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CERTIFICATE OF THE HIGH COURT OF SINDH, KARACHI

Crl Jail Appeal NO. 437 of 2021
Crl Jail Appeal NO. 438 of 2021

Naveed John Bhatti & others

Vs

The State

HIGH COURT OF SINDH

Composition of Bench. S.B.

Mr. Justice Muhammad Karim Khan Agha

Date of hearing: 24-09-2024

Decided on : 01-10-2024

Judgment approved for Reporting

Yes

[Signature]

CERTIFICATE

Certified that the judgment */Order is based upon or enunciates a principle of law
*/decides a question of law which is of first impression/distinguishes/. Over-rules/
reverses/explains a previous decision.

* Strike out whichever is not applicable.

NOTE: - (i) This slip is only to be used when some action is to be taken.

(ii) If the slip is used, the Reader must attach it to the top of the first
page of the judgment.

(iii) Reader must ask the Judge writing the Judgment whether the
Judgment is approved for reporting.

(iv) Those directions which are not to be used should be deleted.

In the High Court of Sindh at Karachi.

Criminal Jail Appeal No. of 2019

Naveed John Bhatti

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Son of William John Bhatti,

confined in Central Prison,

Karachi.....Appellant

Versus

The State.....Respondent.

Appeal under section 410, 418, 419, 420, Cr.P.C.

Being aggrieved by and dissatisfied with the judgment dated 15-05-2019 (copy enclosed), passed by the court of the learned First Additional Sessions Judge (Model Criminal Trial Court), South, Karachi, in Sessions Case No. 470 of 2011 (State Vs. Naveed & others), convicting and sentencing the appellant named above and two others to suffer life imprisonment and to pay Rs. 5,00,000/- each, as compensation to the legal heirs of the deceased under section 544-A, Cr.P.C., and to suffer R.I. for 7 years with fine of Rs. 10,000/- each, respectively for commission of the offences punishable under sections 302 (b), 34, PPC & 397 PPC, thereunder, with benefit of section 382-B, Cr.P.C., prefers this appeal on the facts and grounds given herein below:-

Facts:

1. The facts forming the background of this appeal briefly stated, are that the FIR No. 202/2011 lodged by Suleman Shareef Khan (the complainant) through his statement of section 154 Cr.P.C., with the PS Clifton, Karachi South, for the offences punishable under sections 302/34 PPC on 25-08-2011 at about 1500 hours stated that on such date at about 11.30 a.m. hours, he got informed on phone by the domestic servant Ashfaq that his master Murtaza Chinoy had stood shot and was no more alive and asked him to reach his office whereupon he rushed to such place i.e. office at 2nd Floor, Zamzama Commercial Area, Phase V, DHA, Karachi and saw the police in the street; he entered the office and saw the

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In the High Court of Sindh at Karachi.
 Criminal Jail Appeal No. ⁴³⁸ of 2019

1. Sajid Ahmed Khan;
2. Zahid Ahmed Khan;

Both sons of Rahat Noor,

confined in Central Prison,

Karachi.....Appellants

Versus

The State.....Respondent.

Appeal under section 410,418, 419,420, Cr.P.C.

Being aggrieved by and dissatisfied with the judgment dated 15-05-2019 (copy enclosed), passed by the court of the learned First Additional Sessions Judge (Model Criminal Trial Court), South, Karachi, in Sessions Case No. 470 of 2011 (State Vs. Naveed & others), convicting and sentencing the appellants named above and another namely, Naveed John Bhatti, to suffer life imprisonment and to pay Rs. 5,00,000/- each, as compensation to the legal heirs of the deceased under section 544-A, Cr.P.C., and to suffer R.I. for 7 years with fine of Rs. 10,000/- each, respectively for commission of the offences punishable under sections 302 (b), 34, PPC & 397 PPC, thereunder, with benefit of section 382-B, Cr.P.C., prefer this appeal on the facts and grounds given herein below:-

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Confession Believed

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IN THE HIGH COURT OF SINDH AT KARACHI

Present:

Mr. Justice Mohammad Karim Khan Agha

CRL. JAIL APPEAL NO.437 OF 2019

CRL. JAIL APPEAL NO.438 OF 2019

Appellant in
Appeal No.437/2019:

Naveed John Bhatti s/o William
Johan Bhatti

Appellants in
Appeal No.438/2019:

Sajid Ahmed Khan
Zahid Ahmed Khan both sons of
Rahat Noor through Barrister Iftikhar Ahmed
Shah assisted by Raja Zeeshan and
Muhammad Naeem Awan, Advocates.

Respondent:

The State through M/s. Muhammad Iqbal
Awan, Addl. Prosecutor General, Sindh and
Mumtaz Ali Shah, Assistant Prosecutor
General Sindh.

Complainant:

Through Mr. Muhammad Farooq, Advocate.

Date of Hearing:

24.09.2024

Date of Announcement

01.10.2024

JUDGMENT

By this common judgment, I intend to dispose of both the Cr. jail Appeals filed by Appellants Naveed John Bhatti, Sajid Ahmed Khan and Zahid Ahmed Khan, who were convicted and sentenced by the 1st Additional Sessions Judge/Model Criminal Trial Court (south) Karachi vide Judgment dated 15.05.2019 as under:-

1. Accused Naveed John Bhatti S/o William John Bhatti, Zahid Ahmed Khan S/o Rahat Noor and Sajid Ahmed Khan S/o Rahat Noor are convicted for committing murder of deceased Murtaza Chinoy punishable under section 302(b), read with section 34, PPC and sentenced to suffer Life Imprisonment and each of them is directed to pay compensation of Rs. 5,00,000/(Rupees five Lacs) under section 544-A Cr.P.C. to the legal heirs of deceased. In case of failure in payment of

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compensation, they would also suffer SI for (One year) 01 year more.

2. Accused Naveed John Bhatti S/o William John Bhatti, Zahid Ahmed Khan S/o Rahat Noor and Sajid Ahmed Khan S/o Rahat Noor are also found guilty of offence punishable under section 397, PPC, therefore, they are sentenced to undergo R.I. for Seven (07) years and each of them is directed to pay a fine of Rs.10,000/or in default thereof, they would also suffer S.I. for Six (06) months more.

Benefit of Section 382-B Cr.P.C is also extended to the accused persons. Above sentences would run concurrently.

2. The brief facts of the FIR lodged by complainant Suleman Shareef Khan through his 154, Cr.P.C. statement recorded on 25.08.2011, at about 1500 hours at the spot are that on the said date, he was present at his house at about 1220 hours, when servant Ashfaq of deceased Murtaza Chinoy informed him on phone that his cousin is no more alive and asked him to reach in his office. On receipt of such information, the complainant rushed to the office of the deceased situated at 2nd Floor, Zamzama Commercial Area, Phase-V, DHA, Karachi and saw the police in the street. He went inside the office and saw the deceased in pool of blood lying on the floor where Naveed John, office peon of the deceased, told him that today i.e. 25.08.2011, there was knocking at door of the office, in response he opened the door and found two persons in pant shirt aged about 28/30 years having black bag, who told him to inform the deceased that they have come on behalf of Shahzad Chawla. The complainant also stated that said office peon also informed him that he informed the deceased whereupon he expressed that he did not know them, in the meanwhile by pushing the door they entered inside room and started abusing the deceased on which he forbade them and thereafter they fired upon the deceased due to which he became injured and the culprits fled away from the scene, however, according to said Naveed John he can identify them if appeared before him. Therefore, the complainant claims against two unknown culprits for committing murder of his cousin Murtaza Chinoy for unknown reason.

3. After usual investigation the matter was challaned and the appellants were sent up to face trial. They pleaded not guilty and claimed their trial.

4. In order to prove these cases, the prosecution examined 10-PWs and exhibited various items and other documents. The appellants recorded their statements under Section 342 Cr.P.C. whereby they claimed that they were

innocent. However, they did not give evidence on oath or call any witness in support of their defence.

5. After appreciating the evidence on record, the learned trial Court convicted and sentenced the appellants as set out earlier and hence, the appellants have filed these appeals against their convictions and sentences.

6. The facts of the case as well as evidence produced before the trial court find an elaborate mention in the impugned judgment passed by the trial court and, therefore, the same may not be reproduced here so as to avoid duplication and unnecessary repetition.

7. Learned counsel for the appellants has contended that the appellants are completely innocent and have been falsely implicated in this case by the police in order to show their efficiency; that there was no eye witness to the murder; that the appellants judicial confessions were not made voluntarily and were later retracted and as such the same should be discarded; that the recoveries from each of the appellants were foisted on them; that there are major contradictions in the evidence of the PW's and as such there evidence cannot be safely relied upon and thus for any or all of the above reasons the appellants should be acquitted of the charge by extending them the benefit of the doubt.

8. On the other hand learned Additional Prosecutor General appearing on behalf of the State and the complainant have fully supported the impugned judgment. They have contended that although this is a case of circumstantial evidence but the prosecution has been able to prove its case against the accused based on the evidence of the PW's, the later retracted judicial confession of the accused which could be safely relied upon as being truthful; the recoveries of a robbed item from each of the accused as well as an unlicensed pistol recovered from appellant Zahid an empty of which recovered at the crime scene lead to a positive FSL report when matched with the recovered pistol; that the motive for the murder was robbery; that the medical evidence supported the prosecution case and as such the appeal should be dismissed. In support of their contentions they placed reliance on the cases of *Joygun Bibi v the State* (PLD 1960 SC 313), *Sikandar Ali v The State* (SBLR 2020 Sindh 981), *Sh. Muhammad Amjad v The State* (PLD 2003 SC 704), *Muhammad Amin v The State* (PLD 2006 SC 219), *Ansar and others v The State* (2023 SCMR 929) and *Ali Taj v The State* (2023 SCMR 900).

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9. I have heard the arguments of the learned counsel for the parties, gone through the entire evidence which has been read out by the learned counsel for the appellants, and the impugned judgment with their able assistance and have considered the relevant law including the case law cited at the bar.

10. Based on my reassessment of the evidence of the PW's, the place of the recovery of the dead body, the medical evidence, the blood and empty found at the crime scene I find that the prosecution has proved beyond a reasonable doubt that Muhammed Murtaza Chinnoy (the deceased) was murdered by firearm and his office robbed with his safe containing savings certificates of RS 10lacs each and laptop on 25.08.2011 at about 1130 hours at/from his office at 2nd floor plot No.3-C Lane No.9, Zamzama commercial area Phase V DHA Karachi.

11. The only question left before me therefore is who murdered and robbed the deceased by firearm at the said time, date and location?

12. After my reassessment of the evidence I find that the prosecution has proved beyond a reasonable doubt the charge against the appellants for which they were convicted for the following reasons keeping in view that each criminal case must be decided on its own particular facts and circumstances;

(a) That the FIR was lodged within a few hours of the incident. The slight delay in lodging the FIR has been fully explained by the fact that the complainant was informed over the phone about the shooting of his relative who then rushed to his relative's office where he found him dead. He arranged transportation of the body to the hospital with the assistance of the police and thereafter gave his S.154 Cr.PC statement which later became the FIR against unknown persons. Admittedly his FIR is based on hearsay evidence however the fact that he did not want to falsely implicate the accused in this case is borne out by the fact that he lodged the FIR against unknown persons

(b) Admittedly there is no eye witness to the murder and robbery and the main piece of evidence against the appellants are their retracted judicial confessions and therefore the question arises whether I can safely convict on the basis of the retracted judicial confessions of the appellants. I set out the retracted judicial confessions of each of the appellants for ease of reference below;

CONFESSONAL STATEMENT U/S.164 Cr.P.C. of NAVEED JOHN BHATTI

Question: What you have to say?

Answer: I along with accused Zahid and Malik Rehan Farooq made a plan in order to commit loot to Chinay Sahib and the said plan was occurred in our office. After looting to Chinay Sahib, they having tied me went away from the office. I used to do work in the office of Chinay Sahib

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as Peon. I had called Zahid and Sajid through phone. Thereafter Zahid and Sajid came inside the office of Chinay Sahib and started to commit loot and demanded money from Chinay Sahib, but he made resistance, upon which, accused Zahid made fire shot with his pistol upon him, resulting which, bullet hit at his neck. After that, Zahid and Sajid escaped away from the spot and I stopped there. After that, I moved him, but he was not moving. Thereafter, I called driver of Chinay Sahib through phone and he said me don't fear and inform said incident to 15 Police. Thereafter, Police and Edhi official reached at the spot and took away Chinay Sahib. This much is my confession.

Sd/-Accused

CONFESSIOAL STATEMENT U/S.164 Cr.P.C. of SAJID AHMED

Question: What you have to say?

Answer: The accused Zahid Ahmed is my real brother. The accused Farooq and Naveed made plan in order to commit robbery to Chinay Sahib, Farooq had told to my brother Zahid that there are some money, laptop and precious mobile phone in the office of Naveed, and which money will be looted, same will be distributed with each other. After that, Naveed made phone call to Farooq and stated him to send two persons. After that, I and Zahid came at the office and got opened the door, Naveed opened the door and he said that having put pistol upon him and to take inside office. The Advocate Chinay Sahib had sat inside the office and quarrel occurred with each other and my brother Zahid made fired shot with pistol upon Chinay Sahib, which hit at his neck and he fell down. After that, we escaped away from the spot.

Sd/- Accused.

CONFESSIOAL STATEMENT U/S.164 Cr.P.C. of ZAHID AHMED

Question: What you have to say?

Answer: On 25-08-2011 at about 1115 hours, I and my companion Sajid went to the office of slain Chinay Sahib called by the Naveed Jan in order to commit dacoity where quarrel occurred with Chinay Sahib and I suddenly made fired with pistol which hit at the neck of Chinay Sahib, resulting which he fell down on the spot. We had looted one laptop, two Saving Certificates of Rs.10 Lac each and cash about Rs.50 to 60 thousand from the office of Chinay Sahib. After that, police recovered aforesaid articles from our possession. This much is my confession.

Sd/-Accused

13. It is settled law that a retracted judicial confession can be legally admissible and used against its maker in certain circumstances. In the case of **Muhammad Amin V The State (PLD 2006 SC 219)** it was held at P.224 Para 9 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:-

"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 bearing 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."

10. Similarly in the case of the State v. Minhun alias Gul Hassan PLD 1964 SC 813 this Court has observed as under:-

"As for 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 or coercion or inducement." (bold added)

14. Thus, the court laid down a two pronged test as under (a) whether the retracted judicial confession appears to have been made voluntarily, without any inducement, duress or coercion and (b) was made with the object to state the truth.

15. Notably it was also held that if both (a) and (b) were satisfied even if there were some irregularities in recording of a confession it would not warrant disregarding of the same. In my view however following the case of Azeem Khan V Mujahid Khan (2016 SCMR 274) such irregularities must be of a minor nature and must not have detracted from either the voluntariness or truthfulness of the confession.

16. In the case of *Bahadur V State* (PLD 1996 SC 336) although it was suggested that a judicial confession alone can be made the basis of conviction the safer course was to look to see if there was any corroborative material available to determine its truthfulness.

17. In the case of *Manjeet Singh V State* (PLD 2006 SC 30) a further requirement seemed to be added that in determining the truthfulness of the confession it had to be placed within the context of the whole of the prosecution evidence/case.

18. In my view therefore I am not in any doubt that a retracted confession before a magistrate can be the basis of convicting in a capital case however it must be;

(a) Voluntary i.e. without threat or inducement and

(b) Its object must be to state the truth; assistance for which can be ascertained from (i) whether the confession appears truthful within the context of the prosecution case and (ii) whether there is any other evidence on record which tends to corroborate the truthfulness of the confession and

(a) Only minor irregularities regarding the rules concerning the recording of judicial confessions can be permitted as determined on a case to case basis the main criteria being that such irregularities have not adversely effected the voluntariness or truthfulness of the confession.

I find that when the retracted judicial confessions are placed in the context of the prosecution case there is no evidence to suggest that they were not voluntarily made or made through inducement or coercion and their object was to tell the truth.

I also find that all procedural safeguards in recording each of the judicial confessions have been fully complied with and as such I place reliance on each of the judicial confessions.

The next question is whether there is any corroborative/supportive evidence in relation to the retracted judicial confessions although admittedly corroboration tends to be a rule of caution however in cases of retracted judicial confessions I consider such corroboration / supportive evidence to be of importance/significance especially in a capital case.

I find the following corroborative/supportive evidence to the retracted judicial confessions of the appellants.

(d) That it is an admitted position that appellant John worked in the office of the deceased as it was he who is named in the FIR as being present at the time of the incident and narrating the facts of the incident to the

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complainant about the murder and robbery by the two unknown persons. Initially it therefore appeared to the police that John was perhaps a witness and was not arrested. However when the Supreme Court ordered a reinvestigation the starting point for the new investigation team was John as he was the only person present at the time of the robbery and murder. It would also have been impossible for the other appellants to know that the deceased kept a safe in his office without John telling them as these two other appellants had nothing to do with the deceased office whereas John was a trusted employee and hence appellant John and the other appellants hatched the robbery of the deceased who was killed on resistance by appellant Zahid. Hence when the new investigative team arrested John under S.54 Cr.PC for suspicion of committing the crime he cracked and confessed to the robbery and the murder.

(e) Having confessed to the police to committing the crime John also lead the police to his house where on his pointation a saving certificate of RS 10lacs in the name of the deceased was recovered which fully linked him to the robbery and murder the saving certificate being his share of the proceeds of crime. Appellant John also implicated appellant Sajjad in the crime who the police recovered the deceased laptop from which was picked out at an identification parade as the laptop belonging to the deceased which linked appellant sajjad to the robbery and murder. Appellant Sajjid then implicated his bother appellant Zahid in the crime who the police arrested on his pointation from whom another saving certificate of 10lacs was recovered from in the name of the deceased which again linked him to the robbery and murder. An unlicensed pistol was also recovered from appellant Zahid. Within 6 days after their arrest all three of the appellants confessed to the crime before the judicial magistrate in the terms reproduced earlier.

(f) When the empty recovered at the crime scene was sent for FSL along with the pistol recovered from appellant Zahid it produced a positive FSL report.

(g) That the medical evidence also fully supports the prosecution case in that the deceased received two firearm injuries from close range as evidenced by the blackening around the wounds during the course of him putting up resistance to the robbery.

(h) That the police PW's had no enmity or ill-will towards any of the appellants and had no reason to falsely implicate them in this case for example by foisting the recoveries on the appellants and in such circumstances it has been held that the evidence of the police PWs can be fully relied upon. In this respect reliance is placed on the case of *Mushtaq Ahmed V The State* (2020 SCMR 474). As such I place reliance on the evidence of the police witnesses whose evidence was not dented during lengthy cross examinations.

(i) That all the PW's are consistent in their evidence and even if there are some contradictions in their evidence I consider these contradictions as minor in nature and not material and certainly not of such materiality so as to effect the prosecution case and the conviction of the appellants. In this respect reliance is placed on the cases of *Zakir Khan V State* (1995 SCMR 1793) and *Khadim Hussain v. The State* (PLD 2010 Supreme Court 669). The evidence of the PW's provides a believable corroborated

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unbroken chain of events from appellant John confessing to the crime to the recovery of one of the saving certificates on his pointation to appellant Sajjad confessing to the crime and the recovery of the deceased laptop from him to the arrest of Zahid on his brother Sajad's pointation and him confessing to the crime and the recovery of the other saving certificate from him along with an unlensed pistol which when matched with the empty recovered at the scene of the crime lead to a positive FSL report.

(j) The motive for the crime was robbery which escalated into murder when the deceased resisted the robbery at his office which ties in with the confessions of the appellants.

(k) The fact that no private person was a mashir I did not find to be of huge significance in this day and age where it has virtually become a judicially recognized fact that private persons do not want to associate themselves with such like crimes.

(l) Undoubtedly it is for the prosecution to prove its case against the appellants beyond a reasonable doubt but I have also considered the defence case to see if it at all can cast doubt on or dent the prosecution case. The defence case is simply one of false implication by the police simpliciter despite the police having no enmity with the appellants. None of the appellant's gave evidence on oath and none of the appellants called any DW to support their defence case. The defence that the appellant's confession was not made voluntarily and that the recoveries of the stolen items from the deceased office were foisted on the appellants are after thoughts in order to save the skin of the appellants and I disbelieve the same in the face of the over whelming prosecution evidence and find that the defence case has not at all dented the prosecution case.

19. Thus, for the reasons mentioned above, I uphold the impugned judgment and dismiss the appeals.