

**IN THE SUPREME COURT OF PAKISTAN**  
**(APPELLATE JURISDICTION)**

**PRESENT:**

MR. JUSTICE MUHAMMAD HASHIM KHAN KAKAR  
MR. JUSTICE ISHTIAQ IBRAHIM  
MR. JUSTICE ALI BAQAR NAJAFI

**CRIMINAL APPEAL NO.212 OF 2023**

*(Against the judgment dated 29.06.2021 in Crl.Jal  
Appeal No.D-18 of 2014 with Murder  
Reference/confirmation case No.6 of 2014)*

***Muhammad Wajid***

*...Appellant(s)*

***Versus***

***The State***

*...Respondent(s)*

For the Appellant:

Mr. Anis Muhammd Shahzad, ASC

For the State:

Mr. Siraj Ali Khan Addl. P.G. Sindh.

Date of hearing:

15.05.2025

**JUDGMENT**

**ISHTIAQ IBRAHIM, J.-** The appellant, Muhammad Wajid, was tried by learned IInd Additional Sessions Judge, Hyderabad (**“Trial Court”**) in Crime No. 61 of 2011 registered at Police Station Fort, Hyderabad, for offences punishable under Sections 302 and 376 of the Pakistan Penal Code, 1860 (**“PPC”**), arising out of the rape and murder of Malaika, a minor girl aged about 5½ years. Upon conclusion of the trial, the learned Trial Court vide judgment dated 28.01.2014, convicted the appellant under Section 302(b) PPC and sentenced him to death as *Ta’azir*. He was further convicted under Section 376 PPC and sentenced to imprisonment for life. Additionally, the appellant was directed to pay compensation in the sum of Rs. 200,000/- to the legal heirs of the minor deceased as envisaged under Section 544-A Cr.P.C., and in default thereof to undergo simple imprisonment for a further period of six months. Benefit of Section 382-B, Criminal Procedure Code, 1898 (**“Cr.P.C.”**), was extended to the appellant.

2. The learned High Court of Sindh Circuit Court at Hyderabad, while partly allowing the appeal preferred by the appellant set-aside his conviction and sentence recorded under Section 376 PPC. However, the conviction of the

appellant under Section 302(b) PPC was maintained. The death sentence of the appellant was confirmed, consequently, the murder reference sent by the Trial Court for confirmation or otherwise, was answered in the affirmative vide judgment dated 29.06.2021 (**"impugned judgment"**).

3. Feeling aggrieved by his conviction and sentence, the appellant preferred a Jail Petition before this Court assailing the impugned judgment of the learned High Court. Leave to appeal was granted vide order dated 23.02.2023 in order to reappraise the entire evidence on record, in the interest of the safe administration of criminal justice. The State or the complainant has not preferred any criminal petition/appeal against the acquittal of the accused under section 376 PPC.

4. The prosecution's case as per First Information Report (FIR), is that on 17.12.2011, Malaika, a minor girl aged about 5½ years and daughter of the complainant Muhammad Javed (PW-1), who had left her house to purchase some items when did not return home, her father/complainant along with his brother Muhammad Younis started search for her. The complainant also went to the Police Station and reported about the disappearance of his minor daughter. On the following day i.e. 18.12.2011, a person came to the complainant's residence and informed him that he has seen deadbody of a girl lying in a *Kachra Kundi* (garbage dump). Upon receiving this information complainant along with his brother-in-law Kamran and nephew Muhammad Umair, proceeded to the said location where a number of local residents had already gathered. There, the complainant identified the dead body to be that of his daughter, Malaika deceased, who was clad in pink-coloured clothes and wearing earrings; however, her *dopatta* was missing. In the meantime, the police arrived at the spot and shifted the dead body to the hospital. The police also took into custody the shoes of the deceased which were found lying at some distance from the body. After the funeral and burial rites, the complainant once again approached the Police Station and informed the police that one Muhammad Nasir had told him that he had seen the deceased in the company of appellant Muhammad Wajid on the previous evening. On the basis of this information, the complainant suspected the appellant Muhammad Wajid to be responsible for the murder of his minor daughter.

5. Upon the arrest of the appellant and conclusion of the investigation, a report under Section 173 Cr.P.C was submitted before the learned Trial Court. The appellant was formally charged, to which he pleaded not guilty and claimed trial. Upon the conclusion of a regular trial, the learned Trial Court convicted the



appellant under Sections 376 and 302 PPC and sentenced him accordingly. However, in appeal, the learned High Court set aside the appellant's conviction and sentence under Section 376 PPC, however, while maintaining his conviction under Section 302(b) PPC, the sentence of death awarded to the appellant was confirmed.

6. We have heard the learned counsel for the appellant as well as the learned Additional Prosecutor General, Sindh, representing the State, and have examined the record and evidence available on file with their able assistance.

7. The instant case is one of circumstantial evidence, as there is no direct eyewitness account of the incident. Nonetheless, the courts below have concurrently recorded the conviction of the appellant under Section 302(b) PPC, relying on a chain of incriminating circumstances which, when considered collectively, unerringly point towards the guilt of the appellant. The circumstantial evidence includes the natural conduct and credible testimony of the complainant (PW.1); the last seen evidence furnished by Muhammad Nasir (PW.2); a voluntary judicial confessional statement of the appellant; the recovery of dopatta of the deceased on the pointation of the appellant; and medical evidence corroborating the cause of death as homicidal asphyxia. It is well settled principle of law that conviction can be recorded even in case carrying capital punishment on the basis of circumstantial evidence if it excludes all hypothesis of innocence of accused, however, it should be accepted with great caution and be scrutinized minutely for reaching conclusion that no plausible conclusion be drawn except guilt of the accused. The prosecution is duty bound to prove every circumstance independently as is so connected with other circumstances which constitutes an unbroken chain that leads to no other inference but to the guilt of accused. This Court in case titled, "Munawar Hussain v. Imran Waseem" (2013 SCMR 374), has observed as under:-

"Even, death penalty can also be awarded on circumstantial evidence but it should be beyond any shadow of doubt. The chain of facts be such that reasonable inference can be drawn that accused has committed the offence. All the facts established should be consistent only with the hypotheses of guilt of the accused. If any link is missing that will destroy the whole links of such evidence and all the links of the circumstances must lead to the guilt of the accused. It is not a such type of evidence, but it is sufficiency and quality which matters. The circumstantial evidence should be so interconnected that it forms such a continuous chain that its one end touches the dead body and the other the neck of accused thereby excluding all hypothesis of his innocence."



8. The behavior of the complainant, Muhammad Javed (PW.1), was natural and devoid of any *mala fide*. Upon his daughter Malaika going missing on the evening of 17.12.2011, he promptly initiated search efforts along with his brother and on the same night reported in the Police Station about missing of his daughter. The appellant was not nominated in the said report, which reinforces the *bona fides* of the complainant that he was not interested in charging innocent person(s) in random. Had there been any ulterior motive or enmity of the complainant with the appellant, could have falsely implicated him from the outset. Contrary, on the next day of missing of his daughter, the complainant nominated the appellant as accused when PW Muhammad Nasir told him that he had seen the deceased in the company of the appellant on the previous evening.

9. The testimony of Muhammad Nasir (PW.2), who stated that he had seen the deceased in the company of the appellant on 17.12.2011 at a shop located at Fakir Ka Pir, Hyderabad, constitutes last seen evidence. The witness was subjected to cross-examination, yet nothing could be elicited to discredit his testimony or show any animosity against the appellant. His statement remained unimpeached and forms an essential link in the chain of circumstantial evidence.

10. The confessional statement of the appellant recorded under Section 164, Cr.P.C. by learned Judicial Magistrate Ms. Robab Fatima on 20.12.2011 is of pivotal importance. The Magistrate observed all codal formalities, ensured compliance with legal safeguards, provided ample opportunity/time to the appellant to ponder over his confessional statement, and confirmed voluntariness of the confession. During cross-examination of the learned Magistrate nothing could be unearthed to suggest that the confession was procured through coercion, inducement, or threat. Although the appellant later retracted his confession but it is well established that a conviction can be recorded on the basis of a retracted judicial confession if it is found to be voluntary, true, and corroborated by independent evidence. Reliance placed on “Manjeet Singh v. The State” (PLD 2006 SC 30). In the confessional statement the appellant has admitted commission of rape and murder of the minor deceased through asphyxia i.e. pressing her mouth with his hands and thereafter throwing her dead body in the *Katchra Kundi*.

11. Another significant piece of corroboratory evidence is the recovery of the *dopatta* of the deceased from the abandoned house of the appellant, effected on the pointation of the appellant. This recovery was witnessed by Muhammad Umair



(PW.3) and conducted by Muhammad Ijaz, SIP (PW.7). Such discovery made pursuant to the information furnished by the accused is admissible evidence under Article 40 of the Qanun-e-Shahadat Order, 1984, and lends further credibility to the prosecution case.

12. The medical evidence furnished by Dr. Shahida Mukhtar (PW.4), who conducted the autopsy on the dead body of minor deceased Malaika, conclusively proves that the death of the minor Malaika was homicidal in nature. The cause of death was asphyxia due to pressure on both nostrils and compression of blood vessels, leading to cerebral insufficiency. The post-mortem findings are consistent with the manner of death described in the confessional statement of the appellant and further strengthen the prosecution's version.

13. The learned High Court has rightly declined to accept the confessional statement of the appellant to the extent of the alleged commission of rape thereby acquitting him under Section 376, PPC as the findings of the High Court in this regard are based on proper appreciation of medical evidence on record as well as the confessional statement of the appellant wherein he has not stated in unequivocal words anything about commission of rape with the minor deceased. This approach of the High Court is in consonance with the settled principle that where a confessional statement is not the sole basis of the prosecution case and is corroborated by other evidence, the court may accept the inculpatory parts that support with the established facts and reject the portions that are inconsistent or uncorroborated. In view of the corroborative circumstantial evidence including last seen testimony, recovery, medical findings, and the voluntary confession, the partial exclusion of the rape charge does not detract from the overall prosecution case under Section 302(b), PPC.

14. The prosecution has succeeded in establishing an unbroken chain of circumstantial evidence, each link corroborating the other, and collectively pointing accurately towards the guilt of the appellant. The confessional statement, though retracted, meets the legal requirements of voluntariness and truthfulness and is adequately corroborated. Therefore, the conviction of the appellant under Section 302(b), PPC is well-founded and sustainable in law.

15. So far as the sentence of death awarded to the appellant under section 302(b) PPC is concerned, the record reflects that the appellant has remained in continuous incarceration since his arrest on 20.12.2011, and has been confined in the death cell following the pronouncement of the death sentence by the learned

the learned trial court vide judgment dated 28.01.2014, a period extending over a decade, while on the other hand, there are some inconsistencies of a minor dimension in prosecution evidence which throw up doubts about prosecution version but do not qualify for acquittal. They present merely a mitigating circumstance capable of affecting no more than quantum of sentence. Such inconsistencies may create dilution of prosecution version but not its complete negation. Furthermore, the learned High Court in its well-reasoned judgment has expressly held that the medical evidence on record does not support the confessional statement of the appellant insofar as the allegation of rape upon the minor deceased is concerned. Consequently, the conviction and sentence of the appellant under Section 376, PPC, were set aside. In the peculiar facts and circumstances of the case, this aspect may justly be treated as a mitigating circumstance for the commutation of the sentence of death into imprisonment for life.

16. Consequently, the appeal is partly allowed. While the conviction of the appellant under Section 302(b), PPC is maintained, his sentence is modified from death to imprisonment for life. The sentence of compensation awarded by the learned trial court to be paid to the legal heirs of the deceased, and the consequence in case of default thereof, shall remain intact. The benefit of Section 382-B, Cr.P.C. is also extended to the appellant.

Islamabad

15.05.2025

Approved for reporting.

M.Siraj Afridi PS