

**JUDGMENT SHEET**  
**PESHAWAR HIGH COURT, PESHAWAR**  
**(JUDICIAL DEPARTMENT)**

**Cr.A. No. 1077-P/2018**

**Aisha vs. The State and another.**

**J U D G M E N T.**

**Date of hearing: 16.02.2021. Announced on 03.05.2021**

**Petitioner (s): By Mr. Shabbir Hussain Gigyani, Advocate.**

**Respondent (s): By Ms. Shameen Chaudhry & Mr. Shahab Khattak, Advocates.**

**SYED ARSHAD ALI, J:-** The appellant, Mst. Aisha, the widow of deceased Naik Akhtar, along with three other accused (acquitted during trial on the basis of compromise) were placed on their trial in the Court of learned Additional Sessions Judge-XI, Peshawar. During the proceedings, a compromise was affected between the complainant party and the acquitted accused and on the basis of the said compromise they were acquitted of the charges, whereas the appellant faced the trial and on conclusion of the trial, she was convicted under Sections 302(b)/109 PPC and sentenced to life imprisonment with direction to pay Rs. 100,000/- as compensation to the legal heirs of deceased Naik Akhtar or in default to suffer further six (06) months S.I. Benefit of Section 382-B Cr.P.C. was also extended to the appellant.

2. Brief but essential facts of the case are that on 20.11.2014 at 1910 hours the appellant Mst. Aisha Bibi who is also the complainant of the case FIR, in the casualty of LRH, Peshawar had reported the matter to the local police that on

the day of occurrence, she along with her husband and three sons were travelling in Rickshaw for attending the marriage ceremony of Jehangir (PW-10); when they reached the place of occurrence, she felt serious pain in her abdomen and in order to ease herself in the nearby fields; she boarded from the Rickshaw, in the meanwhile, two persons riding on a motorcycle made firing at her husband, as a result of which, he sustained serious fire-arm injuries and while taking him to the hospital, he succumbed to the injuries. In the F.I.R. she charged unknown accused for the commission of offence. The Murasila (Ex.PW.5/1) was drafted by Imtiaz Khan (PW-05) and the investigation was entrusted to Hamd Ullah SI (PW-13). Investigation officer visited the spot, prepared the site plan Ex.PW.13/1 and from the spot recovered eight empties of 30 bore pistol vide recovery memo Ex.PW.4/2 etc. The said eight empties were sent to the Forensic Science Laboratory ("*FSL*") and according to the report of FSL Ex.PZ/1 all the eight empties were fired from one and the same 30 bore weapon.

3. On 10.12.2014 PW Arshad Khan and Sajawal Khan, both brothers of deceased Naik Akhtar, had recorded their statements under Section 164 Cr.P.C. before the Judicial Magistrate, wherein they had charged Saalim Khan son of Amroz Khan (the alleged paramour of the present appellant), Inayatullah (brother of the appellant), Babar Ali (brother-in-law of the appellant) and appellant for the murder of the

deceased. The motive was stated as alleged illicit relation between the appellant and Saalim Khan. On the same day, accused Saalim Khan was arrested vide card of arrest Ex.PW.13/3 and on his alleged pointation 30 bore pistol was recovered vide recovery memo Ex.PW.4/3. On 16.12.2014 the said pistol was also sent to the FSL and according to the FSL report Ex PZ, the eight empties already recovered were fired from the same pistol recovered from Saalim Khan having No. AA6749.

4. On the request of the local police, on 11.12.2014, the custody of Mst. Aisha Bibi, who at the relevant time was residing in Risalpur Cantt was handed over by Air Force official, namely, Farid to the Investigation Officer and on the following day, she was produced before the Judicial Magistrate-III, Peshawar, wherein she confessed her guilt in the following words:-

ملزمہ مسماۃ عائشہ بیوہ مقتول نیک اختر دختر جہانگیر خان عمر 30 سال ساکن ناسپہ پایان حال کوارٹر PAF میں اکیڈمی رسالپور شناختی کارڈ نمبر 6-3859687-17201 نے بیان کیا کہ میری شادی مقتول نیک اختر سے قریباً 13 سال قبل ہو چکی تھی اور 3 بچے ہیں خاوند ام PAF میں ملازم تھا اور رسالپور اکیڈمی میں ایک کوارٹر میں رہا کس پذیر تھے سال 2010 میں رشتہ دار ساط خان ولد امر و زسکتہ پیر قلعہ کے ساتھ تعلقات تمام ہو کر ہم ایک دوسرے کو پسند کرتے تھے اور موبائل پر رابطہ کرتے تھے اور چوری چھپے ملاقاتیں ہوتی تھی ساط خان میرے ساتھ شادی کا خواہش مند تھا چونکہ میں شادی شدہ تھی تو اس وجہ سے ہم دونوں نے خاوند ام کو ہٹانے کا پروگرام بنایا آخر کار مورخہ 20.11.2014 کو رشتہ دار دیہہ تمل باز میں شادی کے سلسلے میں آ رہے تھے تو میں نے ساط خان کو بتلایا جب ہم شاہ عالم پل پہنچے تو ساط خان ہمارے پیچھے پیچھے موٹر سائیکل پر آ رہا تھا جب اراضیات تمل باز کو روک دینے تو میں نے پیٹ میں دردکا اور پیشاب کا بہا نہ بنا کر رشتہ سے اترے اور پیشاب کے بہانے قدرے فاصلے پر بیٹھ گئی تو اس دوران ساط خان نے میرے شوہر نیک اختر پر فائرنگ کر کے موقع پر قتل کیا سال نے میرے صلاح و مشورے کے ساتھ میرے ساتھ شادی کرنے کی وجہ سے مقتول نیک اختر کو قتل کیا ہے بس یہی میرا بیان ہے۔

5. Challan against all the four accused was submitted before the learned Additional Sessions Judge-I, Peshawar and accordingly charge was framed against all of them to which they pleaded not guilty and claimed trial.

6. During trial, through an FIR No. 221 dated 28.07.2015, Abid Khan the brother of acquitted accused Saalim Khan had charged the complainant Sajawal Khan, Arshad and others for the murder of his brother Abdul Khaliq. Probably in this background, a compromise was effected between the mother of the deceased Naik Akhtar and Saalim Khan according to the said compromise 05 kanal land was transferred in the name of three minor sons of the deceased. The learned trial Court while accepting the compromise, through order dated 28.05.2016 had acquitted accused Saalim Khan from the charges. Similarly, the other two co-accused, namely, Babar Ali (brother-in-law of the appellant) and Inayatullah (brother of the appellant), were also acquitted pursuant to the statement recorded by Hussan Zari (mother of the deceased), Sajawal Khan & Arshad Khan (brothers of the deceased) whereby they have given a concession in respect of involvement of Babar Ali & Inayatullah and on the basis of their statement, they were also acquitted from the charges by the learned trial Court vide order dated 04.06.2016.

7. At the trial, the material witnesses were Shah Zab (PW-07) the son of the appellant and an eye witness to the occurrence. In his statement, he has narrated the story by referring the fact that on the eventful day they were attending the marriage ceremony of Jehangir, he along with his deceased father and mother Mst Aisha and two brothers, when reached the place of occurrence, two persons, while riding on motorcycle, came to the spot and at the relevant time, his mother had made the pretext of easing herself in the nearby fields at the time of occurrence, the accused opened fire at his father due to which his father sustained injuries and died on the spot, however, he did not hold his mother responsible for the murder of his father.

Dr. Obaidullah, who had examined the dead body, appeared as PW-08. Arshad Khan the complainant appeared before the trial Court as PW-09 whereas Jehangir, whose marriage, the appellant and his family were attending, had appeared as PW-10. He had confirmed the holding of marriage ceremony on the eventful day and the death of the deceased. Muhammad Irfan Civil Judge-cum-Judicial Magistrate, who had recorded the confessional statement of the appellant appeared as PW-11 whereas the Investigation Officer has appeared as PW-13. The appellant in her statement recorded under Section 342 Cr.P.C. does not dispute lodging of F.I.R by herself, however, has refuted to have confessed her guilt before the Judicial Magistrate.

8. The learned trial Court, while relying upon the confessional statement of the appellant, has sentenced her for abetting the offence.

9. The learned counsel appearing on behalf of the appellant has argued that when the principal accused was acquitted, though on the basis of compromise then under the law; the alleged abettor cannot be convicted and secondly the confessional statement of the accused is neither true nor voluntary nor is supported by any circumstantial evidence.

10. Keeping in view the above, the essential questions for adjudication before this Court in this appeal are that:-

*(i) when before the conclusion of the trial establishing the guilt of the principal accused, the principal accused was acquitted of the charges on the basis of compromise then in such circumstances whether the present appellant, who is only charged for abetment can be independently convicted;*

*(ii) whether the confession recorded by the appellant is true and voluntary and thus is sufficient to bring home charge against the appellant for abetting the offence; if the first question is in affirmative.*

11. While embarking upon the first issue, we deem it appropriate to reproduce the relevant provision of law dealing with abetment. Chapter-V of the Pakistan Penal Code, 1860 (“PPC”) deals with abetment. Relevant provisions are reproduced as under:-

**“107. Abetment of a thing.-** A person abets the doing of a thing, who

*First: Instigates any person to do that thing; or*

*Secondly. Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or*

*Thirdly. Intentionally aids, by any act or illegal omission, the doing of that thing.*

**Explanation 1.** A person who, by wilful misrepresentation, or by wilful concealment of a material fact which he is bound to disclose, voluntarily causes or procures, or attempts to cause or procure, a thing to be done, is said to instigate the doing of that thing.

**Explanation 2.** Whoever, either prior to or at the time of the commission of an act, does anything in order to facilitate the commission of that act, and thereby facilitates the commission thereof, is said to aid the doing of that act.

**108. Abettor.-** A person abets an offence, who abets either the commission of an offence, or the commission of an act which would be an offence, if committed by a person capable by law of committing an offence with the same intention or knowledge as that of abettor.

**Explanation 1.** The abetment of the illegal omission of an act may amount to an offence although the abettor may not himself be bound to do that act.

**Explanation 2.** To constitute the offence of abetment it is not necessary that the act abetted should be committed, or that the effect requisite to constitute the offence should be caused.

**Explanation 3.** It is necessary that the person abetted should be capable by law of committing an offence, or that he should have the same guilty intention or knowledge as that of the abettor, or any guilty intention or knowledge.

**Explanation 4.** The abetment of an offence being an offence the abetment of such an abetment is also an offence.

**Explanation 5.** It is not necessary to the commission of the offences of abetment by conspiracy that the abettor should concert the offence with the person who commits it. It is sufficient if he engages in the conspiracy in pursuance of which the offence is committed.

**109. Punishment of abetment if the act abetted is committed in consequence and where no express provision is made for its punishment. –** Whoever

*abets any offence shall, if the act abetted is committed in consequence of the abetment, and no express provision is made by this Code, for the punishment of such abetment, be punished with the punishment provided for the offence.*

*Provided, that except in case of Ikrah-i-Tam, the abettor of an offence referred to in Chapter XVI shall be liable to punishment of ta'zir specified for such offence including death.*

**Explanation.** *An act or offence is said to be committed in consequence of abetment, when it is committed in consequence of the instigation, or in pursuance of the conspiracy, or with the aid which constitutes the abetment.*

**114. Abettor present when offence is committed.** – *Whenever any person, who if absent would be liable to be punished as an abettor, is present when the act or offence for which he would be punishable in consequence of the abetment is committed, he shall be deemed to have committed such act or offence.*

**115. Abetment of offence punishable with death or imprisonment for life if offence not committed—***Whoever abets the commission of an offence punishable with death or imprisonment for life, shall, if that offence be not committed in consequence of the abetment and no express provision is made by this Code for the punishment of such abetment be punished with imprisonment of either description for a term which may extend to seven years and shall also be liable to fine.*

**if act causing harm be done in consequence.-***and if any act for which the abettor is liable in consequence of the abetment, and which causes hurt to any person, is done, the abettor shall be liable to imprisonment of either description for a term which may extend to fourteen years, and shall also be liable to fine.*

**116. Abetment of offence punishable with imprisonment-If offence be not committed.-***Whoever abets an offence punishable with imprisonment shall, if that offence be not committed in consequence of the abetment, and no express provisions is made by the Code for the punishment of such abetment, be punished with imprisonment of any description provided for that offence for a term which may extend to one-fourth part of the longest term provided for the offence; or with such fine as is provided for that offence, or with both.*

**If abettor or person abetted be a public servant whose duty it is to prevent offence.** – *and if abettor or person abetted be a public servant whose duty it is to prevent the commission of such offence, the abettor shall be punished with imprisonment of any description provided for that offence, for a term which may extend to one-half of the longest term*



*provided for that offence, or with such fine as is provided for the offence, or with both”.*

12. The close perusal of the scheme of law for abetment would show that the offence of abetment; if established through confidence inspiring evidence; becomes an independent offence of the offence which is committed in consequence of the abetment, however, the punishment for abetment cannot be greater than the main offence which is committed in consequence of such abetment. Section 114 PPC further clarifies the case that when the abettor himself is present at the time of commission of offence for which he would be punishable in consequence of abetment is committed, he shall be deemed to have committed such act or offence. Even if the act/offence abetted is not committed and only a harm is done in consequence of the abetment by the principal accused, the said abetment is also punishable under Section 115 of the PPC, thus, the scheme of law is very clear that the offence of abetment is a distinct offence of the crime abetted and where the principal offender is acquitted for any reason; it will not lead to any inference that the abettor, if on available evidence is found to be involved in the abetment of the offence and the offence has been committed, the abettor shall still be held liable for conviction under Section 109 PPC irrespective of the acquittal of the principal accused. In this regard, reliance is placed on the case of **Fateh Muhammad vs. The State** (PLD 1961 (W.P.) Lahore 212, **Shama alias**

**Jinnat Ali vs. The State (PLD 1966 Dacca 269) and Sohna vs. The State (1968 PCr.LJ 50).**

13. Moving on to the next question. Admittedly, the occurrence has taken place on the spot and in the manner and mode as narrated in the First Information Report (“**FIR**”). The medical report and the site plan also support the manner and mode of the offence. The present appellant in her statement under Section 342 Cr.P.C. admits that it was her who had lodged the report and thus admits her presence on the scene of occurrence. However, the lynchpin of the prosecution case against the present appellant is the prompt confessional statement of the present appellant which was later retracted by her. It is by now trite law that a confession recorded by an accused can validly form the basis of his/her conviction; if the Court is satisfied and believes that it was true, voluntary, was not obtained by torture, coercion or inducement and coherent with the facts and circumstances of the case. Even if such a confession is, later, retracted, it will not lose its evidentiary value; if the same qualify the aforesaid criteria. The Apex Court in the case of **Mst. Joygun Bibi vs. The State (PLD 1960 SC (Pak) 313)** has dealt the matter of retracted confession in the following words:-

*“We are unable to support the proposition of law laid down by the learned Judges in this regard. The retraction of a confession is a circumstance which has no bearing whatsoever upon the question whether in the first instance it was voluntarily made, and on the further question whether it is true. The fact that the maker of the confessional later does not adhere to it cannot by itself have any effect upon the*

*findings reached as to whether the confession was voluntary, and if so, whether it was true, for to withdraw from a self-accusing statement in direct face of the consequences of the accusation, is explicable fully by the proximity of those consequences and need have no connection whatsoever with either its voluntary nature, or the truth of the facts stated. The learned Judges were perfectly right in first affirmative, in declaring that the confession by itself was sufficient, taken with the other facts and circumstances to support Abdul Majid's conviction. The retraction of the confession was wholly immaterial once it was found that it was voluntary as well as true".*

Similarly, in the case of **The State vs. Minhun alias Gul Hassan** (PLD 1964 SC 813), the Apex Court dealing with the matter of retracted confession has observed:-

*"As for the confessions the High Court, it appears, was duly conscious of the fact that retracted confession, whether judicial or extra judicial, could legally be taken into consideration against the maker of those confessions himself, and if the confessions were found to be true and voluntary, then there was no need at all to look for further corroboration. It is well-settled that as against the maker himself his confession, judicial or extra judicial, whether retracted or not retracted, can in law validly form the sole basis of his conviction, if the Court is satisfied and believes that it was true and voluntary and was not obtained by torture or coercion or inducement".*

Similar view was also affirmed in the cases of **Muhammad Gul and others vs. The State** (1991 SCMR 942), **Raza Mohsin Qazilbash and others vs. Muhammad Usman Malik and another** (1999 SCMR 1794), **Muhammad Amin vs. The State** (PLD 2006 Supreme Court 219).

14. In the present case, it is abundantly clear from the record that prior to her arrest on 11.12.2014, the appellant never remained in police custody and her custody was handed over to police by the Air Force official, namely, Farid as

evident from her card of arrest because at the relevant time since her husband was ex-employee of Air Force and she was residing at Risalpur Cantt. On the following day, the appellant was produced before the Judicial Magistrate at 1100 am, she was given three hours to ponder and thereafter at 02.00 p.m. her confessional statement was recorded. Muhammad Irfan, the Civil Judge-cum-Judicial Magistrate, in support of recording the confessional statement of the appellant, has appeared as PW-11. He was cross-examined at length, however, the said cross-examination does not give any impression that the confession recorded by the appellant was involuntary or recorded in her absence she claimed in her statement recorded under Section 342 Cr.P.C. Although it was a Friday when the confessional statement of the appellant was recorded at 02.00 p.m. after the close of working hours, however, it is evident from the statement of the Judicial Magistrate on the record that the appellant was produced before him at 11.00 a.m. and since the Magistrate had to give time to the appellant to ponder on recording her confessional statement and thus, Judicial Magistrate could not adjourn the case after the closing hours and he had to complete the process of recording the confessional statement of the appellant on the same day.

The tone and tenor of her confessional statement find its support from the contents of the F.I.R. wherein the manner and mode of offence was explained. To find further

coherence from the facts and circumstances of the case it is evident that the principal accused Saalim Khan was arrested on 10.12.2014 and on his pointation 30 bore pistol bearing No. A6749 was recovered vide recovery memo Ex.PW.4/3 dated 12.12.2014. The said pistol was sent to the FSL along with eight empties recovered from the spot, according to which, the opinion of the FSL was already available to have been fired from one pistol, the subsequent FSL report Ex.PZ shows that the empties recovered from the spot were fired from the same pistol, which was recovered on the pointation of principal accused Saalim Khan.

15. The medical evidence in form of post-mortem report Ex.PW.8/1 shows that there were five fire-arm entry wounds on the body of deceased and four exit wounds along with the recovery of one spent bullet from inside the deceased body during the post mortem examination suggesting that the deceased was fired from a close range through means of fire-arm. The purpose of travelling which the appellant had disclosed in her F.I.R. and the mode of occurrence which is in line with her confessional statement has also been established on record as evident from the statements of Shah Zeb (PW-07) the son of the appellant/eye witness to the occurrence and Jehangir (PW-10) the maternal cousin of the deceased, who had confirmed that on the eventful day it was his wedding and the deceased along with the appellant were invited for the same. On hearing incident, he rushed at the place of

occurrence and also helped taking the dead body to the hospital.

16. In view of the above, it is established on record that the appellant had promptly confessed her guilt before the Judicial Magistrate which wrings true besides being voluntary and find coherence from the circumstantial evidence, therefore, was rightly admitted by the trial Court in evidence and based her conviction on the said retracted confessional statement. Thus, we have reached at the conclusion that the case against the present appellant for abetting the murder of her husband was duly established by the prosecution and the findings in this regard are not open to any exception.

17. Resultantly, this appeal fails, which is accordingly dismissed.

**ANNOUNCED.**  
**03.05.2021**

**Judge**

**Judge**

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