

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

MR. JUSTICE MUHAMMAD HASHIM KHAN KAKAR
MR. JUSTICE SALAHUDDIN PANHWAR
MR. JUSTICE ISHTIAQ IBRAHIM

CRIMINAL APPEAL NOS.26, 27 & 28 OF 2021

(On appeal against the judgment dated 20.12.2016 passed by the Islamabad High Court, Islamabad in Crl.A.No.13/2011, Crl.A.No.19/2021 & M.R.No.10/2011.)

Bashir-ud-Din and Sharif-ud-Din
(in Crl.A.26/2021)

Mumtaz Hussain and Mushtaq Hussain
(in Crl.A.27/2021)

Mir Muhammad Afzal *(in Crl.A.28/2021)*

..... Appellant(s)

VERSUS

The State *(in Crl.A.26/2021 & Crl.A.27/2021)*

The State thr. AG, Islamabad *(in Crl.A.28/2021)* Respondent(s)

For the Appellant(s) : Raja Shafat Khan, ASC

For the State : Ms. Chaand Bibi, DPG

For the Complainant(s) : Mr. Mustafa Ramday, ASC
a/w Zoe K. Khan Adv. H.C,
Ahmed Junaid Adv. H.C,
Akbar Khan, Adv. H.C,
Barrister Salman Khan Adv. H.C,

Assistance : Muhammad Subhan Malik
(Judicial Law Clerk)

Date of Hearing : 08-05-2025

JUDGMENT

Salahuddin Panhwar, J. These appeals have been filed by the appellants, against the judgment dated December 20, 2016, passed by the Islamabad High Court, Islamabad, in Criminal Appeals No. 13 & 19 of 2011 and M.R. No. 10/2011. The appeals in the High Court challenged the judgment dated February 1st, 2011, rendered by the Additional Sessions Judge, Islamabad, in

Sessions Case No. 28 of 2007, wherein the appellants were convicted under multiple sections of the Pakistan Penal Code, specifically Sections 302 and 396, resulting in the death penalty and a fine of Rs. 100,000 each; failure to pay this fine would lead to two months of simple imprisonment. They were also convicted under Section 460, which resulted in life imprisonment and an additional fine of Rs. 100,000 each, with the same default penalty of two months' simple imprisonment. The charge under Section 400 was not proven, leading to their acquittal. Each appellant was ordered to pay Rs. 200,000 to the legal heirs of the deceased, with a default penalty of six months' simple imprisonment. Leave to appeal was granted to the appellants, and the Jail Petitions as well as the criminal petition was converted into Criminal Appeal vide Order dated 11.01.2021.

2. The prosecution's case asserts that on May 14, 2007, the complainant, Syed Amjad Ali Mashahdi, lodged FIR No. 167/2007 at Police Station Shalimar, Islamabad. In his statement, he reported that at approximately 4:15 a.m., four individuals entered his home, tied his and his wife's hands, and one of them shot his son, Syed Hamad Raza, Additional Registrar, Supreme Court of Pakistan, who later succumbed to his injury. It is pertinent to mention that the record reflects dacoity involving jewelry as well as mobile phone and watch. The complainant identified the appellants during the identification parade conducted before the Magistrate. Subsequently, the trial Court convicted the appellants of the aforementioned offences and imposed the sentences outlined in the introductory paragraph. The appellants challenged their conviction and sentences before the Islamabad High Court, which dismissed their appeals vide judgment dated December 20, 2016.

3. The learned counsel for the appellants argued that the prosecution failed to prove the specific role of each appellant in the murder of Syed Hamad Raza; that the appellants were not identified by the complainant during the investigation, and their identification during the identification parade before the Magistrate was not reliable; that the medical evidence and

recovery of weapons were not sufficient to connect the appellants with the commission of the offence; that no motive was proved by the prosecution through any cogent evidence.

4. The learned Deputy Prosecutor General countered that the prosecution had established the guilt of the appellants beyond reasonable doubt; that the identification of the appellants by the complainant during the identification parade before the Magistrate, corroborated by the ocular evidence, recoveries, and statement under Section 164, Cr.P.C of the appellant Mir Muhammad Afzal; that the medical evidence and recoveries had sufficiently supported and corroborated the ocular account against the appellants.

5. After meticulous evaluation of the arguments advanced by the learned counsel and a thorough appraisal of the record, this Court is satisfied that the prosecution has established the guilt of the appellants beyond reasonable doubt. The ocular testimony, corroborated by the identification of the appellants during the trial and the identification parade, recovery of incriminating weapons, the confessional statement recorded under Section 164, Cr.P.C., made by the appellant Mir Muhammad Afzal, collectively form a cogent and reliable body of evidence linking the appellants to the commission of the offence. Furthermore, the medical evidence, coupled with the forensic examination and positive report of the recovered weapon by the Forensic Science Laboratory (FSL), supports and reinforces the ocular account, thereby eliminating any reasonable doubt as to the involvement of the appellants. It is pertinent to mention that, the medical evidence establishes that the deceased, Syed Hammad Raza, sustained a single fatal injury on his skull, this important fact will be addressed in the latter part of this judgment.

6. In the present case, the judicial confession of the appellant Mir Muhammad Afzal, is available on record in the form of Section 164 Cr.P.C, in which the said appellant narrates the occurrence and gives an inculpatory confessional statement which involved the role of all co-accused persons, who are the

present appellants in the instant case. At this juncture, we cannot resist to shed light on confessions in criminal law. The Black's Law Dictionary defines confession, as a criminal suspect's oral or written acknowledgment of guilt, often including details about the crime.¹ Apart from the dictionary meaning, writers like John H. Wigmore defined confession as "an acknowledgment in express words, by the accused in a criminal case, of the truth of the main fact charged or of some essential part of it."² To make it more simple it is the admission of the accused regarding the commission of the offence.

7. Coming to the evidentiary value of the confession, as per the law of confession in Pakistan, it recognizes two types of confessions; one being the extra-judicial confession and the second being the judicial confession. It is pertinent to mention that both confessions have a distinct evidentiary value, the former constitutes a weak piece of evidence unless corroborated with strong piece of evidence as held in **Imran Case**³, that the extra-judicial confession was not sufficient for recording conviction on a capital charge unless it was strongly corroborated by tangible evidence coming from unimpeachable source, for the very reason that it may be deposed in front of any person, of any locality, any profession, and even any character, but it is upon the Judge, whether he believes in the existence of the occurrence and veracity of the version as deposed in the extra-judicial confession. Conceptual analysis of Article 2(4), Qanun-e-Shahadat, 1984 shows that in order to prove a fact asserted by a party, it does not require a perfect proof of facts, as it is very rare to have an absolute certainty on facts. This provision sets the standard of a prudent man for determining the probative effect of evidence under the circumstances of the particular case. The judicial consensus that has evolved over time is that the standard of 'preponderance of probability' is applicable in civil cases, the standard of 'proof beyond reasonable doubt' in criminal cases, and the in-between standard of clear and convincing proof in civil

¹ Black's Law Dictionary, 9th Edition

² John H. Wigmore, Evidence in Trials at Common Law § 821, at 308 (James H. Chadbourn ed., 4th rev. ed. 1970)

³ Imran v. the State (2015 SCMR 155)

cases involving allegations of a criminal nature. All these three standards are, in fact, three different degrees of probability, which cannot be expressed in mathematical terms, and are to be evaluated under the circumstances of particular case, as provided in clause (4) of Article 2 of the Qanun-e-Shahadat, 1984, and observed in ***Salamat Case***⁴.

The latter, which is in the instant case is the judicial confession, that is attributed with a high degree of confidence *Ipso Facto*, as it is recorded by a Judicial officer in a court in consonance with Section 164 and 364 of the Cr.P.C. and it is commonly relied upon for maintaining conviction by the superior courts of Pakistan. Reference in this regard can be plethora of judgments in Pakistan.⁵

8. The Judicial confessional statement of the appellant Mir Muhammad Afzal, is recognized by law as against the other co-accused as circumstantial evidence, under Article 43 of the Qanun-e-shahadat Order 1984, which is reproduced below:

“43. Consideration of proved confession affecting person making it and others jointly under trial for same offence:

When more persons than one are being tried jointly for the same offence and a confession made by one of such persons is proved,-

(a) such confession shall be proof against the person, making it and;

(b) the Court may take into consideration such confession as circumstantial evidence against such other person.”

Hence, the law of the land itself allows the consideration of such statement as circumstantial evidence against the other co-

⁴ Salamat Ali v. Muhammad Din (PLD 2022 S.C. 353)

⁵ Mazhar Hussain v. the State (1990 MLD 195)

Haji Jatoi v. the State (2003 P.Cr.L.J 1492)

Farooq Mengal v. the State (2007 SCMR 404)

Manjeet Singh v. the State (PLD 2006 SC 30)

Tariq Hussain v. the State (2003 SCMR 938)

Maj (R) Tariq Mehmood v. the State (2002 SCMR 1493)

Mst. Rubina Bibi v. the State (2001 SCMR 1914)

accused, in addition to that the sub-continental precedent of India has reasoned the jurisprudence behind this provision, Article 43 of the Qanun-e-shahadat Order 1984 is *Pari Materia* to the Section 30 of the Indian Evidence Act 1872, regarding which the court held in ***Emperor v. Daii Norsu and Govinda Nath***⁶ that the logic behind such a provision cannot be ignored as “*when a person admits guilt to the fullest extent and exposes himself to the pain and penalties provided for the guilt, there is a guarantee for his truth*”. The confessional statement of the co-accused, wherein he has implicated both himself and the other accused, may also be considered a relevant circumstance against the convict in terms of Article 43 of the Qanun-e-Shahadat, 1984. This provision lays down that when two or more persons are jointly tried for the same offence, and a confession made by one of them is duly proved, the court may take such confession into consideration as circumstantial evidence against the others. Reliance is placed on the dictum laid down by this Court in ***Khurram Malik Case***⁷.

9. Indian Courts have held that the rule laid down in Section 30 of Indian Evidence Act 1872, must be construed strictly. All that is necessary for a confession to be admissible against a co-accused is that the maker should inculcate himself in all the offences in which he implicates the other co-accused and it is not necessary that he should ascribe to himself as a major part in the confession of the crime as he ascribes to the other co-accused. Even if the maker implicates him only in an attempt to commit, or in the abetment of, the offence, or a minor part in the commission of the offence, the admissibility of the confession against the other accused is not affected, reference in this regard is placed on ***Mohammad Sabir Case***⁸.

10. It is to be noted that a different view also exists in criminal law, that as far as confessional statement of one accused is concerned, it may be taken into consideration against the other accused persons if the confession substantially implicates the

⁶ Emperor v. Daii Norsu and Govinda Nath (ILR (1883) 6 Bom 223)

⁷ Khurram Malik and others v. The State and others (PLD 2006 SC 354)

⁸ Mohd. Sabir vs Rex (AIR 1952 All 796)

maker himself, to the same extent as the other accused persons against whom it is sought to be taken into consideration. However, this cannot be considered as a prevailing view in our opinion and it would be sufficient when the accused attributes to himself even a minor role, which is different from other co-accused, it will still be acceptable if by confessing to that minor role, it leads to the maker's incrimination in the case. The position, however, would be different and confession would not be acceptable, where while making the alleged confession, an attempt is made by the maker of it to throw the blame on the other accused persons, making himself a mere unwilling spectator, in this regard reliance is placed on numerous judgments of India.⁹

11. In the present case, the inculpatory confession made by the appellant, Mir Muhammad Afzal, not only details his own involvement but also implicates the other appellants in the incident. Even though the confession was subsequently retracted, a conviction can still be sustained if there exists other corroborative and incriminating evidence against the appellants. It is pertinent to note that once a confessional statement is found to be true and voluntary, it can form the basis for conviction. In this regard, reference may be made to the case of **Muhammad Amin**¹⁰. The inculpatory judicial confession of appellant Mir Muhammad Afzal constitutes a significant cornerstone of the prosecution's case. This confession was duly corroborated by the ocular testimony of the prosecution witnesses, the identification parade, medical evidence, the recovery of the weapon, and the forensic report issued by the Forensic Science Laboratory (FSL), collectively forming a consistent and credible chain of evidence supporting the prosecution's narrative.

12. As far as the motive is concerned, it is important to highlight that the prosecution's case reveals two conflicting narratives regarding the motive: one asserts that the murder occurred during a robbery/dacoity, while the other proposes the

⁹Rema Naik vs. State (AIR 1965 Ori 31)

Balbir Singh vs. The State of Punjab (AIR 1957 SC 216)

¹⁰ Muhammad Amin v. The State (PLD 2006 SC 219)

possibility of a targeted killing. Consequently, the true motive remains shrouded in mystery. Both versions have surfaced in the evidence, yet neither diminishes the culpability of the appellants, nor any of the version was supported by cogent evidence. It was held in **Muhammad Yaqoob Case**¹¹ and **Ali Asghar alias Aksar case**¹² that, where the motive for the offence is shrouded in mystery then the extreme penalty of death is not warranted. In addition to that, it has been held in numerous cases that when motive is neither proved, nor satisfactorily established, in that circumstance the extreme penalty of death is usually avoided.¹³ Additionally, given that four individuals were implicated in the crime, the investigation and identification parade do not attribute a specific role to each appellant with respect to inflicting this injury. This factual matrix, while not exonerating the appellants, constitutes a relevant mitigating circumstance in the assessment of their respective culpabilities and the quantum of sentence.

13. The above discussion leads us to the inevitable inference that the appellants are conclusively linked to the offences, the aforementioned mitigating factors warrant a modified sentencing approach. There are precedents of this Court recognizing that the act of firing a single shot from a firearm may constitute a mitigating factor warranting the imposition of an alternate sentence. In support of this principle, reliance is placed on the authoritative judgment of this Court in **Shameem Khan Case**¹⁴.

14. In light of the preceding considerations, the appeal is partly allowed, the death sentence of the appellants (*in Crl.A.26/2021*), (*in Crl.A.27/2021*) & (*in Crl.A.28/2021*) is hereby, modified to the sentence of life imprisonment and the above said appellants are directed to pay a fine of Rs. 500,000 each. The said amount shall be paid to the legal heirs of the deceased as compensation, in accordance with the provisions of Section 544-A of the Code of

¹¹Muhammad Yaqoob v. State (1999 SCMR 1138)

¹²Ali Asghar alias Aksar v. the State (2023 SCMR 596)

¹³ Nadeem Ramzan v. The State (2018 SCMR 149)

Amjad Shah v. State (PLD 2017 SC 152)

Zafar Iqbal v. State (2014 SCMR 1227)

¹⁴ Shameem Khan v. The State (2024 SCMR 1802).

Criminal Procedure, 1898. In the event of non-payment, they shall undergo six months of simple imprisonment.

Judge

Judge

Judge

B-VIII
Islamabad,
08.05.2025
“Approved for reporting”
M. Subhan Malik (JLC) + Abdul Wasay/-