

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Bench:

Mr. Justice Athar Minallah
Mr. Justice Irfan Saadat Khan
Mr. Justice Malik Shahzad Ahmad Khan

Criminal Petition No.53-K of 2021

*(Against judgment dated 15.03.2021 of
the High Court of Sindh, Karachi passed
in Crl. Appeal No.D-609/2018)*

Shahid Ali ...Petitioner

Versus

The State ...Respondent

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| For the petitioner: | Mr. Shahab Sarki, ASC |
| For the Federation: | Mr. Aamir Rehman, Addl. Attorney General |
| For Govt. of Sindh: | Mr. Saifullah, Additional Advocate General, Sindh <i>(From Karachi Registry via video-link)</i> |
| For the State: | Mr. Siraj Ali Chandio, Additional Prosecutor General, Sindh <i>(from Karachi Registry via video-link)</i> |
| Complainant: | In person. <i>(From Karachi Registry via video-link)</i> |
| Amicus Curiae: | Mr. Faisal Siddiqui, ASC |
| Dates of hearing: | 24.01.2025, 28.01.2025, 03.02.2025 & 06.02.2025 |

JUDGMENT

Athar Minallah, J.- The petition seeking leave was converted into an appeal and it was allowed vide our short order of even date. Shahid Ali, son of Haji Muhammad Iqbal ('**appellant**'), was acquitted of the charge framed against him by extending the benefit of doubt and he was ordered to be released from prison forthwith, if not required to be detained in any other matter. We are, therefore, recording our reasons for allowing the appeal and acquitting the appellant.

2. The crime, in this case, relates to the gruesome murder of Wasim Akram, who was around 7 or 8 years old when his lifeless body was discovered lying in a water tank and was recovered by police officials

on 09.03.2014, pursuant to information given by the father of the appellant. The proceedings were set in motion after the deceased victim's father, Rayat Khan (PW-1) ('**complainant**'), had recorded his statement before the police officer and, consequently, crime report No.103/2014 was registered at the Police Station Saeed Abad, Karachi for commission of the alleged offences under sections 302 and 34 of the Pakistan Penal Code, 1860 ('**PPC**'). The complainant had alleged that his minor son, Wasim Akram, had disappeared on 08.3.2014 and, despite searches by him and others, he could not be traced. The next day i.e. on 09.3.2014, at around 8.30 am, he was informed that the tortured dead body of a child was found lying in the water tank of a house adjacent to a place of business named Rashid Engineering Works. The complainant rushed to the place of occurrence but by then the body had been removed from the water tank. The crime report was registered against unknown accused at 2:30 pm. on 09.3.2014. This timing is significant as would be discussed later. According to the prosecution's story, the police officials were at the crime scene when the complainant had arrived, though it was at a short distance from his residence. The conclusion of the investigation had led to the filing of a report under section 173 of the Code of Criminal Procedure, 1898 ('**Cr.P.C.**') and, pursuant thereto, the charge was framed. The appellant did not plead guilty and upon conclusion of trial, he was convicted under section 302(b) of the PPC and sentenced to death, with the direction to pay Rs.500,000/- as compensation under section 544-A of the Cr.P.C. to the legal heirs of the deceased and, in default thereof, to undergo six months simple imprisonment. The benefit of section 382-B of the Cr.P.C. was extended in his favour. The appeal preferred by the appellant was dismissed by the High Court and the reference was

answered in the affirmative, thus the sentence of death handed down by the trial court was confirmed.

3. We have heard the learned counsel for the appellant. The complainant had appeared in person and had stated that since he did not intend to retain a private counsel, therefore, he would be satisfied with the arguments advanced by the Additional Prosecutor General, Sindh. Mr. Faisal Siddiqui was appointed as an Amicus Curiae to assist us in this matter. We have carefully perused the record with their able assistance.

4. The case before us involves the gruesome murder of a minor victim who had suffered multiple injuries on vital parts of his body. His dead body was discovered lying in a water tank. As already noted above, the crime report was registered at 2:30 pm on 09.3.2014. It was an unseen occurrence and, therefore, the prosecution's case was entirely based on circumstantial evidence. The prosecution's case that had led to the conviction of the appellant rests on the last seen evidence of a chance witness, Muhammad Jan, who had entered the witness box as (PW-2), recovery of the dead body of the deceased minor victim from a water tank, recovery of the crime weapon stated to be a "Reeti" (iron file) at the instance of the appellant and an interview recorded by a journalist Afzal Pervaiz (PW-9) while the appellant was on physical remand and in the custody of the investigating officer. This interview of the appellant was later aired on one of the private television channels, ARY NEWS, on 27.03.2014 at 10 pm, in its program "*Jurm Bolta Hae*". Inspector Mohammad Amir Bhatti (PW-11), who was the Investigating Officer ('I.O.') in this case, had obtained physical remand of the appellant from a competent court and he was confined in the

lock up of the Police Station when his interview was recorded with the permission and in the presence of the I.O.

5. Before discussing the aforementioned evidence, it would be beneficial to examine the principles and law regarding the testimony of a witness who falls in the category of a chance witness and who had last seen the deceased minor victim alive in the company of the appellant and also the status, admissibility and evidentiary value of the statement in the nature of a confession which was recorded by a journalist while the appellant was on physical remand and in the custody of the I.O.

6 This Court, while explaining the theory of last seen together, has held that it is one where two persons are seen together alive and after an interval of time one of them is found alive and the other dead. If the period between the two is short then an inference could be drawn that the person alive was the author of the other's death. The time gap between the sighting and the occurrence should be such that the possibility of someone else committing the crime could be ruled out. It has been further held that the circumstance of the deceased being last seen in the company of the accused is not by itself sufficient to sustain the charge of murder. There must be evidence that would convincingly corroborate the last seen evidence by linking the accused with the murder of his companion, for example existence of incriminating facts such as recovery of incriminating items, a confession etc. The last seen evidence is circumstantial evidence and, therefore, it must be incompatible with the innocence of the accused and should be accepted with great caution. It must be scrutinized minutely so that no plausible conclusion could be drawn therefrom except the guilt of the accused. This court has further observed that the foundation of the last seen theory is based on the principle of probability, cause and

connection. It requires cogent reasons that the deceased in normal and ordinary course was supposed to accompany the accused, proximity of the crime scene, a small gap between the sighting and the crime, no possibility of a third person's interference, motive and time of death of the victim. The circumstance of last seen together does not by itself necessarily lead to the inference that it was the accused who must have committed the crime. There must be something more establishing/ connecting the accused with the crime. The last seen evidence is the weakest type of evidence which, on its own, would not be sufficient to form the basis of a conviction in a case which attracts capital punishment¹. This Court has been consistent in its opinion that the last seen evidence is not sufficient for establishing a crime where it requires making conjectures to connect the accused person with the crime or where there exists a possibility that someone else may have committed the offence. However, if the chain of facts is such that no reasonable inference can be drawn except that the accused has committed the offence after the victim has last been seen in his company, then in the absence of a reasonable explanation by the accused, this evidence can be relied upon for convicting an accused². The last seen evidence becomes reliable if it is corroborated by other pieces of credible circumstantial evidence which are linked and clearly connects the accused person with the commission of the offence³. This Court has observed that, while appraising the circumstantial evidence, the court ought to keep in mind the location of the incident. If the place of incident is such where no witness was available and the accused had the exclusive knowledge about the incident then a simple denial on the part of the accused would not be sufficient to nullify the

¹ *Muhammad Abid v. The State* (PLD 2018 SC 813)
Mst. Resham Bibi v. Sheerin Khan and others (1997 SCMR 1416)

² *Jafar Ali v. The State* (1998 SCMR 2669)

³ *Khurshid v. The State* (PLD 1996 SC 305)

evidence. The last seen evidence carries weight, depending upon varying degrees of possibilities and the facts and circumstances of each case before inferring guilt. The circumstances must be such that they are found to be incompatible with the innocence of the accused and incapable of explanation upon any other reasonable hypothesis other than that of guilt. The last seen evidence thus necessarily requires corroboration and the evidence alone would not be sufficient to sustain the charge of capital punishment⁴.

7. The next question is regarding the status of a witness who falls in the category of a 'chance witness' and the evidentiary value of such evidence for convicting an accused in a murder case which attracts one of the prescribed punishments as death. Article 2(c) of the Qanun-e-Shahdat Order, 1984 (**Order of 1984**) defines the expression "evidence" and, inter alia, includes all statements which the court permits or requires to be made before it by witnesses in relation to matters of fact under inquiry and such statements are called oral evidence. Article 3 provides that all persons shall be competent to testify unless the court considers that they are prevented from understanding the questions put to them, or from giving rational answers to those questions, due to tender years, extreme old age, disease, whether of body or mind or any other similar cause. The exceptions are set out in the three provisos. The persons who are competent to appear in the witness box as witnesses fall in various categories and one of them is a 'chance witness'. A chance witness, in legal terms, is a witness who claims that he or she was present at the crime scene at the fateful time and that his presence there was by sheer chance while in the ordinary course of business, place of residence and in the normal course of events he or she was not

⁴ *Muhammad Amin v. The State* (2000 SCMR 1784)

supposed to be present at the scene. It has been observed by this Court that ordinarily the evidence of such a witness is not accepted unless justifiable reasons were shown to establish his/her presence at the crime scene at the relevant time. In the normal course, the presumption that would operate would be that such witness was absent from the crime scene. However, in rare cases the evidence of a chance witness may be relied upon, provided some convincing explanation appealing to a prudent mind of his presence at the crime scene has been put forth, otherwise the evidence would be seen as suspicious evidence and, therefore, it would not be safe to be relied upon⁵. The admissibility and evidentiary value of the testimony of a witness who falls in the category of a chance witness essentially depends on the facts and circumstances of each case and no hard and fast rule can be laid down in this regard. The crime scene could be a dwelling house, a place of business or a public road or highway. A brother who was living at a distance of twenty miles and was visiting his sister was considered as a reliable witness in the facts and circumstances of that particular case because he had offered a plausible explanation for his presence⁶. The testimony of a visiting son in law was not considered reliable because his explanation was not found to be convincing⁷. Residents of the same vicinity are ordinarily not considered as chance witnesses⁸ but the eye witnesses in a case were considered as chance witnesses because they were inmates of other houses in the vicinity and not the house where the occurrence had taken place late at night⁹. A witness lived nine kilometers from the place of occurrence and he claimed to have been present at the crime

⁵ *Mst. Sughra Begum v. Qaiser Pervez and others* (2015 SCMR 1142)

⁶ *Umar Hayat v. The State* (1998 SCMR 1101)

⁷ *The State v. Ghulam Rasool* (2007 SCMR 1944)

⁸ *Inayat Ali v. The State* (PLD 2002 SC 77)

⁹ *Usman alias Kaloo v. The State* (2017 SCMR 622)

scene on a working day without giving a plausible explanation and, in the facts and circumstances of that case, the Court observed that his statement warranted careful and cautious scrutiny¹⁰. If the offence takes place in a public place, e.g a thoroughfare, then generally the presence of a passerby cannot be outrightly rejected by declaring him or her as a chance witness unless the latter cannot give a plausible and convincing explanation for being present at the crime scene at the relevant time¹¹. The presence of disciples at the crime scene who were visiting a spiritual personality was not doubted because it was not something that was unusual¹². In case of conviction on a capital charge and when the evidence includes the testimony of a chance witness then the court ought to exercise utmost care and be on guard by seeking corroboration before placing reliance on such evidence¹³. The testimony of a chance witness cannot be disbelieved merely because her or his presence at the relevant time and place was per chance. Any doubt that would reasonably suggest that the witness was not present at the relevant time at the crime scene would be sufficient to discard the deposition and it includes a witness who is a chance witness¹⁴. The admissibility and evidentiary value of a witness falling in the category of a chance witness, therefore, depends on the explanation given by the witness regarding his or her presence and to what extent a court would find it plausible, convincing and the testimony of such a witness to be confidence inspiring. The testimony of a chance witness requires strong corroboration¹⁵. The evidentiary value of a witness would depend on the facts and circumstances of each case.

¹⁰ *Ibrar Hussain and another v. The State* (2020 SCMR 1850)

¹¹ *Muhammad Ahmad and others v. The State and others* (1997 SCMR 89)
Mst. Dur Naz and another v. Yousuf and another (2005 SCMR 1906)

¹² *Aman Ullah v. The State* (2002 SCMR 1557)

¹³ *Mst. Anwar Begum v. Akhtar Hussain alias Kaka and others* (2017 SCMR 1710)

¹⁴ *Mst. Rukhsana Begum and others v. Sajjad and others* (2017 SCMR 596)

¹⁵ *Muhammad Zaman v. Muhammad Afzaal* (2005 SCMR 1679)

8. Next, we will advert to the question of admissibility of the interview of the appellant recorded by Afzal Pervaiz (PW-9), which was then aired by one of the private television channels i.e. ARY NEWS in their program "*Jurm Bolta He*". The trial court as well as the High Court had heavily relied upon this statement by treating it as a confession of guilt made by the appellant. It is not disputed that this statement was recorded while the appellant was on physical remand and he was in the custody of the I.O.. He was taken out from the lock up of the Police Station to be interviewed by the reporter in the presence of the I.O. The interview was recorded in March 2014 while the statement of Afzal Pervaiz (PW-9) was for the first time recorded by the I.O. on 13.9.2017. It was then that the recorded statement on a CD was taken into possession by the I.O. Afzal Pervaiz (PW-9), in his testimony, had deposed that the interview was telecast on 27.3.2014. A question regarding the admissibility of this statement has arisen which needs to be answered. Could the statement have been relied upon by treating it as a confession? The expression 'confession' has not been defined in the Order of 1984 nor the Cr.P.C. An accused may make a statement in the nature of an 'admission' or a 'confession' and there is a distinction between these two expressions. Confession refers to a statement made by a person accepting or acknowledging his or her guilt relating to the commission of a crime or an offence. The acknowledgment of guilt must be with reference to the charge against an accused. In legal context confession is divided into two broad categories i.e. judicial confession and extra judicial confession. The former refers to a confession made before and recorded by a Magistrate or a court e.g under section 164 of the Cr.P.C. while extra judicial confession is an acknowledgment of guilt of commission of a crime made before any person other than a Magistrate under section 164 of

Cr.P.C or the court. It could be made orally or in writing and, depending on the facts and circumstances of a particular case, through gestures or signs as well. Article 37 of the Order of 1984 explicitly provides that the confession made by an accused person is irrelevant in a criminal proceeding if the making of the confession appears to the court to have been caused by any inducement, threat or promise, having reference to the charge against the accused person and which proceeds from a person in authority and is sufficient, in the opinion of the court, to give the accused person grounds which would appear to him reasonable for supposing that by making it he/she would gain any advantage or avoid any evil of a temporal nature in reference to the proceedings against him. The confession, therefore, whether judicial or extra judicial, must be demonstrably voluntary, made out of absolute free will and without influence of any kind, whether a threat, inducement, promise or even hope etc. Article 38 explicitly and in absolute terms mandates that no confession made to a police officer shall be proved as against a person accused of any offence. Article 39 further provides that, subject to Article 40, no confession made by any person while the latter is in the custody of a police officer, unless it is made in the immediate presence of a Magistrate, shall be proved as against such person. Article 40 provides that when any fact is deposed to as discovered in consequence of information received from a person accused of any offence, while in the custody of a police-officer, so much of such information, whether it amounts to a confession or not, and relates distinctly to the fact thereby discovered, may be proved. The fundamental principle regarding the admissibility and assessment of a confession, judicial or extra judicial, is that it ought to be genuine voluntary and must have been made out of one's free will. It must have been given freely and without any coercion or influence in any form.

The court must be mindful of the fact that, ordinarily, no person would confess the commission of a crime because of its consequences and the possibility that the profound effects of being in custody and exposed to the physical and psychological distress and trauma associated with investigation and custody, a person's rational thinking generally gets impaired. It cannot be ruled out that an innocent person may confess so as to free himself from the extreme distressful conditions. However, in exceptional and rare cases, it cannot be ruled out that an accused may voluntarily confess his or her guilt because of genuine remorse or regret. It becomes an even more onerous task of the court when the circumstances are such that there is a likelihood of the accused being exposed to the influence of a person in authority, such as being in the custody of a police officer and confined in the lock up of a police station. A confession is voluntary when it is made by an accused out of absolute free will and without any kind of influence whatsoever and it has been made with complete understanding of the accused regarding the ensuing consequences of confessing the guilt. There could be multiple factors which may be required to be taken into consideration in assessing whether the confession is voluntary. The fundamental object intended to be achieved manifest in the relevant provisions of the Order of 1984 is to prevent situations which are likely to influence an accused to confess falsely. When Article 37, 38, 39 and 40 of the Order of 1984 are read together it clearly manifests the legislative intent; to ensure that no statement of guilt relating to the charge causes prejudice when the latter is in a vulnerable position and debilitating environment and likely to be influenced by a person in authority. The loss of liberty, the fate of an accused in the hands of a police officer and the environment of a lock up in the police station have a profound impact on the human mind, which may be

exasperated by the lack of respect for the rights of an accused and the coercive methods adopted by the investigators. The legislature has, therefore, set out the mandatory conditions under section 164 of the Cr. P.C for recording of a confession of guilt made during the course of investigation by an accused read with section 364 *ibid*. This becomes significant when an accused is in the custody of a police officer. This Court in the case of *Sh. Muhammad Amjad*¹⁶ has held that in criminal proceedings an onerous responsibility has to be discharged by the courts while determining whether a confession has been made voluntarily and that it is also true. If the confession is, directly or indirectly, the result of inducement, threat or promise from a person in authority then it would not be treated as having been made voluntarily. However, a confession made genuinely out of free will and voluntarily would be admissible. The Court has observed that the wisdom behind Article 38 of the Order of 1984 was to discourage a police officer from compelling an accused to confess his or her guilt merely to demonstrate efficiency by securing a conviction. The confession made to a police officer is, therefore, inadmissible even if it is made in the immediate presence of a Magistrate. Likewise, under Article 39 a confession made to any person while in the custody of a police officer is also inadmissible except to the extent of the information which distinctly relates to the fact discovered pursuant thereto. This distinction may be explained through an illustration. If an accused, while in custody of a police officer, gives information that he had committed the crime with a knife and discloses the place where such knife was concealed by him, then the information in the nature of confession of the crime would not be admissible while the information to the extent of the recovery of the incriminating material i.e the crime

¹⁶ *Sh. Muhammad Amjad v. The State (PLD 2003 SC 704)*

weapon and its discovery as a consequence thereof would be admissible and may be proved against the accused. Articles 38 and 39 of the Order of 1984 are independent of each other. The cumulative effect of Articles 37, 38, 39 and 40 is that a confession is irrelevant and inadmissible in criminal proceedings if it appears to a court that it was caused by any inducement, threat or promise having reference to the charge against the accused and which proceeds from a person in authority and in the opinion of the court it is sufficient to give the accused person reasonable grounds to believe that by so confessing he would gain any advantage or avoid a temporal evil in the context of criminal proceedings against him/her. A confession made to a police officer, even in presence of a Magistrate, is inadmissible. Moreover, confession of guilt made to any person other than a police officer and while in the custody of a police officer cannot be proved against the latter and thus is not admissible in evidence unless it is made in the immediate presence of a Magistrate. The extent to which the information given by an accused may be proved has been specifically set out in Articles 39 and 40 of the Order of 1984. If an accused, during the course of investigation, genuinely and voluntarily intends to make a confession then the only course that the concerned police officer may adopt has been prescribed under section 164 read with section 364 of the Cr.P.C for recording the confession. As a corollary, a statement amounting to a confession made by an accused to a journalist while in custody of a police officer and any such statement recorded and disseminated publically can also not be proved against the accused. It is settled law that what cannot be done directly can also not be done indirectly. A person in authority or a police officer in whose custody an accused is held in custody for the purposes of investigation under Chapter XIV of the Cr.P.C is not authorized nor empowered to delegate,

directly or indirectly, the power to and authority to investigate to a private person let alone a journalist. The power and authority of a Magistrate under section 164 of the Cr.P.C can also not be usurped and made redundant, directly or indirectly, by giving access to private persons to record confessions. Access and permission, therefore, cannot be given to a private person, such as a person engaged in the profession of journalism, to record the statement of an accused in the nature of a confession while he or she is in custody. Any such statement would be inadmissible under the mandate of Article 39 of the Ordinance of 1984.

9. We will now proceed to examine and analyze the evidence relied upon by the two courts in the light of the principles and law highlighted above. As noted above, the statement of the complainant of this case, Rayat Khan (PW-1), was recorded by Ghaus Bux, Sub Inspector (PW-10) and, pursuant thereto, the crime report was registered at 2.30 pm on 09-03-2014. This statement was recorded after the autopsy was conducted as was deposed by PW-10. The complainant had not alleged the appellant to have committed the offence because he had not been nominated till 2.30 pm on 09-03-24, rather his complaint was against an unknown accused. He had also stated that the person who had informed him had stated that the dead body was discovered in the water tank of a house adjacent to a business premises, namely, Rashid Engineering Works. According to his version while recording his complaint the dead body had been removed by the time he had reached the place of occurrence. According to the testimony of Ghaus Bux, Sub-Inspector (PW-10), by the time he had reached the place of occurrence the dead body had been sent to the hospital by Chaudhry Asghar, Sub Inspector. Mohammad Jan (PW-2) had deposed that he reached the place of occurrence at around 9 am and the dead body

was taken out from the water tank in his presence and that he had recognized it to be of the boy he had last seen alive in the company of the appellant. It appears from the evidence that this crucial fact was not brought by him to the attention of the police officials who were present at the crime scene then. All these witnesses, according to their depositions, had reached the place of occurrence between 9 and 10 am but they are not consistent regarding the material facts. All these witnesses were present at the crime scene together much before the statement of the complainant was recorded but it is obvious from the complaint that the appellant was not the suspect because till registration of the crime report at 2.30 pm the suspects were unknown persons. Moreover, according to the deposition of Sohbat Khan (PW-7) the appellant was arrested on 10-03-2014, the next day, around 10 pm from outside the place of occurrence. This further indicates that the appellant did not apprehend his arrest nor was he a suspect otherwise he would not have been present outside the crime scene. Ghaus Bux, Sub Inspector (PW-10) had deposed that the information of the presence of a dead body in a water tank was given by one Iqbal and the name of the appellant's father was Haji Mohammad Iqbal. The I.O of the case, Mohammad Amir Bhatti, Inspector (PW-11) had confirmed in his deposition that the information was given to Madadgar 15 of the police department by the appellant's father. It does not appeal to a prudent mind that, in the facts and circumstances of this case, the dead body would have been left as an incriminating evidence, rather than disposing it off and concealing it somewhere because it was an unseen occurrence. The recovery from a water tank is also a mystery. The I.O (PW-11), in his testimony, had confirmed that a residential house was attached to the business premises and that a widow with her minor children were living in that house. He had

admitted that he did not investigate the residents of that house. The official who had taken it out and had sent it to the hospital was not produced as a witness by the prosecution. The complainant, Rayat Khan (PW-1), was also present but his version recorded in the registered crime report was different from what he had later deposed when he had entered the witness box. The reference to the water tank of the adjacent house was significant. No motive was set up by the prosecution let alone proving this crucial factum. It was alleged that the appellant had attempted to commit an unnatural sexual offence but when he could not succeed then the victim was killed in a brutal manner. The allegation of the commission of such an offence was not part of the crime report. Though the charge framed on 02-07-2014 has reference to this allegation but it was not proved. The medical evidence also did not support this allegation.

10. The prosecution and both the courts have placed considerable reliance on the statement of the appellant which was recorded by Pervaiz Afzal (PW-9), who claimed to be a journalist but could not prove his employment when he had entered the witness box. This statement was recorded when the appellant was on physical remand and in the custody of the I.O. The latter allowed access to this witness. The appellant was taken out from the lock up of the Police Station and his statement was recorded in the presence of the I.O. The statement, which was treated as a confession of guilt, was aired on one of the private television channels i.e. ARY on 27-03-2014. The statement of this witness was recorded by the I.O on 13-09-2017 and on the same day the recorded statement on a CD was also taken into possession. The witness had unequivocally stated in his testimony that the recorded statement was an edited version and the same was aired by the channel in its program. The testimony and the edited version have

no evidentiary value. Nonetheless, the appellant was in the custody of a police officer while on physical remand. The statement was recorded in the presence of the I.O and not in the presence of a Magistrate. It was not a judicial confession in terms of section 164 of the Cr.P.C. The statement made by the appellant while in the custody of a police officer and which was stated to be in the nature of a confession could not be proved against him and was thus inadmissible as mandated under Article 39 read with Article 40 of the Order of 1984. It could not be treated as a confession made to a police officer and even it was to be so treated it would still have been inadmissible under Article 38. The statement in the nature of a confession could not be proved against the appellant and, therefore, it was not admissible. The reliance placed by both the courts was thus misconceived and no conviction could have been handed down on the basis thereof. Moreover, two persons who were to appear as witnesses were produced before the Magistrate for recording their statements under section 164 of the Cr.P.C. The presence of the appellant was confirmed by Aziz Ullah, Sr. Civil Judge (PW-8) who had recorded the statements. In case the appellant had intended to voluntarily confess his guilt out of his free will then there was no reason why his confession was not recorded under section 164 of the Cr. P.C. This raises questions regarding the bonafides and the conduct of the In charge Police Station and the I.O who had given access to a journalist to record the purported confession while the appellant was in their custody.

11. The prosecution has also relied on the recovery of the crime weapon raitee (iron file) and this piece of evidence is also not free from doubt. The prosecution had produced Tariq Zaman, who had entered the witness box as (PW-3). He had deposed that on 09.3.2014 he was present in the vicinity and had visited the place of occurrence between

3:30 to 4 pm. The police officials had arrived in his presence. The police officials, according to his testimony, had called him and another person, namely, Akhtar Nawaz, to witness the recoveries of incriminating articles from the crime scene. Besides other items recovered in his presence, he had explicitly stated that he was made to witness the recovery of a raitee (iron file) which was taken in possession by the police officials. On the other hand, Sobat Khan, ASI (PW-7) and Ayaz Ahmed (PW-5) have, in their respective depositions, given a different version regarding the recovery of the crime weapon. They had deposed that the appellant was arrested on 10.3.2014 at about 10 pm from outside the place of occurrence and, that after his arrest, he had led to the recovery of the raitee (iron file) from a trunk. The crime weapon was stated to have been blood stained. According to the deposition of Tariq Zaman (PW-3) the other person who had witnessed the recovery of incriminating items, including the crime weapon from the crime scene on 09.3.2014, was Akhar Zaman. The latter was not produced in the witness box for reasons best known to the prosecutors. The recovery of the crime weapon i.e the raitee (iron file) is, therefore, not free from doubt and reliance could not be placed upon it.

12. The prosecution, in order to prove the guilt of the appellant, had relied on the last seen evidence of Mohammad Jan (PW-2), who fell in the category of a chance witness because he lived at a distance of more than half a kilometer from the place of occurrence. Muhammad Jan (PW-2) had asserted in his deposition that he had last seen the deceased victim alive in the company of the appellant a day earlier i.e on 08-03-2014 when he had stopped to offer his prayers at a mosque near the place of occurrence. He was returning to his house in a public transport, a 'rikshaw'. He had admitted in his deposition that the congregational prayer at the mosque had already been offered. His

house was at a short distance and it is unusual for a person commuting on a public transport to make a stop while the destination is at a short distance. The driver of the public transport was also not produced as a witness. As already noted above, the next day this witness claims to have been present at the crime scene in the morning on 09-03-2014 when the complainant of this case and the police officials were also present. It is evident from the evidence brought on record that he had not informed them regarding what he had seen a day earlier. The testimony of this witness does not inspire confidence nor is reliable. His presence by chance on 08-03-2014 is also doubtful. Muhammad Jan (PW-2) was, therefore, a chance witness and reliance could not have been placed on his testimony.

13. The entire edifice of the prosecution's case was built on circumstantial evidence. It is settled law that when the prosecution bases its case on circumstantial evidence and there is no direct evidence then utmost care, caution and scrutiny is required while handing down a conviction¹⁷. Circumstantial evidence may sometimes be conclusive. In order to be conclusive, it must be like a well-knit chain, one end of which touches the dead body of the deceased and the other the neck of the accused. The chain must be complete. The chain of circumstances must not be broken and it ought to be such that it cannot be explained away on any reasonable hypothesis other than the guilt of the accused. The chain must be so complete that it establishes the guilt of an accused beyond any reasonable doubt. It must establish that the plea of innocence was incompatible with the weight of evidence brought on record by the prosecution. Any missing link breaks the chain and renders the evidence unreliable¹⁸.

¹⁷ *Rehmatullah and others v. The State* (2024 SCMR 1782).

¹⁸ *Naveed Asghar and others v. The State* (PLD 2021 SC 600)

14. In this case there was no direct evidence and the circumstantial evidence brought on record was not reliable, trustworthy and confidence inspiring enough to convict the appellant for the charge framed against him. He was, therefore, entitled to be acquitted by extending the benefit of doubt as of right. These were the reasons for acquitting the accused and his forthwith release vide our short order of even date.

15. We consider it necessary to record our observations regarding the conduct of the In charge of Police Station and the I.O who gave access to a journalist to interview the appellant and record his statement on camera while he was on physical remand and in their custody. Regrettably, the edited version was then aired by a private television channel. The legal status of such a statement has already been alluded to above. But this is not the only case in which an accused has been treated in such a manner while in custody. The phenomenon appears to be widespread and continues unabated without having regard to the rights of an accused and even the victims. Media, print or in any other form, plays a pivotal role in a society. It wields enormous power. Article 19A of the Constitution declares that every citizen shall have the right to have access to information in all matters of public importance subject to regulation and reasonable restrictions imposed by law. The media is the bulwark for enabling the citizens to enjoy this guaranteed right. It is noted that the framers have explicitly confined this right to all matters of 'public importance' and has made its enjoyment subject to regulations and reasonable restrictions imposed by law. Not everything that the public may be interested in would come within the fold of the expression 'public importance'. However, keeping in view the importance of freedom of expression and access to information, great care has to be exercised

while interpreting the expression 'public importance'. Here our concern is regarding the rights of an accused during the course of investigation, particularly when the latter is in the custody of a police officer. As already noted above, a confession made by such an accused while in custody of a police officer cannot be proved against him/her unless made in the immediate presence of a Magistrate. It is not uncommon for a reporter to be given access to interview and record a statement of the accused and then disseminate it for information of the public. The news regarding a crime is always of interest to the people, particularly when the case is of high profile or the nature of the crime is of interest to the general public. An unusual interest of the public could lead to a media trial and the consequences could be irretrievable, not only for the accused but the victims as well. The public interest may also be harmed by preventing the actual perpetrators of the crime from being held to account and instead facilitating the conviction of an innocent person on the basis of a perceived imputation of guilt. This phenomenon and its adverse consequences becomes more important in sensitive cases when it is an unseen occurrence and the victim is a child. The media has the enormous power and ability to create narratives which may be true or false. It can cause irretrievable damage to reputations by ruining the lives of the accused and their family members. The media has the unique power to make heroes or villains, intentionally or unintentionally, and such powers are susceptible to be abused in a society where the State suppresses freedom of expression and manipulates the media. A greater responsibility rests with the media to strictly observe high standards of ethical codes in order to strike a balance between the rights of parties involved in criminal proceedings and the public interest i.e what information should be disseminated to the general public. The

bedrock of the criminal justice system is to ensure in each case the right to a fair trial. The fundamental principle of the right to a fair trial is the presumption of innocence; every accused is presumed to be innocent unless proven guilty by a competent court and by observing the safeguards and requirements in the context of a fair trial. The guilt can only be proved in a trial before a competent court. The investigation ought to be conducted strictly in accordance with the procedure prescribed under the law i.e the Cr.P.C. and, that too, by a person authorized in this regard. Extreme caution and care are required to be exercised by those associated with the process of investigation to safeguard the rights of an accused. His or her right to be presumed innocent, the right to privacy, reputation, respect for private life and the lives of the family members and the right against self-incrimination. It is an onerous obligation of the investigators, prosecutors and other persons associated with the task of investigation to prevent the creation of perception and *bias* by acting in any manner likely to impute guilt. It is also the responsibility of the media, in any form, to respect the rights of an accused as well as the victims while reporting on matters relating to criminal proceedings. A disproportionate and excessive media spotlight and the manner in which it is presented is likely to create perceptions of guilt and influence the public as well as those who are associated with the criminal proceedings. The judicial officers are also humans and in this age of information and technology it would not be wrong to assume that they may also be susceptible to be influenced by the media coverage. This is a universal phenomenon. The case before us is a classic example. The accused was in custody and the competent court had ordered his physical remand exclusively for the purpose of investigation. He was presumed to be innocent. The In charge of Police

Station and the I.O gave access to a journalist to interview an accused who was in their custody. His statement was recorded on a camera and then disseminated to the general public by airing it through a private television channel. The victim of this gruesome and heinous crime and his family members were likely to have been effected as well. The In charge of Police Station and the I.O had adopted a process which they were presumed to know that it was not mandated by law and likely to have led to grave violations of the rights of the accused. They are presumed to have known that by doing so they, through the media, were creating the perception of guilt while the custody of the accused was given to them solely for the investigation and then to file a report before the competent court under section 173 of Cr. P.C. An inadmissible purported confession of the accused was relayed to the public through the media regarding a crime committed against a child. The appellant was not produced before a competent Magistrate under section 164 of Cr.P.C. This course adopted by the In charge of Police Station and the I.O may have been for multiple reasons such as showing to the public their performance or to deal with public pressure and its expectation to bring the perpetrators to justice. *Prima facie*, there is no *bona fide* reason nor was it in the public interest to adopt such a course. The right of the appellant to be presumed innocent till his guilt was proved beyond reasonable doubt was gravely violated and undermined. He was presented to the public as a person confessing his guilt. The public, through such sensational and illegal presentation, was likely to believe the appellant to have been guilty of one of the most detestable crimes for which he wasn't even charged till then nor had the investigation been completed. The right to dignity and privacy, implicit therein, was breached. The irretrievable harm caused to his reputation and being stigmatized would live with him despite his

acquittal. The narrative created by airing the program on a private television channel had definitely interfered with and gravely undermined the fairness of the trial and the right to be presumed innocent. It is not unusual for the electronic media to show accused persons parading in front of the cameras or reporters aggressively questioning the accused in criminal cases while they are in custody during the course of investigation. This phenomenon is deprecated because it gravely violates and undermines the rights of the parties, particularly the accused and gravely interferes with the fairness of a trial. It is an obligation of each government, Federal and Provincial, to take immediate effective measures in ensuring that this phenomenon comes to an end. The respective governments are responsible to safeguard the rights of the parties in criminal proceedings, particularly an accused, and the fairness of the process of investigation. Giving access to persons not associated with the process of investigation and facilitating them to interfere, directly or indirectly, with the criminal proceedings violates the law and gravely affects the fairness of the trial and the rights of an accused. It is a misconduct in the case of an investigator or a person in authority, such as the In charge of a Police Station, to give access to or facilitate any person to interfere with the course of investigation in violation of the procedure prescribed under the Cr.P.C, read with the enabling provisions of other statutes. The media, whether print or electronic, is also responsible to self regulate its reporting and airing of programs by setting out and adopting standard operating procedures, having regard to the international best practices. The regulatory authorities are also expected to consider proposing such standard operating procedures in consultation with the stake holders with the object of safeguarding the rights of the parties, particularly during an investigation.

16. The office is directed to send copies of this judgment to the Secretary Ministry of Interior, Government of Pakistan, Secretary Ministry of Information and Broadcasting, Government of Pakistan, Chairman, Pakistan Electronic Media Regulatory Authority and the Chief Secretaries of the respective Provinces for considering the observations made in this judgment and taking such immediate steps as are required to safeguard the rights of parties involved in criminal proceedings and the integrity and fairness of the process of investigation and trial.

Judge

Judge

Judge

ISLAMABAD THE
3rd February 2025
APPROVED FOR REPORTING
(Aamir Sh./Rameen Moin, LC)