

Judgment Sheet

IN THE LAHORE HIGH COURT, LAHORE  
JUDICIAL DEPARTMENT

Criminal Appeal No.16 of 2007

(Muhammad Nawaz. Vs. Muhammad Saqlain etc.)

JUDGMENT

DATE OF HEARING:	29.06.2015.
APPELLANT BY:	Sardar Muhammad Latif Khosa, Advocate alongwith M/s. Aamer Chaudhry and Nasir Ali Turabi, Advocates.
STATE BY:	Ch. Muhammad Mustafa, Deputy Prosecutor General.
RESPONDENTS BY:	Rana Muhammad Ayub Tahir Joyya, Advocate alongwith Mr. Ijaz Ahmad Chadhar, Advocate.  Respondents No.1 and 2 namely Muhammad Saqlain and Azhar Iqbal in person.

**SYED SHAHBAZ ALI RIZVI, J:-** Through the impugned judgment dated 20.12.2006, the learned Additional Sessions Judge, Sargodha has acquitted respondents No.1 and 2 from the charge in case F.I.R No.306/2005 dated 13.11.2005, registered at Police Station Luksian District Sargodha, in respect of offences under Sections 302, 364, 34 PPC with the allegation that the son of the complainant namely Irfan Haider aged about 10 years, student of 4<sup>th</sup> Class at Chenab Academy Sial Morh, went to the Academy on 12.11.2005 at about 07:00 a.m. but did not return, upon which, the complainant started search of his son but in vain; on the next day i.e. 13.11.2005 the complainant alongwith Muhammad Sarwar and Muhammad Shahbaz was present at Sial Morh in search of his son when Muhammad Azam and Khizar Hayat met him and told that on 12.01.2005 at about 02:30 p.m. they were standing at Doda Morh and

saw Irfan Haider alongwith the accused Muhammad Saqlain and Azhar Iqbal who alighted from a wagon coming from Sial Morh and they went towards north. It was stated by the complainant that the accused had kidnapped his son Irfan Haider for the purpose of committing his murder and the motive behind the occurrence was that accused Muhammad Saqlain wanted to marry the daughter of Faiz Muhammad who was engaged with Irfan Haider. Initially, F.I.R in this case was registered under Sections 364/34 PPC; on 14.11.2005 the accused were arrested by the police and on interrogation and disclosure made by the accused the dead body of Irfan Haider was recovered, therefore, Section 302 PPC was added.

2. Learned counsel for the appellant, in support of this appeal, contends that there is overwhelming evidence produced by the prosecution in the shape of last seen evidence, extra judicial confession made by the accused and recovery of dead body of the deceased on the pointation of the accused and then there is medical evidence corroborating the other pieces of circumstantial evidence; that impugned judgment passed by the learned trial court is based upon misreading and non-reading of the evidence available on the record; that circumstantial evidence produced by the prosecution constitutes a complete chain of circumstances and was sufficient for conviction of the accused/respondents; that no cogent reason has been given by the learned trial court for acquitting the respondents and the prosecution version has been disbelieved only on the ground that it is a case of circumstantial evidence; that the learned trial court without appreciating the prosecution evidence in its true perspective has given the benefit of doubt to the respondents; that the complainant party had no ill will or enmity to falsely involve the respondents in this case.

3. The learned Deputy Prosecutor General supports the arguments advanced by the learned counsel for the appellant/complainant and states that the judgment delivered by the learned trial court is not based upon sound reasoning.

4. On the other hand, learned counsel for respondents No.1 and 2 contends that circumstantial evidence produced in this case not only lacks confidence but is also not corroborated by the evidence of recoveries and medical evidence; that the evidence of alleged extra judicial confession was rightly rejected by the learned trial court being without any independent corroboration.

5. **Arguments heard. Record perused.**

6. It is a case of circumstantial evidence hinging around the alleged last seen evidence and the extra judicial confession made by the accused/respondents. After going through the impugned judgment, we are of the considered view that the learned trial court has given convincing and plausible reasons for acquittal of the respondents while observing as under:-

**“The prosecution in order to prove the evidence of last seen produced Muhammad Azam PW-5. The cross-examination of the said witness reveals that he admitted his close relationship with the complainant. He also admitted that his house is at a distance of 4-5 houses from the house of deceased. He also admitted that he remained present in his house throughout 12.11.2005 and 13.11.2005 and he knew that the child was missing since 12.11.2005. The question arises that why so closely related relative of the complainant living adjacent to the house of complainant having knowledge of the missing of the child and after seeing that child in the company of accused Saqlain and Azhar Iqbal on 12.11.2005 at 3/4:00 p.m. did not inform the complainant and kept mum up till evening of 13.11.2005. This testimony of said witness does not appeal to a prudent mind. He remained at his house during 12.11.2005 and 13.11.2005 throughout, so what was the reason of informing the complainant about seeing the deceased lastly within the accused at Sial Morh on 13.11.2005. These peculiar facts make the testimony of this witness highly dubious and not worthy of credence, hence cannot be relied upon. -----**

**It is the case of prosecution that Muhammad Saqlain accused on 14.11.2005 made extra judicial confession before Faiz Sultan PW-6 and later on Faiz Sultan produced Muhammad Saqlain accused before the police and then Muhammad Saqlain led to the recovery of dead body of Irfan Haider deceased. Similarly it is also the case of prosecution that Azhar Iqbal made extra judicial confession before Muhammad Nawaz PW-8 who produced him before the police and later on Azhar Iqbal led to the recovery of dead body of Irfan Haider deceased.**

**Firstly, I would take up the testimony of Faiz Sultan PW-6. The said witness in his cross-examination has admitted that he is**

brother-in-law of the complainant Muhammad Nawaz and his wife Manzooran was married to the complainant. It means that the said witness is Mamoon/maternal uncle of the deceased Irfan Haider. It is the case of the prosecution that the said witness preferred giving the hand of his daughter Sameena to the deceased Irfan Haider instead of Saqlain accused and as such Saqlain accused nourished a grudge against the deceased. It is quite evident that in this state of the affairs the accused Muhammad Saqlain must have equal grudge against the said witness of extra judicial confession as he refused to give him the hand of his daughter. The question arises that why Muhammad Saqlain would go to a person against whom he had already grudge and ill-will and how he expected any mercy from the complainant through involvement of such person. The testimony of said witness regarding extra judicial confession does not appeal to a prudent mind. The said witness in his examination in chief stated that when he produced the accused before the police at Laksian colony and during the interrogation and disclosure the accused led to the recovery of dead body of Irfan Haider. If the testimony of Faiz Sultan regarding the extra judicial confession is believed for the sake of arguments then it means that the dead body of the deceased was recovered on 14.11.2005 but the complainant of the case has himself denied this state of affairs and categorically stated before the court that the dead body of the deceased was recovered on 13.11.2005.-----  
It is the case of prosecution that on 17.11.2005 during the interrogation Muhammad Saqlain accused in police custody led to the recovery of Rassi P-3 from the sugarcane field of Muhammad Bakhsh. The police took into possession Rassi P-3 vide recovery memo Ex. PF attested by Muhammad Azam and Khizar Hayat PWs. The prosecution in order to prove the recovery of Rassi P-3 produced Muhammad Azam as PW-5. It is pertinent to mention here that the said witness also deposed regarding the evidence of last seen. The said witness has admitted in his cross-examination that he is closely related to the complainant. It is very important to note down that in post mortem report Ex.PG, firstly, it was mentioned that rope piece was present with dead body but later on word “not” has been inserted after rope piece which fact sufficiently proves that when the dead body was brought for post mortem examination, there was a rope present with the dead body. The presence of the rope with the dead body at the time of post mortem examination proves that the story about the recovery of Rassi P-3 on 17.11.2005 is totally false and fabricated and no such Rassi was recovered.”

We have noted that the circumstantial evidence produced by the prosecution in this case, is not confidence inspiring and is also not supported by the other pieces of evidence. It is a cardinal principle of criminal jurisprudence that the circumstantial evidence must be of

such a quality that its one end if touches the dead body of the deceased the other must touch the neck of the accused. In this context, we respectfully refer the case of Sarfaraz Khan Vs. The State (1996 SCMR 188) wherein the Hon'ble Supreme Court of Pakistan has observed as follows: -

*“It is well settled that circumstantial evidence should be so inter-connected that it forms such a continuous chain that its one end touches the dead and other neck of the accused thereby excluding all the hypothesis of his innocence.”*

Moreover, evidence of extra judicial confession is a weak type of evidence. Reliance is placed on the case of Tahir Javed Vs. The State (2009 SCMR 166) in which the Hon'ble Supreme Court of Pakistan has held as under:-

*“It may be noted here that since extra-judicial confession is easy to procure as it can be cultivated at any time, therefore, normally it is considered as a weak piece of evidence and Court would expect sufficient and reliable corroboration for such type of evidence. The extra-judicial confession therefore must be considered with over all context of the prosecution case and the evidence on record. Right from the case of Ahmed v. The Crown PLD 1951 FC 107 it has been time and again laid down by this Court that extra-judicial confession can be used against the accused only when it comes from unimpeachable sources and trustworthy evidence is available to corroborate it.”*

Argument of the learned counsel for the appellant, that prosecution witnesses had no ill will or enmity with the respondents and, therefore, their evidence cannot be discarded, is misconceived. It has been very well settled by the Hon'ble Supreme Court of Pakistan in plethora of judgments that mere absence of enmity of a prosecution witness does not provide a stamp of truth to his testimony and the real test to believe the same is that his statement is in consonance with the natural probabilities and materially fits in with other evidence on record and the same inspires confidence of truth to a prudent mind. We are of the considered view that in this case all the pieces of prosecution evidence do not inspire confidence and even their accumulative effect does not advance the case of prosecution. It has been held by the Hon'ble Supreme Court of Pakistan time and again

that one tainted piece of evidence cannot furnish any corroboration to another tainted piece of evidence; reference in this regard is made to the case of **Khalid Javed and another vs. The State (2003 SCMR 1419)**.

7. Moreover, it is, by now, established proposition of law that responsibility of proving the case against the accused completely rests upon the shoulders of the prosecution and it has to prove its case while standing on its own legs. Reliance in this respect is placed on the cases of **Tariq Pervez v. The State (1995 SCMR 1345)** and **Muhammad Akram v. The State (2009 SCMR 230)**. But as discussed above, in the case in hand the prosecution has miserably failed to discharge its responsibility. Even otherwise, it is, by now well established principle of law that when a court of competent jurisdiction acquits an accused of the charge, double presumption of innocence is attached to the said acquittal and until and unless that is found arbitrary, fanciful, perverse and against the record or has led to grave miscarriage of justice, the said acquittal is not interfered with. In this context we rely on the case of **Haji Amanullah vs. Munir Ahmed and others (2010 SCMR 222)** and the case of **Iftikhar Hussain and others vs. The State (2004 SCMR 1185)**. Resultantly, this appeal being devoid of any merit is hereby **dismissed**.

**(MUHAMMAD ANWAARUL HAQ)**  
**JUDGE**

**(SYED SHAHBAZ ALI RIZVI)**  
**JUDGE**

**Approved for Reporting.**

**JUDGE**

**JUDGE**