

**JUDGMENT SHEET**

**IN THE PESHAWAR HIGH COURT, MINGORA  
BENCH (DAR-UL-QAZA), SWAT  
(Judicial Department)**

**J.Cr.A. No.49-M/2013  
With Cr. M No. 93-M/2013**

**JUDGMENT**

Date of hearing: **30.01.2018**

**Appellant:- (Sadiq-ur-Rahman) by M/S Wilayat Ali  
Khan and Rahim Ullah Chitrali, Advocates.**

**Respondent:- (The State) by Mr. Suliman Khan, State  
counsel.**

**MOHAMMAD IBRAHIM KHAN, J.-** The matter

came into existence upon lodging of the Mad No. 7 of  
the daily diary dated 27.12.2009. Thereafter an inquiry  
within the meaning of section 156 (iii) of the Code of  
Criminal Procedure was initiated and in view whereof  
the present accused/Appellant Sadiq-ur-Rahman and  
one Sanaullah were apprehended. During the course of  
inquiry proceedings, the accused in presence of  
members of the inquiry team made pointation of the  
place of occurrence wherein the deceased Maqbool

Ahmad was pushed in the deep ravine (گہری کھائی) the

approximate depth of which is 118 feet. Thereafter

they have taken out Rs. 3,000/- along with mobile from corpus of deceased. The accused have also tried to steal motorcycle belong to deceased Maqbool Ahmad and later on his corpus was thrown in the river. Subsequently, brother of the complainant Farid Ahmad recorded his statement under section 164 Cr.P.C. and charged the present accused/Appellant along with co-accused Sanaullah for murder of his deceased brother Maqbool Ahmad. On the basis of such assertions the 'Murasila' was drafted followed by lodging of the First Information Report.

2. The charge framed by the learned Additional Sessions Judge/Izafi Zila Qazi Chitral on 08.03.2010 would divulge that the accused in prosecution of their common intention on 27.12.2009 at midnight time in a place known as Koghezai Zarmarian Tak pushed the deceased Maqbool Ahmad in the deep ravine, as a result of which he died there and then, thereby, this offence is covered under section 302,34 PPC. Under the second head on the same date,

time and place, the accused have committed act of disappearance of evidence within the meaning of section 201 PPC. Likewise, under the 3rd head the accused have been stood nominated for dishonest misappropriation of the belongings of deceased, thereby committed an offence under section 404 PPC.

3. When the accused/Appellant did not plead his guilt, he claimed trial. Thus, in order to prove the assertions against these accused, the prosecution examined PW-1 Sultan Wazir SI, PW-2 Noor Shahideen IHC, PW-3 Muhammad Afzal IHC No. 687, PW-4 Gul Khosh, PW-5 Jehanzeb HC No. 189, PW-6 Zafar Ahmad SHO, PW-7 Akhtar Hussain SI/Oii, PW-8 Muhammad Yahya Forest Guard, PW-9 Sardar, PW-10 Attaullah, PW-11 Atta-ur-Rahman D IHC No. 105, PW-12 Imtiaz Ahmad, PW-13 Akbar Khan, PW-14 Qurban Panah IHC, PW-15 Farid Ahmad, PW-16 Dr. Samiullah Medical Officer DHQ Hospital Chitral, who has conducted postmortem of the deceased and PW-17 Abdul Ghaffar Khan

MOD/DDOR Mastuj who has recorded confessional statements of the accused.

4. After the closure of prosecution evidence, accused was examined under section 342 of the Code of Criminal Procedure, he negated his involvement in the present episode.

5. In Sessions Case No. 17/2 of the year 2010, the learned Additional Sessions Judge/Izafi Zila Qazi Chitral came up with its judgment dated 18.06.2011, whereby this accused-Appellant Sadiq-ur-Rahman enmeshed in case FIR No. 01 dated 13.01.2010 charged under sections 302,404,201,34 PPC registered at Police Station Koghezai was convicted and sentenced in the following manner:-

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*U/S 302 (b) PPC to life imprisonment along with compensation of Rs. 300,000/- within the meaning of section 544-A Cr.P.C payable to the Legal Heirs of the deceased or in default thereof shall further suffer one year RI. However, benefit of Section 382-B Cr.P.C was extended to the accused/Appellant.*

6. Here is this J.Cr.A No. 49-M/2013 preferred by the convict-Appellant Sadiq-ur-Rahman looking forward for acceptance of prayer under the grounds enumerated in the appeal and for his liberty forever.

7. Having heard arguments of learned counsel for the accused/Appellant and learned State counsel, record with their valuable assistance gone through.

8. Leaving aside other merits of the case for the time being, the only incriminating evidence in the account of accused/Appellant is his retracted judicial confession. As the accused/Appellant was arrested on 13.01.2010 whereas his confessional statement was recorded on 22.01.2010 i.e. after 8 days of his arrest, meaning thereby, that the accused/Appellant remained in police custody for 8 days, so, the possibility of procurement of confession through means of coercion, inducement or torture cannot be ruled out.

In such like situation, it has been observed in many Judicial Pronouncements of the Hon'ble Supreme Court of Pakistan like 2017 SCMR 898 "Muhammad Ismail and others vs the State". The relevant citation (b) reads:-

*Reappraisal of evidence. Judicial confession before Magistrate, retraction of---Effect. Judicial confession allegedly made by accused-persons/appellants before a Magistrate under S. 164, Cr.P.C had been retracted before the Trial Court and in the absence of any independent corroboration such retracted judicial confession could not suffice all by itself for recording or upholding the accused persons' conviction. Convictions and death sentences awarded to accused persons were set aside in circumstances and they were acquitted of the charge of murder. Appeal was allowed accordingly.*


Even otherwise, there is no cavil with this legal proposition that while evaluating the confessional statement the main object of law is to ensure its voluntariness and truthfulness. It would be a right place to mention here that a greater duty/responsibility has been casted upon the Magistrate recording confession to be satisfied that such confession is voluntarily made

and to that end he must make an inquiry before recording the confession.

No doubt, conviction can be based on the retracted confession alone but it is found voluntary, true and confidence inspiring. It has been held by the Honourable Supreme Court of Pakistan in case law cited as "Bahadur Khan vs. The State" (PLD 1995 S C 336) as under:-

*"Retracted confession has to be accepted only if it is corroborated by clear, cogent and independent evidence. Court is called upon to act upon a retracted confession to enquire into all the material points and surrounding circumstances and satisfy itself fully that the confession cannot but be true".*

In view of the wisdom contained in the esteem verdict of the Hon'ble Supreme Court of

 Pakistan reported as 2005 SCMR 515 "Asif Mahmood vs the State", wherein it has been opined:-

(a) Criminal Procedure Code (V of 1898)---

----S. 364---Penal Code (XLV of 1860),  
Ss.302, 392 & 411--Appreciation of  
evidence---Confession, when reliable---

*Principles--Confessional statement for being relied upon should not only be true, voluntary and believable but should be without fear, favour or any inducement.*

The confessional statement would lose its evidentiary value and as such mere this confessional statement would not stand as a sole reason for conviction. Reliance has been placed on 2017 P Cr.L J 479 "Noor Muhammad & others vs the State & others":

*(d) Penal Code (XLV of 1860)---*

*---Ss. 302 & 34---Qatl-i-amd, common intention---Appreciation of evidence---Benefit of doubt---Retracted confession---Accused was charged for the murder of deceased---Accused made confession before Judicial Magistrate but later on retracted---Retracted confession of the accused was not corroborated by any evidence---Circumstances suggested that confessional statement retracted by the accused person, could not at all be called as voluntary judicial confession in the eye of law and the same had no legal effect---Conviction and sentence recorded by Trial Court were set aside in circumstances.*

*on 1/2/20*

In such scenario, when the accused/Appellant admittedly remained in police custody for 8 days, so, the confession might have been



obtained from him by the police through coercion, inducement or torture therefore, such confession deserves little consideration and is discarded accordingly.

9. It is an admitted fact on record that the occurrence occurred during dark hours of the night and in all probabilities this is an unseen and unwitnessed crime. Reliance can be placed on 2017 YLR 436 "Talib Hussain & another vs the State & another":

*(b) Criminal trial---*

*---Ocular testimony, disbelieved---Effect---  
When ocular testimony was disbelieved  
then recovery as well as medical evidence  
were of no help to prosecution.*

*(c) Criminal trial---*

*---Onus of establishing case---Prosecution  
had to establish its own case independently  
instead of depending upon weaknesses of  
defence.*

*(e) Penal Code (XLV of 1860)---*

*---S.302---Criminal Procedure Code (V of  
1898), S.342---Qatl-i-amd---Admission of  
guilt by accused---Prosecution failing to  
prove case---Effect---Where prosecution  
had failed to prove its case against accused*

*beyond reasonable doubt, accused might be acquitted even if he had taken plea and admitted killing the deceased.*

10. It is recognized principle of criminal administration of justice that when there is no direct or ocular evidence in field circumstantial or for that matter last seen evidence has to be evaluated with great care and caution, as there is every possibility of misleading especially in this part of the country where the people do make rumours in respect of certain incident occurred in the locality which sometime transformed into shape of last seen evidence having no relevancy whatsoever with the actual happening which too occurred during dark hours of the night . In present case, exculpatory confession of the accused/Appellant on all counts is not in consonance with the recoveries and evidence put-forth by the prosecution in shape statements of the prosecution witnesses, thus, same is of no use in respect of maintaining of the conviction and sentence awarded to the accused/Appellant.

11. Whereas the factum of benefit of doubt is very much lucid in its entirety that if there exist a reasonable ground to believe that the accused/Appellant has not participated in the commission of alleged crime in the mode and manner as advanced by the prosecution then there is no need of numbers of circumstances to prove the innocence of accused even a single circumstance creating reasonable doubt is sufficient for the acquittal of the accused. In this regard guidance is derived from the judgment cited as 2015 P Cr.LJ 554 (Peshawar) " Sahibzada vs the State and 2 others".

12. In the above prevailing situation, we after reappraisal of entire evidence are of the firm view that the prosecution case against the accused/ Appellant has not been proved beyond reasonable doubt and the judgment of learned trial Court is based on wrong appreciation of evidence and the law on the subject. Hence, we accept this appeal and set-aside the impugned judgment of conviction rendered by the

learned Trial Court. Ergo, the accused/Appellant is acquitted of the charges leveled against him. He is in custody and be set free if not required in any other case.

**13.** These are the reasons of our short order announced in open Court on even date.

**14.** Before parting with this judgment, it is pertinent to mention here that the accused/Appellant has also preferred Criminal Miscellaneous Application bearing No. 93-M of 2013 through Superintendent Haripur Prison for condonation of delay in respect of filing of jail criminal appeal before this Court.

Since the reason advanced therein is genuine as Appellant being a poor person could not afford services of private standing counsel, therefore, he was not in a position to submit the appeal against his conviction within time. Hence, this petition is allowed and the delay occurred

during filing of this criminal jail appeal before this

Court is hereby condoned.

Announced.  
Dt: 30.01.2018

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