

IN THE HIGH COURT OF SINDH AT KARACHI

Special Anti-Terrorism Appeal No.118 of 2017  
Special Anti-Terrorism Appeal No.120 of 2017  
Confirmation Case No.05 of 2017

Present:

Mr. Justice Naimatullah Phulpoto  
Mr. Justice Mohammad Karim Khan Agha

Appellants: Muhammad Bilal son of Hazoor Bux and Mst. Reema w/o. Muhammad Bilal through Mr. Abdul Razzak, Advocate and Muhammad Waqar son of Abdul Qadeer through Syed Lal Hussain Shah, Advocate.

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

Dates of hearing: 29.10.2018 and 06.11.2018

Date of announcement: 13.11.2018

J U D G M E N T

**Mohammad Karim Khan Agha, J.-** Appellants Mohammad Bilal son of Hazoor Bux, Reema wife of Muhammad Bilal and Muhammad Waqar son of Abdul Qadeer have preferred these appeals against the impugned judgment dated 29.04.2017 passed by the learned Special Judge Anti-Terrorism Court No.II, Karachi in Special Case No.B-322/2013, F.I.R. No.212/2013 U/s., 365-A, 302/34 PPC r/w section 7 of ATA, 1997, registered at police station Azizabad, Karachi whereby the appellants have been convicted and sentenced as under:-

- (i) The accused Muhammad Bilal S/o. Hazoor Bux and Reema wife of Muhammad Bilal were in league with each other and had common intention, had kidnapped deceased Neha for ransom and thereafter murdered her as such awarded death penalty under section 7(a) & (e) of A.T.A. 1997 read with section 365-A/302/34 PPC of PS Azizabad. The sentence of death shall not be executed unless confirmed by the Honourable High Court of Sindh u/s. 374 Cr.P.C.
- (ii) The accused Muhammad Waqar is also in league with two accused Bilal and Reema as such he is sentenced to suffer R.I. for life under Section 7(e) of ATA, 1997. The benefit of section 382(b) of Cr.P.C is given to accused Muhammad Waqar.



2. The facts of the prosecution case are that complainant Riyasatullah lodged FIR No.212/2013 on 24.09.2013 at about 1615 hours that on the same date at about 11:00 a.m. his daughter Neha aged 14 years who was student of 4<sup>th</sup> class at Rose Season Grammar School Muhammadi Colony had gone to the school on 24.09.2013 and although the school closes at 12:30 p.m. his daughter had not reached home. He went to the school and found out that a woman had come who told the school administration that the mother of Neha was seriously ill and had taken Neha alongwith her at about 11:00 a.m. He had received a phone call from 0331-7029932 and the caller was asked that he wants to talk to Riyasat. His housemates told him that Riyasat is not at home upon which the caller closed the phone. His case is against a woman and unknown accomplices for alluring his daughter for committing zina.

3. The investigation was carried out and after completion of the same challan was submitted u/s 7(a) and (e) of the ATA 1997 vide crime No.212/2013 u/s 365-A/302/34 PPC r/w section 7 ATA 1997. On 21.05.2014 charge was framed against all three accused persons to which they pleaded not guilty and claimed trial.

4. In order to prove its case the prosecution examined 13 PW's who exhibited various documents in support of the prosecution case.

5. **PW-01** is Sub Inspection Atiq ur Rehman at Ex.P/1. He has produced the FIR as Ex.P/2. **PW-02 is complainant** Riyasatullah at Ex.P/3. He has produced his copy of CNIC as Ex.P/4, memo of inspection of place of incident as Ex.P/5, memo of arrest and recovery as Ex.P/6. **PW-03** is Wali Hassan at Ex.P/7. He has produced memo of inspection of dead body as Ex.P/8, inquest report u/s. 174 Cr.P.C. as Ex.P/9. **PW-04** is Tahir Baig at Ex.P/10 who allowed Bilal, Reema and Neha to stay at his house. He has produced memo of seizure of school bag of deceased Neha as Ex.P/11. **PW-05** is Muhammad Talha at Ex.P/12 who allowed Neha to leave school with Bilal and Reema. **PW-06** is Muhammad Ramzan at Ex.P/13. He produced the letter given to MLO for seeking cause of death as Ex.P/14, letter written to Edhi Cold storage as Ex.P/15, receipt of handing over the dead body to Imran as Ex.P/16, arrival entry No.18 at about 1400 hours at the PS on 26.09.2013 as Ex.P/17. **PW-07** is ASI Mehmood Ahmed at Ex.P/18 who discovered the dead body of Neha at



sea view beach. He produced memo of place of incident from where the dead body was found as Ex.P/19. **PW-08** is Syed Zaheer Ahmed Naqvi Senior Civil Judge Ex.P/20. He produced the sealed envelope containing the statement of witnesses as Ex.P/21, an application of I.O. dated 5<sup>th</sup> October 2013 as Ex.P/22, an application on which order was to produce the PWs before the Court for recording their statement as Ex.P/23, statement of witness Muhammad Talha as Ex.P/24, statement of the witness Tahir Baig as Ex.P/25. **PW-09** is Dr. Rohina Hassan at Ex.P/26, She produced her report as Ex.P/27. She also produced the letter of Jinnah Postgraduate Medical Centre as Ex.P/28, letter of the same letter-head page of Jinnah Postgraduate Medical Centre Karachi dated 26.09.2013 as Ex.P/29, cause of death as Ex.P/30. **PW-10** is Nadeem Ahmed Police Constable at Ex.P/31. He produced memo of arrest of accused Waqar as Ex.P/32. **PW-11** is Naheed at Ex.P/33 who was staying at Tahir Baig's house (PW 04). **PW-12** is Mansoor Ahmed Warsi at Ex.P/34 who was the first IO. He had produced his departure entry NO.27 at about 1635 as Ex.P/35, sketch of the place of incident as Ex.P/36, arrival entry NO.33 as Ex.P/36, letter written to SSP for taking the CDR from where the call had come 0331-7029932 as Ex.P/38, CDR of 5 page as Ex.P/39, departure entry No.11 at about 1155 from the PS for Jinnah Hospital as Ex.P/40. He also produced the receipt by which he had handed over the dead body to the legal heirs as Ex.P/41, arrival entry No.14 at 1730 hours on 26.09.2013 as Ex.P/42. **PW-13** is Inspector Ali Haider at Ex.P/43 who was the second IO of the case. He has produced entry No.51 at about 0050 hours by which information had come at his PS that at PS Azizabad FIR No.212/2013 has been registered and the investigation is given to him and his posting is transferred to PS Azizabad and by entry No.52 at about 0100 hours on 27.09.2013 he departed from his PS both the entries are on same page as Ex.P/44, arrival entry No.21 at about 1745 hours at PS Azizabad as Ex.P/45, entry NO.7 at about 1000 hours by which he had taken Riyasatullah and Talha and police party in police mobile as Ex.P/46, arrival entry No.13 at PS as Ex.P/47, memo of pointation of place of drowning Neha as Ex.P/48. He produced his departure entry No.12 and his arrival entry No.17 at PS on the same page as Ex.P/49, letter written for chemical examination of a slide and clothes of deceased Neha as Ex.P/50, report of chemical examiner as Ex.P/51, entry No.37 and entry No.40 as Ex.P/52, notice to witness Talha as Ex.P/53, notice given to witness



Tahir as Ex.P/54 and notice to accused Bilal as Ex.P/55 and to Reema as Ex.P/56. The prosecution had closed its side at Ex.P/57.

6. The accused persons recorded their statements under S.342 Cr.PC whereby they claimed their false implication in the case. They also, except accused Waqar, gave their statements on oath and also called four witnesses in their defense whose statements were recorded.

7. Learned Judge, Anti-Terrorism Court-II, Karachi, after hearing the learned counsel for the parties and assessment of the evidence available on record, vide the impugned judgment, convicted and sentenced the appellants as stated above, hence these appeals have been separately filed. By this common judgment we intend to decide the same.

8. The facts of the case as well as evidence produced before the trial Court find an elaborate mention in the impugned judgment, therefore, the same are not reproduced here so as to avoid duplication and unnecessary repetition although we shall discuss some of the key aspects of the same in deciding these appeals.

9. In a nutshell the case of the prosecution is that on 24-09-2013 at about 11am in the morning the accused Reema and Bilal through deceitful means convinced Neha a 14 year old school girl to leave school early and come with them so that they could take her to her mother who was unwell. For this the permission of the school accountant Muhammad Tahir (PW5) was sought and approved as apparently Reema was related to Neha who agreed to go with Reema. According to the prosecution case instead of the accused Bilal and Reema taking Neha to her mother who was not even unwell they kidnapped her with a view to demanding ransom from Neha's father Riyasatullah (PW 2). When his daughter Neha failed to return from school her father Riyasatullah went to the school where he was informed that Neha had been taken away by an unknown lady. Thereafter Riyasatullah and other family members started to frantically search for Neha and after some fruitless efforts reported Neha as missing to the police on the same day at 4.15pm where after an FIR under section 365 PPC was lodged against unknown persons. Shortly after this Riyasatullah received a phone call demanding RS 10 lacs otherwise his daughter would be killed. At this point it became a case of kidnapping for ransom under S.365 A PPC. According to the prosecution case after the



kidnapping accused Bilal, Reema and the abducted Neha went to the house of Tahir Baig (PW 4), an old friend of Bilal, at about 12 noon on the same day where they stayed up to Maghrib and thereafter left leaving behind a school bag which belonged to Neha which was supported by Naheed (PW 11) a relative of Tahir who was also present at the house when Bilal, Reema and Neha arrived. In the meantime the police were carrying out there usual investigations. On 26-09-2013 **two days after** Neha's abduction her dead body washed up on Clifton beach. The post mortem of Neha's body was carried out by Dr.Rohina Hassan (PW 9) who opined that she had died on account of asphaxia on account of obstruction to the respiratory passages (smothering) and that she had also been subject to sodomy. On 28-09-2013 **2 days after** the discovery of Neha's dead body IO Ali Haider (PW 13) called Muhammad Talha (PW5) to the PS to describe the person who took Neha from the school and whilst giving such description in front of Neha's father Neha's father considered the description to be similar to his niece Reema. Whereupon IO Ali Haider along with Talha, Neha's father and a police party went to Reema's house where Talha recognized Reema as the person who had come to the school and left with Neha. From Bilal's personal search a mobile phone was recovered along with two SIMS. Bilal and Reema then confessed the crime to IO Ali Haider and took the police party to the house of Tahir Baig (PW4) from where Neha's school bag was recovered containing her school books. Accused Bilal and Reema were then arrested. During interrogation Bilal informed the police that accused Waqar had given him the phone and SIM for demanding ransom from Neha's father and then took the police to Waqar's house who was also arrested in the case. Bilal and Reema confessed to IO Ali Haider that they were at Tahir's house when they heard that an FIR had been registered and that they panicked as Neha, if she was released, could clearly identify them as she knew them as they were related. Thus they took Neha by motorbike to a deserted part of seaview beach and took Neha with them into the sea. When the water was up to Neha's neck Bilal grabbed her by the neck and Reema by her feet and they both held Neha under the water until she stopped struggling and was laying still. They left Neha in the sea and went by motor bike first to their house and then to Neha's house to help with the search. They also took IO Haider to where they had drowned Neha. The prosecution also relied on numerous documents including the S.164 statements of PW's



Talha (PW5) and Tahir Baig (PW4) who identified Bilal and Reema before Civil Judge and Judicial magistrate Syed Ahmed Naqvi (PW 8) and indicted their role in the crime, various recoveries and CDR data of phone calls made from the SIM recovered from Bilal to Neha's father.

10. In a nutshell accused Bilal's defense was that he did not kidnap and murder Neha. He was at work on the day of the incident and joined the search for Neha as soon as he got free from work at about 8 to 9pm on the evening of the day of the incident. His wife accused Reema also denied the allegations and stated that she was in her own house on the day of the incident and later went to her maternal uncle's house (complainant) to help with the search for Neha. The defense case of accused Waqar is that he had nothing to do with the kidnapping for ransom or murder of Neha; that he made no phone calls to Neha's father; that he has been falsely implicated by the police; that he was not arrested from his house as alleged by the prosecution but was called to the PS and kept there for 10 days.

11. Learned advocate for the appellants Reema and Bilal contended that the case was cooked up by the complainant which was evident from the fact that the FIR was registered after an unexplained delay of 4 hours after the incident; that the FIR already mentioned the fact that the complainants daughter had been abducted with intention to commit Zina which he could not have known about at this time; that when he reached the school to collect his daughter at about 12.30pm and found that she had been taken he did not even bother to find out the name of the teacher who had allowed his daughter to leave or let alone ask about the lady who abducted her; that the accountant at the school (PW Talha) who had allowed Neha to go with Reema was a false and put up witness; that Tahir who allegedly produced the school bag of his daughter from his house was a false witness and that Neha's school bag had been planted by the police; that neither Reema or Bilal ever collected Neha from school nor took her to Tahir's house; that there was no evidence that Bilal had committed sodomy on Neha; that there was no evidence that either Bilal or Reema had made any ransom calls to the complainant; that there was no evidence that Bilal and Reema had murdered Neha apart from their extrajudicial confession before the police which had no value in the eyes of the law and thus for all the above reasons the prosecution had failed to



prove its case against Bilal and Reema in respect of any of the charges and since Bilal and Reema were entitled to the benefit of the doubt they should be acquitted of all the charges and the impugned judgment set aside. In support of his contentions he placed reliance on **Rizwan alias Abu Bakar v. The State** (PLD 2010 P.Cr.LJ 1296), **Muhammad Shah v. The State** (2010 SCMR 1009), **Shafqat Mehmood and others v. The State** (2011 SCMR 537), **Sabir Ali v. The State** (2011 SCMR 629), **Muhammad Hanif and another v. The State** (2006 SCMR 249), **Ali Gul v. The State** (2003 SCMR 201), **Syed Saeed Muhammad Shah and another v. The State** (1993 SCMR 550), **Tariq Pervez v. The State** (1995 SCMR 1345), **Naheed Akhtar v. The State** (2015 YLR 1279), **Muneer Ahmed and another v. The State** (PLD 2004 Karachi 478), **Wazir Muhammad and another v. The State** (2005 SCMR 277), **Muhammad Khan v. Maulana Bakhsh and another** (1998 SCMR 570), **Mehmood Ahmed and 3 others v. The State and another** (1995 SCMR 127), **Azeem Khan and another v. Mujahid Khan and others** (2016 SCMR 274), **Nasir Mehmood and another v. The State** (2015 SCMR 423), **Muhammad Zaman v. The State and others** (2014 SCMR 749), **Khalid @ Khalidi and 2 others v. The State** (2012 SCMR 327), **Muhammad Asghar alias Mannah and another v. The State** (2010 SCMR 1706) and **Muhammad Ishaque v. The State** (2007 SCMR 108).

12. Learned counsel for appellant Waqar submitted that there was absolutely no evidence against him apart from the extra judicial confession of Bilal and Reema before the police whereby they had alleged that he had provided them the mobile and SIM in order to make the ransom demands however since this was an extra judicial confession this had no value in the eyes of the law and as such the appellant Waqar should be acquitted of the all charges and the impugned judgment set aside.

13. On the other hand, Mr. Muhammad Iqbal Awan, Deputy Prosecutor General, who was also representing the complainant contended that with respect to Bilal and Reema the prosecution through trustworthy, reliable and confidence inspiring evidence had proved that Bilal and Reema had taken Neha from her school through deceit and thereafter confined her in the house of Tahir where Naheed was also present. That although there was some doubt about the ransom calls the last seen evidence coupled with the medical evidence and the fact that



Bilal and Reema had led the police to where they had murdered Neha at seaview beach by drowning fully corroborated their joint extra judicial confession made before the police to the effect that they had kidnapped and murdered Neha which under these circumstances since it had been corroborated by such unimpeachable evidence could be safely relied upon and as such the impugned judgment in so far as it related to the kidnapping and murder of Neha by appellants Bilal and Reema should be upheld and at a minimum they should be sentenced to life imprisonment. In support of his contentions he placed reliance on **Jaffar Ali v. The State** (1998 SCMR 2669) and **Sh. Muhammad Amjad v. The State** (PLD 2003 Supreme Court 704).

14. With regard to the prosecution case against Waqar he initially contended that Waqar was guilty of the offense so charged but when confronted with the evidence against Waqar very fairly conceded that there may be some doubt with regard to Waqar's involvement in this case.

15. 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.

16. Before deciding this case we would reiterate that kidnapping for ransom, sodomy and murder of a 14 year old girl is an extremely abhorrent and heinous crime for which the most severe penalty is applicable if proven against the accused. However, although we are cognizant of the fact that the law needs to be dynamic in criminal cases we cannot be so cavalier in our outrage as to caste aside some of the golden principles of criminal jurisprudence. Namely that it is for the prosecution to prove its case beyond a reasonable doubt against the accused based on cogent, reliable and trustworthy evidence on record (both oral and documentary) and that the accused is entitled to the benefit of the doubt and that it is the evidence and not our emotions or personal feelings or gravity or heinousness of the offense which must guide our decisions.

17. This view was recently emphasized by the Supreme Court in the case of **Azeem Khan** (Supra) which was a case also concerning kidnap for ransom and murder of a pre teenager which held as under at P.290 Para 32.



*"It is also a well embedded principle of law and justice that no one should be construed into a crime on the basis of presumption in the absence of strong evidence of unimpeachable character and legally admissible one. Similarly, mere heinous or gruesome nature of crime shall not detract the Court of law in any manner from the due course to judge and make the appraisal of evidence in a laid down manner and to extend the benefit of reasonable doubt to an accused person being indefeasible and inalienable right of an accused. In getting influence from the nature of the crime and other extraneous consideration might lead the Judges to a patently wrong conclusion. In that event the justice would be casualty."*(bold added)

18. In our view this case divides into four distinct parts as under which we shall deal with each in turn

- (a) Whether Neha was taken from the school deceitfully by Bilal and Reema and thereafter confined.
- (b) Whether any ransom demand was made by Bilal, Reema or Waqar to Neha's father (the complainant).
- (c) Whether Neha was sodomised by either Bilal or Waqar
- (d) Whether Bilal and Reema murdered Neha

Turning to the first part namely (a) Whether Neha was taken from the school deceitfully by Bilal and Reema and thereafter confined.

19. This part also ties in with whether the complainant cooked up the entire story in order to falsely implicate Bilal and Reema. In our view a delay in approximately 4 hours in lodging the FIR is not fatal in a case where a parents young child goes missing. This is because it is natural human conduct to initially search high and low for the missing child through friends and other Mohalla people. In this respect reliance is placed on **Rahat Ali V State** (2001 P.Cr.LJ P.98). We regard the fact that Zina was also mentioned in the FIR also as not being fatal to the prosecution case based on the facts and circumstances of this case. Namely, the complainant was an illiterate person; since it was his daughter he may have had some fears of rape; that this may have been added by the police without the complainant knowing. Likewise, in our view the failure of the complainant in not finding out the name of the person at the school who handed over his daughter to an unknown lady or inquiring about the identity of the lady who Neha was handed over to



and naming them in the FIR is not fatal to the prosecution case. In such cases of missing children initially the parent is seized with fear and anxiety for the safety of his child and his first actions on finding out about an abduction is immediately in a state of shock and frenzy to go looking for his child in the locality above all else.

20. Muhammad Talha (PW5) was the school accountant who gave evidence that he gave Neha permission to leave the school early with Reema and Bilal at about 11am on 24-09-2013 because Neha's mother was unwell and because Neha confirmed that Reema was related to her. Muhammad Talha is not a chance witness and is also a disinterested witness who had no reason to falsely implicate either Reema or Bilal. Since Neha was related to Reema and Neha agreed willingly to go with her PW 5 Muhammad Tahir would not have suspected that anything was wrong in such an arrangement especially as he had been deceitfully told by Reema and Bilal that Neha's mother was unwell. When IO Ali Haider PW 13 called Muhammad Tahir (PW5) to the police station for a description of who had taken away Neha he went to the PS and whilst describing such persons the complainant who quite naturally was also at the PS as he was pursuing his daughters case recognized the description being given by Talha as being similar to his niece Reema whereupon IO Ali Haider made the complainant take him and Mohammed Talha to Reema's house where Mohammed Tahir recognized Reema and Bilal as the people who had come to the school for Neha and who he had allowed Neha to go with. Reema and Bilal were then arrested and a mobile phone and SIM were recovered from Bilal. We find the evidence of Muhammed Talha to be reliable, trust worthy and confidence inspiring. Such evidence is further bolstered by the fact that based on the information provided by Bilal and Reema the police were lead to the house of Tahir Baig (PW 4) who gave evidence that at about 12.30pm on 24-09-2013 Reema, Bilal and Neha were all in his house which was corroborated by Naheed (PW11) in her evidence who was also living in the house who was not a chance witness and had no reason to falsely implicate Bilal and Reema. Furthermore, Naheed produced Neha's school bag which had been left behind by Neha which contained her school books which were exhibited at trial. Obviously Tahir Baig and Bilal were friends and Tahir Baig was also not a chance witness who had no reason to falsely implicate Reema and Bilal. Furthermore, they did not know the complainant so they had no reason to



foist Neha's school bag on Reema or Bilal as a part of any plan to falsely implicate them. Moreover, if they were part of this plan why did they not produce Neha's school bag themselves voluntarily before the police once they knew of Neha's death via the TV news before the police arrived at there house? If Bilal and Reema had not led the police to Tahir's house Neha's school bag may not have come to light at all. The only logical explanation for Neha's school bag being at Tahir Baig's house was that Neha had left it there when she came to the house with Reema and Bilal where she remained for between 6 to 8 hours on 24-09-2013. Thus, we find the evidence of Muhammad Talha, Tahir Baig and Naheed to be reliable, trust worthy and confidence inspiring especially when corroborated by the recovery of Neha's school bag in terms of Neha being deceitfully taken from school and then taken to Tahir Baig's house by Reema and Bilal and confined there for a minimum of 6 hours as per the evidence of Tahir Baig and Naheed. In this respect reliance is placed on **Muhammad Ehsan v. The State** (2006 SCMR 1857) where it was held at P.1860 at Para 6 as under:

"6. It is true that there is only ocular testimony of P.W. 4 Mst. Khatun Bibi corroborated by medical evidence, P.W. 6 Dr. Muhammad Sarfraz Sial. The fact that there is only ocular testimony of one P.W. which is unimpeachable and confidence-inspiring corroborated by medical evidence would be sufficient to base conviction. **It be noted that this Court has time and again held that the rule of corroboration is rule of abundant caution and not a mandatory rule to be applied invariably in each case rather this is settled principle that if the Court is satisfied about the truthfulness of direct evidence, the requirement of corroborative evidence would not be of much significance in that, as it may as in the present case eye-witness account which is unimpeachable and confidence-inspiring character and is corroborated by medical evidence**". (bold added)

21. S.365 PPC reads as under;

*"S.365 Kidnapping or abducting with intent secretly and wrongfully to confine person. Whoever kidnaps or abducts any person with intent to cause that person to be secretly and wrongfully confined, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine."*

22. Thus we find that the prosecution has proved beyond a reasonable doubt that Reema and Bilal have committed and are guilty of the offense under S.365 PPC of kidnapping or abducting with intent to secretly and



wrongfully confine Neha who they deceitfully lured away from school and confined at Tahir Baig's house for many hours. The charge in this case specifically charges Bilal and Reema with kidnapping Neha from school on 24-9-2013 for ransom demand of Rupees 10 lacs and as such the defense were already on notice that they had to defend a charge of kidnapping and as such are not prejudiced by this finding as they were able to lead evidence in their defense in respect of this offense which they did as is evident from the record.

**Turning to the second part (b) Whether any ransom demand was made by Bilal, Reema or Waqar to the complainant so as to escalate this offense of kidnapping to kidnapping for ransom under S.365 A PPC.**

23. The CDR data produced by the prosecution shows that the calls demanding the alleged ransom to the complainant came from cell no. 0331 7029932 which SIM was recovered from Bilal. The data reveals that 6 calls were made between 2.46pm to 3.27pm most of which were of a duration of over a minute. The first call at 2.46 lasted for 1.42 minutes when according to the complainant the caller rang off. All the other calls were of a similar duration except one only being 25 seconds and all came prior to registration of the FIR but no mention of any ransom demand was mentioned in the FIR which was recorded at 4.15pm after the calls. The SIM was also not kept in safe custody so could have been tampered with. Even otherwise the SIM was registered to **Shahaabuddin** and NOT Bilal, Reema or Waqar and yet no effort was made by the IO to track down or interview Shahaabuddin. In our view such evidence regarding the CDR records under these circumstances cannot be safely relied upon in order to implicate Bilal, Reema or Waqar in making any ransom calls to Neha's father. In this respect reliance is placed on **Azeem Khan's case** (Supra) where it was held as under at P.286 at Para 22

*"No voice record transcript has been brought on record. Similarly from which area the caller made the calls, is also not shown in it. Above all, the most crucial and conclusive proof that the cell phone was owned by the accused and SIM allotted was in his name is also missing. In this view of the matter, this piece of evidence is absolutely inconclusive and of no benefit to the prosecution nor it connects the accused with the crime in any manner."* (bold added)



24. Furthermore, no body else heard the alleged ransom demand and neither did the complainant tell any one about the same immediately upon receiving such demands. This all casts doubts on whether any ransom calls were made at all let alone by Bilal , Reema or Waqar. Furthermore, Bilal and Reema knew the complainant and knew that he was a very poor man and would not be able to pay RS ten lacs so it does not appeal to reason that they would make such a demand. Likewise if they wanted to keep their kidnap for ransom secret why did they take Neha to Tahir Baig's house where Naheed was also present who would have been able to give evidence against him and Reema once it became known that a ransom had been paid for the recovery of Neha. In our view when all the above factors are read together they do not appeal to the mind of a prudent and reasonable man nor to logic and commonsense. In this respect reliance is placed on **Mohammad Asif v. The State** (2017 SCMR 486).

25. Thus, whilst extending the benefit of doubt we are of the view that the prosecution has not been able to prove beyond a reasonable doubt that a ransom call was made in respect of the kidnapping of Neha and thus Bilal and Reema are acquitted of the charge under S.365 A for kidnapping for ransom.

26. With regard to appellant Waqar the only evidence against him with respect to the ransom calls is the extrajudicial confession by Bilal and Reema to the police whilst they were in custody that Waqar had given them the phone to make the ransom call. This extrajudicial confession has not been corroborated at all. Moreover it was made before the police during interrogation of Bilal and Reema and in our view is of no legal value as against appellant Waqar and as such the appellant Waqar is acquitted of the charge of kidnapping for ransom.

**Turning to the third part © Whether Neha was sodomised by either Bilal or Waqar.**

27. Although neither Bilal nor Waqar has been convicted for this offense they were charged with it, it was discussed in the impugned judgment and in our view it **has an important bearing on the truth surrounding this case especially the aspect of the murder of Neha** which we shall deal with later in this judgment.



28. The medical report found that Neha had been sodomised before her death and that traces of semen were found which were sent off for analysis. The prosecution case is that Neha was taken from school by Bilal and Reema and then to Tahir Baig's house where she according to the record stayed between 6 to 8 hours in the presence of Neheed before leaving at between 6 to 8pm and then based on last seen evidence was taken on motorcycle by Bilal and Reema to the seaside about 45 minutes away from Tahir Baig's house where Neha was taken into the sea and drowned by Bilal and Reema.

29. If the prosecution case is to be believed then either Bilal or Waqar sodomised Neha since these were the only two accused males who may have been in her company.

30. There is no evidence that Waqar was ever seen with Neha.

31. There is eye witness evidence that Bilal was seen with Neha leaving Tahir Baig's house with Reema on the day of the incident between 6 and 8 pm. However since the IO failed to take DNA samples from either Waqar or Bilal it cannot be established that they committed sodomy on Neha. This was a gross failing on the part of the IO since such a DNA report of Bilal or Waqar when compared with the semen obtained from Neha would either have linked Bilal or Waqar to the act of sodomy or not. If it would have linked to either of them it would have gone a long way in establishing that the one who was so linked by the DNA was most probably also guilty of her murder. As things stand with no DNA and no eye witness there is no way of knowing whether Bilal or Waqar committed sodomy with Neha which act stands medically proven and opens up the possibility that the act of sodomy was committed by a third party as well as Neha's murder.

32. As such the prosecution has failed to prove its case of the sodomy of Neha by either Bilal or Waqar.

#### **Turning to the fourth part (d) whether Bilal and Reema murdered Neha**

33. We have already found that Bilal and Reema left Tahir Baig's house with Reema between 6 to 8pm. The prosecution has no direct evidence



after this time as to what happened to Neha. The prosecution case after this time is based on three main aspects (a) the extra judicial confession of Bilal and Reema before the police (b) last seen evidence and (c) circumstantial evidence.

34. Turning to convicting the appellants on the basis of the extra judicial confession of Bilal and Reema whilst in police custody. It is settled law that for an extrajudicial confession to be relied upon extreme caution must be exercised and that it must be supported by some unimpeachable corroborative evidence in order to bring home a conviction. In the case of **Sajid Mumtaz V Basharat** (2006 SCMR 231) it was held as under at P.238 Para 17

"17. Last but not the least are the extra-judicial confessions of all the accused, out of whom those of Basharat and Mst. Naghma are joint one. This requires somewhat detailed discussion. This Court and its predecessor Court (Federal Court) have elaborately laid down the law regarding extra-judicial confessions starting from *Ahmed v. The Crown* PLD 1951 FC 103-107 up to the latest. **Extra-judicial confession has always been taken with a pinch of salt. In Ahmed v. The Crown, it was observed that in this country (as a whole) extra-judicial confession must be received with utmost caution. Further, it was observed from time to time, that before acting upon a retracted extra-judicial confession, the Court must inquire into all material points and surrounding circumstances to "satisfy itself fully that the confession cannot but be true." As, an extra-judicial confession is not a direct evidence, it must be corroborated in material particulars before being made the basis of conviction.**

18. It has been further held that the status of the person before whom the extra-judicial confession is made must be kept in view, that joint confession cannot be sued against either of them and that it is always a weak type of evidence which can easily be procured whenever direct evidence is not available. Exercise of utmost care and caution has always been the rule prescribed by this Court.

19. It is but a natural curiosity to ask as to why a person of same mind should at all confess. No doubt the phenomenon of confession is not altogether unknown but being a human conduct, it had to be visualized, appreciated and consequented upon purely in the background of a human conduct.



20. Why a person guilty of offence entailing capital punishment should at all confess. There could be a few motivating factors like; (i) to boast off, (ii) to ventilate the suffocating conscience and (iii) to seek help when actually trapped by investigation. Boasting off is very rare in such like heinous offences where fear dominates and is always done before an extreme confident as well as the one who shares close secrets. To make confession in order to give vent to ones pressure on mind and consciences is another aspect of the same psyche. One gives vent to ones feelings and one removes catharses only before a strong and close confident. In the instant case the position of the witnesses before whom extra-judicial confession is made is such that they are neither the close confident of the accused nor in any manner said to be sharing any habit or association with the accused. Both the possibilities of boasting and ventilating in the circumstances are excluded from consideration.

21. Another most important and natural purpose of making extra-judicial confession is to seek help from a third person. Help is sought firstly, when a person is sufficiently trapped and secondly, from one who is authoritative, socially or officially. The witnesses in hand before whom the confessions are said to have been made are of no social or official status. One Falak Sher (P.W.16) is a junior clerk in the office of the Deputy Commissioner, the other Noor Mohammad (PW.17) is a petty fodder-seller and the third Ahmed Taqi (PW.19) is a teacher in a private school. It is yet to be answered as to what help could they have rendered to the accused when involved in a heinous case of murder as well as abduction for ransom. Least to mention that the dead body having been recovered on 23<sup>rd</sup>, none of the accused had any apprehension of being suspected, involved or arrested on the day of making extra-judicial confessions. These are absolutely unnatural.

22. As observed by the Federal Court, we would reiterate especially referring to this part of the country, that extra-judicial confessions have almost become a norm when the prosecution cannot otherwise succeed. Rather, it may be observed with concern as well as with regret that when the Investigating Officer fails to properly investigate the case, he resorts to padding and concoctions like extra-judicial confessions. Such confession by now, have become the signs of incompetent investigation. A judicial mind, before relying upon such weak type of evidence, capable of being effortlessly procured must ask a few questions like why the accused should at all confess, what is the time lag between the occurrence and the confession, whether the accused had been fully trapped during



investigation before making the confession, what is the nature and gravity of the offence involved, what is the relationship or friendship of the witnesses with the maker of confession and what, above all is the position or authority held by the witness.

23. Seen in the above perspective and also that the extra-judicial confessions of Basharat and Mst. Naghma were joint, all are excluded from consideration. In view of what we have been confronted with on record, all the pieces of circumstantial evidence in the instant case are not wrongly to be placed reliance upon. The learned High Court was right in recording acquittal of the respondents. There being no force in the petitions, both are hereby dismissed and leave to appeal refused." (bold added)

35. The prosecution case is that the extrajudicial confession of Bilal and Reema is corroborated by the fact that the appellants took the police to where the body was found.

36. This **may** have been a piece of corroborative evidence if the body had not already been found and that the appellants were the only ones who knew where to find it as they had hidden it and hence the body was discovered on their pointation. However in this case the body had already been found by the police and the finding of the body and its location had been given wide publicity on the television. Thus, it would have been quite possible for the police to add this aspect to the confession themselves. Furthermore, the medical evidence does not entirely support the extra judicial confession in that the appellants contend that they drowned the accused yet according to the medical report no water was found in the lungs of the deceased. The medical report indicates that the cause of death was strangulation which would imply that the deceased was strangled and then put in the water.

37. Keeping in view the fact that we must take great care and caution before relying on an extra judicial confession made before the police and that it must be corroborated by unimpeachable evidence based on the particular facts and circumstances of this case where there is no unimpeachable corroborative evidence we are not inclined to give any weight to the extra judicial confession of Bilal and Reema and as such decline to convict Bilal and Reema on the basis of such extra judicial confession made during the investigation of the case before the police.



38. Turning to convicting the appellants on the basis of last seen evidence. There must be no other reasonable inference which can be drawn except that the accused has committed the offense after the victim was last seen in his custody. In the case of **Jafar Ali** (Supra) at P.2675 it was held as under

*"The consistent view of this Court has been that last seen evidence is not sufficient for establishing the crime where it requires making conjectures to connect the accused person with the crime or where there are reasonable possibilities that someone else has committed the offence, but if the chain of the fact is such that no reasonable inference can be drawn except that the accused has committed the offence after the victim has been last seen in his company, then in the absence of a reasonable explanation from the accused, this evidence can be relied upon for convicting him for the offence. In the case of Rahmat v. The State (PLD 1977 SC 515) on which the learned counsel has relied, the principle is laid down as under:-*

*"On a balance of the decided cases it appears that the circumstances of the deceased having been last seen in the company of the accused is not by itself sufficient to sustain the charge of murder. Further evidence is required to link the accused with the murder of his companion. Such as incriminating recoveries at the instance of the accused, a strong motive or the proximity of the time when they were last seen together and the time when the deceased was killed. Only then will the accused be called upon to give an explanation of the demise of the person who was last seen alive in his company."*

39. In this case the appellants left Tahir Baig's house with Neha at between 6 and 8pm and would have had to travel from North Karachi to sea view on their motorbike, which takes approximately 45 minutes, along with Neha. As mentioned earlier the medical evidence clearly proves that Neha was subject to sodomy before her death. As mentioned above when dealing with the offense of sodomy we do not know who was responsible for committing this act with her. If the DNA would have shown it to be Bilal then the last seen evidence would have been very strong but this was not the case. Furthermore, if Neha had been sodomised would she have gone quietly along with Bilal and Reema to the seaside and gone in the sea with them for a swim as alleged by the prosecution. We do not think so.



Neha was not a baby she was 14 years of age and thus when this act was committed on her she most likely would have run away or screamed and not have gone into the water voluntarily with Bilal and Reema as if she was enjoying a day at the beach. It would also have been dark in late September 2013 by between 7 and 8pm when Neha would have reached the seaside so why would she go swimming in her school uniform without a change of clothes. In our view none of the above appeals to reason. Reliance in this respect is placed on the case of **Muhammed Asif** (Supra) The fact that Neha was sodomised also means that it cannot be ruled out from the time Neha left Tahir Baig's house with Bilal and Reema she did not escape from them and was got hold of and sodomised and murdered by an unknown third party. Bilal and Reema also did not have a motive to murder her; no item of Neha's was recovered either from Bilal or Reema on their arrest; no blood stained clothes were recovered from Bilal and Reema nor any other reliable piece of evidence to connect them to Neha's murder after they left with her from Tahir Baig's house on the day of the incident.

40. Thus, we are of the view that based on the particular facts and circumstances of the case the last seen evidence alone in this case is insufficient to convict Bilal and Reema for the murder of Neha as other possibilities exist as to who may have killed her keeping in view the fact that she had been sodomised. The fact that a person would sodomise a 14 year old girl rather than have usual intercourse also does not appeal to reason and the likelihood of Bilal being the perpetrator also appears remote especially as his wife was with him from the time they left Tahir Baig's house until they allegedly murdered Reema

41. **Turning to convicting the appellants on the basis of circumstantial evidence.** This concerns such evidence that to infer guilt the incriminating fact must be incompatible with the innocence of the accused and the only explanation is the guilt of the accused as was held in the case of **Wazir Muhammed** (Supra) at P.283 Para 8 in the following terms:-

*"The question of circumstantial evidence and award of conviction has also been examined by this Court on different occasions in various cases and the judicial consensus seems to be that "the fundamental principle of universal application in cases dependent on*



*circumstantial evidence, is that in order to justify the inference of guilt, the incriminating fact must be incompatible with the innocence of the accused or the guilt of any other person and incapable of explanation upon any other reasonable hypothesis than that of his guilt."*(bold added)

42. Likewise in the case of **Azeem Khan** (Supra) at P.290 Para's 31 and 32 it was held as under:-

*"31. As discussed earlier, the entire case of the prosecution is based on circumstantial evidence. The principle of law, consistently laid down by this Court is, that different pieces of such evidence have to make one chain, an unbroken one where one end of it touches the dead body and the other the neck of the accused. In case of any missing link in the chain, the whole chain is broken and no conviction can be recorded in crimes entailing capital punishment. This principle is fully attracted to the facts and circumstances of the present case."*(bold added)

*"32.....In cases of circumstantial evidence, the Courts are to take extraordinary care and caution before relying on the same. Circumstantial evidence, even if supported by defective or inadequate evidence, cannot be made basis for conviction on a capital charge. More particularly, when there are indications of design in the preparation of a case or introducing any piece of fabricated evidence, the Court should always be mindful to take extraordinary precautions, so that the possibility of it being deliberately misled into false inference and patently wrong conclusion is to be ruled out, therefore hard and fast rules should be applied for carefully and narrowly examining circumstantial evidence in such cases because chances of fabricating such evidence are always there. To justify the inference of guilt of an accused person, the circumstantial evidence must be of a quality to be incompatible with the innocence of the accused. If such circumstantial evidence is not of that standard and quality, it would be highly dangerous to rely upon the same by awarding capital punishment. The better and safe course would be not to rely upon it in securing the ends of justice."*(bold added)

43. Although when dealing with extrajudicial confessions and last seen evidence as discussed above we have touched upon some aspects of circumstantial evidence it appears to us that based on the particular facts and circumstances of this case largely on account of the issue of the proven sodomy (but unknown by whom) there has been a break in the chain of evidence from Bilal, Reema and Neha leaving Tahir Baig's house until Neha's death as there exists the possibility that Neha escaped and



was thereafter sodomised and murdered by a 3<sup>rd</sup> party. Likewise the medical evidence of there being no water in the lungs of the drowned Neha does not seem to be consistent with Bilal and Reema's extra judicial confession concerning drowning

44. Even otherwise, if Bilal and Reema wanted to kill Neha and dispose of the body so that her disappearance could not be connected to them it does not particularly appeal to reason that they would take her on their motorbike for a 45 minute trip to the seaside where they could be caught by CCTV footage or other eye witnesses when they could have killed her in secret and hidden the body so that it would not be found.

45. Thus, based on the above discussion we are of the considered view that the prosecution has also failed to prove beyond a reasonable doubt that the appellants Bilal and Reema murdered Neha and thus they are acquitted of this charge of murdering Neha under S.302/34 PPC and under S.7 of the ATA 1997 and the confirmation reference is answered in the negative.

#### Summary:

1. Appellant Waqar's appeal against conviction is allowed and he is acquitted of all charges and he shall be released from custody unless he is wanted in any other custody case.
2. Appellants Bilal and Reema's appeals against conviction are allowed in connection with offenses under S.302, 34, 365 A PPC and under the ATA 1997 **however they both stand convicted of the offense under S.365 PPC of kidnapping or abducting with intent to secretly and wrongfully confine Neha who they deceitfully lured away from school and confined at Tahir Baig's house for numerous hours and are awarded 7 years RI each and ordered to pay a fine of RS 100,000 each. In case of default in payment of fine appellants Bilal and Reema shall suffer S.I for a further 6 months**

46. The office shall immediately transmit a copy of this judgment to the IGP Sind who shall ensure that during the investigation of all cases of rape and sodomy that tests are carried out in accordance with the law for semen on the victim and that DNA is taken from all accused so that it can be found out if they were the likely perpetrators of the crime or not through their DNA.



47. These criminal appeals and confirmation reference stand disposed of in the above terms.