants serious consideration for reasons more than one. The witnesses are discrepant on fundamental issues of demand of ransom and the manner whereby it was paid to the appellant. According to the complainant (PW-9), the captor asked for a sum of rupees 4 crore whereas according to Hassan Javed abductee (PW-7) the demanded amount was rupees 20 lac; the latter is supported by Hamza Shahzad (PW-8), no other than complainant's son who endured captivity alongside the said witness. Even if the discrepancy is viewed as too trivial to cast bearing on the inherent fate of the case, still absence of Hassan Javed's family from the scene is mindboggling; equally devastated by the disappearance of their child, none approached the police or joined the complainant in his pursuit for recovery of the children. Absence of call data, otherwise technically available, to confirm alleged conversation from appellant's cell phone to

a landline PTCL number, subscribed by the complainant, a valuable piece of evidence to establish the alleged communication, is a missing link with obvious consequences. The genesis of supplementary statement is also fraught with doubts. According to the complainant, in his belated disclosure, he had nominated the appellant being the principal culprit, however, when confronted with supplementary statement Ex.DD, his name was conspicuously missing therein. Appellant's nomination by one of the abductees, namely, Hassan Javed (PW-7) in his statement Ex.DC, purportedly recorded on 8.9.2008 met the same embarrassment. Complainant's choice to let off three co-accused, initially nominated by him in his supplementary statement, is a last straw. To synchronize mutually destructive positions, taken after an appalling delay, to rescue the charge, resting on a moral paradigm, inherently lacking evidentiary certainty on appellant's guilt, is an option beyond juridical possibility. It would be grievously unsafe to maintain the conviction. Criminal Appeal is allowed; impugned judgment dated 27.05.2015 is set aside; the appellant is acquitted of the charge and shall be released forthwith, if not required to be detained in any other case.

**Judge**

**Judge**

**Judge**

Islamabad  
30<sup>th</sup> September, 2019  
*Not approved for reporting*  
Azmat/-