2016 Y L R 2212

[Peshawar (Abbotabad Bench)]

Before Mrs. Irshad Qaiser and Qalandar Ali Khan, JJ

ADEEL and another---Appellants

Versus

The STATE---Respondent

Cr. A. No. 107-A of 2013, decided on 10th March, 2015.

(a) Criminal trial---

----Benefit of doubt--- Prosecution, primarily, was bound to establish guilt against accused without shadow of reasonable doubt by producing trust-worthy, convincing and coherent evidence enabling the court to draw conclusion as to whether the prosecution had succeeded in establishing accusation against accused; or otherwise---If the court would come to the conclusion that charges so imputed against accused had not been proved beyond reasonable doubt, then accused would become entitled for his release on getting benefit of doubt and in such a situation, the court had no jurisdiction to abridge such right---To ascertain as to whether accused were involved in the case, or they were entitled to the benefit of doubt, the court could conclude on considering agglomerated effect of the evidence available on record---For giving the benefit of doubt, it was not necessary that there should be many circumstances creating doubt---Single circumstance creating reasonable doubt in a prudent mind about the guilt of accused, would make him entitled to its benefit, not as a matter of grace and concession, but as a matter of right.

Safdar Ali v. The Crown PLD 1953 FC 93; Muhammad Luqman v. The State PLD 1970 SC 10 and Muhammad Akram v. State 2009 SCMR 230 ref.

(b) Penal Code (XLV of 1860)---

----Ss. 365-A, 120-B & 109---Anti-Terrorism Act (XXVII of 1997), S.21-J---Kidnapping or abduction for ransom, criminal conspiracy, abetment---Appreciation of evidence---Benefit of doubt---Case of two versions---Court was obliged to put both the versions in juxtaposition, and then ascertain which one was true---Story narrated by alleged abductee, did not appeal to the prudent mind and contradictions existed in the statements of prosecution witnesses---Prosecution having withheld the material piece of evidence, adverse inference could fairly be drawn that had said witness been produced, her evidence could have been unfavourable to the prosecution---Statement of alleged abductee, either under S.161, Cr.P.C., or under S.164, Cr.P.C., was not recorded soon after her recovery---No proper explanation had been given for non-recording her statement at proper time---Alleged abductee had made certain improvements--- Guest house, where alleged abductee was kept, was situate at a thickly populated area and if she had been kidnapped, she could easily attract the people by raising hue and cry---

Facts had supported the narration of accused that alleged abductee had gone with accused with her own free will---Prosecution had not been able to prove its case through direct evidence---Accused remained in Police custody for two days, but he did not confess his guilt---Judicial Magistrate had not followed the legal procedure for recording confessional statement of accused---Story narrated by accused recorded under S.342, Cr.P.C., was correct and he had never confessed his guilt before Judicial Magistrate---Confessional statement, which was recorded after long delay of more than 15/16 days from the date of arrest, could not be used as substantive evidence of fact---Identification parade, which had not been conducted in accordance with the prescribed procedure, had no value for determining the case of accused---Narration of defence appeared to be more truthful, convincing and correct than the contention of prosecution---In absence of truthful, trustworthy, reliable and confidence inspiring evidence, Trial Court had not wrongly extended the benefit of doubt to accused--- Conviction and sentence recorded by the Trial Court against accused were set aside and they were acquitted of all the charges, extending them benefit of doubt, and they were released, in circumstances.

Muhammad Yousaf and others v. Tariq Mehmood PLD 2008 SC(AJ&K) 6; Ala-ud-Din v. State 2008 PCr.LJ 424; Farid v. The State PLD 2002 SC 553; Ibrar Hussain and others v. State 2007 SCMR 605; Zafar Abbas v. State 2010 SCMR 939; Lal Khan v. State 2006 SCMR 1846; Rahat Ali v. The State 2010 SCMR 584; Imran Ashraf v. The State 2001 SCMR 424; 2008 PCr.LJ 928; 1996 SCMR 473; Amanullah Shah v. State PLD 1996 SC 241; Muhammad Aslam v. State 1999 SCMR 2147; Muhammad Rafique v. State 2010 SCMR 385; Farman Ahmed v. Muhammad Inayat 2007 SCMR 1825; Akhtar Ali v. State 2008 SCMR 6; Saeed Muhammad Shah v. State 1993 SCMR 550; Qasim Ali Malik v. The State and 2 others 2012 PCr.LJ 124; 2002 PCr.LJ 2021; Kachkol and others v. The State 2009 PCr.LJ 596; 2007 PCr.LJ 448; Muhammad Ali v. State 2008 PCr.LJ 87; Muhammad Pervez and others v. The State and others 2007 SCMR 670; Naqeebullah's case PLD 1978 SC 21; 2012 SCMR 524; 2005 SCMR 515; Anwar v. State 1975 PCr.LJ 750; Alamgir Khalid Chughtai v. State PLD 2009 Lah. 254; Muhammad Azeem v. Muhammad Iqbal PLD 1984 SC 95 and PLD 1993 W.P. Baghdad Jadeed 14 ref.

(c) Penal Code (XLV of 1860)---

----S. 365-A---Kidnapping or abduction for ransom--- Conviction could be awarded on basis of solitary statement of abductee, if it rang true and inspired confidence.

Rahim Shah v. The State and others 2004 PCr.LJ 1129 and Arab Gul v. Mir Shah Baz and others 2004 PCr.LJ 1138 ref.

(d) Criminal trial---

----Two interpretations of evidence---When there were two interpretations of evidence, one favouring accused, and the other prosecution, one favourable to accused, was required to be taken into consideration.

Muhammad Akhtar v. State 2010 YLR 2025 ref.

(e) Criminal trial---

----Circumstantial evidence--- Scope---Circumstantial evidence could only form basis for conviction, when it was compatible with the innocence of accused, or the guilt of any other person and in no manner be incapable of explaining upon any reasonable hypothesis, except that of the guilt of accused---Every link and circumstantial evidence, should be proved by cogent evidence, and if not, then conviction could not be maintained or awarded to an accused.

Muhammad Basharat Shah v. Syed Saqib 2013 PCr.LJ 619; Muhammad Iqbal v. State 2013 PCr.LJ 1683; Akbar Ali Shah v. State 2014 YLR 782 and Shamshad Khan and another v. Arif Ashraf Khan and 2 others 2008 SCMR 6 ref.

(f) Criminal Procedure Code (V of 1898)---

----Ss. 61, 167 & 344---Remand and successive remand---Once an accused was sent to judicial lock-up, he could not be handed over to Police subsequently and successive remand could not be given, except in extraordinary circumstances---If remand was required in exceptional cases, then it must be on the basis of detail given in the application for remand; and the reasons given by the Magistrate concerned---Superior courts had repeatedly issued direction to Magistrates and Police for grant of remand and for compliance of the mandatory requirements as required in the provisions contained in Ss.61, 167 & 344, Cr.P.C.

Haseeba Taimor Afridi v. State 2013 SCMR 1326; PLD 1996 Kar. 517 and 1995 SCMR 429 ref.

(g) Criminal Procedure Code (V of 1898)---

----S. 164---Confession---Court was to be careful in ascertaining the true character of the confession for conviction and must consider the reason given for retraction of the confession to find out the truth in such reason before making use of the confession for conviction--- Retracted confession, if found truthful and confidence inspiring; and also qualified the test of voluntariness, could be used for conviction without looking for any other corroboration.

Manjeet Singh v. State PLD 2006 SC 30 and 2005 SCMR 515 ref.

Raja Muhammad Shafat Khan and Nauman Malik for Appellants.

Mushtaq Ali Tahir Kheli for the Complainant.

Muhammad Naeem Abbasi, A.A.-G. for the State.

Dates of hearing: 4th, 5th and 10th March, 2015.

JUDGMENT

MRS. IRSHAD QAISER, J.---By this single judgment, we shall dispose of two Criminal Appeals under section 410, Cr.P.C., having title 'Adeel v. The State' (Appeal No.107-A/2013) and 'Etisam Taj v. The State' (Cr.A No.108-A/2013), two Criminal Revisions under section 439, Cr.P.C, titled 'Waqar Ahmad v. Adeel' (Cr.R No.28-A/2013) and 'Waqar Ahmad v. Etisam Taj' (Cr.R No.29-A/2013) and Criminal Appeal under section 417(2-A), Cr.P.C, titled 'Waqar Ahmad v. Miss Saima Sarwar and another' (Cr. A No.110-A/2013), relating to case FIR No.115 dated 31.01.2013 under sections 365-A/120-B/109, P.P.C., Police Station Cantt., District Abbottabad, and emanating from common judgment dated 22.07.2013 passed by learned Judge Anti-Terrorism Court, Hazara Division, Abbottabad.

2. In the said judgment, Adeel Abbas and Etisam Taj, appellants were convicted under sections 365-A read with section 120-B, P.P.C. and sentenced to rigorous imprisonment for life and their movable and immovable property was also directed to be confiscated to the State. However, Benefit of section 382-B, Cr.P.C. was extended to both the appellants. While accused Saima Sarwar was acquitted of the charges leveled against her in the case. Feeling aggrieved of the sentences passed by the learned trial Court appellant Adeel and Etisam Taj filed Cr. Appeal No. 107-A/2013 and Cr. Appeal No. 108-A/2013 wherein they challenged the conviction and sentences awarded to them. Whereas complainant, Waqar Ahmad filed two separate Revision Petitions (No.28-A/2013 and No.29-A/2013), seeking enhancement of sentence of said two convicts and Criminal Appeal (No.110-A/2013), challenging acquittal of accused Saima Sarwar.

3. The facts, as narrated in the FIR, are that on 31.01.2013 at 14.30 hours, complainant Waqar Ahmad (PW-6) lodged report of the occurrence in Police Station Cantt, Abbottabad to the effect that on 30.01.2013 due to stomach pain, his niece Mst. Ana Bakhtiar aged about 20/21 years was brought by her mother, Mst. Nazima Shaheen to DHQ Hospital, Kehal, Abbottabad for treatment. After checkup, Mst. Ana Bakhtiar went to the washroom of Operation Theatre (OT) of DHQ Hospital, and did not return back. They searched for her and came to know that Adeel son of Ghulam Sarwar and his sister Saima Sarwar have abducted his niece for ransom. He charged both Adeel Abbas and Saima and on the basis of said report, case was registered vide FIR (Ex.PA).

4. During investigation of the case, appellant Adeel was arrested on 31.01.2013 from his village by Muhammad Saeed ASI (PW-17) vide his card of arrest Ex.PW-17/1 and on his personal search, the said ASI recovered Dual Sim Nokia Mobile (Ex.P-1) having two Sims bearing No.0345-5500895 (Ex.P-2) and 0333-5703783 (Ex.P-3) and cash amount Ex.P-4 to Ex.P-6 vide recovery memo (Ex.PW 5/1). During summary interrogation at PS Hazro, appellant disclosed that he had kept Mst. Ana Bakhtiar at Residency Guest House, Islamabad and thereafter, on his pointation, Mst. Ana Bakhtiar was recovered from Islamabad standing alone on road side in F-10 Markaz. The abductee disclosed that she was brought over there by Etisam appellant. On 04.02.2013 statement of Ana Bakhtiar abductee was recorded wherein she charged the accused. Etisam Taj was also arrested as accomplice of the main accused Adeel on 08.02.2013 vide his card of arrest (Ex.PW-18/5) and both the appellants also made their judicial confession, wherein, they disclosed the modus operandi of the occurrence. Mst. Saima Sarwar was also made accused in the case having charged for the offence of abetment under section 109, P.P.C. During investigation, identification parade of both the appellants was conducted.

5. After the completion of investigation, challan was submitted against the accused for their trial in the Anti-Terrorism Court. The appellants and acquitted co-accused, Saima Sarwar were formally charged for the offences under sections 365-A, 120-B and 109, P.P.C. read with section 21-I of Anti-Terrorism Act, 1997, to which they pleaded not guilty and claimed trial. Trial commenced.

6. At the trial, the prosecution produced eighteen witnesses to prove guilt of the present appellants and acquitted co-accused. The brief gist of the prosecution evidence is given below:-

7. Abdur Rashid, ASI (PW-1) recorded the report of complainant Waqar Ahmad vide FIR (Ex.PA). Chanzeb, LHC (PW-2) had delivered parcels Nos.1 and 2 to the Handwriting Expert. Qaiser Khan FC (PW-3) was marginal witness to pointation memo Ex.PW 3/1 vide which the appellant Adeel, led the Police party to Marhaba Hotel, Abbottabad and pointed out Room No.307, where he along with Etisam appellant had stayed for night on 29.01.2013. PW-4 Zakir Hussain submitted challan against the accused. Munsif FC (PW-5) was marginal witness to recovery memo Ex.PW-5/1 and in his presence, the abductee was recovered from F-10 Markaz vide recovery memo. (Ex.PW-5/2) on the pointation of appellant Adeel. Waqar Ahmad complainant, while appearing as (PW-6) gave the detail of search of abductee, registration of case, recovery of abductee and arrest of accused Adeel etc. Rukhsar Ahmad (PW-7) and Muhammad Akram PW-8 had narrated the story of allotment of Room No. 803 of Residency Guest House, Islamabad to Adeel. Khurram Shahzad who had given a car on rent to Adeel on 27.01.2013, was examined as PW-9. PW-10 Ana Bakhtiar, the abductee narrated different stages of her abduction by accused Adeel with the connivance and abatement of accused Etisam and Saima. PW-11 Muhammad Nawaz and PW-12 Adil gave the detail of allotment of Room No. 307 in Hotel Marhaba to Adeel Abbas. PW-13 Shabbir Mohammad Durrani, Judicial Magistrate had conducted identification parade of accused Adeel and Etisam Taj at District Jail, Mansehra and at Central Jail, Haripur, respectively through Abductee, and drafted a joint report (Ex.PW 13/3), duly signed by him. Muhammad Ghayas Khan, Judicial Magistrate (PW-14) had recorded the confessional statement (Ex.PW 14/4) of appellant Etisam Taj on 11.02.2013 and confessional statement (Ex.PW 14/10) of appellant Adeel on 16.02.2013. Bakhtiar Ahmad Khan (PW-15), father of abductee has also given the detail of abduction and recovery of his daughter and arrest of accused Adeel. On 04.02.2013 he also handed over the letter to I.O, which was allegedly written by Etisam with the connivance of Adeel wherein they demanded an amount of Rs. One Cror as "Bhatta", through recovery memo Ex.PW-15/1. Muhammad Ayub SI (PW-16) Muhammad Saeed ASI (PW-17) and Qamar Hayat DSP PW- 18 conducted investigation in the present case.

8. The appellants, Adeel and Etisam Taj and acquitted co-accused, Saima Sarwar recorded their statements under section 342, Cr.P.C. denying their involvement in the commission of the offence for which they were charged. In reply to question No. 26 accused Adeel stated "Ana Bakhtiar and my self in the year May 2011 established relations through Face Book, Ana Bakhtiar used the Face Book with the fake name of Nia, later on after two/three weeks she started to keep contacts with me in terms of calls and SMS. Phone Cells Nos. 0345-5500895, 0333-5703783, 0335-9069602 and 0335-

9069603 were in the use of mine and through phone Cells Nos. 0301-3074444, 0332-8936678, 0301-8121736, 0331-8893274, 0347-8115320 and 0334-1564491 Ana Bakhtiar used to keep contact with me, and in the mid of November, 2012 Ana Bakhtiar asked me to send my parents to her parents for her hand. I sent my parents in the third week of November, 2012 to the parents of Ana Bakhtiar. My parents met with the father of Ana Bakhtiar at Abbottabad in his residence and asked for the hand of Ana Bakhtiar for me, upon which father of Ana Bakhtiar told my parents that after consultation with other family members he will inform my parents. After a week mother of Ana Bakhtiar informed me that she is willing for this Rishta but other family members are not willing. I disclosed this fact to my parents, my mother advised me to refrain myself and closed the chapter of Ana Bakhtiar but still Ana Bakhtiar was adamant to get marry with me. Ana Bakhtiar agitated this matter to her close relatives but she could not persuade them. At last she decided to elope with me. As I was in love with her I could not ignore her wish. On 29th of January, 2013 she contacted me and informed about her decision and called me in Abbottabad for 30th of January, 2013. I came alone and I telephonically contacted to Ana Bakhtiar, she came and went along with me. At her choice we decided to stay in Residency Guest House, Islamabad. On 31.01.2013 at the evening our Nikah ceremony was to be performed when at about 7:15 pm my sister Saima Sarwar informed me on her Cell No, that she along with her mother has been arrested and detained in PS Hazro for the charge of abduction of Ana Bakhtiar. I went to PS Hazro and reached at about 10:00 pm where my sister and mother were detained". Appellant, Adeel also wished to produce defence evidence. However, they did not wish to be examined on oath under section 340(2), Cr.P.C. In defence Mst. Khairaz Bibi, mother of Adeel, was examined as DW-1, and she supported the version of his son. Hafeez-ur-Rehman, Head Constable/ Technical Incharge, SSP Investigation Office, Abbottabad was examined as (DW-2). He produced the record pertaining to ownership of cell phones of different persons including Adeel and Ana Bakhtiar, abductee Ex.DW-2/1 to Ex.DW-2/7 and placed on record his report (Ex. DW 2/8).

9. We have heard learned counsel for the parties at length, carefully gone through voluminous record of the case including the judgments of different cases relied upon by them and the judgments produced by them and the impugned judgment dated 22.07.2013 passed by the trial Court.

10. The story of prosecution hinges on the direct and circumstantial evidence.

11. The direct evidence has been produced by the alleged abductee Ana Bakhtiar who had given the narration of her relation with acquitted accused Saima as costumers and purchaser and various stages of her abduction by accused Adeel with the connivance and conspiracy of accused Etisam Taj and Saima.

12. The circumstantial evidence in the shape of letter issued by Etisam Taj to Bakhtiar whereby he demanded ransom amounts, telephonic calls of Adeel to PW Bakhtiar wherein he demanded the ransom, statements of Bakhtiar and Waqar father and uncle of abductee, use of vehicle registration No. MZ-052 Islamabad for taking the abductee from Abbottabad to Residency Guest House, Islamabad, stay of accused Adeel and Etisam Taj in Marhaba Hotel, at room No. 307 on 29.01.2013, hiring of Guest House for the purpose of illegal confinement of abductee. Arrest of Adeel from Hazro near to his

house, his admission, taking the Police party to the Residency Guest House, recovery of incriminating article from guest house at his pointation, recovery of abductee at the pointation of accused. Confessional statements of both accused Adeel and Etisam, their identification parade through abductee and report of hand writing expert.

13. While rejecting the version of prosecution the accused raised the plea of elopement of Ana Bakhtiar with him with the contention that there was love affair of alleged abductee with him much prior to the date of occurrence and when her parents refused to give her hands to him she made a programme of elopement and she had eloped with him on her own free will. He had also tried to bring on record the proof of his love affairs with Ana Bakhtiar in the shape of greeting cards and cell data of his mobile numbers as well as mobile numbers of Ana Bakhtiar and her family members including her mother.

14. It is known and settled principle of law that prosecution primarily is bound to establish guilt against the accused without shadow of reasonable doubt by producing trustworthy, convincing and coherent evidence enabling the Court to draw conclusion whether the prosecution has succeeded in establishing accusation against the accused or otherwise and if it comes to the conclusion that charges so imputed against the accused have not been proved beyond reasonable doubt, then the accused becomes entitled for his release on getting benefit of doubt in the prosecution case. In such situation the Court has no jurisdiction to abridge such right of the accused. To ascertain as to whether accused are involved in the case or they are entitled to the benefit of doubt, the Court can conclude on considering agglomerated effect of the evidence available on record as held in the case of "Safdar Ali v. The Crown" (PLD 1953 FC 93) and "Muhammad Luqman v. The State" (PLD 1970 SC 10).

15. It is also important to note that the present case is a case of two versions one put forth by prosecution i.e. abduction for ransom and the other by accused/appellant i.e. elopement and love affair of abductee with accused Adeel. Thus the doctrine of juxtaposition would apply in such a case. Court is obliged to put both the version in juxtaposition and then ascertain which version is true. Reference is made to "Muhammad Yousaf and others v. Tariq Mehmood" (PLD 2008 SC(AJ&K) 6), "Ala-ud-Din v. State" (2008 PCr.LJ 424), "Farid v. The State" (PLD 2002 SC 553) and "Ibrar Hussain etc. v. State" 2007 SCMR 605".

16. Keeping in view the above principle in mind it is to be seen whether prosecution has been able to prove its case against accused or not?

17. In the present case the legal machinery came into motion when the uncle of abductee namely Waqar Ahmad PW-6 reported the occurrence to Abdul Rasheed ASI, PW-1, at 14:30 hours on 31.01.2013 and charged accused Adeel and Saima for abduction of Ana Bakhtiar for ransom. His report is reduced in the shape of FIR Ex.PA. During the course of investigation I.Os collected different material and connect the above accused with accused Etisam for kidnapping for ransom.

18. First we want to discuss the direct evidence in the shape of statement of abductee Ana Bakhtiar who was examined as PW- 10. She stated that;-

"I am student of Women Medical College, Abbottabad. A girl by name Saima, accused, used to bring designed clothes to our college. Once she put up a stall also. I along with other girls liked the clothes which she used to bring, and, thus, met her. On 30.01.2013 I along with my mother came to DHQ Hospital, Abbottabad for treatment. I received a call from Miss Saima that she had sent some clothes through her brother Adeel. After myself and my mother received the treatment, I received a call from Adeel who told her that he had brought clothes. On my inquiry, he informed me that he is near the gate and is having a bag in his hand. As I reached near Adeel, he told me that some clothes were lying in the rear seat of the Car and I should see those also. As I went towards the back seat of Car and tried to look at the clothes, I do not know what happened thereafter. After 5 to 6 hours, I regained my senses and found myself in a room along with Adeel". She has also given the detail of ransom demanded by accused Adeel Abbas from her father and uncle. She further stated "As we went back to the room in the guest house, Adeel received a telephone call that Police had taken away his sister Saima and his mother to Police Station. Adeel left Etisam with me and himself went away. Etisam told me that Adeel is trapped and he would also be trapped. Firstly he told me to remain silent and then said that let us get out of this place. Etisam took me out of the guest house and asked me to walk in front of him remaining silent. We walked for about an hour and reached F-10. I was walking in front and Etisam was at the back keeping his hand in the pocket as if he was carrying weapon may be knife which frightened me. After a while Etisam received telephone call and told me that I should go ahead on the road side, since, my relatives had reached. I went ahead and stood near a Restaurant, Pizza Hut and himself stood at the back in dark. Soon thereafter my uncle Waqar Ahmad and Police arrived there but Etisam ran away. My uncle made me sit in a Car along with a lady constable and himself fill some form and signs with the Police. Thereafter, I along with my uncle and lady constable came to our house in Abbottabad".

19. It is settled law that on the basis of solitary statement of victim/abductee, conviction can be awarded if it rings true and inspires confidence. Reference is made to "Rahim Shah v. The State and others" (2004 PCr.LJ 1129), "Arab Gul v. Mir Shah Baz and others" (2004 PCr.LJ 1138).

20. Now it is to be seen whether statement recorded by her is found to be truthful, trust worthy, convincing and her evidence corroborated by other independent evidence inspiring confidence and particularly whether her statement is free from any inducement and coercion etc.

21. The abductee in her statement described the various stages of her abduction by the accused/appellants. According to prosecution, prior to the happening of unfortunate incident on 30.01.2013, a criminal conspiracy has been hatched between the appellants with the abetment of Saima acquitted accused and the plan of kidnapping/abduction started with the call of acquitted accused Saima Sarwar to Ana Bakhtiar, who had acquaintance with the abductee being clothes designer, as she used to bring designed clothes to her college which were liked by her and other girls. Once she also put up a stall in her college. Since it is the main question to determine the relationship between

abductee and Saima which led Adeel to meet her and subsequently kidnapped her for ransom, therefore, first it is to be seen whether Saima is involved in the business of designed clothes and used to come to the college of abductee for the sale of clothes? From the perusal of entire file it reveals that there is nothing on record to suggest that she is designer and used to come to the college for the sale of her clothes and once she also put a stall there. Prosecution has not produced a single evidence to prove that either she came to the college for the sale of her clothes or she ever put up a stall. No efforts had been made to produce any documentary or oral evidence in this respect. Thus the relationship of seller and purchaser between the acquitted accused and alleged abductee has not been proved. When this relationship is missing and not proved, how it is possible for Saima to stage a drama of kidnapping of Ana Bakhtiar with the connivance of other accused and how it can be possible for the prosecution to prove that Adeel Abbas had no other relation with Ana Bakhtiar except the exhibition of clothes sent by Saima through him. In her statement she has stated "As I went toward the back seat of car and tried to look at the clothes, I do not know what happened thereafter. After 5 to 6 hours, I regained my senses and found myself in a room along with Adeel". It is amazing to note that there is no such anesthesia in the market which may make a person senseless and unconscious for 5 to 6 hours only on seeing the clothes on the back seat of car. Moreover, the driver or the accused in the same car did not get any effect of this anesthesia, thus the question of getting anesthesia and becoming unconscious does not prove. All the story narrated by her does not appeal to the mind of prudent person.

22. Prosecution also failed to prove the story of visit of Ana Bakhtiar with her mother Nazima for treatment at D.H.Q., Hospital, Abbottabad. No evidence in the shape of admission slip and treatment has been produced. There are also contradictions in the statement of PWs. She had not uttered a single word in her statement that first she went to washroom and thereafter met Adeel Abbas without the permission of her mother. Nazima Shaheen being a material witness to give the detail of missing of her daughter from the hospital has been abandoned. By not examining this material witness and to give an opportunity to defence to cross-examine her, the prosecution has withheld the material piece of evidence. In these circumstances, an adverse inference as required under illustration (g) of Article 129 Qanun-e-Shahadat, 1984 can fairly be drawn that had she been produced in the witness box and examined, her evidence could have been unfavourable to the prosecution. Reference may be made to "Zafar Abbas v. State" (2010 SCMR 939). Reference may also be made to the case "Lal Khan v. State" (2006 SCMR 1846). Moreover on the record an undated affidavit of Nazima is available at page 213 of judicial record wherein she did not charge any one.

23. It was also the duty of prosecution to produce the record of calls data of mobile numbers of Ana Bakhtiar, alleged designer Saima and Adeel to confirm the facts of date, time and place of the mobile connection of the above parties. It is an era of modern technology and this fact can easily be confirmed through the collection of mobile data. But no efforts in this respect has been made. Rather in cross-examination PW-10 admitted "I do not remember Saima's cell number".

24. It is also important to note that abductee was recovered from F-10 Markez on 31.01.2013 but soon after her recovery her statement was not recorded either under section 161, Cr.P.C. or under section 164, Cr.P.C., except to the effect that she is willing

to go with her uncle Waqar Ahmad. Her this statement is available at page 130 of judicial file. Moreover on the date of alleged recovery she did not charge Adeel for abduction. From the record it is proved that she was examined under section 161, Cr.P.C. on 04.02.2013. No proper explanation has been given for non-recording of her statement at proper time. Though it is contended by PW-17 I.O that at the time of recovery he found the abductee in terrible condition. Who was shivering and in panic and was not fit to give statement. But no medical proof in this respect has been produced to prove that she was not able to record her statement for 4/5 days. In his cross-examination I.O admitted "I had not obtained the opinion of any medical officer regarding the inability of Ana Bakhtiar for recording her statement". It is settled law that when the statement under sections 161 and 164, Cr.P.C. are not recorded at proper time it is fatal to the prosecution. Reference is made to "Rahat Ali v. The State" (2010 SCMR 584). Wherein it is held;-

> "Delayed examination of witnesses by Police without furnishing any plausible explanation is fatal to the prosecution case and the statement of such witness is not to be relied upon".

The august Supreme Court in case "Imran Ashraf v. The State" (2001 SCMR 424) held;-

> "Where no plausible explanation is offered by the prosecution for not recording the statement of eye-witness immediately after the registration of the case, then the evidence of such witness becomes incredible".

Guidance may also be sought from;-

(1993 SCMR 550)	"Saeed Muhammad Shah v. State."
(PLD 1963 SC 170)	"The Attorney General of Pakistan v. Abdul Hamid Sheikh Editor Civil and Military Gazette and another. "
(1983 PCr.LJ 823)	"Ismail v. State."
(PLD 1964 SC 26)	"Siraj Din v. Kala."
(2008 SCMR 1221)	"Ghulam Qadir v. State."
(1996 SCMR 1553)	"Abdul Khaliq v. State"
(PLD 1960 SC 223)	"Muhammad Sadiq v. The State"

Record shows that her statement under section 164, Cr.P.C. was also recorded on the 5th day of her recovery. Such statement also cast doubt about its genuineness. Reference may be made to 2008 PCr.LJ 928 wherein it is held;-

> "Statement of witness recorded under section 164, Cr.P.C. after considerable delay without explanation for delay should be ruled out of consideration".

Reference may also be made to (1996 SCMR 473), "Amanullah Shah v. State" (PLD 1996 SC 241), "Muhammad Aslam v. State" (1999 SCMR 2147) and "Zafar Abbas v. State" (2010 SCMR 939).

25. From the careful perusal of different statements of Ana Bakhtiar recorded under sections 161, 164, Cr.P.C. and during trial it reveals that she had made certain improvements which had correctly been pointed out by the defence counsel during the

course of arguments. It is settled principle of law that improvement made at trial by a witness on material aspect of the case is not worthy of reliance. Reference is made to "Muhammad Rafique v. State" (2010 SCMR 385). Reference is also made to 2008 SCMR 6, wherein it is held "credibility of statement when a witness improves his version to strength the prosecution case, his improved statement subsequently made cannot be relied upon as the witness had improved his statement dishonestly. Credibility becomes doubtful on the well known principle of criminal jurisprudence that improvements once found deliberate and dishonest cast serious doubt on veracity of such witness". Guidance may also be sought from "Farman Ahmed v. Muhammad Inayat" (2007 SCMR 1825) and "Akhtar Ali v. State" (2008 SCMR 6).

26. When the version of alleged abductee is put in juxtaposition with the statements of other prosecution witnesses especially PW-7 Rukhsar Ahmad, who is the Manager of Residency Guest House, Islamabad, where the alleged abductee was kept in illegal confinement, it reveals that he is not supporting the case of prosecution. He stated "I took copy of CNIC of Adeel and completed our procedure for checking in and allowed them to occupy the room. Adeel along with the female stayed for a night in the room in Guest House. The following day at about 12:30 p.m. Adeel along with the female went out in car and returned at 4:00/4:30 p.m., when Adeel returned along with the girl, he was accompanied by one friend, aged about 20/25 years whose name I do not remember. At about 4:30 p.m. Adeel left the room but the girl and his friend stayed back. At about 7:30 p.m., the girl handed over the key of the room at the counter and she along with friend of Adeel went away from the guest house". There is nothing on record to suggest that she has been brought in the room in an intoxicating condition. PW-7 who had allotted the room to Adeel had not noticed any abnormality in the behaviour of female with Adeel. It means that she herself walked out of the car and went to room along with Adeel through reception of the Guest House. According to record the room is situated adjacent to reception but she has neither raised any hue and cry nor informed the staff of guest house that she has been kidnapped by the Adeel. It is also interesting to note that at the time of leaving of the guest house she herself handed over the key of room at the counter and she along with friend of Adeel went away from the guest house. In his statement PW-7 has not uttered a single word that she was kept in illegal confinement. It is admitted fact that guest house is situated at a thickly populated area and if she had been kidnapped she could easily attract the people by raising hue and cry. Moreover, it is not possible for a kidnapper to keep the abductee in such an easily approachable place without any arms and ammunition. PW-7 admitted in his cross-examination "That after filling the form Adeel came along with abductee Ana Bakhtiar at the reception. Accused Adeel after filling the form came to reception and went to room No. 803 wherein he checked the room and then accused along with abductee came to reception, then went in to the room. The waiter took their luggage to the room from the vehicle". He also admitted "Intercom system is available in our guest house. The facility of intercom is available in room No. 803". . . . . It is correct that when Adeel came along with abductee Ana Bakhtiar I was standing on the main entrance. . . . It is correct that abductee Ana Bakhtiar along with Adeel walked through the reception and went out side the guest house. On returning back both of them went to the room. . . throughout her stay in my guest house, I did not suspect that she was an abductee. In my guest house there are five employees inclusive of sweeper, two waiters, one cook and one receptionist, sweeper cleans every room daily". He also admitted "Any guest who so ever when enters our

guest house through reception. . . . At the time of handing over the key, the abductee only said that they were going out and then went out".

All these facts support the narration of accused that she had gone with accused Adeel with her own free will and was freely roaming in and out of guest house.

27. It is also proved from record that at the time of her alleged recovery from F-10 Markez she was not under the control of any person or in illegal confinement. She was found present at a populated area. PW-7 has not uttered a single word that at the time of handing over the keys of room and leaving the guest house she was shivering or in awkward condition and was not in proper senses. In such view of the matter we have no hesitation to say that since she was not willing to depose against Adeel on that very day therefore Police could not record her statement either on that very date or on next date. She has been tortured by Police and other members of her family for 4/5 days and persuaded her to record statement under sections 161 and 164, Cr.P.C. in accordance with their wishes merely to protect their honour and dignity and to falsely implicate the accused/ appellants.

28. The above noted facts reveal that prosecution has not been able to prove its case through direct evidence as it is settled principle of law that when there are two interpretations of evidence one favouring the accused and the other prosecution, the one favorable to accused is required to be taken into consideration. Reference may be made to "Muhammad Akhtar v. State" (2012 YLR 2025).

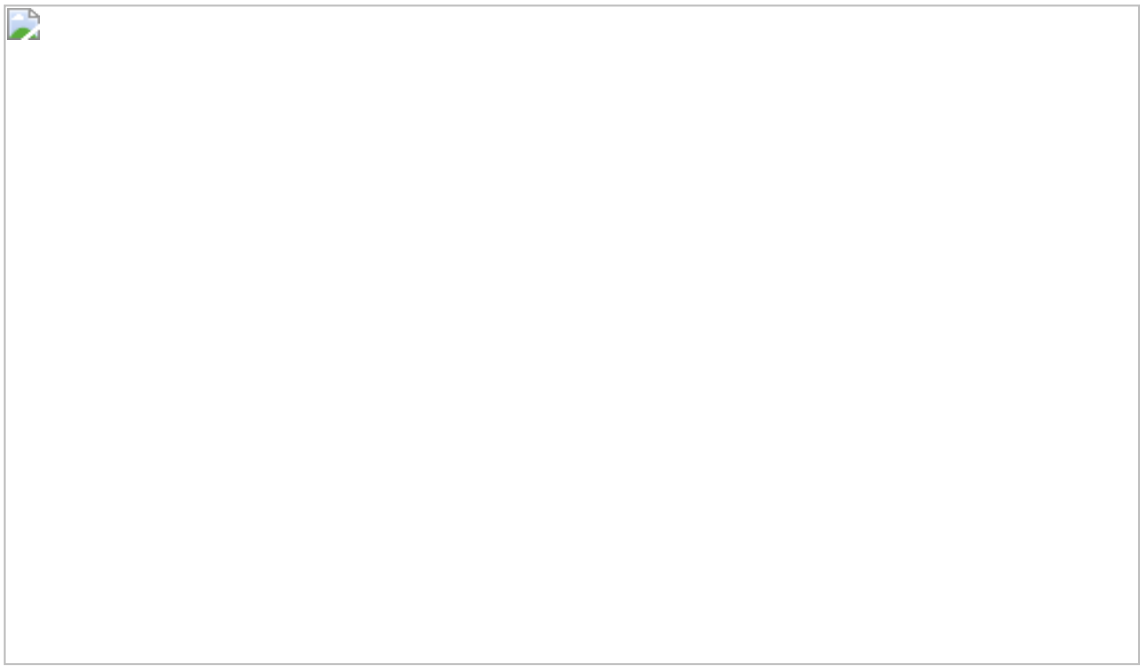
29. Now we have to see whether the circumstantial evidence relied upon and collected by prosecution during the course of investigation are sufficient enough to connect the accused/appellant with crime.

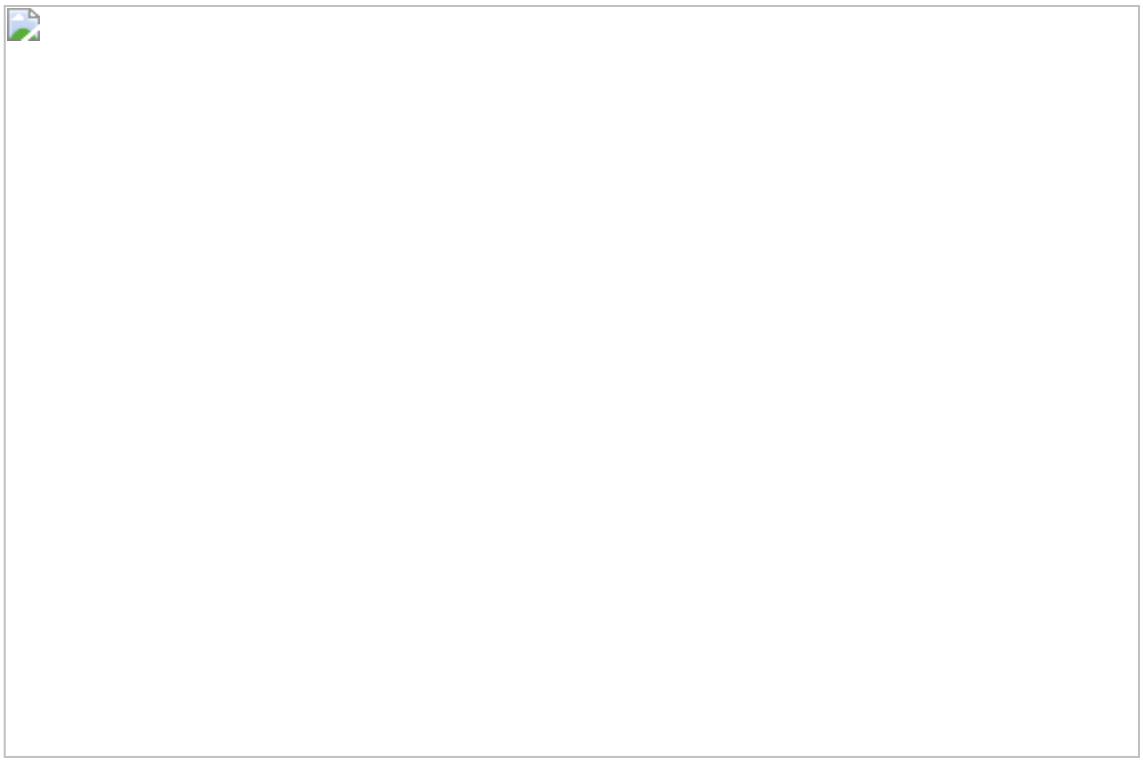
30. It is settled principle of law that circumstantial evidence could only form basis for conviction, when it was incompatible with the innocence of accused, or the guilt of any other person, and in no manner be incapable of explaining upon any reasonable hypothesis, except that of the guilt of accused. Every link and circumstantial evidence should be proved by cogent evidence, and if not, then no conviction could be maintained, or awarded to an accused. Reference may be made to "Muhammad Basharat Shah v. Syed Saqib" (2013 PCr.LJ 619 (SC(AJ&K)). Reference may also be given to "Muhammad Iqbal v. State" (2013 PCr.LJ 1683) wherein it is held;-

> "In circumstantial evidence the prosecution must establish four basic requirements;-
>
> i. All the facts must be consistent,
>
> ii. Should be of conclusive nature,
>
> iii. Should have moral sanctity,
>
> iv. Chain of events interwoven with no breakage and,
>
> v. Evidence should be of high quality inspiring confidence.

While seeking guidance from the judgment reported in case "Akbar Ali Shah v. State" (2014 YLR 782) it is seen whether it is to be established on record that every piece of circumstantial evidence fit in with another piece of such evidence in the chain and corroborated each other. Role of prosecution agency collecting evidence against accused is very important and it is to be seen that same is above board and free from any doubt and suspicion.

31. According to prosecution the complainant Waqar Ahmad PW-6 the uncle of Ana Bakhtiar, and PW-15 Bakhtiar Ahmad father of abductee are not the eye-witnesses of the occurrence of abduction but they had not only corroborated each other on material fact but also corroborated the testimony of abductee on those common facts which are also admitted by accused Adeel in his statement recorded under section 342, Cr.P.C. As evident from the report Ex.PA of complainant Waqar recorded on 31.01.2013 at 14:30 hours, accused Adeel and his sister Saima abducted Ana Bakhtiar for ransom. For proper assistance it would be proper to reproduce the contents of FIR dated 31.01.2013;-





32. In the FIR neither the delay of more than 25 hours has been given nor the detail of mode and manner of his information of abduction of Ana Bakhtiar has been given. Reference is made to "Shamshad Khan and another v. Arif Ashraf Khan and 2 others" (2008 SCMR 6). While examined as PW-6 in the trial Court he has given the detail of his information. At the very start of his statement he stated "On 31.01.2013 at about 1:30 p.m. my wife told me on telephone when I was on duty that my niece Ana Bakhtiar has disappeared from D.H.Q, where she had gone for medical care". When for the first time he was informed through his wife on 31.01.2013 at about 1:30 p.m. and he lodged the report on 31.01.2013 within an hour at 2:30 p.m., had it is possible for him to search the alleged abductee along with his brother Bakhtiar, his wife Nazima Shaheen and during the course of search they came to know that Adeel and his sister Saima had abducted Ana Bakhtiar for ransom. In his statement PW-15 Bakhtiar has not uttered a single word about the association of Waqar with him for the search of abductee rather he has given the name of two other relatives who visited Peshawar, Islamabad and Hazro with him for the search of Ana Bakhtiar and when he is satisfied that Adeel Abbas and Saima are involved in the case he informed Waqar to register the case and he registered the case. In his statement PW-6 has given the detail of his visit to Hazro in the company of Police, arrest of Adeel from Hazro and visit to Residency Guest House Islamabad and recovery of abductee from F-10 Markaz, Islamabad.

33. Father of abductee Bakhtiar Ahmad was examined as PW-15. He has given the detail about the occurrence and the demand of ransom. Here it is important to note that it is not known when his statement under section 161, Cr.P.C. was recorded. Moreover, in his statement he has given a very brief narration of occurrence. But during trial he made improvement and stated "That on 30.01.2013 at about 1:30 p.m. my wife gave me a telephone call and informed me that my daughter Ana Bakhtiar had gone to toilet attached to OPD and did not return. I immediately went to D.H.Q. On reaching the

hospital I along with hospital staff searched for Ana Bakhtiar and could not locate them. At about 3:00 pm I send my wife back home and myself left for Peshawar side in search of Ana Bakhtiar. I was accompanied by my driver and two of my cousins Etisam and Majid". He also gave the detail of demand of money made by accused on cell phone of his daughter. He further stated; "At about 3:00 a.m. on 31.01.2013 we came back to Islamabad. The person who wrote letter to me had asked me to put money in a bag and place it as they demanded. I kept thinking about this aspect of bag. Ultimately, it occurred to me that Saima Sarwar, one of the accused used to bring cloths in a bag. At 11:00/12:00 hours, we reached Hattian Police Chowki. We asked the Police to help us, recover my daughter who is believed to be in the house of Saima Sarwar. Incharge Police Chowki, Sub-Inspector, told us that they are going to arrange for lady constable and would help us. I was not feeling well. It was almost about 1:45 pm when I went out of the Police Post to relax. Many locals had gathered. I saw three persons standing with bags towards me. One of them, who appeared to fairly healthy, was talking to some one that Adeel has brought a girl from Abbottabad and her relatives have arrived who were trying to get Saima Sarwar implicated. I informed the Incharge Police Post about the said conversation heard by me outside the Police Post. The Incharge Police Post took two cells from the person who was talking outside. I had earlier forgotten but now remember the name of Adeel. Thus, I gave a call to my brother Waqar Ahmed and told him to get a case register against Adeel and Saima. On the request of Hazro Police, I asked by brother Waqar to FAX the FIR to them which he did".

34. The story narrated by him does not appeal to the mind of prudent person, but one has to lead to the conclusion that they had the prior knowledge of the elopement of Ana Bakhtiar with Adeel for contracting marriage, but since they are not willing party; therefore, they had tried their level best to recover her daughter. Moreover the material improvement made by both the brothers cannot be ignored. They have improved their statements during the course of evidence to fit in the circumstances and strengthen the prosecution case. Therefore, they have made their statements highly doubtful. It has been held in case of "Saeed Muhammad Shah v. State" (1993 SCMR 550) that the improvement in the statement made by witness in the Court to strengthen the prosecution case are not worth of reliance. Reference is made to "Akhtar Ali v. State" (2008 SCMR 6), (2008 SCMR 6) and "Zafar Abbas v. State" (2010 SCMR 939).

35. It is also astonishing to note that when the letter, wherein demand of ransom of Rs. One Cror was made, was received by Bakhtiar prior to the date of occurrence and the same has been reminded by the alleged abductor to him prior to the lodging of FIR, why this material fact has not been incorporated in the FIR. Moreover it was not taken into possession immediately after the registration of the case rather on 04.02.2013 the I.O demanded the letter and PW-15 Bakhtiar Ahmad Khan handed over the same to him which was taken into possession through recovery meme Ex.PW-15/1.

36. Now it is to be seen whether the letter allegedly received by Bakhtiar had been written and dispatched by accused Etisam with the connivance of accused Adeel. I.O PW-17 Muhammad Saeed who had taken the letter into possession through recovery memo Ex.PW-15/1 stated that "on 04.02.2013 Bakhtiar produced an envelop P-10 having a letter P-9 enclosed in it and told me that the accused had sent this letter to him few days earlier demanding rupees one cror ransom. PW-18 I.O took accused Etisam to

Ilaqa Magistrate on 18.02.2013 who obtained hand writing specimen of accused in fasts, medium and slow pattern. He took the same into possession through recovery memo Ex.PW-16/5 and then the specimen and the letter sent to FSL vide his application Ex.PW-18/14. On receipt of opinion he issued Parwana Ex.PW-18/17, vide which section of law 120-B/109, P.P.C. criminal conspiracy and abetment were added. Joint investigation team was constituted and matter was re-investigated". All these suggest that they came to know about the hatching of conspiracy and abatement of accused Saima and Etisam with Adeel Abbas on the basis of this letter. It is admitted fact that till the recovery of letter Etisam was not properly charged as I.O PW-16 admitted till 02.02.2013, I had never come across any incriminating evidence against accused Etisam. It is also admitted fact that he is neither charged in FIR nor charged by PW-7 Rukhsar by name. Even PW-7 never identified him in Court. He has given the reference of a boy. Prosecution has not made any effort to identify him through PW-7 either through identification parade or in Court. He has been specifically charged on the basis of letter Ex.PW-15/1, which has allegedly been sent by him a few days prior to the occurrence, wherein they demanded the ransom of Rs. One Cror. Since it is very important piece of evidence; therefore, it has to be scanned minutely for the just decision of case.

37. Admittedly the issuance of threat letter is neither mentioned in the FIR nor it is produced during initial stage of investigation. It was procured on the 4th day of investigation and it has never been confronted to the accused Adeel when he was in Police custody for two days and on 04.02.2013 he was sent to judicial lockup. In the letter neither the name of Adeel nor that of Etisam is mentioned. It is allegedly issued by one . To confirm the hand writing of the accused Etisam on the letter his specimen hand writing were obtained and sent it along with questioned letter to Chemical Examiner. It was not annexed with the routine handwriting which is necessary for proper comparison. When in the absence of routine hand writing the concerned expert could not come to definite conclusion he vide letter addressed to SHO return the documents with the following observation;-

> "In order to give scientific expert opinion with regard to questioned Urdu writing, it is submitted kindly to procure sufficient number of routine Urdu writing of the suspect Etisam Taj, which he might have had done on any note book, diaries or some other documents".

There is nothing on record that any effort was made in this respect by I.O and sent the same along with returned record to the expert but it is surprising to note that on the basis of no record the documents expert submitted his positive report Ex.PW-18/6 with the opinion "the questioned Urdu writing on the disputed anonymous letter "tally in individual characteristics" with the present set of his specimen Urdu writing supplied". It was the duty of the prosecution to produce the concerned hand writing expert to explain how and on the basis of which record he prepared the report but the concerned expert has not been produced. In such circumstances no reliance can be placed on the letter allegedly issued by accused Etisam. In this respect guidance is sought from the case "Qasim Ali Malik v. The State and two others" 2012 PCr.LJ 124 Lahore, wherein it is held "Report of hand writing expert does not figure in section 510, Cr.P.C., same is neither per se admissible nor it can be read as evidence, until and unless proved in the manner prescribed under Article 78 of Qanun-e-Shahadat, 1984. Both the report of hand writing expert, in the case, neither were duly proved by producing the scribe nor accused

had been provided an opportunity to question the credence of both the reports by exercising their right of cross-examination . In such reports were neither admissible nor could be relied upon against the accused".

38. Admittedly and as confirmed by the investigating officers PW-17 and PW-18 that during the course of initial investigation under section 365, P.P.C. accused Adeel remained in Police custody for two days on 02.02.2013 and on 04.02.2013 he was sent to judicial lockup on the report of Judicial Magistrate that he is no more required to I.O. But on the basis of this letter produced by Bakhtiar, the statement of Ana Bakhtiar recorded under section 164, Cr.P.C. the I.O PW-17 discussed the case and decided that a case under section 365-A, P.P.C. is made out and sent a letter Ex.PW-17/9 to Superintendent of Police (Investigation) who approved the charge of the offence under sections 120-A/365-A/109, P.P.C. and obtained the remand of accused for second time on 11.03.2014.

39. It is settled law that once an accused is sent to Judicial lockup he cannot be handed over to Police subsequently and successive remand cannot be given except in extra ordinary circumstances. If remand is required in exceptional cases then it must be on the basis of detail given in the application for remand and the reasons given by the Magistrate concerned. Reference may be made to "Haseeba Taimor Afridi v. State" (2013 SCMR 1326), wherein it is held;

> "Under section 167, Cr.P.C. it was the duty of the Magistrate to satisfy himself that there were ground for believing that acquisition or information was well founded for justifying custody on an accused with the Police".

In case "Rehan v. State" (2009 SCMR 181) it held;

> "Article 9 of Constitution guarantees that no person would be deprived of life or liberty save in accordance with law, while Article 10 of the Constitution provides safeguard as to arrest and detention Court should be mind full of the said Article before remanding the accused to Police custody".

In PLD 2005 SC 86 it is held;

> "Magistrate who grants remand is under the legal duty to satisfy himself if under the circumstances remand was to be granted or not".

Reference may also be made to PLD 1969 Lahore page 1020, PLD 1996 Karachi 517, 1995 SCMR 429.

Repeatedly superior Courts issued directions to Magistrates and Police for the grant of remand and for compliance of the mandatory requirement as required in the provisions contained in sections 61, 167 and 344, Cr.P.C. Here we want to reproduce some of the, directions which are as follows;-

> i. The Magistrate shall not grant remand mechanically for the sake of cooperation with the prosecution/Police.
>
> ii. The Magistrate shall always give reasons for the grant of remand and adjournment.

iii. Before granting remand the Magistrate, shall ensure that evidence sufficient to raise suspicion that the accused has committed the offence has been collected by Police and the further evidence will be obtained after the remand is granted.

iv. The Magistrate shall give opportunity to the accused to raise objection if any, to the grant of remand.

v. The Magistrate shall record objection which may be raised by an accused person and shall give reason for the rejection of the same. Reference may be made to PLD 1968 Pesh 140, 2005 YLR 915 Karachi,

40. In the present case on 11.02.2013 vide application Ex.PW-18/9 accused was brought in the Court for further Police custody on the ground.



And vide order dated 11.02.2013 Ex.PW-18/10 the Court granted 7 days police custody by holding "request seem genuine". It has been observed with grave concern that in the present case the procedure as enumerated in sections 61 and 167, Cr.P.C. is not being complied with in letter and spirit. No reasons noted above have been shown for grant of further remand in the case when accused has already been subjected to physical remand. During first remand and at the time of arrest certain recoveries were effected from him. He has shown the place of alleged detention i.e. Residency Guest House Islamabad where the alleged abductee was kept and on his pointation different pointation memos were prepared. Moreover, accused had neither denied the hiring of car, nor allotment of room in Abbottabad hotel and at Residency Guest House, Islamabad; therefore, there is no need of further investigation in this respect. Moreover sufficient material has been collected in this respect during early round of remand of accused Adeel Abbas as well as Etisam.

41. All the facts available on record suggest that subsequent remand was obtained only for recording of confessional statement and it has been recorded on 16.02.2013. According to prosecution accused made voluntary and true statement before the Court, inter alia, accepting the letter to have been dictated by him to Etisam Taj accused. This allegation was denied by accused in his statement recorded under section 342, Cr.P.C. and stated that it is the result of torture and inducement managed by Humayun Jadoon, Bakhtiar, Dr. Azhar and Col Tauqeer at Police station who managed to arrange his meeting with Ana Bakhtiar and Humayun Jadoon who is uncle of Ana Bakhtiar placed hand on Quran and promised that it is the matter of honour and dignity of their family and if he confess this offence later on they will arrange to marry him with Ana Bakhtiar. Upon this promise he appeared before Magistrate who got his signature and thumb impression on a written statement. He even did not go through the contents of documents. It is settled law that Court should be very careful in ascertaining the true character of the confession for conviction and must consider the reason given for retraction of the confession to find out the truth in such reason before making use of the confession for conviction. The retracted confession if found truthful and confidence

inspiring and also qualified the test of voluntariness can be used for conviction without looking for any other sort of corroboration. Reference in this respect is made to "Manjeet Singh v. State" (PLD 2006 SC 30). The law is that retracted confession can be legally taken into consideration against the maker, if the confession is found true and voluntary and can also be used as sole evidence for conviction without corroboration if the Court is satisfied about its voluntary character and truthfulness". Guidance may be sought from 2005 SCMR 515 wherein it is held "in order to ascertain the veracity of confessional statement, the circumstances under which it is recorded are to be examined carefully. For placing reliance on confessional statement it is well settled principle that it would not only be true, voluntary and believable but should be without fear, favour or any inducement".

42. Now keeping in view the above principle in mind it is to be seen that whether the statement recorded by accused is voluntary and true or it is the result of third degree method and inducement.

43. Admittedly accused was arrested on 31.01.2013. He remained in Police custody for two days but he did not confess his guilt. Subsequently when he was again remanded for Police custody for 7-days then on the last date of his remand he was produced before Magistrate for recording of his confessional statement. Mr. Muhammad Ghayas Khan, Judicial Magistrate who recorded his confessional statement was examined as PW-14. He has given the detail of recording of confessional statement and stated that after recording of confessional statement he handed over the accused to Naib Court for sending him to judicial lockup.

Admittedly the confessional statement as well as the certificate and the reply of questionnaire were typed. These were not in the hand writing of Judicial Magistrate. Though in cross-examination he stated "the statement was typed by my steno on my dictation, however I had not stated this fact in my certificate".

In such situation the typing of confessional statement in Urdu by the Steno of Judicial Magistrate cast doubt. There are also contradictions in the statement of Judicial Magistrate and the I.O. in respect of handing over the accused after recording of confessional statement. PW-14 Judicial Magistrate stated that after recording of confessional statement he was handed over to Naib Court for his shifting to jail but PW-18 Omar Hayat in his examination-in-chief has categorically stated;-

> "the Judicial Magistrate after observing all the codal formalities handed over the accused to me".

It means that Judicial Magistrate has not handed over the accused after doing the needful, to Naib Court rather he was handed over to I.O PW-18. This shows the conduct of Judicial Magistrate as well as the I.O. Reference is made to case "Sultan Muhammad etc. v. The State" wherein it is held "Judicial confession cannot be said to have been voluntarily made by accused when after recording judicial confession, accused was handed back to Investigating Officer". Reference is also made to (2002 PCr.LJ 2021) "Kachkol and others v. The State". (2009 PCr.LJ 596), (2007 PCr.LJ 448), "Muhammad Ali v. State" (2008 PCr.LJ 87).

According to record, statement of Adeel Abbas was recorded under section 161, Cr.P.C. which is marked as Ex.PW-18/D-2. When this statement recorded under section 161, Cr.P.C. is kept in juxtaposition with the confessional statement Ex.PW-14/12, it reveals that statement of accused recorded under section 164, Cr.P.C. is the verbatim copy of his alleged statement recorded under section 161, Cr.P.C. Even a single sentence, word, comma and full stop has not been changed. It does not appeal to the mind of prudent person that a person recorded his statement after a period of 14/15 days repeated the same stereo type of statement. But when this question was asked from PW-18 by counsel for accused that confessional statement is the verbatim copy of statement recorded under section 161, Cr.P.C. he denied the suggestion. All the material available on record reveals that Judicial Magistrate had never followed the legal procedure for recording of his confessional statement and when the I.O. had produced the typed statement along with typed questionnaire and certificate to Judicial Magistrate, he put his signatures on them and also got the signatures and thumb impressions of accused. These facts reveal that the story narrated by accused recorded under section 342, Cr.P.C. are correct and he had never confessed his guilt before Judicial Magistrate rather at the inducement of Humayun he put his signatures and thumb impression on Ex.PW-14/12. Reference is made to case "Zafar Abbas v. State" (2010 SCMR 939) wherein it is held "confession which was obtained after issuing threat and inducement is not voluntary and was an inadmissible piece of evidence".

44. Admittedly confessional statement was recorded after sufficient long delay for more than 15/16 days from the date of his arrest; therefore, as held by Superior Courts such confessional statement cannot be used as substantive evidence of fact. In the circumstances observation made by honourable Supreme Court in "Muhammad Pervez and others v. The State and others" (2007 SCMR 670) are very much relevant wherein it is held "in case all the facts are put in juxtaposition, then it is crystal clear that confessional statement was recorded after five days as the appellant Parvez was remained in custody of local Police. It is settled law that delay of 24 hours would normally be fatal though the acceptance of judicial confession as law laid down by this Court in Naqeebullah's case PLD 1978 SC page 21 coupled with the fact that prosecution had failed to explain the delay in recording the confessional statement. This fact created doubt qua the confession piece of evidence". Reference may also be made to "Muhammad Ali v. State" (2008 PCr.LJ 87 Karachi) and to 2012 SCMR 524, 2005 SCMR 515.

45. Similarly the confessional statement of accused Etisam has no value as there is nothing on record that it is voluntary and true. It is also not proved from record that the letter allegedly issued by him is in his hand writing. There is nothing on record that he performed his duty, as guard of the alleged abductee. He is not charged in FIR. There is no direct and circumstantial evidence against him to connect him with crime. He has been involved in the case only to show that in the absence of Adeel, Ana Bakhtiar was under the illegal confinement of Etisam having no arms and ammunition in guest house situated in populated area. Moreover, the confessional statements of both the accused are not in line with the allegation of the prosecution.

46. All the above noted facts reveal that the confessional statements are neither voluntary nor true and their signatures and thumb impression were obtained after using

undue influence, threat and inducement. In such circumstances no reliance can be placed on the confessional statement allegedly recorded by the accused and conviction cannot be recorded on the basis of this retracted confession.

47. One other piece of evidence against accused/appellants are their identification parade though Ana Bakhtiar, Shabbir Muhammad Durrani Judicial Magistrate who had conducted identification parade was examined as PW-13. From the record it reveals that it has not been conducted in accordance to the prescribed procedure. Ana Bakhtiar had not uttered a single word about the identification parade in her statement. Moreover, it was not necessary in the prevailing circumstances as they are previously known to each other. Thus this identification parade has no value for determining the case of accused.

48. Here it would not be out of place to mention the enquiry conducted by Jawad Khan, Joint Secretary Law and Justice Division, Islamabad on the complaint of Mrs. Khiraz Bibi, mother of accused. In her complaint submitted before Hon'ble Chief Justice of Pakistan on 19.03.2013 mother of Adeel Abbas contended that Adeel Abbas knows Ana Bakhtiar for around two and half years ago and they like each others and were to marry on 30.01.2013. Ana with her free will and consent left the house to marry with Adeel Abbas, but a false case was registered against him and his sister by Police on the direction of Azhar Jadoon, Col Tanveer of ISI and Humayun Jadoon. Adeel Abbas also submitted an application to Hon'ble Chief Justice of Pakistan in respect of threats extending by Humayun. During inquiry Humayun has been charge sheeted for committing the act of misusing his power to involve Adeel in a false case of kidnapping during January-February, 2013. During inquiry proceedings both the parties produced their respective evidence. After the inquiry the inquiry officer opined;-

> "the manner in which the influence of accused (Humayun) was used as stated by complainant and her witnesses leaves no room of doubt that it was accused who agonized the entire situation in order to take revenge from Adeel Abbas and his family .. and left no stone unturned to falsely implicate the accused by impersonating himself as Protocol Officer of Supreme Court of Pakistan and creating evidence to his favour under such influence which included getting confessional statement recorded from Adeel, although the record suggests that he had no reason to abduct the alleged abductee for ransom who was already in close contact with him".

When the charge of using undue influence in getting false case registered against Adeel and misusing the official position by falsely impersonating himself as Protocol Officer in S.C was proved, major penalty was imposed and vide office order dated 03.12.2013 he was removed from service.

49. It is established from record that prosecution has withheld the material evidence in the shape of phone data of different call numbers. Record shows that on 07.03.2013 Saima, acquitted accused, had submitted an application to D.S.P. Police Station Cantt Abbottabad Ex.PW 18/D-1 for obtaining the CDR of different cell Numbers of Adeel and Ana etc to prove their contact and relation with each other much prior to the date of occurrence. D.S.P. referred the matter to S.H.O. Though initially PW-18 concerned I.O in his cross-examination denied the submission of application to him but from the

perusal of application it reveals that he refers the matter to SHO and he also admitted in his examination-in-chief;-

> "I have directed S.I Ayub to obtain CDR Data of the telephone number of accused and place on file".

Concerned SHO PW-16 also admitted;-

> "I had obtained call number of Ana Bakhtiar and her father Bakhtiar. I also collected cell number of Adeel. I have applied for obtaining CDR of these cell numbers from officer".

50. This data is very much essential for the just decision of the case and for digging out the truth, but it has not been procured for the reason best known to the Investigating Officers. There are possibilities that the data has been received by I.O but when it was found that the data does not support the version of prosecution that was not appended with judicial file. Since accused party was interested in the production of cell data; therefore, after the closing of prosecution evidence they submitted application to the trial Court for production of data cells Nos. (1) 0345-5500896, (2) 0333-5703783, (3) 0335-9069602, (4) 0335-9069603, remain in use of Adeel accused and Cells Nos. (1) 0301-3074444, (2) 0332-8936678, (3) 0301-8121736, (4) 0331-8893274, (5) 0347-8115320, (6) 0334-1564491, to prove that Ana Bakhtiar went along with Adeel with her free will and consent. She also submitted an application for summoning SSP Investigation along with CDR of different cell number with the contention that the concerned SHO obtained CDR of different numbers but did not make part of file with the consultation of complainant party. The learned trial Court disposed of the application with the direction to produce these witnesses in defence, therefore, appellant in his defence summoned the Incharge investigation SSP, Abbottabad. Hafeez ur Rehman who produced the call data of different cell numbers including cell numbers of Adeel and Ana Bakhtiar Ex.DW-2/1 to Ex. DW-2/7 was examined as DW-2. However, he stated that call data record of cell number 0301-8121736 is awaiting and the call data for one year from 31.01.2012 to 31.01.2013 is not available with them. From the perusal of recovery memo Ex.PW-5/1 it reveals that I.O took into possession different articles including the mobile and sim Nos. 0345-5500895 and 0333-5703783 from the possession of accused Adeel at the time of his arrest on 31.01.2013 and DW-2 affirming the fact through Ex.DW-2/1 that these sims are in the name of Adeel vide Ex.DW 2/4, while sim Nos. 0332-8936678, 0347-8115320 are in the name of Ana Bakhtiar. In his statement recorded under section 342, Cr.P.C. accused has specially mentioned the phone/cell numbers through which he and Ana Bakhtiar contacted to each other.

51. It is proved from record that on the request of accused I.O collected the data record but the same has not been placed on record. It is also established from record that cell No. 0301-8121736 was in the name of Nazima Shaheen. Though accused has produced Hafeez ur Rehman DW-2 to produce the record but he was miser enough not to bring the relevant record as directed but simply stated that call data record of cell number 0301-8121736 is awaiting and the call data for one year from 31.01.2012 to 31.01.2013 is not available with them. This statement shows that mala fide of the agency who with the connivance of prosecution withheld the material record pertaining to the period from 31.01.2012 to 31.01.2013, which is the crucial period to establish the relation of accused with Ana Bakhtiar. Had this record been produced it might have supported the case of accused. Record shows that when no other alternate was left with the accused, the

defence party made personal effort to collect some of the record and vide application dated 13.07.2013 submitted the same in the Court. This record pertained to the period from November, 2012 to January, 2013. From the careful perusal of cell number of 0301-8121736, 0332-8936678, 0347-8115320 in the name of mother of Ana Bakhtiar and in her name and mobile number 0345-5500895 and 0333-5703783 in the name of Adeel reveals that these numbers remained in contact with each other much prior to the date of occurrence. The detail of which is given in pages 476 to 556 of the judicial file. At page No. 554 the detail of cell No. 0347-8115320 in the name of Ana Bakhtiar is given and in the column No of "family and friends numbers" the cell No. 0345-5500895 of accused Adeel is added. This detail has not been rebutted by the prosecution agency. All the above noted fact depicted the dishonesty of the investigation conducted by the investigation officers. It is settled law that wherever investigation reveals dishonesty grave doubts are cast on the case of prosecution. Reference in this respect is made to "Anwar v. State" (1975 PCr.LJ 750 Lahore). Reference is also made to "Alamgir Khalid Chughtai v. State" (PLD 2009 Lahore 254).

52. As noted above that on the basis of this dishonest investigation and interference of the relative of the complainant party Humayun had been dismissed from service vide order dated 03.12.2013 after conducting thorough and fair inquiry in the case of present FIR.

53. According to record during the course of trial accused submitted an application under section 540, Cr.P.C. for recalling of PW-10 Ana Bakhtiar for re-examination so that she could be confronted with the face book data and documents/greeting cards the detail of which was annexed with the application. But his application was turned down by trial Court. However, the greeting cards and face book record is available on judicial file. It needs to be observed that for purpose of acting under section 540, Cr.P.C. it is permissible to look the material not formally admitted in evidence whether it is available on the record of judicial file or in the police file or elsewhere. Reference in this respect is made to (PLD 1984 SC 95) Shariat Appellate Bench in case "Muhammad Azeem v. Muhammad Iqbal" and (PLD 1993 W.P Baghdad Jadeed 14) where in it is held "documents not formally proved cannot be over looked in deciding case".

54. From the perusal of greeting cards available at pages 455 to 468 it reveals that love messages were sent by one Nia to accused Adeel Abbas. These greeting cards contained the handwriting and signature of the sender. It is the contention of Adeel Abbas that these were sent by Ana Bakhtiar with the fake name of Nia. In order to dig out the truth and for just decision of the case it was the duty of the trial Court to recall the abductee in exercise of its power under section 540, Cr.P.C. to confirm these records and in case of refusal the writing and signatures on the cards have to be sent to expert along with specimen and routine signatures, handwriting to expert for seeking opinion, but the trial court flatly refused the application. It even failed to exercise its power under Article 84 of Qanun-e-Shahadat, 1984.

55. All the above noted discussion, facts and circumstances of the case lead to only one conclusion that there was love affair between Ana Bakhtiar and Adeel Abbas much prior to the present occurrence and when the parents of Adeel asked for the hand of Ana Bakhtiar for Adeel Abbas they refused she made arrangement to elope with appellant

Adeel Abbas. All this episode has been described by accused in his statement recorded under section 342, Cr.P.C. in reply to question No. 26 and the mother of accused who was examined as DW-1. She has been subjected to searching cross-examination but prosecution failed to rebut the contention of mother of accused that in the month of November, 2013 she along with her husband came to the house of father of Ana Bakhtiar at Abbottabad and asked for the hand of Ana Bakhtiar for her son from her father Bakhtiar but subsequently he refused.

56. When the story of defence is put in juxtaposition with the prosecution version, the narration of defence appears to be more truthful, convincing and correct than the contention of prosecution. It is settled law that for giving the benefit of doubt it is not necessary that there should be many circumstances creating doubts. Single circumstance creating reasonable doubt in a prudent mind about the guilt of accused makes him entitled to its benefit, not as a matter of grace and concession but as a matter of right. Reference is made to case "Muhammad Akram v. State" (2009 SCMR 230). All these serious issues create doubts in our mind regarding the prosecution of proving the guilt of the appellants beyond the reasonable doubt and these material facts favouring the appellants were not considered by the learned trial Court while appraising the evidence of the prosecution. In the absence of truthful, trustworthy and reliable and confidence inspiring evidence, the learned trial Court has wrongly not extended the benefit of doubt to the accused/appellant.

57. Accordingly, while extending benefit of doubt to the appellants, we while accepting both Appeals Nos. 107-A/2013 and 108-A/2013 set aside the conviction and sentences recorded by the learned Anti Terrorism Court, Hazara Division, Abbottabad vide impugned judgment dated 22.07.2013 and acquit the appellants of all the charges and direct that the appellants Adeel Abbas and Etisam being in custody be released forthwith, if not required in any other case. Both Cr. Revisions Nos. 28-A of 2013 and 29-A of 2013 filed by complainant for enhancement of sentence of Adeel Abbas and Etisam and Appeal No. 110-A/2013 filed against acquittal of Saima being without force are hereby dismissed.

58. These are the detailed reasons for short order of this Court of even date.

HBT/269/P Order accordingly.

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