

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

Mr. Justice Manzoor Ahmad Malik
Mr. Justice Syed Mansoor Ali Shah
Mr. Justice Qazi Muhammad Amin Ahmed

Criminal Appeal No.21-P of 2010

*(Against the judgment dated 18.06.2008
passed by the Peshawar High Court,
Peshawar in Criminal Appeal
No.425/2005 with Murder Reference
No.40/2005).*

Wazir

...Appellant(s)

VERSUS

The State & another

...Respondent(s)

For the Appellant(s)	: Mr. Astaghfirullah, ASC
For the State	: Mr. Mujahid Ali Khan, Additional Advocate General, Khyber Pakhtunkhwa
Date of Hearing	: 29.04.2019

Judgment

Qazi Muhammad Amin Ahmed, J.- Wazir Son of Shamshair, appellant herein, was tried along side eleven others by the learned Special Judge, Anti Terrorism Court at Saidu Sharif for being a privy to abduction of Muhammad Naeem deceased in order to exact ransom from his family; he was arrested much late in the day, finally indicted along side Noor Zaman co-accused; consequent upon their convictions they were sentenced to death; remainder of the accused were acquitted from the charge. The High Court maintained conviction of the appellant, however altered penalty of death into imprisonment for life; while dealing with the case of Fazal Rehman, co-convict he was found guilty by the learned High Court for conspiracy within the contemplation of Section 109 of the Pakistan Penal code, 1860 and thus sentenced to five years R.I. Leave has been granted to re-appraise the evidence to ensure safe administration of criminal justice.

2. Learned counsel for the appellant contends that the appellant has been roped in the case on the basis of a misplaced

and misconceived suspicion; that confessional statement is a flawed piece of evidence hardly sufficient to sustain the charge; it has been disbelieved *qua* majority of the accused and thus cannot be pressed into service *qua* the appellant; it is contradicted by medical evidence pointed out by the learned counsel. Contrarily the learned Law Officer has defended the impugned judgment; he argued that the Courts below rightly convicted the appellant for the crime as prosecution successfully drove home charge against him beyond reasonable doubt. He has referred to appellant's long absconson as a circumstance reflecting upon his guilt.

3. Appellant's confessional statement relied upon by the Courts below is prosecution's mainstay. Occurrence took place way back in February 2002, whereas the appellant statedly made his breast clean on 27.6.2002. We have noticed the confessional statement spreading over four hand written pages as unseemingly elaborate and exhaustive; it is more an encyclopedia to cater needs for the prosecution than a declaration of guilt by a remorseful or repentant offender. Argument that such a detailed narrative can neither be voluntary nor spontaneous is not entirely beside the mark. We have also not felt comfortable with the printed form with empty spaces to fill the relevant details to qualify requirements of Section 364 of the Code of Criminal Procedure. Argument that warnings and cautions were not live addressed face to face to the prisoner cannot be dismissed out of hand. Once prosecution opts to rely upon a confessional statement of an accused to his detriment it must come forward with the disclosure above all suspicions and taints; it is not a case in hand. Findings recorded by the medical officer with regard to cause of death are not in line with the details purportedly furnished by the appellant. According to the confessional statement the deceased was tortured and he became unconscious when the accused put a quilt on him and found dead when removed, whereas according to Dr. Nisar Ahmed, PW-7 the death "*occurred due to extra ordinary violence, choking and fracture of cervical spine (due to trauma and fracture choking) (asphaxial death)*". Confessional statement cannot be favourably received without being imprudent for yet another reason; it has been disbelieved *qua* Ibrahim, Muhammad Zaib, Hassan Shah,

Javed, Shah Zaman, Wali Khan, Sajid Khan and Ghani Khan, co-accused. It is by now well settled that a confessional statement has to be received wholistically without quantification; once it is found unreliable *qua* majority of the accused notwithstanding different roles it cannot furnish basis for appellant's conviction as well. We have also not been able to draw any distinction in the appellant's position *vis-à-vis* Fazal Rehman who had been let off by the learned High Court with five years imprisonment. On the whole, prosecution case against the appellant is not free from doubt and thus it would be un-safe to maintain the conviction. Criminal appeal is allowed.

JUDGE

JUDGE

JUDGE

Islamabad, the
29th of April, 2019
Ghulam Raza/*