

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA

Crl. Jail Appeal No.D-67 of 2018
Crl. Reference No.D-09 of 2018

PRESENT:

Mr. Justice Mohammad Karim Khan Agha,
Mr. Justice Zulfiqar Ali Sangi,

Appellant : Khadim Hussain, through Mr. Abdul Hakeem
Brohi, Advocate.

Respondent : The State, through Mr. Ali Anwar Kandhro,
Additional Prosecutor General.

Date of hearing : 02.03.2021.

Date of Announcement : 09.03.2021

J U D G M E N T

MOHAMMAD KARIM KHAN AGHA.- By means of instant appeal, appellant Khadim Hussain son of Amannullah Jagirani, has assailed the judgment dated 14.11.2018 delivered by learned Additional Sessions Judge-I, Shahdadkot in Sessions Case No.287/2014, re-State v. Khadim Hussain, arising out of Crime No.34/2014, registered at Police Station A-Section Shahdadkot, for offence under Sections 302, 34, PPC.

2. The learned trial court after full-dressed trial found the appellant guilty of alleged charges and has punished him for offence under Section 302(b), thus has convicted and sentenced him to death subject to confirmation by this court with fine of Rs.500,000/-, to be paid to the legal heirs/walis of deceased Khadim Hussain son of Abdullah Siyal and in case of default to undergo S.I for 06 months more.

3. The crux of prosecution case as narrated in the aforesaid F.I.R which was lodged on 10.03.2014 by Abdullah son of Mohammad Hassan Siyal are that on 07.03.2014 at 9:00 a.m in the morning Khadim Hussain son of complainant informed him that he would leave for Jamshoro for doing labour and left on Chingchi Rickshaw along with Mumtaz Jagirani, Khadim Hussain Jagirani, Mour Jagirani. On 09.03.2014 the complainant was available in his house where his nephew Waheed son of Ghulam Hyder resident of Usta Mohammad Baloushistan and relative Habibullah son of Khuda Bux Siyal resident of Shambozai Mohallah Shahdadkot and brother in law Ali Dost were available as guests. At about 7:30 pm in the evening, on hearing noise of Chingchi Rickshaw the complainant along with his above named guests went out of the house and saw that Khadim Hussain, Mumtaz Ali and Mour all three sons of Amanullah Jagirani were riding on Chingchi Rickshaw. Khadim Hussain was driving the Chingchi, the above named persons threw white colour bag towards the entrance door of the house of Ali Dost and fled away on Chingchi. The complainant opened the plastic bag which contained the skull of Khadim Hussain son of complainant. The complainant informed police. The police arrived and after initiating necessary proceedings, the skull of Khadim Hussain was handed over to the complainant for burial and thereafter the complainant remained busy in searching for remaining body of his son Khadim Hussain. On 10.03.2014, the remaining body of Khadim Hussain was found on the bank of Sim Shaakh adjacent to Imam Bux road. The body of Khadim Hussain was tied with stone lying in water, with the help of loin cloth. The dead body of deceased Khadim was discovered at 6-00pm in the evening. The complainant informed police about the dead body and lodged FIR on 10.03.2014 against accused Khadim Hussain, Mumtaz Ali and Mour all sons of Amanullah Jagirani and unknown accused for committing murder of his son Khadim Hussain by slitting throat of Khadim Hussain with some sharp cutting object.



4. After registration of FIR, I.O investigated the case, who after completion of legal formalities submitted the challan before the competent court of law having jurisdiction.

5. Learned trial court after completion of codal formalities framed charge against the appellant on 03.02.2015, to which he pleaded not guilty and claimed to be tried.

6. In order to prove its case, the prosecution examined 12 witnesses, who exhibited numerous documents and other items and thereafter prosecution side was closed. Thereafter, statement of accused was recorded under Section 342 Cr.PC in which he denied the allegations and claimed his false implication due to old enmity. The accused however did not examine himself on oath or call any DW's in support of his defence case.

7. On conclusion of the trial, learned trial court after hearing learned counsel for the parties and appraisal of prosecution evidence brought on record, convicted and sentenced the appellant/accused as mentioned earlier in this judgment vide Judgment dated 14.11.2018 hence the appellant has filed this appeal against his conviction.

8. The facts of the case as well as evidence produced before the trial court find an elaborate mention in the judgment dated 14.11.2018 passed by the trial court and, therefore, the same may not be reproduced here so as to avoid duplication and unnecessary repetition.

9. Learned counsel for the appellant has contended that he is completely innocent in this case and has been falsely implicated on account of enmity; that there was an unexplained delay in lodging FIR which is fatal to the prosecution case; that there was no eye witness to the murder of the deceased; that the appellant's confession cannot be safely relied upon as this was extracted by the police through coercion and torture and was allegedly made after an unexplained period of 10 days after his arrest; that the recoveries



have all been foisted upon him; that the so called eye witnesses are all related and cannot be safely relied upon and for any of the above reasons the appellant should be acquitted of the charge by extending him the benefit of the doubt. In support of his contentions he has placed reliance on **Hamzo V The State** (1983 P Cr. L J 892), **Hamzo V The State** (PLD 1960 (W. P.) Karachi 817) and **Said Begum V The State** (PLD 1958 (W. P.) Lahore 559).

10. On the other hand learned Addl. Prosecutor General who was also representing the complainant fully supported the impugned judgment and contended that the deceased was seen leaving by eye witnesses with the appellant and other co-accused and then eye witnesses identified the appellant as being one of the persons who threw the head of the appellant in a bag outside the home of the complainant's relatives and the evidence of these eye witnesses was reliable, confidence inspiring and was to be believed; that the confession of the appellant although later denied was voluntary and truthful and could be used against him; that the medical evidence fully supported the prosecutions case; that the recoveries had been made on the pointation of the appellant and as such the prosecution had proved its case beyond a reasonable doubt against the appellant and as such his appeal should be dismissed and his conviction and sentence maintained. In particular he stressed that due to the barbarity of the murder the death sentence should be maintained. In support of his contentions he has placed reliance on **Jafar Ali V The State** (1998 SCMR 2669), **Khurshid V The State** (PLD 1996 Supreme Court 305), **Allahditto V The State** (1968 SCMR 378), **Rafaqat Ali V The State** (2016 SCMR 1766) **The State through A.G., V Waqar Ahmad** (1992 SCMR 950) and **Dadullah V State** (2015 SCMR 856).

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



12. Based on our reassessment of the evidence of the PW's, especially the PW eye witnesses, PW MLO's and other medical reports, and recovery of head of the deceased outside Dost Ali's house and shortly thereafter the recovery of the torso (headless) of the deceased in Sim Shaikh, we find that the prosecution has proved beyond a reasonable doubt that Khadim Hussain (the deceased) was murdered by sharp cutting object by having his head cut off from his torso on 07.03.2014 at 9am to 09.03.2014 at about 7pm adjacent the Sim Shakh at Iman Shahdadkot road situated in Deh Kot Karira, Taluka Shahahdadkot which severed head was thrown in a plastic bag at the house of Dost Ali.

13. The only question left before us therefore is who murdered the deceased by decapitating his head from the rest of his body with a sharp cutting object at the said time, date and location and whether the appellant was involved in the murder of the deceased.

14. After our reassessment of the evidence we find that the prosecution has proved beyond a reasonable doubt the charge against the appellant for which he was convicted for the following reasons;

- (a) That the FIR was lodged with promptitude based on the particular facts and circumstances of the case and any delay in lodging the same has been fully explained. According to the evidence of the complainant on 09.03.14 at 9am he saw the appellant along with other absconding co-accused on a Chingehi Rickshaw which was being driven by the appellant when one of the co-accused riding in the Chingehi threw a plastic bag at the house of Dost Ali where he was with other PWs. When the bag was opened decapitated head on his son was found. He immediately informed the police who came to his house and inspected the head and carried out other necessary legal formalities. Despite being under severe shock and trauma the complainant along with other PW's searched for the headless torso of his son which was found on 10.03.14 (the next day) at Sim Nalla and there after he immediately registered the FIR and as such the complainant had no time to cook up a false case against the appellant as he had informed the police immediately about his sons head being cut off from his body and thrown outside the house of Dost Ali and the police



arrived at such house shortly thereafter. Even otherwise no enmity has come on record between the appellant and the complainant party which would motivate them to lodge a false case against the appellant. The appellant is named in the FIR with a specific role.

- (b) In our view the prosecution's case mainly rests on the eye witnesses to the decapitated head of the deceased being thrown to them by the co-accused from the rickshaw which the appellant was driving and the finding of his torso whose evidence we shall consider in detail below **and the appellant's judicial confession ;**

Turning first to the judicial confession by the appellant. This was made on 26.03.2021 which was 10 days after his arrest which was made before PW 11 Shafqatullah who was a judicial magistrate.

The appellant's confession reads as under:

"Q. What have you to say?

Ans. I am plying Qingqi Rickshaw. Deceased Khadim Hussain had fought with me over the matter of our minor children about one month prior to the incident and had beaten me. I was poor, therefore, remained calm. I, then narrated such facts to my relative Abdul Sattar who replied that we would also fight. On the day of incident, I and Abdul Sattar took Khadim on my Qingqi Rickshaw to Sim Shaakh (Salinity Canal) via Qubo Road, where we alighted for washing hands and face. While Khadim was washing his face, I inflicted hatchet blow on backside of his neck and he fell down in the minor (Shaakh). We then cut his head and by roping stone with his body threw it in the minor (Shaakh). Then we brought his head to the town and threw it in front of house of his relatives in Massan Mohalla. I had to say this much."



Law on retraction of judicial confessions.

In this case we find that the accused has not actually retracted his judicial confession but has contended that it was made after torture and inducement by the police of which we have found no evidence of and appears to be a bald allegation. In any event we consider it appropriate to consider the law on the retraction of judicial confessions to assess whether they can be relied upon under any circumstances.

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After a review of the relevant law on the legal validity of judicial confessions the Hon'ble Supreme court in the case of **Ch. Muhammad V Yaquob V The State** (1992 SCMR 1983) reached the following conclusion:

"The legal position, which has emerged from the above reports, seems to be that in order to judge the evidentiary value of retracted confession, the Court is to advert to the question, whether the same appears to have been made voluntarily, without any inducement, duress or coercion with the object to state the truth. If the Court is satisfied on the above aspect, the mere fact that there were some irregularities in recording of a confession, would not warrant disregarding of the same". (bold added)

It is settled law that a retracted judicial confession can be legally admissible and used against its maker in certain circumstances. In the later 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)

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.

Notably it was also held that if both (a) and (b) were satisfied that even if there were some irregularities in recording of a confession it would not warrant disregarding of the same. In our 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.

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



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.

In our view therefore we are not in any doubt that a retracted confession before a magistrate can form the basis of convicting in a capital case however it must be;

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

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(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**
- (c) 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.
- (d) It is preferable that there is some independent corroboration of the confession.

After carefully considering the evidence of PW 11 Shafqatullah the judicial magistrate and PW 8 Muhammed Suleman who arrested the appellant and produced him before the judicial magistrate for his confession to be recorded we are satisfied that the confession has been made voluntarily, is truthful and fits in within the context of the entire prosecution case (as will be elaborated further below) and that all the relevant precautions and warnings were given to the appellant before and after he made his judicial confession as laid down in the case of **Azeem Khan V Mujahid Khan** (2016 SCMR 274). For example, there were no signs of torture on his body, he was warned that if he made a confession it could be used against him in a court of law, that he was given adequate reflection time, that no police were present when he made his confession, his hand cuffs were removed, he stated that his confession was being made voluntarily without coercion or inducement and he was told that he would not be handed back to the police whether he confessed or not and indeed was remanded to judicial custody after his confession and as such we believe that confession of the appellant albeit retracted in terms of him stating that the confession was made on account of torture and coercion by the police (**especially as we have found no evidence on the record to suggest that the appellant was subject to any coercion or torture by the police**) and rely on the same as against its maker who is the appellant **subject** to some corroborative evidence. We



consider the delay in recording the judicial confession of the appellant based on the particular facts and circumstances of this particular case does not effect its reliability. For example, although he was arrested on 16.03.14, on 25.03.2014 the appellant on his pointation lead the police to the ricksaw and murder weapon and then **the day after** (26.03.2014) he made his judicial confession which ties in with the prosecution case in all material respects. In this regard reliance is placed on **Majeed V State** (2010 SCMR 55) where it was held at P.59 para 10 as under;

"10.No doubt there was a delay of 12 days in recording the confession but this by itself is not sufficient to discard the same. This court in the case of **Nabi Bakhsh V State** (1999 SCMR 1972) held that delay in recording the confessional statement by itself is not sufficient to effect its validity. However no hard and fast rule can be laid down about the period in which the confessional statement of the accused ought to be recorded during investigation"

Thus, we will now see what other direct or corroborative or supportive evidence is on record to corroborate the judicial confession of the appellant.

Other direct evidence against the appellant;



(c) It is true that there are no eye witnesses to the actual murder of the deceased. Namely, the decapitation of his head from the rest of his body but in this particular case last seen evidence is important when read in conjunction with the eye witnesses who saw the deceased leave with the appellant on his Rickshaw and saw the appellant return on his rickshaw a day later one of whose occupants threw the decapitated head of the deceased towards the house of Dost Ali.

(d) In **Fayyaz's case** (Supra) at P.2030 at Para 7 it was held as under regarding last seen evidence;

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"The last seen evidence is one of such categories of evidence. In this category of cases some fundamental principles must be followed and the Prosecution is under-legal obligation to fulfill the same, some of which may be cited below:-

- (i) There must be cogent reasons that the deceased in normal and ordinary course was supposed to accompany the accused and those reasons must be palpable and prima facie furnished by the Prosecution.
- (ii) The proximity of the crime seen plays a vital role because if within a short distance the deceased is done to death then, ordinarily the inference would be that he did not part ways or separated from the accused and onus in this regard would shift to the accused to furnish those circumstances under which, the deceased left him and parted ways in the course of transit.
- (iii) The timing of that the deceased was last seen with the accused and subsequently his murder, must be reasonably close to each other to exclude any possibility of the deceased getting away from the accused or the accused getting away from him.
- (iv) There must be some reasons and objects on account of which the deceased accompanied the accused for accomplishment of the same towards a particular destination, otherwise giving company by the deceased to the accused would become a question mark.
- (v) Additionally there must be some motive on the part of the accused to kill the deceased otherwise the Prosecution has to furnish evidence that it was during the transit that something happened abnormal or unpleasant which motivated the accused in killing the deceased.
- (vi) The quick reporting of the matter without any undue delay is essential, otherwise the prosecution story would become doubtful for the reason that the story of last seen was tailored or designed falsely, involving accused person.

Beside the above, circumstantial evidence of last seen must be corroborated by independent evidence, coming from unimpeachable source because uncorroborated last seen evidence is a weak type of evidence in cases involving capital punishment.

- (vii) The recovery of the crime weapon from the accused and the opinion of the expert must be



carried out in a transparent and fair manner to exclude all possible doubts, which may arise if it is not done in a proper and fair manner.

- (viii) The Court has also to seriously consider that whether the deceased was having any contributory role in the cause of his death inviting the trouble, if it was not a pre-planned and calculated murder."(Bold added)

(e) In this case the evidence is far better than last seen evidence as the eye witnesses saw the deceased leave with the appellant and other co-accused in search of work at Jamshoro and then saw the appellant the next day in the rickshaw whilst one of the co-accused tossed the head of the deceased in a bag to Dost Ali's house. Hence the connection is in seeing the appellant leave with the deceased in his rickshaw to search for work and then see the appellant return in his rickshaw a day later with the decapitated head of the deceased points directly to his involvement in the murder of the deceased especially when read with the confession of the deceased which we have already found to be reliable and admissible.

(i) Eye witness PW 1 Abdullah. He is the complainant in the case and the father of the deceased who was his son. According to his evidence on 07.03.2014 at 9am he saw his son leave to go to catch transport to Jamshoro on a rickshaw with the appellant and other co-accused. On 09.03.2014 he, Habibullah and Waheed had gone to the house of Dost Ali when in the evening they heard the sound of a rickshaw. He immediately came out of the house where he saw the appellant and the co-accused all sons of Amanullah Jagirani sitting in the rickshaw by the appellant. He saw one of the co-accused (Mour) throw a plastic bag from the Rickshaw which drove off. On opening the plastic bag he found the head of his son. He immediately informed the police who came to the wardat and carried out all legal formalities. He then searched for the torso of his son with others. According to his evidence on 10.03.2014 at about 6pm he reached Sim Nala near Iman Bux Road where he saw blood stains as well as marks of wheels of rickshaw. They then found the headless body of the deceased from Sim Nala which was tied with Romal of deceased and heavy stone. With him were Habibullah, Waheed, as well as Mashirs Azam and Qurban. He left them and went to the PS to lodge his FIR.

He knew the appellant, he saw the appellant drive the rickshaw from which one of the co-accused threw the bag



containing the head of his son. It was about 6.30pm in the month of March and as such it would have been light at that time and as such he would easily have been able to recognize and identify the appellant. Even otherwise in his FIR he states that light bulbs were glowing which would have made the identification of the appellant even easier so there is no case of mistaken identity and no need to hold an identification parade. The appellant was also named and given the same specific role in the FIR lodged promptly after the incident. The fact that he could see the incident clearly was corroborated by the evidence of the other eye witness PW's who also saw the appellant throw the head of the deceased in a bag from the rickshaw.

Admittedly the eye witness was related to the deceased however it is well settled by now that evidence of related witnesses cannot be discarded **unless** there is some ill will or enmity between the eye witnesses and the accused which has not been proven in this case by any reliable evidence. Reliance is placed on **Ijaz Ahmed V The State** (2009 SCMR 99) and **Nasir Iqbal alias Nasra and another v. The State** (2016 SCMR 2152). In fact in this particular case the complainant during cross examination specifically states that there was no enmity between him and the appellant prior to this incident

The complainant is **not** a chance witness as he lived in the locality and was visiting his relative Dost Ali who was also living in the same locality.

As mentioned earlier he lodged his FIR with promptitude based on the particular facts and circumstances of this case which named the accused with specific roles and the other eye witnesses. Any delay in registering the FIR is fully explained by the complainant in his evidence. His evidence reflects that of his FIR and there have been no significant improvements in the same so as to render his evidence unreliable. He had no enmity with the appellant and had no reason to falsely implicate him in the murder of his son. His evidence was not dented despite lengthy cross examination. We find his evidence to be reliable, trust worthy and confidence inspiring and we can convict on this evidence alone if corroborated by medical evidence. In this respect reliance is placed on **Muhammad Ehsan v. The State** (2006 SCMR 1857), **Anwar Shamim v State** (2010 SCMR 1791) and **Qurban Hussain V State** (2017 SCMR 880). As also found in **Farooq Khan v. The State** (2008 SCMR 917), what is of significance is the quality of the evidence and not its quantity, and in this case we find the evidence of this eye witness to be of good quality.

(ii) Eye witness PW 2 Abdul Waheed. He corroborates eye witness PW 1 Abdullah in all material respects. He is named in



the FIR as an eye witness shortly after the incident and gave his S.161 Cr.PC eye witness statement promptly which left no room for concoction and there has not been any significant improvements in his evidence so as to render it doubtful and the same considerations apply to him as to eye witness PW 1 Abdullah..

(iii) Eye witness PW 3 Habibullah. He corroborates eye witness PW 1 Abdullah and eye witness PW 2 Abdul Waheed in all material respects. He is named in the FIR as an eye witness shortly after the incident and gave his S.161 Cr.PC eye witness statement shortly after the incident which left no room for concoction and there has not been any significant improvements in his evidence so as to render it doubtful and the same considerations apply to him as to eye witnesses PW 1 Abdullah and PW 2 Abdul Waheed.

Having believed the eye-witness evidence we find that the authorities cited by the appellant are of little, if any, assistance to him since they mainly relate to delay in recording a judicial confession which we have already dealt with earlier in this judgment. The judicial confession of the appellant which we have found reliable and admissible also ties in with the above referred eye witness evidence which corroborates and supports its truthfulness along with other prosecution evidence.

Thus, based on our believing the evidence of the 3 PW eye-witnesses and the appellant's confession what other supportive/corroborative material is there against the appellant?



(f) That the evidence of the 3 eye-witnesses is corroborated by PW-7 Muhammed Azam who was the mashir of the head of the deceased, the headless torso and arrest of the appellant. PW 9 PC Amanullah who reached the wardat after the head of the deceased was thrown at Dost Ali's house and was reported by the complainant also corroborates the three eye witnesses. PW 6 Shahid Ahmed who registered the FIR of the complainant also corroborates the complainant's story.

(g) That the medical evidence of PW's 4 Dr.Ramesh Lal who was the MLO who carried out the post mortem on the severed head corroborates the deceased being beheaded by a sharp cutting substance/weapon which he opines as a dagger and which beheading was the cause of death. PW 5 Dr.Mohammed Idrees MLO who examined the headless body of the deceased and gave evidence that the head was removed from the neck by a sharp cutting weapon and that no other injury was visible on the body and that the beheading caused the death also corroborates the prosecution evidence. No post mortem of the body was carried out however based on the particular facts and circumstances of the case we find this to be inconsequential as it is apparent that the cause of death was by beheading through a sharp cutting weapon.

(h) That the PW's give evidence that they were able to find the headless body at Sim Nalla by following the blood trail and the marks made by the wheels of the rickshaw which was used by the appellant. The stone and romel used to tie the stone to the body was also recovered at the scene and exhibited as evidence which ties in with the appellant's confession.



(i) That the appellant took the police and the mashirs on his pointation to where he had kept the rickshaw and hidden the hatchet (murder weapon) which was a place which only he could have known about and not the police or the complainant which ties in with his confession.

(j) That the recovered hatchet was covered with blood stains and the chemical test on the blood was positive.

(k) That all the PW's are consistent in their evidence and even if there are some contradictions in their evidence we consider

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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 appellant. In this respect reliance is placed on **Zakir Khan V State** (1995 SCMR 1793) and **Khadim Hussain v. The State** (PLD 2010 Supreme Court 669).

(l) That the police PW's had no enmity or ill will towards the appellant and had no reason to falsely implicate him in this case by for example making up his arrest or foisting the rickshaw and hatchet on him and in such circumstances it has been held that the evidence of the police PW's can be fully relied upon. In this respect reliance is placed on **Mustaq Ahmed V The State** (2020 SCMR 474).

(m) That it does not appeal to reason, logic or commonsense that the father who was both the complainant and eye witness would let the murderer of his son go scot free by substituting him with an innocent person (the appellant). In this respect reliance is placed on **Allah Ditta V State** (PLD 2002 SC 52).

(n) The evidence of the PW's provides a believable corroborated unbroken chain of events from the deceased leaving with the appellant in his rickshaw to the deceased's head being cut off and thrown at the house of Dost Ali by the appellant and his co-accused from his rickshaw to the recovery of the headless torso to the arrest of the appellant to the recovery of the rickshaw and hatchet (murder weapon) on the pointation of the appellant to the appellants confession before the judicial magistrate which we find would even meet the test of their being sufficient circumstantial evidence connecting the appellant to the murder of the deceased as was laid down in **Fayyaz Ahmed V State** (2017 SCMR 2026) as the prosecution has produced all the links in chain in an unbroken one where the one end of the same touches the dead body and the other



the neck of the accused so as to lead to his conviction on the basis of circumstantial evidence.

(o) In his judicial confession the appellant himself reveals the motive for the murder. Namely, deceased Khadim Hussain had fought with me over the matter of our minor children about one month prior to the incident and had beaten me. I was poor, therefore, remained calm. I, then narrated such facts to my relative Abdul Sattar who replied that we would also fight.

(p) It does not appeal to logic, common sense or reason that if you were innocent you would throw the decapitated head of the deceased outside a neighbors house and run away without explanation which conduct in and of itself is virtually an admission of your involvement in the deceased's murder.

(q) Undoubtedly it is for the prosecution to prove its case against the accused beyond a reasonable doubt but we 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 based on enmity which has not been substantiated whatsoever by the appellant. He did not give evidence on oath or call any DW in support of his defence case which was basically false implication simpliciter. The claim that his confession was made due to coercion and torture is an afterthought especially as no injury marks were found on his body at the time of his confession and he did not make any complaint to this effect to the magistrate who recorded his confession. Thus, for the reasons mentioned above we disbelieve the defence case as an afterthought. Thus, in the face of the appellant's corroborated judicial confession which we rely upon, the eye witness evidence which we have found to be reliable, trust worthy and confidence inspiring the defence case



(which we disbelieve) has not at all dented the prosecution case.

15. Thus, based on the above discussion especially in the face of reliable, trust worthy and confidence inspiring eye witness evidence, the appellants duly corroborated judicial confession which we believe and place reliance upon and other corroborative/supportive evidence mentioned above we have no doubt that the prosecution has proved its case against the appellant beyond a reasonable doubt for the offence for which he has been convicted and hereby maintain his conviction.

16. With regard to sentencing the prosecution has proved the motive of the appellant through his judicial confession. The murder itself was extremely barbaric being the beheading of a person with a hatchet and then throwing his decapitated head in front of his relatives house. Such a brutal and barbaric murder is not deserving of any leniency on the part of the courts and a deterrent sentence is fully warranted based on the particular facts and circumstances of this case. On particularly brutal crimes justifying the death sentence reliance is placed on *Tariq Iqbal V State* (2017 SCMR 596) which at P.596 held as under:



"3. Leave to appeal had been granted in this case only to consider as to whether the appellant deserved the sentence of death on the charge of murder or not and the stage of granting leave to appeal the merits of the appellant's case had not been pressed before this Court. This shows that the question of the appellant's guilt as well as all the factual allegations leveled by the prosecution against the appellant now conclusively stand settled and accepted. The appellant had trespassed into the complainant's house, had killed the complainant's wife and had robbed different articles available in the complainant's house which articles had later on been recovered from the appellant's custody. The appellant had made an extra-judicial confession before two witnesses and had also made a judicial confession before a Magistrate. **The murder in issue had been committed by the appellant in furtherance of a robbery and a young lady in her prime had been butchered by the appellant inside her house by giving as many as 10 *churri* blows on**

3

different parts of her body. Such conduct displayed by the appellant clearly shows that the appellant is a cruel desperate person who deserves no sympathy in the matter of his sentence. This appeal is, therefore, dismissed." (bold added)

17. Under these circumstances due to the particular brutality and callousness of the murder we hereby uphold the death sentence of the appellant. Thus, the appeal is dismissed, the impugned judgment is upheld along with its convictions and sentences and the confirmation reference is answered in the affirmative.

18. The appeal stands disposed of in the above terms.

Sd/-Muhammad Karim Khan Agha, Judge
Sd/-Zulfiqar Ali Sangi, Judge

Announce by us in open court.
Sd/-Fahim Ahmed Siddiqui, Judge
Dated 9/03/2021
Sd/-Zulfiqar Ali Sangi, Judge
Dated 9/03/2021

