

**THE SUPREME COURT OF PAKISTAN**

(Appellate Jurisdiction)

**Bench:**

Mr. Justice Athar Minallah  
Mr. Justice Irfan Khan Saadat  
Mr. Justice Malik Shahzad Ahmad Khan

**CRIMINAL PETITION NO.1619 OF 2021**

(Against judgment dated 13.9.2021 of the Peshawar High Court, D.I. Khan Bench passed in Criminal J.Appeal No.82-D of 2018)

Muhammad Bilal ... Petitioner

**Versus**

The State and another ... Respondents

For the petitioner: Mr. Muhammad Yousaf Khan, ASC

For the State: Mr. Altaf Khan, Addl.AG, KPK

For the Complainant: Nemo

Date of hearing: 08.04.2025

**ORDER**

**Athar Minallah, J.-** Muhammad Bilal ('petitioner') has sought leave against the judgment of the High Court dated 13.09.2018 by invoking the jurisdiction of this Court under Article 185(3) of the Constitution of the Islamic Republic of Pakistan, 1973 ('Constitution') and whereby his appeal was dismissed.

2. The petitioner was nominated in crime report No.28/17 registered under sections 302, 364-A and 376 of the Pakistan Penal Code, 1868 ('PPC') at Police Station Dera Town, Dera Ismail Khan. The crime report was registered pursuant to a statement filed by Ghulam Abbas, (PW-5) ('complainant'). The latter had stated that his five nieces including Mahnoor Bibi ('deceased/victim') who was five years old, were living with him after the death of their mother. He had taken his family members and his five nieces to attend the wedding of one of his relatives on 26.01.2017. It was alleged that one of the nieces, the deceased/victim, could not be traced at the wedding. It was further alleged that the petitioner was also not

traceable and, therefore, it raised suspicious regarding his involvement in the disappearance of the deceased/victim. The petitioner was arrested and according to the prosecution story, had led to the recovery of the dead body of the deceased/victim from the sugarcane fields which were owned by one Ghulam Hussain. The autopsy was conducted by Dr. Aiman Sana (PW-1), and according to her opinion, the cause of death of the deceased/victim was due to strangulation. She had obtained the samples and swabs and they were sent to the Forensic Science Laboratory for chemical and DNA analysis. The Investigating Officer, Zamir Hussain, Sub-Inspector (PW-10), had produced the petitioner before the Judicial Magistrate-II, D.I.Khan on 31.07.2017 for recording his judicial confession under section 164 of the Code of Criminal Procedure, 1898 ('**Cr.P.C.**'). After completion of investigation, report under section 173 Cr.P.C. was submitted and pursuant thereto charge was framed. The petitioner did not plead guilty and therefore, the trial had commenced. The trial court upon conclusion of trial, convicted the petitioner for the offences under sections 302(b), 364-A and 376 of the PPC. He was sentenced to death on three counts. The murder reference was also sent as required under section 374 Cr.P.C. to the High Court for confirmation of the sentences of the death. The convictions and sentences were challenged by the petitioner before the High Court and his appeal was dismissed vide the impugned judgment dated 13.09.2021. The reference sent by the trial court was answered in the affirmative. The petitioner challenged his convictions and sentences by seeking leave of this Court.

3. We have heard the learned counsel for the petitioner and Additional Advocate General at great length. We have also perused the record with their able assistance.
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4. The complainant in this case was served but no one has appeared on his behalf today. The case of the prosecution is entirely based on circumstantial evidence. The complainant, Ghulam Abbas had entered the witness box as PW-5. According to the testimony of the complainant, he had taken his five nieces to attend a wedding of one of his relatives. In his examination-in-chief, he had deposed that the deceased/victim could not be traced at the wedding. The petitioner was also not traceable and, therefore, this had raised suspicion regarding his involvement in the disappearance. However, in his cross-examination, he had deposed that on his return from the wedding to his house at about 6 pm., he was informed for the first time that the deceased/victim had gone missing from the place of wedding. According to the prosecution story, as was deposed by the complainant, the police had visited his house at about 9 pm. and it was then that the matter was reported and the petitioner was nominated as an accused for abduction of his niece i.e. the deceased/victim. There is no explanation how the police officials had received the information and had, therefore, visited the complainant's house. The Investigating Officer, Zamir Hussain, Sub-Inspector (PW-10) also did not give any explanation in this regard. However, according to his deposition, the crime report was registered after receiving the information when the complainant's house was visited. According to the testimony of the Investigating Officer, Zamir Hussain, Sub-Inspector (PW-10), the house of the petitioner was raided but he could not be arrested. However, he was later arrested, according to his deposition, at about 2 am. on 27.01.2017. The complainant, Ghulam Abbas (PW-5), had stated in his testimony that the police officials had again visited his house at 4 am. on 27.01.2017 along with the petitioner because the latter had disclosed that he could recover the dead body of the deceased/victim. On the other hand, this factum was not confirmed by Farman Ali Shah (PW-9) nor Zamir Hussain (PW-10) in their depositions.



However, the former in his cross examination had stated that after recovery of the dead body, he along with the Investigating Officer had visited the house of the complainant and that the latter had accompanied him for spot inspection. Likewise, Zamir Hussain (PW-10) had also not stated in his deposition that before the recovery of the dead body of the deceased/victim which was led by the petitioner, he had visited the house of the complainant. The recovery memo of the dead body shows the complainant to be one of the witnesses. The testimonies of the witnesses are not confidence inspiring on account of material contradictions. They are not consistent in material particulars. The recovery of the dead body from the sugarcane field situated near the road is also shrouded in mystery. It does not appeal to a prudent mind that the body would remain at such an exposed place without being noticed by passersbys.

5. We have also noted that the High Court did not find the judicial confession recorded by Saqib Khan, Judicial Magistrate-II, D.I.Khan (PW-7) to be reliable and trustworthy. The High Court has correctly observed that the judicial confession was not recorded in accordance with the principles of law laid down by this Court, particularly in the context of observing the mandatory safeguards. The judicial confession, therefore, cannot be relied upon for sustaining the conviction.

6. The medical evidence, particularly the DNA report does not support the prosecution story. Dr. Aiman Sana (PW-1), who had conducted the autopsy on the dead body of the deceased/victim was of the opinion that the death was caused due to strangulation, however, the offence of sexual assault or rape was not confirmed. She had obtained samples and swabs were prepared and sent for chemical and DNA analysis. The DNA report dated 12.12.2017, completely demolished the case of the prosecution. It



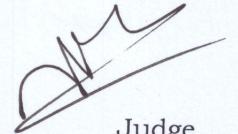
had explicitly eliminated the petitioner as being the possible contributor to the DNA sample that was sent for chemical analysis.

7. In view of the above discussion, we have not been able to persuade ourselves that the prosecution had proved its case beyond a reasonable doubt so as to sustain the convictions and sentences handed down by the trial court and confirmed by the High Court. The petitioner is, therefore, entitled to the benefit of doubt as of right. We, therefore, convert this petition into an appeal and the same is allowed. The judgments of the trial court and the High Court are hereby set-aside. Consequently, the appellant is acquitted of the charges framed against him.

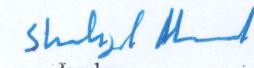
The above are the reasons for our short order dated 08.4.2025.



Judge



Judge



Judge

**Islamabad the,**  
8<sup>th</sup> April, 2025  
**'NOT APPROVED FOR REPORTING'**  
Aamir Sheikh/\*