

**JUDGMENT SHEET**  
**IN THE LAHORE HIGH COURT**  
**MULTAN BENCH MULTAN**  
**JUDICIAL DEPARTMENT**

*Criminal Appeal No. 13-J of 2014*  
(Mohib Ali vs. The State)

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

**Date of Hearing:** 01.11.2021  
**Appellant by:** Mr. Abdul Samad Ali and Mr. Muhammad Ilyas Jamil Advocates  
**State by:** Mr. Muhammad Laeeq-ur-Rehman Khan ADPP  
**Complainant:** Nemo

Mohib Ali (*appellant*) had faced trial in case FIR No. 437 (*PA/I*) recorded on 01.12.2010 under Sections 302/34 PPC at police station Sadar District Rajanpur on the complaint of Habib-ur-Rehman (*Pw-6*) for the allegations of commission of rape and *Qatal-e-Amad*<sup>1</sup> of Javeria (*aged 7/8 years*). During investigation Section 376-A PPC was also added. On conclusion of trial vide judgment dated 28.11.2013 passed by the learned Additional Sessions Judge Rajanpur, he was convicted and sentenced as under: -

- (i) **Under Section 302(b) PPC** imprisonment for life and to pay Rs.100000/- (one lac) as compensation to the legal heirs of deceased in terms of Section 544-A Cr.P.C. In default of payment of compensation he was ordered to further undergo six months SI.
- (ii) **Under Section 364-A PPC** imprisonment for life.
- (iii) **Under Section 376 (i) PPC** imprisonment for life and fine of Rs.50000/- (fifty thousand). In default of payment of fine, he was ordered to further undergo 6 months SI.

2. All the sentences were ordered to run concurrently. Benefit of Section 382-(B) Cr.P.C<sup>2</sup> was also extended to

---

<sup>1</sup> Murder

<sup>2</sup> The period served in jail before conviction

appellant. It is important to mention here that as appellant was Juvenile<sup>3</sup> so trial was conducted by the learned Sessions Judge as Juvenile Court whereas his co-accused Qasim Ali was tried by the same court in its ordinary jurisdiction. It will not be out of context to refer here that Qasim Ali was acquitted from the case.

3. Facts of the case are that on 01.12.2010 Muhammad Sharif Sub Inspector (*Pw-9*) on receipt of information of this occurrence arrived in the area of *Asni* where Habib-ur-Rehman (*Pw-6*) made a statement (*PA*). He maintained that Javeria aged about 7/8 years was her daughter; on 30.11.2010, when in the evening he returned to his house his daughter was missing; search was started and announcement was also made from the loudspeakers of the mosque but of no consequence; on the second day (*01.12.2010*) at about 07:30 am he along with Abdul Qadir (*Pw-7*) Bilal (*not produced*) and others during search, when arrived at the graveyard, they found the dead body of Javeria; there was strangulation around her neck with her *Shalwar*<sup>4</sup> and also blood on her private part of the body.

4. After endorsement, Muhammad Sharif SI sent the complaint to police station on the basis of which FIR (*PA/I*) was recorded by Zafar Hussain SI (*Pw-I*).

5. Appellant was arrested on 17.01.2011. During investigation, according to prosecution, appellant made a confession before Mr. Irfan Ahmad learned Magistrate (*Pw-11*). In the process of investigation also Abdul Qadir (*Pw-7*) and Bilal claimed that in the evening of 30.11.2010 they had seen the appellant and his co-accused Qasim Ali where Javeria was also present and they were giving a fruit (*guava*) to her. On the basis of said material the report under Section 173 Cr.P.C (*Challan*) was submitted in Court.

---

<sup>3</sup> A person who at the time of commission of an offence has not attained the age of eighteen years (Section 2{B} of Juvenile Justice System Ordinance, 2000) {since repealed under Section 25 of the Juvenile Justice System Act, XXII of 2018}.

<sup>4</sup> A pair of light loose trousers with a tight fit around the ankle worn by women

6. A charge under Sections 302/364-A/376(ii)/34 PPC was framed against appellant which he pleaded not guilty and demanded his trial.

7. In support of its case prosecution had produced Zafar Hussain SI/author of FIR (**Pw-1**), Dr. Muhammad Rizwan (**Pw-2**), Asghar Ali/draftsman (**Pw-3**), Khalil Ahmad HC/Moharrar (**Pw-4**), Khalid Hussain/Constable (**Pw-5**), Habib-ur-Rehman/complainant (**Pw-6**), Abdul Qadir (**Pw-7**), Ghulam Akbar/Constable (**Pw-8**), Muhammad Sharif SI/IO (**Pw-9**), Lady Doctor Mah Jabeen (**Pw-10**) and Mr. Irfan Ahmad Magistrate (**Pw-11**).

8. Bilal Hasani being unnecessary was given up by the learned Assistant District Public Prosecutor, who after producing the report of Chemical Examiner (**PM**) had closed the prosecution's evidence.

9. In his examination made under Section 342 Cr.P.C, version of appellant was as under: -

*“It is an unseen occurrence. No PW had seen the occurrence. PWs are related inter se so they are interested witnesses and they have deposed against me falsely only to strengthen the prosecution case. My maternal uncle (Mamoo) Sarwar is brother-in-law of complainant. I am an orphan and only the bread winner of my family including three sisters. Master Faiz, father of prosecution witness Bilal Hasani had demanded the hand of my sister for his son prior to the occurrence but I had refused to give the same, so they had grudge against me and falsely involved me in this unseen occurrence”*

10. Appellant opted not to produce defence evidence or to appear in terms of Section 340(2) Cr.P.C.

11. Both learned counsel for appellant jointly contend that it is a case of circumstantial evidence based on weak testimony of Abdul Qadir (**Pw-7**) therefore, conviction of appellant cannot sustain. They further add that so-called confession of appellant is suffering from serious infirmities

and illegalities which under no circumstance can be a base for conviction of appellant.

**12.** On the other hand, learned ADPP in an emotional manner maintains that a girl of 7/8 years of age was not only committed to rape but murdered without any sin, so the appellant deserves no leniency; there was no enmity whatsoever of the private witnesses with the appellant, hence question of false involvement does not arise; Abdul Qadir (*Pw-7*) who had seen the appellant and his co-accused with the deceased on 30.11.2010 in the evening is a credible witness and his testimony cannot be thrown out of consideration; prosecution on the strength of qualitative evidence was succeeded to prove its case beyond reasonable doubt who has been rightly convicted by the learned trial court. Learned ADPP finally maintains that the learned trial court by not awarding normal penalty of death has already taken a lenient view in favor of appellant.

**13. HEARD.**

**14.** I am conscious of the fact that the nature of crime is serious and heinous in nature as a girl of 7/8 years was not only committed to rape but done to death by strangulation. But on this reason alone an offender cannot be sent to gallows. Under all circumstances the basic principles cannot be compromised that this is the duty of prosecution to prove its case beyond reasonable doubt; the evidence produced by prosecution must be credible and reliable having the ring of truth; case cannot be decided on the basis of surmises and conjectures; weak and infirm evidence must lose its worth particular when it is a case of capital charge and that the maxim "*Justitia nemini neganda est*" (Justice is to be denied to nobody) is the basic consideration while deciding a case.

**15.** It also reminds me an article<sup>5</sup> 'HEART VS. HEAD: Do Judges Follow the Law or Follow Their Feelings' by

---

<sup>5</sup> <http://texaslawreview.org/wp-content/uploads/2015/08/Rachlinski-93-4.pdf>

Andrew J. Wistrich, Jeffrey J. Rachlinski and Chris Guthrie (United States of America). This Article explores the question whether feelings about litigants also influence judges' decisions. Some of the important abstracts are as under: -

- i. *United States Circuit Judge Jerome Frank*<sup>6</sup> asserted that “Mr. Prejudice and Miss. Sympathy are the names of witnesses, whose testimony is never recorded, but must nevertheless be reckoned with in trials by jury.
- ii. *Sympathy and empathy in the jury box can be defended as softening the sometimes sharp edges of our legal system. Judges, however, are supposed to make reasoned decisions based on the facts and the law rather than on the basis of sympathy or empathy for litigants.*
- iii. *Judicial oaths require Judges to put their feelings towards litigants aside.*
- iv. *Equating empathy with partiality, Senator Charles Grassley*<sup>7</sup> asserted that “the most critical qualification of a Judge is the capacity to set aside one’s own feelings so that he or she can blindly and dispassionately administer equal justice for all.
- v. *Asked about the proper role of a Judge during her Senate confirmation hearing, United States Supreme Court Justice Sonia Sotomayor*<sup>8</sup> responded “Judges can’t rely on what’s in their heart. . . . It’s not the heart that compels conclusions in cases. It’s the law.”
- vi. *Judge Michael Boggs*<sup>9</sup> testified before the Senate Judiciary Committee “the comforting part about being a Judge is that the law should prevail in each and every case. Sympathy or empathy for the party has no role.”
- vii. *The idea that one set of rules applies to the sympathetic litigant and another set applies to the unsympathetic litigant is not consistent with the rule of law.*
- viii. *An Ohio*<sup>10</sup> *appellate Judge expressed deep sadness for “the tragic loss of life the case presents” but then added that “when I put on*

---

<sup>6</sup> Jerome New Frank (September 10, 1889-January 13, 1957) was an American legal philosopher and author who played a leading role in the legal realism

<sup>7</sup> Charles Ernest Grassley (born September 17, 1933) is an American politician serving as the president pro tempore of the United States Senate, and the senior United States senator from Iowa.

<sup>8</sup> Nominated by Barack Obama on August 8, 2009 as Associate Justice of the Supreme Court of the United States)

<sup>9</sup> Associate Justice of Georgia Supreme Court (January 1, 2017)

<sup>10</sup> A State in the East North Central region of the Midwestern United States. It is the 34th largest by area, the 7<sup>th</sup> most populous, and the 10<sup>th</sup> most densely populated

*the robe as Judge, I must not let my feelings, my emotions . . . influence my review and application of the law. (State v. Cutts, July 22, 2009, Hoffman, J, concurring).*

16. Emotion, sympathy, empathy and kindness are aliens during the dispensation of justice. For a Judge the only principle is to follow is "*Let justice be done though the heavens fall*"<sup>11</sup>. This principle signifies the belief that justice must be realized regardless of consequences.

17. The Honorable Supreme Court of Pakistan in **Naveed Asghar's case**<sup>12</sup> on the question of heinousness of a crime was pleased to hold that: -

*"The ruthless and ghastly murder of five persons is a crime of heinous nature; but the frightful nature of crime should not blur the eyes of justice, allowing emotions triggered by the horrifying nature of the offence to prejudice the accused. Cases are to be decided on the basis of evidence and evidence alone and not on the basis of sentiments and emotions. Gruesome, heinous or brutal nature of the offence may be relevant at the stage of awarding suitable punishment after conviction; but it is totally irrelevant at the stage of appraising or reappraising the evidence available on record to determine guilt of the accused person, as possibility of an innocent person having been wrongly involved in cases of such nature cannot be ruled out. An accused person is presumed to be innocent till the time he is proven guilty beyond reasonable doubt, and this presumption of his innocence continues until the prosecution succeeds in proving the charge against him beyond reasonable doubt on the basis of legally admissible, confidence inspiring, trustworthy and reliable evidence. No matter how heinous the crime, the constitutional guarantee of fair trial under Article 10A cannot be taken away from the accused. It is, therefore, duty of the court to assess the probative value (weight) of every piece of evidence available on record in accordance with the settled principles of appreciation of evidence, in a dispassionate, systematic and*

---

<sup>11</sup> A translation of Latin maxim "Fiat iustitia ruat cælum"

<sup>12</sup> Naveed Asghar & 2 others vs. The State PLD 2021 SC 600

*structured manner without being influenced by the nature of the allegations. Any tendency to strain or stretch or haphazardly appreciate evidence to reach a desired or popular decision in a case must be scrupulously avoided or else highly deleterious results seriously affecting proper administration of criminal justice will follow. It may be pertinent to underline here that the principles of fair trial have now been guaranteed as a Fundamental Right under Article 10-A of the Constitution and are to be read as an integral part of every sub constitutional legislative instrument that deals with determination of civil rights and obligations of, or criminal charge against, any person”*

**18.** On the touchstone of above said principles now I proceed to examine the evidence produced by the prosecution. Statement of Habib-ur-Rehman/complainant (Pw-6) has already been referred in the opening paragraphs of this judgment, where he did not disclose any clue whatsoever about any of the assailants. In the same document/complaint names of Abdul Qadir (Pw-7) and Bilal Hasani were also mentioned who associated the complainant for the search of his daughter.

**19.** In witness box both Habib-ur-Rehman and Abdul Qadir made material improvements in their statements. Habib-ur-Rehman in his examination-in-chief stated as under (relevant lines only): -

*“I also informed Abdul Qadir and Bilal PWs telephonically about missing of my daughter. They came to my house in the evening on the same day. Above named PWs informed me that they had seen the deceased in the company of Mohib and Muhammad Qasim accused present in court who were giving her guava fruit. Then we went to the accused persons and inquired about deceased. They disclosed that they had left deceased near graveyard”*

20. In cross-examination he was duly confronted by defence and it was established that the reproduced lines were result of improvements.

21. Perusal of statement of Abdul Qadir (Pw-7) also makes it clear that he, too, changed his story and by improving maintained as under: -

*“About two years back on 30.11.2010 at about 3:30 pm when I was residing in Qasba Asni, I along with Bilal (PW) were present at a shop in the said village when we saw Mohib Ali and Qasim Ali accused persons present in court taking away Mst. Javairia daughter of the complainant while giving her guava fruit. We returned back home and after about 1½ hours came to Rajanpur. I received telephone call from Habib ur Rehman complainant just before Maghrib prayer time that her daughter Mst. Javairia deceased was missing. Then we returned back to Asni and started search of deceased and got an announcement in the loud speaker of mosque. Then I along with Habib ur Rehman complainant went to Mohib Ali and Qasim Ali accused persons present in Court and inquired about deceased. They disclosed that they had left the deceased near the graveyard”*

22. The question of improvement by a witness came for consideration before the apex Court in Syed Muhammad Shah's<sup>13</sup> case and it was held that: -

*“Secondly, statements of the witnesses in the court in which improvements are made to strengthen the case of the prosecution are not worthy of reliance. It is held in the case of Amir Zaman v. Mehboob and others (1985 SCMR 685) that testimony of witnesses containing material improvements are not believable. Reference can also be made to the cases of Haji Bakhsh v. The State (PLD 1963 Kar. 805), Qaim Din and others v. The State (1971 P Cr. LJ 229) and Fazla and another v. The State (PLD 1960 Lah. 373)”*

---

<sup>13</sup> Syed Saeed Muhammad Shah & another vs. The State 1993 SCMR 550



23. Again on same question in **Sardar Bibi's case**<sup>14</sup> it was held that: -

*“As doctor, while conducting postmortem examination, declared that the deceased persons received bullet injuries hence for the first time during trial, Falak Sher and Sikandar were shown to be armed with 30 bore pistol and Munir being armed with 7mm rifle. This willful and dishonest improvement was made by both the witnesses in order to bring the prosecution case in line with the medical evidence. In the FIR the complainant alleged that fire shot of Falak Sher hit Zafar Iqbal deceased on his chest and the fire shot of Sultan Ahmed accused also hit on the chest of deceased Zafar Iqbal. According to doctor, there was only one fire-arm entry wound on the chest of the deceased Zafar Iqbal. In order to meet this situation, witnesses for the first time, during trial made omission and did not allege that the fire shot of Sultan hit at the chest of Zafar Iqbal, deceased. So the improvements and omissions were made by the witnesses in order to bring the case of prosecution in line with the medical evidence. Such dishonest and deliberate improvement and omission made them unreliable and they are not trustworthy witnesses.”*

24. Same view also finds support from **Muhammad Arif's case**<sup>15</sup>.

25. If Abdul Qadir and Muhammad Bilal Hasani had joined Habib-ur-Rehman on the same day i.e. 30.11.2010, started search and both they told that they had seen the assailants and deceased together, why this important fact was not unveiled by Habib-ur-Rehman when he made the statement (PA) to Muhammad Sharif SI? It is important to refer here that by no stretch of imaginations in his statement, Habib-ur-Rehman maintained that he made any telephone call to Abdul Qadir and Muhammad Bilal and they associated him on 30.11.2010 but what was claimed that

---

<sup>14</sup> Sardar Bibi & another vs. Munir Ahmad & others 2017 SCMR 344

<sup>15</sup> Muhammad Arif vs. The State 2019 SCMR 631

both the witnesses came to him in the morning of 01.12.2010.

**26.** In view of above, the worth, veracity, credibility and reliability of Habib-ur-Rehman and Abdul Qadir are completely smashed.

**27.** The prosecution therefore, is left only with the confession (PM) made by appellant.

**28.** Before I discuss and appreciate the merits of the confession, I will like to refer the relevant provisions of law and principles settled on this subject by the apex Court.

**29.** Section 164 Cr.P.C and the Rules and Orders of the Lahore High Court, Lahore Volume III and Chapter 13 are directly related to recording of a confession. Under Section 164 Cr.P.C: -

- i. Power to record confession lies with a Magistrate of the First Class and any Magistrate of the Second Class specially empowered.*
- ii. It can be recorded in the course of an investigation, or at any time afterwards before the commencement of the trial.*
- iii. It shall be recorded and signed in the manners provided in Section 364 Cr.P.C.*
- iv. The Magistrate is under a statutory duty that before recording any confession he shall explain to the accused that he is not bound to make a confession and if he does so it can be used as evidence against him.*
- v. The Magistrate shall record confession only if he has reason to believe that it is being made voluntarily.*

**30.** Under the High Court Rules and Orders the following questions have been formulated which a Magistrate is bound to put to an accused under all circumstances for the purpose of his satisfaction that the same is being made with free will and consent, without any promise, duress, compulsion, threat, ill treatment or any other extraneous consideration.

**Q. No.1.**

*Do you understand that you are not bound to make a Confession?*

- Q.No.2.** *Do you understand that your statement is being recorded by Magistrate, and that if you make a Confession, it may be used as evidence against you?*
- Q.No.3.** *How long have you been in Police custody?*
- Q.No.4.** *Do you understand that after making a Statement before me you will not be remanded to Police custody but will be sent to the judicial lock up?*
- Q.No.5.** *Understanding these facts are you making a Statement before me voluntarily?*
- Q.No.6.** *What are your reasons for wishing to make a Statement?*

31. It must be noticed that above are the minimum number of questions and there can be no deviation however, if the answers are of such a character as to require a Magistrate to do so, he can put such further questions as may be necessary to enable him to judge whether the accused is acting voluntarily. So the entire exercise is to ensure that what an accused wants to say that is the volunteer voice of his conscious, mind and heart. It must not be ignored also that before a Magistrate proceeds to record the confession, he should arrange so far as is compatible with his safety and that of his staff and with the safe custody of the prisoner; that the latter is left for some time out of the hearing of Police Officer or other persons likely to influence him.

32. A volunteer confession by accused always remained an important consideration for the apex and higher courts of the country. In “Azeem Khan’s case”<sup>16</sup> the principles reinforced by the apex Court are as under: -

- i. Before recording confession and that too in crimes entailing capital punishment, the recording Magistrate had to essentially observe all the mandatory precautions (laid down in the High Court Rules and Orders).*

---

<sup>16</sup> Azeem Khan & others Vs. Mujahid Khan & others 2016-SCMR-274

- ii. *Fundamental logic behind the same was that, all signs of fear uncalculated by the investigating agency in the mind of the accused were to be shed out.*
- iii. *Accused was to be provided full assurance that in case he was not guilty or was not making a confession voluntarily then in that case he would not be handed over back to the police.*
- iv. *Sufficient time for reflection was to be given after the first warning was administered.*
- v. *At the expiry of such time, recording Magistrate had to administer the second warning and the accused shall be assured that now he was in the safe hands.*
- vi. *All police officials whether in uniform or otherwise including Naib court attached to the court must be kept outside the court and beyond the view of the accused.*
- vii. *After observing all these legal requirements if the accused person was willing to confess then all required questions as formulated by the High Court Rules and Orders should be put to him and the answers given, be recorded in the words spoken by him.*
- viii. *Statement of accused should be recorded by the Magistrate with his own hand and in case there was a genuine compelling reason then, a special note was to be given that the same was dictated to a responsible official of the court like Stenographer or Reader and oath shall also be administered to such official that he would correctly type or write the true and correct version.*
- ix. *Accused shall be sent to jail on judicial remand and during this process at no occasion he shall be handed over to any police official/officer whether he was Naib court wearing police uniform, or any other police official/officer because such careless dispensation would considerably diminish the voluntary nature of the confession made by the accused.*

**33.** By applying the law and principles referred above, it is to be appreciated that if the evidence of confession in this case meets the required standards or short of it? First of all it is to be seen that whether appellant was arrested on 17.01.2011 as claimed by Muhammad Sharif SI (Pw-9) or the position was otherwise? Statement of Habib-ur-Rehman/complainant (Pw-6) shows that he had seen the appellant in police custody first time after 4/5 days of the occurrence that means by or before 05.12.2010 appellant was with the Investigating Officer. Even Abdul Qadir (Pw-7) in cross examination categorically replied that appellant was arrested on the day of recovery of dead body.

**34.** In view of above, prosecution itself has confirmed that the appellant was arrested much earlier to 17.01.2011 which means that he remained under illegal confinement since the actual day of his arrest, so on this ground alone the confession has lost its worth.

**35.** For the sake of arguments, if it is presumed that appellant was arrested on 17.01.2011, even then the prosecution has multiple barriers to cross. First time appellant was produced before the learned Magistrate (Mr. Irfan Ahmad) on 18.01.2011 with a request (DB) by the Investigating Officer to record his confession and surprisingly the learned Magistrate passed a unique order which is as under: -

*“The police has requested for recording statement of accused person under Section 164 Cr.P.C. Upon queries of this case it appears that accused person is under some pressure and influence. The request of recording statement under Section 164 Cr.P.C will remain pending and the same would be decided when the accused person would be produced in this Court on the next of hearing”*

**36.** Again, on 22.01.2011, appellant was produced by Muhammad Sharif SI (Pw-9) with similar request (DC)

before the learned Duty Magistrate (Mr. Muhammad Ashraf) and again an astonishing order passed was as follow: -

*“Since, accused is in police custody, therefore, keeping in view this aspect he is directed to engage his counsel to proceed further, in this request of the police for the statement of accused under Section 164 Cr.P.C. At the same time notice to co-accused be issued for four days”*

**37.** Story further goes on, when on 26.01.2011 third time Investigating Officer brought the appellant (**DD**) before the learned duty Magistrate (Mr. Muhammad Ashraf). Even this time better sense did not prevail and following order was passed: -

*“It is fresh request of local police to record the statement of accused person under Section 164 Cr.P.C. It is further noted that on 22.01.2011 Investigating Officer was directed to produce co-accused person before the court, but, he has failed. Keeping in view this aspect he is further directed to arrest co-accused person and produce before the court on 31.01.2011, after that this request shall be entertained”*

**38.** Before reverting to the final day when confession was recorded, I want to observe that the learned Magistrates one after the other committed serious illegalities while passing the orders (*ibid*) on the repeated requests of the Investigating Officer. On the very first day (18.01.2011) when the appellant was produced before the learned Magistrate (Mr. Irfan Ahmad), he was supposed to proceed in the manners as prescribed under Section 164 Cr.P.C read with the relevant Rules and Orders of this Court. After formulating the questions and taking their answers, he could declare that appellant was seeming to be under pressure and in that eventuality he/learned Magistrate was not supposed to return his custody to the Investigating Officer but to send him to Jail and to call him again at an appropriate date according to his own satisfaction so as to find out that still there was or

not any pressure or influence on appellant? In any case even thereafter, appellant had to be sent to Jail and no authority was vested with the learned Magistrate to hand over his custody to the Investigating Officer. Similarly, the learned duty Magistrate could not adjourn the matters by assigning so-called reasons for the arrest of co-accused, issuance of notice to him or asking the appellant to engage an Advocate. If the first learned Magistrate committed illegality, at least second learned Magistrate (Duty) on 22.01.2011 and 26.11.2011 could do the right instead of following the same illegality made by him and the first learned Magistrate.

**39.** Let's forget what was done in past and come to the point that what happened on 31.01.2011, when the confession of appellant (PM) was recorded. It was in complete deviation of the statutory provisions and procedure prescribed earlier and the principles settled by the apex Court. The leaned recording Magistrate (Mr. Irfan Ahmad) committed following illegalities: -

- i. At the time of alleged confession Muhammad Sharif SI was present inside the court.*
- ii. The questions as formulated under the High Court Rules and Orders were not put to appellant.*
- iii. Appellant was not asked that since when he was in police custody.*
- iv. The question that said confession if made can be used against appellant was not asked from him.*
- v. The question that if appellant wanted to make confession voluntarily is also missing.*
- vi. No oath was taken from the Stenographer who under the dictation recorded questions and answers as well as the order with regard to satisfaction of the learned Magistrate.*
- vii. There is no mention that handcuffs of appellant were removed before he was called upon for his confession.*
- viii. Not a single minute was given to appellant to reconcile and to give a*

*second thought before he had to make the confession.*

ix. *The confession was recorded on Oath.*

40. Whatever has been referred above, it takes me to a definite conclusion that the evidence of confession could never be a base for conviction of appellant and the same has been wrongly believed by the learned trial court.

41. It is said that confession evidence is powerful but flawed. Mr. Saul M. Kassin<sup>17</sup> in his research (Confession Evidence Commonsense Myths and Misconceptions)<sup>18</sup> about false confession has shared his experience as under: -

*“Confessions have been proven false in a numbers of ways, for instance, when it turns out that no crime was committed, the real perpetrator is found, or the confessor’s involvement was physically impossible. Whatever the mechanism, although the prevalence rate is unknown, false confessions occur with some degree of regularity. In Europe, 12% of prisoners, 3% to 4% of college students, and 1% to 2% of older university students reported that they have confessed to crimes they did not commit (Gudjonsson, 2003). In North America, police investigators recently estimated that 4.78% of innocent people confess during interrogation (Kassin et al., 2007). Within the recent population of post conviction DNA cases, roughly 25% contained confessions in evidence—a sample that represents the tip of a much larger iceberg (Drizin & Leo, 2004; Gross, Jacoby, Matheson, Montgomery, & Patel, 2005; Scheck, Neufeld, & Dwyer, 2000)”*

42. Mr. Erin Blakemore in Washington Post<sup>19</sup> (June 23, 2019) had reported that according to the National Registry of Exonerations<sup>20</sup>, 27% of people in the registry who were accused of homicide gave false confessions, and 81% of

<sup>17</sup> <https://web.williams.edu/Psychology/Faculty/Kassin/biography/index.html>

<sup>18</sup> [https://web.williams.edu/Psychology/Faculty/Kassin/files/Kassin%20\(2008\)%20CJB%20Confession%20Myths.pdf](https://web.williams.edu/Psychology/Faculty/Kassin/files/Kassin%20(2008)%20CJB%20Confession%20Myths.pdf)

<sup>19</sup> ...[https://www.washingtonpost.com/health/examining-why-false-confessions-occur-in-the-us-criminal-justice-system/2019/06/20/10128bb4-9207-11e9-aadb-74e6b2b46f6a\\_story.html](https://www.washingtonpost.com/health/examining-why-false-confessions-occur-in-the-us-criminal-justice-system/2019/06/20/10128bb4-9207-11e9-aadb-74e6b2b46f6a_story.html)

<sup>20</sup> <https://www.law.umich.edu/special/exoneration/Pages/about.aspx>



people with mental illness or intellectual disabilities did the same when they were accused of homicide.

**43.** Even in Pakistan the situation is not less than worst. Most of the cases having the evidence of confession are failed when brought in the court on various reasons. Maimoona Rafique Advocate in her article<sup>21</sup> (False Confession: A Cause of Wrongful Convictions in Pakistan) has written: -

*“According to research, the untrained investigator feels they have a sixth intuition about suspect guilt and deceits leading them to mistakenly believe the false confessions they get are real. Furthermore, the unethical or prejudiced investigator has an improper mentality when it comes to the interview. They are convinced that the suspect is guilty. As a result, they don’t think the suspect is talking the truth until he or she confesses; everything else is considered a lie and treated as such”*

**44.** Referring United Kingdom she further wrote that even in that jurisdiction, about 25% of the suspects make the false confession due to the pressure of police, techniques they haven’t know, or even they were not aware by the law that they are not bound to answer they may remain silent. Many of the accused confessed and become convicted and afterward they become to know that those convicted persons were just an innocent person.

**45.** Ending the discussion made above, this criminal appeal is **allowed**. Impugned judgment dated 28.11.2013 is **set aside**. Appellant is **acquitted** from the case. He is in custody and shall be released forthwith if not required in any other case.

**(Sohail Nasir)**  
**Judge**

Approved for Reporting

**(Judge)**

*Afzaal*

---

<sup>21</sup> <https://www.thelegalpakistan.com/2021/09/04/false-confession-a-cause-of-wrongful-convictions/>

