

IN THE SUPREME COURT OF PAKISTAN  
(APPELLATE JURISDICTION)

**PRESENT:**

MR. JUSTICE ATHAR MINALLAH  
MR. JUSTICE IRFAN SAADAT KHAN  
MR. JUSTICE MALIK SHAHZAD AHMAD KHAN

**CRIMINAL APPEAL NO. 167 OF 2023**

*(On appeal against the judgment dated 30.09.2020 of the High Court of Sindh, Circuit Court Hyderabad in Cr. Jail Appeal No. D-03./2017 and Confirmation Case No. 01/2017)*

Manzoor Ahmed

... Appellant

**Versus**

The State

...Respondent

For the Appellant:

Qari Abdul Rasheed, ASC  
Syed Rifaqat Hussain Shah, AOR

For the Complainant:

Mr. Wali Muhammad Khoso, ASC  
Mr. Aslam, complainant in person  
(Via video link from Karachi)

For the State:

Mr. Khadim Hussain, Addl. P.G. Sindh

Date of Hearing:

22.05.2025

**JUDGMENT**

**Irfan Saadat Khan, J.-** The appellant was tried by the learned Additional Session Judge, Tando Adam (*Trial Court*) in the criminal case arising out of FIR No. 474 dated 26.11.2011, registered at Police Station Tando Adam under sections 302 and 34 of the Pakistan Penal Code, 1860 ("**PPC**"). Upon conclusion of the trial, the learned Trial Court convicted the appellant for murder under section 302(b) of the PPC, sentencing him to death and directing him to pay Rs. 100,000/- (one lac) as compensation to the deceased's legal heirs in terms of section 544-A of the Code of Criminal Procedure, 1898 ("**Cr.P.C**") and in default thereof to further undergo six months of simple imprisonment *vide*: judgment dated 02.01.2017. Concerning the charge of committing sodomy with the deceased, punishable



under section 377 of the PPC, the Trial Court did not convict the appellant finding it doubtful.

2. Aggrieved by the findings recorded by the Trial Court, the appellant preferred an appeal<sup>1</sup> before the High Court of Sindh (*High Court*). The appeal and corresponding confirmation case No. 01 of 2017 were decided in terms that the appellant's conviction and sentence of death under section 302(b) of the PPC were maintained *vide*: judgment dated 30.09.2020. The High Court additionally convicted the appellant committing sodomy with the deceased under section 377 of the PPC, sentencing him to imprisonment for life as well as directing him to pay Rs. 1,000,000/- (one million) to the victim's legal heirs and in default thereof to further undergo six months of simple imprisonment.

3. Thereafter, the appellant directed Jail Petition No. 339 of 2020, and leave was granted by this Court through the order dated 14.02.2023, which is replicated below:

"Learned counsel for the petitioner, *inter alia*, contends that the occurrence is unseen and the petitioner has been roped in the case merely on the fact that he was the *Imam* of the *Masjid* on the roof of which the dead body of the deceased was found. According to him, there was no direct evidence against the petitioner to connect him with the commission of the offence. He further states that the recovery as alleged by the prosecution is also doubtful and is portrayed by the prosecution in a manner that cannot be believed by a prudent person.

2. The contentions raised by the learned counsel require consideration. Leave to appeal is granted, *inter alia*, on the grounds raised by the learned counsel. The appeal stage paper-books be prepared on the available record with liberty to the parties to add thereto."

4. The facts of the case may now briefly be stated. A murder was reported to the police on 26.11.2011 at 7:30 p.m. by Muhammad Aslam (the "**complainant**" / PW-1) through the FIR *supra*. As per the FIR, approximately two days earlier on 24.11.2011, in between 8:00-9:00 p.m., the complainant's son

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<sup>1</sup> Criminal Jail Appeal No. D-03 of 2017.



Bilawal<sup>2</sup> accompanied his paternal uncles, Muhammad Azam and Muhammad Akram, to the Qutib-e-Madina Mosque to offer their *Isha* (night) prayer. After the prayer, both uncles left the mosque, leaving the minor child behind. When the child did not return home, the complainant, along with his brothers and a neighbour Nazeer Ahmed, launched a search for Bilawal, proceeding to the mosque where they met the *Pesh Imam*, Manzoor Ahmed (the appellant), and the *Moazzin*, Nadeem Shaikh, who both suggested to search the mosque. While searching the roof of the mosque – specifically the third floor – the search party noticed fresh blood on the floor. Upon further inspection, they discovered the child-Bilawal lying beside a heap of bricks, grievously wounded with his throat deeply cut and having a faint pulse. Bilawal was immediately transported to Murk Hospital, Tando Adam, from where he was referred to Hyderabad for further treatment. Unfortunately, Bilawal (the “**deceased**”) succumbed to his injuries enroute to the hospital at Hyderabad and so his body was taken back to Taluka Hospital, Tando Adam<sup>3</sup>. The police were intimated and arrived at the hospital, where they prepared the required documents and ensured that a postmortem examination of the deceased was conducted. In the meanwhile, the complainant led the police to the place of occurrence, i.e. Qutib-e-Madina Mosque, at around 3:00 a.m. on 25.11.2011, where an inspection was carried out and some blood-stained articles were recovered. Thereafter, the body of the deceased was handed over to the complainant, who oversaw the subsequent funeral and burial and remained occupied in receiving condolences. It was only on 26.11.2011, at about 7:30 p.m., that the complainant reported the incident to the police suspecting the appellant and the *Moazzin* of the mosque, Nadeem Ahmed Shaikh, as the perpetrators of the crime.

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<sup>2</sup> Aged five or six years old.

<sup>3</sup> Returning to the Taluka Hospital, Tando Adam at 1:30 a.m. on 25.11.2011 according to Muhammad Azam/PW-2's statement.



5. Qari Abdul Rasheed, ASC and Syed Rifaqat Hussain Shah, ASC/AOR, have entered appearance on behalf of the appellant and stated, at the very outset, that the appellant has been falsely implicated in a case based entirely on suspicion and conjectures. The learned counsel argued that the occurrence was unwitnessed and all the prosecution witnesses were closely related to the deceased, making their testimony interested and untrustworthy. They pointed out that there was a two-days unexplained delay in lodging the FIR. It was further argued that the last seen witness, Muhammad Saleem, was introduced belatedly and was not named in the FIR or in the initial investigation. The learned counsel maintained that the conviction cannot be based on circumstantial evidence alone without clear, cogent and confidence-inspiring proof. They therefore prayed for the appellant's acquittal by allowing the instant appeal.

6. Mr. Wali Muhammad Khoso, ASC, has entered appearance on behalf of the complainant<sup>4</sup> and stated, at the very outset, that the conviction of the appellant is fully supported by reliable and corroborated evidence on record. The learned counsel argued that the appellant, being the *Pesh Imam* of Qutib-e-Madina Mosque and the Islamic teacher of the deceased child was last seen taking the boy upstairs shortly before the child was found critically injured with his throat slit on the rooftop. He referred to the judicial confession of the appellant recorded in accordance with law by the Magistrate and submitted that it was voluntary, truthful and consistent with the medical and forensic evidence. The learned counsel highlighted the recovery of the blood-stained *Aari* (saw) blade at the appellant's instance and the positive chemical report showing presence of human blood and sperms on the deceased's clothing and internal swabs. It was further submitted that the appellant offered no explanation as to the whereabouts of the child after being last seen with him nor led any defence

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<sup>4</sup> Both the complainant and his counsel appeared via video link from Karachi.



evidence and thus, the prosecution had established a complete and unbroken chain of circumstantial evidence pointing unerringly to the appellant's guilt. The learned counsel therefore prayed that the appellant's conviction and sentence may be maintained and the instant appeal may be dismissed.

7. Mr. Khadim Hussain, Additional Prosecutor General for the province of Sindh, has entered appearance on behalf of the State and argued in concurrence with the submissions advanced by the learned counsel for the complainant.

8. We have heard all the learned counsel, appearing in the instant matter, at length and have perused the record with their assistance.

9. The most prominent point in this case is the timeline and thus it is necessary to reiterate the events highlighted above and provide additional detail. Even a cursory glance at the record confirms that the occurrence allegedly took place around 8:00-9:00 p.m. on 24.11.2011 whereafter a search party, including the complainant, his brothers and his neighbour, began looking for the deceased when, at around 9:00 p.m., they reached the mosque, finding there the deceased, then injured and barely alive. They rushed the deceased to Murk Hospital, Tando Adam, and then departed onwards for Hyderabad. It was enroute to Hyderabad that the deceased passed away and so the complainant, accompanied by his companions, returned to the Taluka Hospital, Tando Adam around 1:30 a.m. on 25.11.2011<sup>5</sup>. The police were then informed of the occurrence and police officers, including the I.O. Nadeem Akhtar Baig (PW-11) arrived at the hospital, preparing the necessary documents and ensuring that the postmortem examination of the deceased took place. Dr. Muhammad Ashraf (PW-6) began the postmortem examination at 2:15 a.m. noting a deep incised wound on the deceased's neck leading to shock and hemorrhaging, ultimately causing death. The doctor found

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<sup>5</sup> The next day, i.e. 25.11.2011, having begun after the stroke of midnight.



no external signs of sodomy, although he collected anal swabs for further testing, reserving his final opinion in this regard until the results of the swabs' chemical examination. In the meanwhile, police officers, including the I.O., accompanied the complainant to the place of occurrence—the rooftop of the Qutb-e-Madina Mosque—for a spot inspection at about 3:00 a.m.. There, they recovered blood-stained earth and the deceased-Bilawal's green turban, white cap and slippers from behind the brick pile. These were seized and memos were prepared on the spot. After the postmortem examination had concluded, the body of the deceased was handed over to the complainant, who oversaw the funeral and burial of his son, the deceased. The complainant, still occupied with receiving condolences, had not yet registered the FIR. It was finally on 26.11.2017 at 7:30 p.m. that the complainant lodged the FIR *supra* and raised suspicion against the appellant and the *Moazzin* Nadeem Ahmed Shaikh, as possible perpetrators. There is then an established delay of approximately 47 hours in registering the FIR. In the time that had elapsed, the postmortem examination of the deceased took place, the police conducted a preliminary inquiry at the place of occurrence recovering articles and preparing the corresponding memos, the deceased's funeral and burial took place, the complainant met with relatives extending their condolences and yet still the FIR was not lodged.

10. The record also confirms that the complainant and prosecution have nowhere sought to explain the delay or even provide a reasonable justification for the belated registration of the FIR. In fact, the I.O., Nadeem Akhtar Baig (PW-11), stated categorically during his cross-examination that during the spot inspection at 3:00 a.m. on 25.11.2011, barely 1½ hours after the complainant had turned back from the way to Hyderabad, he “told to [sic] *Mohammad Aslam* to lodge the F.I.R, but he said that after funeral ceremony, he will lodged [sic] the F.I.R”. In this regard this Court's observations in the case of *Altaf Hussain vs The State* (2019 SCMR 274) are of relevance and are replicated as the following:



*"The inordinate delay in setting the machinery of law in motion speaks volumes against the veracity of the prosecution version"*

Although there is no cavil to the proposition that a delay in registering the FIR is not *per se* fatal to the prosecution case, the same must be explained to grant the belated FIR some sanctity of truth. The consequence of not explaining such a delay has been explained in the case of Amir Muhammad Khan v. The State (2023 SCMR 566) where this Court highlighted that:

*"Nowhere in the entire evidence, the prosecution has explained the reason for the delay in reporting the matter to the Police with such a delay. The delayed FIR shows dishonesty on the part of the complainant and that it was lodged with deliberation and consultation"*

11. Following the registration of the FIR, Muhammad Saleem (PW-5) enters the picture as a "last seen" witness on 27.11.2011. He stated before the police that he was present at a barbershop on the fateful night of 24.11.2011, and from there, he last saw the deceased at the door of the mosque around 9:00 p.m.; that shortly thereafter, the appellant came to the same door and took the deceased up the mosque stairs. The appellant was then arrested on 28.11.2011 and he statedly led to the recovery of the weapon of offence, i.e. a blood stained *Aari* (saw) blade allegedly used to cut the deceased's throat, on the same date. On the following day, i.e. 29.11.2011, the appellant was produced before the Judicial Magistrate, who recorded his confessional statement to the extent of murdering the deceased on account of some harsh exchanges between the appellant and the deceased's father, the complainant. Upon the receipt of the Chemical Examiner's report on 29.12.2011, Doctor Muhammad Ashraf (PW-6) issued a final opinion on the question of whether sodomy was committed with the deceased. Quoting the Chemical Examiner's findings that human sperm was found on deceased's *shalwar* and the internal anal swabs taken, the doctor concluded that sodomy had taken place, contradicting his initial opinion in the postmortem



report. The I.O. thus added section 377 of the PPC in the challan he submitted to the Trial Court, which framed charges against the appellant accordingly. Here it is pertinent to note that the appellant pleaded not guilty and claimed trial. Thereafter, during the trial, the appellant submitted in his statement under section 342 of the Cr.P.C. that he gave the confessional statement due to "the pressure of police". Clearly then, the confessional statement has been retracted.

12. The delay in the FIR notwithstanding, it is apparent that the occurrence was unseen and that there was no direct evidence in this regard. A necessary caution must then be taken, i.e. where the prosecution case hinges entirely on circumstantial evidence, utmost care is required to arrive at a just decision. The law in this regard has been explained by this Court in the case of Ch Barkat Ali v. Major Karam Elahi Zia and another (1992 SCMR 1047) in the following words:

*"Law relating to circumstantial evidence that proved circumstances must be incompatible with any reasonable hypothesis of the innocence of the accused. See 'Siraj vs. The Crown' (PLD 1956 FC 123). In a case of circumstantial evidence, the rule is that no link in the chain should be broken and that the circumstances should be such as cannot be explained away on any hypothesis other than the guilt of the accused."*

Moreover, in the case of Altaf Hussain vs. Fakhar Hussain and another (2008 SCMR 1103) it was held that:

*"Needless to emphasis that all the pieces of evidence should be so linked that it should give the picture of complete chain, one corner of which should touch the neck of the deceased and other corner to the neck of the accused. Failure of one link will destroy the entire chain."*

Applying the above caution, it is clear that the prosecution relies mainly on the appellant's confessional statement later retracted, the recovery of the weapon of offence and the Chemical Examiner's report to try and bring home the charges against the appellant.



13. Let us first address the appellant's confessional statement. Undoubtedly, the appellant retracted his confession, pleading not guilty and submitted in his statement, under section 342 of the Cr.P.C., that the police forced him to make a confession. With regard to retracted judicial confessions this Court recently held in the case of Obaidullah v. The State (2025 SCP 177)<sup>6</sup> 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 basis of said confession. Reference in this context may be made to the cases of Aala Muhammad Vs. The State (2008 SCMR 649), Muhammad Shafi Vs. Muhammad Raza (2008 SCMR 329), Muhammad Ismail Vs. The State (2017 SCMR 898) and Daniel Boyd Vs. The State (1992 SCMR 196)."*

It is noted that in the appellant's retracted judicial confession he states that his motive for committing the murder was to cause the complainant grief because they had earlier exchanged bitter words. Similarly, the I.O. Nadeem Akhtar Baig (PW-11) states during his examination in chief that earlier on while the police interrogated the appellant, he admitted to committing the crime due to strained relations with the complainant, i.e. the deceased's father, and the complainant's brother, i.e. the deceased's uncle. It is important to highlight here that both of the complainant's brothers were present during this interrogation. The complainant's brother, Muhammad Akram (PW-3) also submitted in his statement under section 161 of the Cr.P.C. that the appellant had committed the crime on account of some heated exchange with the complainant. Later, during his cross-examination, Muhammad Akram (PW-3) disclaimed his earlier statement, updating his story by mentioning that no harsh words were exchanged between the complainant and the appellant rendering the exact

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<sup>6</sup> Jail Petition No. 14 of 2020 authored by one of us, namely Malik Shahzad Ahmad Khan, J..



motive doubtful. Importantly, the FIR, lodged approximately two days after the occurrence, is completely silent about any possible motive. Furthermore, neither the complainant nor his brother make any mention of a heated exchange in their depositions nor have they uttered a single word regarding the appellant's possible motive for committing the crime. Again, in his statement under section 342 of the Cr.P.C. the appellant also mentioned that he had no enmity with anyone, in stark contrast to his confessional statement. This material aspect of the appellant's confessional statement renders the confession doubtful.

14. Adverting now to the factum of recovery of the weapon of offence i.e. an *Aari* (saw) blade, the record reveals that a bloodstained *Aari* was claimed to have been recovered at the appellant's instance from the roof of the same mosque where the deceased's body was found. Admittedly then, the recovery has been effected from a place open and accessible to the public i.e. a mosque frequented by *namazies*, and so it cannot be claimed that the recovery was made from the appellant's exclusive possession. Moreover, the *mashirs* who had witnessed the recovery, were told by the police to arrive at the mosque telephonically. The recovery of the weapon of offence is also thus rendered doubtful.

15. Again, the *Aari* was not subjected to any forensic testing to match the appellant's fingerprints with those that could have been taken from the weapon's hilt. Thus, in the instant case i.e. one where there is no direct evidence and there are missing links in the chain of circumstantial evidence, the recovery of the *Aari* and the results of the testing it was subjected to are inconsequential and do not advance the prosecution case since the weapon has not been independently linked to the appellant.

16. The prosecution has also sought to marshal evidence to support the appellant's conviction and sentence in terms of section 377 of the PPC for



committing sodomy with the deceased. In this regard it is of paramount importance to highlight that the appellant's alleged confession was only to the extent of the murder and cannot support his conviction for sodomy. The record also reveals that the complainant did not inform the police that the offence (sodomy) had been committed with his son, the deceased. In fact, the police only included the offence under 377 of the PPC subsequently after the Chemical Examiner's report arrived. Moreover, Dr. Muhammad Ashraf (PW-6) stated in the postmortem report, issued under his hand, that there were no physical signs or symptoms of sodomy. He recorded that "*no semen, nor blood, faecal matter or lubricant found [sic] around anus, no laceration on mucus membrane inside anus. Anus is not prolapsed*". The doctor, however, reserved his final opinion until receipt of the report of the chemical examiner in regards the internal and external anal swabs he had taken. It was only upon the receipt of the report which found human sperm on the deceased's *shalwar* and on the internal anal swabs that the doctor concluded that sodomy had been committed with the deceased. The appellant's DNA, however, was not compared with the DNA in the sperm on the deceased's *shalwar* and internal anal swabs. Keeping in view that the instant case is one where there was no direct evidence, where there are otherwise missing links in the chain of circumstantial evidence and where the appellant's DNA was not sent for comparison with the DNA of the sperm found on the articles sent for examination, it would therefore be unsafe to rely solely on the presence of human sperm on the internal anal swabs and *shalwar* of the deceased to maintain a capital sentence.

17. The truthfulness of the claim that Muhammad Saleem (PW-5) had last seen the appellant leading the deceased from mosque's gate up its stairs must also be assessed. Muhammad Saleem (PW-5) statedly saw this happen around 9:00 p.m. on 24.11.2011 from his vantage point at the "Yousif Barber Shop"



where he had called his relative Irshad and from where he would head onwards to Mehrabpur that same night. Muhammad Saleem (PW-5) returned home to Tando Adam on 27.11.2011 where he was informed about Bilawal's death. He allegedly set out to offer his condolences to the complainant that very day when enroute he encountered a police mobile van at Jatia Para where he informed the I.O. that he last saw the deceased with the appellant. There are, however, flaws in Muhammad Saleem's (PW-5) testimony; foremost amongst these was that Muhammad Saleem had not promptly informed that he last saw the deceased with the appellant, preferring only to inform the police when he happened to cross paths with a police mobile van at Jatia Para. This delay raises doubt for the additional reason that the incident had caused uproar in the locality and Muhammad Saleem (PW-5) likely having knowledge of the same, still did not come forward promptly. Muhammad Saleem (PW-5) also acknowledged during cross-examination that in his statement to the police under section 161 of the Cr.P.C., he did not mention that he encountered the police mobile van at Jatia Para. Again, he did not reasonably explain his presence at the barbershop except by stating that he had called his relative there even though the said relative lived at a great distance from the shop and despite that the barber Yousif himself was not present at the shop. Furthermore, the sitemap does not describe any barbershop from where the gate of the mosque was within view despite describing adjacent houses and streets. The sitemap certainly does not describe any source of light at the entrance of the mosque or the gate itself.<sup>7</sup> Muhammad Saleem (PW-5)'s testimony as the "last seen" witness is thus also rendered doubtful.

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<sup>7</sup> The sitemap does not bear any date.



18. The conduct of the deceased's uncles, as well as the complainant, is also astounding. Admittedly, the uncles had left the deceased Bilawal, a child of barely five or six years, behind at the mosque after the night (*Isha*) prayers, later beginning their search for the deceased when he had not returned home for some time. Again admittedly, the search party arrived at the mosque around 9:00 p.m.. The initial act of leaving behind a child unattended at the mosque in the darkness of night during the winter month of November is perplexing in itself but also because the mosque is usually closed after the *Isha* (night) prayer.<sup>8</sup> What is more, only one other person was present in the mosque when the search party arrived, further establishing the absurdity of the PWs' actions and their account of events.

19. Keeping in view the foregoing facts, we have arrived at the conclusion that the prosecution has not proved its case against the appellant beyond the shadow of reasonable doubt. It is a settled proposition of law that even if there is a single circumstance which creates a doubt in the prosecution case, the benefit of that doubt accrues, as of right, in the accused's favour and may be sufficient to acquit the accused. The instant case is one that is rife with such doubts and thus we are of the view that the appellant's guilt is not proved. Consequently, the impugned judgments of the Trial Court and the High Court are set aside and the appellant, Manzoor Ahmed, is acquitted of the charges framed against him by extending the benefit of doubt. He shall be released from jail forthwith, unless he is required to be incarcerated in any other matter.

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<sup>8</sup> As per Muhammad Saleem son of Abdul Majeed (PW-7) during cross-examination.



20. These are the reasons for our short order dated 22.05.2025 which is reproduced below:

*“For reasons to be recorded later, this appeal is allowed. Consequently, the appellant is acquitted from the charges framed against him by extending the benefit of doubt. The judgments of the High Court dated 30.09.2020 and the Trial Court dated 02.01.2017 are set aside. In case the appellant is not required to be incarcerated in any other matter then he shall forthwith be released.”*

Islamabad, the  
22<sup>nd</sup> of May, 2025  
Arshed/ Mustafa Kundi, J.L.C

Approved for Reporting