

Confession before mag

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## IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Anti-Terrorism Jail Appeals No.121 & 122 of 2014  
Conf. Case No.07 of 2017.

Present:

Mr. Justice Naimatullah Phulpoto

Mr. Justice Mohammad Karim Khan Agha

Appellants:

1. Jalal Ahmed S/o. Faiz Ahmed,
2. Muhammad Muneer S/o. Zainul Abideen,  
presently confined in Central Prison,  
Karachi through Mr. Muhammad Iqbal  
Chaudhry, Advocate.

Respondent/State:

The State through Mr. Faheem Hussain and  
Mr. Muhammad Iqbal Awan, Deputy  
Prosecutors General Sindh

Dates of hearing:

30.11.2018 and 05.12.2018

Date of Judgment:

14.12.2018.

## J U D G M E N T

MOHAMMAD KARIM KHAN AGHA, J.- Appellants Jalal Ahmed S/o. Faiz Ahmed and Muhammad Muneer S/o. Zainul Abidin were tried by learned Judge of Anti-Terrorism Court No.II, Karachi in Special Case No.B-159/2012 which by the judgment dated 31-10-2014 (the impugned judgment) convicted them both and handed down the Death Sentence (subject to confirmation by this court) to the appellant/accused Muneer Ahmed S/o. Zainul Abideen u/s. 7(a) & (e) of ATA, 1997 r/w 302/365-A/364-A, 34 PPC on two counts of murder and kidnapping for ransom and awarded life imprisonment to co-accused Jalal Ahmed u/s/ 7 (e) ATA, 1997 for kidnapping for ransom. The benefit of Section 382-B Cr.P.C. was also given to the appellants.

2. Brief facts of the prosecution case as enumerated in the F.I.R. lodged by the complainant Babul who is a chicken vendor is that on 31.10.2012, his son named Saleem alias Sameer who was 7 years old left his house at 10:00 a.m. for playing, but did not return. That he and other relatives searched for his son but could not find him. That a phone call was received from No.0305-2155208 on the mobile phone of his wife who



spoke to their son where after many phone calls were received from the same number, but nothing in particular was discussed. Hence, he registered his FIR at the P.S. against un-known accused or accused persons for abducting his son.

3. The challan shows that the Inspector had taken out CDR of the number given in the F.I.R. from where Rs.50,000/- ransom amount was demanded. On 09.11.2012 he had received spy information that the two accused were present near Afzal Pan Shop Sector 15-B, Bangali Para, Bufferzone, Karachi, whom he had arrested and who disclosed their names as Muhammad Muneer and Jalal. From the accused person three mobile phones were recovered having SIM No.0302-2155208. The accused Muneer disclosed that he had kidnapped the child and had detained him on 31.10.2012 at his friend Jamal's Farm House Gharo and had been making calls through Jalal and demanding ransom amount. After keeping the child for five to six days at the Farm House, Muhammad Muneer had taken the child in jungle of Gadani and killed him on 07.11.2012 by constriction of neck and by hitting him with a big stone.

4. The charge was framed against both the accused on 08.10.2013 to which they pleaded not guilty and claimed trial of the case. In support of the charge the prosecution examined eight witnesses. The **PW-01** is the complainant Babul at Ex. P/1. He has produced FIR as Ex. P/1-A. Memo of place of incident as Ex. P/1-B and memo of place of recovery of dead body at the pointation of accused Muhammad Muneer as Ex. P/1-C.

5. **PW-02** is Muhammad Arif at Ex. P/2. He has produced memo of arrest of two accused and search as Ex.P/3. Ex. P/4 is the memo of inspection of dead body. Ex. P/5 is the receipt of handing over the dead body. **PW-03** is Asif Ahmed, Civil Judge and Judicial Magistrate Central, Karachi at Ex. P/6. He has produced envelope containing confessional statements as ex. P/7. Ex. P/8 is the confessional statement of accused Jalal Ahmed. Ex. P/9 is the confessional statement of accused Muhammad Muneer. Ex. P/10 is the application of Akhtar Jawad addressed to D.J. Central, Karachi. Ex. P/11 is the application of Inspector Akhtar Jawad addressed to JM-II, Central Karachi. He had handed over the custody of the accused to Jail Authority as Ex. P/12. **PW-04** is ASI Syed Muhammad



Zaki Zaidi at Ex. P/13. **PW-05** is Muhammad Shakeel at Ex. P/14. **PW-06** is Dr. Zafar Shah at Ex. P/15. He has produced postmortem report as Ex. P/16, Cause of Death as Ex. P/17 and chemical report and histopathology as Ex. P/18. He has produced receipt of the chemical examination dated 21.11.2012 as ex. P/19 and its report dated 29.11.2012 as Ex. P/20. **P.W-07** is Inspector Akhtar Jawad who is the IO of the crime at Ex. P/21. He has produced the departure entry No.27 as Ex. P/22 and arrival entry No.31 as Ex. P/23. He again produced entry No.35 by which he departed to arrest for Gadani as Ex. P/26. He had entered his arrival at PS. Gadani by entry No.32 which he produced as ex. P/27. He had sent the samples for chemical examination as Ex. P/28. He produced the CDR of 8 pages as Ex. P/32. **PW-08** is Samina the mother of Saleem.

6. The accused recorded their statements under S.342 Cr.PC whereby they denied the charge. Both accused also gave evidence under oath whereby they denied the charge and accused Muneer called one DW in his defense.

7. Learned Judge of Anti-Terrorism Court No.II, Karachi after hearing the learned counsel for the parties and assessment of evidence available on record, vide the impugned judgment convicted and sentenced the appellants as stated above, hence these appeals have been filed. By this judgment we intend to decide the same.

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

9. In a nutshell the prosecution case is that the complainant's 7 year old son Saleem went missing on 31-10-2012 after he left his house for playing at about 10am. The complainant and other family and friends went searching for him but could not find him. At about 10pm on the same day Saleem's mother Samina received a phone call stating that her son was with her enemies. On the next day (01-11-2012) the complainant registered a FIR whereby an offense was registered u/s 365 (A) PPC against unknown person's. On the same day Saleem's mother (Samina alias Shalina) called the number where the call concerning her son had



been made from when she spoke to the kidnapper and her son; during another call on the same day the kidnapper told her that her son would be returned if she paid RS 50,000 but did not say where the ransom was to be paid. The next day (02-11-2012) she again called the kidnapper where she heard the shrieks of her son where after the mobile was powered off. Inspector Akhtar Javad was the IO of the case who on 09-11-12 (7 days after the last call to Samina) received spy information that those who had kidnapped for ransom Saleem were present at Afzal Pan shop Sector 15 Buffer Zone Karachi who arrested the accused Muneer and Jalal on pointation of the spy. From Muneer two cell phones were recovered and from Jalal one mobile phone and two SIMS. The arrests were made in the presence of Shakeel and Arif who acted as Mushirs. The accused confessed on the spot that the child was with them. Later at the PS Muneer confessed that he had taken the boy to Gadani where he had killed him. Muneer then led the police party, mushir Shakeel and the complainant to where the dead body of the child was in the jungle area of Gadani. The complainant recognized the dead body of his son. The dead body was taken to Abbassi Shaheed Hospital Karachi where MLO Dr. Zafar Shah Khan carried out the post mortem who found the cause of death to be cardio respiratory failure secondary to acute head injury and constriction of neck collectively by hard and blunt object. The chemical report also found the presence of semen in the anal area which indicated that Saleem had also been sodomised (although the accused were not charged with this). After some time both the accused made judicial confessions about their involvement in the crime to Asif Ahmed Civil Judge and JM Karachi central. The prosecution further relied on exhibits of various recoveries, CDR data, chemical report and DNA to prove that the accused committed the offenses as charged.

10. The defense plea of accused Muneer was that he was innocent; that he had a land dispute with the complainant and thus on account of this enmity he had been falsely implicated in the case and that he had been induced and tortured into giving his judicial confession which he had retracted. The defense plea of Jalal was that he was innocent; that he had only been in Pakistan for three days having crossed over from Bangladesh; that he had not made any judicial confession and that he been falsely implicated by the police in this case.



11. Learned advocate for appellants contended that both the confessions of Muneer and Jalal before the judicial magistrate were inadmissible in evidence and could not be relied upon because they were neither voluntary nor truthful in that Muneer had been subject to torture and that the rules regarding recording of confessions had not been complied with namely that both the appellants were not told that they would not be handed back to police custody if they refused to make a confession; he also stressed that Muneer had been brought before the judicial magistrate earlier on 14-11-2012 but he had refused to make a confession because he had been subject to torture; that Muneer's confession before the magistrate was not supported by the medical evidence because if Muneer had hit Saleem with a big stone his skull would have been totally crushed which was not the case as per the medical report; that there was no blood on the recovered stone; that there were contradictions in the statements of the PW's in that some had stated in their evidence that the stone was found on the head on the deceased while others had stated that it was laying on his body; that no ransom demand had been made and that no ransom had been recovered and thus both Muneer and Jalal were entitled to the benefit of the doubt and should be acquitted of the charges against them. In support of his contentions he placed reliance on **Syed Azeem Shah V The State**(PLD 1987 Quetta 96), **Hakim Gul v. The State** (PLD 1964 (WP) Pesh P.1) **Muhammad Jamshed v. The State** (2003 PRC.LJ 167) and **Wazir and others v. The State** (PLD 1960 (WP) Kar 674).

12. Mr. Faheem Hussain, Deputy Prosecutor General, who was also representing the complainant, contended that there were no legal infirmities in the impugned judgment and as such the same should be maintained. In particular he pointed to the fact that the judicial confessions of both Muneer and Jalal were voluntary, true and the recording of their statements complied with all the necessary rules; that in the case of Muneer he had also taken the police to the dead body; that Muneer had a motive to kill the boy out of his unnatural love for the boy's mother which was not returned by her; that with regard to Jalal not only had he made a legally admissible confession before the magistrate



concerning his involvement in the crime but the mobile phone recovered from him as shown by the CDR data proved that it was his mobile which was used to make the ransom demand and as such the convictions and sentences as handed down in the impugned judgment should be maintained including the death penalty to Muneer which should be confirmed. In support of his contentions he placed reliance on **Naseem Akhtar V State** (1999 SCMR 1744), **Khan Muhammed V State** (1999 SCMR 1818), **Muhammad Amin v. The State** (2006 PLD SC 219), **Nazir Sehzaad and another v. The State** (2009 SCMR 1440), **State through Advocate-General, Sindh, Karachi v. Farman Hussain and others** (1995 PLD SC 1), **Hamid Mahmood and another v. The State** (2013 SCMR 1314), **Said Muhammad v. The State** (1999 SCMR 2758) and **Khan alias Khani and another v. The State** (2006 SCMR 1744).

13. We have heard the arguments of the learned counsel for the parties, gone through the entire evidence which has been read out by the appellants, the impugned judgment with their able assistance and have considered the relevant law.

14. In considering this case of kidnapping for ransom we have been guided by the finding of the Supreme court in another kidnapping for ransom case being **State V Farman Hussain** (PLD 1995 SC1) which was cited with approval by the Supreme court in the later case of **Noor Muhammed V State** (1999 SCMR P.2722) at P.2725 in the following terms;

*"However, we may observe that the people are losing faith in the dispensation of criminal justice by the ordinary criminal Courts for the reason that they either acquit the accused persons on technical grounds or take lenient view in awarding sentence. It is high time that the Courts should realize that they owe duty to the legal heirs/relations of the victims and also to the society. Sentences awarded should be such which should act as a deterrent to the commission of offences. One of us (Ajmal Mian, C.J., as he then was) has highlighted this aspect, inter alia in the case of State through the Advocate-General Sindh, Karachi v. Farman Hussain and others (PLD 1995 SC 1), relevant portion whereof at page 19 reads as follows:-*

*(3) It is matter of public knowledge that in Sindh, on account of kidnapping for ransom, commission of dacoities and other offences, the people are feeling insecure. The learned trial Court has dilated upon these*



*aspects in detail. I am inclined to subscribe to the view found favour with it. The approach of the Court in matters like the case in hand should be dynamic and if the Court is satisfied that the offence has been committed in the manner in which it has been alleged by the prosecution the technicalities should be overlooked without causing any miscarriage of justice". (bold added)*

15. The appraisal of the evidence in our view fully supports the prosecution case. In our view based on the evidence of PW 1 Babul the father of Saleem and PW 8 Samina the mother of Saleem their 7 year old son Saleem went missing on 31-10-2012 in the morning. There after a search was carried out for him but without success which led to the lodging of an FIR on the next day at 10.30pm against unknown persons. In our view a delay in approximately 24 hours in lodging the FIR is not fatal in a case where a parents young child goes missing. This is because it is natural human conduct to initially search high and low for the missing child through friends and other mohalla people as was done in this case rather than immediately rush to register a FIR. The hope is that the missing child will be found. In this respect reliance is placed on **Rahat Ali V State** (2001 P.Cr.LJ P.98).

16. The next issue is whether the child Saleem was kidnapped or abducted. Admittedly this was a case where no one witnessed the abduction or kidnapping of Saleem. There was also no last seen evidence. The evidence of abduction and kidnapping comes from PW 1 Babul and PW 8 Samina who gave evidence that phone calls were received from some unknown person that her son Saleem was with them. In particular PW 8 Samina states in her evidence that a ransom demand was made for RS 50,000 for the return of her son. The CDR of PW 8 Samina was matched with a phone later recovered from appellant Jalal which indicates that Jalal was in contact with PW 8 Samina throughout the time when she alleges that the calls were made to her. We find the evidence of PW 1 Babul and PW 8 to be reliable, trustworthy and confidence inspiring and thus we can convict on this oral evidence alone for kidnapping for ransom especially as it is corroborated by the CDR record and the judicial confessions of both Muneer and Jalal which for reasons discussed later in this judgment we found to be legally admissible and on account of the other aspects discussed later in this judgment. Reliance in this respect is



placed on **Muhammad Ehsan v. The State** (2006 SCMR 1857) where it was held at P.1860 at Para 6 as under:

*"6. It is true that there is only ocular testimony of P.W. 4 Mst. Khatun Bibi corroborated by medical evidence, P.W. 6 Dr. Muhammad Sarfraz Sial. The fact that there is only ocular testimony of one P.W. which is unimpeachable and confidence-inspiring corroborated by medical evidence would be sufficient to base conviction. It has been noted that this Court has time and again held that the rule of corroboration is rule of abundant caution and not a mandatory rule to be applied invariably in each case rather this is settled principle that if the Court is satisfied about the truthfulness of direct evidence, the requirement of corroborative evidence would not be of much significance in that, as it may as in the present case eye-witness account which is unimpeachable and confidence-inspiring character and is corroborated by medical evidence". (bold added)*

17. We do not consider the fact that no ransom was paid to be relevant. We are of the view that based on the evidence a ransom demand was made which is sufficient to attract the provisions of S.365 (A) PPC. In this respect reliance is placed on **Farman Hussain's** case (Supra) which at P.32 Para 25 held as under

*"25. There was also some argument before the High Court though it was not urged before us, on the question, whether section 365-A, P.P.C. is attracted to the present case as the father of the kidnapped Tariq Nawaz has not deposed that he was contacted by any of the accused for payment of ransom. The factum that none of accused contacted the parents of the kidnapped child for payment of ransom, is of no consequence as this is not the requirement of the above provision of P.P.C. The determining factor is as to the object of kidnapping. There was no enmity between the parents of the kidnapped Tariq Nawaz and the above accused persons. Tariq Nawaz in his above-quoted statement from the examination-in-chief has deposed that "During my stay in that bungalow the accused obtained our telephone number. Whenever the accused found me worried they used to console saying that they had no enmity with my father and they would contact my father and as soon as the money will be paid I would be released". (bold added)*

18. Thus, we uphold the convictions of both Muneer and Jalal for kidnapping for ransom the 7 year old boy Saleem.

19. PW 7 Akhtar Javad who was the IO in the case on 09-11-2012 received spy information that the two culprits who had kidnapped the child were present at Bangali Para Near Afzal Pan shop sector 15 Buffer



zone Karachi where on the pointation of the spy he accosted the Appellants. On the search of Muneer two mobile phones were recovered and from Jalal one mobile phone with two SIMS. The appellants admitted before the police that the child was with them and that they can get him recovered. PW 4 Mohammed Zaidi is the ASI who accompanied IO PW 7 Akhtar Javed as a part of the police party who made the arrest and recovery from the appellants who corroborates IO Akhtar Javed concerning the arrest and recovery. Importantly the arrest and recovery was made in the presence of two independent mushirs from the mohalla. Being PW 02 Mohammed Asif and PW 05 Mohammed Shakeel. These witnesses were not chance witnesses as they live in the mohalla. PW 02 is the maternal uncle of the deceased and stated that he knows Muneer and that Jalal also lived in the mohalla. He was also witness to the extra judicial confession of Muneer before the police. Likewise PW 05 Mohammed Shakeel stated in his evidence that he knew the appellants who were arrested who used to sell fruit in the market. He called PW 1 Babal from the place of arrest and told him to go to the PS which is corroborated By PW 1. Neither of the Mushirs PW 02 Mohammed Asif and PW 05 Mohammed Shakil nor the police had any enmity with the appellants and had no reason to falsely implicate them in this case. The evidence of the Mushirs which we find to be trust worthy and confidence inspiring also confirms that Jalal was living in the mohalla and was not a recent arrival from Bangladesh 3 days before. Thus, from the evidence of the witnesses discussed above we are of the view that both the appellants were arrested at the time and place as mentioned by the police in the FIR.

20. In so far as appellant Muneer is concerned another important piece of evidence against him in this case is that the dead body of the child was recovered on his pointation **immediately after** his arrest on 09-11-2012. As per the evidence of PW 1 Babul the father of the boy, PW 5 Mohammed Shakeel an independent Mushir, PW 4 ASI Muhammed Zaidi and PW 7 Javed Akhtar the IO of the case Muneer took them all to Gadani where he showed them where the dead body was hidden in the jungle area of Gadani. Nearly all these witnesses corroborate each other in most material respects. A big stone was also found on the dead body whose head had been smashed in. In our view only the person who had murdered the boy and hidden the dead body could have known of its precise location in the



jungle area of Gadani and the recovery of the dead body of the boy on the pointation of Muneer is very strong corroborative evidence that he murdered Saleem and hid the dead body especially as it was in a place which only he could have known about in the jungle area of Gadani and there was no delay in Muneer leading the police to the dead body which he agreed to do about an hour after his arrest. The recovery of the dead body of Saleem on the single pointation of Muneer is admissible in evidence under Article 40 of the Qanun-e-Shahadat Ordinance 1984. The dead body of Saleem was identified by his father PW 1 Babul. As noted from the medical evidence of PW 06 Dr. Zafar Shah Khan who carried out the post mortem of the dead body it was "old swollen and in decomposition" which would tie in with Saleem being murdered about 7 or 8 days earlier as per the judicial confession of Muneer which we shall deal with later and was in an identifiable condition

21. The dead body of Saleem was taken to Abbassi Shaheed Hospital where the post mortem was conducted by PW 06 Dr. Zafar Shah Khan whereby the cause of death was found to be cardio respiratory failure secondary to acute head injury and constriction of neck collectively by hard and blunt object. This cause of death also ties in with the judicial confession of Muneer which we will come to later and the recovery of the big stone on the body of the dead body of Saleem at the time it was found. Having seen the photographs of the dead child and considered the medical report we are of the view that the face of the boy was smashed in to hinder the identification of the body but was not so smashed as to be unrecognizable so we reject the contention of the appellant that the stone would have totally smashed the skull to pieces. Yes, the skull and head were damaged but not beyond recognition.

22. We have also taken into account that by and large all the PW's have corroborated themselves and the prosecutions case and that any contradictions are minor and are not of a material nature which can be ignored. That although some of the witnesses are related since the defense has not shown that they have any personal enmity towards the accused or any reason to falsely implicate any of them we are of the view that such relationship is not relevant in assessing the reliability of their evidence. In



this respect reliance is placed on **Aurangzeb V The State** (2010 P.Cr.LJ 1281).

23. That most of the relevant and required police entries in the various registers have been made and duly exhibited which again bolsters the prosecution's case.

24. Along with the above corroborative evidence discussed above a crucial aspect of the case are the judicial confessions which both the appellants recorded before PW 03 Asif Ahmed JM Karachi and which they both later retracted.

25. Muneer has stated in his confession as under;

*"I confess that child Sameer is my relative. I was in love with his mother Shalina. Shalina has wasted my money for four years. Due to her my wife and children all are ruined. I was living in the neighbourhood of Babul. Child Sameer used to come to me. I kidnapped the child on 31.10.2012 and bring him to co-accused Jalal and kept the child there. Then brought the child back. The call received from his mother. Then I came to Gadani along with child. Then I killed the child Sameer with my hands and stones. In this murder his mother shalina is also involved. I feel ashamed/guilty about this. It is my statement".*

26. Jalal has stated in his confession as under;

*"I say on oath that accused Muneer Hussain came to me along with child Sameer S/o. Babul. I kept the child for three days. Thereafter Muneer Hussain took the child from me. The same is my statement".*

27. Learned counsel for the defense has mainly contended that the confessions before the judicial magistrate are inadmissible and cannot be safely relied upon for the following reasons (a) that they have now been retracted (b) that the confessions were not voluntary and were a result of torture/coercion (c) that the confessions were not made in accordance with the prescribed procedure and (d) that the confessions were made after a delay of 17 days.

#### **Law on retraction of judicial confessions.**

28. 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 Yaqoob 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)*

29. 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 **Muhammed Amin** (Supra) 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)

30. 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.

31. 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 Muhahid 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.

32. 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

33. 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.

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

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

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

(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.

35. In this case appellant Muneer has contended that he was tortured and coerced into making the statement. Based on the evidence before us we find such contention to be without substance. This is because he put this allegation to no PW during cross examination including the IO and Judicial magistrate before whom the confession was made or even ever raised the issue before he made his S.342 statement. Furthermore, at the time he made his confession he was in judicial custody so it is difficult to see how the police tortured him. Even at the time when his confession was recorded there was found to be no marks of maltreatment on his body by the magistrate, he did not mention to the magistrate that he was making the statement because he had been tortured and after his confession he was handed back to the jail police and thus he had no danger of being handed back to the police as he was in judicial custody. Even if Muneer had earlier been brought before the magistrate for recording his statement on 14-11-2012 we find of no relevance as there is no order or record to say that he declined to record his statement on account of torture at the hands of the police. Thus, we find Muneer's confession before the judicial magistrate to be voluntary.

36. With regard to the truthfulness of Munir's confession as discussed above we find that there is sufficient corroborative material to prove that his confession was true. For example, he took the police to the place where the murdered body had been hidden in Gadani which only he could have known about. It appears from his S.342 Statement and his evidence in chief that Muneer felt spurned by Shalina the mother of Saleem who he was in love with but who had rejected his advances and according to him had in effect ruined his life in terms of finance and family and thus he had an added motive to demand ransom from Shalina and kill her son Saleem on account of her rejection of him. In this respect without belaboring the point it is important to set out again his judicial confession which reads as under:



*"I confess that child Sameer is my relative. I was in love with his mother Shalina. Shalina has wasted my money for four years. Due to her my wife and children all are ruined. I was living in the neighbourhood of Babul. Child Sameer used to come to me. I kidnapped the child on 31.10.2012 and bring him to co-accused Jalal and kept the child there. Then brought the child back. The call received from his mother. Then I came to Gadani along with child. Then I killed the child Sameer with my hands and stones. In this murder his mother Shalina is also involved. I feel ashamed/guilty about this. It is my statement".*

37. In addition and importantly the content of Muneer's judicial confession tends to show that it is truthful because it contains secret personal details concerning his feelings for Shalina which only he would know and none other. As mentioned in his judicial confession and as a matter of fact he also knew Saleem who he was related to. Thus on Saleem's release he would have recognized Muneer and as such he had no option except to murder Saleem in order to protect his own identity and even tried to smash in Saleem's face to make Saleem's identification more difficult if he was ever discovered by an disinterested person. The medical evidence also fully corroborates the truthfulness of his confession. His confession in our view thus fits in with the prosecution evidence and case before us and can be regarded as truthful and safely relied upon.

38. Indeed, in the case of **Sajid Mumtaz V Basharat** (2006 SCMR 231) it was held as under at P.238 Para's 19, 20 and 21 whilst discussing why anyone should enter even into an extra judicial confession as set out below:

19. *It is but a natural curiosity to ask as to why a person of sound mind should at all confess. No doubt the phenomenon of confession is not altogether unknown but being a human conduct, it had to be visualized, appreciated and consequented upon purely in the background of a human conduct.*

20. *Why a person guilty of offence entailing capital punishment should at all confess. There could be a few motivating factors like; (i) to boast off, (ii) to ventilate the suffocating conscience and (iii) to seek help when actually trapped by investigation. Boasting off is very rare in such like heinous offences where fear dominates and is always done before an extreme confident as well as the one who shares close secrets. To make confession in order to give vent to ones pressure on mind and consciences is another aspect of the same psyche.*



*One gives vent to ones feelings and one removes catharses only before a strong and close confident. In the instant case the position of the witnesses before whom extra-judicial confession is made is such that they are neither the close confident of the accused nor in any manner said to be sharing any habit or association with the accused. Both the possibilities of boasting and ventilating in the circumstances are excluded from consideration.*

21. *Another most important and natural purpose of making extra-judicial confession is to seek help from a third person. Help is sought firstly, when a person is sufficiently trapped and secondly, from one who is authoritative, socially or officially. The witnesses in hand before whom the confessions are said to have been made are of no social or official status. One Falak Sher (P.W.16) is a junior clerk in the office of the Deputy Commissioner, the other Noor Mohammad (PW.17) is a petty fodder-seller and the third Ahmed Taqi (PW.19) is a teacher in a private school. It is yet to be answered as to what help could they have rendered to the accused when involved in a heinous case of murder as well as abduction for ransom" (bold added)*

39. Thus, in this case due to Muneer's apparent love for Shalina the mother of the dead boy Saleem who had rejected his love for her and the shame he felt about his actions as admitted in his confession he might have made such a confession in order to ventilate his suffocating conscience or because he felt trapped after leading the police to the dead body of Saleem. It being notable that the magistrate to whom he confessed to was in a position of authority.

40. Furthermore, a review of the evidence of PW 03 Asif Ahmed JM Karachi before whom the judicial confession was made shows that nearly all the relevant material precautions and procedures were carried out in accordance with the relevant rules before during and after the recording of the confessions. Based on the facts and circumstances of this case where the accused was brought from judicial custody before making his confession and being handed back to jail police after making his confession we do not consider the fact that the magistrate did not inform the appellants that they would not be returned to police custody if they did not confess to be fatal to their case as the expectation of the appellants would have been that they would be returned to the jail police in order to return them back to jail after they were produced before the magistrate. Thus, based on the particular facts and circumstances of the case and the



other corroborative evidence against the appellants and when we consider this case and all the evidence against the appellants in a holistic manner we consider this to be a minor defect which does not effect the voluntariness or truthfulness of the confessions. Reliance in this respect is placed on the case of **Nassem Akthar** (Supra) which held as under at P.1763

*"After carefully scrutinizing the confessions made by the appellants, we find that in all most all respects the confessions tally with each other with very minor variations which do not cast any doubt on the prosecution version. Perhaps, if the two confessions had been exact copies of each other, even to the extent of all minor details there might have been a question mark as to why it was so.*

*The High Court has referred to a judgment of this Court in the case of **Muhammad Yaqoob v. State** (1992 SCMR 1983) which has been relied upon by learned counsel for the complainant. One of the principles reiterated in the said judgment is that any lapse on the administrative side on the part of a Magistrate recording a confession may not be fatal as to the evidentiary value of such confession provided the Court is satisfied that the lapse on his part has not, in any way, adversely affected the voluntariness or truthfulness of the confession.*

*We do not find any significant or material lapse on the part of P.W.1 in recording the confession of the two appellants. One or two minor omissions cannot be termed as lapses to affect the evidentiary value of the said confessions.*

*It was not established that the confessions had been obtained or tendered on account of any pressure, influence or coercion from any quarter. No suggestion was made to P.W.1, the Magistrate, that the confessions had been obtained under pressure, influence or coercion except for the general suggestion that the confession had been recorded by him under the dictation of the Investigating Officer which was denied by P.W.1.*

*As regards P.W.9, Inspector Abdul Rashid, then S.H.O. Police Station Gulberg, in his cross-examination, apart from a general question that the police had maltreated the appellants, no specific questions were put regarding any torture or maltreatment. Similarly in their respective statements under section 342, Cr.P.C. the appellants have made general allegation about maltreatment. No suggestions were made to prosecution witnesses about where, how and by whom the maltreatments took place. (bold added)*

41. Although there was a delay of 17 days from the date of the arrest of the appellants and the judicial confessions we do not consider this delay to be fatal based on the particular facts and circumstances of this case especially as during this period the appellants were both in judicial custody. In this respect reliance is placed on **Majeed V State** (2015 SCMR



865) whereby it was held that no hard and fast rule can be laid down as to the effect of any delay in recording a judicial confession and thus for the reasons discussed earlier we do not consider a delay in recording of the confessional statements to be fatal to the prosecution case based on the particular facts and circumstances of this case where the appellants were produced from judicial custody in order to make their confessions and then returned to judicial custody and the large amount of corroborative evidence against the appellants.

42. With regard to any potential language issue since the appellants both spoke Bengali, it has come in evidence that they both also understood Urdu and as such the language in which the confession was recorded and the appellants understanding of it when it was read back to them is not an issue which would effect its voluntariness or truthfulness.

43. In so far as the confession of Jalal is concerned he simply denies making any statement before the magistrate and states that he only signed a piece of paper which was put before him. Based on the corroborative evidence of the PW's and the relevant documents on record we are of the considered view that the prosecution has proved that Jalal did make such a confession before the magistrate voluntarily and that it is truthful and fits in with the context of the prosecution case and is corroborated by other material on record such as the calls to Shalina from the mobile phone which was recovered from him.

44. In short, we find that both the retracted confessions of both Muneer and Jalal are admissible in evidence and can be safely relied upon since they were both made voluntarily, are truthful (based on the context of the prosecution case -Muneer's love and affection for Shalina being spurned- and the other corroboratory material on record such as the medical evidence, the body being discovered on the pointation of Muneer, Saleem being detained at Jalal's house for 3 days which ties in with Shalina's evidence that when she made the last call to Muneer on 02-11-2012 she heard her son shriek and Muneers time frame for the murder in his confession and the calls to Shalina being made from the mobile phone recovered from Jalal) and that there was no major irregularities in the manner in which their confessions were recorded so as to adversely affect the voluntariness or truthfulness of the confessions.



45. Since we have found the confessions to be legally admissible and are relying on them the next question which arises is what impact the confessions have on the guilt of the accused for the various offenses for which they have been charged.

46. As mentioned earlier as corroborated by the judicial confessions of Muneer and Jalal we have already upheld both of their convictions for kidnapping for ransom Saleem u/s 365 (A) PPC

47. With respect to the unnatural act of sodomy which was committed on Saleem the medical and chemical evidence fully supports the fact that the boy was sodomised. The question however remains by whom? As the boy was being kept by Muneer and Jalal at Jalal's house a part from Muneer and Jalal any other person might also have had access to Saleem during his 2 or 3 day detention period at Jalal's House before his murder. **Quite shockingly** the IO admitted that he did not send the DNA swabs off due to a lack of funds when even the trial court found that such tests could have been carried out at the Aga Khan Hospital. Thus although it is proved that the boy Saleem was sodomised it cannot be said whether it was by either Muneer or Jalal or someone else due to the failure to test for DNA. Such a test would have either eliminated or implicated either Muneer or Jalal. It is also of concern that despite the material before the trial judge S.377 PPC was not added to the heads of charges against the appellants. Both of the Appellants therefore stand acquitted u/s 464 A Cr.PC.

48. We would also like to add that although we accept that it is for the prosecution to prove its case beyond a reasonable doubt which we consider it has done in the case of kidnapping for ransom and murder of Saleem we do not find the defense case convincing at all. For example, no question was put to any PW that there was any dispute over property between Muneer and any of the PW's which was essentially the defense of Muneer for his false implication which we consider to be a complete after thought.

#### **Murder of minor child Saleem.**

49. We are of the considered view that based on his confessional statement and other corroborative evidence as discussed earlier that the



prosecution has proved beyond a reasonable doubt that Muneer murdered Saleem and has thus committed the offense of murder under S.302 PPC as found in the impugned judgment.

50. We are however of the view that the prosecution has not been able to prove beyond a reasonable doubt that Jalal was involved in the murder of Saleem.

51. Our courts have adopted the approach that the usual sentence for murder is the death penalty. This may be reduced to imprisonment for life if there are any mitigating circumstances or if the judge in his discretion is of the view that based on the particular facts and circumstances of the case the appropriate sentence is to award the alternate to death being the sentence of imprisonment for life. In this respect reliance is placed on **Ghual Mohy-Ud-Din V State** (2014 SCMR 1034)

52. In this case we find no mitigating factors and based on the particular facts and circumstances of the case we are not inclined to exercise our discretion to reduce the death sentence to imprisonment for life. In this case a minor boy of 7 years of age was kidnapped by Muneer and Jalal for ransom; Muneer had a motive to kidnap and murder Saleem in wanting the ransom money and in Muneer wanting to avenge his love being spurned by Shalina; that Saleem was unnaturally sexually assaulted through sodomy by either Muneer, Jalal or other persons unknown whilst in the detention of Muneer and Saleem and was then strangled by Muneer before being viciously and brutally struck in the face by a heavy stone by Muneer in order to hinder his identification with his body being left to rot in the jungle of Gadani. The loss and suffering to the parents and family of their murdered young son can hardly be imagined especially keeping in view the circumstances surrounding his death. In such cases in our view once proved the culprits deserve no leniency and their sentence should serve as a deterrent to other persons who intend to commit such heinous crimes against vulnerable innocent children and as such the death sentence of Muneer is confirmed. In this respect reliance is placed on **Farman Hussain's case** (Supra) and **Imran Ali V State** (2018 SCMR 1372)



**Summary.**

1. Appellant Muneer is convicted of the charge under S.365 (A) PPC read with S.7 (a) and (e) ATA and his death sentence is confirmed.
2. Appellant Muneer is convicted of the murder of Saleem u/s 302 PPC and his death sentence is confirmed
3. Appellant Jalal is convicted of the charge under S.365 (A) PPC, read with S.7 (e) ATA and his sentence of imprisonment for life is maintained keeping in view the fact that the prosecution had not filed an appeal for any enhancement in his sentence.

53. These Criminal Appeals and Confirmation Reference stand disposed of in the above terms.

*Arif*