

IN THE HIGH COURT OF SINDH AT KARACHI

Spl. Cr. AT Appeal No.D-92 of 2024

Spl. Cr. ATJ Appeal No.D-99 of 2024

Before:

Justice Adnan Iqbal Chaudhry.

Justice Tasneem Sultana.

Appellant in Appeal No.92/2024.	Danish Maqbool through Mr.Nasrullah Korai, Advocate.
Appellant in Appeal No.99/2024.	Moula Bux @ Mouli: Nemo .
Complainant	Muhammad Hanif: Nemo
State	Through Mr. Mumtaz Ali Shah, Assistant P.G
Date of hearing	24.7.2025, 25.07.2025, 28.07.2025 & 29.07.2025.
Date of judgment	28.10,2025,

J U D G M E N T

TASNEEM SULTANA, J: By this common Judgment, we intend to dispose of aforementioned Special Criminal Anti-Terrorism Appeal/Jail Appeal, as the same being arisen out of common judgment, have been heard by us together. Through the listed Appeal and Jail Appeal Appellants Danish Maqbool and Moula Bux @ Mouli have assailed the Judgment dated 27.06.224, passed by the Anti-Terrorism Court No.XV Karachi (**Trial Court**) in Special Case No.46 of 2021 (Old number 112 of 2021), arising out of FIR No.331 of 2020 registered at P.S Chakiwara Karachi under Section 302, 365-A & 34 PPC read with Section 7 of Anti-Terrorism Act 1997, whereby they have been sentenced as under:

- (i) Accused Moula Bux @ Mouli son of Muhammad Anwar and Danish Maqbool so of Maqbool Hussain are sentenced to suffer imprisonment for life under section 364-A read with section 34 of Pakistan Penal Code, 1860 alongwith payment of fine of Rs.200,000/- each as compensation to be paid to the legal heirs of deceased and in case of default of payment of compensation they accused shall suffer S.I for six (06) months more.
- (ii) Accused Moula Bux @ Mouli son of Muhammad Anwar and Danish Maqbool so of Maqbool Hussain are sentenced to suffer imprisonment for life under section 7(1)(a) of Anti-Terrorism Act, 1997 alongwith fine of Rs.200,000/-each to be paid to the legal heirs of deceased and in case of default of payment of fine they accused shall suffer S.I for six (06) months more.

All the sentences have been ordered to run concurrently and the benefit of Section 382-B, Cr.P.C has also been extended to the Appellants.

2. Facts of the prosecution case, in nutshell, are that on 14.12.2020 complainant Muhammad Hanif Baloch appeared at police station and narrated that on 12. 12.2020 at about 12:00 noon his son Abdul Rehman aged about 11 years left the house and did not return, as such on 13-12-2020 at about 01:30 hours he filed NC report at police station Chakiwara, that he is confident that someone kidnapped his son for unknown reason. On the aforesaid narration of the complainant, duty officer SIP Ahmed Khan lodged the FIR for offence under section 364-A and 369 PPC.

3. SIP Muhammad Ashraf of PS AVCC/CIA, was entrusted investigation of this case, he visited the place of incident. On 20.12.2020, dead body of a boy in burnt condition was found within the jurisdiction of Police Station Baghdadi which was taken to Civil Hospital Karachi by SIP Sabir Hussain of PS Baghdadi. The mother identified the piece of the trouser and declared the dead body is of her son Abdul Rehman. On 08-01-2021 Investigation Officer on suspicion arrested Moula Bux @ Mouli, who during interrogation, disclosed that he committed this offence along with his accomplices Sarban, Saud, Danish Maqbool and 2/3 friends of Saud for extortion of Rs.150,000/- or 200,000/-. On such disclosure Section 365-A PPC read with section 7 ATA was inserted. During interrogation the appellants admitted their guilt while disclosing that after kidnaping Abdul Rehman they took him to the house of Aunt of Danish Maqbool's wife, situated at Gulshan-e-Mazdoor, Hub River road Karachi, meanwhile Abdul Rehman died due to the fear. The appellants voluntarily led the Investigating Officer to the pointed places. On 19.01.2021 confessional statement under Section 164 Cr.P.C of accused Moula Bux @ Mouli was recorded before the learned Magistrate concerned. The Investigation Officer submitted the charge sheet before the trial Court while placing the name of co-accused Saud and 2/3 unknown in column No.2.

4. During proceedings co-accused Sarban was killed in police encounter and proceedings against him were abeted vide order dated 18.3.2024, while case against accused Saud was kept on dormant file.

5. Having been supplied the requisite documents as provided under section 265-C Cr.P.C., the trial court framed formal charge against the appellants at Ex.04 to which they pleaded not guilty and claimed trial.

6. To prove its case, prosecution examined thirteen (13) witnesses. **PW-1** Mst.Zarina was examined at Ex.05. **PW-2** Dr. Abdul Jabbar Memon at Ex.8, he produced postmortem examination report at Ex.8/A, certificate of cause of death at Ex8/B and letter addressed to MLO at Ex8/C. **PW-3** Muhammad Amjad at Ex-09, he produced memo of inspection of place of incident at Ex.9/A and memo of pointation of place of recovery of dead body at Ex.9/B. **PW-4** complainant Muhammad Hanif (through video link) at Ex.11, he produced FIR at Ex.11/A, memo of securing mud attached with the dead body at Ex.11/B, report under section 174 Cr.P.C at Ex.11/C and receipt of

handing of the dead body at Ex.11/D. **PW-5** SIP Ahmed Khan at Ex-12, he produced roznmacha entry No.3 at Ex.12/A, roznmacha entry No.47 at Ex.12/B, roznmacha entry No.23 at Ex.12/C and letter addressed to Incharge AVCC/CIA at Ex.12/D. **PW-6** SIP Muhammad Ashraf at Ex-13, he produced order of SSP at Ex.13/A, roznmacha entry No.86 at Ex.13/B, roznmacha entry No.39 at Ex-13/C, roznmacha entry No.56 at Ex.13/D, letters addressed to police surgeon Civil Hospital Karachi, Incharge Edhi Child Home Karachi, Incharge Ansar Burni child home Karachi, Incharge Serdkhana Home Karachi. Incharge Juvenile Jail Karachi, Director Jinnah Hospital, Additional police surgeon Abbasi Shaheed Hospital and Incharge Edhi Sardkhana Home Karachi at Ex.13/E, entry No.15 at Ex.13/F, entry No.60 at Ex.13/G, entry No.41 at Ex.13/H and entry No.45 at Ex-13/I. **PW-7** PC Muhammad Ismail Awan at Ex-14, he produced roznmacha entry No.65 at Ex.14/A, memo of pointation of place of captivity of deceased where he died at Ex-14/B and entry No.24 at Ex.14/C. **PW-8** PC Meer Hassan at Ex-18, he produced memo of arrest of accused Danish and Sarban at Ex.18/A. PC Meer Hassan was again examined at Ex.20 as **PW-9**, since his earlier evidence was recorded in absence of deceased accused Sarban. **PW-10** Judicial Magistrate Barrister Uzair Ali at Ex.22, he produced letter addressed to Judicial Magistrate at Ex.22/A and confessional statement of accused Moula Bux @ Mouli at Ex.22/B. **PW-11** SIP Sabir Hussain at Ex.24, he produced roznmacha entry NO.58 at Ex.24/A, entry No.60 at Ex.24/B and roznmacha entry No.15 at Ex.24/C. **PW-12** ASI Shabir Ahmed at Ex.25, he produced roznmacha entry No.82 at Ex.25/A, memo of arrest of accused Moula Bux @ Mouli at Ex.25/B and roznmacha entry No.99 at Ex.25/C. **PW-13** Inspector Shariq Ahmed Siddiqui at Ex.27, he produced order of SSP at Ex.27/A, letter addressed Chemical Examiner Sindh Karachi at Ex.27/B, letter addressed to MLO Civil Hospital Karachi at Ex.27/C, roznmacha entry No.61 at Ex.27/D, letter addressed to Incharge Sindh Forensic and DNA Serology Laboratory Karachi at Ex.27/E, letter for chemical examination of case property at Ex.27/F, CRO of accused Moula Bux @ Mouli at Ex.27/G, roznmacha entry No.36 at Ex.27/H, roznmacha entry No.44 at Ex.27/I, CRO of accused Sarban and Danish at Ex-27/J, roznmacha entry No.65 at Ex.27/K, entry No.19 at Ex.27/L, entry No.78 at Ex.27/M, letter addressed to MLO Civil Hospital Karachi for DNA of blood sample of mother of deceased and such examination report at Ex.27/N, piece of trouser of deceased at Ex.27/ O, photographs of the dead body of deceased Abdul Rehman at Ex.27/P, letter addressed of Incharge IAC Karachi University at Ex.27/Q, report of Director Laboratories and Chemical examiner at Ex.27/R, reports of Sindh Forensic DNA and Serology Laboratory at Ex.27/S and reports of Industrial Analytical Center at Ex.27 /T and 27/U.

7. Statement of appellants under section 342 Cr.PC were recorded at Ex.29 and 30, wherein they denied the allegations leveled against them and claimed to be innocent. Accused Danish Maqbool produced copy of Cr. Miscellaneous Application No.67/2021, order dated 11.01.2021, raid report of learned Magistrate, entry No.32 and photographs at Ex.30/A to 30/E respectively. Both the appellants-accused did not opt to

examine themselves on oath, however, produced witnesses in their defense.

8. Appellant Moula Bux @ Mouli examined his mother Mst. Fareeda as **DW-1** at Ex.31, she produced application addressed to I.G Sindh at Ex.31/A. Accused Moula Bux @ Mouli also examined one Muhammad Haris as **DW-2** at Ex.32. While, appellant Danish Maqbool examined his mother Mst. Safia as **DW-3** at Ex.33, she produced photographs of appellant Danish Maqbool at Ex.33/A, telephone number of Inspector Shariq at Ex.33/B and chit at Ex.33/C. Appellant Danish Maqbool also examined one Taj Muhammad as **DW-4** at Ex.34.

9. The learned trial Court after hearing the counsel for the parties vide impugned judgment convicted and sentenced the appellants as reproduced above.

10. Perusal of record reflects that vide Order dated 27.11.2024 advocate Sumair Zaman was appointed on State expenses to proceed with this case on behalf of pauper appellant Moula Bux @ Mouli, however, he failed to appear even on a single date. Therefore, these appeals were heard with the able assistance of learned counsel for appellant Danish Maqbool and learned State Counsel.

11. The learned counsel for appellant Danish Maqbool *inter-alia*, contended that impugned judgment suffers from misreading and non-reading of evidence; that FIR was registered after delay of two days; that the FIR was initially registered under section 364-A PPC but last Investigating Officer added Section 365-A PPC without any lawful authority; that on 06.12.2020 appellant-accused Danish Maqbool left Karachi for Nawabshah alongwith his wife as she was ill and remained in the house of his in-laws from 06.12.2020 till 05.01.2021; that the police official of Chakiwara Police Station informed his mother that Danish Maqbool is required for evidence in firing case, thus, on 05.01.2021 he voluntarily appeared at police station alongwith his mother where he was confined, illegally; that mother of accused Danish Maqbool also filed application under section 491 Cr.PC bearing No.67/2001 on which Magistrate conducted raid at police station but he was shifted earlier by the police officials to some unknown place; that defense witnesses also supported the version of appellant by producing documentary evidence; that appellant-accused is not nominated in FIR and his name was inserted at the later stage which too on the alleged statement of appellant Moula Bux @ Moli; that there is no eye-witness of the alleged incident.

12. As far as appellant Moula Bux @ Mouli is concerned, Mr.Nasrullah Korai, advocate for the appellant Danish Maqbool contended that CDR of Moula Bux was not collected despite of the fact that his mobile phone was secured at the time of his arrest; that blood was collected on 24.12.2020 while same was deposited in concerned Laboratory on 28.12.2020; that IO has admitted in evidence that there is no eye witness of the incident, thus, the prosecution failed to prove its case against the appellants; that alleged retracted confessional statement has no value in the eyes of law which was recorded after considerable delay of 11 days; that case of prosecution suffers from reasonable doubts

and it based on surmises and conjectures, therefore, appellants are liable to be acquitted of the charge and they cannot be convicted on shaky evidence. In support of his contention has placed reliance on (i) Naqibullah and Anon vs. The State (PLD 1978 SC 21), (ii) Muhammad Azam v. The State (2025 SCMR 810), (iii) Azeem Khan v. Mujahid Khan (2016 SCMR 274), (iv) Muhammad Mansha v. The State (2018 SCMR 772), (v) Imran alias Dully v. The State (2015 SCMR 155), (vi) Ghulam Hussain v. The State (PLD 2020 SC 61), (vii) Imran v. The State (2024 PCr.LJ 1048), (viii) Tanvir v. The State (PLD 2020 Lahore 774), (ix) Nabi Bux and another v. The State (1999 SCMR 1972), (x) The State/ANF v. Muhammad Arshad (2017 SCMR 283) and (xi) Khan Muhammad and others v. The State (1999 SCMR 1818).

13. Conversely learned Assistant P.G supported the impugned judgment and argued that chain of evidence duly connects the appellant with the offence; that appellant Moula Bux @ Moli recorded confessional statement before the learned Magistrate itself connects the appellants with the offence; that prosecution witness duly supported the case and they remained consistent despite lengthy cross-examination; that appellants have failed to prove malafide on part of the complainant; that appellants examined defense witnesses in their support as such burden shifted on them to prove their innocence however, they miserably failed to discharge their burden by producing a cogent evidence. He lastly prayed for dismissal of these appeals. In support of his contention he has placed reliance on Sheraz Asgha vs. State (1995 SCMR 1365), Muhammad Ismail and another vs. The State (1995 SCMR 1615), Nabi Bakhsh and another vs. The State and another (1999 SCMR 1972), Shahbaz Masih vs. State (2007 SCMR 1631) and The State/ANF vs. Muhammad Arshad (2017 SCMR 283).

14. We have heard the learned counsel for the parties as well as learned DPG and scanned the material available on record.

15. On careful perusal of material brought on record it appears that undeniably, it is un-witnessed incident. However, the prosecution case is based on circumstantial evidence, judicial confession of appellant Moula Bux @ Moli, recovery of incriminating articles and scientific evidence, which has to be reckoned with. The testimony of PW-01 Zarina mother of the deceased, though lacking eye witness observation of the abduction, is consistent and unshaken on essential facts; that her son left home on 12-12-2020, at 11.00 a.m., and did not return despite immediate searching and on the next day. PW4 Muhammad Hanif Baloch complainant (father) filed missing report and on 14-12-2020 FIR was lodged against the unknown persons. This fact corroborates the family's prompt action. PW3 Muhammad Amjad, maternal uncle of deceased, confirmed prior money dispute of appellant Moula Bux @ Moli, with Arshad @ Kodu (other maternal uncle of deceased) and co-accused Sarban and he shared these facts with the complainant that 10\15 days prior to incident appellant Moula Bux @ Moli came to PW3 and informed that his brother Arshad @ Kodu owed Rs.10,000\- to co-accused Sarban which is to be

recovered by appellant Moula Bux @ Moli, which gave rise to suspicion against Moula Bux. On 20-12-2020, an eventful discovery of the burnt dead body was found from the slaughter house situated within the remit of PS Bagdadi. The fact that the dead body was of deceased was identified through a piece of trouser on the dead body and police secured soil matted with the dead body (Ex.11/B). The evidence of complainant supported by Mst. Zarina (PW-1) and maternal uncle of deceased Muhammad Amjad (PW-3) provides the foundation of the case. None of these family witnesses were shown to have enmity with the appellants, and cross examination did not reveal material contradiction. Their demeanor was steady, and their testimony is confidence inspiring.

16. Medical evidence provided by Dr. Abdul Jabbar (PW-2) reflects that on 20-12-2020, he conducted post mortem examination of burnt dead body vide post mortem report No.252/2020 (Ex.8-A) and confirmed that body was extensively charred, external and internal injuries could not be described and viscera was preserved for forensic purposes, thus medical evidence corroborates the prosecution case by linking recovery of burnt dead body with subsequent forensic findings. On 16.01.2021 during interrogation, appellants Moula Bux @Moli and Danish Maqbool admitted their guilt and on their own disclosures they led police party and pointed the house of aunty/Khala of Danish Maqbool's wife situated at Hub River Road, Gulshan-e-Mazhar where they kept the deceased Abdul Rehman in captivity. I.O secured mud and chair on which the appellants had tied deceased Abdul Rehman (Ex.14/B). The appellants also pointed out the place from where body of deceased was recovered (Ex.9/B).

17. On 19-01-2020, the appellant Moula Bux @ Moli when produced before the learned Judicial Magistrate (PW10), confessed his guilt by mentioning in detail the reason of abduction of deceased Abdul Rehman and subsequent death during confinement as under:-

میں ساریاں جو کہ رحمان ڈکیت کا بیٹا ہے اس کے ساتھ میں کام کرتا ہے اور وہ روز کے مجھے 250/200 روپے دیا کرتا تھا۔ اس طرح میری اس سے دوستی ہوگئی۔ سعود، سربان کی وجہ سے میرا دوست بنا۔ میں سربان کے لیے آفس، کرسٹل سپلائی کرتا تھا۔ ارشد کوڈو نے مجھے 10000 روپے نہیں دینے تھے کرسٹل اور آفس کی مد میں اور ساریاں مجھے سے پیسے مانگ رہا تھا۔ پھر میں نے ارشد کوڈو کے بھانجے کو اغوا کیا۔ 12.12.2020 کو میں نے اور دانش نے عبدالرحمن جو کہ بھانجہ تھا ارشد کوڈو کا، کپڑے دلانے کا بول کر موٹرسائیکل پر لی مارکیٹ لایا اور ساریاں اور سعود کو دیا۔ پھر دانش، سعود، سربان اور دیگر دوست اس کو نیول کالونی لے گئے۔ دانش کی وائف کی خالہ کے گھر میں اور خالہ انگلینڈ میں تھی۔ پھر انہوں نے بچے کو کرسی سے باندھا۔ پھر میں عشاء کی نماز کے بعد بچے کو دیکھنے گیا بچہ مر گیا تھا۔ اس کے دوستوں نے بچے کے اوپر مٹی ڈالا اور گلاب کا پانی ڈالا اور واش روم میں رکھا۔ میں ڈر کر گھر آیا اور ایک ہفتہ بعد 20.12.2020 کو دانش کی وائف کی خالہ آرہی تھی پھر ساریاں اور دیگر کے ساتھ لاش سلاٹر بانوس کے سامنے گلی کے اندر لانے اور وہاں پھینک دی۔ میں اپنے جرم کو قبول رہا ہوں اور اللہ سے معافی مانگ رہا ہوں۔

18. However, the appellant retracted from his confession. In this case the substantive piece of evidence with prosecution is confessional statement of the appellant Moula Bux @ Moli. From perusal of the same it transpires that the same is voluntary and according to the narration of the occurrence because the appellant Moula Bux @ Moli had disclosed such facts which otherwise were neither known to the complainant nor to the investigating officer. Such disclosure was that appellant Moula Bux @ Moli had a money claim against Arshad @ Kodu, the maternal uncle of deceased Abdul Rehman; that the claim was for

sale of drugs which were peddled by Moula Bux for Sarban, who was son of Rehman dacoit; that Sarban was pressing Moula Bux for payment/recovery; therefore both appellants abducted nephew of Arshad @ Kodu i.e. deceased Abdul Rehman. This confessional statement has rightly been believed by the learned trial court, as it was duly corroborated by sequence of events i.e., the appellants led police party and pointed the house where they kept the deceased Abdul Rehman in captivity. Prior to the said information nobody knew the place of confinement of deceased. In such circumstances, the recovery from the place of captivity on the disclosure of the appellants was admissible under Article 40 of the Qanun-e-Shahadat Order, 1984. The condition precedent to the applicability of Article 40 is that there must be discovery of fact in consequence of some information received from accused, and at that time the accused be in custody of a police officer. In this case both appellants were in police custody and at their instance the place where the deceased was held captive was discovered, from where chair and mud thrown over the dead body was secured. Therefore Article 40 is attracted and said recoveries were according to law.

19. In case reported as Pandurang Kalu Patil and another v State of Maharashtra (PLJ SC(India) 90) the Hon'able Supreme Court of India on the point of recovery at the instance of accused observed as follows:

“The fact discovered by PW18 is certainly not the gun. The fact discovered is that A2 had concealed the gun (article No.5\2) behind the old house under the heap of wood. It was the same gun with which A2 had fired at PW2 and that aspect has been proved with the help of other evidence”.

20. The contention of learned defence counsel is that the confessional statement was retracted soon before commencement of trial. This Court is of view that even conviction can be based on retracted judicial confession provided it is true and voluntary and corroborated by some strong piece of evidence. In this case the confession of the appellant Moula Bux @ Moli was recorded not only in accordance with section 164 \ 364 Cr.P.C., but also in accordance with Rules and Orders framed by High Court. We find that the confessional statement of appellant Moula Bux @ Moli was voluntary and true, and that conviction can be based on his confession.

21. In case of Muhammad Amin vs. The State (PLD 2006 SC 219), it was 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:

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."

22. Similarly in the case of *The State vs. Minhas @ 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".

23. In the case of *Badahur vs. The 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 took to see if there were any corroborative material available to determine its truthfulness.

24. The next question is whether there is any corroborative evidence in relation to the retracted judicial confession although admittedly corroboration tends to be a rule of caution, however, in cases of retracted judicial confession we consider such corroborative evidence to be significance specifically in cases of capital punishment.

25. The judicial confession finds robust corroboration in the scientific evidence produced by the I.O Inspector Shariq Ahmed Siddiqui (Pw-13). During his evidence he produced DNA parentage report (Ex.27/S) which confirmed with probability of 99.99% that the burnt dead body was of Abdul Rehman, biological son of Muhammad Haneef and Zarina Khatoon. Soil analysis (comparison report) (Ex-27/T) which demonstrated that soil taken from the house of aunty of Appellant Danish Maqbool's wife matched with soil matted on the dead body of Abdul Rehman. (Exh 27/U). The said report shows that the chemical residue on mud from the dead body was consistent with disposal by burning and chemical application. I/O also produced photographs and trouser piece attached to the burnt body (Ex-27/O). Each of these scientific reports are independent, neutral and un-impeached. The DNA report (Ex-27/S) conclusively establishes identity of deceased, silencing doubts about mistaken identification. The soil report Exh-27/T ties the place of confinement admitted in confession with physical evidence, confirming that victim was kept in the house which was disclosed by the appellants who after their arrest, led I.O. to the house voluntarily. The hydro-carbon report Ex-27/U corroborates the disposal method of the dead body narrated by appellant Moula Bux @ Moli. These reports were never challenged. Their harmony with confessions and consistency with other prosecution witnesses lends them great weight. Defence during cross examination did not expose any tampering, substitution or broken seal. The I.O. remained confident and professional. His testimony was consistent and corroborative. The scientific reports make the prosecution

unassailable.

26. Appellants in their statements under Section 342 Cr.P.C., denied the allegations levelled by the prosecution and claimed false implication but did not opt to depose on oath under Section 340 (2) Cr.P.C. or to subject themselves to cross-examination.

27. The defence examined DW-1 Mst. Farida (mother of appellant Moula Bux) DW-2 Haris Jan, DW-3 Safia Bano (mother of appellant Danish Maqbool), DW-4 Taj Muhammad to set up pleas of illegal detention and alibi. Their testimony, however, was entirely unsupported by independent or documentary corroboration. No record, nikahnama, photographs or wedding invitation cards were produced to substantiate the claim of being elsewhere. In cross-examination, fair concessions were made that such proof was not available. So far as the plea of alibi deposed by DW-2 Muhammad Haris Jan that appellant Moula Bux was at his marriage on 19.12.2020 till Fajar of 20.12.2020, he admitted in cross-examination that same is unsupported by any documentary evidence. An alibi, to succeed, must be cogent and credible on its own; here, it is not. Moreover, the prosecution case covers a span from 12.12.2020 to 20.12.2020 including confinement and later disposal of dead body. A partial presence at a marriage event, even if assumed, does not neutralize the rest of the inculpatory record. The complainant in his cross-examination accepted that a family marriage occurred and that accused Moula Bux was seen there. We have treated that answer with due care; however, that single acknowledgment does not exculpate because timeline involves days of confinement culminating in disposal on 20.12.2020 and because the decisive strands are scientific and judicial confession linked, not sightings at a social event.

28. It was next submitted that alleged confession was recorded on 19-01-2021, whereas appellant Moula Bux @ Moli was arrested on 07-01-2021, therefore, confessional statement is not voluntarily and it has been recorded after delay of 11 days. In this context, pivotal question requiring consideration would be whether delay of 11 days in recording confessional statement was fatal and affects its validity or admissibility. It may be seen that superior Courts while dealing with this aspect have invariably observed that delay in recording confessional statement by itself is not sufficient to affect its validity. No hard and fast rule can certainly be placed about period within which confessional statement of the accused ought to be recorded during course of investigation. However, Courts are obligated to properly scan and thoroughly scrutinize the truthfulness and voluntary basis of making confession before the Judicial Magistrate.

29. In instant case Mr. Uzair Ali Khan, Judicial Magistrate after observing precautions, required under the law recorded confession of appellant Moula Bux @ Moli. No cross examination impeached any of these safeguards. The defence produced no complaint to any authority alleging coercion at the relevant time. The confession, therefore, showed voluntariness and truthfulness. Therefore, the argument is unsustainable. In this respect reliance is placed on the case of Majeed v. State (2015 SCMR 865).

30. In case of Syed Sharifudin Pirzada vs. Sohbat Khan (PLD 1972 SC 363) the Hon'ble Apex Court observed that mere fact of accused having been in police custody does not lead to draw inference of procuring confession by coercion or torture. The evidentiary value was considered on the basis of opportunity provided to the accused during trial for explaining circumstances about making confessional statement. Relevant observations reads as under:

"It may be noted that the learned trial Judge and the High Court have discarded the judicial confessions on the ground that they had been in the police custody for sometime before they were produced before him for getting their confessions recorded and that they were not asked question as to how long they had been in the police custody and why they had been chosen to get their confessions recorded. In our opinion, the reasons given by the learned trial Court and the High Court on this point are unsatisfactory. The fact that Sohbat Khan was for some time in the police custody does not lead to the conclusion that he was tutored. Remaining of accused persons for some time in police custody does not effect their judicial confessions. Mr. Azazuddin, A. C. M., who recorded the statements has clearly stated in his statement that full opportunity was given to the accused persons to explain the circumstances in which they were giving their statements and complied with the pro forma which was available for recording the judicial confessions. This shows that the confessions were made voluntarily."

31. In another case reported as Muhammad Ismail and another vs. State (1995 SCMR 1615) wherein it has been observed that delay in recording the confession by itself cannot render the confession nugatory if otherwise it is proved on record that the same was made voluntarily. The relevant observation reads as follows:

"18'. Then comes the confession of appellant Muhammad Ismail. Delay for recording confession per se is no ground to discard it unless it is proved or emerges from the circumstances that it was obtained by coercion, threat, pressure etc. Indeed, the learned Magistrate after observing formalities recorded his confession and certified that it was true and voluntary. In his confession the appellant has advanced different motive for committing murders. But undisputedly he has admitted that he alongwith Ghous Muhammad had committed the triple murders. The details given by the appellant in confession establishes that it is not only true but voluntary one also. The learned trial Court thus has rightly treated as evidence against the appellants. The High Court has offered its view that under Article of Qanun- eShahadat Order it can be used as evidence against Muhammad Ismail and as circumstantial evidence against Ghulam Ghous. The learned trial Court and the High Court has correctly relied upon the confession. To us also it appears to be true and voluntary one. The ocular version of. Hazrat Ali and confession of the appellant Muhammad Ismail is sufficient to prove charge against the appellants....."

32. The submission of learned defence counsel on the role of appellant Danish Maqbool, was that there is no evidence of participation and that alleged evidence is mere association on the basis of false implication. The submission overlooks converging circumstances. EX22\B locates the unlawful confinement at the house connected to the appellant Danish Maqbool to his close family circle. EX27\T furnishes a scientific correspondence between soil from that premises and matted soil recovered from the dead body along with seizer memo and sampling at the site EX 11\B and EX14\B; and nothing in cross examination discredited those steps. In matters of joint liability, section 34, P.P.C, provides that where a criminal act is done by the several persons in furtherance of their common intention of all, each of such person are liable for that act in the same manner

as it was done by him alone., Therefore, participation can be inferred from consistent, corroborated circumstances showing shared intention and presence at critical stages. Here the scientific and documentary material places the victim at premises connected to the appellant Danish Maqbool and ties the recovered dead body back to that very location. The unexplained presence of matching soil on the dead body, together with the confession, supports a finding of common intention. Reliance is placed on the case of Sh. Muhammad Abid VS State (2011 SCMR1148), wherein the Hon'able Apex Court has observed as under:

“10. Once it was found that accused persons had common intention to commit crime, it was immaterial as to what part was played whom, as vicarious liability was that who had stood together, must fall together. The question what injuries were inflicted by a particular accused in cases to which section 34 P.P.C.applies is immaterial, the principle underlying the section being that where two or more persons acted with a common intention each is liable for that act committed as if it had been done by him alone”.

33. The evidence of prosecution witnesses remained consistent on all material particulars despite rigorous cross examination. Minor variations in peripheral details, such as times or distance are natural in human recollection and do not diminish credibility. On the contrary, complete uniformity might have suggested tutoring. These minor inconsistencies have hallmarks of genuine testimony. The core narrative was unwavering, clear, and corroborative by objective scientific evidence. Reliance is placed on the case of Aqil v. The State reported in 2023 SCMR 831.

34. The case laws relied upon by learned counsel for the appellants has been examined but found distinguishable. In supra cases of Naqibullah and Azeem Khan, the confessional statements were disbelieved owing to absence of statutory safeguards or lack of corroboration. In cases of Muhammad Azam ,Imran and Tanvir where forensic reports were disbelieved due to unexplained delays or unsafe custody are not attracted here, for the reports in the instant case were produced in evidence with seals intact, and at no stage of the proceedings did the defence question their authenticity or object to their admissibility. Likewise, the dictum in Muhammad Mansha (supra) regarding dishonest improvements by ocular witnesses is irrelevant, since no ocular account is relied upon by the prosecution in this case. Accordingly, the authorities cited by the defence are clearly distinguishable .

35. Now coming to the question of conviction and sentence, the Trial Court has convicted and sentenced the appellants Danish Maqbool and Moula Bux@ Moli for commission of offence of abduction which resulted in the murder of deceased Abdul Rehman son of Muhammad Hanif aged about 11 years by accused Moula Bux @ Moli son of Muhammad Anwar, Danish Maqbool son of Maqbool Hussain ,deceased Sarban son of Abdul Rehman, absconding accused Saud and 2\3 other unknown accused in furtherance of their common intention falling under section 364-A read with section 34 of PPC and section 6(2)(a) punishable under section 7(1)(a) of ATA,1997, and the appellants were sentenced for the aforementioned offences.

36. It appears that the charge was framed for the offences of abduction of deceased Abdul Rehman for the purpose of extorting money to the extent of Rs.150,000/ to Rs.200,000/ from complainant and confined at the house of aunt of appellant Danish Maqbool's wife, tied with plastic string and blind fold the deceased, who died thereat and his body was kept into a sack along with earth rose water and chemical and threw it in the area of Baghdadi Slaughter House, created sense of fear and insecurity hence committed offence punishable under section 302, 365-A read with section 34 PPC as well as section 6(a)(e) punishable under section 7(a)(e) of ATA, 1997.

37. The charge for the offence under section 365-A of P.P.C. was framed on the basis of allegations incorporated in charge sheet under section 173 Cr.P.C., whereas the confessional statement of appellant Moula Bux @ Moli reflects that he enticed deceased on the score of getting clothes, then both appellants took deceased on motorcycle to Lee Market where child handed over to other co-accused. The confessional statement further reflects that on account of money dispute with maternal uncle of deceased Abdul Rehman over Rs 10,000\ deceased was abducted and kept in captivity at the house of relative of appellant Danish Maqbool and subsequently deceased died during captivity. However, no call note, demand or intention to extort money was ever demonstrated by the prosecution, therefore, the evidence available on record did not constitute the offence under section 365-A P.P.C., thus, learned trial court convicted and awarded sentence under section 364-A P.P.C., though the offence under section 364-A P.P.C., is not listed in the third schedule to the ATA.

38. We now examine whether the offence of terrorism was made out in the facts of the case. Learned trial court while answering point No.-III has observed that *"It has come on record that there was sense of fear, terror and insecurity in the people of vicinity when the burnt dead body of deceased Abdul Rehman was recovered on 20-12-2020 from Slaughter House within the Jurisdiction of Police Station Baghdadi, Karachi". The said evidence is sufficient to prove the offence against accused persons under the definition of terrorism."*

39. At this stage, it is necessary to recall the statutory provisions. Section 6(1) of the ATA of 1997 defines terrorism. It states that terrorism means the use or threat of action, where:

- (a) *the action falls within the meaning of sub-section (2);*
- (b) *the use or threat is designed to coerce or intimidate or overawe the Government or the public or a section of the public, or to create a sense of fear or insecurity in society;*
- (c) *the use or threat is made for the purpose of advancing a religious, sectarian or ethnic cause, or intimidating and terrorizing the public, social sectors, media persons, business community or attacking civilians including government officials, lawyers, judges, personnel of law enforcement agencies and armed forces.*

Sub-section (2) enumerates acts such as killing, kidnapping, firing upon law enforcement, and other violent acts. While the Section 7 prescribes the

punishment for acts of terrorism.

40. It is now trite that the definition of terrorism under Section 6 of the ATA cannot be applied in a casual or indiscriminate manner. The ATA is a special law, enacted to deal with offences that go beyond ordinary crime and that threaten the stability of the State, the safety of the public, or the authority of law enforcement. It is not every heinous act of murder that will constitute terrorism; rather, it is only those acts which meet the statutory definition. The Hon'ble Supreme Court in case of Ghulam Hussain and others v. The State (PLD 2020 SC 61), where a seven-Member Bench explained that it is not the effect but the object of the act which determines whether an offence is terrorism. This pronouncement carries binding force under Article 189 of the Constitution, and all subordinate Courts are duty-bound to apply its ratio decidendi in letter and spirit.

41. In Ghulam Hussain case, the Hon'ble Supreme Court undertook a comprehensive review of the ATA and prior case law, and formulated a precise twofold test. The Court held that:

firstly, the actus reus element must be satisfied — meaning that the action in question must fall within the category of violent acts specifically enumerated in Section 6(2), such as killing, grievous bodily harm, kidnapping, firing upon law enforcement, arson, or bomb blasts.

Secondly, and equally importantly, the mens rea element must also be satisfied — the action must be designed to intimidate, coerce, or overawe the Government, the general public, a section thereof, or to terrorise law enforcement or advance a prohibited ideological cause. The Court cautioned that both elements must co-exist; the absence of either would disqualify the act from the ambit of terrorism.

It was observed that mere heinousness of an act or its tendency to spread fear is insufficient. Terrorism is not a matter of degree of brutality but of the object pursued. This careful calibration by the Supreme Court reflects a deliberate legislative-judicial balance: to confine provisions of sections 6 of the ATA to those crimes which genuinely threaten the State and public order, while leaving other heinous offences to the ordinary Courts.

42. We are of the view that this case does not fall within the purview of ATA since according to the evidence there was no design, object or intent to cause terror and thus the provisions of ATA do not apply to the offence under Section 364-A P.P.C. It appears from the overall appraisal of evidence that the ingredients attracting Section 6 of the Anti-Terrorism Act, 1997 are not made out. However, once the trial has already been conducted by the said Court and the impugned judgment has been placed before this Court in appeal, the proceedings cannot be rendered void, as this Court, under Section 423 Cr.P.C, is fully competent to examine the legality, propriety, and correctness of the impugned judgment and to pass any order which ought to have been passed by a Court of competent jurisdiction. The appellate forum may, therefore, decide the matter on merits instead of remanding it to Court of Sessions. This view finds support from the case of **Tariq Khan v. State (2022 PCrLJ 558)**, and a similar approach seems to have been

taken by the Hon'ble Supreme Same in **Hasnain Salim v. The State (2024 SCMR 2024)**.

43. Thus, based on our reassessment of the evidence on record and our above discussion we find that the prosecution has proved its case against the appellants beyond a reasonable doubt in respect of section 302, 364-A, 34 P.P.C. Accordingly, by exercising powers under section 423 Cr.P.C., we hereby modify the conviction and sentence of appellants as under:

“The appellants stand convicted under section 302, 364-A read with section 34 P.P.C., and are sentenced to undergo RI for life imprisonment on two counts along with payment of fine of Rs. 200,000\ each for each count as compensation to be paid to the legal heirs of deceased and in case of default of payment of compensation the appellants shall suffer SI for six (06) months more. All the sentences shall be run concurrently and benefit of section 382-B Cr.P.C. is also extended to the appellants.”

In view of above discussed facts and circumstances both appeals are dismissed with the above modification.

JUDGE

JUDGE