

## IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD

Cr. ATA Appeal No. D-50 of 2016

Cr. Appeal No. D- 55 of 2016

Cr. Jail Appeal No. D-56 of 2016

### Present:-

Mr. Justice Muhammad Iqbal Kalhoro  
Mr. Justice Zulfiqar Ali Sangi

Appellant : Himat Ali in Cr. ATA Appeal No. D-50 of 2016  
through Mr. Imam Bux Baloch, Advocate

Appellant : Sulleman in Cr. Appeal No. D- 55 of 2016  
through Mr. Saifullah Dasti, Advocate

Appellant : Arz Muhammad & Sulleman in Cr. Jail Appeal No. D-56  
of 2016 through Mr. Muhammad Jameel Ahmed,  
Advocate

Respondent : The State  
through Ms. Safa Hisbani, Assistant Prosecutor General,  
Sindh

Date of hearing : 12.9.2019 & 25.9.2019

Date of judgment : 28.10.2019

### J U D G M E N T

**ZULFIQAR ALI SANGI, J.** - By this common judgment, we intend to dispose of above captioned appeals as the same arise out of FIR No. 56 of 2015 registered at police station Taluka Mirpurkhas under Section 365-A, 34 P.P.C. read with Section 6/7 ATA 1997, FIR No. 55 of 2015 registered at police station Khaan District Mirpurkhas under Section 324, 353, 100, 34 P.P.C read with Section 6/7 ATA, 1997, FIR No. 56 of 2015 registered at police station Khaan District Mirpurkhas under Section 23(1)(a) Sindh Arms Act, 2013, FIR No. 57 of 2015 registered at police station Khaan District Mirpurkhas under Section 23(1)(a) Sindh Arms Act 2013 and FIR No. 58 of 2015 registered at police station Khaan District Mirpurkhas under Section 23(1)(a) Sindh Arms Act 2013.

2. After registration of above FIR investigation was conducted and challans were submitted before the concerned court, who after taking cognizance allotted separate special case numbers. Thereafter learned ADPP filed application under Section 21-M

on behalf of State, which was allowed on 30.10.2015 and all the cases were ordered to be amalgamated in Special Case No. 18 of 2015 and learned Judge of Anti-terrorism Court, Mirpurkhas after recording evidence and completing all formalities passed a common judgment dated 05.05.2016, which is impugned before us in the above appeals.

3. Learned trial court by impugned judgment has convicted the appellants and sentenced each of them to suffer imprisonment for life and further ordered forfeiture of their moveable and immoveable properties in favour of government for committing offences of kidnapping for ransom under Section 365-A PPC and Section 7(c) of Anti-terrorism Act, 1997 read with Section 34 PPC. They were also convicted in police encounter case (Special Case No.19/2015) for offence under Section 7(h) of Anti-terrorism Act, 1997 and were sentenced to suffer R.I for 5 (five) years and to pay fine of Rs.1,00,000 (one hundred thousand) each and in default whereof to suffer further RI for one year, appellant Arz Muhammad was also convicted for possessing 30 bore pistol under Section 24 of Sindh Arms Act, 2013 in Special Case No. 20 of 2015, to suffer R.I for 02 ( two) years and to pay fine of Rs. 50,000/- (fifty thousand only) and in default whereof to suffer further R.I for six months. Appellants Sulleman and Himat Ali were also convicted in Special Case Nos. 21 & 22 of 2015 respectively and were sentenced under Section 25 of Sindh Arms Act, 2013 to suffer R.I for 03 (three) years and to pay a fine of Rs: 50,000/- (Fifty thousand only) each and in default whereof to suffer further RI for six months. However, benefit of Section 382-B Cr.P.C. was extended to them.

4. The facts as per FIR No. 56 of 2015 registered at police station Taluka Mirpurkhas are that complainant Muhammad Arab Mahar came at police station and lodged FIR by stating that he is zamindar, his uncle Haji Noor Muhammad Mahar is doing business of cattle, on 05.09.2015 he along with his cousin Muhammad Ramzan and uncle Haji Noor Muhammad left home for cattle market, Umerkot, when they reached Mirpurkhas-Umerkot road at about 0600 hours, suddenly one red colour Margalla Car No. AAB-653 came from Mirpurkhas and stopped near them. Complainant party saw five persons sitting in the car, out of which four persons who

were armed with weapons alighted and kidnapped Haji Noor Muhammad Mahar and went towards Umerkot. Complainant party returned to their village and informed about the incident to Sirajuddin son of abductee Haji Noor Muhammad Mahar. On 07.09.2015 Sirajuddin received a phone call from his father's mobile number for payment of ransom of Rs: 1,50,00,000/= for release of Haji Noor Muhammad. Subsequently he was continuously receiving calls for arrangement and payment of ransom amount up to 14.09.2015. Such FIR was registered 17.9.2015.

5. On the same day i.e. 17.09.2015 SIP Nizamuddin Khaskheli SHO P.S Taluka Mirpurkhas lodged another FIR bearing Crime No.55 of 2015 at Police Station Khaan District Mirpurkhas for offence under Section 324, 353, 100, 34 PPC read with Section 6/7 ATA, alleging therein that he is posted as SHO P.S Taluka Mirpurkhas, he received information from SIP Akbar Mari of Police Station Khaan that he has received spy information that Haji Noor Muhammad Mahar who was abducted from the jurisdiction of police station Taluka Mirpurkhas has been kept by kidnappers in sugarcane crop near the house of Khamiso Katohar near Patoyoon-Nawabad Road and now they are preparing to shift him to another place. He also called for other police force of different police stations and also informed the higher authorities for search and recovery of abductee, upon which complainant along with his staff also come via Dah-Dari and reached at pointed place along with his staff at about 1345 hours, then SHO P.S Khaan namely Akbar Mari informed through wireless that one red colour Margalla Car No: AAB-653 was coming towards Dah Dari Mori from the house of Khamiso Katohar and disclosed that he was following the Car. At about 1400 hours they saw said car coming in speed towards Dah Dari Mori, they signaled to stop the car which was stopped and 5 persons duly armed with deadly weapons including one empty handed alighted from the car; empty handed person raised crises saying 'save' 'save' and started fleeing towards North, other four persons made straight firing upon the police, the police also retaliated in their defense. The encounter continued for about half an hour and lastly one person from accused side surrendered while raising hands, three persons fell down on ground and firing stopped. Police saw that person having KK had died in firing and two persons were injured and they had firearm

injuries on their legs, who had pistols and were taken into police custody. The person who raised crises came towards police and disclosed that he was kidnapped by accused persons on 05.09.2015 and kept in sugarcane crop and were shifting to other place. The persons who surrendered disclosed his name as Himat Ali son of Deedar Ali Rind and further disclosed that they kidnapped the abductee and used to call his relatives for ransom, for deceased he disclosed his name as Ali Murad son of Habibullah Rind and for injured person he disclosed their names as Arz Muhammad son of Hamao and Sulleman son of Habibullah Rind, with regard to car he disclosed that there are no documents. From Himat Ali one TT pistol of 30 bore along with magazine 4 live bullets and 4 notes of 100/- were recovered and from Arz Muhammad one TT pistol of 30 bore with magazine 2 live bullets one note of Rs. 500/- and from Sulleman Rind one TT pistol of 30 bore along with magazine 3 live bullets one note of Rs. 1000/- and one KK along with magazine and 5 live bullets two notes of Rs. 100/- and NIC was recovered from deceased Ali Murad Rind. Such mashirnama was prepared.

6. Police also registered cases under Section 23(i)(a) Sindh Arms Act, 2013 against arrested accused and all five cases were investigated by Inspector Abdul Sattar Gurgage who after completing investigation submitted challans before Anti-terrorism Court Mirpurkhas and on application of ADPP all the cases were amalgamated and tried.

7. After completing necessary formalities trial court framed a common charge on 18.12.2015 at Ex.18 to which accused pleaded not guilty and claimed to be tried. Their pleas were recorded by the trial court as Ex.19 to 21. Prosecution in order to prove it's case examined complainant Muhammad Arab as P.W-1 at Ex. 23, Haji Noor Muhammad as P.W-2 at Ex.27, Muhammad Ramzan as P.W-3 at Ex.30, Manzoor Ahmed as P.W-4 at Ex: 32, Fateh Muhammad P.W-5 at Ex.36, Umed Ali as P.W-6 at Ex.39, Akbar Khan as P.W-7 at Ex.43, SIP Nizamuddin as P.W-8 at Ex. 48, Muhammad Jurial as P.W-9 at Ex.58, Muhammad Moosa as P.W-10 Ex.60, Abdul Sattar as P.W-11 at Ex.65, thereafter ADPP filed statement on 21.04.2016 and closed

the side of prosecution at Ex.77. Accused were examined under Section 342 Cr.P.C at Ex. 78, 79 & 80 respectively.

8. After hearing learned defense counsel and ADPP learned trial court convicted the appellants as stated above, hence the instant appeals.

9. Learned counsel for appellants contended that appellants are innocent have been implicated due to enmity; that there is delay of 12 days in registration of FIR which has not been explained by complainant party; that even no roznamcha entry about the abduction was made at police station; that names of appellants are not mentioned in FIR nor description has been given by complainant party in FIR No. 56 / 2015; that after arrest of appellants, identification parade was not held before Magistrate; that during evidence CD of voice recording of abductors was not produced before the trial court; that fake encounter is shown by the police; that no police official received injury in the alleged encounter; that injuries to appellants on their knee during the encounter suggest false implication; that MLC was managed by police; that doctor has not disclosed the range of fire received by appellants; that witnesses produced by the prosecution are interested who have given contradictory evidence; that identification of appellants in court during evidence has no value as witnesses had seen them prior to recording of evidence; that weapons were foisted upon the appellants; that prosecution failed to establish case against appellants beyond a shadow of reasonable doubt. Learned counsel relied upon the cases of **Azeem Khan and another V. Mujahid Khan and others** ( 2016 SCMR 274 ), **Mohammad Hayat and 3 others V. The State** ( 2018 P Cr L J Note 61), **Riaz V. The State** ( 2018 Y L R 2059 ), **Abdul Jabbar and others V. The State** ( 2017 P Cr L J 160 ), **Muhammad Dawood and 8 others V. The State** ( 2015 P Cr L J 316 ), **Muhammad Saleem V. The State** ( 2014 Y L R 794 ) and **Bashir Ahmed V. The State** ( 2015 M L D 313 ), and prayed for setting aside the judgment of conviction and acquittal of appellants.

10. Learned APG contended that delay in cases of abduction for ransom is natural and always complainant party remain under threat of life of their relative, waiting for safe recovery as has been done in the present case. She further submitted that

identification parade before Magistrate is not necessary, identification at the time of evidence before the trial court is sufficient. The person identifying culprits who remained in their custody for a considerable period would not make any mistake in identification of the accused during trial. No enmity is suggested for false implication; abductee was recovered from the possession of appellants during police encounter; that witnesses had fully supported the case of prosecution; weapons used in commission of offence also recovered from the appellants. Lastly she contended that prosecution has proved its case beyond any shadow of reasonable doubt by producing trustworthy and confidence inspiring evidence, appellants were rightly convicted by the trial court hence she prayed for dismissal of their appeals. She relied upon the cases of **Aamir Ali and 2 others V. The State (2017 P Cr L J 1451)** and **Muhammad Rasool V. The State (2015 P Cr L J 391)**.

11. We have heard the arguments of learned counsel of the parties and pursued the material available on record.

12. Prosecution in order to prove the case against the appellant has examined complainant Muhammad Arab as PW-1 at Ex: 23 who deposed that on 05.09.2015 at 6:00 a.m he along with his paternal uncle Haji Noor Muhammad and cousin Muhammad Ramzan left their houses for Cattle Piri at Umerkot, when they reached at Haji Noor Muhammad Rasti situated at Mirpurkhas-Umerkot road at 6-30 a.m, they saw a red colour Margalla Car No: AAB- 653 in which 5 persons were sitting, out of which four who were armed with weapons got down from the car and on point of weapons abducted his paternal uncle Haji Noor Muhammad and went towards Umerkot. He informed such facts to Sirajuddin son of abductee. He further deposed that on 07-09-2015 he received a call on Mobile No.0313-3515848 of P.W Sirajuddin from Cell No. 0307-0325035 of abductee Haji Noor Muhammad whereby the abductors demanded Rs.one crore and fifty lacs as ransom for the release of Haji Noor Muhammad failing which they will receive his dead body. He further deposed that from 7<sup>th</sup> to 14<sup>th</sup> September, 2015 he repeatedly received message of demanding ransom from said cell number and lastly abductors reduced amount of ransom to rupees one crore. On 17.09.2015 he went to police station Taluka Mirpurkhas and

lodged FIR No. 56 of 2015 for abduction of Haji Noor Muhammad. He deposed that on 17.09.2015 in the evening Haji Noor Muhammad came at home and informed them that during encounter between police and abductors he was got freed by the police, abductee further informed that during encounter police arrested two accused namely Arz Muhammad and Sulleman in injured condition, third accused Himat Ali surrendered before police and 4<sup>th</sup> one Ali Murad was killed in encounter while two accused made their escape good. Abductee further disclosed that accused Himat Ali, Sulleman, Dilawar alias Mir Buledi and Ali Murad after kidnapping took him to the house of absconder accused Khameso Khan Katohar where he was detained for about 13 days. Abductee further informed him that on the day of encounter accused Arz Muhammad, Himat Ali, Sulleman and Ali Murad were shifting him in same Margala Car No. AAB-653 to another place but during encounter at Dah-Dari Mori police got freed him from the clutches of accused persons. He stated that on the next day i.e. 18.9.2015 between 11:00 AM and 12:00 noon he along with abductee Haji Noor Muhammad and PW Muhammad Ramzan went to Civil Hospital Mirpurkhas where he identified accused Arz Muhammad and Sulleman in injured condition while dead body of accused Ali Murad to be the same person who had abducted Haji Noor Muhammad; thereafter they went to police station Taluka Mirpurkhas where they also identified accused Himat Ali. He further deposed that he and other P.Ws along with abductee were produced before the Magistrate where their statements under Section 164 Cr.P.C. were recorded. Complainant was cross examined by defence counsel but could not shatter his evidence.

13. P.W-3 Muhammad Ramzan was examined at Ex.30. He also deposed on same line as deposed by complainant Muhammad Arab.

14. P.W-2 Haji Noor Muhammad, who is the abductee and is most important witness of the incident was examined at Ex.27. He during his evidence deposed that the incident took place on 5.9.2015. On the day of incident he along with P.W-1 Muhammad Arab and Muhammad Ramzan left their houses for Cattle Piri at Umerkot and reached at 'Name Board' of village called after his name as "Haji Noor Muhammad Mahar" situated at Mirpurkhas-Umerkot Road at 6:30 a.m and saw one

Red Colour Margala Car No. AAB-653 coming from Mirpurkhas side and stopped there. He saw five persons with open faces sitting in the car, out of them four who were armed with weapons got down and abducted him. They all took him to village Khameso Katohar situated towards Umerkot side where they detained him in the house of accused Arz Muhammad and Khameso both by caste Katohar for about 12-13 days where 6-7 persons guarded him. During his confinement he heard them calling each other with names of Arz Muhammad, Himat Ali, Sulleman, Mir alias Dilawar, Khamiso and Ali Murad. Abductee further deposed that on 17.9.2015 they took him in the said car for shifting to another place and when at about 2:00 PM they reached at Dah-Dari Mori an encounter took place between them and police party. During encounter accused Ali Murad was killed while accused Himat Ali along with his weapon surrendered, whereas accused Arz Muhammad and Sulleman were apprehended in injured condition, the other accused made their escape good. Police got him freed and at about 7:00 to 7:30 PM, he reached his home. He further deposed that on the same day i.e. 17.9.2015 at about 9:00 PM, he took P.W-1 Complainant Muhammad Arab and P.W Muhammad Ramzan to Civil Hospital Mirpurkhas where they identified accused Arz Muhammad and Sulleman and also the dead body of deceased accused Ali Murad to be the same persons who had abducted him. After that, they went to police station Taluka Mirpurkhas where they identified the accused Himat Ali to be the same person who at the time of incident and thereafter had driven the Car No. AAB-653. He further deposed that he along with above named P.Ws appeared before 1<sup>st</sup> Judicial Magistrate Mirpurkhas for recording their Statements under Section 164 Cr.P.C. Though this important witness was cross examined by defence counsel but except minor discrepancies nothing was brought on record which could cause dent in his evidence.

15. P.W-4 Manzoor Ahmed (mashir) was examined at Ex.32. He deposed that on 20.9.2015 at about 1:40 p.m. he along with his cast fellow Mumtaz reached at 'Name Board' of village Haji Noor Muhammad Mahar situated at Mirpurkhas-Umerkot road where complainant Muhammad Arab came along with police officials and in their presence pointed out the place from where Haji Noor Muhammad was said to be

abducted. Police prepared memo of inspection of place of occurrence in his presence and co-mashir Mumtaz. He further deposed that on 13.10.2015 at about 12 noon Inspector Abdul Sattar Gurgage called him and co-mashir Mumtaz on mobile phone to come at police station Taluka Mirpurkhas. They both left their houses and reached at Jarwari channel where he saw police mobile van wherein accused Himat Ali was sitting. The said police officer mad them to sit also in the police mobile van and brought at Dah-Dari Mori and from bushes accused Himat Ali produced a mobile phone containing a SIM. The said police officer took the mobile phone into police possession and sealed the same in a parcel, such memo was also prepared. He identified accused Himat Ali in court to be the same so also case property viz. black colour Nokia mobile phone. He too was cross examined at length but defence counsel could not shatter his evidence.

16. P.W-06 P.C. Umed Ali (mashir) was examined at Ex.39. He deposed that he was posted at police station Mirpurkhas Old. On 18.9.2015 at 7:30 a.m. he along with Investigating Officer Inspector Abdul Sattar and police constables Abdul Majeed left police station for Civil Hospital Mirpurkhas and reached at 8:00 a.m. where he saw two persons namely Arz Muhammad and Sulleman who were admitted as indoor patient. I.O arrested both of them in main case bearing Crime No. 56 of 2015 police station Taluka under Section 365-A, etc PPC and 6/7 ATA 1997. Such memo of arrest was prepared in his presence and PC Abdul Majeed. He further deposed that on the same day at 12:00 noon ASI Ghulam Hussain of said police station handed over a sealed parcel of blood stained clothes of deceased Ali Murad to Inspector Abdul Sattar. Such mashirnama was also prepared. He further deposed that on 19.9.2015 he along with SHO Abdul Sattar and PC Abdul Majeed left police station Mirpur Old in police mobile van driven by HC Mehmood Ali to investigate case bearing Crime No. 55 of 2015 police station Khaan under Section 324 PPC r/w Section 6/7 ATA 1997, reached at the place of occurrence i.e. Dah-Dari Mori adjacent to Jamrao canal in Deh 81 Taluka Hussain Bux Mari where he saw SIP Nizamuddin Khaskheli SHO PS Taluka Mirpurkhas was already there and on his pointation I.O Abdul Sattar inspected the scene of occurrence and secured bloodstained earth of deceased accused Ali Murad.

He also secured 25 empties of SMG and 19 empties of 30 bore pistol. He took the same in police possession. The blood stained earth was sealed in separate parcel, while in all 44 empties were sealed in another parcel. Such memo was prepared. He identified accused Arz Muhammad and Sulleman in court so also case property.

17. P.W-7 Akbar Khan Mari mashir and I.O was examined at Ex. 43. He deposed that on 17.9.2015 he was posted as SHO PS Khaan district Mirpurkhas. On the same day at 8:40 a.m. he received spy information that Haji Noor Muhammad Mahar who was abducted from the jurisdiction of police station Taluka Mirpurkhas has kept the kidnappers in sugarcane crop near village Khameso Katohar. He after informing his superiors along with staff vide entry No. 4 at 8:40 a.m. proceeded to the pointed place, other police parties also reached there. During search he found a red colour Margala Car No. AAB-653 came out from the house of Khameso Khan Katohar (abductor accused) and followed the same. He informed SIP Nizamuddin who held Nakabandi at Dah-Dari Mori and stopped the said car, they also reached there. They found five persons who got down from said car. Out of them one was armed with Kalashnikov and three were armed with pistols while 5<sup>th</sup> was empty-handed. He deposed that accused who were armed with weapons on seeing police party started firing, police also started firing in defence and an encounter continued for about half an hour. One person who was armed with pistols surrendered himself whose name was Himat Ali while three assailants were fallen on the ground. Out of them one who was armed with Kalashnikov was found dead while two were found in injured condition. On enquiry out of two injured persons, one disclosed his name as Sulleman, one pistol of 30 bore was secured from each injured persons. The pistol was also recovered from accused Himat Ali. About the dead body of accused his name was disclosed as Ali Murad by co-accused Sulleman and from the side of deceased Ali Murad they secured a Kalashnikov loaded with 5 live bullets. An empty bag, original CNIC of Ali Murad were also secured. He further deposed that 5<sup>th</sup> person who on seeing the police party raised cries and disclosed his name as Haji Noor Muhammad Mahar, told the police party that on 5.9.2015 he was abducted by the accused persons from Umerkot road and confined in sugarcane crop near village Khameso Katohar. He further disclosed that

accused had demanded ransom from his relatives for his release and on the day (17.9.2015) accused person trying to shift him to another place but he was freed during the encounter by the police. This witness also identified the appellants in court so also property including car and weapons.

18. P.W-8 SIP Nizamuddin who is complainant in Special Case No. 19 of 2015 under Section 324 PPC and Section 6/7 ATA 1997 and complainant / recovery officer in cases registered against appellant Arz Muhammad, Sulleman and Himat Ali under Section 23(I)(a) of Sindh Arms Act, 2013 was examined at Ex. 48. He deposed that on 17.9.2015 he was posted as SHO at police station Taluka Mirpurkhas. On that day at 12:00 noon Muhammad Arab came at police station and lodged report against unknown persons under Section 365-A, 34 PPC read with Section 6/7 ATA 1997, with regard to abduction of Haji Noor Muhammad Mahar on 5.9.2015 from bus stop of village Haji Noor Muhammad situated at Mirpurkhas-Umerkot road. He further deposed that on the same day at 12:45 p.m. he received a telephone message of SIP Akbar Khan Mari SHO PS Khaan that abductee Haji Noor Muhammad was kept by abductors in sugarcane crop near village Khameso Katohar. He conveyed such information to his superiors and CIA Police Mirpurkhas and then by making entry in daily diary left police station along with his staff and at about 1:45 p.m. reached at Dah-Dari Mori where he was informed by SIP Akbar Khan that abductors took abductee Haji Noor Muhammad in a Red Colour Car No. AA-653 and was asked for Nakabandi at that place. He further deposed that at 2:00 p.m. he saw the car coming in high-speed, he stopped it and saw five persons in the car out of which one was armed with Kalashnikov, three with pistols got down from the car while 5<sup>th</sup> person who was empty-handed also got down from the vehicle who raised his arms and uttered the words in Sindhi "Bachayo-Bachayo" and ranaway. He deposed that abductors started firing at police, who too started firing in defence. Such encounter continued for about half an hour. One accused surrendered with pistol who disclosed his name as Himat Ali. During encounter one accused was killed and Himat Ali disclosed his name as Ali Murad, two accused were also apprehended in injured condition, they disclosed their names as Arz Muhammad and Sulleman and weapons were also recovered from

them. P.W in his deposition further disclosed that Haji Noor Muhammad Mahar stated before him that he was abducted by present accused persons on 5.9.2015 and confined in sugarcane crop near village Khameso Katohar. He stated that he registered FIR No. 55 of 2015 under Section 324, 353, 100 & 34 PPC r/w Section 6/7 ATA, 1997; FIR No. 56, 57 & 58 of 2015 under Section 23(1)(a) Sindh Arms Act, 2013 respectively. He deposed before the trial court that Inspector Abdul Sattar Gurgage inspected the place of encounter i.e. Dah Dari Mori and secured 25 empties of SMG and 19 empties of 30 bore pistol and blood stained earth of deceased Ali Murad in presence of mashirs. He identified the accused before the trial court so also case property including Car as same.

19. P.W-9 Mr. Muhammad Jurial Civil Judge and Judicial Magistrate-I, Mirpurkhas was examined at Ex.58. He deposed that investigation officer Inspector Abdul Sattar Gurgage moved application No. Cr/-56-15 dated 8.10.2015 for recording 164 Cr.P.C. statements of complainant Muhammad Arab, P.W Haji Noor Muhammad (abductee) and Muhammad Ramzan in Crime No. 56 of 2015 of police station Taluka Mirpurkhas under Section 365-A, 34 PPC and Section 6/7 ATA, 1997. At that time I.O produced only one accused by name Himat Ali. He called the accused in chamber. After that complainant and P.Ws were called turn by turn and recorded their statements under Section 164 Cr.P.C.; chance of cross-examination was given to accused but he stated that he will cross examine them in trial.

20. P.W-10 Doctor Muhammad Moosa was examined at Ex.60. He deposed that he was posted as Senior Medical Officer in Civil Hospital Mirpurkhas on 17.9.2015 where police brought two persons in injured condition namely Arz Muhammad and Sulleman for medical examination and treatment. He examined them and issued such certificates.

21. PW-11 Abdul Sattar Gurgage who was investigating officer was examined at Ex. 65. He deposed that on 17.9.2015 he received letter Nos. CB/R/-2746 dated 17.9.2015 of SSP Mirpurkhas for conducting investigation of main case bearing Crime No. 56 of 2015 police station Taluka Mirpurkhas, FIR Nos. 55, 56 and 57 & 58 of 2015

of police station Khaan district Mirpurkhas. On 18.9.2015 at 8:00 a.m he reached at Civil Hospital Mirpurkhas where he arrested injured accused Arz Muhammad and Sulleman. He also arrested accused Himat Ali who was already in police lockup of said police station. He also inspected red colour Car No.AAB-653 lying at police station. He received articles from hospital, inspected dead body of deceased and injured accused persons. He visited the place of incident in presence of mashirs, secured 25 empties of SMG and 19 empties of 30 bore pistol; in all 45. He secured bloodstained earth of accused Ali Murad and sealed the same. He recorded statements of all witnesses mentioned in all the FIRs. He wrote letter to SSP Mirpurkhas for obtaining mobile call record of accused Himat Ali, Soba Khan, deceased accused Ali Murad, abductee Haji Noor Muhammad and complainant Muhammad Arab. He received mobile data from the office of SSP Mirpurkhas. He sent the parcel of blood stained clothes and another sealed parcel bottle of blood stained earth of deceased accused Ali Murad to chemical examiner, Government of Sindh Karachi for analyses and report. He produced the witnesses before the Magistrate for recording their 164 Cr.P.C. statements, which were recorded during investigation. He recovered mobile phone which was used in commission of offence for demanding ransom, it was of Nokia Company having SIM No. 0306-0314102. He sealed it and prepared mashirnama. He also received report of bloodstained clothes and mud of deceased accused Ali Murad from chemical examiner, Government of Sindh Karachi and Forensic Science Laboratory Hyderabad Report No. FSL/FD/OR/F,A/1439 dated 28.9.2015 with regard to crime weapons recovered from accused persons and empties secured from the scene of occurrence. He identified the accused so also case property including the car used in crime.

22. All the witnesses examined before the Trial Court have supported the prosecution case on all material facts. The abduction and recovery of the abductee have been proved. The encounter and during which death of one culprit and injury to two accused is fully established. The recovery of arms and the car in which the abductee was taken away have not been shattered during cross-examination. There is

nothing on record to show enmity between the parties to raise suspicion of false implication of the appellants.

23. The police officials have also supported the prosecution case relating to recovery of abductee, arms and car used in the crime. Although defence counsel have cross-examined the witnesses at length but nothing diluting the intrinsic value of evidence has been brought on record. There are minor discrepancies in the evidence but they have no bearing on merits of the case. The minor discrepancies always come on record due to lapse of considerable time between incident and recording of evidence.

24. Learned defence counsel has relied upon the case of **Azeem Khan and another v. Madad Khan and others (2016 SCMR 274)**. In this case, case of prosecution was based upon circumstantial evidence, it was an unwitnessed crime, defects in judicial confession, which facts and material are totally different from the present case, therefore it is not helpful to the appellants. In case of **Muhammad Ayaz and 3 others v. The State (2018 P.Cr.L.J Note 61)** the abductee of 1<sup>st</sup> episode has not implicated the accused at trial. During encounter none received any injury from the either side, weapons and empties were not sent to ballistic expert for report. Whereas in the present case abductee has fully supported the case, during encounter abductee was recovered from the possession of appellants, one accused was killed and 2 were injured in the encounter, and one who surrendered was duly armed with weapon, weapons and empties recovered were sent to ballistic expert and such report is in positive which favours the prosecution case. In case of **Riaz v. The State (2018 YLR 2059)**, complainant during the course of examination had stated that both the accused present in court were not the same who abducted the minor and during trial complainant was declared hostile and recovery of abductee boy was contradictory. Whereas in the present case all the witnesses including complainant have fully supported the case of recovery of abductee. In case of **Abdul Jabbar and others v. The State (2017 P.Cr.L.J 160)** alleged abductee was not recovered from the possession of accused but he appeared before the police along with complainant and the incident was of night time and there were contradictions in evidence. But the present incident

was committed in day time, no major contradictions are pointed out. In case of Muhammad Dawood and others v. The State (2015 P.Cr.L.J 316) FIR was registered by police with a delay of 40 days and was not got registered by the relatives of abductee; accused persons were on inimical terms with that police officials and complaints were already made against the said SHO. In the present case there is no enmity of appellants with police or with complainant party. In case of Muhammad Saleem v. The State (2014 YLR 794) accused was employee of complainant, no one saw the incident of abduction except abductee, recovery of abductee was doubtful and no encounter took place between the abductors and the police party though abductors were armed with weapons. But in the present case complainant Muhammad Arab and Muhammad Ramzan have seen the abduction of Haji Noor Muhammad who was recovered from the appellants after an encounter took place and during that encounter one accused was killed and two sustained injuries. In case of Bashir Ahmed v. The State (2015 MLD 313) abductee was not recovered from the possession of accused nor was recovered on their pointation; accused were muffled faces and were not identified by complainant and other witnesses. Therefore, this case is also of no help to the appellants as they were clearly seen by complainant and witnesses at the time of abduction and the abductee was recovered from the possession of appellants and the car which was used in commission of offence was also recovered. As discussed above, the law relied upon by learned counsel for the appellants are not applicable to the facts and circumstances of the case.

25. Delay in FIR in cases of abduction for ransom is not fatal to the prosecution in presence of strong direct and circumstantial evidence which must be reliable and inspire confidence, which is available in the present case. Reliance can be placed on the case of Ghulam Hussain Soomro v. The State (PLD 2007 SC 71) wherein Honourable Supreme Court of Pakistan held as under

We have anxiously attended to the submissions of the learned counsel and found from the record that the delay in lodging F.I.R. has been adequately explained and accounted for. In any event, mere delay in lodging of the F.I.R. is not always fatal to the prosecution case, though in some cases it might militate against the bona fides of the prosecution.

In the cases involving kidnapping of young ones for extorting huge ransom, parents as well as the investigating police invariably endeavour their best to locate the victim rather than promptly lodging F.I.R. for fear of death of victim, which may sometimes prove to be counterproductive. We are, therefore, not inclined to draw any adverse inference against the prosecution on the ground of delay alone in lodging the F.I.R.

26. Non-holding of identification test is also no ground to discard testimony of eyewitness and abductee who remained in custody of accused for considerable period and in such circumstances identification of accused in court at the time of evidence is sufficient. Further, identification parade is not a requirement of law but only one of the methods to test the veracity of evidence of an eyewitness who has had an opportunity to see the accused and claimed to identify him. When witness has spent considerable time with accused and had an opportunity to take a good look at him, holding of identification test would not be necessary. Reliance can be placed on the case of Dr. Javed Akhtar v. The State (PLD 2017 SC 249), Muhammad Akbar v. The State (1998 SCMR 2538), The State v. Haider Zaidi and 2 others (2001 SCMR 1919).

27. All the witnesses including abductee have fully supported the case of prosecution against the appellants, recovery of abductee from the possession of appellants, encounter of the appellants with police and receiving of injuries during encounter by the appellant, death of one of the accused during encounter, recoveries of unlicensed weapons from appellants including empties which were sent to FSL, report of chemical examiner regarding blood stained clothes of deceased accused and blood stained mud, collection of CDR of Mobile of accused so also abductee, recovery of mobile phone and the SIM which were used for demand of ransom have proved the case of prosecution and the evidence of star witness (abductee) being trustworthy, inspires confidence and cannot be easily discarded on flimsy grounds or on technical ones. Reliance can be placed on the case of The State through Advocate General Sindh Karachi v. Farman Hussain and others (PLD 1995 SC 1), The State v. Nazeer Ahmed and others (1999 SCMR 610), The State v. Haider Zaidi and 2 others (2001 SCMR 1919) wherein Honourable Supreme Court of Pakistan allowed acquittal

appeals passed by the High Court and upheld the convictions awarded by the trial courts in case of abduction for ransom.

28. In view of foregoing, we are of the view that prosecution has proved abduction and recovery of abductee by and from the appellants through confidence inspiring evidence of abductee Haji Noor Muhammad and SIP Nizamuddin, which cannot be brushed aside. In such circumstances, reliance can be placed on the case of Hakim Khan v. The State (2013 SCMR 777), Sajan and another v. The State (2015 P.Cr.L.J 953) where under similar circumstances conviction of the accused was maintained. The offence of kidnapping for ransom is increasing day by day in our country and the purpose of punishment is to change character of offender by keeping him away from criminal activities and to prevent him from its repetition. In the present case a rebellious act is appearing on the part of the appellants which needs to be checked timely.

29. In view of what has been discussed above, we found no merits in the appeals, therefore, the same are dismissed.

JUDGE

JUDGE