

IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD

Cr. Spl. ATA Appeal No.D-108 of 2004.

Cr. Acquittal Appeal No.D-120 of 2004.

PRESENT

Mr. Justice Naimatullah Phulpoto

Mr. Justice Shamsuddin Abbasi.

Date of Hearing: 30.04.2018 & 15.5.2018.

Date of Judgment: 21.05.2018.

Appellants/accused: *Muhammad Sarwar s/o Muhammad Ali Arain
in Cr. Spl. ATA Appeal No.D-108 of 2004.
Through Mr.Badal Gahoti, Advocate.*

Appellant /The State: *In Criminal Acquittal Appeal No.D-120 of
2004.*

*Through Syed Meeral Shah Bukhari,
Additional Prosecutor General, Sindh and for
respondents in Criminal Special ATA Appeals
No.D-108 of 2004.*

Respondents: *In Criminal Acquittal Appeal No.D-120 of
2004.*

*Ghulam Sarwar and others through M/s
Hameedullah Dahri and Ayatullah Khowaja,
Advocates.*

JUDGMENT

NAIMATULLAH PHULPOTO, J:-

Appellants Muhammad Sarwar,

Haji Mohabbat Khoso, Pathan Khoso, Ghulam Sarwar, Umar, Abdul Latif, and Anwar were tried by learned Judge Anti Terrorism Hyderabad Division & Mirpurkhas at Hyderabad, in Crime No.10 of 1999, registered at Police Station Bandhi under section 365-A, 148, 149 PPC. On the conclusion of the trial vide Judgment dated 30.06.2004 Appellants Haji Mohabbat Khoso, Pathan Khoso and Muhammad Sarwar Arain were convicted and sentenced to imprisonment for life and to pay fine of Rs.200,000/- each and forfeiture of the property owned by them was ordered. In case of default in payment of fine they were ordered to suffer one year R.I. more. Co-accused namely Ghulam Sarwar Khoso s/o

Saifal Khoso, Umer s/o Bhawal Khoso, Abdul Latif s/o Abdul Jabbar Khoso and Anwar son of Haji Nihal Dahri were acquitted of the charge by extending them benefit of doubt. State also filed criminal acquittal appeal No.D-120 of 2004 against acquittal of the aforesaid accused persons. We intend to decide the aforesaid matters together to avoid the repetition as in both appeals evidence is same.

2. Brief facts of the prosecution case as disclosed in the FIR are that above accused persons named above along with late accused Allah Rakhio and absconding accused Haji Achar and others and three unknown dacoits on 5th March 1999, at night hours time armed with K.K and gun kidnapped Javed Iqbal and Nazeer Ahmed Arain for the ransom. It is alleged that accused demanded Rs.1500,000/- as ransom for the release of the abductees Javed Iqbal and Nazeer Ahmed. It is further case of the prosecution that ransom amount was demanded by accused from P.W. Tariq Masood in presence of P.Ws Sharif, Aijaz Ali. P.Ws/abductees Javed Iqbal and Nazeer Ahmed were released by the accused on receiving the ransom amount of Rs.1500,000/-. It is alleged that accused persons namely Haji Mohabbat Khoso, Pathan Khoso, Ghulam Sarwar Khoso and Umer Khoso were arrested and they were found in possession of unlicensed weapons like repeater, gun K.K. and 12 bore gun by the I.O. and the cases under Arms Ordinance were registered against them. It is also further case of the prosecution that accused persons by the commission of the above offence have created terror in the locality. Complainant Muhammad Shareef lodged F.I.R. under section 365-A PPC at PS Bandhi.

3. After usual investigation challan was submitted against the accused under the above referred sections.

4. Trial Court framed the charge against the accused Haji Mohabbat Khoso, Ghulam Sarwar, Pathan Khoso, Umar and Muhammad Sarwar at Ex.17. Accused pleaded not guilty

5. Amended charge was framed against accused Mohabbat Khoso, Muhammad Sarwar, Pathan Khoso, Umar, Anwar and Abdul Lateef at Ex.26. Accused pleaded not guilty and claimed to be tried.

6. In order to prove its case, prosecution examined complainant Muhammad Shareef on 6.3.2003 at Ex.34 who produced F.I.R. No.10 of 1999 at Ex.34/A. Evidence of Mashir Muhammad Tahir who acted as Mashir of identification of accused Pathan, Ghulam Sarwar and Haji Mohabbat was recorded on 8.3.2003 at Ex.35. Prosecution examined P.W. abductee Javed Iqbal at Ex.37. P.W. Nazeer Ahmed abductee at Ex.38, P.W. Tariq Masood at Ex.46, P.W. Aijaz Ali was examined on 14.6.2004 at Ex.47. P.W. Muhammad Imran Adil at Ex.48, P.W. SIP Ghulam Rasool, who recorded statement of complainant under section 154 Cr.P.C. and investigated the case at Ex.49. P.W. Inspector/SIO Fida Hussain was examined at Ex.50, who produced Mashirnama and F.I.R. at Ex.50/A. P.W. ASI Muhammad Essa arrested accused Mohabbat Pathan, Ghulam Sarwar, he was examined at Ex.52, SIP/SIO Abdul Hameed of Police Station 'A' Section Nawabshah at Ex.53, P.W. ASI Muhammad Yousuf at Ex.55, P.W. SIP Muneer Ahmed who arrested accused Anwar Dahri and his evidence was recorded at Ex.57, P.W. SIP Dur Muhammad who arrested accused Abdul Lateef Khoso at Ex.58 and produced Mashirnama at Ex.58-A, P.W. Mr. Saleem Qambrani Joint Civil Judge & FCM Nawabshah conducted identification parade of accused Anwar on 2.6.2000 has been examined on 26.6.2004 at Ex.59 who produced memo of identification parade at Ex.59-A, P.W. Inspector / I.O. Mazhar Hussain investigated the case and received spy information during investigation that accused Mohabbat Khoso, Pathan Khoso and Ghulam Sarwar and their accomplices have detained the abductees in their captivities. He proceeded to the pointed place where abductees were detained. It is stated that encounter took place. Later on I.O. arrested accused Mohabbat, Pathan and Sarwar Khoso within their limits of Police Station Nausheroferoze. Thereafter, prosecution side was closed.

7. Statements of the accused Haji Mohabbat Khoso, Ghulam Sarwar, Pathan Khoso, Anwar Dahri, Umer Khoso, Abdul Lateef and Muhammad Sarwar were recorded under section 342 Cr.P.C. at Ex.63 to 68 respectively. Accused claimed false implication in this case and denied the prosecution allegations.

8. Trial Court after hearing the learned counsel for the parties and assessment of evidence vide Judgment dated 30.06.2004 convicted accused Haji Mohabbat Khoso, Pathan Khoso and Muhammad Sarwar Arain and sentenced to imprisonment for life and to pay fine of Rs.200,000/- each and forfeiture of the property owned by them was ordered. In case of default in payment of fine, they were ordered to suffer rigorous imprisonment for one year more. Accused namely Ghulam Sarwar Khoso s/o Saifal Khoso, Umer s/o Bhawal Khoso, Abdul Latif s/o Abdul Jabbar Khoso and Anwar son of Haji Nihal Dahri were extended benefit of doubt and acquitted of the charge.

9. Mr. Badal Gahoti, Advocate for Appellant Muhammad Sarwar made following submissions:-

- (i) That the name of Appellant Muhammad Sarwar did not transpire in F.I.R. recorded under section 364 PPC.
- (ii) That there was no allegation against Muhammad Sarwar that he had kidnapped abductees for ransom but there is only allegation against him that he received the ransom.
- (iii) That the F.I.R. was lodged against Muhammad Sarwar bearing crime No.44 of 1999 P.S. Bandhi under section 506(2), 215 PPC but name of Muhammad Sarwar was not mentioned in the said F.I.R.
- (iv) That after arrest of accused Muhammad Sarwar no identification parade was held through any of the witness before any Magistrate.
- (v) That no ransom amount was recovered from Appellant Muhammad Sarwar during investigation.

- (vi) That both abductees namely Javed Iqbal and Nazeer Ahmed did not implicate Appellant Muhammad Sarwar at trial.
- (vii) That only the piece of evidence collected against Muhammad Sarwar was that he was identified by P.Ws. Muhammad Sharif, Tariq Masood and Aijaz before the trial Court after 05 years of the incident.
- (viii) That Appellant Muhammad Sarwar was arrested during investigation a 30 bore pistol was recovered from him. A case under section 13(d) of the Arms Ordinance was registered against him and he was acquitted in Arms Ordinance case by IInd Judicial Magistrate Nawabshah in Criminal Case No.240 of 2002 vide Judgment dated 16.4.2003. Copy of the Judgment has been produced by Muhammad Sarwar in his statement recorded under section 342 Cr.P.C.
- (ix) That co-accused Ghulam Sarwar, Anwar, Umer and Lateef have been acquitted by the trial Court on same set of evidence.
- (x) That Appellant Muhammad Sarwar has been falsely involved in this case as Muhammad Sarwar deposed against I.O. S.H.O. Mazhar Hussain in criminal complaint No.37 of 1999, filed by co-accused Dildar before S.D.M. Naushero Feroze.
- (xi) That Investigation Officer admitted this fact in his cross examination.
- (xii) That there are material contradictions in the evidence of the witnesses namely Muhammad Shareef, Tariq Masood and Aijaz with regard to the receipt of the ransom by Appellant Muhammad Sarwar.
- (xiii) That place of incident has also not been established by the prosecution at trial.
- (xiv) That during the captivity of the abductees there was police encounter none received injury from either side.
- (xv) After release of the abductees they went home for 15 days and did not appear at Police Station for recording of their statements.

(xvi) Identification of the accused was not conducted by the concerned Magistrates while observing the legal formalities.

(xvii) It has come on record that before holding of identification parade accused was shown to the abductee.

In support of his contentions he has relied upon the cases reported as ***FAIZ-UR-REHMAN v. THE STATE*** (2012 SCMR 538), ***MUHAMMAD TUFAIL v. THE STATE*** (2013 SCMR 768), ***MURSAL KAZMI alias QAMAR SHAL v. THE STATE*** (2009 SCMR 1410), ***MAH GUL v. THE STATE*** (2009 SCMR 4), ***ASIF JAMEEL v. THE STATE*** (2003 MLD 676), ***IRSHAD ALI alias ISHOO v. THE STATE*** (P.L.D. 2006 Karachi 178) and ***TARIQ PERVEZ v. THE STATE*** (2005 SCMR1345).

10. Syed Meeral Shah Bukhari, A.P.G. argued that abductees Javed Iqbal Arain and Nazeer Ahmed have fully implicated the Appellant Muhammad Sarwar in the commission of the offence. He has further contended that Appellant kidnapped the abductees for the ransom and after receipt of ransom abductees were released. He further argued that trial Court has properly appreciated the evidence according to the settled principle of law. He prayed for dismissal of the appeal filed by the Appellant Muhammad Sarwar.

11. Syed Meeral Shah Bukhari, A.P.G. appearing on behalf of the Appellant/State in Criminal Acquittal Appeal No.D-120 of 2004 has made following submissions:-

(i) That the trial Court did not appreciated the evidence against the Accused /respondents brought on record by the prosecution.

(ii) That both abductees implicated respondents/acquitted accused in their evidence brought on record before the trial Court.

(iii) That the finding of the trial Court is based on misreading and non-reading of the evidence brought on record before the trial Court.

12. Mr. Hameedullah Dahri, Advocate for respondent No.4/ acquitted accused Anwar made following submissions:

- (i) That Anwar/respondent was acquitted by the trial Court as his identification parade through the witnesses was held by Assistant Mukhtiarkar in the Jail premises and it was not according to the rules.
- (ii) That trial Court rightly acquitted respondent/accused.

13. Mr. Ayatullah Khawaja, Advocate for respondent No.1 Ghulam Sarwar made following submissions.

- (i) Respondent No.1 Ghulam Sarwar had rightly been acquitted by the trial Court and trial Court has assigned sound reasons for his acquittal.
- (ii) Relatives of Ghulam Sarwar had filed application under section 491 Cr.P.C. against S.H.O. before Sukkur Bench regarding illegal detention of Ghulam Sarwar and others.
- (iii) Ghulam Sarwar has been acquitted in police encounter as well as in the case under Arms Ordinance.

Learned advocates for the respondents/ acquitted accused In support of their contentions relied upon the cases reported as **MIR HASSAN v. THE STATE** (2013 Y.L.R.1905), **FAHEEM AHMED FAROOQUI v. THE STATE** (2008 SCMR 1572) and **IRSHAD ALI alias ISHOO v. THE STATE** (P.L.D.2006 Karachi 178).

14. We have carefully heard the learned counsel for the parties and scanned the entire evidence available on record.

15. Facts of this case and evidence find an elaborate mention in the judgment of the trial Court, as such, there is no need to repeat it.

16. At the cost of repetition we discuss evidence of both abductees, I.Os and Civil Judge & F.C.M. and Mukhtiarkar for just decision of these cases.

P.W. Javed Iqbal [Abductee] has deposed that on 5.3.1999 he along with his maternal uncle Nazeer Ahmed left house in the Car to give Indent to the driver at about 8-15 p.m. They reached at Khaskheli watercourse there was jungle from both the sides. At that time all of sudden 12 persons emerged. They were armed with hatchets and guns. Car was stopped. He along with his maternal uncle was abducted in the Car by the culprits and detained at some unknown place in jungle. He had written 'chit' to his relatives for making arrangement of Rs.50,00,000/- and his uncle had written 'chit' of ransom of Rs.20,00,000/- for their release. He has further stated that he was released on 14.6.1999 and his maternal uncle Nazeer Ahmed 15 days prior to his release from the detention of the culprits and he was dropped by the culprits at Protective Bund near Dadu and his 161 Cr.P.C. statement was recorded by police on 16.6.1999. His 164 Cr.P.C. statement was also recorded and identification test was held for three accused persons.

In the cross examination abductee Javed Iqbal has admitted that during captivity in the jungle there was police encounter. He has further stated that police asked him to appear before Mukhtiarkar for identification parade as some suspects have been arrested. He along with Nazeer Ahmed abductee went to the office of Mukhtiarkar. He has stated that he identified the accused persons in the identification parade.

P.W. No.4 Nazeer Ahmed was abductee. He has given the same episode of the incident there is no need to repeat it. But in the cross examination has admitted that after their abduction there was police encounter. Police fired upon dacoits and the dacoits also fired on the culprits but nobody had sustained any injury. He has further stated that he was released by the culprits on 1.6.1999. Regarding identification parade, he has deposed that it was held before Assistant Mukhtiarkar and he identified accused Mohabbat Khoso, Sarwar and Pathan. From the evidence of Nazeer Ahmed abductee it is clear that it was joint identification parade of accused Mohabat, Sarwar and Pathan.

P.W. Mazhar Hussain Investigation Officer has deposed that on 09.03.1999 he was posted as SHO at P.S Bandhi, when, the case of this crime No. was delivered to him for the purpose of further investigation, during the course of investigation, he received spy information that accused persons of this case namely Haji Muhabbas Khoso, Pathan Khoso and Ghulam Sarwar Khoso and their associates were the culprits. On receiving this information, on 15.03.1999, he along with the police staff of different police stations, vide entry No.21/99 at about 5:30 a.m., went to the village of the accused Muhabbat Khoso entry was made at P.S Naushero Feroz, wherefrom H.C Allahdino was also taken by I.O for his assistance. Police reached at the house of accused Muhabbat Khoso, the father of the abductee namely Choudhri Manzoor Ahmed was with police. The dacoits on seeing he police party opened fires upon police with intention to kill us, Police, after taking the position also fired upon them. During the course of firing, ASI Ali Hyder identified dacoits Haji Muhabbat Khoso, Pathan Khoso, Ghulam Sarwar Khoso. Firing continued for 15 minutes. The dacoits along with the abductees succeeded in running away in bushes. Police searched for these culprits but could not trace out them. Police went to the place where these dacoits were sitting, where there were beds and two "cappals". Choudhri Manzoor disclosed that these "chappals" belonged to his son abductee. Thereafter, he went to the P.S Naushero Feroz where he lodged an F.I.R. bearing Crime No.27/1999 u/s 353, 324, 149 PPC. He produced attested copy of FIR 27 as Ex.60/A. this case was challenged by the Naushero Feroze P.S before the court of concerned Court. During investigation on 11.06.1999, I.O. was informed by S.H.O. P.S Nashwero Feroze that he had arrested accused Muhabbat Pathan and Sarwar Khoso. On the same date, I.O. left the P.S along with his staff and reached at the P.S Nashero Feroz. The accused were found confined in lock-up of P.S Naushero Feroz they were arrested in this case. The mashirs were Muhammad Eissa and P.C Sikandar. On 12th June we got remand of the accused from the court of learned Civil Judge Nawabshah. On 13th June the accused were brought at the P.S Bandhi for the purpose of interrogation during the course of interrogation, the accused

person voluntarily prepared to produce crime weapons which they had used in the commission of offence. I.O. along with police party and the accused persons left the P.S to village of Anwar Dahri. Accused Haji Mohabbat voluntarily produced from bushes one K.K and one magazine along with 30 bullets. The No. of K.K was 03241 Made in Pakistan. It was secured it was in working order. Subsequently, accused Pathan Khoso produced Repeater gun along with 10 cartridges. The accused Ghulam Sarwar Khoso had produced S.B gun along with 10 cartridges, from plastic bag. I.O. secured these weapons prepared such mashirnama in presence of mashirs ASI Khalid Husain, H.C Muhammad Eissa. The accused were asked about licenses of these weapons, they disclosed that they had no licenses. Subsequently, I.O returned to P.S Bandhi and lodged FIR against three accused namely Muhabbat Khoso bearing crime No.27/99. I.O lodged FIR bearing crime No.28/99. This FIR was lodged against accused Pathan and accused Ghulam Sarwar Khoso. I.O recorded the statements of P.Ws. under section 161 Cr.P.C. On 26.06.1999, the abductees appeared at the P.S Bandhi I.O. went along with the abductee Javed Iqal and visited place of occurrence. It was shown by Javed Iqal. I.O prepared mashirnam of the place of occurrence. The place of occurrence was situated in Khaskheli Water Course. Abductees were directed also to appear before the Assistant Mukhtiarkar Nawabshah for recording 164 Cr.P.C statements and identification parade. I.O. reached before concerned court and handed over the custody of the accused persons to the Assistant Mukhtiarkar for the purpose of identification parade. After the identification parade custody of the accused persons was delivered to police by the concerned Assistant Mukhtiarkar. Then 164 Cr.P.C statements of the P.Ws were recorded by Mukhtiarkar. The case was finally challaned showing three accused persons in custody and remaining were shown as absconders. This challan was submitted on 19th June, 1999. Absconding accused were Umer Khoso, Barkat Khoso, Latif Khoso, Achar Khoso, Allah Rakhio Waggan and Anwar Dahri. I.O. admitted in cross examination that the culprits had dired when police party was 40/50 paces away from them. Police had fired but nobody was injured during firing and no

abductee injured, no damage was caused to mobile van. I.O. admitted that accused Anwar Dahri and Dildar Khoso had filed petition against him before High Court. I.O. has admitted that weapons produced in the Court were not sealed and recovered weapons were not sent to Ballistic Expert.

P.W. Mr. Saleem Qambrani Civil Judge & F.C.M. has deposed that 02.06.2000, he was posted as Joint Civil Judge and FCM Nawabshah, SHO P.S. Bandhi submitted letter to hold the identification parade for accused Anwar S/o Nihal Dahri. Identification test was held under his supervision in District Jail Nawabshah. Magistrate arranged for 10 dummies in Jail. After completing all the formalities, the handcuff of the accused was ordered to be removed. The directions were given to the accused to stand according to his own choice he stood at Sr. No.2 in a row of dummies. He called P.W Javed Iqbal through Constable of the Jail Nawabshah. This P.W appeared identified accused standing at Sr. No.02 to be the culprit. Second time, row of the dummies was arranged and accused was directed to take position on his own choice. He had taken position at Sr. No.06 in the row of dummies. P.W Javed Iqbal was called and he had rightly picked out accused Anwar at Sr.No.06. Third time, accused was asked to take his position according to his own choice along with the dummies, he had taken his position at Sr.No.09, thereupon P.W Javed Iqbal was called and he picked out accused Anwar. Magistrate prepared the mashirnama in presence of mashirs S. Sikandar Shah and Fareed Ahmed Awan. Magistrate admitted in cross that in the identification memo he had not written the names off dummies but they were UTPs. He has admitted that the identification memo did not mention the role assigned to accused. It is admitted in cross that in the remarks Magistrate has mentioned the accused was shown to Javed Iqbal 10/15 minutes prior to him through HC No.444 Ibrahim Gul of Jail Police in the Office of Assistant Superintendent Jail S.H.O. Bugthi was also in the office.

P.W. Anwerdin has deposed that on 16.06.1999, he was Assistant Mukhtiarkar at Nawabshah, when SHO P.S. Bandhi had submitted letter before him for holding identification test of accused persons namely Haji Muhabat

Khoso, Ghulam Sarwar Khoso and Pathan Khoso. The SHO disclosed that P.Ws Javed Iqbal and Nazeer would identify accused persons. The P.Ws were made to sit on the Northern side of the Mukhtiarkar office at corner. Assistant Mukhtiarkar ordered the accused to take position in a row of dummies to the Northern side of the Mukhtiarkar office, according to their choice. The row of dummies was arranged to the Eastern side of the Mukhtiarkar office. The accused Haji Muhabat on his own choice stood to Northern side in the row of dummies. He was at Sr. No.13. accused Ghulam Sarwar Khoso according to his own choice had taken position at Sr.No.20. Accused Pathan according to his own choice stood at Sr.No.6 with the dummies. He called through Peon of his office P.W Javed Iqbal and he was asked to identify any one of the accused persons, from the row. The P.W abductee had identified accused who were at Sr. No.13, 20 and 25 respectively and they disclosed that they had committed offence. Assistant Mukhtiarkar subsequently, ordered the P.W Javed Iqbal to go outside. He ordered accused persons to change their position along with dummies. Haji Muhabat Khoso stood at Sr. No.17, Ghulam Sarwar Khoso stood at Sr. No.20 and accused Pathan stood at Sr. No.29 in the row of dummies. Through the Peon of the office, he called P.W Nazeer Ahmed and directed him to identify his culprits. This P.W while seeing the row of the dummies had picked up the accused persons at Sr. No.17, 20 and 29 respectively. This P.W disclosed that these accused persons were the culprits of the incident. He prepared the mashirnama of identification test in presence of mashirs Muhammad Tahir and Kashif Maqsood. Mukhtiarkar admitted in cross that the names of the dummies were not noted down. He had not noted the facial and bodily description of the dummies. He admitted that dummies were not having clothes of the body similar to the clothes of accused persons.

17. We have perused the evidence minutely. It transpired that the name of Appellant Muhammad Sarwar did not appear in the F.I.R. there was no evidence that Muhammad Sarwar had kidnapped abductees for ransom but there was only allegation against him that he had received the ransom but the date, time and place for payment of the ransom has not been established at

trial. It appears from the evidence that another F.I.R. was also lodged against Muhammad Sarwar under section bearing crime No.44 of 1999 at Police Station Bandhi under section 506(2), 215 PPC but name of Appellant Muhammad Sarwar was not mentioned in the said F.I.R. After arrest of accused Muhammad Sarwar he was not put to identification parade through witnesses. Appellant Muhammad Sarwar was arrested but during investigation no ransom amount was recovered from him. Both abductees Javed Iqbal and Nazeer Ahmed did not implicate Appellant Muhammad Sarwar that he kidnapped them for ransom and received amount. Only piece of evidence collected against Muhammad Sarwar was that he was identified by prosecution witnesses Muhammad Shareef, Tariq Masood and Aijaz before the trial Court after 05 years of the incident. It is settled law that identification of accused before the trial Court was unsafe for conviction. It has come in evidence that Appellant Muhammad Sarwar was arrested during investigation and 30 bore pistol was recovered from him. He faced trial under the Arms Ordinance before the II Ind Judicial Magistrate Nawabshah in Criminal Case No.240 of 2002 vide judgment dated 16.4.2003 he has been acquitted. Copy of the Judgment was produced by the accused Muhammad Sarwar in his statement recorded under section 342 Cr.P.C. It is matter of record that co-accused Ghulam Sarwar, Anwar, Umer and Latif have been acquitted by the trial Court on same set of evidence. Conviction of the Appellant on same set of evidence without independent corroboration was unwarranted in the law as held in the case of **MUHAMMAD AFZAL v. THE STATE** reported in 2017 SCMR 1645. Relevant portion is reproduced as under:-

6. It has not been disputed by learned Additional Prosecutor General that firearm injuries on the person of Muhammad Arkam (deceased) were also attributed to Jafar and Qasim. Likewise another co-accused of the appellant namely Sadiq was attributed butt blow on right leg, arm and head of Muhammad Aslam (injured). Injuries attributed to the said co-accused of the appellant were also available in the post mortem report of Muhammad Akram (deceased) and in the MLC of Muhammad Aslam injured (PW.8). Witnesses of the ocular account while appearing before the learned trial court implicated all the accused facing the trial. However, three co-accused of the appellant namely Jafar, Qasim and Abdul Ghaffar were acquitted by the learned trial court and their acquittal was not assailed any further as per the available

record. We are mindful of the fact that principle of falsus in uno falsus in omni bus is not applicable in our system of administration of justice relating to criminal cases and the courts are required to sift grain from the chaff in order to reach at a just conclusion but it is well settled by now that if some accused are acquitted on the basis of same set of evidence the said evidence can be believed to the extent of the other accused facing the same trial but the courts have to be at guard and are required to look for corroborating evidence for maintaining conviction in such like cases.

Learned Advocate for the Appellant has further argued that S.H.O. / I.O. Mazhar Hussain has falsely involved Muhammad Sarwar Appellant in this case as co-accused Dildar has filed criminal complaint No.73 of 1999 before S.D.M. Naushero Feroze against S.H.O/I.O.

18. From the deep scrutiny of evidence we have found that there were material contradictions in the prosecution case with regard to the place of incident, place of payment of ransom and other particulars of the case. According to the case of prosecution during the captivity of the abductees in Jungle there was a police encounter but none received injury from either side which clearly shows that prosecution story was unbelievable and unnatural. We have also noticed that abductees after release from the accused did not go to the Police Station for fifteen days for recording of their statements. It has also created serious dent in the prosecution case. In this case identification parade was held by Magistrate while ignoring the legal formalities. Such as, before a witness is called upon to identify the suspect, he should be asked whether he admits prior acquaintance with any suspect whom he proposes to identify. He shall be asked to state the marks of identification by which he can identify the suspect. It has come on record that before holding of identification parade accused were shown to the abductees. With regard to the identification of the accused law is well settled, in the case of **GULFAM v. THE STATE** (2017 SCMR 1189) Honourable Supreme Court has held as follows:-

5. The prosecution had maintained that the present appellants had correctly been identified by the above mentioned eye-witnesses during a test identification parade conducted and supervised by a Magistrate but we note that the parade so conducted and held was a joint parade in which both the present

appellants had been made to stand along with many other dummies. Holding of a joint identification parade of multiple accused persons in one go has been disapproved by this Court in many a judgment and a reference in this respect may be made to the cases of Lal Pasand v. The State (PLD 1981 SC 142), Ziaullah alias Jaji v. The State (2008 SCMR 1210), BachaZeb v. The State (2010 SCMR 1189) and Shafqat Mehmood and others v. The State (2011 SCMR 537).

19. It is a matter of record that above named abductees had identified the Appellants before the trial Court during trial but perusal of the statements of both abductees shows that they have stated that accused present in the Court are same but they failed to individually identify either of them with reference to any role allegedly played by them in the incident. Identification of an accused person before trial Court during trial has already been held by this Court to be unsafe. In this case identification parade was held before Mukhtiarkar III-Class Magistrate. General impression against Revenue Magistrates/Mukhtiarkars during that period was that they were under the influence of the police, as such, identification of accused persons before the trial Court during trial was unsafe as held by Honourable Supreme Court in the case of **GULFAM (supra)** relevant portion is reproduced as under:-

6. It has further been observed by us that the above mentioned eye-witnesses had statedly identified the appellants even before the trial court during the trial but a perusal of the statements made by the said eye-witnesses before the trial court shows that both Muhammad Rafiq complainant (PW17) and Muhammad Ishaq (PW18) had only referred to the accused persons "present in court" but had failed to individually identify either of them with reference to any role allegedly played by them in the incident in issue. Identification of an accused person before the trial court during the trial has already been held by this Court to be unsafe particularly when the eye-witnesses making their statements before the trial court were examined after many other prosecution witnesses had already been examined and on all such occasions the accused persons could conveniently be seen by the eye-witnesses in the dock. In the present case the eye-witnesses were witnesses Nos. 17 and 18 meaning thereby that

16 other prosecution witnesses had already, been examined by the trial court and on all such occasions the present appellants could conveniently be seen by the eye-witnesses in the dock in the courtroom. This is why identification of an accused person before the trial court during the trial has been held by this Court to be unsafe in the cases of Asghar Ali alias Sabah and others v. The State and others (1992 SCMR 2088), Muhammad Afzal alias Abdullah and another v. State and others (2009 SCMR 436), Nazir Ahmad v. Muhammad Iqbal (2011 SCMR 527), Shafqat Mehmood and others v. The State (2011 SCMR 537), Ghulam Shabbir Ahmed and another v. The State (2011 SCMR 683) and Azhar Mehmood and others v. The State (2017 SCMR 135).

20. Identification parade of accused namely Anwar Dahri was held before Joint Civil Judge F.C. Magistrate Nawabshah on 2.6.2000 through abductees but procedure for conducting identification parade was not adopted. Abductee did not assign part to accused played at the time of incident. It is admitted by Mukhtiarkar T.C.M. that Joint identification parade was held. Under the law holding of joint identification parade of multiple accused persons in one go has been disapproved by Honourable Supreme Court.

21. Prosecution case mainly rests on the identification parade. It is settled law that identification proceedings must be carefully conducted and abductees namely Javed Iqbal and Nazeer Ahmed had not mentioned any features/identification marks of the assailants in their statements recorded under section 161 Cr.P.C. therefore, there was no benchmark against which to test whether the Appellants, who he had identified after long time and who had fleetingly seen were in fact the actual culprits. Civil Judge & F.C.M. and Assistant Mukhtiarkar had also not certified that in the identification proceedings other persons, amongst whom the Appellants were placed, were of similar age, height, built and colouring. The main object of identification proceedings is to enable a witness to properly identify a person involved in a crime and to exclude the possibility of a witness simply confirming a faint recollection or impression, that is, of an old, young, tall short, fat, thin, dark or fair suspect. During identification proceedings possibility could not be ruled out that accused

were shown to the witnesses. As regards to the identification of the Appellants before the trial Court is concerned that too will not assist the prosecution case. These witnesses/abductees had a number of opportunities to see the Appellants before their statements were recorded. In the present case culprits were required to be identified through proper identification proceedings, however, the manner in which identification proceedings were conducted raised serious doubt on the credibility of the process. We are supported in the above view by the Judgment of Honourable Supreme Court in the case of **JAVED KHAN alias BACHA and another v. The State and another** (2017 SCMR 524).

22. Trial Court on same set of evidence has recorded acquittal in the favour of accused namely Ghulam Sarwar, Umer, Abdul Lateef and Anwar against whom acquittal has been filed by complainant. We are surprised that on same set of evidence more or less in similar circumstances without strong and independent piece of evidence trial Court has convicted the Appellants namely Haji Mohabbat Khoso, Pathan Khoso, and Muhammad Sarwar. Conviction in such circumstances is not sustainable under the law. Offence under section 365-A PPC carries capital punishment under the law. Strong evidence was required for recording the conviction in such case but trial Court dealt with the case in a very casual manner. Evidence of the police officials regarding police encounter was also highly unbelievable and untrustworthy. It lacked independent corroboration. We have no hesitation to disbelieve it. Prosecution has also failed to bring on record the antecedents of the abductees who were kidnapped for ransom. Prosecution has also utterly failed to prove the ransom which was paid to the accused for the release of the abductees. Accused in their statements recorded under section 342 Cr.P.C. have raised plea that they were innocent and falsely implicated in this case by the police due to enmity. It has come in evidence that S.H.O. Mazhar Hussain Hisbani had picked up accused from their house and a constitution petition was filed in High Court bearing C.P. No.115 of 1999 against the police officials.

23. From the close scrutiny of the evidence, we have come to the conclusion that prosecution has failed to prove its case against the Appellants. There are several circumstances in this case which have created doubt in the prosecution case. It is settled principle of the law that for extending benefit of doubt multiple circumstances are not required. A single circumstance which creates reasonable doubt in the prosecution case is sufficient for extending benefit of doubt for recording the acquittal. In the case of **TARIQ PERVEZ v THE STATE** [1995 SCMR 1345], the Honourable Supreme Court has observed as follows:-

“It is settled law that it is not necessary that there should many circumstances creating doubts. If there is a single circumstance, which creates reasonable doubt in a prudent mind about the guilt of the accused, then the accused will be entitled to the benefit not as a matter of grace and concession but as a matter of right.”

24. For the above stated reasons we have come to the conclusion that the prosecution has failed to prove its case against the Appellant. Therefore, Criminal Special ATA Appeal No.108 of 2004 filed by Appellant Muhammad Sarwar is allowed. Conviction and sentence recorded by the trial Court vide Judgment dated 30.06.2004 is set-aside. Appellant Muhammad Sarwar is present on bail his bail bond stands cancelled and surety discharged.

25. So far Criminal Acquittal Appeal No.D-120 of 2004 filed by the State against respondents / acquitted accused is concerned, in view of above stated reasons, we hold that the same has become infructuous and accordingly is dismissed.

JUDGE

JUDGE