

Stereo HCJDA-38
Judgment Sheet
**IN THE LAHORE HIGH COURT
BAHAWALPUR BENCH BAHAWALPUR
JUDICIAL DEPARTMENT**

Criminal Appeal No.45 of 2014
(Amir Hussain Vs. The State)

Criminal Appeal No.35 of 2014
(Ashiq Hussain Vs. The State & another)

&

Criminal Appeal No.29 of 2014
(Mst. Gulshan Naheed Vs. The State & another)

Date of hearing: 06-09-2018

Appellants by: M/s Muhammad Sharif Bhatti, Javed Iqbal Adham, Zeeshan Haider and Sardar Israr Hussain Dahir Advocates.

Complainant by: Nemo.

State by: Mr. Najeeb Ullah Jatoy, Deputy Prosecutor General Punjab.

OAZI MUHAMMAD AMIN AHMED, J:-Arhum Waheed,7,was playing outside his home on 20.10.2013 when at 2:30 p.m, whisked away by two pillion riders; commotion by playmates attracted from the neighborhood, amongst other, Habib-ur-Rehman and Khawaja Naveed Faiz, PWs. Upon failure to search the child, the incident was reported at Police Station Civil Lines Bahawalpur, at a distance of 2 ½ kilometers from the venue through application (Ex.PA) moved by child's father Muhammad Waheed Faiz (PW-3). The complainant received a cellular call on 4.11.2013 when the caller demanded Rs.50,00,000/- as ransom for the release of his son; it was finally settled as Rs. 5,00,000/-; the complainant took the police into confidence. Again on 7.11.2013 at 10:00 a.m, the complainant was directed to reach Humaira Hotel on the bank of Satlej River with the ransom amount; the amount was arranged with

signatures of some of the bills of Rs.5000 denomination as the witnesses, three brothers inter-se reached the designated point, they were diverted to Adda Sharifabad again detoured to a place known as Rehman Phatak; three appellants were present there; they received ransom and let off the child. The episode was shared with the police same day; shortly thereafter, the appellants were apprehended from a house situated near Bindra Pulli. Upon personal search by Shaista Khan 2066/LC (PW-2), a sum of Rs. 30,000/- was recovered; it comprised six bills of Rs. 5000 each (P-1/1-6) with two earlier signed by the complainant, Ashiq Hussain got recovered a sum of Rs.130,000/-(P-3/1-26) on 17.11.2013 followed by Amir Hussain in the sum of Rs.180,000/- (P-4/1-36) on 19.11.2013 comprising of bills of same denomination i.e Rs.5000/- each, these included bills with previous signatures. A motorbike (P-5) and additional sum of Rs. 50,000/- (P-6/1-10) were recovered on 20.11.2013 at the disclosure of Ashiq Hussain followed by another sum of Rs. 50,000/- (P-7/1-10) and a cellphone by Amir Hussain appellant on 25.11.2013. Police secured data (P-9) suggestive of communication between the appellants and the complainant vide memo Ex.PJ. Indicted on 19.12.2013, the appellants claimed trial, in pursuance whereof, prosecution produced six witnesses to drive home the charge; they include the child, Arhum Waheed (PW-5), his father Muhammad Waheed Faiz (PW-3) and uncle Naveed Faiz (PW-4), articulated concertedly; these statements constitute prosecution's mainstay. Without opting to be their own witnesses in disproof of the charge, nonetheless, the appellants denied the incident; they claimed that the complainant enacted a ploy to avenge altercation occurred between them at a service station. Gulshan Naheed, appellant came up with denial simpliciter. The learned trial Judge, however, unimpressed by appellants' positions, proceeded to convict them, vide impugned judgment dated 15-1-2014 under Section 365 of the Pakistan Penal Code, 1860 and sentenced them to imprisonment for life on each count with

forfeiture of their properties; they are also convicted under Section 7(e) of the Anti-Terrorism Act, 1997 with forfeiture of properties on each count; benefit of Section 382-B of the Code of Criminal Procedure, 1898 was also extended. CrI. Appeals No.45, 35 and 29 of 2014 dispute vires of the impugned judgment; these are being decided through this single judgment.

2. Learned counsel for the appellants contend that that the occurrence has been fabricated to rob the appellants in a fake case in order to settle an earlier dispute that brought both the male appellants with the complainant face to face; that the prosecution's case far from being confidence inspiring merits outright rejection as the complainant and the witnesses, on their own showing, had ample opportunity to apprehend the appellants red handedly, particularly when they manifestly carried no weapon. The learned counsel has also disputed recoveries as being sham, according to them, the appellants were arrested same day and, thus, there was no space to entertain hypothesis of piecemeal recoveries' spreading over a long span of time. Failure by the prosecution to arrange a test identification parade and complainant's refuge behind a supplementary statement to identify the appellants, has been severely criticized by the learned counsel who concluded that reliance upon Arhum Waheed, a child of impressionable age would be unsafe in circumstances; the bottom line is that prosecution's case, being fraught with doubts, benefit whereof, cannot be withheld. Contrarily, the learned Law Officer has defended the impugned judgment on the ground that there was no earthly reason for a family to put forth child of 7 years to set up a false case, over a petty exchange of hot words as claimed by the appellants; the learned Law Officer has strenuously referred to the statement of Arhum Waheed, that according to him, went, by and large without serious challenge; he has also referred to thorough investigative probe carried out by a Joint Investigation Team, comprising senior

police officers, to suggest that there was no factual basis for appellants' false implication.

4. Heard. Record perused.

5. The child was taken away on 20.10.2013; First Information Report, unambiguously suggests that the incident was reported same day through a direct approach at the police station; none was arrayed by name initially. The complainant, seemingly a well-off entrepreneur, joined by his family members, cannot be conceivably expected to come up with an ominous and fake plea of abduction involving his son aged just 7; a family would surely not countenance such a repugnant exercise; on the contrary, being an affluent trader, he was possibly a choice target for the crime. Prosecution's case when examined in the above backdrop is found incisively pointed upon appellant's culpability; the star witness is child himself, though, of an impressionable age, nonetheless, he intelligently responded to Court queries and thus, was rightly admitted in the witness box, pointing, unmistakably, his accusing finger upon the appellants; his formidable deposition, is confronted by the appellants with two suggestions alone, both denied firmly; he stayed in captivity with the appellants till his release on 7.11.2013 and, thus, had every opportunity to identify his captors; in the absence of any material, suggestive of a contra possibility, his evidence cannot be brushed aside merely on the hypothesis of being under parental influence. On an independent analysis, within the framework of totality of circumstances, he is found confidence inspiring against his tormentors. Insofar as argument that testimonies of Muhammad Waheed Faiz and Naveed Faiz, Pws ought to have been routed through the process of test identification parade, instead of being structured on supplementary statement is concerned, the suggested exercise, indeed, would have been a step much wiser, nonetheless, a usual lapse on part of the police, does not by itself diminish evidentiary value of the statements when taken in the overall framework of prosecution case. The complainant, in his

examination-in-chief, asserted to identify the appellants by their names and faces as he had earlier seen them at *Al-Makka Motor Workshop*, their workplace before they came across him after abduction of his son; the defence has opted not to contest this position and, thus, objection is beside the mark; same goes for the piecemeal recoveries, an appalling investigative inaptitude, if at all, to be viewed thoughtfully would not tremor the foundational base of the prosecution's case, otherwise firmly grounded on the statements of the witnesses, more than sufficient to drive home the charge beyond reasonable doubt; recovered amount with previous signatures by itself rules out the possibility of a mock exercise, designed to avenge a trivial altercation. On a most stringent and cautious analysis, there is no space to entertain any hypothesis of appellants' innocence; they have rightly been convicted and sentenced and, thus, no interference is called for except for a direction for sentences to run concurrently. *Cr. Appeals Nos.45, 35 & 29 of 2014 are disallowed.*

(Ch. Abdul Aziz)
Judge

(Qazi Muhammad Amin Ahmed)
Judge

Approved for Reporting.