

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

**PRESENT:**

Mr. Justice Mushir Alam

Mr. Justice Yahya Afridi

Mr. Justice Qazi Muhammad Amin Ahmed

**Criminal Petition No.60 of 2017**

*(Against the judgment dated 20.12.2016 passed by the Peshawar High Court Peshawar in Cr. A. No.562-P/2015)*

***Inhaf Ullah***

*...Petitioner(s)*

**Versus**

***The State & another***

*...Respondent(s)*

For the Petitioner(s): Mr. Astaghfarullah, ASC

For the State: Ms. Ayesha Tasneem, ASC

Date of hearing: 07.04.2021.

**JUDGMENT**

**Qazi Muhammad Amin Ahmed, J.-** Atique, 6/7, was playing outside his house, located within the precincts of Police Station Bhana Marri, Peshawar on 16.10.2014; at 4:00 p.m, he took a bottle of water from his house to serve a passerby whereafter he vanished from the scene; according to the prosecution, he was whisked away in an alto car; the incident was reported same day by his brother Muhammad Aamir (PW-3); he also informed his father who was in China on a business trip and rushed back to join search for the child; after 3/4 days of the occurrence, an unknown person delivered fruit in two shopping bags to the complainant, purportedly sent by his father's friend Tariq; the fruit carried a chit bearing a cell phone number and a message about the captivity of the child with the dispatcher. The complainant handed over the *chit* to his father Umar Khan (PW-2). The family contacted the captors on phone who demanded Rs.2 crore as ransom, finally settled as Rs.800,000/-, paid at the designated place in lieu of abductee's release on 22.10.2014. As the investigation progressed, Inhafullah, Shahid, Musharaf Khan, Alif Khan, Shahzad Gul, Atlas alias Aslat and Asad Ullah were taken on board as accused; Inhaafullah petitioner, in response to a court question, was identified by Umar Khan (PW-2) as recipient of the

ransom. The learned trial Judge vide judgment dated 21.09.2015 proceeded to convict all the accused under section 365-A of the Pakistan Penal Code, 1860 and sentenced them to imprisonment for life; on appeal, the Peshawar High Court, barring the petitioner, acquitted all the accused from the charge vide impugned judgment dated 20.12.2010, *vires* whereof, are being assailed on a variety of grounds. It is argued that neither the complainant nor his father named or identified the petitioner in their examination-in-chief and it was in pursuance to a question prompted by the Court that Umar Khan (PW-2) reluctantly pointed his finger upon the petitioner, for the first time in the Court; according to the learned counsel, there was no occasion for the learned Judge to put Court question to a witness undergoing examination-in-chief to the detriment of the petitioner; that a different vehicle other than the one used in the occurrence was recovered, that too, upon the disclosure of a co-accused, since acquitted, and, thus, mere recovery of ransom amount statedly upon petitioner's disclosure without any identification mark is hardly sufficient to sustain the charge. Acquittal of six out of seven co-accused brought the entire edifice to the ground, concluded the learned counsel. The learned Law Officer has faithfully defended the impugned judgment.

2. Heard. Record perused.

3. Abduction of a small child for ransom is a most serious offence and it is hard to expect that a family would come up with a fake script, nonetheless, in the present case, we have noted glaring flaws and discrepancies that cannot be possibly ignored on a perceptual paradigm. According to the complainant, the incident had occurred on 16.10.2014 and reported same day in the absence of his father, present in China looking after some trade assignment, however, according to the latter, upon receipt of information, he rushed back and when the incident was reported on 19.10.2014. The discrepancy may be viewed as human error inasmuch as according to the record, the First Information Report was recorded on 16.10.2014, nonetheless, arrival of a message demanding ransom through an unknown person categorically claiming to have been dispatched by one Tariq without any reaction or response, in those testing hours, fails to inspire confidence. Similarly, without intervention of police, payment of ransom to the petitioner and immediate release of the child are circumstances no less intriguing either. No test identification parade was carried out to qualify the standard of proof within the contemplation of Article 22 of the Qanun-e-Shahadat Order, 1984. Similarly, petitioner's identification, with handcuffs in the dock, through intervention of the

Presiding Judge fails to commend our approval. The Court bears no responsibility either for the prosecution or the defence; it must maintain its neutrality to decide a case on the strength of evidence alone, essentially to be adduced by the prosecution itself to drive home the charge. No doubt, the trial Court is vested with ample authority to put questions to the witness, however, the power of this amplitude must be exercised with caution and circumspection, solely in aid of justice without disturbing equality in the scales; in the present case, incessant interventions by the trial Judge has grievously undermined testimony of a witness, otherwise mute and reticent on a fundamental detail of the case. Acquittal of six out of seven accused, though assigned different roles, nonetheless, equally blamed to have aided the crime, leaves nothing in the field. It would be unsafe to maintain the conviction Criminal petition is converted into appeal and allowed; impugned judgment is set aside; the appellant is acquitted of the charge and shall be released forthwith, if not required to be detained by law.

**Judge**

**Judge**

**Judge**

Islamabad, the  
7<sup>th</sup> April, 2021  
Not approved for reporting  
Azmat/-