

Kidnap For Reason: Abductor believed
No need for ID parade 648

CERTIFICATE OF THE COURT BY READER

Sp: ATA 157/17 s/w others

Ashfaq A. & others vs. The State

SINDH HIGH COURT

Composition of Bench.

Single/D.B.

Mr. J. Muhammad Raza Khan Aji

Mr. J. Zulfiqar Ali Sangi

Dates of hearing: 05-05-20

Decided on 13/05-20

(a) Judgment approved for
reporting.

Yes
No

KAGL

CERTIFICATE

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

*Strike out whichever is not applicable.

NOTE:—(i) This slip is only to be used when some action is to be taken.

(ii) If the slip is used, the Reader must attach it to the top of the first page of the judgment.

(iii) Reader must ask the Judge writing the Judgment whether the Judgment is approved for reporting.

(iv) Those directions which are not to be used should be deleted.

SGP., Kar.—L (iii) 1459—5,000—6-93—T.S.S.

IN THE HIGH COURT OF SINDH AT KARACHI

Cr. Special Appeal No. 157 of 2017

Ashfaq Ahmed S/o Nazeer Ahmed,
 Muslims, adults, residents of Karachi
 Presently confined in Central Prison
 Karachi... .. Appellant

Versus

The State Respondent

FIR No. 378 /2012
 U/s 365-A/395/347/34 PPC
 R/w Sec.7 A.T.A. 1997
 P.S. Boat Basin Karachi

CR. SPECIAL APPEAL UNDER SECTION 25
OF THE ANTI-TERRORISM ACT 1997

Being aggrieved by and dis-satisfied with the impugned Judgment of conviction dated: 03.07.2017 passed by the learned Anti-Terrorism Court No.VIII, at Karachi in Special Case No.57(iii)/2012 (New Special Case No.15/2014), (titled as: State ...versus ...Aslam Jan and others), whereby convicting the appellant and other accused Persons and sentenced to suffer Life Imprisonment under section 7(i, e) of A.T.A. 1997 and sentenced them U/s 395 PPC to suffer R.I. for Ten years and fine of Rs.100,000/- each and in

IN THE HIGH COURT OF SINDH AT KARACHI

Special ATA Appeal No. D 160 of 2017

Muhammad Hassan alias Ali Hassan S/o. Ghulam Nabi
Muslim, Adult, R/o. Bunglow No.6 DHA Phase-VI Karachi.
Presently Confined at Central Prison Karachi.

.....APPELLANT

V E R S U S

The State

.....RESPONDENTS

FIR No. 378/2012
P.S Boat Basin, Karachi
U/s. 365-A, 395, 347, 34, PPC
R/W Section 7 of ATA, 1997.

APPEAL U/S. 25 OF ANTI-TERRORISM ACT, 1997

Being aggrieved by and dissatisfied with the impugned judgment dated 03.07.2017 passed by learned Trial Judge / Judge Anti-Terrorism Court No. VIII Karachi in old Special Case No. 57(iii)/2012 and New Special Case No. 15/2014 whereby the Appellant was convicted and Sentenced for life imprisonment and forfeiture of his property. All the sentences are ordered to be run concurrently and the benefit under Section 382 (b) Cr.P.C was also extended to the Accused / Appellant.

(Certified True Copy of Judgment is annexed as annexure A)

It is prayed on behalf of the Appellant that this Honourable Court may be pleased to set aside the impugned judgment dated: 28.03.2017 on consideration of following facts and grounds:-

F A C T S

Brief facts of the prosecution case are that on 05.08.2012 Complainant namely Mrs. Geeta Shahani the FIR No. 378/2012 P.S Boat Basin U/s. 395,347,34 PPC R/w. Section 7 of ATA, 1997 wherein she disclosed that on 30.07.2012 at about 06:30 p.m she along with her driver accused Ramzan went to a Temple (Mandar) situated in Prince Complex for offering prayers in her Honda City car bearing registration No. AEF-381 and after prayer on her way back to home at about 09:30 p.m

date to which
hearing is
adjourned

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THE HIGH COURT OF SINDH 1/8
AT KARACHI
D.C.
2017

Shahid Ahmad @ Zahid Baluch

vs. Lat Bux

Presently Conjoined in Central

District Court - Appellant/Plaintiff

vs. Lat Bux - Respondent

Spl Case No. 57/CD/2014

New Spl Case No. 15/2014

FCR No. 378/2012

U.P. 365-A/395/347/34 PPC

R/W. 7 DATA Act 1997

P.S. Band Basin Karachi

Arrest under Section 25(2) ATA Act 1997 with the
Anti Terrorism Act 1997 and Certified copies
of records and facts to file the appeal kindly
approve humbly.

Respected Honorable Sir,

Being aggrieved and dissatisfied the impugned
judgment on date 3rd July 2017 of Anti Terrorism
Court No. 11th Karachi, where the learned
Judge convicted to sentenced for R.I. life
the appellant is liable forfeiture of his property
U.P. 365 PPC with the U.P. 700 of Anti Terrorism
Act 1997 of 10 years and fine of Rs. 1-lac
in case failure to pay of fine further for 6
months more.

That all the sentenced above conviction
is concurrently to extended the accused
person also extended Section benefit
to 30 days as per. Since this appeal is file
through by Superintendent Central
Prison Karachi with facts and grounds.

IN THE HIGH COURT OF SINDH
AT KARACHI
SPL ATA appeal No. 10 / 2017

653

Muhammad Ramzan

70 Allahditta
Conjined in Central
Prison Karachi -

Appellant/ Accused

Respondent

The State -

SPL Court No. 57(III) 2012

Mem. SPL Can No. 15/2014

FIR No. 378/2012

U/s 365-A/395/347/34 PPC

R/W 7 of ATA Act 1997

P.S Boat Basin Karachi

Appeal under ATA Act (1997) 25 with the
Anti Terrorism Act 1997 to Submitted
appeal also with the facts and grounds
kindly admit appeal with sympathy
and consideration

Respected Honourable Sir
Being aggrieved and dissatisfied the impugned
judgement. On dated. 03rd July 2017 of the
Anti Terrorism Court No. VIIIth Karachi,
where the learned Court convicted and to
sentenced for R.I. imprisonment of life
and shall be also punished and sentenced
is liable forfeiture of his property.

IN THE HIGH COURT OF SINDH AT KARACHI

Crl. Jail Appeal No. Of 2017.

At
 Anan Ahmed s/o Ahmed,
 Muslim, adult, presently
 confined in Central Prison,
 Karachi.....

Appellant in person.

Versus

The state.Respondent.

Index.

	Description.	Annex.	Page.
1.	Memo of Appeal & Affidavit.		
2.	Copy of impugned Judgement.		
3.	Application u/s 426 Cr. P.C.		
4.	Application of Exemption.		
5.	Application of Condonation.		

Before me

18/11


Karachi.

29.09.2017.

[Signature]


Appellant.

JUDGE

Kidnap for ransom: Abductee believed
No need for DP parole 655

IN THE HIGH COURT OF SINDH AT KARACHI

Spl. Crl. Anti-Terrorism Appeal No.157 of 2017.
Spl. Crl. Anti-Terrorism Appeal No.160 of 2017.
Spl. Crl. Anti-Terrorism Jail Appeal No.180 of 2017.
Spl. Crl. Anti-Terrorism Jail Appeal No.202 of 2017.
Spl. Crl. Anti-Terrorism Jail Appeal No.209 of 2017.

Present:

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

Appellants:

1. Ashfaque Ahmed S/o. Nazeer Ahmed
through Jan Muhammed Naich, Advocate
2. Muhammad Hassan alias Ali Hassan
S/o. Ghulam Nabi through Mr. Insaf Ahmed
Shaikh, Advocate.
3. Sohail Ahmed @ Zahid Baloch S/o. Lal Bux.
4. Muhammad Ramzan S/o. Allah Ditta.
5. Adnan Ahmed S/o. Ahmed,
through Mr. Ajab Khan Khattak Advocate

Respondent/State:

Through Mr. Muhammad Iqbal Awan, Deputy
Prosecutor General.

Date of hearing:

05.05.2020.

Date of Judgment:

14.05.2020.

J U D G M E N T

MOHAMMAD KARIM KHAN AGHA, J:- Accused/Appellants Ashfaque Ahmed S/o. Nazeer Ahmed, Muhammad Hassan alias Ali Hassan S/o. Ghulam Nabi, Sohail Ahmed @ Zahid Baloch S/o. Lal Bux, Muhammad Ramzan S/o. Allah Ditta and Adnan Ahmed S/o. Ahmed were tried by learned Judge, Anti-Terrorism Court No.VIII, Karachi in Special Case No.57(iii)/2012 (New Spl. Case No.15/2014), arising out of Crime No.378/2012 u/s. 365-A/395/347 PPC r/w section 7 of ATA, 1997 registered at P.S. Boat Basin, Karachi. After trial vide judgment dated 03.07.2017 the accused Ashfaque Ahmed, Muhammad Ramzan, Adnan Ahmed and Sohail Ahmed were sentenced to Imprisonment for Life with forfeiture of their property U/s. 7(i)(e) of Anti-Terrorism Act 1997 R/w section 365-A PPC. They were also sentenced to imprisonment for 10 years.

along with fine of Rs.01 lac each for the offence punishable U/s. 395 PPC. In default of payment of fine they were ordered to further undergo six months more imprisonment, whereas accused Muhammad Hassan was punished u/s. 7(i)(e) R/w 365-A PPC and sentenced for Life Imprisonment along with forfeiture of his property. All the above sentenced were ordered to run concurrently. The benefit of section 382 (B) Cr.PC was also extended to the appellants.

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

3. The brief facts of the prosecution case are that on 05.08.2012 complainant Mrs. Geeta Shahani got her statement recorded U/s 154 Cr.P.C. which was incorporated in the book of 154 Cr.P.C. at P.S. Boat Basin, Karachi alleging therein that on 30.07.2012 at about 06:30 p.m. she along with her driver accused Ramzan went to a "Mandar" situated in Prince Complex for preaching in her Honda City Car bearing registration No.AEG-381 and after preaching, while returning, when she reached at Block-2, near to her Bonsita Apartment at about 09:30 p.m. a car came from back side and hit her car intentionally. She further narrated that her driver accused Ramzan alighted from the car and started talking with those persons of the other car who had hit her car and in the meanwhile two persons alighted from the car that had hit her car and came with her driver and sat in her car. The complainant alleged that the said persons issued threats to her not to raise hue and cry otherwise they would shoot her. The complainant further disclosed that accused forcibly robbed gold **Kara**, two rings and a wrist watch from her. One of them sat on the driver's seat next to her driver and drove towards Ziauddin Chowrang. She was blind folded and kept in a katcha house. One of the accused was kept guard upon her whereas other accused was enquiring from her about gold ornaments and cash. Another accused duly armed also came there and snatched keys of her house, who went to her house and took away **cheque book**, cash of Rs.12,000/-, 200 US Dollars, 500 Darham and silver ornaments about 8/10 Tola. According to the complainant at about 01:00 a.m. at night the accused obtained her signature on the cheque of Rupees One Crore and on the next day one of the accused took her cheque to

Faisal Bank, Abdullah Haroon Road branch for encashment and when the Manager enquired about abductee/complainant's encashment of cheque due to fear she asked him to encash the cheque. Thereafter at about 02.30 p.m. the accused left her along with her car at ICI Bridge by saying that her driver had been killed. Wherefrom she came to her house and came to know that her driver Muhammad Ramzan, his brother Gulzar along with their three unknown companions intentionally managed for an accident with her car, kept her under wrongful confinement, forcibly robbed cash, foreign currency, gold, silver ornaments and got en-cashed cheque of Rupees One Crore from her account.

4. After registration of FIR, investigation was entrusted to Inspector Hameedullah Niazi who visited place of incident and prepared such memo. He also recorded further statement of complainant. On 16.08.2012 all the above accused were arrested by the police of P.S. Clifton being suspicious and during interrogation they were found involved in the commission of present offence. The I.O. therefore, arrested them in the present crime.

5. Accused Sohail @ Zahid Baloch and Muhammad Ramzan pointed out place of incident to the I.O. who prepared such memo in presence of mashirs. During interrogation on 17.8.2012, accused Sohail and Muhammad Ramzan volunteered to point out the place where the abductee had been confined. On the pointation of accused Sohail @ Zahid Baloch the I.O. recovered Rs.7,00,000/- from a house situated in Mawachh Goth, which amount was received by him as his share of the ransom amount. Such memos were duly prepared by the I.O. During further interrogation another accused also volunteered to produce the amount from their house situated at Generalabad Shereen Jinnah Colony, Karachi. Wherefrom, accused Aslam Jan produced a 7 MM rifle with loaded magazine containing 05 live bullets and cash Rs.5,00,000/-. Accused Sohail Baloch produced one Kalashnikov with 10 live bullets and cash of Rs.50,000/-. Accused Ashfaq Ahmed produced a pistol with three live bullets and cash of Rs.5,00,000/-. Accused Muhammad Ashraf produced a 30 bore pistol with two live bullets and accused Muhammad Ramzan produced Rs.5,00,000/-. I.O. secured the same and prepared such memo in presence of mashirs.

6. During interrogation accused Aslam Jan further disclosed that Rs.46,00,000/- were received by him as his share of the ransom out of which he had produced Rs.500,000/- and had kept Rs.,21,00,000/- at the Bungalow of Senator Sajjid Dasti.

7. Accused Sohail @ Zahid Baloch during interrogation further disclosed that out of the share received by him he had given Rs.15,00,000/-, some American dollars and 03 sets of silver ornaments to his uncle Ahmed Ali and cash Rs.10,00,000/- to Yasir S/o. Asghar Ali for business purpose. On 24.08.2012 investigation was transferred to I.O./Inspector Abid Hussain Soomro and on 30.8.2012 he collected **CCTV/CD, cheque and voice recording CD** from the Manager Faisal Bank, Abdullah Haroon Branch.

8. On 31.8.2012, identification parade of accused was held before Judicial Magistrate-VI South Karachi during which the complainant identified accused Muhammad Ashraf, Sohail @ Zahid Baloch and Ashfaq Ahmed. On 02.9.2012, the investigation was transferred to Inspector Hameedullah Khan. On 07.9.2012 S.164 Cr.P.C. statement of accused Muhammad Hassan @ Ali Hassan was recorded before the concerned Magistrate. On 07.9.2012 on the pointation of accused Aslam Jan, the I.O. recovered Rs.900,000/- and **two gold Kara** from servant quarter, Bungalow No.136, Khayaban-e-Bukhari where accused Aslam Jan was working as guard. The I.O. also recorded 161 Cr.P.C. statements of witnesses and after completing legal formalities he submitted challan against the present accused in the court of law to face their trial, whereas the names of accused Mir Sajid Dasti, Gulzar, Ahmed Ali and Yasir were shown in the charge sheet with blue ink.

9. To prove its case the prosecution examined 10 prosecution witnesses and exhibited numerous documents and other items and thereafter the side of the prosecution was closed. Statements of the accused u/s 342 Cr.P.C. were recorded in which they denied the prosecution evidence and claimed to be innocent as this was a case of false implication. None of the appellants gave evidence under oath although appellants Sohail and Asfaq each called one witness in support of their defence case.

10. Learned Judge, Anti-Terrorism Court No.VIII Karachi, after hearing the learned counsel for the parties and assessment of evidence available on record, vide the impugned judgment dated 03.07.2017, convicted and sentenced the appellants as stated above, hence these appeals have been filed by the appellants against their convictions.

11. The facts of the case as well as evidence produced before the trial court find an elaborate mention in the judgment dated 03.07.2017 passed by the trial court and, therefore, the same may not be reproduced here so as to avoid duplication and unnecessary repetition.

12. Learned counsel for the appellants Sohail Ahmed, Muhammed Ramzan and Adnan Ahmed has contended that there is no evidence against any of the appellants, that there was a 5 day unexplained delay by the complainant in lodging the FIR which enabled her to cook up a false case against the appellants, that appellant Ramzan was only the driver of the appellant and that no case has been made out against him, that with regard to appellant Adnan there was no evidence of his involvement in the offense for which he had been charged, for example there was no identification evidence against him, and that appellant Sohail had simply been arrested from his house and had been falsely implicated in the case by the police and as such for any of the above reasons all the appellants should be acquitted of the charge by being extended the benefit of the doubt. In support of his contentions he placed reliance on **Sultan Khan v. Sher Khan and others** (PLD 1991 Supreme Court 520) and **Asfandiyar and another v. Kamran and another** (2016 SCMR 2084).

13. Learned counsel for the appellant Ashfaq contended that there was no evidence against him except the identification parade which could not be safely relied upon as it had not been carried out in accordance with law and had been delayed by 15 days and that the prosecution case did not appeal to reason as all 7 accused were arrested at the same time yet quite inexplicably only 3 of them were put before an identification parade whereas learned counsel for appellant Hasan submitted that there was no evidence against him whatsoever and that he stood by his confession which was exculpatory in nature and as such for any of the above reasons.

both learned counsel for the appellants contended that the appellants should be acquitted of the charge by being extended the benefit of the doubt.

14. On the other hand learned Deputy Prosecutor General has fully supported the impugned judgment and has contended that the eye witness abductee PW 7 Mrs Geeta Shahani has fully implicated the appellants in her kidnapping for ransom, that a ransom demand was made and was paid, that some of the ransom was recovered, that all the appellants are responsible for the offence as they all played a role in the kidnapping for ransom and the prosecution had proved its case beyond a reasonable doubt against each of the appellants and as such the appeals of each and every appellant should be dismissed. In support of his contentions he placed reliance on **Junaid Rehman and others v. The State and others** (PLD 2011 Supreme Court 1135), **Muhammad Siddique and others v. The State** (2020 SCMR 342), **Zakir Khan and others v. The State** (1995 SCMR 1793), **Muhammad Ehsan v. The State** (2006 SCMR 1857), **Khawaja Hasanullah v. The State** (1999 MLD 514), **Said Muhammad v. The State** (1999 SCMR 2758) and **Muhammad Zaman v. The State** (2007 SCMR 813).

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

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

(a) Admittedly there was a five day delay in lodging the FIR and usually such delay can prove fatal to the prosecution case **unless** the delay is adequately explained. In this case the abductee was an old lady of 70 years of age and has explained her delay in lodging the FIR in her evidence by stating that she is a heart patient and remained in shock for 5 days. Even otherwise the complainant had no enmity with any of the appellants and had no reason to falsely implicate any of them in this case. In the FIR she only nominated her driver and no other person which would not have been the

case if she wanted to fix the other appellants through a false case and as such in our view she had adequately explained her delay in lodging the FIR which has not caused prejudice to any of the appellants.

(b) In our view the key prosecution witness is eye witness abductee PW 7 Mrs Geeta Shahani who is also the complainant in this case. According to her evidence when she reached home on 30-07-2012 at 9.30pm her car was hit from behind and her driver left her car to discuss this with the driver of the car which hit them where after one of the persons from the car sat on the driving seat of her car, another sat in the back of her car next to her with a pistol and she was then joined by her driver in the back of the car. She was then driven to an unknown location where she was robbed of her gold bangles, wrist watch, cash, her purse, credit cards and house keys were also taken. **At this point she was not blind folded.** The accused demanded money from her and wanted to know where her cheque book was kept. By taking her house keys they entered her house and robbed more valuables and returned with her cheque book and compelled her with threats to her life to make out a cheque for RS one Crore which she did. They also forced her to call her bank and explain the large withdrawal which the bank even called back and reconfirmed from her before encashing her cheque. Once the cheque was encashed she was released at 3.15pm the next day. She lodged her FIR and later identified 3 of the accused before an identification parade with specific roles. She identified convict Muhammed Asraf (who was convicted in this case but has not filed an appeal as yet), appellant Ashfaq Ahmed and appellant Sohail. In this case she was in the company of the appellants for virtually one day when the appellants were very interactive with her from abducting her in her car, taking her to the place of captivity, robbing her, demanding money from her, finding out from her where her cheque book was kept in her house, getting her to sign the cheque and speak to the bank manager. During this period she was not blind folded, there would have been light and as such she would have got a good look at her abductors over a considerable period of time and thus she would have been able to easily correctly identify her abductors. In such facts and circumstances in a kidnapping for ransom case the superior courts have held that identification parades are not mandatory. In this respect reliance is placed on the case of **Zakir Khan** (Supra). Even otherwise an identification parade was held in this case where the abductee correctly identified 3 of the accused with specific roles. The 15 day delay in holding the identification parade has been explained as it was the Eid holidays and even otherwise a delay in holding an identification parade is not fatal to its outcome. In this respect reliance is placed on **Muhammed Zaman** (Supra). We consider any lapses in the identification parade as being only minor in nature and do not based on the particular facts

and circumstances of this case lead us to the conclusion that the abductee has not correctly identified the two appellants who played a role in her kidnapping for ransom. In this respect reliance is placed on **Muhammed Siddique V State** (2020 SCMR 342). Even in her own evidence the eye witness abductee states as under,

"I had seen the involvement of the 5 accused, one had collided car with my car, second sat with me on the backside of car and snatched gold ornaments etc, third drove my car, fourth encashed the cheque and fifth was my driver Ramzan"

As noted above the abductee had no reason to implicate any of the appellants in a false case and her evidence is similar to her S.154 Cr.PC statement. Her evidence was not dented despite lengthy cross examination and thus we believe her evidence and the correctness of her identification of the appellants. Her identification of appellant Ramzan is not in doubt as she knew him for the last 6 months as her driver and there was no need for any identification parade in respect of this appellant. With regard to appellant Adnan he is clearly shown on the CCTV at the bank encashing the abductee's cheque and as such his identification is also not in doubt. The only identification which is left is appellant Hassan whose involvement in the kidnapping as discussed later was lesser than that of the other appellants.

It is settled law that we can convict if we find the direct oral evidence of **one eye witness** to be reliable, trust worthy and confidence inspiring. In this respect reliance is placed on **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 held as under 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 matters;

"11. The statement of Israel (P.VV.9) the eye-witness of the occurrence is confidence inspiring, which stands substantiated from the circumstances and other evidence. There is apt observations appearing in Allah Bakhsh v. Shammi and others (PLD 1980 SC 225) that "even in a 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 which matter. Therefore, we are left with no doubt whatsoever that conviction of Niaz-ud-Din was fully justified and has rightly been maintained by the High Court." (bold added)

In this case we find the abducted eye witness PW 7 Geeta Shahani's evidence to be reliable, trust worthy and confidence inspiring and we believe her evidence in its entirety including her correct identification of the appellants named above. Such identification of the appellants named

above is also corroborated by PW1 Hatim Aziz who was the judicial magistrate in whose presence the abductee made the identification of the above named appellants and also recorded the confession of appellant Hasan.

Never the less by way of abundant caution we will consider below whether any corroborative/supportive evidence is available in respect of the direct oral eye witness evidence.

(c) Judicial confession of appellant Hassan which is set out below for ease of reference.

Statement u/s. 164 Cr.P.C. of Muhammad Hassan dated 06.09.2012.

Question: What have you to say?

Six days ago from Ramzan, Ramzan driver (appellant in this case) met with me in the parking area of Hyper Star Shopping Mall, his vehicle was hit from back and he was abusing to his madam that she is stinginess and which bumper has hit, she deducted its amount from my salary, during which, he said that he wants to abduct her. I said that she is aged lady, so who said that she is owner of Crore of Rupees and resides alone in the house and her son resides abroad, who asked that have any person, so, I said that there are some Balouch persons, who are gunmen at bungalow, after that, first Ramzan, he came at my house, so I got met him with Aslam Jan guard (already convicted in this case), who remains present on a bungalow situated in Khayaban-e-Bukhari (from where part of the ransom amount was recovered), then we went to meet with Aslam Jan, who asked that whether your lady owner keeps amount in cash, upon which, he replied that some time she also keeps cash and also keeps ATM card and Cheque Book of cash, during the said discussion, there was a driver named Ashraf (an appellant in this case) on the said bungalow, who served tea, we took tea and said discussion remained continued, then we came out from there. On third Ramzan phone call of Aslam was received that you come at my bungalow, I went there, at there person named Sohail alias Zahid Balouch (an appellant in this case) was present. He said to take him and meet with Ramzan. We went at Garden PSO, we went there where the bungalows are situated in front of PSO

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Pump, so Ramzan was present there. His discussion was made with Ramzan that Aslam has sent him, after discussion, we came back at Aslam. Aslam, Ashraf and Sohail remained stayed there and I went at bungalow, after the said day, on fifth Ramzan, I phoned to Ramzan, so he said that not to make phone call to him. On 16th August, Aslam called me at Zamzama. I just came and stopped there, the police of Clifton P.S. took to me, Sohail, Adnan (an appellant in this case) and Ashfaq at PS. I saw him (Ashfaq) first time, then maltreatment was committed, then the personnel of boat basin kept us with them for investigation and locked up at night. At night in the lock up Ramzan disclosed that on 29th Ramzan at about 9:00 p.m. he got abducted to his madam and we all received Cheque of One Crore Rupees and Ramzan said that he and Sohail Balouch went at the flat of madam and stolen the remaining articles and Ramzan disclosed that these persons distributed the amount them, I have to say this much. (bold added)

It is settled law that a retracted judicial confession can be used against its maker provided that it has been made (a) voluntarily and (b) is truthful and (c) there are only minor irregularities in its recording. In this respect reliance is placed on **Muhammad Amin V The State** (PLD 2006 SC 219) and **Azeem Khan V Mujahid Khan** (2016 SCMR 274).

We find, based on the particular facts and circumstances of this case, that appellant Hasan's confession has been made voluntarily, is truthful and suffers from hardly any irregularities in its recording and has even been accepted by learned counsel for appellant Hasan as in his view it is exculpatory in nature.

In our view however it shows that Hasan was involved in the kidnapping for ransom along with the others at least to the extent of planning and putting together the team who executed the kidnapping for ransom in full knowledge of their intentions which was learnt over several meetings which he attended and thus he played a role (albeit a minor one) in the kidnapping for ransom of the abductee.

It is settled by now that any person who plays a role in a kidnapping for ransom case, however minor, is equally as liable as the other co-accused. In this respect reliance is placed on **Khawaja Hasanullah's case** (supra) where it was held as under at P.524;

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"In cases of abduction for ransom, it is not necessary that all the culprits must have collectively done all the criminal acts together form 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".(Bold added)

Likewise in the case of **Said Muhammad** (supra) it was held as under at page 2759 paras-2 and 3:-

"Three persons were abducted namely, Ghulam Mohyuddin, Khalid Mahmood and Abdur Rehman on 25.4.1991. After a few days, two of the abductees namely, Abdur Rehman and Ghulam Mohyuddin were released but abductee Khalid Mahmood was not released and, till the disposal of the case, the whereabouts of Khalid Mahmood were not known. Appellant Said Muhammad was not present at the time of actual abduction had taken place. The main culprits were Ghulam Muhammad and Faiz Muhammad who were tried in absentia, as observed earlier, and three others namely, Dost Muhammad, Abdul Khalid and Aziz Ullah who could not be apprehended but some time later they were killed in a police encounter.

The role assigned to appellant Said Muhammad is that, after the main culprits had abducted the three abductees and were taking them in a vehicle, on the way, Said Muhammad was stationed who told the abductors that the passage was clear. From the evidence the involvement of Said Muhammad in the offence is established as has been found by the trial Court and confirmed by the High Court. In the circumstances of the case, Ch. Muhammad Akram, learned counsel for the appellant, has not pressed this appeal on merits but only argued the appeal on the question of sentence. According to learned counsel, it was a fit case where appellant Said Muhammad should have been awarded the lesser sentence.

In present case it would appear from the evidence that the leading part in the abduction was that of the co-accused and compared to their role, the role of appellant Said Muhammad was minor in nature. In the facts and circumstances of this case, we are of the view that a distinction can be made in the case of the present appellant in so far as the question of sentence is concerned.

Reference in this regard can be made to a judgment of this Court in the case Shufoo v. State (1968 SCMR 719) (bold added)

(d) PW 4 Umar Hasan who was Branch manager Faisal Bank who was an independent witness and not a chance witness who handed over the CCTV footage showing appellant Adnan encashing the abductee's cheque, the bank's voice recording of the bank's call back confirming Ms Geeta's permission to encash the cheque and the original cheque of Ms Geeta for Rs one crore, and CNIC of appellant Adnan who had encashed the cheque dated 30.07.2012. The evidence of PW 4 Umar Hasan and the items recovered from the bank as mentioned above all corroborate the evidence of the abductee. None of the appellants challenged the admissibility or exhibiting of any of these documents or items at trial. The CCTV footage shows appellant Adnan encashing the cheque and the CNIC which he gave to the bank at the time of encashment belonged to him. The call back recording between bank staff and the abductee fully corroborates the abductee's evidence and the cheque is hers with her signature on it which has not been disputed by any of the appellants. The Rs one crore is therefore the payment of the ransom demand as the cheque was signed by the abductee under threat to her life. It also does not appeal to logic, commonsense and reason that the abductee would not have been personally present to collect the cash since it was such a large amount and she would have definitely informed the bank well in advance that she was intending to withdraw such a large sum of money rather than demand it be paid over immediately on a phone call.

(e) The abductee did not know where she was held in captivity by her kidnappers and nor did the police however after their arrest appellants Sohail and Ramzan on their pointation took the police to the place where they had held the abductee captive which place no one except the kidnappers were aware of. Each of the appellants pointed out the separate rooms where they stayed during the abduction. Sohail in order to gain entry to the house produced a key which he had hidden and also handed over RS 7lacs to the police which was his share of the ransom amount. In our view appellant Sohail who was not a well off person has not been able to justify this large amount of money. In this respect reliance is placed on PW 8 Hameedullah Khan and PW 9 Waseem Ahmed.

(f) That the appellants on their pointation took the police (PW 8 Hameedullah Khan and PW 9 Waseem Ahmed) to a place where weapons and some of their ransom was kept which was a place the police did not know about and only the appellants were aware. The police were taken to a room on the first floor of a building at Shareen Jinnah Colony where:

(i) Accused/convict Aslam Jan (who was convicted in this case but has not filed an appeal) handed over 7 MM Rifle and bullets and **RS 5 lacs being his share of the ransom amount.**

(ii) appellant Sohail handed over one SMC from an Iron box

(iii) appellant Adnan handed over one pistol and bullets and **RS 50,000 being his share of the ransom amount**

(iv) appellant Ashfaq handed over one pistol and bullets and **RS 5 lacs being his share of the ransom amount from an Iron box**

(v) Accused/convict Ashraf (who was convicted in this case but has not filed an appeal) handed over a pistol and bullets.

(vi) Appellant Ramzan handed over **RS 5 lacs which was his share of the ransom amount.**

In our view none of the appellants were in a financial position to have in their possession such large amounts of cash and even if they were in such a position there would have been no reason for them to have hidden it away secretly rather than put it in a bank account. Thus, we find that such recoveries of cash from the appellants was part of the ransom amount which was paid to them as kidnappers of the abductee

(g) According to PW 9 Waseem Ahmed and PW 10 Hameed Khan Accused/convict Aslam Jan (who was convicted in this case but has not filed an appeal yet) and was another member of the kidnapping for ransom gang took the police on his pointation to Bungalow 136, 39th Street Khyaban Bukhari Phase VI DHA Karachi where he lead them to the servant quarters and in a room adjacent to the bathroom he handed over to the police **RS 9 lacs and two Golden Kara's which was his share of the ransom money.** The golden Kara's belonged to the abductee Geeta.

(h) Appellant Ramzan in his S.342 statements admits that he was the domestic servant/ driver of Ms Geeta and that Ms Geeta was abducted as under;

"I was domestic servant on Ms Geeta Shahani. I was arrested by the police who pressurized me to give

evidence against other persons but I refused. In fact of 30-07-2012 when I was coming with Geeta Shahani she was abducted by 3 persons who also took me with them....." (bold added)

(i) 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)

(j) That all the PW's are consistent in their evidence and even if there are some contradictions in their evidence we consider these contradictions as minor in nature and not material and certainly not of such materiality so as to effect the prosecution case and the conviction of the appellants. In this respect reliance is placed on **Zakir Khan V State** (1995 SCMR 1793). Their evidence provides a believable corroborated unbroken chain of events from the kidnapping of the complainant in her car outside her house, to her forced captivity, the stealing of her valuables, the demand for her to pay RS one crore cheque under threat of her life, to the encashment of that cheque, the arrest of the accused and the recovery of some of the ransom amount from them.

(k) Although we have found that the prosecution has proved its case against all the appellants beyond a reasonable doubt we have also considered the defence cases of the appellants. According to appellant Ramzan he was also abducted however based on the other evidence discussed above we disbelieve his defence. The other appellants claim that they were arrested from their homes but none of the appellants examined themselves on oath and only appellants Sohail and Asfaque produced a witness in support of their case but we do not find their evidence believable in the face of the overwhelming prosecution evidence against the appellants and their defence appears to be an after thought in order to save their skins.

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

"It is a matter of public knowledge that in Sindh, on account of kidnapping for ransom, commission of dacoities and other offences, the people are feeling unsecured. The learned trial court has dilated upon these aspects in detail. I am inclined to subscribe to the view

found favour with it. The approach of the Court in matters like the case in hand should be dynamic and if the Court is satisfied that the offence has been committed in the manner in which it has been alleged by the prosecution the technicalities should be overlooked without causing any miscarriage of justice". (bold added).

17. Thus, based on the above discussion especially in the face of reliable, trust worthy and confidence inspiring eye witness evidence of the abductee and other corroborative/supportive evidence mentioned above we have no doubt that the prosecution has proved its case against all appellants beyond a reasonable doubt and as such the appeals against conviction filed by all the appellants (namely, Ashfaq Ahmed, Muhammad Hassan alias Ali Hassan, Sohail Ahmed @ Zahid Baloch, Muhammad Ramzan and Adnan Ahmed) are all dismissed and the impugned judgment is upheld.

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