

THE SUPREME COURT OF PAKISTAN

(Appellate Jurisdiction)

Bench:

Mr. Justice Athar Minallah

Mr. Justice Irfan Saadat Khan

Mr. Justice Malik Shahzad Ahmad Khan

CRIMINAL PETITION NO.1674 OF 2021

(On appeal against the judgment dated 09.06.2021 of the Peshawar High Court, Mingora Bench (Dar ul Qaza) Swat passed in CrI. Appeal No.16-M/2020 with M. R. No.7 of 2020) and CrI. Appeal Nos.240-M/2016 and 42-M of 2020)

Said-ur-Rehman and another ... Petitioners

Versus

The State and another ... Respondents

For the petitioner: Mr. Hussain Ali, ASC

For the complainant: Mr. Asad Jan, ASC
(via video link from Peshawar Registry)

For the State: Syed Kausar Ali Shah, Addl.AG KPK

Date of hearing: 22.05.2025

JUDGMENT

Athar Minallah, J.- Vide our short order dated 22.05.2025, we had allowed the criminal miscellaneous application filed by **appellants**, Said-ur-Rehman and Noor Rehmat, therefore, their petition was numbered as Criminal Petition No.1674 of 2021. The petition was converted into an appeal and its was allowed. Consequently, the appellants were acquitted from the charges framed against them by extending the benefit of doubt. The judgments of the trial court and the High Court dated 08.01.2020 and 09.06.2021 respectively were set-aside. It was ordered that the appellants be released forthwith if not required to be incarcerated in any other matter. Vide same short order, Criminal Petition Nos. 135-P and 136-P of 2021 filed by complainant, Mst. Zuleikha Bibi, were dismissed.

2. This is a classic illustration of the abysmal state of the criminal justice system, particularly reflecting the lack of integrity,

competence and professionalism in investigation and prosecution. It also underscores the inability of investigation officers to effectively discharge their statutory duties in the investigation of criminal cases. The commission of the crime in this case resulted in the gruesome and brutal murders of two young men Shah Faisal and Shafi-ur-Rehman aged 18 and 15 years respectively. The alleged occurrence took place in a remote area of Chitral in the province of Khyber Pakhtunkhwa. The complainant, Mst. Zulekha Bibi (PW-1) and her husband, Gul Zaman (PW-2) resided with the family in village Jibraik, located on the bank of river Chitral. A bridge over the river connects the village to Domel.

3. The evidence on record reveals that the movement of persons crossing the bridge was hindered by Chitral Scouts who had established a security barrier at the site. During evening hours crossing the bridge was generally prohibited unless special permission was granted by the officials controlling the post. The particulars of persons allowed to cross were entered into a register maintained at the barrier, and, according to the witnesses the national identity cards of those crossing the bridge were temporarily retained by the said officials.

4. The complainant, Mst. Zulekha Bibi (PW-1), reported to Sub Inspector Paneen Nawaz (PW-10) who was on patrol duty, that on 16.02.2016 her son, Shah Faisal, and her husband's nephew, Shafi-ur-Rehman had gone missing. She nominated eight accused, including the present appellants, alleging that they had abducted both victims, dead or alive. The complaint was received by Sub Inspector Paneen Nawaz on 17.02.2016. Although the information disclosed the commission of a cognizable offence, it was not entered in the register prescribed under section 154 of the Code of Criminal

Procedure, 1898 ('Cr.P.C.') instead it was recorded in the daily diary (Exh.PW-10/1). Subsequently, an application was submitted before a Magistrate seeking permission to conduct an inquiry under section 156(3) of the Cr.P.C. which was allowed. The legality of that order shall be discussed in detail later in this judgment.

5. After making the entry, Sub Inspector Paneen Nawaz arrested both the appellants. However, the events narrated in the complainant's testimony during the trial differed from the version recorded in the official complaint. According to her deposition, when the victims did not return on 16.02.2016, she went to the Chitral Scouts' post at the bridge, where she was informed that the victims had indeed crossed the bridge as per their record. She further deposed that on 17.02.2016, the police and Chitral Scout's officials searched the accused persons' house and recovered personal belongings of the two victims.

6. The complainant's husband Gul Zaman (PW-2), testified that he was informed that the Chitral Scouts had summoned him, he therefore, returned to village Jibraik and joined his wife and the officials in searching the accused' house. On 18.02.2016, Sub Inspector Paneen Nawaz (PW-10) received information which led to the recovery of two sacks from the river. Upon opening them, human body-parts were discovered. The complainant (PW-1) and her husband (PW-2) identified the recovered human remains as those of the victims. The body-parts were sent to the Tehsil Headquarter Hospital, Drosh, where they were examined by Dr. Shakeel Ahmed, Medical Officer (PW-6). According to the post-mortem report, the deceased Shah Faisal had sustained a firearm injury on the chest. Following the recovery, crime report No.13, dated 18.02.2016 was registered at Police Station, Randu, District Chitral, for offences

under sections 302, 147, 148, 201, 202 and 297 of the Pakistan Penal Code, 1860 ('**PPC**'). The investigation was entrusted to Sub Inspector Qurban Ali (PW-13), to whom the custody of both the appellants were also handed over by Sub Inspector Paneen Nawaz (PW-10). During investigation, the appellant, Said-ur-Rehman led to the recovery of a Kalashnikov rifle, a blood-stained axe and a *churri* (knife) from the residential premises where the nominated accused were residing. Sub Inspector, Qurban Khan (PW-13) also recovered a piece of *Chitae* (mat) allegedly stained with blood and two blood-stained stones from the pedestrian path where the victims were purportedly killed.

7. The appellants along with another co-accused Mir Ahmed Khan were produced by the investigating officer before Muhammad Ismail, Civil Judge, Judicial Magistrate (PW-14) for recording their judicial confession under section 164 of the Cr.P.C. The Magistrate initially declined to record the confession; however, the confessional statements were subsequently recorded under section 164 of the Cr.P.C. The crime-empties recovered from the crime scene on 18.02.2016 were sent to the Forensic Science Laboratory ('**FSL**') along with the alleged weapon of offence on 16.03.2016. Similarly, the blood-stained stones, *chitae*, axe, *churri* (knife) and clothing were sent for chemical analysis to the FSL on 16.03.2016 i.e. nearly four weeks after the alleged occurrence. Subsequently, the complainant, Mst. Zulekha Bibi (PW-1) recorded a statement verifying that four of the nominated accused i.e. Said Ahmad Khan, Sher Ali Khan, Zar Muhammad and Najeebullah had been nominated merely on suspicion, and that she was satisfied that they had no role in the commission of the offence. She maintained, however, that the remaining four accused, including the appellants, Noor Rehman and

Said-ur-Rehman were the actual perpetrators of the gruesome murders of the two victims. She further stated that Mir Ahmed Khan was present at the accused's residence during the search on 17.02.2016 and, as he had expressed willingness to testify against them as such she did not press charges framed against them. Upon conclusion of the investigation, the investigating officer submitted his report under section 173 of the Cr.P.C. Consequently, charges were framed on 01.04.2016 against the appellants to which they pleaded not guilty.

8. To establish its case, the prosecution examined fourteen witnesses. The appellants and co-accused chose not to testify on oath, therefore, their statements were recorded under section 342 of the Cr.P.C. The appellants, Said Rehman, however, opted to produce his evidence and, two witnesses, Raees Khan (DW-1) and Ajab Gul (DW-2) entered the witness-box on his behalf.

9. During the proceedings four of the nominated accused Said Ahmed Khan, Sher Ali Khan, Zar Muhammad and Najeebullah were acquitted under section 265-K of the Cr. P.C. Upon conclusion of the trial, the appellants, Said-ur-Rehman and Noor Rehman were convicted for the offence under section 302(b) and 34 PPC and were sentenced to death on two counts *vide* judgment dated 08.01.2020. They were also directed to pay compensation of Rs.1,000,000/- to the legal heirs of each deceased under section 544-A of the Cr. P.C., recoverable as arrears of land revenue, or in default thereof to undergo six months simple imprisonment. Appellant, Said ur Rehman was further convicted under section 201 PPC and sentenced to five years rigorous imprisonment, and under section 15(AA) PPC to three years rigorous imprisonment. It was directed that all sentences would run concurrently, with the benefit of section 382-B Cr. P.C. On

appeal, the High Court upheld the convictions and dismissed the appeal filed by the appellants through the impugned judgment dated 09.06.2021. The reference for confirmation of the death sentences was answered in the affirmative. The appellants challenged their convictions and sentences before this Court while the complainant also filed separate petitions against the acquittal of the co-accused.

10. We have heard the learned counsel for the appellants, the complainant as well as the learned Additional Advocate General, Khyber Pakhtunkhwa at considerable length. We have also perused the record with their able assistance.

11. The gruesome and brutal unnatural deaths of the two young men was indeed an unprecedented and shocking occurrence. There was no last seen evidence in this case except for statements of the prosecution witnesses regarding the victims' movement over the bridge. The prosecution's case primarily rested upon the judicial confessions of the appellants recorded under section 164 of the Cr. P.C., the recovery of incriminating material at the instance of one of the appellants and the positive report of the FSL.

12. We shall therefore, examine separately the pieces of evidence relied upon by the trial court for convicting and sentencing the appellants, however, before doing so it is essential to first determine the legality of the inquiry ordered by the Magistrate under section 156(3) of the Cr.P.C., and pursuant thereto, the arrest of both the appellants by Sub Inspector, Paneen Nawaz (PW-10), who claimed to have been assigned the said inquiry.

13. The provisions of the Cr.P.C. are divided into 11 parts, encompassing chapters I to XLVI. Part-V of Chapter XIV is titled 'information to the police and their powers to investigate'. Section 156 follows section 154 and is captioned 'investigation into cognizable

cases'. Sub section 3 of section 156 provides that any Magistrate empowered under section 190 of Cr. P.C. may order such an investigation. The expression 'such an investigation' refers to the investigation mentioned in sub section (1), which authorizes the officer incharge of police station to investigate any cognizable case without an order from a Magistrate. Sub section (1) of section 156, therefore, contemplates an investigation that follows the entry of a complaint relating to the commission of a cognizable offence in the book prescribed under section 154 of the Cr.P.C. The term 'investigation', defined under section 4 of the Cr.P.C. includes all proceedings conducted by a police officer or any person authorized by Magistrate for the collection of evidence. Notably, the term 'any person' excludes a Magistrate. Conversely, 'inquiry', defined under section 4(k), means every inquiry other than a trial conducted by a Magistrate or a Court. The distinction between the inquiry and investigation is crucial in determining the scope of a Magistrate's powers under section 156 (3) of the Cr.P.C. The statutory duty i.e. to register and investigate information relating to a cognizable offence rest exclusively with the officer incharge of a police station under section 154 Cr.P.C. Once such information is recorded in the prescribed register, it assumes the status of a cognizable case. Section 156 becomes operative only in relation to information that has culminated in the registration of a case under section 154 of the Cr.P.C. i.e. the first information report. Section 157 further circumscribes the powers of the officer incharge of a police station by requiring him to have "reason to suspect" the commission of a cognizable offence before commencing investigation. Provisos 'a' and 'b' to section 157(1) authorize the officer to dispense with investigation in limited circumstances and imposes statutory duties

to inform both the Magistrate and the informant of the reasons for doing so. The authority to order investigation under section 156(3) is vested exclusively in a Magistrate empowered under section 190. A competent Magistrate may order investigation either on receiving of a report under section 157 or upon an application by an informant; however, if a Magistrate chose to proceed under Chapter XIV, sections 200 to 204, after taking cognizance of a complaint under section 190, he cannot subsequently invoke section 156(3). This principle has been consistently affirmed by this Court as well as by the Supreme Court of India while interpreting *pari materia* provisions. An order under section 156(3) thus necessarily relates to an investigation in a cognizable case that has been or must be registered under section 154 Cr.P.C. The Magistrate is not empowered to order an inquiry under section 156 (3), and any such order would amount to reading into the statute what the legislature never intended. The Cr.P.C. envisages external judicial supervision over the executive functions of the police to preserve integrity of the criminal justice system and to protect both the accused and the victim from abuse of coercive power. Accordingly, the entry of information regarding a cognizable offence merely in the daily diary does not authorize the police to initiate an investigation under the Cr.P.C. An arrest made prior to the registration of the FIR, except in the exceptional circumstances expressly provided under section 54, 55, 57 or 151, is illegal and without lawful authority. Such illegality may have profound implications, particularly where judicial confession under section 164 Cr.P.C. is subsequently recorded.

14. In the present case, the complainant, Mst. Zulekha Bibi (PW-1), reported the matter on 17.02.2016 to Sub Inspector Paneen Nawaz (PW-10), who was on patrol duty. The written complaint disclosed the

commission of the cognizable offence. The officer incharge of the police station, however, failed to enter the information in the register prescribed under section 154 Cr.P.C., as he did not register an FIR. Instead, the particulars were entered in the daily diary and permission was sought from the Magistrate to initiate an inquiry under section 156(3) Cr.P.C.

15. As discussed above, the Magistrate has no authority to order such inquiry and order was without lawful sanction. The purported inquiry was assigned to Sub Inspector Paneen Nawaz (PW-10) who, under its guise, undertook actions properly attributed to an investigation. The appellants were arrested on 17.02.2016 i.e. prior to the registration of a crime report under section 154 of Cr.P.C., their arrest was, therefore, illegal and without lawful authority, not falling within any of the statutory exceptions. This illegality has significant consequences in evaluating whether the judicial confessions subsequently recorded were genuine, voluntary and the result of free will.

16. It is settled law that a confession made to or in the presence of a police officer is not admissible, even if made in the immediate presence of a Magistrate as is mandated under Article 38 of the Qanoon-e-Shahadat Order, 1984 (**'Order of 1984'**). Similarly, a confession made while in custody is inadmissible except when recorded by a Magistrate in accordance with section 164 of the Cr.P.C. or when it leads to the discovery of a fact within the meaning of Article 40 of the Order of 1984.

17. Section 364 Cr.P.C. prescribes the manner of recording a confession under section 164, while Chapter 13 of the High Court Rules and Orders (volume-III) lays down procedural safeguards to ensure that a confession is genuine, voluntary and made without any

form of influence and coercion. The Magistrate must explain to the accused that he is not bound to confess and that any confession made may be used against him. The Magistrate shall not record the confession unless, upon questioning, he has reasons to believe that it is being made voluntarily. The expression 'reasons to believe' requires objective satisfaction, not mere suspicion, and must rest on credible material and the Magistrate's own observation of the accuser's demeanor. These safeguards are designed to ensure that confession is an act of free will, uninfluenced by fear, threat, inducement or hope of leniency.

18. This Court has consistently held that a judicial confession may form the basis of conviction if found to be true, convincing, and made voluntarily, free from any coercion, inducement, or influence. Even a retracted confession retains evidentiary value if it was recorded in accordance with law and is corroborated by independent evidence. However, as a rule of prudence, corroboration is generally sought. A confession, to be admissible, must be voluntary. Delay in recording a judicial confession, particularly while the accused remains in police custody, casts doubts upon its voluntariness and necessitates heightened judicial scrutiny. It is the Magistrate's duty to ensure that the accused is entirely free from police influence and that hand-cuffs, if any, are removed before recording his/her statement. The confession must be accepted or rejected as a whole; its inculpable parts cannot be selectively relied upon while discarding the exculpatory ones. The court must remain conscious that no person ordinarily confesses to the commission of a crime due to its grave consequences, and that the distress and trauma of custody may impair rational judgment, leaving even an innocent person to confess.

Thus, exceptional caution is warranted when the accused is or has been in police custody.

19. In the instance case the appellants were arrested on 17.02.2016 during the purported inquiry prior to the registration of an FIR. The arrest was based solely on an entry in the daily diary. The judicial confessions were recorded on 23.02.2016 i.e. six days after their illegal arrest. Judicial Magistrate Muhammad Ismail (PW-14) deposed that the appellants were remanded to prison through a Naib Court, yet he was unaware whether the Naib Court handed them over to the police. However, Sub Inspector Qurban Khan (PW-13) stated that the Magistrate had called him to take custody of the appellants after recording their confessions and that he himself transported them to the prison. This inconsistency undermines the reliability of the alleged confessions which, notably, are not corroborated by other prosecution evidence and, in fact, contradict the prosecution's own narrative.

20. The prosecution also relied on the recovery of incriminating items at the instance of the appellant, Said-ur-Rehman and certain articles allegedly collected by the investigating officer. The complainant Mst. Zulekha Bibi (PW-1) testified that after her complaint officials of police and Chitral Scouts raided and searched the accused's house i.e. the alleged crime scene on 17.02.2016, recovering personal belongings of the deceased victims. However, the investigating officer made no mention of such raid, search, or recovery in his deposition.

21. This case concerns the brutal murders and subsequent decapitation and dismemberment of two young men, allegedly within the appellants' residence. Yet, the only physical evidence recovered was a small blood-stained portion of a *chitae* (mat) along with axe and

churri (knife) claimed to bear blood-stains. These items were sent to the FSL almost a month after their recovery casting serious doubts on the reliability and evidentiary value of the positive FSL report.

22. According to the medical evidence, the injuries sustained by the deceased must have resulted in profuse bleeding, however, the evidence brought on record shows no indication of such bleeding having occurred at the alleged crime scene. It is also not the prosecution's case that the stains had been washed or cleared to destroy evidence. Furthermore, the firearm weapon and the spent bullets allegedly recovered from the crime scene were sent to the FSL together, which compromises the integrity of the chain of custody and the reliability of the findings. In view of these material deficiencies and inconsistencies, reliance on the FSL report for the purposes of sustaining a conviction would not be safe, keeping in view the law enunciated by this Court.

23. The prosecution case was in its entirety, based on circumstantial evidence. There was no direct ocular testimony linking the appellants to the commission of the offence. The deceased victims were not seen in the company or proximity of the appellants. The two sacks in which human remains cut into twelve pieces were also not recovered at the instance of either appellant. Their arrest was illegal and without lawful authority, and the judicial confession recorded under section 164 Cr.P.C. purportedly made voluntarily and out of the free will were surrounded by serious doubts. The alleged recoveries of incriminating articles were equally doubtful in the peculiar facts and circumstances of this case. The investigating officer also failed to collect the crucial evidence regarding the movement of the deceased victims across the bridge under the control of Chitral Scouts. The prosecution's own witnesses

contradicted one another on material particulars, further weakening its case.

24. In these circumstances, the prosecution failed to prove its case against the appellants beyond a reasonable doubt. The appellants, therefore, were entitled to the benefit of doubt and could not have been convicted on the charge framed against them.

The above are the reasons of our short order of even date.

Judge

Judge

Judge

Islamabad, the

22nd May, 2025

'APPROVED FOR REPORTING'

*M. Azhar Malik/**