

JUDGMENT SHEET
PESHAWAR HIGH COURT, D.I.KHAN BENCH
(Judicial Department)

Cr.A.No.69-D/2024 with
Cr.Misc. No.31-D/2024.

Qaisar Abbas
Vs.
The State etc.

JUDGMENT

For Appellant: Mr. Nazar Muhammad Niazi,
Advocate.

For State: Mr. Inam Ullah Khan Kundi AAG.

For Respondent: Mr. Ghulam Hur Khan Baloch,
Advocate.

Date of hearing: **26.11.2025.**

FARAH JAMSHED, J.- This single judgment shall dispose of the instant appeal and the connected Criminal Revision No.12-D of 2024, titled '*Hidayat Ullah v. Qaisar Abbas etc*' as both the matters are the outcome of one and the same judgment and order dated 03.9.2024, passed by learned Additional Sessions Judge, Paharpur, D.I.Khan, in case F.I.R No.398 dated 17.07.2018, registered under Section 302 PPC of Police Station Paharpur, District D.I.Khan.

2. Through impugned judgment and order dated 03.9.2024, the appellant Qaisar Abbas son of Muhammad Hashim, was convicted under Section 302(b) of Pakistan Penal Code, 1860, for the murder of Farhan Iqbal and sentenced to life imprisonment and

payment of compensation of Rs.500,000/- (five hundred thousand) to the legal heirs of deceased, in terms of Section 544-A, Cr.P.C, or in default thereof to further undergo simple imprisonment for six months. Benefit under Section 382-B, Cr.P.C. was extended to the convict/appellant.

3. Brief summary of prosecution case as divulged from the FIR, registered on the strength of '*Murasila*' indicates that on 17.7.2018, at about 19:20 hours, the complainant Hidayat Ullah son of Haji Muhammad Hayat, while present alongside the deceased, his nephew Farhan Iqbal, reported the incident to the local police at Emergency Room of Civil Hospital, Paharpur. He reported that on the eventful evening, he was present in his house when he received information that someone hit his nephew Farhan Iqbal, a Gardner at CMH, D.I.Khan has been brought to Civil Hospital, Paharpur in injured condition; that, since father of deceased, a retired army personnel, had proceeded to Mangla Dam in connection with election duty, hence, on receiving the aforesaid information, he alongwith other relatives reached the hospital, where his nephew had succumbed to his injuries. Upon his query, he was informed that Farhan Iqbal was murdered by Qaiser Abbas by stabbing him with dagger blows at about 18:30 hours at cattle shed of Lahori Wali, situated in village

Hafiz Abad for the reason, the accused suspected illicit relations between his wife and the deceased. He charged the accused for the commission of offence.

4. The accused was arrested by the SHO Police Station Paharpur (Pw-6), on the same day of occurrence from the spot and he was produced before the Court of learned Judicial Magistrate, Paharpur (Pw-5). On 18.7.2018, confessional statement of accused was recorded, while Mst. Zeenat Bibi, wife of the appellant/accused was also produced before the Judicial Magistrate, Paharpur, on the same date for recording her statement under Section 164, Cr.P.C., wherein, she reiterated the stance of complainant. In the said statement, she stated that appellant is her husband and they are blessed with two sons and three daughters and now-a-days they are residing at Paharpur; that her husband and Farhan Iqbal (deceased) were working in Al-Moiz Sugar Mills and had friendship, therefore, they used to visit houses of each other due to which her relations developed with Farhan Iqbal and they used to remain in contact on mobile phone; that her husband (the appellant) suspected, who often gave reference to her about the deceased's friendship, however, she took Oath on Holy Quran, however, her husband did not believe; that yesterday i.e. 17.7.2018, her husband left the children at village Kurrar Shiddi at morning and on

return asked her to call Farhan Iqbal on mobile phone to come to Paharpur, hence, she called the deceased on his phone No.0345-1925505 via phone No.0341-6911968 of her husband, who did accordingly; that she along with her husband while riding the motorcycle started behind the motorcycle of deceased and when reached to Seggra Minor, her husband asked her to deboard from the motorcycle and walk to another side as the people might not observe them; that after covering some distance, her husband asked Farhan Iqbal deceased to stop the motorcycle to attend the call of nature; that as soon Farhan Iqbal stopped his motorcycle and deboarded therefrom, her husband took out a dagger and gave dagger blows to Farhan Iqbal, who was crying for help, while she ran away from the spot and took shelter in the nearby houses; that her husband was on run behind her where the people overpowered him; that she witnessed the occurrence. It is worth mentioning that during trial, Mst. Zeenat Bibi was abandoned on 22.7.2023, being won-over by defense.

5. On completion of necessary investigation, challan was submitted before the trial Court. The prosecution produced and examined nine (09) witnesses to establish its case against accused. After conclusion of the prosecution evidence, the accused was examined under section 342, Cr.P.C., wherein he professed

innocence and false implication. However, neither he opted to be examined on oath in terms of Section 340(2), Cr.P.C., nor produced defence evidence. The learned trial Court, after hearing arguments, convicted the appellant and sentenced him as detailed above in earlier paras of this judgment, hence, the instant appeal, and the connected criminal revision filed by complainant for enhancement of the sentence.

6. Arguments heard. Record perused.

7. Undeniably, single accused has been charged in this criminal case, hence, the chances of substitution and false implication would be a rare phenomenon, but this fact alone would not be sufficient to absolve the prosecution of its liability to bring home guilt of the accused beyond any reasonable doubt.

8. With this background, the points for determination before this Court would be:

(i) Whether the occurrence took place in the mode, manner and time as alleged by the complainant and prosecution?

(ii) Whether the appellant was arrested from the spot on the day of occurrence?

(iii) Whether the appellant recorded his confessional statement without any pressure and coercion; and whether the same was recorded in accordance with settled principles of law; and could be made the base for awarding conviction?

(iv) Whether the motive stands established.

9. Undeniably, the occurrence was unwitnessed, as the complainant (Pw.8), on getting rushed to Civil Hospital, Paharpur, upon hearing of the incident, and filed a report with Sher Muhamad ASI (Pw-02), who documented it as '*Murasila*'. The prosecution maintains that the appellant was arrested from the spot. In this respect, Muhammad Imran Khan, the then SHO Police Station, Paharpur testified as Pw-06. According to him, he arrested the accused, recovered a knife, allegedly used in the commission of offence and seized a motorcycle belonging to the accused. He mentioned that he was near the place of occurrence and upon learning of the incident, went there. However, he did not disclose this fact in his statement under section 161, Cr.P.C. It is evident from his testimony that his departure from and arrival to the Police Station is not on record to support his version. Similarly, place of arrest of accused is also not mentioned from card of arrest or any other official document. He further admitted that Pw Sher Muhammad was not in his company during *gasht*. He neither drafted any *Murasila* concerning alleged incident, nor signed any recovery memo for alleged seized items. Based on this statement, it can be safely inferred that accused was never arrested from the spot. Had it been so, this witness would have prepared

relevant document on the spot, completed recovery proceedings coupled with association of independent witnesses. Moreso, Mst. Zeenat Bibi, wife of the appellant, never mentioned the arrival of the SHO at the scene, in her statement recorded under Section 164, Cr.P.C.

10. Muhammad Asghar SI (Pw.7) conducted investigation in the present case and during visit of the spot, he prepared site plan on the pointation of Mst. Zeenat Bibi, wife of the appellant. He explained the proceedings conducted by him during the course of his investigation. During cross-examination, he admitted that he had not inquired or confirmed how, by whom, or through what means accused was brought to the Police Station. He stated that he only took into possession the blood from the spot. He admitted that he did not obtain any documentary proof from Excise Department in respect of ownership of the motorcycle in question. He also failed to record statements from local residents regarding arrest of the accused. Similarly, he did not record statement of any person who allegedly gave shelter to Mst. Zeenat Bibi. He admitted that Mst. Zeenat Bibi was not handed over to him for investigation at the spot. He was unaware about the time when he prepared recovery memos. He admitted that he had not sealed the alleged mobile in

parcels. He admitted that according to CDR data, there was no contact between mobile number of the deceased and the accused on the day of occurrence. Similarly, he had not annexed any CDR data in respect of telephonic contact between the deceased and Mst. Zeenat Bibi, to corroborate complainant's version. He also admitted that he did not record the statement of any eyewitness accounts of presence of accused and victim being together on the day of incident. From this deposition, it is clear that the mode and manner of the occurrence remained shrouded in mystery.

11. Since Mst. Zeenat Bibi, who allegedly witnessed the occurrence, was not produced as prosecution witness during trial, being won-over, hence, without undergoing the test of cross-examination, no credence could be given to her statement recorded under Section 164, Cr.P.C. This flaw in the case has seriously undermined the prosecution case.

12. The prosecution also relies on confessional statement of the appellant, recorded by Ms. Fareena Mehreen, Judicial Magistrate (Pw-5). Accordingly, her statement must be evaluated touchstone of the settled principles to ensure justice. On 18.7.2018 at about 01:00/01:05 p.m, the appellant was produced before Pw-5 by the local police for recording his statement under section 164/364, Cr.P.C. She introduced herself to

the accused and informed him of the relevant law. After questioning according to the designated questionnaire and recording his responses, he was allowed time for reflection. The process of recording the confessional statement was completed in 30 minutes. Thereafter, the accused was handed-over to Naib Court to be sent to the judicial lockup. She issued a certificate and testified the procedure and observation of the formalities. On same day, Pw-5 also recorded the statement of Mst. Zeenat Bibi, under Section 164, Cr.P.C. During cross-examination, she confirmed that she did not inquire whether any family members of the accused were in police custody. She also claimed to have handed the accused over to Naib Qasid, contradicting her earlier testimony that he was handed over to Naib Court. She admitted that in those days the work of Police Station Paharpur was not assigned to her. Though request was made for re-examination for clarification, however, same was turned down with the observation that they may produce duty roaster of learned Judicial Magistrate during the course of arguments.

Regarding time of pondering over by the accused, in Taj Wali Shah¹ case, it was held that:

“The words “he was summoned to the Court after thirty (3) minutes” appear very alarming because it strongly suggest that when accused Taj Wali Shah was

¹ Taj Wali Shah v. The State (2014 P.Cr.L.J. 323 [Peshawar])

first produced, he was given thirty (30) minutes to ponder over the matter and was given back to the police, taken out of the Court room otherwise, summoning again the accused to the Court was never required, if in case he was kept there for thirty (30) minutes inside the Court, providing him friendly atmosphere to regain courage and to shed out all fears from his mind, the police had infused in his mind, but it is very strange rather shocking that after remaining six (6) days in police custody, he was given only thirty (30) minutes time and that too, as it appears from the certificate, he was sent out of the Court and was re-summoned again on expiry of thirty (30) minutes time. This is no way of recording confession of an accused in a murder case because once accused in a murder case is entrusted to the custody of Magistrate, the Magistrate is required to clear his Court Room from all the police officials/officers in uniform or in plain clothes and the accused be provided chair and dice, also disclosing to him that he was in the safe and secure hands of the Magistrate and shall not entertain any fear of the police also infusing into him courage and confidence and providing assurance that in case he did not make a confession, he would not be handed over back to the police. Simply filling of printed pro forma or dictating such important matters to the KPO is not a faithful obligation under the law because the Magistrate has shown highly irresponsible attitude while dealing with such sensitive matter and has violated the clear instructions of the High Court, contained in the High Court Rules”.

In respect of return of accused to police custody after recording his confession, wisdom is derived from Muhammad Pervez² case, wherein it was held that:-

“Accused, after recording of confessional statement were handed back to police, such type of confession was irrelevant. Accused remained in police custody before and after recording confession for

² Muhammad Pervez and others v. The State and others (2007 SCMR 670)

24 hours and Magistrate had taken only one hour to record confession of the accused, such type of confession would not fall in the category of voluntary confession”.

Moreover, record also tells that Mst. Zeenat, wife of convict/appellant was produced before the same Court for recording her statement under section 164, Cr.P.C, hence, in this scenario, the confession of the accused does not appear to be recorded without any fear or pressure.

13. The evidentiary value of this confession can be viewed from other angle. Since the said confession was retracted, therefore, the same would require further corroboration from the record qualifying to be a valid ground for conviction. In Nadir Hussain³ case, it was held that:-

“Retracted confession should not be acted upon unless corroborated in material particulars”.

Similarly, in Obaidullah⁴ case, the apex Court has held that:-

“It is true that the conviction and sentence of an accused can be maintained on the basis of a retracted judicial confession provided the said evidence appears to be trustworthy and the same is corroborated by some independent evidence. However, if the retracted judicial confession of an accused is not corroborated by any independent evidence or the same has been recorded in violation of the law on the subject then conviction and sentence of an accused cannot be sustained on the

³ Nadir Hussain v. The Crown (1969 SCMR 442)

⁴ Obaidullah and 2 others v. The State and others (2025 SCMR 1558)

basis of said confession. Reference in this context may be made to the cases of Aala Muhammad v. The State (2008 SCMR 649), Muhammad Shafi v. Muhammad Raza (2008 SCMR 329), Muhammad Ismail v. The State (2017 SCMR 898) and Daniel Boyd v. The State (1992 SCMR 196).

Likewise, in Imtiaz Naeem⁵ case, it has been held that:

“A retracted confession, especially when it stands as the sole basis for conviction, raises significant legal, ethical and practical concerns. When coupled with the dismissal of oral evidence furnished by the complainant, relying on a retracted confession to secure a conviction becomes even more precarious”.

14. Based on *ibid* dicta and after thorough examination of record, we did not find an iota of corroborative evidence with regard to the alleged confession of the appellant, hence, the same could not be relied upon for sustaining conviction on a capital charge.

15. So far as recovery of knife/‘*Churri*’ from possession of the appellant is concerned, we have already disbelieved the testimony of Muhammad Imran Khan SHO (PW-6), who allegedly recovered the knife from possession of the appellant at the time of his arrest. Even otherwise, the recovery memo, Ex. Pw 3/1 reveals recovery of blood-stained ‘*Churri*’ (an article for house use), however, as per FSL report Ex-PZ, no blood was detected thereupon. In addition a specific dagger—has

⁵ Imtiaz Naeem v. The State (2025 SCMR 744)

been mentioned by the complainant but later, recovery of ordinary kitchen knife with broke tip has been reflected in recovery memo Ex.Pw-3/1 as well as FSL report Ex-PZ. In such view of the matter, this piece of evidence is also excluded from consideration.

16. There is no doubt that the fundamental principle of justice always emphasized on the highest quality of evidence, convincing and sufficient to dispel any apprehension of the Court regarding the guilt of the accused. The law clearly states that even a single reasonable doubt is enough to acquit an accused. Ref: *Riaz Masih alias Mithoo*⁶. In a recent pronouncement, reported in *Ahmad Ali*⁷ case, the apex Court has held that:-

“Even otherwise, it is well settled that for the purposes of extending the benefit of doubt to an accused, it is not necessary that there be multiple infirmities in the prosecution case or several circumstances creating doubt. A single or slightest doubt, if found reasonable, in the prosecution case would be sufficient to entitle the accused to its benefit, not as a matter of grace and concession but as a matter of right”.

17. For the aforesaid reasons, we have come to an irresistible conclusion that the prosecution has failed to prove its case beyond reasonable shadow of doubt, benefit of which, as stated above, is to be extended to

⁶ Riaz Masih alias Mithoo Vs. State” (NLR 1995 Cr.SC 694)

⁷ Ahmad Ali and another Vs. The State” (2023 SCMR 781)

the appellant as matter of right and not as a matter of grace.

18. Above in view, the instant criminal appeal is allowed. The impugned judgment and order dated 03.09.2024 is set-aside. Resultantly, the appellant is acquitted of the charges levelled against him. He is directed to be released forthwith, if not required to be detained in connection with any other case. Since we have set aside the impugned conviction awarded to the appellant, hence, the connected revision petition, bearing Cr.R.No.10-D/2024, titled '*Hidayat Ullah v. Qaisar Abbas etc*' has become infructuous, which stands dismissed accordingly.

19. Above are the reasons for our short order of even date.

Announced.
26.11.2025.

-Sd/-
JUDGE

-Sd/-
JUDGE

(D.B)
Hon'ble Justice Farah Jamshed
Hon'ble Justice Inam Ullah Khan