

Acquitted: no Reliance on retracted judicial Confession  
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## IN THE HIGH COURT OF SINDH, KARACHI

*Present:*

*Mr. Justice Mohammad Karim Khan Agha  
Mr. Justice Abdul Mobeen Lakho,*

**Criminal Jail Appeal No.689 of 2019  
Confirmation Case No.38 of 2019**

<b>Appellant</b>	Adnan Abbasi S/o. Zafar Iqbal through Mr. Khaleeq Ahmed, Advocate
<b>State</b>	The State through Mr. Muhammad Iqbal Awan, Deputy Prosecutor General.
<b>Complainant</b>	Nizamuddin through Azizullah Khan, Advocate.
<b>Date of hearing</b>	20.04.2021
<b>Date of Announcement</b>	28.04.2021

### JUDGMENT

**MOHAMMAD KARIM KHAN AGHA, J:-** The appellant Adnan Abbasi in the instant appeal has assailed the judgment dated 21.10.2019 passed by Learned Model Court/ Additional District & Sessions Judge-, Karachi East in a Sessions Case No.913 of 2017 arising out of Crime No.52 of 2017 U/s. 302/201/202/34 PPC P.S. Shahrah-e-Faisal, Karachi whereby the appellant was convicted under Section 302(b)PPC for committing Qatl-e-amd and awarded the death sentence subject to confirmation by this Court. He was also directed to pay a compensation of Rs.500,000/- to the legal heirs of the deceased and in default of payment he has to undergo simple imprisonment for six months more.

2. The brief facts of the prosecution case as narrated by the complainant Nizamuddin S/o. Muhammad Yousuf are that he had four children, three daughters and one son namely Muhammad Rizwan. His son had contracted court marriage with Neha Gul Naz who was already having three children from her first husband and one child namely Mohid was born from his son Muhammad Rizwan. His son was residing along with his family in a rented premises i.e. Flat No.04, Al-Rauf Royal City, Block-19, Gulistan-e-Jauhar,

Karachi. His son was working with Wilson Company. He used to visit us regularly. On 08.01.2017 at about 1930 hours his son came to him and asked to hand over a motorcycle bearing No.3461, maker Super Power. Upon inquiry he told him that he had sold out his own motorcycle. Thereafter he left his place around 1930 hours along with his motorcycle. Since he did not get back his motorcycle till 09.01.2017 he called him but his cell phone did not respond, therefore, he also sent text message on his mobile phone which was also not responded. After getting no response from his son he went to Al-Fauf Royal City on 10.01.2017. He found a lock on the flat and motorcycle was parked in the parking area. He tried to take away his motorcycle, however the watchman reached there and restrained him from taking away the motorcycle. He asked him to show the registration documents of motorcycle. He showed him the photocopy of his motorcycle registration book, thereafter he allowed him to take the motorcycle. He inquired from the watchman about his son on which he told him that a boy around 14/15 years old came to him and left a cage of parrots with him as the residents of Flat No.004 were moving away from there. He again called his son on his cell phone but did not get any response. On 23.01.2017 his daughter namely Lubna Jabeen received a phone call at about 1652 hour. The caller told his daughter that her brother (Mohammad Rizwan) had been murdered and his dead body was lying inside the residence. After hearing the news they went out of senses. On 24.01.2017 his daughter Lubna again received a call and the caller threatened her for dire consequences in case they would report the matter to police. On 24.01.2017 they went to PS Shahrah-e-Faisal and reported the matter to the duty officer SI Aslam Jamal. He along with him went to Al-Rauf and broke open the door of Flat No.004. As they entered the flat, they found an unbearable smell was coming out from dead body of his son who was wrapped in a plastic sheet. When police removed plastic sheet and found that the hands and feet of his son were tied and his neck was tightly tangled with a rope due to which his eyes and tongue had come out. We had also found two knives and one hammer near the dead body. Police had taken the dead body to Jinnah Hospital for postmortem where after completing all the legal formalities he kept the dead body in mortuary of Edhi Center and came to home to complete the funeral arrangement. While he was busy in funeral arrangement Imam Muhammad Din of Johari Madaris Masjid came to his residence and told him that two persons in a black car had come to him and they had threatened him (Imam Sahab) that in case he would offer Namaz-e-Janaza of his son Rizwan, he would experience the same result. Hence such FIR was lodged against accused

Imtiaz Latif @ Neha Gul who was wife of the deceased and against unknown persons.

3. After completing usual investigation charge sheet was submitted against accused persons for offence punishable u/s. 302/201/202/34 PPC.
4. The prosecution in order to prove its case examined 08 witnesses and exhibited various documents and other items. The statement of accused was recorded under Section 342 Cr.P.C in which he denied all the allegations leveled against him and in particular stated that his confession was not voluntary as his brothers were being held by the police until he made his confession. He did not give evidence on oath or call any DW in support of his defence case.
5. After appreciating the evidence on record the trial court convicted the appellant and sentenced him as set out earlier in this judgment. Hence, the appellant has filed this appeal against his conviction.
6. The facts of the case as well as evidence produced before the trial court find an elaborate mention in the impugned judgment dated 21.10.2019 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 appearing on behalf of the appellant contended that he was innocent of any wrong doing and had been falsely implicated in this case by the police in collusion with the complainant; that there was no eye witness evidence against him, that there was no last seen evidence against him and the only evidence against him was his confession which was made before a judicial magistrate which had not been made voluntarily and as such was of no legal value and that there was no other evidence against him and as such he should be acquitted of the charge by being extended the benefit of the doubt. In support of his contentions he placed reliance on **Muhammad Mansha v. The State** (2018 SCMR 772), **Muhammad Ismail and others v. The State** (2017 SCMR 898), **Mah Gul v. The State** (2009 SCMR 4), **Wazir Muhammad and another v. The State** (2005 SCMR 277), **Qaddan and others v. The State** (2017 SCMR 148), **Azeem Khan and another v. Mujahid Khan and others** (2016 SCMR 274) and **Syed Mehroz Mehdi Zaidi alias Mehdi Badshah v. The State** (2020 MLD 1344).

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8. On the other hand learned DPG and learned counsel for the complainant have fully supported the impugned judgment and have contended that the appellant's confession was made voluntarily, was truthful, fitted in with all aspects of the prosecution case and was subject to all legal safe guards and as such could be safely relied upon against its maker who was the appellant despite his late retraction of it; that the judicial confession was corroborated by the medical evidence, by the appellant leading the police to the scene of the murder on his pointation and CDR data which linked him to the crime and as such the prosecution had proved its case against the appellant beyond a reasonable doubt and the appeal should be dismissed. In support of thier contentions they placed reliance on the case of **Nizam-ud-din v. Riaz and another** (2010 SCMR 457).

9. We have heard the arguments of the learned counsel for the appellant as well as learned DPG and counsel for the complainant, gone through the entire evidence which has been read out by the counsel for the appellant, and the impugned judgment with their able assistance and have considered the relevant law including that cited at the bar.

10. After our reassessment of the evidence we find that the prosecution has **NOT** proved its case beyond a reasonable doubt against the appellant for the following reasons:-

(a) The FIR was lodged by the complainant after a delay of more than one day despite the complainant discovering the dead body which delay has not been fully explained and as such this goes against the complainant's case as it leaves room for concoction and falsification. The appellant was not named in the FIR.

(b) There was no eye witness to the deceased being murdered by the appellant.

(c) There was no last seen evidence to connect the deceased with the appellant.

(d) The prosecution case rests primarily on the appellant's judicial confession made before the judicial magistrate PW 8 Abdul Sarmad. We are not in any doubt that a retracted confession before a magistrate can be the basis of convicting in a capital case, in this respect reliance is placed on **Azeem Khan's case** (Supra), however it must be;

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

(ii) 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

(iii) 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.

Based on the particular facts and circumstances of this case we find that the appellant's judicial confession was not made voluntarily for the following reasons;

- (i) There was absolutely no evidence at the time of his confession to link the appellant to the offense and as such he had no reason to confess.
- (ii) He has maintained that his brothers were in custody at the time when he made his confession and this was the reason why he made his confession in order to save his brothers. This was put to PW 8 Abdul Sarmad who was the judicial magistrate who recorded his confession during cross examination and therefore was not an afterthought. He also stated the same in his S.342 Cr.PC statement. PW 6 Shakeel Ahmed who was the IO even admits in his evidence that the appellants brothers were in custody facing enquiries prior to the appellant's arrest. His children were also in custody at the time when he made his confession.
- (iii) PW 6 Shakeel Ahmed who was the IO in his evidence states as under;

*"It is correct to say that the children of Mst. Imtiaz Latif @ Neha Gulnaz widow of deceased were at PS. Voluntarily says that there was no place for keeping custody of children of the accused therefore, I kept them at PS with the consent of accused Imtiaz Latif @ Neha Gulnaz. There were four children of accused Imtiaz Latif, two were about 15 to 16 years old, while third one was 1 to 2 years old and the fourth was handicap and his probable age was 6 to 7 years old. It is incorrect to say that from 15.03.2017 to 18.03.2017 brothers of the accused were present at PS. Voluntarily says that they were called for inquiry prior to arrest of the accused. It is correct to say that accused Adnan Abbasi was in my custody from 14.03.2017 to 18.03.2017. It is incorrect to say that on 17.03.2017 I obtained signature of the accused on his confessional*

*statement while he was in custody. Application recording of confessional statement as well as remand report bears my handwriting. (Note: The copy of confessional statement of the accused was shown to the IO in reply thereof he stated that it bears his handwriting). It is correct to say that on 17.03.2017 I recorded statement of the accused. I obtained signature of accused on his statement at PS."*(bold added)

In the appellants S.342 Cr.PC he states as under regarding his retracted judicial confession;

Q.No.6. It has come on the record that on 14.03.2017 you were arrested from the gate of Al-Rauf Royal City at 1800 hours by police alongwith co-accused Imtiaz Latif @ Neha Gul alongwith four children and such memo was prepared?

Ans. It is incorrect. I was arrested by police on 09.03.2017 from Shah Aqiq Shrine and two brothers were already detained by police and they compelled me to record confessional statement on the condition that the police would release my brother sFaisal Abbasi and Zeeshan Abbasi.

Q.No.7. It has come on the record that after arrest you shown willingness to record confessional statement before the court of Magistrate and on your instance IO produced you before Magistrate, who recorded your confessional statement on 18.03.2017?

Ans. I recorded statement U/s. 164 Cr.P.C. at the instance of the IO who wrote my statement to which I memorized because my two brothers were already detained by police.

Thus, in our view it appears that the appellant confessed before the judicial magistrate because his brothers were already in custody and he was threatened that they would be implicated in false cases if he refused to confess. The confession recorded in the hand writing of the IO also accords with the appellants version that he was required to memorize the IO's version of his confession and repeat the same before the magistrate. Under these circumstances we find that the appellant's confession was a result of inducement and coercion and as such it was not made

voluntarily and we discard the same and place no reliance on it.

Even otherwise there are a number of significant procedural omissions made by the magistrate in recording the appellant's confession. For example, he was not informed that he would not be returned to police custody if he failed to confess and only after he confessed was he informed that the confession could be used against him in evidence.

Even if we believed and relied upon the judicial confession of the appellant (which we do not) it would still need to be corroborated by some other independent evidence from an unimpeachable source. In this respect reliance is placed on Muhammed Ismail's case (Supra)

**So what other corroborative supportive evidence was there against the appellant to connect him with the murder of the deceased.**

(e) The medical evidence provided by PW 7 Dr. Shiraz Ali supports the fact that the appellant was murdered by asphyxia, stabs wounds to the head and blows to the hands which is corroborative of the retracted judicial confession.

(f) The evidence of witness Lubna who was an important witness who was contacted on her mobile phone by the person who told her that the deceased body was in the flat was not lead for unknown reasons.

(g) Ms Lubna's phone was not recovered and no CDR data of any phone was exhibited which could link the appellant to any phone call to Ms Lubna.

(h) It does not appeal to logic, reason or commonsense that the appellant would call Ms Lubna and tell her about the dead body of the deceased in his flat if he was the culprit. He would never had made such a call which could potentially implicate him in the crime. He had every reason not to make such a call.

(i) No recovery was made from the appellant as the murder weapons were left at the scene.

(j) The fact that the appellant pointed out the flat where the murder took place is completely irrelevant as the police and the complainant already knew where the murder took place.

(k) Thus, even if we believed the judicial confession of the appellant and placed reliance on (which we do not) there is hardly any corroborative/supportive material on record to show the appellant's involvement in the commission of the crime. There is certainly no unbroken chain of circumstantial evidence which reaches from the toe of the deceased to the


neck of the appellant which could possibly justify his conviction for the offense for which he is charged.

(1) It is a golden principle of criminal jurisprudence that the prosecution must prove its case against the accused beyond a reasonable doubt and that the benefit of doubt must go to the accused by way of right as opposed to concession. In this respect reliance is placed on the case of **Tariq Pervez V/s. The State** (1995 SCMR 1345),

11. For the reasons discussed above having excluded the appellants judicial confession from consideration as it was found by us not to have been made voluntarily and the total lack of any corroborative or supportive evidence to connect the appellant to the offense for which he was charged we find that the prosecution has failed to prove its case against the appellant beyond a reasonable doubt and as such the appeal is allowed, the appellant is acquitted of the charge, the confirmation reference is answered in the negative and the appellant shall be released forthwith unless he is wanted in any other custody case.

12. The appeal and confirmation reference is disposed of in the above terms.

  
JUDGE

  
JUDGE  
28/04/21

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