

**IN THE HIGH COURT OF SINDH, KARACHI**

**Special Criminal Anti-Terrorism Appeal No.02 of 2021  
Special Criminal Anti-Terrorism Appeal No.04 of 2021  
Special Criminal Anti-Terrorism Appeal No.05 of 2021  
Special Criminal Anti-Terrorism Jail Appeal No.18 of 2021  
Special Criminal Anti-Terrorism Jail Appeal No.29 of 2021**

***Present:***

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

Appellant in Appeal No.02/2021	Sajid S/o Noor Ahmed Through M/s. S. Ahsan Ali Shah & Liaquat Ali Khan Advocates
Appellants in Appeal No.04/2021	(i) Sardar S/o Mir Hassan (ii) Danish S/o Abdul Majeed Through S. Ahsan Ali Shah, Advocate
Appellant in Appeal No.05/2021	Danish S/o Abdul Majeed Through S. Ahsan Ali Shah, Advocate
Appellants in Appeal No.18/2021	(i) Asghar Ali Mugheri S/o Muhammad Achar (ii) Mukhtiar Ali Brohi S/o Mian Bux Through M/s. Moula Bux Bhutto and S. Ahsan Ali Shah, Advocates
Appellant in Appeal No.29/2021	Khawar S/o Dildar Through S. Ahsan Ali Shah, Advocate
Respondent	The State Through Mr. Muhammad Iqbal Awan, Addl. Prosecutor General, Sindh
Date of Hearing	23.08.2022.
Date of Order	31.08.2022.

**JUDGMENT**

**ZULFIQAR ALI SANGI, J:-** The appellants named above were tried by Anti-Terrorism Court No.II, Karachi in (1) Special Case No.B-448/2015 under FIR No.150/2015 U/s 365-A/34/512 PPC R/w Section 7 ATA, 1997, (2) Special Case No.B-449/2015 under FIR No.34/2015 U/s 353/324 PPC R/W Section 7 ATA, 1997, (3) Special Case No.B-450/2015 under FIR No.35/2015 U/s 23(i)A SAA, (4) Special Case No.B-451/2015 under FIR No.36/2015 U/s

23(i)(A) SAA, (5) Special Case No.B-448-A/2015 under FIR No.150/2015 U/s 365-A/34/512 PPC R/w Section 7 ATA, 1997 and (6) Special Case No.B-449-A/2015 under FIR No.34/2015 U/s 353/324 PPC R/w Section 7 ATA, 1997; all FIRs were registered at PS AVCC/CIA, Karachi and vide judgment dated 24.12.2020 they were convicted and sentenced as follows:

- a) *“Life imprisonment” under section 365-A PPC r/w Section 7(e) of ATA, 1997 for kidnapping the abductee.*
- b) *In the case of encounter u/s 353/34 PPC r/w Section 7(m) ATA, 1997 accused Danish son of Abdul Majeed, Asghar Ali Mugheri son of Mohammad Achar and Mukhtiar Ali Brohi son of Mian Bux are also convicted and sentenced to suffer “R.I. for 03 years”.*
- c) *Accused Mukhtiar Ali and Asghar are also convicted and sentenced to suffer R.I. for 7 years U/s 23(i)A SAA keeping the unlicensed weapons.*

All the sentences were ordered to run concurrently. The benefit of Section 382-B was extended to all the accused persons by the trial court.

2. The brief facts of FIR No.150/2015 are that complainant Naimat Gul has lodged FIR on 29.03.2015 at about 2100 hours stating therein that he lives in House No.318, Block-F, Gali No.15 near National Chowk, Iftikhar Town, Karachi and has a shop in the name of Saad Computer on Plot No.69 Sector 9-A, Saeedabad. He stated that his real brother Raheem Gul who has shop in the name of NS Computer on Plot No.70, Sector 9-B, Saeedabad. He (brother Raheem Gul) on 27.03.2015 at about 2255 hours closed his shop and came to him and told him that he is going home. He (complainant) at about 0300 hour closed his shop and went home. At home he did not see car of his brother and from the house inmates, he came to know that his brother has not reached home. He was worried, he called his brother on his mobile number but the mobile of his brother was powered off. He along with his friends and relatives kept searching his brother when at about 0600 hours at Sector 14-B in the third lane near Nala he found the car Chevrolet No.AGS-737 of his brother but there was no clue where his brother was. In the car he found one laptop, one mobile phone whereas one mobile Samsung Galaxy Core IMEI No.352112/06/124095/5 with two SIMs No.0300-2500962 and 0333-2899189 was missing. He kept searching for his brother and

now he was sure that some unknown accused persons have kidnapped his brother and thus lodged the FIR.

3. After the main FIR, FIR No.34/2015 was also registered which states that SI Niaz Muhammad posted at AVCC/CIA Karachi accompanied with other police officials and accused Saddar was conducting search for abductee and accused persons involved in the main FIR. When they reached at Northern By-Pass near Raheem Goth within the limit of PS Manghopir, at about 2030 hours as per pointation of arrested accused they tried to catch the accused persons present there for the recovery of abductee; however, the accused persons started firing upon the police party with intention to kill them and in retaliation, police party also returned fire for their defence. As a result, accused Asghar Ali and Mukhtiar Ali Brohi sustained injuries and were arrested. Thereafter, from personal search of Asghar Ali 32 bore revolver without numbered loaded with three bullets and cash Rs.400/- was recovered and from Mukhtiar Ali one 32 bore revolver loaded with two bullets and cash Rs.520/- was recovered. On enquiry, they could not produce any license of the recovered weapons, as such; two separate FIRs under the Sindh Arms Act, 2013 were also registered against them for holding an unlicensed weapon.

4. After completing the usual investigation, all the cases were challaned before the court having jurisdiction. After completing the legal formalities the charge against the appellants was framed, to which they pleaded not guilty and claimed to be tried.

5. The prosecution in order to prove its case examined 11 Prosecution Witnesses and exhibited various documents and other items. The statement of accused persons was recorded under Section 342 Cr.P.C in which they denied all allegations leveled against them. After appreciating the evidence on record, the learned trial Court convicted the appellants as mentioned above; hence, the appellants have filed these appeals against their convictions.

6. The facts of the case as well as evidence produced before the trial court find an elaborate mention in the impugned judgment dated 24.12.2020 passed by the learned trial Court and, therefore,

the same may not be reproduced here so as to avoid duplication and unnecessary repetition.

7. Learned counsel for the appellants have contended that the appellants are innocent and have falsely been implicated in these cases; that the prosecution has miserably failed to prove the charges against the appellants; that the conviction must be based on unimpeachable evidence and certainty of guilt and any doubt arising in the prosecution case must be resolved in favour of the accused; that the identification parade has no value as 03 accused Asghar Ali, Mukhtiar Ali and Khawar had stated to the Magistrate that their pictures were taken and shown to the abductee, who was already known to them; that the alleged abductee had claimed to have been released at Fajar (Morning) time but he did not inform the police promptly neither did the complainant, which also creates doubt that the story is managed; that car of the abductee was not made case property nor its seizure memo was prepared; that the arrest of accused persons was shown as a result of encounter, however, no police official was injured or even escaped unhurt, which also creates doubt; that the learned trial Court while pronouncing the judgment did not assess the evidence properly; that this is an un witnessed crime in which direct evidence like CCTV footage, CDR, fingerprints, DNA testing etc. becomes essential and the chain point of CDR has to prove the crime and prosecution story which has not been done properly in this case; They lastly pray for the acquittal of the appellants. They have placed reliance on the cases of ***Muhammad Aamir and another vs. The State (2022 YLR 484)***, ***Master Juman Buriro vs. The State (2022 YLR 299)***, ***Muhammad Sohail and others vs. The State and others (2021 PCRLJ 1502)***, ***Muhammad Kamran vs. The State (2021 SCMR 479)***, ***Mian Khalid Perviz vs. The State through Special Prosecutor ANF (2021 SCMR 522)***, ***Shaban Akhtar and another vs. The State through Prosecutor General Punjab (2021 SCMR 395)***, ***Sarfraz alias Bhoora vs. The State (2021 YLR 836)***, ***Abdul Haq and others vs. The State (2020 SCMR 116)***, ***Ghulam Hussain and others vs. The State and others (PLD 2020 Supreme Court 61)***, ***Amjad Ali Khan vs. The State and others (PLD 2020 Supreme Court 299)***, ***Naqeebullah and others vs. The State and others (2020 MLD 1492)***, ***Waqar A. Shamsi and another vs. The State (2019***

**SCMR 2039), Waris Ali and 5 others vs. The State (2017 SCMR 1572), Mst. Mehboob Bibi and others vs. The State (2017 SCMR 1835), Azeem Khan and another vs. Mujahid Khan and others (2016 SCMR 274), Muhammad Fayyaz vs. The State (2012 SCMR 522), Sabir Ali alias Fauji vs. The State (2011 SCMR 563), Muhammad Ayaz and others vs. The State (2011 SCMR 769), Muhammad Akram vs. The State (2009 SCMR 230), Bashir Ahmed vs. Muhammad Siddique and others (PLD 2009 Supreme Court 11), Ghulam Qadir and 2 others vs. The State (2008 SCMR 1221), Tariq Mahmood vs. The State and others (2008 SCMR 1631) and Mohabbat Ali and another vs. The State (2007 SCMR 142).**

8. On the other hand, learned Addl. P.G. Sindh has fully supported the impugned judgment on the basis of evidence produced by the trial Court. He has relied upon the cases of **Sh. Muhammad Amjad vs. The State (2004 SCJ 33), The State vs. Haider Zaidi and others (2002 SCJ 310)** and **Muhammad Siddique and others vs. The State (2020 SCMR 342).**

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

10. On our reassessment of evidence, we have found that the prosecution has proved its case beyond a reasonable doubt against all the appellants by producing reliable, trustworthy, and confidence inspire evidence.

11. The case of prosecution is that the brother of Complainant Raheem Gul was kidnaped by the accused persons on 27-03-2015; such FIR was lodged on 29-03-2015 by his brother Naimat Gul (PW-1) against unknown persons who on his examination before the trial court had fully supported the case and also explained the delay in registration of FIR. As per his evidence during search they found the car of abductee in the middle of Sector 14-B and Sector 17-A. They called the police and car was searched wherefrom mobile phone of abductee and one laptop was recovered. He further deposed that on 01-04-2015 he received call from his brother's number 0333-2899189 on his mobile number 0345-

2580489 and caller demanded an amount of Rs. One crore as ransom for the release of his brother. He received call repeatedly and calls were also received on the mobile number of his another brother Rahat Gul for ransom to which he informed the investigation officer S.I Muhammad Amir Bhatti who also informed him about the transfer of investigation to AVCC. He further deposed that his brother Raheem Gul returned to home in the morning of 19-04-2015 and was in weak condition. Cross-examination was conducted at some length but we do not find any substance favourable to accused person. During cross-examination counsel for the accused had made some focus on the delay in registration of FIR. His evidence is further supported by PW-2 Rahat Gul in respect of kidnaping of their brother, receiving the calls for ransom and returning of the abductee at home. The PW-9 Inspector Muhammad Amir has supported the version of complainant while deposing that the complainant approached him and informed him about receiving of the phone calls for ransom and he recorded such statement of the complainant, thereafter, he handed over the investigation of the case to AVCC for further investigation.

12. Normally the delay in registration of FIR in the cases of abduction for ransom occurs as the relatives of abductees at the first instance remain busy in searching for them or in some cases they wait for the contact to be established by abductors and always feel apprehensive of lives of their beloved ones. Therefore, delay in cases of such like nature is not fatal to the prosecution. But such delay has to be explained and is required to be considered with other evidence produced by the prosecution for safe administration of justice. If the evidence is free from all doubts, then delay alone would not be sufficient to disbelieve the case of prosecution. But if there is sufficient material available in the evidence that shows that accused has not committed offence with which he is charged, and then the delay too might be fatal to the prosecution case. In the present case incident took place on 27.03.2015 and complainant party was busy in searching and on recovery of the car belonging to abductee they informed the police and later on the FIR was registered on 29-03-2015 against the unknown persons. On receipt of calls for ransom again police was approached and

statement of complainant was recorded. If the complainant party wanted to book someone in the case they must nominate him/them but they did not do so as they wanted to prosecute the real culprits not the innocent. Reliance is place on the case of **Ashfaque Ahmed and 4 others v. The State (2022 Pak. Cr. L.J (Note) 38)**.

13. It is also noted that in cases of abduction for ransom, it is not necessary that all the culprits must have collectively done all the criminal acts together from the stage of abduction till extortion of money. In such cases mostly, the work is divided. Abduction is done by a few of them, place of confinement is guarded by others and ransom is extorted by one or two of them. This is done through planning. The object of all is to extort money. Therefore, the punishment would be the same irrespective of the role played by each of them. For example, in a case where accused only told the main abductors on the way that the passage is clear and did not play any other role in the abduction he was tried and the death sentence was awarded to him by the trial court and was confirmed by the High Court and Honourable Supreme Court commuted the sentence of death to imprisonment for life in case of **Said Muhammad v. The State (1999 SCMR 2758)**. Reliance is also placed on the case of **Khawaja Hasanullah v. The State (1999 MLD 514)** where it was held as under:-

*"In cases of abduction for ransom, it is not necessary that all the culprits must have collectively done all the criminal acts together from the stage of abduction till extortion of money. In such cases mostly, the work is divided. Abduction is done by a few of them, place of confinement is guarded by others and ransom is extorted by one or two of them. This is done under a planning. The object of all is to extort money. Therefore, the punishment could be the same irrespective of the role played by each of them".*

14. We would add here that in the cases of abduction/kidnapping normally the case would depend upon the evidence of the abductee. In such cases, the abductee shall always be regarded as the **star witness** while the other evidence would be that of a corroborative piece of evidence. In the instant case, the star witness of the case is PW-6 Raheem Gul the brother of the complainant as per his evidence on 27-03-2015 after closing his shop he aimed to go to his house in his vehicle No. AGS-737 and

when he reached at Mour (curve) of Itehad Town Mour then his car was stopped by three persons coming from a street on motorcycles and other persons were already available there. The motorcycle was stopped in front of the car and the persons available there came towards his car, two had also come down from the bike and one person kept the pistol at his temple whereas rest of them had surrounded his car. One of them told him that police is behind them and that they want his car to escape, he opened the door of his car to get down and the accused pushed him inside towards the seat next to the driver's seat. One accused started driving the car, two sat at the rear seat and three on the motorbike. They drove the car and the motorbike was piloting, the car was following. As per his evidence during such drive they had tied his hands from behind; after crossing the Itehad Town Nala they turned in the gali (street) on left and then comes Sector-14 and then Dawood Goth to Saeedullah Goth where jungle starts. They had stopped the car put off the lights. All these persons were talking among themselves in Urdu. They were asking him in whose name the car was. The persons who were sitting at the rear seat of the car had taken his mobile Samsung from front pocket of Qameez, original CNIC, wallet, keys; he had Rs.16,000/- in the pocket, Rs.1 lac in an envelope was available in the car, and at the rear seat of his car there were two laptops; one was of HP and one of was Dell. They had taken Dell Laptop and HP Laptop was still lying there underneath top cover of car. The cover of the car he had kept in the car and underneath he had kept the HP Laptop. His mobile Samsung Galaxy had two sims one was of Jazz No.0300-2500962 and other was Ufone-0333-2899189. The car was stopped but ignition was on and he saw six more persons coming out from the bushes. The persons who were in the car handed him over to those six persons. He was taken to a side and they all were talking to each other. Those six persons had taken him on foot towards Hub, Balochistan. The whole night they made him walk on foot in the bushes. They kept him for three days in the jungle. In one hand and in one leg sometimes in both the legs they used to tie him up with handcuffs and fillers. They used to give him one glass of water in the morning and one glass of water in the evening. After three days they had blind folded him and had taken him on motorbike; the motorbike had driven for 25 minutes and thereafter he was made to walk on foot. For 16 days he was kept in

a hut made by left over straw of wheat. From the outside one could only see that it was a chuff of remains of the wheat whereas one could stay inside that Chuff of wheat. There was always one person armed with weapon guarding on him. He was given one cup of tea in the morning and one cup of tea in the evening. Those persons who kept him for 16 days could not speak Urdu properly and they all the time used to talk in Sindhi. They used to torture him. Those persons who had kept him for 20 days made him talk to his family members three times to demand ransom. They used to make call from his both sims 0300-2500962 and 0333-2899189 to the number of his brother 0345-2580489 namely Naimat Gul. The number of his brother was in the sim and whenever he was made to talk with his brother they used his sim and he could see the number of his brother from the sim and used to call on that number. They used to tell him to demand Rs.1 crore and he requested his brother to fulfill the demand. He had told those people that they cannot arrange Rs.1 crore. When those people felt that there is no hope they used to beat him with butt even when they used to talk with his family they beat him too so that his family knows that he is beaten by them. He was only made to talk twice and the third time they taken him to jungle to kill him. He then requested them let him talk with his family for a third time which was allowed. On the last four days he was shifted in a house where there was population as he could hear Azan. He could also hear the voice of family i.e. women and children. After those four days they told him that their people had been picked up by the police and that they are releasing him on the assurance that when he goes back he should get their men released. In the night they blind folded him and at 3:00 or 4:00 am they had taken him by foot; when it was about fajar (morning) time they had taken him in populated area where they left him and they went away. When he was released his blind fold was removed. He had found out where he was left was Sakran Murree Chowk which he found out from the people of the locality. He took a lift from various people till he reached home at 8:00 am. On the same day when he had reached home AVCC had contacted him but he was not in a position to talk to anybody. On 19.04.2015 he was released and on 21.04.2015 IO Rana Ishrat had come to his house and he took him to where he was released.

15. It is established from the evidence of the abductee that the abductee narrated the manner of his abduction, each and every movement during his captivity for about one month; demand of ransom and after the arrest of some of the accused persons his release by them which evidence we find to be natural and confidence inspiring. The abductee also disclosed that in his presence, the ransom was demanded while using his mobile number and he identified all the accused persons during the identification parade conducted by the Magistrate with role assigned against each accused so also identified them in the Courtroom that they all are the same who abducted him and demanded ransom amount. During cross-examination no enmity or ill will is suggested to falsely implicate the accused persons in the case of capital punishment. In absence of enmity, the evidence of abductee who's evidence otherwise based on truth, reliable and confident inspiring cannot be discarded. Reliance can be placed on the case of **Muhammad Riaz and Others v. Bilqiaz Khan and Others (2012 SCMR 721)** wherein it is held as:-

**“9. ...These prosecution witnesses particularly the abductees had neither any enmity with the appellants-convicts nor was so alleged with specific proof to warrant as inference that they had falsely implicated them...”**

16. It is settled law that accused can be convicted if the court find the direct oral evidence of one eye-witness to be reliable, trustworthy and confidence inspiring. In this respect reliance is placed on the case of **Muhammad Ehsan v. The State (2006 SCMR 1857)**. The Supreme Court in the case of **Niaz-Ud-Din v. The State (2011 SCMR 725)** has also observed in respect of the ability of the court to uphold a conviction for murder even based on the evidence of one eye-witness provided that it was reliable and confidence inspiring and was substantiated from the circumstances and other evidence since it is the quality and not the quantity of evidence which is of importance. Further the Supreme Court in the case of **Allah Bakhsh v. Shammi and others (PLD 1980 SC 225)** also held that "even in murder case conviction can be based on the testimony of a single witness, if the Court is satisfied that he is reliable." the reason being that it is the quality of evidence and not the quantity. Although we believe the evidence of a **star witness Raheem Gul the abductee** being reliable, trustworthy and confidence inspiring

even then to satisfy our self for the sake of safe administration of criminal justice we reassess the other evidence which is of a corroborative nature to the evidence of the abductee.

17. The accused persons were **identified by the star witness Raheem Gul the abductee before the PW-5 Magistrate Aijaz Ali Abro** who was examined by the prosecution and while recording his evidence he stated that on 27-04-2015 on the application of investigation officer he conducted the identification parade of accused persons namely Sardar Ali alias Nizam s/o Mir Hassan, Sajid s/o Noor Muhammad, Khawar s/o Dildar, Asghar Ali s/o Muhammad Aachar and Mukhtiar Ali s/o Mian Bux separately after completing the legal formalities and the abductee rightly identified them by pointing out his finger that they were the accused persons who kidnaped him. He further deposed that on 16-06-2015 again investigation officer approached him with application in respect of the identification parade of accused Danish s/o Abdul Majeed which he also conducted by following the law and the accused was rightly identified by PW Raheem Gul the abductee with his role. It is observed that the abductee remained about one month in the captivity of accused persons and his eyes were also not tied, he was shifted at several places even by foot, therefore, he had good look on the accused persons. We have carefully examined the identification parade memo and have found the same is in accordance with the guidelines of the Honourable Supreme Court of Pakistan in the case of **Kanwar Anwaar Ali (PLD 2019 SC 488)**. Although some irregularities in the identification parade are available these in our view are not sufficient to discard other evidence which otherwise is more than sufficient to convict the appellants. In the present case, the appellants were correctly identified by the witness during a test of identification and during the trial the witnesses also identified the appellants. The evidence of the Magistrate, who conducted the identification parade, was not shattered by the defence counsel which suggests that his evidence is reliable. It is now settled that even non-holding of identification test is no ground to discard the testimony of eyewitnesses and abductee, who remained in the custody of accused for a considerable period (which in this case was about one month) 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 one of the methods to test the veracity of the evidence of an eyewitness who has had an opportunity to see the accused and claimed to identify him and is of a corroboratory nature. When the witness has spent considerable time with the accused and had an opportunity to take a good look at him holding of identification test would not be necessary. Reliance is placed on the cases of ***Dr. Javed Akhtar V. The State (PLD 2017 SC 249)***, ***Muhammad Akbar V. The state (1998 SCMR 2538)*** and ***The State V. Haider Zaidi and 2 others (2001 SCMR 1919)***. Thus based on the particular facts and the circumstances of the present case we hold that this piece of evidence also goes against the accused persons.

18. The other piece of evidence against the accused is the recovery of Samsung mobile phone of abductee Raheem Gul which was used by accused persons for demand of ransom and the CDR report which also proved the contact from the said numbers to the brothers of abductee for demand of ransom in such a period when abductee was under their captivity. The abductee Raheem Gul in his evidence had stated that one mobile phone of Samsung alongwith two sims was also taken by the accused persons from him which they also used for the demand of ransom. PW-8 SIP Niaz Muhammad stated that on 12-04-2015 in presence of official witnesses he arrested the accused Sardar, Khawar and Sajid and on search of accused Sardar said mobile phone belonging to abductee was recovered from his possession which directly links him to the ransom demand. The recovery of mobile phone was also supported by the PW-3 SIP Habib-ur-Rehman the mashir. The investigation officer PW-11 wrote a letter for CDR of phone numbers used for demand of ransom and the number on which such calls were received on 15-04-2015 which he collected on 30-04-2015 and the same data was also exhibited in the evidence. PW-7 PC Asif Ilyas has also supported the collection of CDR by the investigation officer being the attesting witness of memo of its collection. The CDR was of the numbers 0300-2500962 belonging to Naimat Gul the brother of the abductee Raheem Gul on which calls were received and 0333-2899189 belongs to the abductee Raheem Gul from which calls were made by the accused persons. On careful examination

of the CDR and other evidence it reflects that the telephonic conversation was made in the period on which the abductee Raheem Gul was under captivity so also the number of the abductee Raheem Gul was used from the places where the abductee disclosed that he was kept under captivity by the accused persons.

19. As regards to the nonpayment of the ransom amount as contended by the learned counsel for the appellants that payment/demand for ransom has not been proved, hence, the case is not made out, is misconceived and has no force. For the sake of convenience relevant provision i.e. Section 365-A PPC is reproduced here, which reads as under:-

**“365-A Kidnapping or abduction for extorting property, valuable security, etc.** *whoever kidnaps or abducts any person for the purpose of extorting from the person kidnapped or abducted, or from any person interested in the person kidnapped or abducted, any property, whether movable or immovable, or valuable security, or to compel any person to comply with any other demand, whether in cash or otherwise, for obtaining release of the person kidnapped or abducted, shall be punished with (death or) imprisonment for life and shall also be liable to forfeiture of property.”*

Section 2(n) of Anti-Terrorism Act, 1997 provides as under:-

**“2(n)** *“kidnapping for ransom” means the action of conveying any person from any place, without his consent, or by force compelling or by any deceitful means inducing him, to go from any place, and unlawfully detaining him and demanding or attempting to demand, money, pecuniary or other benefit from him or from another person, as a condition of his release;*

20. From perusal of Section 365-A, PPC and Section 2(n) of Anti-Terrorism Act, 1997, it is clear that in order to constitute an offence of kidnapping for ransom, the proof of payment of money thereof is not *sine qua non* and said offence also stands constituted if there is an abduction for the purposes of extortion of money and a ransom is demanded. In the case in hand the abductee Raheem Gul was under captivity of the accused persons for about one month without any other reason except for extortion of money from the complainant party to which prosecution examined and proved thought three witnesses including the abductee that the accused persons demanded one crore from the complainant and his other brother Naimat Gul. However the abductee was released by the

accused persons at the time when their three accomplices were arrested and they were under apprehension that the police might reach them through their arrested accomplices. Further corroboration is provided by recovery of the mobile phone from the possession of accused Sardar and the CDR collected by the investigation officer which confirm that the conversation was made in between the accused persons and the complainant party at the time when the abductee was under captivity. In our humble view, the ingredients of the offence of kidnapping for ransom are fully satisfied and proved in this case. In this regard, reliance can be placed on the case of **Muhammad Riaz and others v. Bilqiaz Khan and Others (2012 SCMR 721) supra**, wherein the Hon'ble Supreme Court of Pakistan has held that:

*"11. A close reading of the afore-referred provision would show that essential ingredients to prove the offence are twofold: (i) the act of abduction, (ii) "for the purpose of extorting from the person Kidnapped or abducted, or from any person interested in the person Kidnapped or abducted,...or to compel any person to comply with any other demand, whether in cash or otherwise, for obtaining release of the person Kidnapped or abducted". In Muhammad Amjad v. State (PLD 2003 SC 704), ambit of this provision came up for consideration and the Court held as follows:--*

*"38. Section 365-A P.P.C. deals with kidnapping or abduction for extorting property, valuable securities etc. while committing above crime various acts are done i.e. capturing the victim and then detaining him under captivity. Normally thereafter, demand is made for ransom. More often than not these acts are done by more than one person, but in this case everything was done by the appellant himself. To constitute an offence under this section it is not necessary that the money must have passed on to the culprit, nor it is necessary that the victim must have been released. Abduction/kidnapping may be by force or by deceitful means."*

*12. The evidence led proved beyond reasonable doubt that the appellants had abducted the two abductees for the purpose of extorting ransom and had compelled the complainant to comply with the demand for cash/ransom for releasing the abductees."*

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

***"It is a matter of public knowledge that in Sindh on account of kidnapping for ransom, commission of dacoities and other offences, the people are feeling unsecured. The learned trial court has dilated upon these aspects in detail. I am inclined to subscribe to the view found favour with it. The approach of the Court in matters like the case in hand should be dynamic and if the Court is satisfied that the offence has been***

***committed in the manner in which it has been alleged by the prosecution the technicalities should be overlooked without causing any miscarriage of justice".***

22. It is also settled that the cases of kidnapping for ransom were to be dealt with iron hands and even if there were minor discrepancies and deviation in evidence or minor shortfalls on part of the investigation agency the courts were always to be dynamic and pragmatic in approaching true facts of the case and drawing correct and rational inferences and conclusions arising out of facts and circumstances of each case. Reliance can be placed on the case of ***Ghulam Hussain Soomro v. The State (PLD 2007 SC 71)***.

23. Turning to the case of prosecution in respect of the encounter and receiving injuries by the accused Mukhtiar and Asghar, the recovery of crime weapons from their possession, we have gone through the evidence of prosecution witnesses carefully. The PW-8 SIP Niaz Muhammad deposed that on 15-04-2015 he received order from his high ups that accused Sardar can help for the arrest of other his accomplices and as such he along with other staff while taking accused Sardar with them proceeded to the pointed place Northern Bypass, Rahim Goth, in the jurisdiction of PS Manghopir and when they reached near the accused persons they started firing upon the police party who retaliated and after an encounter they arrested two persons in injured condition who disclosed their names as Mukhtiar and Asghar. Revolvers of 32 bore alongwith live rounds were recovered from both the accused persons and the same were seized and sealed separately under the proper mashirnama. As per his evidence he also recovered 5 empties of 32 bore, 4 of 9mm, 6 of 30 bore and 7 empties of SMG. The arrested accused persons further disclosed that three other accomplices escaped from the scene and they were Danish, Muhammad Magsi and Wali Muhammad. The mashirnama was signed by the ASI Waseem Illahi and PC Asad Asghar. The injured were sent for medical treatment and on reaching at police station the FIR's were registered by him. He handed over the custody of these accused persons and the recovered property to inspector Rana Ishrat for investigation. PW-4 ASI Wasseem Illahi the witness of the encounter, recovery and arrest of accused persons had supported his version in totality without any material contradiction

24. The cases of encounter and the Arms were also entrusted to the Inspector Rana Ishrat of AVCC for the investigation alongwith custody of accused and the property recovered from the place of incident by the complainant SIP Niaz Muhammad. He deposed that after getting the custody of accused persons and the property, recorded statements of the witnesses and on 22-04-2015 sent all the weapons for FSL, also sent vehicle which bullets hit during the encounter for FSL, conducted identification parade of accused persons through the Magistrate, received the positive FSL reports on 19-05-2015 in respect of the weapons recovered from accused Asghar and Mukhtiar which he also exhibited in evidence. All the police witnesses were cross-examined but their evidence was not shattered by the defence counsel which we believe to be reliable, trustworthy and confidence inspiring. The evidence of the prosecution witnesses corroborates each other in all material respects. Even the evidence of police witnesses can be safely relied upon since no allegation of enmity, bias or ill will has been made against any of them and as such they had no reason to falsely implicate the appellants in this case. In this respect reliance is placed on **Zafar v. State (2008 SCMR 1254)**.

25. We have also noticed some minor contradictions in the evidence but no major contradiction has been pointed out by the defence counsel in the evidence of prosecution witnesses. Even in the cases where some minor contradictions may be available which are not sufficient to create any serious doubt the same can be ignored which always are available in each and every case, as has been held by Honourable Supreme Court in case of **Zakir Khan V. The State {1995 SCMR 1793}**, relevant paragraph is reproduced as under:-

***“13. The evidence recorded in the case further indicates that all the prosecution witnesses have fully supported each other on all material points. However, emphasis has been laid by Mr. Motiani upon the improvements which can be found by him in their respective statements made before the Court and some minor contradictions in their evidence were also pointed out. A contradiction, unlike an omission, is an inconsistency between the earlier version of a witness and his subsequent version before the Court. The rule is now well established that only material contradictions are to be taken into consideration by the Court while minor discrepancies found in the evidence of witnesses, which generally occur, are to be***

*overlooked. There is also a tendency on the part of witnesses in this country to overstate a fact or to make improvements in their depositions before the Court. But a mere omission by witness to disclose a certain fact to the Investigating Officer would not render his testimony unreliable unless the improvement made by the witness while giving evidence before the Court has sufficient probative force to bring home the guilt to the accused.”*

26. Thus based on the discussion made hereinabove and on our reassessment of entire evidence produced by the prosecution, we find that the prosecution has proved the charge beyond a reasonable doubt against the appellants by producing reliable, trustworthy, and confidence-inspiring oral evidence as well as recovery of the crime weapons and the other material belonging to the complainant party so also the documentary evidence in support of the same. We, therefore, uphold all the sentences, fines, and penalties for each offence in the judgment whilst dismissing the appeals of the appellants.

27. The appeals stand disposed of in the above terms.

**JUDGE**

**JUDGE**