

THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Bench:

Mr. Justice Athar Minallah
Mr. Justice Malik Shahzad Ahmad Khan
Mr. Justice Shakeel Ahmad

**CRIMINAL APPEAL NO.674 OF 2020 AND
CRIMINAL PETITION NO.241 OF 2025.**

(Against judgment dated 27.09.2016 of the Peshawar High Court, Mingora Bench (Dar ul Qaza) Swat passed in CrI. Appeal No.223-M/2013 & M.R. Nos.4-M and 4-A of 2013)

Sher Ahmed	...Appellant in CrI.A.674/2020
Alam Khan	...Petitioner in CrI.P.241/2025

Versus

The State and another	...Respondents in both cases
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For the appellant/petitioner:	Mr. Arshad Husain Yousafzai, ASC (in both cases)
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For the complainant:	Mr. Danial Khan Chamkani, ASC (In CrI.A.674/2020)
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For the State:	Syed Kausar Ali Shah, Additional Advocate General, Khyber Pakhtunkhwa
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Date of hearing:	13.03.2025
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Judgment

Athar Minallah, J.- The appellant, Sher Ahmed, had invoked the jurisdiction of this Court and had sought leave, which was granted *vide* order dated 06.11.2020. Alam Khan, son of Bakhti Zaman, had later filed a petition seeking leave and, pursuant to our order, it was numbered and fixed for hearing. The delay in filing the petition was condoned because it involved the question of liberty of the petitioner who was incarcerated at the time. Sher Ahmed and Alam Khan shall collectively be referred to as the appellants. The appeals were allowed *vide* our short order of even date and the appellants were acquitted from the charges framed against them by extending the benefit of doubt. They were directed to be released forthwith, if not required to be incarcerated in any other matter. We are, therefore, recording our reasons for their acquittals.

2. It was reported on 23.04.2012 by Rasheed Ahmed, PW-12 (complainant) in his written statement filed in the Police Station, Raheem Abad, District Swat that his son Ahmed, who then was between 9 and 10 years old, could not be traced despite searches made by him and others. However, the statement did not disclose the commission of a cognizable offence. Pursuant to this report *Mad* No.39 (Exh.PW-12/1) was registered. The inquiry was marked to Abdul Wahid, Sub Inspector (PW-14) on 25.04.2022 and on the same day the latter had sought permission to conduct an inquiry under section 156(3) of the Code of Criminal Procedure, 1898 ('**Cr.P.C.**'). It was granted by the concerned Magistrate. It appears from the testimonies of the witnesses that during the course of the said purported inquiry, several persons were suspected and subjected to interrogation. They were interrogated and then released as was deposed by Abdul Wahid SI (PW-14). All this activity was taking place before the registration of the case as required under section 154 of the Cr.P.C. This aspect will be discussed in more detail later because it was not only in violation of the scheme of the Cr.P.C but had consequences in relation to the confession recorded under section 164 of the Cr.P.C. On 05.07.2012 Muhammad Hanif Khan, Inspector (PW-10) took over the purported inquiry for only a day and Alam Khan was arrested by him. The latter had led to the recovery of the dead body of a child from a well. After the recovery of the dead body, crime report No.554 dated 05.07.2012 was registered at P.S. Raheem Abad, District Swat for commission of the alleged offences under sections 365-A, 302 and 34 of the Pakistan Penal Code, 1860 ('**PPC**') read with section 7 of the Anti-Terrorism Act 1997 ('**Act of 1997**'). The recovered body was identified by the complainant Rasheed Ahmed (PW-12) by the clothes on the recovered body since it was putrefied and beyond recognition. Dr. Muhammad Ishaq (PW-1) had conducted the autopsy and submitted the

post mortem report to the investigating officer. The opinion of the medical practitioner was not conclusive because he had identified three possible causes of death i.e. poisoning, violence or drowning. A definite finding was not given. The autopsy report could not even ascertain the gender because of the condition in which the body had been recovered. The samples taken for DNA analysis were returned because the DNA analysis could not be performed and further parts were required by the Forensic Science Laboratory ('FSL'). It is noted that Alam Khan was arrested on 05.07.2012 while Sher Ahmed on 06.07.2012. On 11.07.2012 the judicial confessions of both the appellants were recorded by Johar Ejaz Ali Shah, Judicial Magistrate, who had entered the witness-box as (PW-13). After completion of the investigation, the investigating officer filed a report under section 173 of the Cr.P.C. The charge was framed by the trial court on 27.09.2012 and neither appellant pleaded guilty. The prosecution produced fourteen witnesses while the appellants opted not to be examined under oath and, therefore, their respective statements were recorded under section 342 of the Cr.P.C. The trial court, upon conclusion of the trial, convicted and sentenced the appellants. It is noted that the third accused, Umrain, was acquitted of the charge framed against him because the trial court had formed an opinion on the basis of the evidence brought on record that he had been involved in the case merely because his house was situated near the well from where the dead body was recovered. The appellants were sentenced to death on three counts under sections 365-A PPC, 302(b) PPC and also under section 7(a) of the Act of 1997. The movable and immovable properties of the appellants were ordered to be forfeited. They were also ordered to pay compensation of 5,00,000/- (rupees five hundred thousand) each under section 544-A of the Cr. P.C to the legal heirs of the deceased. The trial court had further imposed a

fine of Rs.1,00,000/-(one hundred thousand) each, payable to the legal heirs of the deceased minor under section 7(a) of the Act of 1997. The appellants challenged their convictions and sentences before the High Court and their appeals were dismissed *vide* the impugned judgment dated 27.09.2016. The High Court had answered the reference in the affirmative. The appeal against the acquittal of Umrain was also dismissed.

3. We have heard the learned counsel for the appellants and the learned counsel for the complainant. We have also had the benefit of assistance by the learned State counsel. The record has been perused with their assistance.

4. The complainant, Rasheed Ahmed (PW-12) had reported on 23.04.2012 that his son, who was about 10 years old, had gone missing. An inquiry under section 156(3) of the Cr.P.C was initiated. The testimonies of the police officials associated with the inquiry show that several people were subjected to inquiry on the basis of being suspects. The inquiry was taken over by Muhammad Hanif Khan, Inspector (PW-10) for one day in the absence of Abdul Wahid, Sub-Inspector (PW-14) to whom it was marked. Muhammad Hanif Khan, Inspector (PW-10) had deposed in his examination-in-chief that Alam Khan was interrogated by him and that he was arrested at noon on 05.07.2012. Pursuant to the interrogation, Alam Khan had led to the recovery of the body from a well. It was after the recovery of the body that the crime report under section 154 of the Cr. P.C was registered on 05.07.2012 at 9:40 p.m. In his cross-examination Muhammad Hanif Khan, Inspector (PW-10) had explicitly deposed that the involvement of Alam Khan was suspected and, therefore, he was subjected to interrogation and in his examination-in-chief he had confirmed that the interrogation was

conducted and the arrest was made during the inquiry. The complainant, Muhammad Rasheed (PW-12), was neither informed nor was he present when the body was recovered from the well. This is intriguing and does not appeal to a prudent mind. Jahan Badshah (PW-4) was one of the witnesses of the recovery of the dead body from the well. In his testimony he had confirmed that he was a close relative of the complainant Rasheed Ahmed. He had also affirmed that he was nominated in a criminal case regarding the murder of one of the appellants, Alam Khan's brother. There is no explanation brought on record as to why, in the circumstances, the complainant Rasheed Ahmed (PW-12) was not informed, not even by his close relative, when the dead body was being recovered.

5. We have noted that the appellants had recorded their respective judicial confessions under section 164 of the Cr. P.C. We have carefully perused both the confessional statements. The statement of the appellant, Sher Ahmed, is exculpatory because he had alleged that, despite restraining the other appellant, Alam Khan, the latter had killed the child. Likewise, the confessional statement recorded by the appellant Alam Khan was partly exculpatory in nature since he had attributed an effective role to Sher Ahmed in taking the life of the minor victim. The events narrated by both the appellants in their respective confessional statements are distinct and not corroborated. The proceedings till the registration of the case under section 154 and the arrest of the appellant, Alam Khan and then the recovery of the dead body, according to the prosecution's case, at his instance are not only shrouded in mystery but they were in violation of the mandatory provisions of the Cr.P.C. The officer in charge of the police station had sought permission from the Magistrate under section 156(3) to conduct an 'inquiry' and it was allowed by the latter. As already noted above,

Alam Khan was arrested on 05.07.2012 while Sher Alam on 06.07.2012. They had remained in the police custody for a considerable time and their confessional statements were recorded on 11.07.2012. There is nothing on record to explain the delay in recording the judicial confessions. Was the appellant, Alam Khan, dealt with in accordance with law, particularly in conformity with the provisions of the Cr.P.C? If the answer is in the negative then the question is whether this illegality could have had an effect regarding the confession being voluntary and having been made out of free will. What was the status of the 'inquiry' ordered by the Magistrate under section 156(3) of the Cr.P.C?

6. It is settled law that under section 154 of the Cr.P.C it is the statutory duty of an officer of a police station to enter information relating to a cognizable offence in the book kept and prescribed for this purpose. The expressions 'cognizable offence' and 'cognizable case' have been defined in section 2(f) as meaning an offence or case in which a police officer may, in accordance with the second schedule or under any other law in force, arrest without a warrant. This is distinct from the procedure in case of a non-cognizable offence dealt with under section 155. Section 154 precedes section 156 and mandates that it is the statutory duty of an officer in charge of a police station to register the information and, once the information has been entered in the book prescribed for the purpose of section 154 of the Cr.P.C then it assumes the status of a 'cognizable case' as has been interpreted and held by this Court in the case of *Sughran Bibi*¹. Section 156 follows section 154 with the heading 'Investigation into cognizable cases' It is, therefore obvious that it explicitly relates to investigation which ensues the registration of an FIR or a case under section 154. The section, therefore, becomes

¹ *Mst. Sughran Bibi v. The State (PLD 2018 SC 595)*

relevant in those cases where a case has been registered under section 154. Sub section 3 of section 156 provides that 'any Magistrate empowered under section 190 may order such an investigation as above mentioned'. Section 157 sets out fetters on the power of an officer of a police station relating to investigation, even if a case has been registered under section 154. The officer in charge of a police station, in order to proceed to investigate a case or to depute a person for this purpose, must satisfy the test of having 'reason to suspect' the commission of a cognizable offence. However, proviso (a) and (b) of section 157(1) empowers an officer in charge of a police station to dispense with or not to proceed with the investigation; (a) when the information is against any person by name and the case is not of a serious nature or (b) when it appears to an officer in charge of a police station that there is no sufficient ground to embark on an investigation. However, in such an eventuality there is a statutory duty to forthwith inform the Magistrate in the report required to be sent to the latter, the reasons for such a decision and also notify the informant. The Magistrate may, in exercise of powers vested under section 156(3), order an investigation. It is noted that the legislature has expressly empowered a Magistrate empowered under section 190' to order an investigation. This is significant because there could be eventualities in which information may not have been given or received under section 154 and the complainant may have approached a Magistrate empowered under section 190 to take cognizance under section 200 read with sections 201,202 and 203 of the Cr.P.C. It is noted that Chapter XIV and Chapter XVI are distinct. In case of Chapter XIV the stage of taking cognizance by a Magistrate is after a report under section 173 has been filed upon conclusion of investigation pursuant to registration of an FIR under section 154. However, the scheme under Chapter XVI is different. The Magistrate has

two options when a complaint has been received under section 200, either to entertain the complaint by taking cognizance and proceed under Chapter XVI or to pass an order under 156(3). In the former eventuality the Magistrate would be required to examine the complainant under oath under section 200 and then proceed to pass an order under section 202 of the Cr.P.C. However, if he chooses to pass an order under section 156 (3) then he may also direct the officer in charge of a police station to register the case under section 154 if it relates to the commission of a cognizable offence. But once the Magistrate has examined the complainant under oath under section 200 then he has to proceed under Chapter XVI and cannot pass an order under section 153(6). This Court, in Mohammad Ramzan's case², had considered the aforementioned provisions and it was held that once a Magistrate has taken cognizance by recording the statement of a complainant then the latter can only proceed under Chapter XVI in accordance with the mandate described under sections 202 to 204. However, if the Magistrate does not take cognizance in the aforementioned manner, then it will be open for him to pass an order under section 156(3) for investigation of the case after registration of a case under section 154. The Supreme Court of India has also interpreted the *para materia* provisions in a similar manner³. It is, therefore, implicit in section 156(3) that the order of investigation contemplated therein is relatable to registration of a case under section 154 of the Cr.P.C if the crime relates to the commission of a cognizable offence. The order of investigation would be effective when a case is already registered or has been registered pursuant to the order of the Magistrate. The expression 'investigation' has been defined in section

² Mohammad Ramzan v. The State case (PLJ 1979 SC 302)

³ Gopal Das Sindhi and others v. The State of Assam and others (AIR 1961 SC 986), Suresh Chand Jain v. The State of Madhya Pradesh and others (AIR 2001 SC 571) and Sakiri Vasu v. State of U.P. and others (AIR 2008 SC 907)

2(l) and it includes all the proceedings under the Code for the collection of evidence, conducted by a police officer or by any authorized person other than a Magistrate. Inquiry has been defined under section 2(k) and it includes every inquiry other than a trial conducted under the Cr.P.C by a Magistrate or a court. The exceptions to carry out an investigation before the registration of a case have been explicitly mentioned in the Cr.P.C e.g in sections 54,55,57 or 151 etc. However, even in such eventualities the powers of the police officer are not unfettered. Section 60 and 61 make it mandatory for a police officer to notify the Magistrate or produce the arrested person before such Magistrate. The order of 'investigation', therefore, in the context of section 156(3) refers to investigation in a case which has already been registered or it would follow after the required entry under section 154 has been made pursuant to the order. Moreover, an inquiry cannot be ordered by a Magistrate under section 156(3) because in that case one will have to read in the section something the legislature has not intended. The scheme of the Cr.P.C contemplates external supervision of a Magistrate over the executive functions of an officer in charge of a police station. As an example, even when it appears to an officer in charge of a police station or the investigation officer that sufficient evidence or reasonable grounds of suspicion exist, this does not justify the forwarding of an arrested accused to a Magistrate and such an accused has to be released, but in such an eventuality the mandatory provisions set out under section 169 have to be complied with. The investigation that follows the registration of a case under section 154 has to be conducted in accordance with the provisions of the Cr. P.C. This is crucial in order to uphold the integrity of the criminal justice system on the one hand and on the other to protect the accused as well as the victim from the abuse of the coercive powers vested in an officer

in charge of a police station. The '*madd*' is an entry in the daily or station diary. This enables an officer in charge of a police station to circumvent the scheme mandated under the Cr.P.C and to avoid the external supervision against abuse of the coercive police powers. This could have extreme debilitating effects on an accused. The case before us is a classic example. The effects can be profound in the context of assessing whether a confession recorded under section 164 of the Cr.P.C was voluntary and made out of free will.

7. In this case the initial statement filed by the complainant Rasheed Ahmed (PW-12) was only to the extent of informing the officer in charge of a police station that despite a search he could not find his son. He had not expressed any apprehension regarding the commission of a cognizable offence. It was understandable that the information did not meet the requirements set out in section 154. In the circumstances, there was no need to seek an order and measures could have been taken for searching the missing child. Nonetheless, the report seems to have been taken seriously by seeking permission for conducting an 'inquiry' under section 153(3) of the Cr.P.C and it was granted by the concerned Magistrate without appreciating the fact that no power or authority was vested to order an inquiry. The witnesses in their depositions had stated that the Magistrate had ordered an 'inquiry' and that it was marked to Abdul Wahid SI (PW-14). In his examination-in-chief he acknowledged that 'during the course of inquiry, I interrogated various suspects, but they were released being not involved in the commission of the offence'. Mohammad Hanif Khan, SHO (PW-10) had also deposed that many persons were interrogated during the inquiry. He claims to have taken over the inquiry only for a day i.e on 05.07.2012 and had further stated that the appellant, Alam Khan, was arrested on the same day. It was later in the day that, according to his testimony, the appellant had led

him to the recovery of the dead body from the well. No FIR or, in other words, entry was made as required under section 154 before the recovery of the body. The entire proceedings before the registration of the case under section 154 were conducted under the garb of an inquiry not even contemplated under section 156(3) of Cr.P.C. It is established from the evidence that during the period from 23.04.2012 till 05.07.2012 numerous persons were arrested and interrogated as suspects. They were released without complying with the requirements prescribed under the Cr.P.C, in the case of suspects who are arrested and released after the registration of a case. It was, therefore, obvious that the officer in charge of the police station had reason to suspect the commission of a cognizable offence but did not register a case nor complied with the mandatory procedure set out under section 157. By adopting this course, the officer in charge of the police station had steered clear from the external supervisory check otherwise contemplated under the scheme of the Cr.P.C. The officer in charge of the police station or any other officer associated with the purported 'inquiry' had illegally arrested suspects and then released them. The interrogation without the registration of a case in the circumstances was also illegal. The abuse of the coercive powers in this case, therefore, cannot be ruled out. It is a mystery as to when and why the appellants were treated as suspects and the arrest of the appellant, Alam Khan also becomes questionable. This definitely must have had serious consequences in the context of the exercise of free will and rational thinking for the purpose of making a confession. These circumstances raise serious doubts regarding the confessional statements recorded under section 164 being voluntary and given out of free will.

8. This Court, in Major (Retd.) Tariq Mehmood's case has observed that if the confession is not confidence-inspiring then it cannot be made

a basis to convict a person without independent corroboration. It is a general trend of the courts to refrain from basing the convictions solely on the basis of a retracted confession. The rule of abundant caution is to look for independent corroboration in material particulars to ensure the safe administration of justice. However, a judicial confession does not always lose its evidentiary value if there is no independent corroboration. This Court has further held that it is for the court to be satisfied that the retracted judicial confession was true and voluntary and that it can safely be made a basis for conviction. The true test to judge the evidentiary value of a retracted confession would be that it must be voluntary, truthful and free of any duress and coercion. The retraction of a judicial confession in itself is not a ground to discard it. This Court has, therefore, held that the retracted judicial confession, if found to be voluntary, true and confidence-inspiring, then it alone would be sufficient to sustain a conviction and, further, that the rule of corroboration being a rule of abundant caution is not an inflexible rule to be insisted in each case. If in particular circumstances of the case the court is satisfied that the judicial confession was voluntary, true and confidence-inspiring then it may also justify sustaining a conviction.⁴

9. In a recent judgment⁵ this Court, after surveying the precedent law, has summarized the principles; a solitary judicial confession, if it is made a basis for conviction, then it has to be relied upon *in toto* without any pick and choose; when there is no other evidence and the confessional statement is the only material for convicting an accused then it has to be either accepted as a whole or rejected accordingly; the exculpatory portion of a confession cannot be discarded while proceeding to rely upon the same for decision of the case; a confession

⁴ *Tariq Mehmood v. State* (2002 SCMR 1493)

⁵ *Javed Iqbal v. State* (2023 SCMR 139)

has to be read as a whole and not by relying only on the inculpatory part of the statement; the confessional statement of a person can only inculcate himself and no other person can be inculpated merely because some other person has made any admission; the admission of occurrence by the accused with a different version is not a confession of guilt and the court, without splitting it, has either to accept or reject it as a whole. However, if the admission in parts or full is of a nature which supports the case of the prosecution which is proved through reliable evidence, only then such statement or confession can be used for the purpose of corroboration and supporting evidence. This Court has also held that a judicial confession made by a co-accused is a valid piece of evidence which could be taken into consideration and used as circumstantial evidence against a co-accused of such a confessing accused. Moreover, delay in recording a confessional statement by itself is not sufficient to adversely affect its validity. No hard and fast rule can be laid down to determine the period for recording such confessional statements during the investigation⁶. A delayed confessional statement loses its evidentiary value the longer an accused remains in the custody of the police.⁷

10. We have noted that the judicial confessions of both the appellants contradict each other's version and do not find any corroboration. It was deposed by the Judicial Magistrate who had recorded the confessions that the appellants were placed in the custody of the Almad but did not state that he was not in police uniform. The confessions in the facts and circumstances of this case cannot be treated as having been made voluntarily and out of free will. The testimonies of the complainant Rasheed Ahmed (PW-12) and Adalat Khan (PW-07) are not consistent

⁶ Majeed v. the State (2010 SCMR 55)

⁷ Muhammad Parvez v. The State (2007 SCMR 670)

insofar as material facts are concerned. Adalat Khan (PW-7) was the complainant's brother and he had deposed that Alam Khan had remained associated with them during the search for the child. According to his testimony Alam Khan was suspected because of his inquiries regarding delay in the payment of ransom. The witness had deposed that on 05.07.2012 both the appellants and the other acquitted accused, Umrain, had come to the grassy ground. In his examination-in-chief he had stated that Alam Khan was arrested from the grassy ground but later, in his cross-examination, he had contradicted his own statement by deposing that his arrest was made while he was proceeding towards the complainant's house. The deposition of Adalat Khan (PW-07) does not find support from the testimonies of other witnesses, particularly that of the complainant, Rasheed Ahmed (PW-12). The latter, in his deposition, did not refer to the communication between Alam Khan and Adalat Khan (PW-07) nor the presence of the appellants and the acquitted accused at the grassy ground. The testimony of Muhammad Hanif Khan, Inspector (PW-10) further weakens the prosecution's story because, according to his deposition, Alam Khan was one of the suspects during the inquiry conducted under section 156(3) of the Cr. P.C. and that he was interrogated prior to the recovery of the body and registration of the crime report. The testimony of Abdul Wahid (PW-11) further raises doubts since he had contradicted the facts narrated by Adalat Khan (PW-07) in material particulars. According to his testimony the appellant, Sher Ahmed, and the acquitted accused, Umrain, were arrested on 06.07.2012. There was no explanation as to why the three accused were not arrested when, according to the testimony of Adalat Khan (PW-07), they came together to the grassy ground to collect the ransom amount. There is no evidence to prove that ransom was demanded or that the child victim was

abducted by the appellants. The DNA report was inconclusive and the identification of the body was solely based on the recognition of the clothes on the dead body recovered from the well after more than three months from the date of his disappearance. The judicial confessions of both the appellants, recorded under section 164 of the Cr. P.C after remaining in police custody for a considerable time are doubtful because the circumstances do not establish that they were voluntary and given out of free will. The judicial confessions were retracted and, therefore, strong independent corroboration was required. The prosecution had failed in its obligation to prove the case against the appellants beyond a reasonable doubt and, therefore, they were entitled to be acquitted from the charges against them.

11. The office is directed to send a copy of this judgment to the Prosecutor General and Inspector General of Police, Khyber Pakhtunkhwa. We have observed in several cases that the phenomenon of entering information as a '*madd*' and seeking permission from a Magistrate to conduct an inquiry is widespread in the province of Khyber Pakhtunkhwa. The Magistrate also allows the request. As we have noted above, the Magistrate is not empowered under section 156(3) to order an inquiry nor steps relating to investigation can be taken by an officer In charge of a police station pursuant thereto. The purpose and object of empowering a Magistrate to pass an order under section 156(3) of Cr.P.C. appears to be misconstrued. This ultimately leads to failure on part of the prosecution to fulfill its obligations. Every investigation has to be conducted in accordance with the provisions of Cr.P.C. which also ensures safeguards against the abuse of coercive powers vested in a police officer. We expect that appropriate steps will be taken to ensure compliance with the scheme of the Cr.P.C. and guidance shall be

Crl.A.674/2020, etc.

provided to the prosecutors and the officers In charge of the police stations in this regard.

Judge

Judge

Judge

Islamabad the,
13th March, 2025
'APPROVED FOR REPORTING'
*M. Azhar Malik/Rameen Moin, LC**