

CERTIFICATE OF THE COURT IN REGARDS TO

SP. ATA 04/12 w/o other

M. Shahid @ Bahadur vs. The State

& others  
SINDH HIGH COURT

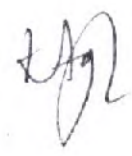
Composition of Bench. Single/D.B.

Dates of hearing: 14th & 15th April, 2020

Decided on 28-04-20

(a) Judgment approved for reporting.

Yes  
~~No~~



CERTIFICATE

Certified that the judgment \*/Order is based upon or enunciates a principle of law \*/decides a question of law which is of first impression/distinguishes/over-rules/ reverses/explains a previous decision.

\*Strike out whichever is not applicable.

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- NOTE:—(i) This slip is only to be used when some action is to be taken.  
(ii) If the slip is used, the Reader must attach it to the top of the first page of the judgment.  
(iii) Reader must ask the Judge writing the Judgment whether the Judgment is approved for reporting.  
(iv) Those directions which are not to be used should be deleted.

# IN THE HIGH COURT OF SINDH AT KARACHI

(Criminal Appellate Jurisdiction)

Special Anti Terrorism Appeal No. 04 of 2012

**PRESENTED**  
06-02-2012

**Muhammad Shahid alias Bahadur,  
Son of Rasool Bux (Jaffar) Muslim, Adult,  
by caste Brohi, Now Confined in Central Prison,  
Karachi.....**

6/2/12  
**Appellant.**

347

Versus

The State..... Respondents.

Crime NO.319/2007  
P.S Sachal Karachi  
Offence U/S.365-A & 34 PPC  
R/W Sec: 7 (e) ATA 1997

## CRIMINAL SPECIAL ANTI-TERRORISM APPEAL U/S 25 OF ATA ACT 1997

Being aggrieved and dis-satisfied with the judgment dated 31-01-2012 passed by learned Anti-Terrorism Court No. I, Karachi, in Special Case No.36 of 2007 titled (The State Vs. Muhammad Ibrahim and Others) in Crime No.319/2007 P.S Sachal Karachi for the offence U/S 365-A & 34 PPC R/W Section 7 (e) ATA 1997, convicting the appellant above named U/S 7 (e) of Anti-Terrorism Act 1997 and sentenced him to suffer imprisonment for life and forfeiture of property extending benefit of section 382-B Cr. P.C. The appellant above named prefer this appeal on the following facts and grounds with prayer that this Hon'ble Court may be pleased to admit this appeal and call for record and proceedings of the above Special Case, from the Court of Special Anti-Terrorism Court No.I, Karachi and after hearing allow this appeal and set aside the judgment dated 31-01-2012 and for any such other order as be deem fit and proper under the law and circumstances of the case.

*(Certified Copy of Impugned Judgment dated 31-01-2012 is attached herewith and marked as annexure "A")*



IN THE HON'BLE HIGH COURT OF SINDH AT KARACHI  
Special A.T. Appeal No. 10 of 2012.

1. Muhammad Ibrahim S/o Habib (P~~ro~~secuted under s 7(e) of ATA, 1997)
  2. Muhammad Saeed S/o Muhammad Ibrahim
- MUSLIMS, adults and presently confined in  
Central Prison Karachi ..... Appellants / Accused

V/S

The State

Respondent

Spl. Case No. 36 of 2007

FIR No. 319 / 2007

U/S 365-A / 34 PPC

r/w Section 7-e,

ATA, 1997

P.S. Sachal, Karachi.

APPEAL UNDER SECTION 25 (1) OF THE ANTI-  
TERRORISM ACT, 1997

Being aggrieved and dissatisfied with the Judgement dated 31.01.2012 passed by Anti-Terrorism Court No. I, Karachi in Spl. Case No. 36 of 2007 whereby the learned Trial Judge has convicted the appellants / accused u/s 365-A/34 PPC r/w section 7(e) of ATA, 1997 and sentenced to undergo life Imprisonment and forfeiture of their property. The benefit of Section 38-B Cr.P.C is also extended to them therein the Judgment.

1/5

31.01.2012

The charge sheet u/s 365-A/34 PPC r/w section 7 of Anti-Terrorism Act, 1997 against accused Muhammad Ibrahim @ Moro s/o Habib,

Special A.T. Appeal No. 4 of 2012

- 1- Amir Bux s/o Ramzan
  - 2- Nojammuddin s/o Haji Pigaroo Chandro
- Muslims, adults and presently confined in  
Central Prison Karachi

Appellants/Accused

V/S

The State - - - - - Respondent -

Spl. Case No. 36 of 2007

FIR No. 319/2007

U/s

365-A/34 PPC

r/w section 7-e,

ATA, 1997

P.S.

Sachal Karachi

APPEAL UNDER SECTION 25 (2) OF THE ANTI-TERRORISM  
ACT, 1997

Being aggrieved and dissatisfied with the judgment dated  
31-01-2012 passed by Anti-Terrorism Court No. I, Karachi in Spl.  
Case No 36 of 2007 whereby the learned trial Judge has imple-  
ted the appellants/accused u/s 365-A/34 PPC r/w section 7(e) of  
ATA, 1997 and sentenced to undergo life imprisonment and  
forfeiture of their property. The benefit of section 38 B  
Cr.P.C is also extended to them herein the Judgment.

1/5

31.01.2012

The charge sheet u/s 365-A/34 PPC r/w section 7 of Anti-  
Terrorism Act, 1997 against accused Muhammad Ibrahim @ Moro s/o Habib,



IN THE HIGH COURT OF SINDH AT KARACHI

Present:

Mr. Justice Mohammad Karim Khan Agha  
Mr. Justice Zulfiqar Ali Sangi.

**SPL. CRL. ANTI-TERRORISM APPEAL NO.04 OF 2012.**

Appellant: **Muhammad Shahid** alias Bahadur @ son of Rasool Bux (Jaffar) through Mst. Akhtar Rehana, Advocate.

Respondent: The State through Mr. Muhammad Iqbal Awan, Deputy Prosecutor General.

**SPL. CRL. ANTI-TERRORISM APPEAL NO.10 OF 2012.**

Appellant: **Muhammad Ibrahim** @ Moro son of Habib (Now Deceased) and **Muhammad Saeed** son of Muhammad Ibrahim through, Ms. Akhtar Rehana Advocate.

Respondent: The State through Mr. Muhammad Iqbal Awan, Deputy Prosecutor General.

**SPL. CRL. ANTI-TERRORISM APPEAL NO.11 OF 2012.**

Appellant: **Ameer Bux** @ Ghous Bux @ Ghouso Brohi @ Sudhir son of Ramzan through, Ms. Akhtar Rehana Advocate and **Najamddin** @ Najab @ Usman Chandio son of Haji Piyaro Chandio through Mr. Muhammad Munir Ahmed, Advocate

Respondent: The State through Mr. Muhammad Iqbal Awan, Deputy Prosecutor General.

Date of hearing: 14.04.2020 and 15.04.2020

Date of Judgment: 28.04.2020.

J U D G M E N T

MOHAMMAD KARIM KHAN AGHA, J:- Accused **Muhammad Ibrahim** (now deceased) @ Moro s/o Habib, **Muhammad Saeed** s/o Muhammad Ibrahim, **Amir Bux** @ Ghous Bux @ Ghouso Brohi @ Sudhir s/o Ramzan, **Najamddin** @ Najab @ Usman Chandio s/o Haji Piyaro Chandio and **Shahid** @ Bahadur Brohi s/o Rasool Bux **except absconding,**

**accused** Mashooq Ali Brohi s/o Jaffer Brohi, Wahid Bux @ Wahid Brohi s/o not known, Luqman Jatoi @ Akber Jatoi s/o not known, Abdul Rashid @ Rashid Burghari s/o not known, Azeem Gujar s/o not known, Peeral Brohi s/o not known, Peer Muhammad @ Peero @ Lapri @ Hassan Gujar s/o not known, Abdul Qadir @ Mujeeb @ Azeem Gujar s/o Abdul Razzak, Nawab @ Jalal Brohi @ Rashid Burghari s/o not known and Muhammad Bux @ Chaman @ Peeral Brohi, were tried by learned Judge, Anti-Terrorism Court No.1, Karachi in Special Case No.36 of 2007 arising out of Crime No.319/2007 u/s. 365-A/34 PPC read with Section 7 (e) of Anti-Terrorism Act, 1997 registered at P.S. Sachal, Karachi.

2. After trial vide judgment dated 31.01.2012 the appellants/accused **Muhammad Ibrahim** (Now deceased) @ Moro s/o Habib, **Muhammad Saeed** s/o Muhammad Ibrahim, **Amir Bux** @ Ghous Bux @ Ghouso Brohi @ Sudhir s/o Ramzan, **Najamddin** @ Najab @ Usman Chandio s/o Haji Piyaro Chandio and **Shahid** @ Bahadur Brohi s/o Kasool Bux (collectively referred to as the appellants) were convicted under section 6(e) of Anti-Terrorism Act, 1997, punishable under Section 7(e) of The Anti-Terrorism Act, 1997 and sentenced for life imprisonment and ordered for forfeiture of their properties. The benefit of Section 382-B Cr.P.C was also extended to them. The case against the proclaimed offenders was kept on dormant file till arrest or surrender of accused persons or till further orders.

3. Being aggrieved and dissatisfied by the judgment passed by learned Judge, Anti-Terrorism Court No.1 Karachi, these appeals have been preferred by the appellants against their convictions.

4. The brief facts of the prosecution case are that the complainant Sajjad Ahmed son of Nabi Bux lodged FIR at police station Sachal, Karachi on 05.07.2007 at 0100 hours, to the effect that he was working as Chowkidar at Plot Fatima Town, owned by Syed Rehan Zaidi. As per FIR on 04.07.2007 at about 2015 hours, the complainant and Mr. Shani along with his friends were sitting and after some time, his friends namely Kamran s/o Muhammad Akram, Muhammad Farooq s/o Haji Samad, Supervisor Adil Ibrar s/o Ibrar Hussain and Taxi Driver Sajid son of unknown went in Taxi No.PL-1721 to go for food. At about 2150 hours on Katcha road near plot Fatima Town, situated near Power House at the distance of 90/100 yards the taxi stopped and the complainant party



thought that perhaps the vehicle had broken down and when the taxi stopped two fires from repeater gun were made and the complainant party suspected that those fires were made by their gun man Ghulam Abbas. The complainant, Mr. Shah and his friends then went and checked the vehicle and found nothing in the vehicle. They looked for their friends but could not find them but under torch light they found mobile/cell Nokia 1112 of Mr. Adil and purse of Mr. Farooq at some distance from the place of incident inside the taxi. Mobile phone 6100 of driver was also found. As per the FIR the above persons had been kidnapped by unknown persons for unknown reasons, therefore, the complainant lodged above report in which he had requested for legal action.

5. Initially the investigation of the case was entrusted to ASI Sahab Khan, posted in Investigation Branch at police station Sachal, Karachi then on 06.07.2007, the culprits demanded ransom amount of Rs.2 crores from the complainant party for the release of the abductees, therefore, Section 365-A PPC was added to the FIR and the investigation was transferred to AVCC, Karachi which was entrusted to Inspector Attiq-ur-Rehman who conducted the investigation of the case. After conclusion of the investigation he submitted the charge sheet before the competent court of law. The charge was framed against the accused persons to which they pleaded not guilty and claimed to be tried.

6. To prove its case the prosecution examined 16 prosecution witnesses and exhibited numerous documents and other items and thereafter the side of the prosecution was closed. The statements of the accused were recorded u/s 342 Cr.P.C wherein they denied all the allegations and claimed false implication at the hands of the police. The accused however did not examine themselves on oath or call any witness in support of their defense case.

7. Learned Judge, Anti-Terrorism Court No.I, Karachi after hearing the learned counsel for the parties and assessment of evidence available on record, vide the impugned judgment dated 31.01.12, convicted and sentenced the appellants as stated above, hence these appeals have been filed by the appellants against their convictions.

8. The facts of the case as well as evidence produced before the trial court find an elaborate mention in the judgment dated 31.01.2012 passed by the trial court and, therefore, the same may not be reproduced here so as to avoid duplication and unnecessary repetition.

9. Learned counsel for appellant Najamuddin has contended that none of the PW eye witness abductees are reliable as they have not given a detailed account of their abduction, that there are contradictions in their evidence and that this is a false case concocted by them in order to con their parents in paying to them the ransom amount and as such their evidence should be discarded, that the identification of appellant Najamuddin has not been proven as no hulia was given of him in the S.161 statements of the abductees, that the identification parade can be ignored as it was a joint identification parade and no role was assigned to each appellant and for any of the above reasons the appellant should be acquitted of the charge by extending him the benefit of the doubt. In support of his contentions he has placed reliance on **Javed Khan alias Bacha V the State** (2017 SCMR 524), **Ghulam Hussain V The State** (2005 YLR 405), **Muhammad Shahid alias Shahdi** (2010 YLR 2950), **Sabir Ali @ Fauji V The State** (PLJ 2011 SC 401), **Shafqat Mehmood V The State** (PLJ 2010 SC 986) **Ghulam Qadir V The State** (2008 SCMR 1221), **Siraj ul Haq V The State** (2008 SCMR 302), **Muhammad Tufail V The State** (2013 SCMR 768) **Lal Pasand V The State** (PLD 1981 SC 142) and **Muhammad Amin V The State**.

10. Learned counsel for the appellants Muhammad Saeed, Muhammad Shahid and Ameer Bux has adopted the arguments of learned counsel for appellant Najamuddin and in addition has contended that the appellants were all shown to the abductees prior to their identification parades and as such the identification parades are of no legal value, that there was nothing to link the appellants to the ransom demand as no phone or SIM was recovered from them, the persons who they allegedly paid the ransom to could not have identified them as it was too dark, that no abductee took the police to the place where they were held captive and as such for any of the above reasons the appellants should be acquitted of the charge by extending them the benefit of the doubt. In support of her contentions she has placed reliance on unreported judgment of Supreme



Court Amir Bux alias Ghous Bux alias Gouso Brhohi alias Sudhri V The State (Cr. Appeal No.192 of 2017) dated 29.05.2018.

11. On the other hand learned Deputy Prosecutor General has fully supported the impugned judgment and contended that the abductee eye witnesses are reliable, trustworthy and confidence inspiring and fully implicate the appellants in the kidnapping for ransom, that the eye witnesses who paid the ransom prove that a ransom demand was made and paid and as such the prosecution had proved its case beyond a reasonable doubt against the appellants and all the appellants' appeals should be dismissed. In support of his contentions he has placed reliance on **Junaid Rehman V The State** (PLD 2011 SC 1135), **Muhammad Siddique V The State** (2020 SCMR 342), **The State V Haider Zaidi & others** (2002 SCJ 310) and **Zakir Khan V The State** (1995 SCMR 1793).

12. We have heard the arguments of the learned counsel for the parties, gone through the entire evidence which has been read out by the appellants, the impugned judgment with their able assistance and have considered the relevant law including that cited at the bar.

13. After our reassessment of the evidence we find that the prosecution has proved beyond a reasonable doubt the charges against each of the appellants for the following reasons;

- (a) The FIR in respect of the incident was filed within hours of the incident and such prompt filing of the FIR rules out the possibility of the complainant concocting a false case against the appellants with the police or any other third party. Even otherwise the complainant had no enmity with the appellants and had no reason to falsely implicate them in a case.
- (b) In our view the foundations of the prosecution's case rests on (a) the eye witness abductees (including magistrate) and eye witnesses who paid the ransom and the correctness of their identification of the appellants and (b) any evidence that any ransom demand was made.

Turning to the eye witness evidence of the abductees and those who paid the ransom.

(i) **Eye witness abductee PW 1 Muhammed Amin Sajjid.** He was the taxi driver who was abducted on 04.07.07. According to his evidence he drove to a plot in Fatima Town to meet some friends and on leaving in order to get something to eat he, Kamran, Farooq and Adil whilst riding in his taxi were stopped by 5 persons who made them get out of the taxi and made them walk for hours before being driven in a vehicle to a house where they were **detained in a room for 21 days** before 3 out of the 4 of them were released (including himself) and one was not released on 24 July after his family had paid the ransom. On 15-08-07 he picked out Muhammed Saeed and Muhammed Ibrahim at an identification parade as two of his kidnappers who used to bring food to him. At another identification parade held on 06.12.2007 he picked out Ghous Brohi and Najam Chndio as two other kidnappers and finally at an identification parade held on 05.04.2008 he picked out Muhammed Shahid as one of his kidnappers. Despite this eye witness correctly picking out the appellants at the identification parade in our view based on the particular facts and circumstances of the case where the eye witness abductee PW 1 Muhammed Amin Sajjid had been in captivity for **21 days** there was no need to hold an identification parade as over this period he would have got a good look at his kidnappers and would easily have been able to identify them. In this respect reliance is placed on **Ghazanfar Ali V The State** (2012 SCMR 215) which in relevant part at Para 13 at P.224 reads as under;

*“Even otherwise the holding of identification parade is not mandatory and it is merely a corroborative piece of evidence. If the statement of a witness qua the identity of an accused even in Court inspires confidence, if he is consistent on all material particulars and there is nothing in evidence to suggest that he is deposing falsely, the absence of holding of identification parade would not be fatal to the prosecution. In Harbajan Singh v. State of Jammu and Kashmir ((1975) 4 Supreme Court Cases 480), the Court upheld the conviction where no identification parade had been held and observed that the failure to hold identification parade would not be fatal in cases where enough corroborative and conclusive evidence was available. A similar view was taken in Jadunath Singh v. State of U.P. ((1970) 3 Supreme Court Cases 518). (bold added)*

Likewise in the case of **Zakir Khan V State** (1995 SCMR 1793) which was a case which also concerned kidnapping for ransom it was held by the supreme court as under;



*"A clear distinction was drawn between the circumstances where the witness only gets a glimpse of the accused who happened to be a stranger to him and where although the witness had met the accused for the first time but he had seen him several times. It was held that in the latter case the necessity of holding an identification parade could be dispensed with and the accused could even be identified in the Court for the first time. In the present case the kidnapee had remained with the accused sufficiently long not only to identify them by their faces but to identify them even by their names. This is not a case where a witness had only gotten a glimpse of the accused but in this case, admittedly he had remained with them during his captivity and had clearly seen their faces. Therefore, in our opinion, holding of an identification parade was not a mandatory requirement in the present case. The contention raised by the learned counsel for the appellants therefore, has very little force." (bold added)*

Again in the case of **The State V Haider Ali and others** (2002 SCJ 311) which was another kidnapping for ransom case the supreme court held as under;

*"Abductee lived in captivity of the respondents for 47 days and had seen them closely. He also conversed with them. Even if the evidence of identification test is excluded altogether, yet, his sole testimony is sufficient to conclusively prove that the respondents had abducted him."*

Even though in our view the identification parades were not necessary although there were some minor defects in the identification parades we consider that we can still also rely on them as a corroborative piece of the eye witnesses identification of the appellants based on the case of **Muhammed Siddique V State** (2020 SCMR 342) which held as under at Para 5 which is set out below;

*"5. Castigating severely the evidence of test identification parade, the learned counsel relied upon the guidelines laid down in the case of Kamwar Anwar 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 reparability 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

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."* (bold added)

The case which we are currently deciding attracts the above dicta as it is a case of sudden abduction. Even a delay in holding the identification parade of over a year was not fatal to the identifier correctly identifying the accused whilst in this case the identification parades were carried out relatively expeditiously. In this respect reliance is placed on the case of **Solat Ali Khan v. The State** (2002 SCMR 820) and in any event evidence flowing from an identification parade is **only a corroborative piece of evidence** and cannot supersede reliable, trustworthy, confidence inspiring direct evidence. In this respect reliance is placed on **Muhammad Ehsan v. The State** (2006 SCMR 1857).

This eye witness was a natural witness and not a chance witness. He had no enmity with the appellants and had no reason to falsely implicate them. His evidence was not dented despite lengthy cross examination and as such we believe that this eye witness has correctly identified all the appellants as playing a role in his kidnapping for ransom along with the other abductees.

(ii) **Eye witness abductee PW 3 Kamran Akram.** He was abducted on 04.07.07 along with taxi driver PW 1 Muhammed Amin Sajjid. Despite a lapse of two years in giving his evidence from the incident in his evidence he corroborates eye witness PW 1 Muhammed Amin Sajjid in all material respects. He specifically states that the kidnappers told him that they had kidnapped them for ransom and if no ransom was paid they would kill them. He, PW 1 Muhammed Amin Sajjid and PW 4 Farooq Ahmed were all released at the same time whilst PW 5 Adil was not released with them as according to his evidence PW 5 Adil's family had not paid the ransom. According to his evidence Adil was released 14 to 15 days after them. He attended 3 separate identification parades like PW 1 Muhammed Amin Sajjid where he picked out Muhammed Ibrahim, Najamuddin and then Ameer Bux and finally Muhammed Shahid as playing a role in his kidnapping. The same considerations apply to him as for eye witness abductee PW 1 Muhammed Amin Sajjid and for the same reasons we believe that he has correctly identified the appellants he mentioned as some of the persons who played a role in his kidnapping for ransom.

(iii) **Eye witness abductee PW 4 Farooq Ahmed.** The same considerations apply to him as to eye witness abductee PW 1 Muhammed Amin Sajjid and eye witness abductee PW 3 Kamran Akram. Their evidence corroborates each other in all material respects and at 3 separate identification parades he identified each of the appellants as being involved in his kidnapping for ransom. We believe this witness as well and

are of the view for the reasons mentioned in respect of the other 2 abducted eye witnesses mentioned above he has correctly identified all 5 of the appellants who played a role in his kidnapping for ransom.

(iv) **Eye witness abductee was PW 5 Adil Abrar Muhgal.** He gave the same evidence as eye witness abductee PW 1 Muhammed Amin Sajjid, eye witness abductee PW 3 Kamran Akram and eye witness abductee PW 4 Farooq Ahmed. Their evidence corroborates each other in all material respects. He states in his evidence that he was the abductee who was not initially released with the other abductees Sajjid, Kamran and Farooq but was kept in captivity because his parents had not paid the ransom. On 02.08.07 he was released after his parents had paid the ransom. Despite however identifying all the appellants at the identification parade he refused to do so in court and was declared hostile by the prosecution. **Thus, to be on the safe side we have discarded his evidence vis a vis the identification of the appellants.**

(v) **PW 2 Muhammed Ashfaq** is the magistrate who conducted the 3 separate identification parades of the appellants who were picked out by the eye witnesses mentioned above (including eye witness abductee PW 5 Adil Abrar Muhgal who later resiled from his identification of the appellants in court) who also prepared and exhibited all the memo's of identification parades which confirmed that each of the above eye witness abductees did identify each appellant as per their evidence before the identification parade which he carried out.

(vi) **Eye witness PW 6 Hafeez Ahmed** is the maternal uncle of PW 4 abductee Farooq Ahmed. He is not an abductee eye witness but is a witness to the ransom negotiations and an eye witness to identifying one of the persons who he paid the ransom amount to. He negotiated the ransom over a long period of time with the kidnappers along with PW 9 Imran Akram who was the brother of PW 3 abductee Kamran Akram and was an eye witness to the payment of the ransom and confirms in his evidence that PW 9 Imran Akram was recording their ransom negotiations with the kidnappers. According to his evidence the ransom was agreed as 10 lacs which was to be divided and paid equally by the family of each abductee. He, Abid and Imran left to pay the ransom as directed by the kidnappers. According to his evidence 3 persons came on a motorbike to an appointed place to collect the ransom. He handed over the ransom amount to one of them and then 3 abductees were released. He identified appellant Muhammed Shahid as one of the persons who came to collect the ransom in court. He was a



natural witness and not a chance witness who had no reason to falsely implicate the appellant Muhammed Shahid. Since in court identification has been generally deprecated by the supreme court we have only given a little weight to his identification of appellant Muhammed Shahid especially as he would only have got a fleeting glance at him at night time.

(vii) **Eye witness PW 9 Imran Akram** is the brother of PW 3 abductee Kamran Akram. He is not an abductee eye witness but is a witness to the ransom negotiations and an eye witness to identifying one of the persons who the ransom was paid to. He corroborates PW 6 Hafeez Ahmed in all material respects concerning the ransom negotiations with the kidnappers and the fact that he, PW 6 Hafeez and Abid went to pay the ransom. He also corroborates PW 6 Hafeez Ahmed about the amount to be paid and how the kidnappers sent them from place to place before 3 of them came on a motorbike and collected the ransom amount from PW 6 Hafeez Ahmed and thereafter released 3 of the abductees. He also identified appellant Muhammed Shahid as one of the persons who came to collect the ransom in court. He was a natural witness and not a chance witness who had no reason to falsely implicate the appellant Muhammed Shahid. Since in court identification is generally deprecated by the superior courts we have once again only given a little weight to his identification of appellant Muhammed Shahid especially as he would only have got a fleeting glance of him at night time. **Importantly** he also handed over the audio recording of the ransom demands which was made by the kidnappers on the equipment which was provided by the CPLC which is in line with his evidence and that of PW 6 Hafeez Ahmed.

Thus, based on our reassessment of the evidence of the above eye witnesses when taken together we find that the prosecution has proved beyond a reasonable doubt that all the appellants are guilty of kidnapping the abductees under section 365 PPC

The next issue is whether any demand for ransom was made so as to elevate the offense to one of kidnapping for ransom under section 365 A PPC.

- (i) It is well settled by now that to be guilty of the offense u/s 365 A PPC it does not need to be proved that a ransom was actually paid but only that a ransom demand was made. In this respect reliance is placed on **Sh. Muhammed Amjad V The State** (PLD 2003 SC 704)

- (ii) In this respect we have already believed the correctness of the identification evidence of eye witnesses abductees in respect of the appellants which was given by PW 1 Muhammed Amin Sajjid, PW 3 Kamran Akram and PW 4 Farooq Ahmed **all of whom gave evidence that they had been kidnapped for ransom by the appellants and would be released once their families paid the ransom and indeed they were so released** when a ransom was paid and having already believed their identification evidence we have no reason to disbelieve their evidence in respect of the ransom demands which they heard and were told about by their kidnappers.
- (iii) In addition we have already found PW 6 Hafeez Ahmed and PW 9 Imran Akram who dealt with the ransom negotiations to be witnesses whose evidence is reliable, trust worthy and confidence inspiring which corroborates each other in all material respects as to the ransom demand and payment of ransom. They are not chance witness as they are related to the abductees and as such it was they who had to arrange the ransom payment and according to them did pay the ransom. They have no reason to falsely implicate the appellants and as such we believe their evidence that a ransom demand was made by the appellants which was paid by them. Despite being related to the abductees since no ill will, enmity or prejudice has been suggested against them by any of the appellants we are of the view that we can safely rely on their evidence against the appellants. In this respect reliance is placed on **Ijaz Ahmed V State** (2009 SCMR 99)
- (iv) Furthermore, corroboration of the ransom demands is found in the cassette in which the ransom demands were recorded and which along with a transcript was exhibited at trial which is supportive of the evidence of PW 6 Hafeez Ahmed and PW 9 Imran Akram concerning the negotiations for the payment of ransom with the kidnappers for the return of the abductees.
- (v) In addition why would the appellants have released the abductees if no ransom had been paid after 21 days. It does not appeal to logic, reason or commonsense. In this respect reliance is placed on **Fayyaz Ahmed V State** (2017 SCMR 2026)
- (vi) The fact that the appellants withheld releasing one of the abductees until his ransom was paid is also supports the fact that ransom demands were made



and ransom was paid. Having received ransom for 3 abductees who had been returned it was only logical for the kidnappers to expect the family of the remaining abductee to pay the ransom for his release which was what happened as otherwise he would not have been released.

#### Other evidence and other considerations.

(i) That all the PW's are consistent in their evidence and even if there are some contradictions in their evidence we consider these contradictions as minor in nature and not material and certainly not of such materiality so as to effect the prosecution case and the conviction of the appellants. In this respect reliance is placed on **Zakir Khan V State** (1995 SCMR 1793). Their evidence provides a believable corroborated unbroken chain of events from the kidnapping of the abductees through to the ransom demands, the payment of the ransom and the eventual release of the abductees.

(ii) Undoubtedly it is for the prosecution to prove its case against the accused beyond a reasonable doubt but we have also considered the defense case to see if it at all can cast doubt on or dent the prosecution case. It is claimed by the appellants that this is a concocted case by the police on account of the police wanting to put pressure on one of the abductees to withdraw a case against police officers alleged to have been involved in a fake encounter but what is intriguing is that such ill will was not suggested to either PW 10 Shahib Khan who was the first IO or to PW 11 Muhammed Mithal who was the police officer who registered the FIR. Furthermore, if the idea was to pressure appellant Shahid Brohi what was the need to falsely implicate all the other accused. This was completely unnecessary and does not appeal to logic, reason or commonsense. Even otherwise the **key witnesses** in this case are **not** police officers but rather natural witnesses. With regard to the other eye witness abductees who were natural witnesses according to the evidence of PW 6 Hafeez Ahmed and PW 9 Imran Akram who received them shortly after their release the abductees were all in a bad state and as such it is highly unlikely that they orchestrated their kidnapping for 21 days. Furthermore, who looked after the abductee who was not released if the 4 abductees were orchestrating this entire affair. If the abductees were orchestrating this drama then why is it that they were not able to take the police to where they were held captive? The answer is because they did not know where they were held captive as this was no drama orchestrated by themselves in order to extort money from their families. Furthermore, none of the appellants gave evidence on oath or produced a single

witness in support of their defense case of false implication and as such for the reasons discussed above we disbelieve the defense case

(iii) **In kidnapping for ransom cases courts need to take a dynamic approach in assessing the evidence.** In the case of **Advocate General Sindh, Karachi v. Farman Hussain and others (PLD 1995 SC 1)**, in a kidnapping for ransom case it was observed as under:-

**"It is a matter of public knowledge that in Sindh, on account of kidnapping for ransom, commission of dacoities and other offences, the people are feeling unsecured. The learned trial court has dilated upon these aspects in detail. I am inclined to subscribe to the view found favour with it. The approach of the Court in matters like the case in hand should be dynamic and if the Court is satisfied that the offence has been committed in the manner in which it has been alleged by the prosecution the technicalities should be overlooked without causing any miscarriage of justice".** (bold added).

14. Thus, based on the above discussion especially in the face of reliable, trust worthy and confidence inspiring eye witness evidence and other corroborative/supportive evidence mentioned above we have no doubt that the prosecution has proved its case against all the appellants beyond a reasonable doubt for the offenses for which they have been convicted and sentenced and as such the appeals against conviction filed by all the appellants are **all dismissed** and the impugned judgment is upheld.

15. The appeals are disposed of in the above terms.