THE HIGH COURT OF SINDH, CIRCUIT COURT AT HYDERABAD

Cr. Jail Appeal No.D-03 of 2017
Confirmation Case No. 01 of 2017

Present:
Mr. JUSTICE NAIMATULLAH PHULPOTO
JUSTICE RASHIDA ASAD

Date of hearing:	16.09.2020
Date of Judgment:	30.09.2020
Appellant:	Manzoor Ahmed through Mian Taj Muhammad Keerio, Advocate.
Complainant:	Muhammad Aslam through Mr. Shoukat Ali Kaka, Advocate.
Respondent:	The State through Mr. Shahzado Saleem Nahiyoon D.P.G.

J U D G M E N T

Rashida Asad J.– Manzoor Ahmed, appellant has assailed the legality and propriety of the judgment dated 02.01.2017, passed by the learned Additional Sessions Judge-1, Tando Adam in Sessions Case No.03 of 2012, arising out of Crime No.474 of 2011, registered at Police Station Tando Adam, under section 302 and 377, P.P.C., whereby, the learned trial Court after full-fledged trial, convicted the appellant under section 302(b) P.P.C and sentenced him to death subject to the confirmation by this Court with direction to pay compensation of Rs.100,000/-to the legal heirs of the deceased as provided under Section 544-A Cr.P.C and in case of default he was directed to suffer S.I for six months. However, charge for committing sodomy was not proved.

2. The facts leading to the case of prosecution are that on 24.11.2011 at 2000 to 2100 hours, Bilal (the deceased-boy in this case), aged about 5 ½ years, went for offering Isha prayer in Qutb-e-Madina Mosque along with his uncles Muhammad Azam and Muhammad Akram. After offering prayers, his both uncles came back home. However, minor Bilal did not return. Thereafter, the complainant (father of deceased-boy) along with his brothers and neighbor

Nazeer Ahmed went to the Mosque and met Pesh Imam ( ) Manzoor Ahmed Shaikh and the Moazin ( ) Nadeem Shaikh, and searched the deceased in the premises of the Mosque and when they went on the rooftop of the Mosque, they saw Bilal in injured condition, with cut throat, taking his last breath. The minor boy was immediately shifted to Murk Hospital, in critical injured condition, wherefrom referred to Hyderabad but he succumbed to his injuries on the way. Complainant lodged FIR at police station Tando Adam on 26.11.2011 at 1930 hours bearing Crime No. 474/2011 for offence under sections 302, 34 P.P.C.

3. It appears from the record that after completing the usual investigation challan was submitted against the appellant and trial Court framed charge against him to which he pleaded not guilty and claimed trial.

4. The prosecution, in order to prove its case, has examined 11 witnesses, out of which PW-1 Muhammad Aslam is complainant, P.Ws-2, 3 &4 Muhammad Azam, Muhammad Akram and Nazeer Ahmed are post-occurrence witnesses, P.W-5 Muhammad Saleem is last seen witness, P.W-6 Muhammad Ashraf is Senior Medical Officer, P.W-7 Muhammad Saleem is Mashir, P.W-8 Ranjho Khan is witness of handing over of dead body to the complainant, P.W-9 Muhammad Ismail is Tapedar, P.W.10 Abdul Raheem the then Civil Judge & Judicial Magistrate-, Tando Adam who recorded the confessional statement of the accused-appellant, and P.W-11 SIP Nadeem Akhtar Baig is the I.O.

5. Trial court recorded statement of accused under section 342, Cr.P.C. wherein he pleaded his innocence and claimed his false implication in this case. However, neither he examined himself on oath in order to disprove the prosecution case nor led any evidence in defense.

6. Learned trial Judge after hearing the learned counsel for the parties and examining the evidence available on record convicted and sentenced the appellant as stated above through impugned judgment. Hence, the appellant has preferred Criminal Jail Appeal against the said judgment whereas, learned trial Court has made

reference for confirmation of death setnence awarded to the appellant, hence bound by a common thread, we intend to dispose of both the Criminal Jail Appeal and confirmation case through this single judgment.

7. It appears from the record that the learned trial court in the impugned judgment has already discussed the evidence in detail and there is no need to repeat the same here, so as to avoid duplication and unnecessary repetition.

8. Mian Taj Muhammad Keerio, learned counsel for the accused-appellant strenuously argued that the appellant has falsely been implicated in this case by the complainant; that it was an unseen / un-witnessed occurrence; that the witnesses being closely related to the deceased are interested witnesses hence they have falsely deposed against the appellant; that there is no eyewitnesses in this case and the circumstances have not been proved to make a chain of circumstances against the accused-appellant; that in the Roznamcha Entry No.28, complainant informed the police that his son had been murdered by unknown persons; that there was delay of two days in lodging of the F.I.R. for which no explanation has been furnished; that in the F.I.R. complainant has suspected appellant as well as Moazin namely Nadeem Shaikh; that name of Muhammad Saleem did not transpire in the F.I.R., but, according to the prosecution, he acted as witness of the last seen; that source of light is not disclosed; that no blood was found at the clothes of accused though it was a case of slaughtering of the deceased-boy; that Nadeem Shaikh Moazin of the Mosque was neither made as accused nor cited as witness; that the evidence of P.W Muhammad Saleem, the alleged last seen witness that at relevant time he was sitting at the shop of Barbar was not confidence inspiring as the proprietor of the Babar shop was not examined; that at the time of initial examination on dead body of the deceased no sodomy signs were noted by the doctor, but chemical report was positive; that, according to the doctor, deceased died half an hour of the injuries but deceased had started rigor mortis at the time of conducting postmortem examination; that in the confessional statement before the learned Magistrate (P.W.10) the accused-appellant nowhere confessed his

act of sodomy upon the deceased; that confessional statement has not been recorded properly; that upon circumstantial evidence, one cannot be convicted and awarded penalty of death. He has lastly contended that since the prosecution falls sort of clear, cogent and consistent evidence, learned trial Court has erred in law in finding the accused-appellant guilty and such, the conviction and sentence against the accused-appellant should be set-aside. However, he frankly stated that he wouldn't press the appeal on merits in case if the death sentence is converted into the life. In support of his contention learned counsel for the appellant has placed reliance on the cases of KHALID JAVED and another versus THE STATE (2003 SCMR 1419), AZEEM KHAN and another versus MUJAHID KHAN and others (2016 SCMR 274), MUHAMMAD AZHAR HUSSAIN and another versus THE STATE and another (PLD 2019 Supreme Court 595), and ALI GUL versus The STATE (2020 MLD 952).

9. Mr. Shahzado Salim Nahyoon, D.P.G. for the State assisted by Mr. Shoukat Ali Kaka, advocate for complainant argued that there is clear evidence of P.W-10 Abdul Raheem that the accused-appellant made judicial confession as to killing of the deceased-boy by him. Defense has not proved any plea either by adducing evidence or through cross-examination made to the prosecution witnesses. According to him, the appellant being Pesh Imam of the Qutb-e-Madina Mosque was not only the incharge of the Mosque but the deceased boy was his Taalib (student) and appellant was his Islamic Teacher. He has further submitted that, the evidence of P.W-5 Muhammad Saleem, who had lastly seen the deceased-body and his presence at the Barbar shop at the relevant time was natural and is equally encouraging and lack of any embellishment after due cross examination. The learned DPG further stated that the statement of the doctor, is clear to show that act of sodomy was committed to the victim by appellant before committing his murder. According to him, there is chain of circumstances proved by the prosecution unerringly pointing out the guilt of the appellant. He argued that complainant and prosecution witnesses had no enmity whatsoever with the appellant who was Pesh Imam of the Mosque to implicate him falsely. That crime weapon was also produced by the appellant soon after his arrest on

28.11.2011, which was found blood stained and positive report of chemical examiner was also not rebutted by the defense. He prayed for dismissal of the appeal and confirmation of death sentence.

10. Mr. Keerio, advocate for appellant, in rebuttal argued that name of P.W. Muhammad Saleem did not transpire in the final report; that subsequently, application was moved and on the application he was called for evidence; that recovery of the cutter was effected from the roof of the Mosque; that appellant had cooperated the complainant party in search of the deceased-boy.

11. We have considered the arguments advanced before us and perused the record.

12. In order to prove unnatural death of child Muhammad Bilal, prosecution has examined Dr. Muhammad Ashraf at Ex.14, Senior Medical officer, who stated that dead body of Muhammad Bilal son of Muhammad Aslam was brought to Taluka Hospital Tando Adam through PC Ranjho Khan of PS Tando Adam on 25.11.2011 at about 2:00 a.m., for postmortem examination and report. Senior Medical officer started postmortem examination at 02:15 a.m and finished it at 03:40 a.m. On the external examination of dead body, Senior Medical Officer found the following injury:

> Incised wound with irregular margins at angles on front of neck. Wound was measuring 8 cm x 5 cm x tissue deep.

13. The cause of death as mentioned was as shock and hemorrhage due to injury caused to the deceased. In the cross-examination, unnatural death of deceased Muhammad Bilal has not been denied by defence. Efficiency of doctor has also not been questioned. We, therefore, hold that child Muhammad Bilal died his unnatural death as described by the Senior Medical officer.

14. In order to prove its' case, the prosecution examined complainant P.W-1 Muhammad Aslam who deposed that he has three daughters and one son namely Muhammad Bilal, the deceased-boy. On 24.11.2011, his brothers Muhammad Azam and Muhammad Akram went for offering Isha prayers in mosque Qutb-e-Madina along with his son Muhammad Bilal and his brothers returned back but his son did not come. After sometime, complainant along with his brothers Azam and Akram went to search his son, his

neighbor Nazeer Ahmed also joined them. They searched everywhere, but not found the boy. Then they enquired from Pesh Imam ( ) Manzoor Ahmed Shaikh and Moazin ( ) Nadeem Ahmed Shaikh about Bilal, who asked them to search him in mosque as well, thereafter, during search when they reached on the roof of the Masjid, they found fresh blood on the roof and saw behind the pile of bricks, minor Bilal, in injured condition. He was unconscious and his heart was beating very slowly. The child was first taken to Murk Hospital Tando Adam where Doctor advised them to take him to Hyderabad and while proceeding to Hyderabad, his son succumbed to his injuries. Thereafter, they returned back at Taluka Hospital Tando Adam along with deceased-boy and informed to police. Police arrived at Taluka Hospital from where he along with police went to Qutb-e-Madina Masjid to show the place of incident. Police had inspected the place of incident and behind piles of bricks found a blood stained Turban in green colour, cap of white colour and slippers of minor Bilal from the place of incident. Police had taken blood stained mud, Turban, cap and slippers from spot and prepared memo of inspection of place of incident. After postmortem dead body was handed over to the complainant who after burial remained busy in receiving condolence came at police station on 26.11.2011 at 7:30 p.m. and lodged the FIR. He showed his suspicion over Pesh Imam Manzoor Ahmed Shaikh and Moazin Nadeem Ahmed Shaikh. He further deposed that his cousin Muhammad Saleem had seen Manzoor Ahmed Shaikh while taking his son Bilal towards roof of the Masjid through staircase. P.Ws Muhammad Azam, Muhammad Akram and Nazeer Ahmed gave the same episode of the incident as narrated by the complainant.

15. As is evident from the facts narrated in the FIR as well as the evidence of the complainant and other P.Ws that the incident was un-witnessed because the offence was committed on the rooftop of Masjid, as is clear in the sketch of vardat produced by P.W-09 / Tapedar Muhammad Ismail in his evidence, even otherwise defence has not disputed the place of vardat which is roof of the mosque. The prosecution has therefore, relied upon circumstantial evidence viz. last seen of the deceased in the mosque with appellant, the production of crime weapon by appellant, judicial confession recorded by the appellant before

learned Judicial Magistrate, medical evdience and report of chemical examiner.

16. As regards the last seen evidence is concerned, we observe that the foundation of the "last seen together" theory is based on principles of probability and cause and connection, cogent reasons that the deceased in normal and ordinary course was supposed to accompany the accused, proximity of the crime scene, small time gap between the sighting and crime, no possibility of third person interference as well as time of death of victim.

17. The evidence of P.W-05 Muhammad Saleem shows that he got a Barbar shop near Qutb-e-Madina Masjid and on 24.11.2011, he was present in his barber shop at about 9:00 p.m. after Isha prayer when the Namazis had gone after the prayer he saw master Bilal (now deceased) standing on the door of Masjid and after some moment Pesh Imam Manzoor / the appellant came on the door and he saw appellant taking master Bilal through the stair case of Mosque. He further deposed that after some time he had gone to station as he had to go Mehrabpur. On 27.11.2011 when he returned from Mehrabpur to Tando Adam he came to know that son of Aslam was murdered on the roof of Masjid Qutb-e-Madina. Thereafter while he was going for condolence to the house of Aslam he saw police mobile at Jatia para and narrated the facts to ASI Nadeem Akhtar Baig. ASI recorded his statement and thereafter, he went to the house of complainant for condolence. The evidence of this P.W Muhammad Saleem is enough to prove that the accused / appellant had taken the deceased-body with him to the upstairs of Mosque and thereafter he was found in critical injured condition on the roof of Mosque. As it appears from the evidence of complainant Muhammad Aslam (the father of deceased-boy) and other witnesses that after the deceased-boy had gone to Mosque, and had never returned and later he was found in unconscious condition behind the piles of bricks on the roof of said mosque, which clearly shows that the deceased-boy was lastly seen with the accused-appellant who taken him upstairs. The accused-appellant has not given account as to why the deceased-boy had not returned from the Mosque. Thus the circumstances of last seen absolutely against the accused-appellant. So, it is a link to the chain of circumstances against the accused-appellant. Such piece of evidence connects the

circumstances i.e. the deceased knew the appellant who was his Islamic teacher, the incident took place within a short gap between the sighting and crime as according to the prosecution evidence the deceased-boy was alive and heart was beating very slowly, therefore following the principle that if deceased was lastly seen alone in the company of accused shortly before the time he was presumed to have killed at the place of occurrence, reasonable inference could be drawn that appellant is responsible for the death of deceased, reliance is placed on the case of Mst. ROBINA BIBI versus THE STATE (2001 SCMR 1914).

18. The observation of learned trial Judge on Point No.3, while answering in "doubtful", in view of first opinion of the doctor (without receiving chemical report), seizer of wearing apparels of deceased-boy at Police Station, and not confessing the act of sodomising before Magistrate, would not fatal to case as there is convincing, cogent evidence of the prosecution witnesses to prove its' case on the charge of sodomy committed with deceased-boy. It is worthwhile to mention here that act of sodomy with the minor (deceased) is fully established as the sperms were not only detected on shalwar of minor but on his internal anal swabs as well. The final opinion dated 29.12.2011 of doctor (P.W-6) is reproduced below for better appreciation:

> *"As per chemical report of the deceased I have come to conclusion that the act of sodomy was performed on deceased Muhammad Bilal s/o Muhammad Aslam Mughal.*
>
> *According to chemical examiner sperms were detected on shalwar of deceased and in internal anal swabs."*

19. Perusal of chemical report shows that five sealed cloths parcels each with 03 seals and two sealed bottles each with 01 seal, seals perfect and as per copy sent, were received to the office of Chemical Examiner. The relevant portion of chemical report is reproduced as under:

> *"DESCRIPTION OF ARTICLES CONTAINED IN THE PARCEL*
>
> 1. *Blade of Ari of accused Manzoor Ahmed Sheikh s/o Ahmed Ali …… Parcel No.1.*
> 2. *White colour Shalwar with Elastic (small) of deceased Muhammad Bilawal S/o Muhammad Aslam…… Parcel No.2*

3. *Earth secured from place of crime scene…..*
Parcel No.3

4. *White Colour Cap…….) of deceased*

5. *Green colour (Amama)……..)*
Muhammad Bilawal…….Parcel No.4

6. *White and green colour chappal*
of deceased Muhammad Bilawal……Parcel No.5

7. *Anal Swab external of deceased*
Muhammad Bilawal…….Bottle No.1

8. *Anal swab internal of deceased*
Muhammad Mr. Bilawal …….Bottle No.2

RESULT OF EXAMINATION

Articles No. One to six & and eight (08) noted above are stained with human blood.

Human sperms detected into the above mentioned articles no. two & eights

Human sperms not detected into the above mentioned articles no. four, five & seven."

20. On careful examination of the Chemical Examiner's report and statement of P.W-6 Dr. Muhammad Ashraf ((supra), the case of the prosecution cannot be doubted with tainted glasses on the point of sodomising of deceased-boy, before his murder. Therefore, the finding of the learned trial Judge on Point No.3 are not sustainable. The said Doctor had also supported the injuries on the person of deceased-boy to have been caused with sharp cutting weapon as confessed by the appellant and thus medical evidence is consistent to judicial confession as made by the appellant. As discussed above, the confessional statement in the case having been recorded without wastage of time and after observing all legal formalities, appears to be voluntary, truthful and confidence inspiring, which requires no further corroboration as is held in the case of NIZAM-UD-DIN versus RIAZ and another (2010 SCMR 457).

21. The appellant had got opportunity to lead evidence in defence but he had not led any evidence though he had cited Muhammad Nadeem Shaikh as defense witness but later through statement withdrew his name.

22. In the present case, no person was nominated as an accused in the F.I.R., only suspicion was shown over appellant and Moazin of the Masjid, who were the custodian of the Mosque being it's Pesh Imam and Moazin. In fact, the clue of motive was given out by appellant himself for the commission of this heinous crime, of brutal murder of an innocent helpless child of about 5½ years, when he had confessed his guilt before the learned Judicial Magistrate.

23. As far the contention of the learned counsel that upon circumstantial evidence, one cannot be convicted and awarded the penalty of death, this plea is also misconceived because there is no bar or hindrance to pass the sentence upon a killer when the chain of guilt is found not to be broken and irresistible conclusion of the guilt is surfacing from the evidence, which is connecting the accused with the commission of that offence without any doubt or suspicion. If the circumstantial evidence brought on the record is of such nature then the conclusion would be in the shape of conviction and no other conclusion shall be drawn by any stretch of imagination in such a case, for the guilt of the accused, penalty of death or life imprisonment shall be a normal event. Reliance is placed upon the cases reported as Khuda Bukhsh v. The State (2004 SCMR 331); Faisal v. The State (2007 SCMR 58); Sheraz Tufail v. The State (2007 SCMR 518); Israr Ali v. The State (2007 SCMR 525); Binyamin alias Khari and others v. The State (2007 SCMR 78); Ghulam Nabi v. The State (2007 SCMR 808) and Muhammad Akhtar v. The State (2007 SCMR 876). In the case of Muhammad Akhtar ((supra)) it is held as under:

> *"5. After having gone through the statements of Abdul Shakoor (P.W.1) and Muhammad Naeem (P.W.2) we have no hesitation in our mind to hold that Muhammad Mursaleen (deceased) was taken away by the petitioner from his house whose dead body was recovered subsequently. The conduct of petitioner also remained unusual as he could not furnish any plausible justification that where Muhammad Mursaleen (deceased) was left who had been admittedly taken by him from his house. It is to be noted that blood-stained Toki was also recovered at the pointation of petitioner as a result of his disclosure hence the question of applicability of section 103, Cr.P.C. does not arise as pressed time and again by the learned Advocate Supreme Court on behalf of petitioner but in such an eventuality*

Article 40 of the Qanun-e-Shahadat Order, 1984 would figure in. The Toki (Exh.P.1) was found stained with human blood as per the report of Chemical Examiner. Dr. Muhammad Mushtaq (P.W.3) has conducted the post-mortem examination of dead body of Muhammad Mursaleen on 19-2-2002. According to whom injury No.1 i.e. "an incised wound 7.5 x 3 c.m. on left side of neck, 1 c.m. below lobule of left ear", injury No.5 i.e. "an incised wound 11 x 2 c.m. on right and back of neck at upper part 1 c.m. below injury No.4 second cervical vertebrae on right part was cut in the line of the incised wound" and injury No.6 i.e. "an incised wound 7 x 2 c.m. on back of right side of neck at its junction with the trunk, 4 c.m. below to injury No.5. Intervertebral disc between 6th and 7th cervical vertebrae was cut and spinal card was also cut at the level of injury No.6. Upper border of back part of right first rib was exposed. Cervical plura on the right side was exposed in the depth of the wound but not cut", which resulted in the death of Muhammad Mursaleen due to "acute cardio pulmanary arrest as a result of haemmoragic and nurogenic shock" caused by heavy cutting weapon and no doubt the Toki is a sharp-edged weapon and injury No.1 as mentioned hereinabove could have been caused by it. It is worth while to mention here that act of sodomy was also committed with Muhammad Mursaleen (deceased) as the anal swabs were found stained with semen. The prosecution has succeeded in establishing the accusation by cogent and concrete evidence as discussed hereinabove.

6. We have dilated upon at length the prime contention of learned Advocate Supreme Court on behalf of petitioner that reliance could not have been placed on the last seen evidence. "It is to be noted that the ' above question has been examined time and again in different cases and a few are mentioned hereinbelow for ready reference:

> *1969 SCMR 558, 1969 PCr.LJ 1108, PLD 1991 SC 718; 1999 ALD 48(i), PLD 1991 SC 434, 1991 SCMR 1601, 1998 PCr.LJ 722, PLD 1959 SC (Pak.) 269, PLD 1978 SC 21, 1991 PCr.LJ 956, PLD 1964 Quetta 6, 1971 PCr.LJ 211, 1980 PCr.LJ 164, 1998 SCMR 2669, PLD 1964 SC 67, PLD 1971 Lah. 781, 1972 SCMR 15, 1974 PCr.LJ 463, PLD 1971 Kar. 299, PLD 1977 SC 515, 1997 SCMR 1416, 1988 PCr. LJ 205, NLR 1988 Cr. 599, 1997 SCMR 1279, PLD 1978 BJ 31 and 1997 SCMR 20.*

7. We have perused the dictum laid down in the abovementioned authorities. The consensus seems to be that "last seen evidence itself would not be sufficient to sustain charge of murder and such evidence further required to link accused with the murder of his companion i.e. incriminating recoveries at accused's instance, strong motive or proximity of time when both last seen together and time of murder, accused required to explain demise of his companion only when such requirements fulfilled". PLD

1997 SC 515, AIR 1927 Lah. 541, PLD 1956 FC 123, 1972 SCMR 15, PLD 1964 SC 167 and PLD 1966 SC 644.

8. The further consensus in such-like cases appear to be that "last seen evidence carries weight depending upon varying degree of possibility and facts and circumstances of each .case. Before inferring guilt merely from inculpatory circumstances, such circumstances, held, must be found to be incompatible with innocence of accused and incapable of explanation upon any other reasonable hypothesis than that of guilt". PLD 1977 SC 515, AIR 1922 Lah. 181, AIR 1922 All. 340, PLD 1955 BJ 1, 1974 PCr.LJ 463, AIR 1932 Lah.243, PLD 1971 Kar.299, PLD 1953 FC 214 and PLD 1964 SC 167."

9. On the touchstone of the criterion as enunciated in the above mentioned case-law and discussed at length in case of Muhammad Amin v. State 2000 SCMR 1784 authored by one of us (Mr. Justice Javed Iqbal) and judicial consensus, in our considered opinion, the last seen evidence in this case has rightly been considered and relied upon by the Courts below for the simple reason that the statements of Abdul Shakoor (P.W.1) and Muhammad Naeem (P.W.2) cannot be discarded who have pointed out in an unequivocal manner that deceased was lastly seen in the company of petitioner by whom the deceased was taken away from his house on the pretext of peeling off sugarcane sticks. The recovery of Toki which was found stained with human blood and medical evidence lend full corroboration to the prosecution version. It is to be noted that petitioner has failed to furnish a plausible explanation that on which point and where the deceased was separated from him and he could not discharge the onus of burden lies on him in view of the provisions as contemplated in Article 21 of the Qanun-e-Shahadat Order, 1984. In this regard we are fortified by the dictum laid down in case titled Rehmat v. State PLD 1977 SC 515. The defence version appears to be an afterthought and has rightly been rejected by the learned Courts below.

24. We have come to the conclusion that no direct evidence of the crime in question was available and the prosecution case was structured upon circumstantial evidence of last seen, recovery of dead body of deceased-boy from rooftop of the mosque, where the accused was performing duty as Pesh Imam and was also teaching the deceased-boy, pointation of place of occurrence, recovery of crime weapon by the accused, corroborated by positive reports of weapon and chemical report regarding commission of sodomy with the deceased-boy, recovery of a blood stain Ammama (turban) of green colour and cape of white colour from the place of occurrence, and medical evidence,

confessional statement of accused recorded by the Judicial Magistrate under Section 164, Cr.P.C. Accused although retracted his confession, but the same could be relied upon, because the manner adopted by him for commission of offence stated in confessional statement is fully corroborated by prosecution evidence available on record. P.W-5 mashir Muhammad Saleem, had attested all proceedings of the investigation including recovery of iron cutter. There is nothing on record that such confessional statement of the appellant was the result of any pressure or coercion. We are fully convinced that confessional statement was recorded in proper manner after observing all legal formalities by the Judicial Magistrate it was true and voluntarily and mere retract from such confession is not sufficient to discard it from consideration. In the case of Muhammad Amin v. The State (PLD 2006 SC 219) Honourable Supreme Court of Pakistan has held that conviction can be based on confession if Court satisfies and believes that it was true and voluntary and was not obtained by pressure, coercion or inducement. It is held as under:

> *"9. There is no cavil to the proposition that conviction could have been awarded on the basis of retracted confession which proposition was examined in case of Mst. Joygun Bibi v. The State PLD 1960 (SC (Pak) 313 as under:*
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> > *"we are unable to support the proposition of law laid down by the learned Judges in this regard. The retraction of a confession is a circumstance which has no hearing whatsoever upon the question whether in the first instance it was voluntarily made, and on the further question whether it is true. The fact that the maker of the confession later does not adhere to it cannot by itself have any effect upon the findings reached as to whether the confession was voluntary, and if so, whether it was true, for to withdraw from a self-accusing statement in direct face of the consequences of the accusation, is explicable fully by the proximity of those consequences and need have no connection whatsoever with either its voluntary nature, or the truth of the facts stated. The learned Judges were perfectly right in first deciding these two questions, and the answers being in the affirmative, in declaring that the confession by itself was sufficient, taken with the other facts and circumstances to support Abdul Majid's conviction. The retraction of the confession was wholly immaterial once it was found that it was voluntary as well as true,"*
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> *10. Similarly in the case of the State v. Minhun alias GUL Hassan (PLD 1964 SC 813) this Court has observed as under:*
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> > *"As far the confessions the High Court, it appears, was duly conscious of the fact that retracted confession, whether judicial or extra judicial, could legally be taken into consideration against the maker of those confessions*

> *himself and if the confessions were found to be true and voluntary, then there was no need at all to look for further corroboration. It is well-settled that as against the maker himself his confession, judicial or extra judicial, whether retracted or not retracted, can in law validly form the sole basis of his conviction, if the Court is satisfied and believes that it was true and voluntary and was not obtained by torture coercion or inducement."*

25. Appellant had failed to furnish a plausible explanation that at what time and place deceased boy was separated from him; he could not discharge the onus of burden lies on him in view of Provisions as contemplated in Article 21 of Qanun-e-Shahdat Order, 1984. The defence version appears to be after thought. Trial Court has rightly rejected it.

26. All the above noted segments of evidence have led to one important conclusion that it was a tyrannous and merciless action of accused who had sodomized the innocent child of 5½ years and brutally murdered him by cutting his throat in holy mosque. Therefore, the events and the circumstantial evidence had proved that the appellant is the person who had committed this heinous offence of murder, deserves no leniency. No reason or mitigating circumstance for awarding lesser sentence to the appellant is available in this case. In these circumstances, the conviction and sentence of appellant under Section 302(b), P.P.C. is maintained and the appellant is further convicted under Section 377 P.P.C. and sentenced to imprisonment for life and to pay fine of Rs.one million to the legal heirs of deceased Bilal, and in default thereof to suffer six months S.I. more. Accordingly, the appeal filed by appellant (Cr. Jail Appeal No.D-03 of 2017) is hereby dismissed.

27. Resultantly, death sentence awarded to the appellant is confirmed and death reference i.e. Confirmation Case No.D-01 of 2017 is answered in the affirmative.

JUDGE

JUDGE