

THE HIGH COURT OF SINDH AT KARACHI

Spl. Crl. Anti-Terrorism Appeal No.66 of 2002.
Spl. Crl. Anti-Terrorism Appeal No.67 of 2002.
Confirmation Case No.12 of 2002.

Present:

Mr. Justice Mohammad Karim Khan Agha
Mr. Justice Muhammad Saleem Jessar.

Appellants: 1. Ahmed Omar Sheikh s/o. Saeed Ahmad Sheikh.
through Mr. Mahmood A. Sheikh, Advocate assisted by Rauf Ahmed Sheikh Advocate.

2. Fahad Nasim Ahmed S/o. Nasim Ahmad,
3. Syed Salman Saqib S/o. Syed Abdul Rauf,
4. Sheikh Muhammad Adil s/o Abdul Shakoor through Mr. Khawaja Naveed Ahmed and Mr. Ria Bashir Ahmed Advocates.

For State: Through Mr. Saleem Akhtar Buriro, Additional Prosecutor General.

Spl. Crl. Anti-Terrorism Appeal No.68 of 2002.

Appellant/State: Through Mr. Saleem Akhtar Buriro, Additional Prosecutor General.

Respondents: 1. Fahad Nasim Ahmed S/o. Nasim Ahmad,
2. Syed Salman Saqib S/o. Syed Abdul Rauf,
3. Sheikh Muhammad Adil s/o Abdul Shakoor through Mr. Khawaja Naveed Ahmed and Mr. Ria Bashir Ahmed Advocates.

Dates of hearing: 03.03.2020, 04.03.2020
05.03.2020 and 06.03.2020

Date of Judgment: 02.04.2020.

JUDGMENT

MOHAMMAD KARIM KHAN AGHA, J:- Accused (1) Ahmed Omar Sheikh S/o. Saeed Ahmad Sheikh (2) Fahad Nasim Ahmed S/o. Nasim Ahmad, (3) Syed Salman Saqib S/o. Syed Abdul Rauf and (4) Sheikh Muhammad Adil S/o. Abdul Shakoor were tried by learned Judge, Anti-Terrorism Court Hyderabad Division & Mirpurkhas Division, Hyderabad in Special Case No.26 of 2002 arising out of Crime No.24/2002

U/s. 365-A/368/302/109/201/120-A/34 PPC read with Sections 7-a 8(a)(v)(c), 11/A(a)(b)(c), 6(2)(b)(c)(e)(f), 11/H(3-4), 11/V(I)(a)(b)(2), 11/L(a)(b)7(a)(b)(2), 11/H(2)(a)(b), 11/W(1)(2), 7 of the Anti-Terrorism Act, 1997, Police Station Artillery Maidan, Karachi (South). After trial vide judgment dated 15.07.2002 the appellant namely Ahmed Omer Saeed Sheikh was convicted and sentenced to death under section 365-A, 302 PPC read with Section 6(a) of the Anti-Terrorism Act, 1997 and Section 120-A PPC. The other accused persons namely Adil Sheikh, Salman Saqib and Fahad Naseem were sentenced under section 7 of the Anti-Terrorism Act, 1997 to suffer Life Imprisonment. They were also sentenced to pay fine of Rs.500,000/- each. In case of non-payment of fine, the accused persons were ordered to suffer sentence for five (5) years more. The court directed all the four accused persons to pay jointly a sum of Rs.20,00,000/- (Rupees twenty lacs) which shall be given to the widow of Daniel Pearl and also to his orphan son. All the above sentences were ordered to run concurrently. The appellants were extended the benefit of section 382(b) Cr.P.C.

2. Being aggrieved and dissatisfied by the judgment passed by learned Judge, Anti-Terrorism Court Hyderabad Division & Mirpurkhas Division, Hyderabad, these appeals have been preferred by the appellants, whereas the State has also filed Special Criminal Anti-Terrorism Appeal (Revision Application) No.68 of 2002 for enhancement of sentence from life imprisonment to death in respect of Respondents Adil Sheikh, Salman Saqib and Fahad Naseem.

3. The brief facts of the prosecution case are that on 04.02.2002 one Mariane Pearl residing at 19/1 Zamzama Street, D.H.A. Phase-V, Karachi under her signatures addressed a letter to the Station House Officer of Artillery Maidan Police Station, Karachi wherein she placed information on record in the following terms:- The contents of the letter have been incorporated in FIR and FIR was registered.

"My husband Daniel Pearl, a U.S. National and South Asia Bureau Chief of the Wall Street Journal was on assignment in Pakistan. He disappeared on the 23rd of January, 2002 and has not come back since that date. I came to know from driver Nasir Abbas son of Muhammad Din of Taxi Registration No.PL-1676 that Mr. Abbas dropped my husband in front of the Village Restaurant in Saddar, Karachi. My husband's whereabouts have not been determined since that time.

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I first heard of my husband's kidnapping from e-mail message received on the 27th of January 2002. The e-mail message included photographs that showed my husband held in detention in inhuman conditions. The writer(s) of the e-mail wrote that they had abducted my husband in retaliation for the imprisonment of Pakistani men by the US. Government in Cuba and other complaints.

The unknown accused persons had demanded the provision of Lawyers to Pakistanis detained in the U.S. , the release of the Pakistanis jailed in Cuba to Pakistan, the return of former Taliban Ambassador Mulla Zaef to Pakistan and the delivery of F-16 fighter jets to Pakistan or the repayment of money allocated for those F-16 jets as well as 15 percent interest.

In a subsequent e-mail received on 30.01.2002, the unknown accused threatened to kill my husband within 24 hours if their demands were not met.

I approached you for registration of this case and request that you return my husband from his kidnappers".

*Sd/-
Mariane Pearl
19/1, Zamzama Street,
Karachi."*

4. After the kidnapping for ransom of the abductee Daniel Pearl by the appellants working through a pre planned conspiracy, as indicated above, when the ransom demands were not met the abductee Daniel Pearl was murdered by the appellants with his execution being video recorded.
5. After investigation the challon was filed and the accused who had been arrested for the offenses as mentioned above were sent up to face trial. The charge against the accused was framed to which they all pleaded not guilty and claimed trial of the case.
6. To prove its case the prosecution examined 23 prosecution witnesses and exhibited documents and various other items and thereafter side of the prosecution was closed. The statements of the accused were recorded u/s 342 Cr.P.C. wherein they proclaimed their innocence. The accused did not examine themselves on oath although appellant Ahmed Omar Sheikh examined two DW's in support of his defense case.
7. The facts of the case as well as evidence produced before the trial court find an elaborate mention in the judgment dated 15.07.2002 passed by the trial court and, therefore, the same may not be reproduced here so as to avoid duplication and unnecessary repetition.

8. Mr. Mahmood A. Khan, learned counsel for the appellant Ahmed Omar Sheikh has contended that the FIR has been registered after an unexplained delay of 12 days during which period the complainant and the police concocted a false case against the appellants; that with regard to the calls allegedly received at Governor's House by Pearl in front of PW-2 Jameel Yousaf there was no evidence that such calls had come from appellant Omar Sheikh and thus there was no evidence to show that the appellant Omar Sheikh had abducted Pearl, that Mrs Pearl who was the complainant and was a very important witness avoided giving evidence and that her complaint was concocted, that there is no evidence of any conspiracy on record, that neither of the judicial confessions of co-accused Salman Saqib and Fahad Naseem could be safely relied upon as they had not been made voluntarily as admitted by the Judicial magistrate in her evidence, that the identification of appellant Omar Sheikh at identification parades by PW-6 Asif Mahfooz and PW-1 Nasir Abbas are of no legal consequence as neither of them gave any hulia of the appellant, that there was a delay in the identification parade and that the identification parade was not carried out in accordance with the relevant guidelines and rules for safe identification parades. That the handwriting expert's opinion cannot be safely relied upon as he was completely unqualified, that there was no evidence that appellant Omar Sheikh made any ransom demand, that appellant Omar Shakh was arrested in Lahore on 6th February and not in Karachi on 13th February, that the laptop which was used to trace the e-mails allegedly sent by the other appellants on appellant Omar Sheikh's instructions was according to the prosecution evidence seized on 11th February and yet it was with the FBI forensic computer expert on 4th February which shows that the e-mails were planted on appellant Omar Sheikh and the other appellants and this is a false case, that the video which showed the murder of Pearl was not genuine and had not been authenticated and even otherwise it did not link appellant Omar Sheikh or any other appellant to Pearl's murder and as such based on any of the above reasons appellant Omar Sheikh should be acquitted of the charge by extending to him the benefit of the doubt. In the alternative he submitted that this was not a case which justified the death penalty but only life imprisonment. In support of his contentions he has placed reliance on the cases of **Mah Gul v. The State** (2009 SCMR 4),

Muhammad Yameen alias Raja v. The State and others (2009 SCMR 84), Waqar Ahmad and another v. The State (2012 P. Cr.LJ 170), Abdur Rashid v. The State (2003 P. Cr.LJ 742), Muhammad Ayaz and others v. The State (2011 SCMR 769), Muhammad Ramzan and others v. The State (2011 P. Cr.LJ 140), Shafqat Mehmood and others v. The State (2011 SCMR 537), Sabir Ali alias Fauji v. The State (2011 SCMR 563), Umar Farooq v. The State (2006 SCMR 1605), Abdul Salam and others v. The State and others (PLD 2005 Quetta 86), Ziaullah alias Jajj v. The State (2008 SCMR 1210), Abdul Jabbar and another v. The State (2019 SCMR 129), Zafar v. The State (2018 SCMR 326), G.M. Niaz v. The State (2018 SCMR 506), Nazir Ahmad v. The State (2018 SCMR 787), Muhammad Ashraf alias Acchu v. The State (2019 SCMR 652), Ali Raza alias Peter and others v. The State and others (2019 SCMR 1982), Muhammad Mansha v. The State (2018 SCMR 772), Kanwar Anwaar Ali, Special Magistrate in the matter of Criminal Miscellaneous Application No.183 of 2019 in criminal Appeal No.259 of 2018 (PLD 2019 SC 488), Mian Sohail Ahmed and others v. The State and others (2019 SCMR 956), Abdul Karim alias Raja and another v. The State (1996 P. Cr.LJ 503), Immadine v. Pathan and 3 others (2001 P. Cr.LJ 1892) and Abdul Qadir Motiwala v. The State (1971 SCMR 569).

9. Mr. Ria Bashir Ahmed and Mr. Khawaja Naveed Ahmed, learned counsel for the appellants Fahad Nasim Ahmed, Syed Salman Saqib and Sheikh Muhammad Adil have adopted the arguments of learned counsel for appellant Omar Sheikh in so far as it relates to them and have further contended that the appellants are completely innocent, that there is no evidence of any conspiracy against them, that the judicial confessions of appellants Salman Saqib and Fahad Naseem were not made voluntarily and were retracted and as such cannot be relied upon, that there is no evidence that they were involved in any kidnapping or making any ransom demand or were involved in the murder of Pearl and as such for any of the above reasons they should be acquitted of the charge based on being given the benefit of the doubt. They submitted that it was a case of acquittal and certainly not a case which justified the enhancement of their sentences if this court maintained their convictions due to the relatively minor role which they played in the offenses. In support of their contentions they placed reliance on the cases of **Gul Munir and another v.**

The State (1990 P. Cr.LJ 1878), **Munir Ahmed and others v. The State** (1988 P. Cr.LJ 116), **Ali Akbar v. The State** (2001 P. Cr.LJ 890), **Mst. Darya Khatoon v. The State** (1996 P. Cr.LJ 1477), **Wali Muhammad alias Mandhoo v. The State** (1986 P. Cr.LJ 1153), **Moharram v. The State** (1983 P. Cr.LJ 471), **Miskeen v. The State** (1983 P. Cr.LJ 1113), **Hamzo and another v. the State** (1083 P. Cr.LJ 892), **Minhon and another v. The State** (1996 P. Cr.LJ 528), **Ghulam Abuzar and another v. The State** (1991 P. Cr.LJ 697), **Shah Nawaz v. The State** (1989 P. Cr.LJ 621) and **Murtaza and 2 others v. The State and another** (1996 P. Cr.LJ 358).

10. On the other hand Mr. Saleem Akhtar Buriro, learned Additional Prosecutor General has fully supported the impugned judgment. He has contended that the delay in the filing of the FIR has been fully explained, that it is not relevant whether the complainant was examined or not as it is up to the prosecution to decide which witnesses to call and even otherwise Mrs. Pearl has explained her inability to come to Pakistan as she had just given birth and had been advised not to travel on medical grounds, that there was sufficient evidence on record through the PW's, identification of the appellants before identification parades, the judicial confessions of two of the appellants Salman Saqib and Fahad Naseem, last seen evidence, recoveries of bills for the international hotel, recoveries of e-mails sent to Mrs. Pearl and their original manuscripts and laptop along with expert forensic report along with appellant Omar Sheikhs confessions before the police that he had abducted Pearl and that Pearl was dead to prove that the appellants had kidnapped Pearl for ransom, although he did fairly concede when confronted by the court that there was little evidence on record to link the appellants to the video which showed the execution of Pearl and that the hand writing expert appeared to lack the required qualifications and his report lacked reasons for his conclusions but none the less he contended that when all the prosecution evidence was viewed in a holistic manner the prosecution had proved its case against the appellants beyond a reasonable doubt and that the appeals should be dismissed and all the sentences of life imprisonment be enhanced to the death penalty as the appellants who had been sentenced to life imprisonment were on the same footing as the appellant Omar Sheikh who had been sentenced to death keeping in view the brutality of the offense committed. In support of his contentions, he placed reliance on

Sh. Muhammad Amjad V The State (PLD 2003 SC 704), Ghulam Husain Soomro V The State (PLD 2007 SC 71), Zakir Khan and others V The State (1995 SCMR 1793), Raz Muhammad V The State (PLD 2002 SC 56), Nazeer alias Wazeer V The State (PLD 2007 SC 202), Muhammad Amin V The State (PLD 2006 SC 219), Khan Muhammad V The State (1999 SCMR 1818), Ghazanfar Ali @ Pappu and others V The State (2012 SCMR 215), The State V Minhun alias Gul Hassan (PLD 1964 SC 813) and Ghulam Nabi V The State (2007 SCMR 808).

11. 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 including that cited at the bar.

12. In a nutshell the case of the prosecution is that an American Journalist Daniel Pearl (Pearl) whilst on assignment in Pakistan was trying to make contact with Pir Mubarak Shah Geelani (Geelani) in order to seek information from Geelani in connection with an incident whereby a person known as Richard Read later dubbed "the shoe bomber" had tried to blow up a commercial airliner while in the air. That the appellants taking advantage of Pearls search for Geelani hatched a conspiracy in Room 411 of Akbar International Hotel Rawalpindi on 11-01-2002 to kidnap Pearl for ransom. In his search for Geelani, Pearl along with two colleagues had met Bashir aka Omer Sheikh aka Farooq Muzafer who claimed to be a Murid (follower) of Geelani and was very close to Geelani at Room No.411 of Akbar International Hotel Rawalpindi where Bashir aka Omer Sheikh aka Farooq Muzafer on 11.01.02 took Pearls business card and told Pearl that if he was able to arrange a meeting for Pearl with Geelani he would let Pearl know. According to the prosecution about a week later Bashir aka Omer Sheikh aka Farooq Muzafer contacted Pearl and told him he could arrange such meeting in Karachi. On 23-01-02 Pearl left his wife and where he was staying in Karachi by taxi and after a meeting with Jameel Yousaf at the CPLC at the Governors House took the same taxi to the Metropole hotel near the village restaurant where he was supposed to meet Bashir aka Omer Sheikh aka Farooq Muzafer who was to take Pearl to his meeting with Geelani. When Pearl reached outside the Metropole Hotel in a taxi a white corolla pulled up in front of the taxi.

Pearl got out of the taxi and was greeted by Bashir aka Omer Sheikh aka Farooq Muzafer who was to take him to his meeting with Geelani and Pearl left with Bashir aka Omer Sheikh aka Farooq Muzafer and the other appellants for his meeting with Geelani in the white corolla. Pearl did not return home after his meeting. Mrs Pearl the next day contacted Jameel Yousaf head of the CPLC who Pearl had met before leaving for his meeting with Bashir aka Omer Sheikh aka Farooq Muzafer and informed him that her husband had not returned home. Hence efforts were made to track down Pearl's whereabouts by Mrs. Pearl and the police assisted by the FBI since Pearl was an American citizen and the US authorities had sent the FBI to assist the Pakistani police in their investigation. That on 27-01-2002 Mrs. Pearl received an e-mail from the appellants stating in effect that her husband had been kidnapped and would be returned provided that certain demands were met as set out in the letter reproduced above and which was incorporated in the FIR. On 30-01-2002 the appellants sent Mrs. Pearl another e-mail stating that unless the demands were met within 24 hours Pearl would be murdered. That according to the prosecution all the appellants were involved in one way or another as part of the conspiracy to kidnap for ransom Pearl through playing a role in his abduction, sending the e-mail ransom demands and when these demands were not met in executing Pearl which execution was video recorded where he was in essence murdered by churri by cutting his head from the rest of his body as shown in a recovered video film. His body however was not recovered.

13. In considering and reassessing the evidence on record we have scrutinized, examined and taken account individual pieces of evidence whilst considering the whole context of the case so that all the evidence can be viewed in a holistic manner. In our view this is important especially in cases of kidnapping for ransom which is often carried out in a highly organized fashion with each participant carrying out his separate role without which the kidnapping for ransom could not be achieved. For example, one person could have abducted the person, another could have held him captive, another could have made the ransom demand whilst yet another person could have collected the ransom demand. Thus, the role of each appellant must be seen in this background. No doubt some of the accused may have played a lesser role. For example, the person who fed

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the accused as opposed to the person who abducted him but the important point in our view is that without all the accused playing their designated role the kidnapping for ransom could not have been achieved and would have failed and thus each accused involved in the kidnapping for ransom bears equal responsibility and liability for the offense.

14. We are acutely aware that this is a very sensitive case where a foreign journalist was murdered in the most brutal circumstances whilst on assignment in Pakistan and would have spread terror amongst other foreigners in Pakistan and the journalist community as a whole with the result that freedom of expression would be impugned upon. We are also cognizant of the human tragedy whereby Mrs. Pearl who was pregnant at the time had to endure the agony of her husband going missing and eventually being murdered in a barbaric manner and the fact that on account of such an unspeakable crime a child will never know his father. However, as Judges we have to put such aspects aside and decide the guilt or innocence of the appellants by dispassionately assessing the evidence before us and coming to a decision which is supported by the evidence on record and the governing law and not by our emotions or own personal feelings. We can only be guided by the evidence and the law and nothing else. In this respect we refer to the case of **Azeem Khan V Mujahid Khan** (2016 SCMR 274) which held at P.290 Para 32 as under;

"Similarly, mere heinous or gruesome nature of crime shall not detract the Court of law in any manner from the due course to judge and make the appraisal of evidence in a laid down manner and to extend the benefit of reasonable doubt to an accused person being indefeasible and inalienable right of an accused. In getting influence from the nature of the crime and other extraneous consideration might lead the Judges to a patently wrong conclusion. In that event the justice would be casualty".

15. Before proceeding to decide these appeals we were pained to have noticed with concern that these appeals have been pending for the last 18 years during which time the appellants have been in jail. An appeal is a continuation of a trial and in our view under Article 10 (A) of the Constitution which envisages an expeditious trial it also envisages an expeditious hearing and decision of an appeal if one is filed. In our view to keep an appeal pending for years on end regardless of who is at fault is

tantamount to violating Article 10 (A) of the Constitution and ultimately it is for the judges before whom such cases are fixed to use their judicial authority to ensure that such appeals are decided expeditiously. In our humble view the High Courts need to put in place a system for expediting the hearing and deciding of old appeals to ensure that Article 10 (A) of the Constitution is complied with and an appeal is a meaningful right. For example, appeals which are up to 5 years old could be put in yellow files, between 5-10 years in blue files and over 10 years in green files. If a person is released after serving out his sentence and his appeal still remains pending then an appeal can only be regarded as a right on paper which is completely illusionary and would amount to a fraud on both the appellant and the criminal justice system. If a convict is acquitted after serving 18 years in jail he cannot make up for the loss of such precious time and is not compensated for it. In such a case if a man had a young child of say 3 years old at the time of sentencing he would completely have missed that child growing up who would be almost an alien to him at the time of his release. Even if a convicts conviction is up held by a High Court he can at least, if he so chooses, expeditiously move on to the next level of the appellate process which is his right and from where he may still get relief. A right of appeal will only become meaningful, as opposed to illusionary, in criminal cases if such appeals are decided expeditiously which is an obligation which the State owes to its convicted citizens which objective is to ensure that no person is deprived of his liberty for longer than is legally justified since a persons liberty is in our view the highest expression of his right to life which is also guaranteed by the Constitution.

Turning to the evidence in respect of each ingredient of the offense charged.

The appellants have all been convicted for conspiracy under S.120 (A) PPC.

16. S.120 (A) and (B) PPC which define the offense of conspiracy and its punishment is set out below for ease of reference;

120-A. Definition of criminal conspiracy. *When two or more persons agree to do, or cause to be done, -*

(1) an illegal act, or

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(2) an act which is not illegal by illegal means, such an agreement is designated a criminal conspiracy:

Provided that no agreement except an agreement to commit an offence shall amount to a criminal conspiracy unless some act besides the agreement is done by one or more parties to such agreement in pursuance thereof.

Explanation. It is immaterial whether the illegal act is the ultimate object of such agreement, or is merely incidental to that object.

120-B. Punishment of criminal conspiracy.

(1) *Whoever is a party to a criminal conspiracy to commit an offence punishable with death, imprisonment for life or rigorous imprisonment for a term of two years, or upwards, shall, where no express provision is made in this Code for the punishment of such a conspiracy, be punished in the same manner as if he had abetted such offence.*

(2) *Whoever is a party to a criminal conspiracy other than a criminal conspiracy to commit an offence punishable as aforesaid shall be punished with imprisonment of either description for a term not exceeding six months, or with fine or with both".*

17. After our reassessment of the evidence we are of the view that it shows through PW 6 Asif Mehfooz Farooqui and PW 7 Amir Afzal that appellant Omar Sheikh aka Bashir aka Farooq Muzafer stayed at Room 411 of Akbar International Hotel Rawalpindi on 11-01-2002 and met with Pearl, PW 6 Asif Mehfooz Farooqui and a person named Arif and that Geelani was discussed. There is no evidence that any of the other appellants were present and that any conspiracy/plan was made to abduct Pearl on that date in that room of the Hotel which in the presence of Pearl himself would have been absolutely absurd. Thus, we have not found any evidence to prove that either appellant Omar Sheikh aka Bashir aka Farooq Muzafer or any other appellant hatched a conspiracy to kidnap Pearl for ransom in room 411 of the Akbar International Hotel in Rawalpindi on 11-01-2002 within the meaning of S.120 (A) PPC and thus all the appellants are acquitted of this charge.

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18. The appellants have been convicted for Kidnapping for Ransom which is defined under S.365 (A) PPC as is set out below;

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

In essence there are two limbs to this offense which each must be satisfied;

- (a) Kidnapping or abduction and (as in this case)
- (b) to compel any person to comply with any other demand, whether in cash or otherwise, for obtaining release of the person kidnapped or abducted (bold added)

19. Turning to the offense of kidnapping or abduction.

S.362 PPC in essence defines abduction as under;

"362. Abduction. Whoever by force compels, or by any deceitful means induces, any person to go to any place, is said to abduct that person" (bold added)

20. Keeping in view the definition of abduction after our reassessment of the evidence we are of the view that the prosecution has proved beyond a reasonable doubt that the appellant Omar Sheikh aka Bashir aka Farooq Muzafer has committed the offense of abduction under S.362 PPC for the following reasons;

- (a) In our view there is no unexplained delay in lodging the FIR after the incident which could have lead to concocting a false case against the appellants. Admittedly the FIR was lodged after a delay of 12 days however firstly in cases of kidnapping for ransom it is not unusual for there to be some delay in lodging an FIR as the immediate concern of the loved ones of the abductee is to try to track down the missing person by calling friends, relatives and others who were last in contact with the missing person. In this case this delay would be more acute as the loved one of the missing person was a foreign national (American) who was a lady who had

accompanied her husband (the abductee) on his trip to Pakistan. As such she would have been even more scared and traumatized than usual and would not even know how to go about such matters. Most likely one of her first ports of call would have been the US Embassy in order to report her husband as missing. Even otherwise she contacted PW 2 Mr. Jameel Yousaf on the day after her husband went missing and the police soon after that got involved in the case along with the FBI since Pearl was an American citizen. Thus, we find no unexplained delay in lodging the FIR. Most significantly, why would an American lady accompanying her journalist husband to Pakistan who did not know the appellants want to cook up a story to falsely implicate the accused? The answer is that she would have no such reason. Her priority would have been to find and get her husband safely returned.

- (b) There is evidence on record that Pearl was making efforts to meet Geelani by utilizing his journalist contacts. PW 6 Asif Mehfooz Farooqui who was a journalist working with a Japanese news paper and was working with Pearl prior to his abduction and who was in touch with Pearl gave evidence that Pearl wanted to help him to arrange a meeting with Geelani in connection with Richard Read the so called "shoe bomber". Through his contacts including one Arif he was able to trace out Geelani's Murid (follower) who claimed to know Geelani well and a meeting was arranged at the International Hotel in Rawalpindi at 9pm on 11-01-2002. They found the Murid who was known as Bashir in the restaurant and returned to Room 411 to which Bashir had the key and opened the door and discussed with him and Pearl in room 411 about Geelani and in particular whether Bashir could arrange a meeting between Geelani and Pearl. According to his evidence Bashir said he would try and Pearl gave him his business card so that he could get in contact with Pearl if he was able to arrange such a meeting. Later Pearl told him that Bashir had arranged his meeting with Geelani in Karachi and that he was going to meet Bashir and Geelani. On 23.01.2002 Pearl called him (the day when Pearl was to meet Geelani) and he told Pearl that it was not dangerous to meet Geelani. This witness identified Bashir at an identification parade as the person who they met in room 411 and told them he would try to arrange Pearl's meeting with Geelani. In our view this witness would have gotten a good look at Bashir as according to him the meeting in the room with Bashir lasted about 3 hours and there was full

light in the room and as such he could easily identify Bashir even without an identification parade which was not mandatory in this case. Reliance is placed on **Ghazanfar Ali v. State** (2012 SCMR 2015). He did pick Bashir out at an identification parade as the person who met Pearl in the hotel room and discussed Geelani and meeting him. He was an independent witness, he was not a chance witness, he had no enmity with the appellant and had no reason to falsely implicate the appellant Omar Sheikh or incorrectly identify him. There may be some deficiencies in the conduct of the identification parade but in our view based on the particular facts and circumstances of this particular witnesses identification of the appellant Omar Sheikh these deficiencies are not particularly relevant. In this respect reliance is placed on **Muhammed Siddique V State** (2020 SCMR 342) His evidence was not shattered during lengthy cross examination and thus we believe the evidence of this witness in terms of his correct identification of Bashir and as Bashir being the person who agreed to arrange Pearl's meeting with Geelani. The evidence of the meeting between Bashir and Pearl at the hotel is corroborated by the evidence of PW 7 Amir Afzal who was the receptionist at the hotel on the day that Pearl and Bashir met. PW 7 Amir Afzal in his evidence confirms that one Muzafer Farooq had occupied room 411 of the hotel on 11-01-2002 which was the date on which Bashir met Pearl in room 411 and confirmed that an English man had also met with Muzafer Farooq. He identified appellant Omer Sheikh who was present in court as Muzafar Farooq. In our view this witness is an independent witness, is not a chance witness and had no ill will or enmity with Omar Sheikh and had no reason to falsely implicate him in this case and as such we believe the evidence of this witness. He provided the record of Room 411 to PW 22 Rao Aslam who was the first IO of the case who also recovered bills in the name of Muzafer Farooq which were duly exhibited. PW 3 Javaid Abbass corroborates the evidence of PW 22 Rao Aslam about the recovery of the bills from PW 7 Amir Afzal who was the receptionist at the hotel and was mashir of recovery. Thus, based on the above discussion of the evidence we find that Omar Sheikh is also known as Bashir and is also known as Muzafer Farooq who met Pearl, PW 6 Asif Mehfooz Farooqui and Arif at 9pm on 11-01-02 and had a meeting with Pearl in room 411 at the International Hotel in Rawalpindi where Omar Sheikh aka Bashir aka Muzafer Farooq agreed to arrange a meeting with Geelani and Pearl and that he would contact Pearl in this regard.

(c) On 23-01-2002 PW 1 Nasir Abbass who is a taxi driver states that he took Pearl to the Governor's House and then at about 7pm took him to the village restaurant where he parked up close to the metropole hotel. According to his evidence en route he dropped Pearl at the CPLC in order to meet Jameel Yousaf. This is corroborated by PW 2 Jameel Youasf who was head of the CPLC and who in his evidence confirms meeting Pearl at about 5.45pm on that day. According to his evidence Pearl received a phone call which he over heard and to which Pearl responded in effect that he was close to the office where his meeting was to be held. At about 6.45pm Pearl left the CPLC for his meeting. This corroborates the evidence of taxi driver PW 1 Nasir Abbas who had waited outside the CPLC in order to take Pearl to his next destination. According to PW 1 Nasir Abbas' evidence he took Pearl to the village restaurant in Karachi and parked near the metropole hotel. At that time a white Toyota car then pulled up in front of his car. Pearl got out and he saw Pearl greet a man who he saw and identified as Omer Sheikh aka Bashir aka Farooq Muzafer. Admittedly it was dark but in his evidence PW 1 Nasir Abbass specifically says that there was light and he saw a person who he later identified as Omer Sheikh aka Bashir aka Farooq Muzafer before an identification parade. Admittedly this witness gave did not give any hulia of Omer Sheikh and the identification parade was held after some delay and not all the rules of the identification parade may have been followed but in our view he was an independent witness, he was not a chance witness, he had no enmity with the appellant and had no reason to falsely implicate the appellant Omar Sheikh or incorrectly identify him and his evidence in part is corroborated by PW 2 Jameel Yousaf. His evidence was not shattered during lengthy cross examination and thus we believe the evidence of this witness in terms of his correct identification of Omar Sheikh aka Bashir aka Farooq Muzafer as the person who left with Pearl on the night of 23-01-2002.

(d) In our view the evidence shows that Omar Sheikh aka Bashir aka Farooq Muzafer by deceitful means i.e pretending to set up a meeting between Pearl and Geelani induced Pearl to go with him and Pearl was never seen alive again **and as such Omar Sheikh has committed an offense under S.362 PPC of abducting Pearl and we hereby convict him of such offense.**

(e) There is no evidence that any of the other appellants played any role in abducting Pearl. There is no evidence that any of them were present at Hotel international when Pearl met Bashir on 11-01-2002 and there is no evidence that any of them were present when Omar Sheikh aka Bashir aka Farooq Muzafer left with Pearl in the white corolla on 23-01-2002.

21. Based on our above discussion we find that Omar Sheikh aka Bashir aka Farooq Muzafer was the person who was last seen with Pearl alive and this aspect of the case will be dealt with later in this judgment.

22. To convict Omar Sheikh aka Bashir aka Farooq Muzafer for the kidnapping for ransom and murder of Pearl we must consider the other evidence on record and in particular to see what corroborative material may be available in this respect.

23. **The question now arises whether the prosecution has proved beyond a reasonable doubt that either appellant Omar Sheikh aka Bashir aka Farooq Muzafer or any of the other appellants kidnapped Pearl for ransom keeping in view the definition of kidnap for ransom under S.365 A PPC as set out above and the fact that if any of the other appellants are involved in the ransom demand they will still be liable for the offense under S.365 A for kidnapping for ransom despite the fact that they played no role in abducting Pearl because as mentioned earlier if they did play a role in sending the ransom demand by e-mail or keeping Pearl captive then they would all come within the ambit of S.365 A PPC. In this respect reliance is placed on **Sh. Muhammed Amjad V The State** (PLD 2003 SC 704)**

24. In determining this issue in our view the following key aspects of the case are of particular significance.

(A) Whether we can safely rely on either or both of the judicial confessions of Salman Saqib and Fahad Naseem.

(B) Whether Omar Sheikh aka Bashir aka Farooq Muzafer was arrested in Lahore on 6th February 2002 or in Karachi on the night of 13th February 2002.

(C) Whether the laptop from where the e-mails were traced was recovered on the night of 10/11th February 2002 from where Fahad Naseem was staying.

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(D) Whether the handwriting expert's report can be safely relied upon in terms of its accuracy in matching appellant Omar Ahmed Sheikh's and appellant Muhammed Adil's handwriting.

25. We will proceed to deal with each question in turn.

A. Whether we can safely rely on either or both of the judicial confessions of Salman Saqib and Fahad Naseem.

26. For ease of reference the judicial confessions of both Salman Saqib and Fahad Naseem are set out below.

Judicial Confession of Salman Saqib under section 164 Cr.P.C.

"I remained stay about 4/5 months in Afghanistan. In the month of April 1999 I was caused injured in Baghram (Afghanistan) wherefrom I was brought to Pakistan and I remained under medical treatment in different Hospitals of Karachi about one and half / two months ago I removed stick and I became able. My operation about 25/30 were conducted. I met with Sheikh Umar first time in Procession (Jalsa) and this meeting has taken place in January 2000, thereafter in the month of December 2001, I met with Sheikh Umar second time in the office of Jaish Muhammad, thereafter on 2nd January 2002, I received phone call of Sheikh Umar who told me that he is coming to Karachi tomorrow you can meet me I replied him you come tomorrow. On the next day, he having made phone and told me that he is coming from Islamabad by Air, may you receive me at Airport, and do you have any conveyance, I replied him that I have no conveyance but if you said me then I come through Taxi, on which he replied me that you reach at airport at 1030 hours, I arrived at airport on fixed time then Sheikh Umar was standing in the Launch and another person was also accompanied with him he got introduced him that he is his friend Qasim, he asked that where is your house then I replied that my house is situated at Gulshan-e-Iqbal, he said that there is so ahead his house and we have to go for work on 21st January, I stated him my paternal house is situated at Gulistan-e-Jouhar then he said me that they have to fresh therefore, I took away both of them to the house of my paternal uncle situated at Gulistan-e-Jouhar, where they became free about 10/15 minutes, thereafter they made phone and they asked me that you are introduced about student Biryani House situated at Saddar, I replied them yes, on which they said you go with us thereafter we all three went away towards student Biryani House through Taxi, where one person Sheikh Umar was waiting. Sheikh Umar having gone talked him separately and he did not any talk in our presence, thereafter Sheikh Umar asked me do you know about Muhammad Ali Society, I replied him yes; Muhammad Ali Society is situated near PECHS Society. Thereafter we all three along with fourth person whose name doesn't know departed to Muhammad Ali Society in Taxi. We conducted search bungalow No.D-17 situated at Muhammad Ali Society, where Sheikh Umar disclosed that this is house of his

paternal Aunt. We took tea in the said house. I came to know that there are his three paternal cousins, who left to their works. Paternal aunt did not come in our presence, where one was old servant. After half an hour Sheikh Umar asked that you have to go, on which I replied yes. They said it is ok. I drop you at Aga Khan. The Taxi in which we had come was parked outside, in which we boarded, they dropped me at Aga Khan, where from I went away to my house, on next day 22nd January I received phone call of Sheikh Umar who said me you come to me then I said him that I am going to Market along with cousin Fahad, on which he said that to come here then I agreed, thereafter I and Fahad came at D-17 and met with Sheikh Umar and he said me that he had some work at that time and I have assigned said work to someone and if now any work would be then I will call you, now you may go to Market, thereafter we both went away to Market. About 1130 / 1200 hours, I received phone call of Sheikh Umar on my mobile phone, he asked me where is you at this time, I replied that I am present at I.I Chundrigar Road then he said me you come Via Saddar and bring Poloside camera for me. I replied him that I did not purchase any camera nor I have any experience then he said it is simple and will be available in the Electronic Market. I having made free from my work came at Saddar along with Fahad and purchased Poloside Camera in Rs.1500/- and also purchased two cartridges. Thereafter we came at D-17 to hand over camera to Sheikh Umar where I gave camera and cartridges to Sheikh Umar, where at that time two person were also present, out of them one was Qasim and second was Aadil whom I also met. Where I offered Zohar prayer in the leadership of Aadil, thereafter Aadil and Qasim went away. After that Sheikh said me that you may not go right now I have some work with you. After short while of their leaving, Sheikh kept two pages in front of me and Fahad, out of which, one was in English version while another one in Urdu version, it was written therein that we are going to start campaign of Saving Pakistan "Pakistan Bachao" and our demands are that Mulla Zaeef may be released and also those Pakistani peoples who are confined in Cuba Jail they may also be released. America has to give F-16 to Pakistan or American should give F-16 or return amounts alongwith interest. Sheikh Umer further added that this written declaration has to email them without changing. This written/declaration has to email to Pakistan and International Level Newspapers. They asked me to wait a bit because two friends have to come and you have to tell them about using of Camera, thus we stayed there. In the evening after about one and half hours two guys came, out of them, one was the that boy who had met me yesterday at Students Biryani and another was new comer. We taught them to use of a Camera and inserting cartridge therein. After that, I and Fahad started to move from there, meanwhile, Sheikh Umer said his cousin whose house was this, to drop both guys at Taxi Stand and he dropped us and then we came back at home by taxi. Thereafter, on 23rd January Sheikh phoned me and asked that he is going back, so, come to meet me. After that, I and Fahad went to D-17 in order to see him at about 11:00A.M., he told us that I am going, so, those papers which I had handed over to you, you should email in verbatim, and Adil will deliver you something within one or two days, thus you have to send alongwith this email. After meeting him and we leaved from there. Again on 25/26th January Sheikh

Umer phoned and asked me that Adil has made any phone call to you. I replied him that Adil has not phoned me yet. He told me that Adil will phone you shortly and will call you for meeting, you may see with him. After that, Adil phoned me at Mughrib time and called me at Naubahar Hotel Saddar at 9:00PM. I and my cousin Fahad arrived at Naubahar Hotel at 9:00pm where met with Adil, he gave us an envelop and we received a envelop came back at home. When we opened the said envelop and found four pictures therein these pictures of one person who was tied in chains. Then again received a phone call of Sheikh Umer and told that this is a Denial Pearl and we have kidnapped him. Now when you make mails you should write in email that we have kidnapped Denial Pearl and these are our demands, and also send these all four pictures alongwith this mail. After that, we mailed this message alongwith pictures on next day. After two days, again Sheikh phoned and told that Adil will call you again today, you meet with him. Thereafter, received a phone call from Adil in evening time and he again called me at Naubahar Hotel at about 9:00pm. After that, I and Fahad reached there on fixed time, again Adil handed over an envelop and came back at home and opened it and found two pictures therein and these pictures were of also Denial Pearl. Thereafter, Sheikh Umer again phoned for mailing of said pictures to him. On next day, Fahad also mailed him. He made some changing in earlier message that he is not a CIA Agent but he is of a MOSAD Agent. After one day Sheikh made phone call and told me to email one another mail but I refused him and I had also refused him before this. When I came to know about kidnapping of Denial Pearl and I told him that all these are wrong, from which Government will have to face hardships and Crusaders/Mujahid will be defamed as well but he recited/preached me Hadith and also gave religious references and got me ready. After two or three days we had been arrested and this all happened because Fahad had emailed from his uncle's home. This much is my statement, heard and found correct and put my signature".

Judicial Confession of Fahad Naseem under section 164 Cr.P.C.

"We met with a person there whose name was later known as Sheikh Umar and Salman Bhai informed that he is the person who has come along Moulana Masood after getting released from India in a plane. I had seen him for the first time. He kept talking to us for a while. Then he asked me what do you do? I told him that I am a computer programmer at which he said God has helped me as I was looking for the same person who I have found. He asked me if I could send emails etc and I replied that it is not a difficult task. He said if I make a movie and give it to you, will you be able to email it? I told him that the size of a movie on disk is too big to be emailed then he asked about pictures. I said pictures can be emailed. Then Sheikh Umar asked Salman Bhai that if I give you a negative, who'll you get to develop it? Salman Bhai said it's a very difficult task. Then he told Salman Bhai that if I get a Polaroid camera the problem of getting the pictures developed will be no more. Salman Bhai said such cameras are easily available in the market. He said I cannot easily go out; you bring me one and then gave some money to Salman Bhai. In the meanwhile, one more