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Investigation and Prosecution in the offence of Kidnapping for Ransom: A Case study of Pakistan

Dr. Muhammad Ramzan Kasuri
Public Prosecutor, Anti-Terrorism Court Rawalpindi
m.ramzan.adpp@gmail.com

Muhammad Asif Chohan
LLM Scholar, University of Lahore / Visiting Lecturer, Punjab University Law College, Punjab University, Lahore
aasif147@yahoo.com

Yasir Arafat
LLM Scholar, University of Lahore, Lahore
yasirarafatpk@gmail.com

Akhtar Ali Ansari
LLM Scholar, University of Lahore, Lahore
akhtaraliansariadv@gmail.com

Abstract

Kidnapping for ransom is one of the most heinous offenses, carrying a capital punishment. This crime is addressed under Section 365-A of the Pakistan Penal Code (PPC) and can also fall under Section 7(e) of the Anti-Terrorism Act of 1997 (ATA). Regardless of the applicable sections of law, cases of this nature are tried in the Anti-Terrorism Court (ATC). The investigation of this heinous offence holds paramount importance in the prosecution of offenders. The primary function of the investigation is the collection of relevant, admissible and reliable evidence. In many cases of kidnapping for ransom, the evidence is predominantly circumstantial, especially when the abductee has been killed. However, in instances, where the abductee is released or recovered, his statement becomes crucial and can, by itself, form the basis for a conviction. Sometimes, the investigating agency gathers circumstantial evidence that appears credible at first glance. However, when subjected to rigorous scrutiny, numerous flaws and doubts inherent in such evidence often become apparent. In these instances, the courts disbelieve the evidence. The primary duty of the prosecutor is to conduct thorough scrutiny of the police reports prepared u/s 173 of the Code of Criminal Procedure (Cr.P.C) prior their submission to the court, ensuring the rectification of any curable defects and to diligently prosecute the offenders before the competent trial court by presenting cogent and compelling evidence to secure convictions. This Article provides an in-depth analysis of the evidentiary standards commonly employed in the prosecution of kidnapping for ransom cases. It identifies critical deficiencies in both the investigative and prosecutorial phases, highlighting procedural and substantive flaws. Furthermore, the Article offers practical recommendations for improving the processes of evidence collection, preservation and presentation to ensure more effective and just outcomes.

Keywords: *Collection of Evidence, Defective Investigation, Prosecution, Rules of Admissibility, Kidnapping, Abduction for Ransom.*

1. Introduction

Kidnapping for ransom is a heinous offence carrying severe punishment of death or life imprisonment both in PPC and ATA 1997 exclusively triable by ATC. Kidnapping for ransom often occurs without any witnesses. In such cases, the prosecution must rely heavily on circumstantial evidence. It is a well-established principle that in such cases, the prosecution must interlink each circumstance in a way that creates a continuous, complete and unbroken chain, directly connecting the accused to the alleged offense. If any link is absent, the accused is entitled to the benefit of doubt (Muhammad Hussain case, 2011 & Nasir Javed case 2016).

The types of the evidence typically traced, discovered and ultimately relied upon in the trial court during prosecution of kidnapping for ransom cases includes: direct evidence; such as statements of abductee or any eye-witness; circumstantial evidence; such as Last-seen evidence; discovery of new facts leading to the recovery of evidence upon the accused's pointation attracting article 40 of QSO; items belonging to the kidnapped victim and/or other incriminating evidence recovered from the accused's possession; Identification parade; identification of the location where the call was made; rental agreement or ownership document of the car or house used in the commission of offence; confessions made outside the court by the accused or co-accused known as extra judicial confessions; evidence based on modern devices and techniques such as CDRs and transcript of call demanding ransom; evidence establishing that the SIM card used for the ransom call was registered in the accused's name or recovered from his possession; digital evidence in form of audio or video clips; human biological trace evidence (such as blood, hair, seman, DNA or saliva); forensic chemical evidence (including chemical substances or drugs); micro-trace evidence (such as fibers, glass fragments, textiles or non-human biological traces); and biometric evidence (including ear prints or fingerprints, etc.) This comprehensive list encompasses the varied forms of evidence that are pivotal in securing convictions in kidnapping for ransom cases.

The primary responsibility of the investigation is collection of evidence. The prosecution has a dual duty: first to scrutinize the evidence to check their relevancy, admissibility and reliability for applicability of offences and taking prosecutorial decision; second to present the best available evidence before the court to secure the conviction of the criminals. This Article examines the roles of investigation and prosecution in the collection and presentation of evidence before the court. It provides a detailed analysis of each type of evidence commonly used in prosecuting kidnapping-for-ransom cases exploring methods of evidence collection, and the rules and standards governing admissibility and reliability of evidence. Furthermore, it identifies deficiencies, defects and flaws within current investigative and prosecutorial practices. It concludes with recommendations for enhancing the processes of evidence collection, preservation and presentation to ensure more effective and just outcomes.

2. Offence of Kidnapping or abduction for Ransom

Kidnapping or abduction for ransom is an offence u/s 365-A of the PPC which was introduced in 1990 through an amendment. This section provides severe punishment. This offence has twofold essential elements. First element is the act of kidnapping or abduction and the second is the purpose behind it. The purpose may include extorting moveable or immoveable property even a valuable security from the abductee or someone interested in abductee. Additionally, it may include coercing an individual to fulfill other demands, whether in the form of money or valuables, to ensure the abductee's release. The determining factor for this offence is object behind it. Simple demand of the ransom is sufficient to constitute the offence. The payment of the ransom and release of the abductee are not mandatory elements. So, non-payment of ransom would not take it out of

the ambit of section 365-A PPC (Muhammad Nabi case, 2006, the State case, 2006, Sh. Muhammad Amjad case, 2003 and Muhammad Riaz case, 2012).

In cases of kidnapping or abduction for ransom, the work of the culprits is often meticulously divided and preplanned. One group is responsible for the abduction or kidnapping, another guard the place of confinement, while one or two individuals handle the ransom demands. Despite their varied roles, all the culprits share the same objective: extorting money. Consequently, they all face the same punishment, regardless of the specific part they played in the crime (Aurangzeb case, 2010 & Sh. Amjad case, 2003). Each member of a gang involved in kidnapping for ransom is equally and vicariously liable for the crime. The specific role of each individual is irrelevant and holds no primary consideration if the accused is alleged to be part of the abduction gang (Asghar case, 2013 & Akram case, 2012).

2.1. Hostage taking, kidnapping for ransom or hijacking

Offenses such as hostage-taking, kidnapping for ransom and hijacking are defined under the Anti-Terrorism Act, 1997, in Sections 2(m), 2(n), and 2(l), respectively. Section 2(m) describes hostage-taking as unlawfully detaining a person under the threat of harm or death to compel compliance with certain demands. Section 2(n) defines kidnapping for ransom as forcibly or deceitfully abducting a person without consent, unlawfully detaining them, and demanding or attempting to obtain money, financial gain, or other benefits for their release. Section 2(l) pertains to hijacking, characterizing it as an attempt to seize or exert unlawful control over an aircraft through threats, violence, force, or obstruction, whether by an individual on board or from outside the aircraft.

2.2. Difference between kidnapping for ransom u/s 365-A PPC and 7(e) of ATA

Although the definition of Kidnapping for ransom in Section 2(m) of the ATA mirrors that found in Section 365-A of Pakistan Penal Code, 1860, however, the application of offence of kidnapping for ransom under ATA, necessitates the intent to commit terrorism as specified in Section 6(1)(b) and 6(1)(c). So, the offence of Kidnapping for ransom under ATA and under 365-A of PPC may overlap. However, the primary distinction between these offences lies in the intent. Thus the design and purpose of the accused for ransom constitutes an act of terrorism. The Supreme Court upheld the sentence awarded to the accused on the grounds that the prosecution successfully proved beyond a reasonable doubt the offences u/s 365-A, 120-B of PPC and 7(e) ATA (the State case, 2021). The SCP also held that although kidnapping for ransom is a heinous offense triable by ATC, in either case, however, if the purpose behind it is to cause fear and insecurity among the public or if it aligns with the design and purpose specified in Section 6(1)(b) and 6(1)(c) of the ATA, the convict will face sentences for both the offense u/s 365-A PPC and u/s 7(e) of ATA (Ghulam Hussain case, 2020).

The plain reading of the Section 6 of ATA reveals that the actions described in subsection (2) constitute the offense of terrorism only when accompanied by the ‘design’ or ‘purpose’ outlined in clauses (b) or (c) of subsection (1) of section 6 ATA. For an act to be deemed terrorism, it must be driven by political, religious, or ideological motives intended to destabilize society as a whole. While heinous crimes can indeed shock society, if they are propelled by personal motives, they do not fall under the category of terrorism. In case of *Imtiaz Latif and others*, the SCP observed that the records clearly show that the accusation of kidnapping for ransom involves five individuals allegedly driven solely by financial gain thus this case does not meet the criteria for terrorism, as the two-fold *mens-rea* is absent. The court held that accused did not aim to create insecurity, destabilize the public, or promote any sectarian agenda, we believe that the provisions of Section 6 ATA, pertaining to the design or purpose of the offense, do not apply. Therefore, Section 7(e) ATA is deemed inapplicable(Imtiaz Latif case, 2016). If the sole purpose of a kidnapping for ransom is financial gain, it does not fall within the scope of terrorism.

2.3. Extortion of Money (Bhatta) and Kidnapping

The distinction between kidnapping for ransom and 'Bhatta' lies in the specific demand aspect inherent in kidnapping for ransom. Kidnapping for ransom involves the abduction of a person with the intent to make a specific demand for ransom. In contrast, 'Bhatta' or extortion typically involves making unlawful demands without necessary involving abduction or kidnapping. Therefore when a person is abducted with the intention of making a specific ransom demand, the charge for extortion (Bhatta) will not apply. Section 6(2)(k) addresses the offense commonly known as 'extortion' or 'bhatta', while its penalties are stipulated in Section 7(h) of the ATA, ranging from minimum of one year to a maximum of ten years of imprisonment. The application of these provisions necessitates the presence of mens-rea for the case to be adjudicated within the ATC, where proving the intent to coerce or intimidate the public is a prerequisite (Ali Nawaz case, 2021).

Extortion is defined u/s 383 of the PPC as intentionally placing any person in fear of injury to induce them to deliver any property, valuable security, or any other benefit. Section 384 PPC prescribes its punishment Additionally, from section 385 to 389 deals its different kinds and punishments. Extortion constitutes the acquisition of property through coercion or threat, positioning it between theft and robbery. Unlike theft, where property is taken without consent, it akin to robbery, as it involves obtaining consent through fear of harm and injury. It shares similarities with theft and cheating as all three aim at wrongful acquisition of property but differ in their methods (modus operandi): theft lacks consent, cheating/fraud gains consent through deceit, and extortion secures consent through fear. The defining element of extortion is the overpowering of the owner's will to relinquish property under duress. Notably, physical force alone does not constitute extortion; it requires proof that fear of harm compelled the victim to part with their property. Extortion encompasses both moveable and immovable property; however, the scope of theft is limited to moveable property.

Section 386 of the PPC addresses aggravated extortion, warranting enhanced penalties for such offences. It encompasses acts commonly referred to as 'bhatta' covered under Section 386, 387 and 388 of the PPC. These offences also fall within the ambit of terrorism as defined in Section 6(1)(k) of the ATA (Watan Party case, 2011). Extortion through threats of death or grievous harm is punishable by up to ten years' imprisonment and a fine. In a case where a murder was committed in a brutal manner with the intent to send a message to businessmen refusing to pay protection money (bhatta), the act aimed to instill fear, insecurity, and terror within the business community (Abdul Rehman case, 2020). In the absence of public knowledge, the offence of extortion (bhatta) fails to meet statutory requirements, as the Sindh High Court highlighted that the complainant kept the bhatta demands private suggesting they were not intended to coerce or intimidate the public, thus lacking the requisite mens-rea for applicability of offence under ATA (Ali Nawaz case, 2021). The offence of kidnapping for ransom differs from extortion (bhatta) in that kidnapping requires the completed act of abduction, whereas extortion under Section 6(2)(k) can be charged even without abduction.

So in year 2021 total 22 cases were registered under extortion and 11 cases were transferred, and while in year 2020 total 52 cases were registered under extortion while 17 cases were transferred to ordinary court, and in year 2019 total 91 cases were registered under extortion while 42 cases were transferred to ordinary court. this transfer of cases were based on one ground that this offence has nexus with object clause as mentioned in 6(1) (b) and 6(1) (c), which means act designed to create fear and insecurity in society or advancing a religious and sectarian cause based upon Terrorist Intent.

3. Investigation

The word investigation, as defined in Cr.P.C, is a comprehensive process encompassing all proceedings conducted by a police officer or an individual authorized by a Magistrate, excluding Magistrates themselves for the collection of evidence (Sec. 04, Cr.P.C, 1898). This definition, however, is not exhaustive, allowing flexibility in its application (Karim, 2020). Investigation refers to the process of gathering evidence to enable the Investigating Officer to form an opinion, ultimately leading to the submission of a final report under Section 173 of the Cr.P.C. before the competent court. (Umer Hayat case, 2015). The purpose of an investigation, as highlighted in the Muhammad Nawaz Khan case, emphasizes the fundamental principle that no individual should be subjected to trial unless there is a strong case against them. The investigation serves a dual objective: to examine the allegations of an offense and to determine their authenticity. (Muhammad Nawaz Khan case, 1976).

The higher judiciary of Pakistan has consistently emphasized that investigation is solely the process of collecting evidence. It has been held that investigation entails nothing beyond the gathering of relevant evidence. This evidence serves as the sole basis for the court to arrive at a just and fair determination of the accused person's guilt or innocence. Therefore, only an honest investigation can guarantee a fair trial; without an impartial and just investigation, the concept of a fair trial is an illusion. A fair investigation assures a fair trial, and any act that ensures a thorough and unbiased investigation supports the guaranteed rights to a fair trial, rather than undermining it (Bank of Punjab case, 2010). It was further held that a plain reading of Section 4(1) of the Cr.P.C. is sufficient to establish that investigation solely refers to the collection of evidence and nothing beyond that (Syed Muhammad Ahmed case, 2006). The primary objective of an investigation is to uncover the truth by gathering relevant material and evidence (Abdul Khalique case, 2015). The amalgamation of investigative powers serves a singular purpose – to bring only the culpable before the court of law. The process culminates with the submission of a charge sheet, in the form of a challan under section 173 of the Cr.P.C, effectively presenting the case against the accused before the court. Thus, the intricate web of statutory provisions and legal authority coalesces to ensure that justice is pursued diligently and that only those found guilty are brought to face the scrutiny of the legal system.

The criminal investigation process is a continually evolving effort that demands ongoing enhancements in techniques, knowledge, and capabilities. Once the police register a First Information Report (FIR), the Criminal Justice System (CJS) is set into motion. A crucial component of this system is the police investigation, which largely influences the case's outcome in court, ensuring justice for crime victims, their families, and even the accused (Handbook, 2021). Police reports u/s 173 of Cr.P.C is the result of a investigation. In particular, police reports is always based upon the evidence which one is gathered or collected by the police, and request of police whether to charge a particular person on the basis of evidence. Police reports are forwarded to the prosecutor for formulation of his opinion whether to prosecute or not. Investigation is an impartial process designed to identify the actual offender. The police have the authority to verify the involvement of a specific accused. This process involves collecting, documenting, and preserving all relevant evidence, including witness statements, forensic findings, and other crucial materials.

3.1. Investigation of offence of Kidnapping for ransom

Investigating serious crimes such as kidnapping or abduction for ransom is of utmost importance due to their profound impact on victims and society. A systematic and thorough investigation plays a crucial role in delivering justice. First and foremost, a well-executed investigation ensures the proper collection, preservation, and presentation of all relevant evidence in court, strengthening the prosecution’s case. This includes securing physical evidence such as surveillance footage,

phone records, and ransom notes, as well as obtaining witness testimonies in strict compliance with legal procedures. Every piece of evidence must be meticulously analyzed and systematically gathered to construct a clear and compelling sequence of events. In such cases, the I.O must utilize modern techniques, including geofencing to track communications, identifying behavioral patterns of the kidnappers, and employing advanced technological tools to monitor movements. Given the urgency of these situations, swift and precise action is essential to prevent harm to the victim. Exploring all leads and corroborating findings is critical to building a strong case that can withstand judicial scrutiny. Additionally, understanding the kidnappers' motives and methods provides valuable insights for future crime prevention and enforcement strategies. Furthermore, the credibility of the criminal justice system hinges on the integrity of the investigation. A flawed or negligent investigation can result in wrongful accusations, eroding public trust and allowing the true perpetrators to escape justice. Therefore, the I.O must adhere to the highest standards of professionalism and diligence, ensuring that all findings are accurate, unbiased, and legally sound. (Asmat Ullah case, 2016).

Unfortunately, mostly the I.O conducts the investigation of kidnapping for ransom's offence negligently. They mostly fail to verify the ownership of the vehicle used for kidnapping the victim for ransom purposes and ultimately recovered from the accused's possession. Mostly they do not investigate about the arrangement of the ransom amount by the complainant. They often fail to record the denominations of the currency notes designated for the ransom payment. They mostly neglect to use modern technology like geofencing and collection of CDRs from the cellular companies. They mostly do not investigate the individuals cited by the complainant such as owner of the vehicle and house used in the commission of the offences. This paper highlights the defects mostly committed and repeated by the I.Os during collection and preservation of evidence.

4. Evidence

According to the QSO's definition, 'evidence' encompasses two types: oral evidence which includes all statements permitted or required by the court from witnesses concerning matters of fact under inquiry; and documentary evidence which includes all documents presented for the court's inspection. In the *Jameel Ahmed* case, The Supreme Court of Pakistan stated that 'evidence is a comprehensive term that includes statements from witnesses, parties, and documents presented in a court or judicial forum to prove or disprove a case' (Jameel Ahmed case, 1994). Thus, evidence encompasses all witness statements recorded by the court and documents submitted during the trial to convince the court about existence or non-existence of a fact.

Evidence is fundamentally about facts; facts in issue and relevant facts. "Every right or liability which becomes the subject of litigation always depends upon certain facts." The law of evidence governs the process of uncovering facts in legal proceedings, making it the lex fori, or the law of the forum or court. It is a meticulous fact-finding process. The law of evidence primarily focuses on the modes, methods and techniques used to establish facts in judicial proceedings, ensuring the judge's satisfaction (Khalil ur Rehman 2020). The law of evidence ensures that a trial is a rational procedure for resolving disputes between litigants. For instances, if A claims that an event happened in a specific manner and B, his opponent, contends it occurred differently, the court's role is to find the through witnesses, documents and other means (Karim, 2020).

The police report submitted u/s 173 of the Cr.P.C is the result of an investigation conducted by the I.O based on the materials collected during the investigation. These materials are converted into legal evidence by the court during trial proceedings. The court is required to base its conclusions solely on the evidence presented during the trial and cannot rely on the investigation itself (Khalil ur Rehman, 2020). The definition of 'evidence' must be understood in conjunction with the definition of 'proved'. Together, these definitions clarify that 'evidence' as specified by the Order

is not the sole means of proof. The court must also consider several other 'matters' when reaching its conclusion (Khalil ur Rehman, 2020).

5. Types of Evidence in Kidnapping Cases

The types of evidence that are typically identified, traced, and later presented in court in kidnapping cases include the following;-

i. Direct evidence
a. Testimony of Abductee or kidnapped
b. Eye-witnesses
ii. Circumstantial evidence
a. Last-seen evidence.
b. Discovery of new facts leading to the recovery of dead body or weapon of offence on the pointation of the accused attracting article 40 of QSO.
iii. Real Evidence
a. All kinds of physical recoveries
c. Items belonging to the kidnapped victim and/or other incriminating evidence recovered from the accused's possession.
iv. Corroborative piece of evidence
d. Identification parade.
e. Identification of the location where the call was made.
f. Rental agreement of the car used in the commission of offence
g. confessions made outside the court by the accused or co-accused known as extra judicial confessions.
v. Evidence available through modern devices
a. CDRs and Transcript of call demanding ransom.
b. evidence establishing that the SIM card used for the ransom call was registered in the accused's name or recovered from his possession.
c. Digital evidence in audio-video form.
vi. Evidence available through modern techniques
a. Human biological trace evidence (such as blood, hair, seman, DNA or saliva).
b. Forensic chemical evidence (including chemical substances or drugs).
c. Micro-traces (such as fibers, glass fragments, textiles or non-human biological traces).
d. Biometric evidence (including ear prints or fingerprints, etc).

The main responsibility of the Investigating Officer (I.O) or Joint Investigation Team (JIT) is to collect all available evidence in accordance with the law and procedure governing admissibility of such piece of evidence.

5.1. Direct evidence

5.1.1. Testimony of Abductee or Kidnapped

The testimony of abductee is direct evidence which goes expressly to the very point in question and if believed, proves the point in question without aid from inference and reasoning such like the testimony of eye-witnesses in murder cases. In cases of kidnapping and abduction, the testimony of the abductee or kidnapped alone can be sufficient to conclusively prove the accused's guilt (the state case, 2001). Conviction can be based on the solitary statement of the abductee if it is rings true and inspires confidence (Adeel case, 2016). The abductee's account should be accepted unless there are compelling reasons to doubt it (Asif Hussain case, 2005). The identification of abductors by the abductee is reliable if it is natural, credible, trustworthy and confidence-inspiring. Such evidence can support a conviction without additional corroboration, especially when the abduction is clearly established and the abductees have no motive to falsely implicate innocent individuals. Minor discrepancies, inconsistencies, omissions, or trivial matters

that do not undermine the prosecution's case should not lead the court to reject the evidence entirely (Muhammad Rasool case, 2015).

5.1.2. Eye-witnesses

The testimonies of eye-witnesses fall under the category of direct evidence.

5.1.3. Difference Between Direct Evidence and Circumstantial Evidence

Direct evidence directly addresses the point in question and, if believed, proves it without requiring any inference or reasoning. For example, an eyewitness testimony to a murder serves as direct evidence. This type of evidence includes either the testimony of witnesses who perceived the facts firsthand or the production of documents that constitute the facts in question. Often referred to as original evidence, it arises from the personal knowledge of the witness. Some authors used the term 'percipient evidence' which means evidence of a fact personally perceived by the witness using any of their senses. This term is more distinct because direct evidence proves the existence of facts in issue without any inference or presumption. In jurisprudence, direct evidence is typically limited to cases where the principal fact (factum probandum) is attested directly by witnesses, things or documents. Circumstantial evidence (indirect), in contrast, does not directly prove the point in question but establishes it through inference. Also known as 'substantial evidence', it leads to a logical inference that the fact exists. In forensic procedures, this type of evidence is commonly referred to as circumstantial evidence. It can be either conclusive or presumptive. Conclusive circumstantial evidence shows a necessary connection between the principal facts (factum probndum) and the evidentiary facts (factum probans) as a consequence of natural laws. Presumptive circumstantial evidence, on the other hand, rests on a greater or lesser degree of probability.

5.2. Circumstantial evidence

Most of the cases of kidnapping for ransom stand on circumstantial evidence. In cases involving circumstantial evidence, the prosecution must prove each incriminating circumstance with reliable and compelling evidence, forming a complete chain of events that leads to only one conclusion: the guilt of the accused. Suspicion, however strong, cannot substitute for proof. The prosecution must provide a complete chain of evidence, with one end touching the dead body and the other around the accused's neck. Sometimes, the investigating agency gathers circumstantial evidence that appears credible at first glance. However, when subjected to rigorous scrutiny, numerous flaws and doubts inherent in such evidence often become apparent. In these instances, the courts disbelieve the evidence (Fiaz Ahmed case, 2017).

5.2.1. What are the rules for admissibility of circumstantial evidence

When dealing with circumstantial evidence, specific legal principles must be meticulously observed. Sir Alfred Wills, in his book, outlined several fundamental rules governing circumstantial evidence, with the following five being the most crucial: 1) The facts relied upon as the basis for any legal inference must be conclusively proven and must have an undeniable connection to the fact in question; 2) The burden of proof always lies with the party asserting the existence of a fact that establishes legal liability; 3) In all cases, whether involving direct or circumstantial evidence, the best available evidence must be presented; 4)To justify an inference of guilt, the inculpatory facts must be irreconcilable with the innocence of the accused and must not be explainable on any reasonable hypothesis other than guilt; and 5) If any reasonable doubt exists regarding the accused's guilt, they are entitled to acquittal as a matter of right. (Wills, 1872). Therefore, in cases based on circumstantial evidence, the prosecution must substantiate each incriminating circumstance with credible and compelling proof. The established facts must create an unbroken chain of events, leading to the inevitable conclusion that the only logical inference is the guilt of the accused (Noor Hassan case, 2020).

The Supreme Court of Pakistan, in Naveed Asghar cases has set forth a critical principle for evaluating circumstantial evidence (Naveed Asghar case, 2021). The Court stated that the established approach for determining the sufficiency of circumstantial evidence in convicting an accused is an follow: if, based on the proven facts and circumstances, no hypothesis consistent with the accused's innocence can be formulated, the case warrants a conviction. Conversely, if the facts and circumstances can be reconciled with any reasonable hypothesis suggesting the accused's innocence, the case must be considered as lacking sufficient evidence, leading to an acquittal. In a murder case, circumstantial evidence should form a cohesive chain, linking the deceased to the accused unequivocally. Each link in this case must be intact and incapable of being explained away by any reasonable hypothesis other than the accused's guilt. The chain must be complete to establish the accused's guilt beyond reasonable doubt, making any claim becomes unreliable, rendering a conviction unsafe, especially in capital cases. Therefore, reliance on circumstantial evidence not meeting this stringent standard is highly unsafe; it is better and safe not to rely on such evidence for conviction (the state case, 2017).

The August Supreme Court of Pakistan asserted in Imran Alias Sully case that it is now a consistent view that in cases based entirely on circumstantial evidence, each piece of evidence must interlink to form an unbroken chain. This chain must be such that one end loops around the neck of the accused, while the other touches the dead body. Should any link be missing, the chain would break, making it impossible to connect the evidence conclusively. Consequently, a conviction, particularly for a capital charge, cannot be reliably secured. For such convictions, it is crucial that courts rigorously scrutinize the circumstantial evidence, as fabrication of such evidence is not uncommon. A meticulous and thorough examination is necessary to ensure justice is served (Imran case, 2015).

5.2.1.1. What are the parameters for proving a case based on circumstantial evidence

In such cases, the prosecution must prove each incriminating circumstance with credible and compelling evidence. These established facts must then interlink seamlessly, forming a complete chain that leads to the only reasonable conclusion—the guilt of the accused. (the state case, 2021). The value of circumstantial evidence must be evaluated on the basis that it should lead to only one conclusion. To establish the guilt of an accused, the proven facts must be incompatible with the accused's innocence and should not allow any other reasonable explanation except that of their guilt (the state case 2021).

Calamity often strikes unexpectedly, and crimes rarely occur under ideal conditions. Therefore, it is unrealistic to expect perfect evidence in every criminal case. What is crucial is whether the prosecution can present the best possible evidence given the circumstances and whether that evidence is sufficient to sustain the charge. In a case, the complainant, the deceased's brother, innocently sought information from the accused, Waqar Ali Shamsi who was a close friend and expected to know the deceased's whereabouts. as the investigation progressed, Shamsi confessed, leading the prosecution to establish a chain of circumstances. This included last seen evidence, occupation of premises, and the recovery of electric wires and ropes used to cause death by asphyxia. Thus, the argument that there was no evidence to support a guilty verdict is unconvincing. The devastated family, residing in an affluent neighborhood, had no motive to falsely accuse the appellant, the deceased's best friend, instead of the real offender. Shamsi's exclusive knowledge is compelling evidence of his culpability. The circumstances also implicate Muhammad Arshad, who cannot escape responsibility for the murder through mere denials and inconsequential defenses from their supporters. Consequently, their convictions and sentences under Sections 302 (b) of the PPC are upheld (Waqar A. shams case, 2019).

5.2.2. Last-seen evidence

The evidence of 'last seen' pertains to situations where the deceased was last seen in the company of the accused and subsequently goes missing. To secure a conviction based on circumstantial evidence, including last-seen evidence, the prosecution must establish two crucial elements: proximity of time and proximity of distance. The former is based on the principle of *de recenti*, which emphasizes that the time gap between the deceased being last seen with the accused and their subsequent death must be minimal. A shorter interval reduces the possibility that the deceased separated from the accused and encountered another individual. whereas later requires proving during the trial that the victim was killed near the location where they were last seen with the accused. The greater the distance between these two points, the stronger the probability of the accused's innocence. Failure by the prosecution to establish both proximity of time and distance undermines the 'last seen' evidence. While assessing the credibility of 'last seen' evidence, courts must be aware that our investigation system is vulnerable to fabrications, false evidence and overly broad accusations. Therefore, 'last seen' evidence must be scrutinized with extra care, as it is easy to fabricate but hard to substantiate. Even if proven, 'last seen' evidence only suggests the possible involvement of the accused in the murder and must be considered alongside other circumstantial evidence for a conviction, with strong corroboration required (Nadeem Shah, 2024).

5.2.2.1. Shifting Burden of Proof in Last Seen Evidence

Undoubtedly, the 'last seen theory' is a crucial link in the chain of circumstances pointing to the guilt of the accused with a certain degree of certainty. This theory shifts the burden of proof to the accused, requiring them to provide a reasonable explanation for the cause of the deceased's death. The *last seen theory* applies when the time gap between the accused being last seen with the deceased and the discovery of the deceased's body is so brief that it eliminates any reasonable possibility of another person committing the crime. Article 122 of the QSO explicitly states that when a fact lies within a person's special knowledge, the burden of proving it rests upon them. Consequently, if an individual was last seen with the deceased, they must provide a credible and satisfactory explanation regarding how and when they parted ways. If the accused offers a plausible explanation, they are deemed to have fulfilled their burden of proof. However, if they fail to do so, they fail to meet the burden imposed by Article 122 of the QSO. In cases based on circumstantial evidence, an accused's failure to provide a reasonable explanation serves as an additional link in the chain of incriminating circumstances. However, Article 122 does not shift the overall burden of proof, which remains the prosecution's responsibility in a criminal trial. Instead, it establishes that if the accused does not shed light on facts within their special knowledge that could support a theory of innocence, the court can view their failure as an additional link completing the chain of evidence. It is important to note that only if the prosecution successfully proves with definite evidence that the deceased was last seen alive with the accused, a reasonable inference can be drawn against the accused. Only then can the onus shift to the accused under Article 122 of the QSO 1984 (Noor Hassan case, 2022).

5.2.2.2. Last Seen and its Evidential Value

What is evidential value of the 'last seen' evidence? 'Last seen' evidence is generally regarded as weak unless it is corroborated by other independent evidence (Syed Ali Akbar case, 2021). It is well established that 'last seen' evidence is generally regarded as weak unless it is corroborated by additional independent evidence (Akbar case, 2022). The court may place firm reliance on 'last seen' evidence if it is untainted and effectively establishes a credible link between the accused and the victim within a narrow window of time and distance (Qaisar case, 2021).

5.2.3. Discovery of new facts leading to the recovery attracting article 40 of QSO

The discovery made pursuant to information furnished by the accused is admissible as evidence and is protected under Article 40 of QSO. Such information, whether or not it amounts to a

confession, is admissible as long as it pertains to the discovery of new facts. To invoke Article of the QSO, the prosecution must establish that: i) the information provided by the accused led to the discovery of new facts, ii) this discovery was previously unknown to the police and was derived for the first time from the accused, and iii) the discovery of these facts is relevant to the commission of the offence or connects the accused to the crime (Mst. Askar Jan case, 2010, Aneel Iqbal, case, 2021, Muhammad Iqbal 2003, Sher Dil case, 2003, Mst. Rizwanan case, 2003 & Zafar Iqbal case, 2016). The essence of Article 40 of the QSO is the doctrine of confirmation by subsequent events. This doctrine is based on the principle that any fact discovered during a search, prompted by information provided by an accused, serves as confirmation of the truthfulness of that information. Whether the information is confessional or non-inculpatory, if it leads to the discovery of a fact, it is deemed reliable. Consequently, the legislature has allowed such information to be used as evidence, albeit by limiting the admissible portion to the minimum necessary.

It is now firmly established that the recovery of an object does not constitute the discovery of a fact within the meaning of Article 40. In Indian jurisdiction, it is well settled that the "discovery of fact" mention in Section 27 of the Evidence Act (in Pakistan, Article 40 of QSO) refers not to the recovered object itself, but to the place from which the object is recovered and the accused's knowledge thereof (Pulikuri Kottaya case, 1947). This principle has been consistently endorsed by Indian SC in subsequent rulings (Jaffar Hussain case, 1969). in case of *state of Himachal Pradesh,* the evidence unearthed by the police, through i) the disclosure statements and ii) the subsequent recovery of incriminating items based on these statements, unequivocally points to the accused as the individual who concealed the said articles in hidden locations. The inculpatory nature of these statements is inconsequential, as Section 27 of the Evidence Act explicitly permits the admissibility of such statements to a police officer, irrespective of whether they amount to a confession (State of Himachal Pradesh case, 1999).

In Nadeem Shah case, it was observed by Honorable Divisional Bench that upon a thorough analysis of Article 40 of the QSO, it is evident that for a statement made by an accused in police custody to be deemed admissible, the prosecution must establish the following essential elements: i) the information provided by the accused must lead to the discovery of a fact previously unknown to anyone; ii) the discovered fact must be perceptible through the senses and iii) the discovered fact must have a clear and direct connection to the matter as issue and iv) memo of such disclosure must be prepared as to establish during the trial that the accused made a disclosure leading to the discovery of some fact (Nadeem Shah case, 2024). However, the honorable DB held that 'the accused's statement was entered into the record, wherein he confessed to sodomizing the victim before strangling him to death. It is pertinent to note that, as this portion constituted a confession, it could not be admitted into evidence. The prosecution, by necessary implication of Article 40, was limited to introducing only the portion of the accused's statement that led the police and witnesses to the discovery of the victim's body, as this constituted a fact discovered through his statement.' This rule contradicts the provisions of Article 40 explicitly states: The extent to which information received from an accused may be proved—When any fact is deposed to as discovered in consequence of information provided by a person accused of an offense while in police custody, only that portion of the information, whether it amounts to a confession or not, which directly relates to the discovered fact, may be admitted as evidence (QSO, 1984). Article 40 of the QSO serves as an exception to Article 38 and 39. For a case fall within the purview of this article, the prosecution must prove that the information provided by the accused led to the discovery of facts previously unknown to the complainant and police, and that these facts came to light solely through the accused's disclosure whether amount to confession or not. So, the disclosure amounting to confession or not made by the accused leading towards discovery of new facts is admissible under Article 40 the QSO. The rule is that when the manner of the occurrence or any fact of the case is

unknown to the police and same is disclosed by the accused even during police custody that is admissible under Article 40 of the QSO. After his arrest, the accused revealed the details of how deceased was killed and disposed of in the Jehlum River. He also indicated the location where the deceased's body could be found, leading to its recovery. According to Article 40 of the QSO, the information provided by the accused, including the location of the minor's death and the subsequent discovery of the body, is considered relevant as it was exclusively known to the accused (Gul Ahmad case, 2011). The Bungalow in question was under the possession of the accused, where the deceased's body was discovered. Unimpeachable evidence confirmed that the recoveries of the body, car, and other articles were made based on information provided by the accused. Under Article 40 of the QSO, these pieces of evidence are admissible and were conclusively proven. It was determined that when combined, this circumstantial evidence formed a strong chain leading to the undeniable conclusion that the accused was responsible for the murder (Sh. Muhammad Amjad case, 2003).

5.3. Test Identification parade (TIP)

The TIP is backbone of the prosecution's case, directly influencing the acceptance or rejection of the ocular account. The SCP, in Mahboob Haasan case emphasized the responsibility of the police to maintain secrecy. It stated that the accused should not be seen by witnesses while in police custody or lock-up. The police are required to take every necessary precaution to conceal the identity of the detainees before conducting TIP. These measures were not just to be taken but also had to be demonstrably proven to have been taken (Mehboob Hassan case, 2015).

In the light of the above case of SCP, the Prosecutor General Punjab issued a circular (No. S-PRSQN/PGP/Circulation/2024-208-2796) on March 25, 2024. This circular directed all prosecutors working in District Courts or Special Courts in Punjab to assist the Magistrate at the time of request for TIP as to avoid illegalities and irregularities during the proceedings. The following directives were included: i) prosecutors are instructed to forward requests for test identification parades with a note to assist the courts by referencing principles established by superior courts. This is to prevent the practice of conducting joint test identification parades for multiple accused individuals; ii) Prosecutors should provide assistance in addressing issues related to defective TIPs conducted by judicial officers, which may contravene the LHC Rules and Orders, Volume III, Chapter II, Part C and judgments by the Superior Courts. It has further directed that these issues should be raised during the forthcoming meetings of the Criminal Justice Coordination Committee within the respective districts. The goal is to end the practice of conducting joint TIP for two or more accused individuals simultaneously and ensure that the rle of each accused person is specified during the proceedings (PGP, 2024). So, the circular aims to enhance the integrity and fairness of TIP by emphasizing to established legal principles and court guidelines.

Common errors in the Test Identification Parade (TIP) are as i) nomination of accused prior TIP: If the accused is already nominated, then TIP is unnecessary (Sahib Shah, 2024). ii) Delay in conducting TIP: any delay in holding the TIP reduces its reliability (Muhibullah case, 2023. iii) Lack of detailed description of accused: witnesses often fail to mention the facial features, appearance, or clothing of the accused in their statements (Muhammad Shaban case, 2023, & Umair Ashraf case, 2023). iv) Unnamed witnesses: witnesses participating in the TIP are sometimes not named in the investigation (Syed Aijaz Ali shah 2023). v) lack of independent witnesses: TIPs sometime lack independent witnesses, relying solely on police officials (Atta Muhammad 2023). vi) accused in police custody: conducting a TIP while accused is under investigation or on remand with the police compromises its credibility (Muhammad Saleem 2022). vii) unassigned roles: witnesses sometimes identify the accused without specifying the accused's role in the crime (Abid Ali case, 2022). viii) joint TIPs: joint TIPs, where multiple suspects are presented together, are unreliable and unacceptable (Jamshaid case, 2022). ix) Omitted features of

accused in FIR: when the FIR lacks specific features of the accused, a TIP is redundant (Abdul Majeed case, 2022). x) mismatch with dummies: the features of dummies used in the TIP sometimes differ significantly from those of the accused (Syed Ahmed Hussain case, 2022). xi) insufficient dummies: the number of dummies used in TIPs is frequently inadequate (Muhammad Ismail case, 2022). xii) non-conduct of TIP: sometimes, TIP are not conducted at all Inhaf Ullah case, 2021). xiii) violation of Police Rules: TIPs sometimes violate Rule 26.32 of the Police Rules, 1934 regarding the irregular selection and description of dummies (Aneel Iqbal case, 2021 & M. Ibrahim case, 2020). xiv) incomplete TIP Reports: TIP reports frequently omit details about the features of both the dummies and the accused (Noor Islam case, 2020). xv) partial participation: not all ocular witnesses participate in the TIP (Nasrullah case, 2020). These errors undermine the effectiveness and reliability of the TIP process in identifying suspects accurately.

Key provisions addressing the admissibility of TIP can be found in Article 22 of the QSO. The detailed rules and procedure can be found in Chapter 11, Part-C, Volume III of the Lahore High Court Rules and Orders and Rule 26.32 of the Police Rules 1934. Kanwar Anwar Ali case represents a pivotal precedent in the context of TIP. The SCP thoroughly examined previous rulings consolidating the established rules and procedures. This case now serves as an authoritative reference, encapsulating the legal principles and guidelines pertaining to TIP (Kanwal Anwar case, 2019).

To ensure the reliability of TIP, it is crucial that the I.O should avoid any errors that could compromise the process. The prosecutor must provide thorough assistance to the magistrate, ensuring that all procedures are correctly followed to prevent any irregularities or illegalities during TIP proceedings. Likewise, the Magistrate must conduct the TIP with utmost vigilance, adhering strictly to the guidelines set by higher courts. The evidence gathered from a TIP is a critical component of the prosecution's case, as it significantly impacts the eyewitness testimony. Therefore, every stakeholder involved must exercise the highest level of diligence to prevent any procedural violations.

5.4. Evidence available through modern devices and techniques

In the contemporary era, modern/digital devices – such as cell phones, computers, the internet, and other technological tools – are used for communication and information processing. Digital evidence can be categorized into two types: data stored on digital devices and information electronically transmitted through communication networks. The utilization of electronic, digital, and forensic evidence has significantly increased in criminal trials, as both statutory law and judicial precedents now permit their introduction to establish guilt. The past two decades have witnessed major shifts in the information technology landscape, rendering the collection and analysis of digital evidence a crucial instrument for solving crimes and preparing court cases (Goodison, Robert C. Davis and Jackson, 2021).

The principal provision governing the admissibility and reliability of digital evidence in Pakistan is Article 164 of the QSO which grants courts the authority to admit evidence obtained through technological advancements. Article 164 stipulates: "production of evidence that has become available because of modern devices, etc. – in such cases as the court may consider appropriate, the court may allow being produced any evidence that may have become available because of modern devices or techniques." This provision facilitates the presentation of digital and forensic evidence in court.

Additionally, a recent amendment to Article 164 of the QSO includes a proviso "stating: conviction on the basis of modern devices or techniques may be lawful." Consequently, Pakistani courts can convict and sentence accused individuals based on electronic and forensic evidence. Relevant legislation concerning electronic and digital evidence also includes the Electronic Transactions Ordinance, 2002 and the Prevention of Electronic Crimes Act, 2016. So, the court, under Article

164 of QSO is authorized to permit the presentation of evidence obtained through modern devices or techniques and can convict on the basis of evidence available because of modern techniques and devices (Ammar Yasir case, 2013 & Saifal case, 2023). Procedure to receive such evidence has been smoothened by the provisions of Article 46A and 78A of the QSO as well as provisions of Electronic Transaction Ordinance, 2002 subject to restrictions and limitations provided therein (Ali Raza case, 2019).

5.4.1. Admissibility and reliability of CDRs or Transcript of call demanding ransom

Call Data Records (CDR) serve as a crucial form of circumstantial evidence and play a pivotal role in the prosecution of terrorism cases. In Pakistan, the effectiveness of CDR in securing convictions has been inconsistent; however, it has proven to be particularly significant in cases of kidnapping for ransom and extortion (bhatta) under the Anti-Terrorism Act, 1997. Judicial precedents demonstrate that numerous convictions have been upheld based on incriminating CDR evidence, especially in kidnapping cases, where it establishes critical links between the accused, the victim, and the crime (Rashid Aslam case, 2017, Abdur Razzaq case, 2016). Conversely, case law also provides numerous instances where Call Data Records (CDR) failed to establish the guilt of the accused beyond a reasonable doubt. Judicial precedents highlight several key omissions and deficiencies in the presentation and utilization of CDR evidence, which have led courts to dismiss it as unreliable. These include improper authentication of records, failure to establish exclusive possession of the phone number, lack of corroboration with other evidence, and gaps in the chain of custody. Such shortcomings have often resulted in the acquittal of accused persons, reinforcing the need for a meticulous approach when relying on CDR in criminal prosecutions.

Thorough examination of the judgments of higher courts shows that the evidence of CDR has been rejected due to lacking the name and signature of any authorized officer of the cellular company, lacking seal and covering letter of the concerned office, lacking call transcripts or complete audio recordings, lack of identification of individuals on both the side of the calls as indicated in the call data presented as evidence. The rule laid down for the reliability of evidence of CDR is that ‘the courts must exercise heightened caution when evaluating such evidence, as advancements in technology have made it easier to edit and alter recording to suit one’s preferences (Asmat Ullah case, 2016).

5.4.2. Admissibility of tape recorded conversation

Audio cassette is admissible in evidence (Zafar Iqbal case, 1988). To admit a tape recording as evidence, several prerequisites must be met: the recording’s accuracy must be proven, the recorded voice properly identified, and the court must verify the tape’s authenticity, ensuring it is free from tampering or fabrication. Independent corroboration and intrinsic evidence should also be considered. The speaker’s voice must be accurately identified either by the recorder or by others familiar with it. The maker of the recording must confirm its accuracy, and sufficient direct or circumstantial evidence must rule out any tampering or erasure. The court must be convinced beyond a reasonable doubt that the recording has not been altered. Additionally, the recorded voice should be compared with that of the concerned individual (Kashif Anwar case, 2013).

A tape-recorded conversation is now a widely accepted form of ‘real evidence’ that a party can present to prove a fact in issue. The term ‘real evidence’ encompasses all types of evidence other than oral and documentary, including tape recordings, charts, photographs, fingerprints, and tracker dogs. A tape-recorded conversation can be validated through the testimony of a participant in the conversation, the individual who recorded it, or even by the transcripts of the recording, which are considered legitimate proof of the conversation (Rehmat Shah Afridi case, 2004).

5.5. Digital and electronic evidence in Audio Video forms

The admissibility and credibility of digital evidence are pivotal concerns in legal proceedings. In 2019, a three-member bench of the Supreme Court of Pakistan laid down 21 essential conditions

for the admissibility and reliability of audio and video evidence, categorized under electronic, digital, and forensic evidence, in the case of *Ishtiaq Ahmed Mirza*. After evaluating significant precedents, the court outlined the following prerequisites:

1. No audio or video recording can be considered by the court unless its authenticity is established and it is proven to be free from tampering.
2. A forensic report issued by a Provincial Forensic Science Agency (PFSA) analyst regarding an audio or video recording is inherently admissible under Section 9(3) of the Punjab Forensic Science Agency Act, 2007.
3. Under Article 164 of the Qanun-e-Shahadat Order (QSO), 1984, the court has the discretion to admit evidence obtained through audio or video recordings.
4. Even if the court allows the presentation of an audio or video recording as evidence, it must still be authenticated following the established rules of evidence.
5. The accuracy of the recording must be verified, and sufficient direct or circumstantial evidence must be provided to eliminate any doubts regarding tampering.
6. The recording must faithfully capture the conversation or event exactly as it took place.
7. The individual who recorded the conversation or event must be presented as a witness in court.
8. The original recording device must be physically produced before the court.
9. The court must have the opportunity to review the audio or video recording by playing it.
10. The recording must be clear and intelligible for it to be considered reliable evidence.
11. The person who made the recording must identify the voices or individuals captured in it. If they are unavailable, another person familiar with the voices or individuals may do so.
12. Any other person present during the recorded conversation or event may testify about its contents.
13. The individuals whose voices or images appear in the recording must be accurately identified.
14. The audio or video evidence must be directly relevant to the case and must otherwise comply with admissibility requirements.
15. The chain of custody must be properly documented, proving the secure handling of the recording from its creation to its presentation in court.
16. The transcript of the recording must be prepared under the supervision of an independent authority.
17. The recording should typically be made as part of routine duties rather than created solely for use as evidence in a legal case.
18. The origin of the audio or video recording must be clearly disclosed.
19. The date on which the person presenting the recording obtained it must be provided.
20. If an audio or video recording is introduced at a later stage in judicial proceedings, its credibility may be questioned.
21. A formal application must be submitted by the party seeking to introduce the recording as evidence in the case record. (Ishtiaq Ahmed Mirza case 2019).

With the advancement of science and technology, it is now feasible to conduct forensic examinations, audits, or tests through accredited laboratories to determine the authenticity of audio and video recordings. Such examinations can ascertain whether an audio tape or video is genuine or if it has edited, doctored, or tampered with. The same technological advancements have also made it increasingly easy to edit, doctor, superimpose, manipulate audio and video content. Consequently, without a forensic audit or test, the reliability of such evidence in court becomes questionable. Given that the standard of proof in criminal cases is beyond a reasonable doubt, any legitimate doubt regarding the authenticity of audio or video evidence can undermine its credibility

and reliability (Ishtiaq Ahmed Mirza case 2019). Without a forensic report confirming the authenticity of the video clip, it cannot be considered reliable piece of evidence (Ishtiaq Ahmed Mirza case 2019 & Asfandyar case, 2016). The failing to disclose the source of the video or to forensically confirm its authenticity would nullify its admissibility (Asfandyar case, 2016).

5.6. Evidence available through Modern Techniques

Article 164 of the Qanun-e-Shahadat Order (QSO) has significantly expanded the evidentiary scope by accommodating modern forensic and technological advancements to secure, preserve, and present evidence effectively. The key categories include:

5.6.1. Human Biological Trace Evidence

- DNA profiling (from blood, saliva, semen, or hair)
- Hair analysis for individual identification
- Saliva and blood for matching suspects with crime scenes

5.6.2. Forensic Chemical Evidence

- Narcotics and drugs analysis (confirming substance composition)
- Toxicology reports (detecting poisons or intoxicants)
- Explosives and chemical residues in crime scene investigations

5.6.3. Micro-Traces and Trace Evidence

- Glass fragments from crime scenes
- Non-human biological traces (pollen, animal hair, or microbial evidence)
- Fibres and textiles for clothing and suspect linkage

5.6.4. Biometric Evidence

- Fingerprints and palm prints for identity verification
- Ear prints and lip prints as emerging biometric identifiers
- Retinal scans and facial recognition for authentication and tracking

6. Conclusion

The kidnapping for ransom is heinous crime punishable by capital punishment u/s 365-A PPC and 7(e) of ATA 1997. This crime is sometimes committed to fund terrorist activities and at other times for monetary gains by organized groups. Regardless of the motive, such cases are triable by the ATC. However, the punishment u/s 7(e) of ATA is specifically applied when the act is committed for terrorism purposes. Cases of kidnapping for ransom often rely on circumstantial evidence, necessitating a robust and unbroken chain to secure conviction. Evidence is the cornerstone for establishing the guilt or innocence of the accused. The primary responsibility of investigation is collection of evidence. The prosecution performs dual duty; first to scrutinize the investigation (available evidence) while keeping in view the rules and standards governing admissibility and reliability of the evidence for taking prosecutorial decision and second to present the best available evidence before the court to secure conviction of the criminals.

In prosecuting kidnapping-for-ransom cases, the more common types of evidence include: i) direct evidence including testimonies of the abductee and eyewitnesses; ii) circumstantial evidence including ‘last seen evidence’, ‘wajdakar/res-gestae evidence’, ‘discovery of new facts leading to recovery’; ‘rental agreement of car or house used in occurrence; iii) real evidence including physical recoveries relevant to the case; iv) corroborative evidence including identification parade, pointation of place of occurrence, medical evidence if any, etc.; v) evidence available through modern devices including CDRs, audio-video recordings or any other digital evidence and; vi) evidence available through modern techniques including DNA Analysis, forensic reports.

In kidnapping or abduction for ransom cases, the prosecution often relies heavily on circumstantial evidence, which necessitates strong corroboration. This type of evidence is inherently weaker and requires the prosecution to link each circumstance carefully; creating a complete, continuous, and unbroken chain that firmly connects the accused to the alleged offence. If any link in this chain is

missing, the benefit of the doubt must go to the accused. Therefore, it is imperative that the I.O, as well as the scrutiny and trial prosecutor, exercise utmost vigilance in the collection, preservation and presentation of evidence before the court to ensure a just conclusion and outcome of the case.

7. Key Recommendations

To improve the investigation and prosecution system for kidnapping for ransom cases, a multi-dimensional approach is required. Strengthening evidence collection, forensic analysis, prosecutorial oversight, and legal reforms will enhance conviction rates and ensure justice for victims.

A. Recommendations for Investigating Officers and Prosecutors

The Investigating officers and prosecutors must ensure the following things while conducting investigation and prosecution of the offices related to kidnapping for ransoms

1. Verify the applicability of offences to determine whether the case qualifies as kidnapping for ransom under Section 365-A of the PPC or falls within Section 2(n), Section 6(2)(e), and Section 7(e) of the Anti-Terrorism Act (ATA) 1997. The objectives and purpose behind the kidnapping must be established to confirm whether it was committed for ransom or other motives.
2. Determine the presence of eyewitnesses and record their statements under Section 161 of Cr.P.C. If available, their testimony may be reinforced through statements under Section 164 Cr.P.C before a magistrate. If the abductee is rescued, a detailed statement must be obtained, and medical examination should be conducted immediately. The place of confinement must be thoroughly inspected for any incriminating evidence.
3. In cases lacking eyewitnesses, gather circumstantial evidence systematically, including "last-seen" evidence, to establish a clear timeline. Any discovery of new facts leading to the recovery of a dead body, weapon, or critical material evidence on the accused's pointation should be documented in line with Article 40 of the Qanun-e-Shahadat Order (QSO).
4. Collect and preserve real evidence, such as physical recoveries linked to the offence, including personal belongings of the abductee and other incriminating items found on the accused.
5. Conduct and document a Test Identification Parade (TIP) to confirm the accused's involvement while ensuring compliance with legal procedures to prevent irregularities.
6. Establish the location of ransom calls and corroborate this with rental agreements or ownership documents of vehicles or premises used in the crime. If available, extra-judicial confessions of the accused or co-accused should be properly documented.
7. Ensure the retrieval and analysis of digital evidence, including Call Data Records (CDRs), transcripts of ransom calls, and verification of SIM card ownership used for ransom demands, linking it to the accused. Audio and video evidence must be properly authenticated and preserved.
8. Employ modern forensic techniques for evidence collection, such as DNA analysis, forensic chemical testing, and biometric identification (fingerprints, ear prints, fibres, textiles, and micro-trace evidence) to strengthen the case.
9. Ensure strict compliance with legal and procedural requirements in collecting, preserving, and presenting evidence. Collaborate with forensic and technical experts for proper validation of evidence while maintaining a detailed chain of custody to uphold its integrity in court.
10. Evaluate whether circumstantial evidence forms a complete and unbroken chain leading to the accused. Any missing links must be addressed, and efforts should be documented to bridge evidentiary gaps that may weaken the prosecution's case.

11. Prosecutors must rigorously scrutinize police reports (u/s 173 CrPC) before submission to ensure compliance with evidentiary standards and prevent weak cases from reaching trial.
12. Prosecutors should be trained to effectively examine forensic evidence, digital records, and geo-location data to strengthen prosecution arguments in court. A centralized prosecution database should be established to track case progress, evidence admissibility, and judicial decisions for efficient case management.
13. If ransom money is linked to terrorism, the prosecution must connect the case to anti-terror financing laws under the Anti-Money Laundering Act, 2010 to ensure appropriate sentencing.

B. **Recommendations Policy Makers**

i. Legal amendments should be introduced clearly differentiating when kidnapping for ransom cases fall under terrorism laws versus regular criminal laws to avoid misapplication of the ATA, 1997.
ii. Accountability mechanisms must be introduced to hold police officers and prosecutors responsible for failing to collect crucial evidence and conducting defective investigations or conducting defective prosecution respectively.
iii. A comprehensive Witness Protection Program should be implemented to safeguard victims and witnesses from coercion or threats.
iv. Legal protections must be introduced for families forced to pay ransom, ensuring they are not prosecuted for actions taken under duress.
v. Dedicated Anti-Kidnapping Units must be established, with specialized teams trained in negotiation tactics, digital forensics, and financial tracking to improve case handling.
vi. Financial crime experts must be deployed to trace ransom payments and money laundering trails, enabling a more robust financial investigation.
vii. Elite prosecution teams should be formed to handle complex kidnapping cases, ensuring expert legal representation in courts.
viii. The ATA, 1997 must be amended to formalize federal and provincial-level Joint Investigation-Prosecution Teams (JIPTs) for faster, more transparent investigations.
ix. Protocols for Interpol assistance in tracing ransom transactions and cross-border kidnappings must be established to enhance international cooperation.

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