

Acquitted: Only evidence uncorroborated Confession before mag 633

## IN THE HIGH COURT OF SINDH, KARACHI

Present:

Mr. Justice Mohammad Karim Khan Agha  
Justice Mrs. Kausar Sultana Hussain.

### Special Criminal A.T.J.A. No.61 of 2022

Appellant: Syed Afsar @ Rizvi S/o. Sibte Hussain  
through M/s. Raj Ali Wahid Kunwar a/w.  
Abdul Qadir Soomro, Advocates.

The State: Through Mr. Ali Haider Saleem,  
Additional Prosecutor General, Sindh and  
Rana Khalid Hussain, Special Prosecutor  
Rangers.

Date of Hearing: 22.05.2023.

Date of Judgment: 24.05.2023.

## J U D G M E N T

**MOHAMMAD KARIM KHAN AGHA, J:-** The Appellant Syed Afsar @ Rizvi S/o. Sibte Hussain has filed this appeal against the judgment passed by the Anti-Terrorism Court No.IV, Karachi dated 24.02.2022 in Special Case No.34/2019 (old No.1632/2016) arising out of F.I.R. No.141/2012 U/s.302/34-PPC registered at P.S. Nabi Bux, Karachi whereby the appellant was convicted and sentenced as under:-

- a) Accused Syed Afsar Ali @ Rizvi S/o. Sibte Hussain found guilty for the charge of the offence u/s. 302(b)/34 PPC and awarded imprisonment for life and to pay sum of Rs.100,000/- (Rupees one hundred thousand) as compensation u/s. 544-A Cr.P.C. to the legal heirs of the deceased Abdul Sattar S/o. Abdullah, which shall be recovered by way of arrear of land revenue and in default of payment/recovery thereof undergo further imprisonment for six month.

- b) Accused Syed Afsar Ali @ Rizvi S/o. Sibte Hussain found guilty for the charge of the offence u/s. 6(1)(b) of ATA 1997 and convicted u/s. 7(1)(a) of ATA 1997 for life imprisonment and under section 7(2) of ATA 1997, fine of Rs.50,000/- (Rupees Fifty Thousand). In case of default in payment of the fine, he shall further suffer for six month imprisonment.

2. The brief facts of the case are that on 16.07.2012, information was received to PS Nabi Bux about a dead body lying at Noman Street, near PTCL Exchange. SI Shoukat along with his subordinates left for the pointed place. Police party headed by SI Shoukat and patrolling police officials reached at the place of incident. He secured empties and bloodstained earth from the place of incident and shifted dead body to Civil Hospital, where inspection of dead body and proceedings u/s. 174 Cr.P.C. were conducted. Dr. Rizwan Ahmed, MLO conducted postmortem of the dead body. The dead body was identified as Abdul Sattar S/o. Abdullah, R/o. Dalmia Kachi Para. Statement u/s. 154 Cr.P.C. of real uncle of deceased (Complainant Yousuf S/o. Jaffar) recorded by S.I. Shoukat Ali at Civil Hospital and handed over dead body to the relative of deceased under superdiginama. Another dead body (later it was identified as Anees Ahmed) was lying in the mortuary of the hospital, which was found within the jurisdiction of Meethadar. Deceased Anees Ahmed was friend of deceased Abdul Sattar. Complainant disclosed that on the fateful day deceased Abdul Sattar left his home along with his friend deceased Anees for purchase of motorcycle from Hyderi Market at that time Abdul Sattar was having cash of Rs.25,000/-. They were kidnapped and murdered on unknown grounds by unknown culprits. Thus, FIR was lodged against unknown culprits. After completion of formal investigation and failure to trace out the real culprits, report under "A" Class, was submitted before the concerned trial.

3. On 08.06.2016, SIP Mir Kalam was directed by SIO that he received a message from Rangers officials that one accused Afsar Ali is detained in Meetha Ram Sub-Jail in custody of Rangers and during interrogation he confessed his guilt about commission of offence reported in FIR bearing

No.141/2012, wherein deceased Abdul Sattar S/o. Abdullah had been killed in the year 2012. SIP Mir Kalam along with SIO went to Meetha Raam sub-jail, the custody of accused was handed over to SIP Mir Kalam by Rangers officials, he interrogated the accused and during interrogation he confessed his guilt. On such disclosure accused was formally arrested and custody of accused was brought to PS Nabi Bux, where accused during interrogation disclosed that he along with his companion Shakeel Benarsi, Nadeem and Rizwan kidnapped deceased Abdul Sattar and Anees Ahmed from Dalmia. They were taken to a flat situated at Soldier Bazar, where they were tortured and then taken to Mithadar in Suzuki Hi-Roof, adhesive tape was pasted on their mouth and gunshot injury was inflicted to Anees at his head and his body was thrown in Meethadar area, while Abdul Sattar was hit with bullet on his head in Rimpa Plaza, M.A. Jinnah Road and his body was thrown from Suzuki Hi-Roof. The motive of killing of those persons were disclosed that they use filthy language against Hazrat Ali (R.A), Hazrat imam Jaffar (R.A) and other religious dignitaries of Shia sect. During interrogation accused disclosed that he can point out the place where deceased Abdul Sattar was killed and his dead body was thrown on 14.06.2016. Accused voluntarily led the police party, to Rimpa Plaza, M.A. Jinnah Road and disclosed that it is same place where he committed murder of deceased Abdul Sattar and thrown his dead body on 15.06.2016, SIP Mir Kalam submitted an application for recording 164 Cr.P.C. statement of accused Syed Afsar Hussain. The Judicial magistrate allowed the application and fixed on 16.06.2016 for recording 164 Cr.P.C. of accused. The statement u/s. 164 Cr.P.C. of accused was recorded by judicial magistrate.

4. After completion of formal proceedings on 09.12.2016 the charge was framed against accused Syed Afsar Ali @ Rizvi S/o. Sibte Hassan to which he pleaded not guilty and claimed trial. After hearing the evidence of 4 witnesses the charge was amended as co-accused Muhammed Shakeel @ Banarsi was arrested and joined the trial. The co-accused and the appellant again plead not guilty to the charge.

5. In order to prove its case, the prosecution examined 13 PWs and exhibited various items and other documents. The appellant recorded his statement under Section 342(1) Cr.P.C. in which he denied all the prosecution allegations leveled against him and claimed his innocence. He did not give evidence on oath but did call one DW in support of his defence case. His co-accused also denied the allegations in his Section 342 Cr.PC statement and did not give evidence under oath.

6. After appreciating the evidence on record, the learned trial court convicted and sentenced the appellant as set out earlier and hence, the appellant has filed this appeal against his conviction and sentence. The co-accused was acquitted of the charge and the State has not filed any appeal against his acquittal

7. The facts of the case as well as evidence produced before the trial court find an elaborate mention in the impugned judgment dated 24.02.2022 passed by the trial court and, therefore, the same may not be reproduced here so as to avoid duplication and unnecessary repetition.

8. Learned counsel for the appellant has contended that the appellant has been falsely implicated in this case by the rangers/police as he is an activist of the MQM political party; that the only piece of evidence against him is his retracted judicial confession which cannot be relied upon because it was not made voluntarily; that no recovery was made from him of any weapon; that there is no other evidence against him and as such for the above reasons the appellant be acquitted of the charge by extending him the benefit of the doubt. In support of his contentions he placed reliance on the cases of **Abdul Sattar v The State** (PLD 1976 SC 404), **Hayatullah v The State** (2018 SCMR 2092), **Taj Bahadur alias Taji v The State** (1997 MLD 1072), **Anwar Hussain v The State** (2019 YLR 1117), **Attaullah alias Qasim v The State** (2006 YLR 3213), **Azhar Ali v The State** (2021 YLR 2263), **Muhammad Javed v The State** (2021 YLR 2075), **Fazal**

**Hussain alias Fageera v The State** (2020 P Cr. L J 311), **Owais v The State** (2022 P Cr. L J 920), **Riaz Ahmed v The State** (2010 SCMR 846), **Fazal Akbar v The State** (2013 P Cr. L J 369), **Sardar Bibi v Munir Ahmed** (2017 SCMR 344) and an unreported judgment dated 04.02.2021 passed by the ATC No.XV, Karachi in Special Case No.35 of 2017.

9. On the other hand learned Additional Prosecutor General and Special Prosecutor Rangers appearing on behalf of the State have fully supported the impugned judgment and in particular contended that the retracted confession of the appellant made before the judicial magistrate was made voluntarily with the object of telling the truth and as such could be safely relied upon; that the appellant took the police to the place of the wardat and as such the prosecution had proved its case against the appellant beyond a reasonable doubt. In support of their contentions they have placed reliance on the cases of **Muhammad Amin v The State** (PLD 2006 SC 219), **Dadullah and another v. The State** (2015 SCMR 856), **Akhtar v. The State** (2014 P.Cr. L.J 993), **Arshad Ali v. The State** (2014 YLR 1394), **Niazuddin v. The State** (2011 SCMR 725), **Khadim Hussain v. The State** (PLD 2010 SC 669), **Majeed v. The State** (2010 SCMR 55), **Nazeer alias Wazeer v. The State** (PLD 2007 SC 202), **Muhammad Ehsan v. The State** (2006 SCMR 1857) and **Manjeet Singh v. The State** (PLD 2006 SC 30).

10. At the outset we note that when the charge was originally framed only against the appellant PW's 1 to 4 had already recorded their evidence before the appellants defence counsel. After their evidence was recorded an amended charge was framed which only included the addition of the name of the co-accused. The trial recommenced and the original 4 PW's who had already recorded their evidence were not recalled in order to re record their evidence. Ordinarily this might have made this a case warranting remand to the trial court to re record the evidence of the first 4 PW's. We have however noted that the co-accused Muhammed Shakeel who the evidence of the first 4 PW's was recorded in his absence and were {

not recalled after the framing of the charge was acquitted and as such no prejudice has been occasioned to the co-accused in this regard. Likewise since the appellant was present during the evidence of all the witnesses and had the chance to cross examine them all through his counsel we do not consider that he has been prejudiced and thus based on the particular facts and circumstances of this case since no prejudice had been caused to the appellant the no appeal can be proceeded with on merit and is not a case of remand. Both learned counsel for the appellant and the State agreed with the above position and hence we have decided to hear and decide this appeal on merits.

11. Based on our reassessment of the evidence of the PW's, the place of the recovery of the dead body, the recovery of blood and empties at the crime scene, the medical evidence and other medical reports including the post mortem report of the deceased, we find that the prosecution has proved beyond a reasonable doubt that Abdul Sattar (the deceased) was murdered by firearm on or about 16.07.2012 at about 12.15am at night at Moman Street Rimpa Plaza M.A.Jinnah Road Karachi.

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

13. After our reassessment of the evidence we find that the prosecution has NOT proved beyond a reasonable doubt the charge against the appellant for which he was convicted for the following reasons keeping in view that each criminal case must be decided on its own particular facts, circumstances and evidence on record;

(a) That there was no eye witness to the murder.

(b) That there was no last seen evidence.

(c) That the case of the prosecution revolves around a retracted judicial confession made by the appellant. Therefore the question arises whether we can safely convict on the basis of the retracted judicial confession of the appellant. We set out the retracted judicial confession for ease of reference below;

"I, Syed Afsar Rizvi @ Zaidi S/o Sibt-e-Hassan Rizvi (Late), R/o House-No.A-38, Sector 11½ Orangi-Town, do hereby state on oath that I belong to MQM (A). I joined MQM (A) in 1997 and due to getting job as Manager in Telegraph Office; I quit my designation in 1988 and started working as a sympathizer. In 2002, I again joined the MQM(A) as a worker. I remained posted as Joint Unit Incharge from December 2009 to December 2011 and as Joint Sector incharge from January-2011 to 2013. In July 2012, I received an order from the Shia High Command to kill two boys from Dalmian Karachi namely Abdul Sattar S/o Abdullah and Anees S/o Ahmed, who belonged to the Sipah-e-Sahaba, as they both insults the Hazrat Ali (as) and imam Jaffer Sadiq (as). Therefore, I and my accomplices Nadeem Baber, Shakeel Banarsi & Rizwan made reiki of them. On 15th July-2012, as soon as Abdul Sattar and Anees come out from their homes, I accompanied with my accomplices kidnapped them in Hi-Roof and brought at a flat in Shah-Khurasan Soldier Bazar, tortured them and remained interrogating that in the midnight of 15<sup>th</sup> & 16<sup>th</sup> July, Abdul Sattar and Anees boarded into Hi-Roof, brought to Copy Center Area Mithadar and at about 11½ Hrs after making bullet shots in the head of Anees thrown the dead-body, then on returning back to M.A. Jinnah Road at about 12:00 Hrs after wrapping tape on the face of Abdul Sattar killed him by making bullet shot in his head with T.T. Pistol.

In 2013, Hammad Siddique called and held meeting in Jinnah Ground, in which the incharges of all sectors/joint including me were present, wherein he said that large number of MQM(A) workers are being martyred in Karachi City, you people may watch these persons into your respective areas. Thereafter a meeting was held in Orangi-Town sector wherein I and Dr. Rasheed were directed that you people may look these persons. For this task prepared one team of workers; in which Khalid Mamu, Nadeem Babay, Shakeel Banarsi, Afroz Alam (Gudoo) and Adil mental were included. Manzoor Bakar's (121-A) workers used to see all these people. He used to say about the person who had to be killed to the Central Sector incharge Ghulam Haider and the sector Incharge used to say me and I used to say Dr. Rashid. To the best of my knowledge, these boys included: (1) Siraj Dacoit (2) Nazish (3) Bahadur (4) Murshid (5) Afroz, (6) Shahid Bengali and with him another boy whose name is unknown alias Nai, who killed to one Munna alias 125.

I committed various wardat & killings on the instance of Hammad Siddique. In 2010, I committed the murder of Murshid Dacoit, wherein Ashraf Ali @ Noshad @ Kalam Bihari was also accompanied with me. Then in the same year, I inclusion with Ashraf Ali @ Noshad & Shafquat committed the murder of Bahadur Dacoit in North Nazimabad.

In 2010, in response to the murder of MPA Reza Haider I inclusion with my companion Naeem Builder committed the

murder of Bakhtawar Bus Driver. Then in the same year, together with my comrades whose names I have mentioned, assassinated BQM President Aftab Malik at Fuji Hotel, Sector 15, Orangi Town.

In 2012, at the instance of Hamad Siddiqui and the high command, alongwith my associates targeted to Mehtab Alam the Ameer of Tableeghi Jamaat Orangi Town. In the meanwhile on the orders of high command killed to PPP Workers Nazish, Javed Batta & Zeeshan. In the same year I committed and got committed the murder of PPP workers; Jehangir, Ali Raza, Ejaz Mushka, Akmal & Tahir. On my orders, my comrades committed the murder of MOM(A) worker Noshad @ Adeel, who was worker of Unit-126.

From the year of 2002 to 2004, I accompanied with my comrades Sadaquat & Jamal snatched the hides of sacrificial animals and collected the Fitra, and spreaded fear & panic in the area. Together, my colleagues and I supplied the weapons to our entire unit & sector Incharges through ambulance, and got concealed it.

In 2013, the Rangers started operation, the KTC Incharge Hammad Siddique & Farooq Saleem directed all the sectors that the entire target killing teams may become hidden at Markaz-90. Thereafter I went away to Lahore and after returning back to Karachi, I went away to my son Saeed Ali Rizvi at Dubai on one month visit visa.

In Dubai, I met with Hammad Siddique, who was with his cousin, he directed me to get in touch with KTC Incharge Nadeem Ahsan and Security Incharge '90' Minhaj Qazi through whats-up, wherein the financial help and various orders were included, which was from the party's reconciliation policy.

I told to Hammad Siddique that in 2013, I had prepared the target killing team of Orangi-Town Sector, in which Dr. Rasheed, Manzoor Bakar and me, were included.

In 2010, I together comrades committed the murder of SSP worker i.e. Pesh-e-Imam Qari Hussain. In the said assassination, Afroz, who was resident of Sector 11-1/2 Orangi and Feroz of Sabzi-Market and Zeeshan Siraj of Chishti Nagar were included. In 2012, committed the murder of Shakeel at Muhajir Chowk, Sector 11 1/2 Orangi Town.

In 2010, the Sector Incharge Ghulam Haider asked me to bring the arms from Baldia Sector. I and Kauser Siddique went to Baldia and brought 18 Kalashnikovs from the Sector Incharge Asghar Baig. The arms were got buried to underground in the store of Imam-Bargah. During remand of P.S. Pakistan Bazar, I got recovered them one 9mm pistol with five rounds from my home, which was given to Shakeel Banarsi for the murder of Ejaz Mushka, while got recovered the buried arms after the rest from Rangers.

I remember very well that I ordered the killing of three people at the behest of Hamad Siddiqui and Farooq Saleem for the following reasons:

1. Nazish had killed to a worker of 121-B and his six month old son at bike. For the murder of Nazish, I had ordered to Sher Mohammad @ Sheru and Khalid Mamu.
2. Siraj Dacoit, who used to commit Zina with mothers, sisters & daughters during dacoity wardats, for his killing I had ordered to Nadeem Bhui.
3. Akmal, who had committed the murder of MQM(A) worker Haider, for his killing I had ordered to Sher Mohammad @ Sheru.

*This much is my statement.* (bold added)

Sd/-&RTI of the Accused

Sd/-& Stamp of  
Civil/Family & Judicial Magistrate-XI  
Karachi (South)."

14. It is well settled by now that a retracted confession before a magistrate can be the basis of convicting in a capital case. In this respect reliance is placed on the case of **Muhammad Amin V The State** (PLD 2006 SC 219) which 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.**"

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 following criteria must be met in order for a retracted judicial confession to be safely relied upon (along with corroboration);

- (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.

15. Even if we believe the retracted judicial confession and place reliance on it in such cases it is important that it is corroborated by some independent of evidence from an unimpeachable source as was held in the case of **Muhammad Ismail and others v. The State** (2017 SCMR 898) where it was emphasized that if the judicial confession was the only piece of evidence against the accused then ignoring procedural safeguards would amount to the whole confession being disregarded and in cases of judicial confessions as alluded to earlier there was a requirement of corroboration in the following terms at P.898;

*"The only other piece of evidence remaining in the field was a judicial confession allegedly made by Muhammad Iqrar, Khalid Hussain and Shakir Ali appellants before a Magistrate under section 164, Cr.P.C. but admittedly the said judicial confession had been retracted by the appellants before the trial court and in the absence of any independent corroboration such retracted judicial confession could not suffice all by itself for recording or upholding the appellants' convictions. The record also shows that the appellants had submitted an application before the trial court maintaining that they had never been produced before a Magistrate for recording of their confessions and that the confessions attributed to them were bogus. The proceedings of recording of the judicial confession deposed about by the relevant Magistrate show that it had been mentioned in those proceedings that before recording the confessions the handcuffs of the appellants had been removed. The statement made by the concerned Magistrate before the trial court shows that some police constables did remain in the courtroom at the time of recording of the confessions".*

16. Like wise in the case of **Fazal Rehman and others v. The State and others** (PLD 2004 Supreme Court 250), it was held as under at P.251 with regard to corroboration of a retracted judicial confession;

*"(d) For the purpose of arriving at the conclusion whether a retracted confession may form the basis of conviction if believed to be true and voluntarily made, the Court has to take into consideration not only the reasons given for*

*making the confession or retracting but the attending facts and circumstances surrounding the same. There can be no absolute rule that a retracted confession cannot be acted upon unless the same is corroborated materially. But as a matter of prudence and caution which has sanctified itself into a rule of law, a retracted confession cannot be made solely the basis of conviction unless the same is corroborated. This, however, does not necessarily mean that each and every circumstance mentioned in the confession regarding the complicity of the accused must be separately and independently corroborated nor is it essential that the corroboration must come from facts and circumstances discovered after the confession was made.*(bold added)

.....

*(f) The confession of an accused person is substantive evidence and a conviction can be based solely on the confession. The question however, as to whether on the facts and circumstances of a given case the Court should act upon such a confession alone is an entirely differently question, which relates to the weight and evidentiary value of the confession. Normally speaking it would not be quite safe, as a matter of prudence if not of law, to base a conviction for murder on the confession of the alleged murderer, by itself and without more, when the confession is open to good deal of criticism.*(bold added)

17. Based on the particular facts and circumstances of this case where admittedly the appellant had been held in communicado in rangers custody where he originally admitted to numerous crimes for 90 days and the confession itself, which the appellant claims was not voluntary, we find that **we cannot safely rely on the retracted judicial confession and exclude the same from consideration.** This is because we find that it would be impossible for the appellant to record such a long and detailed confession whereby he confessed to many murders over a number of years with dates and locations and names of persons concerned in the murder as well as the persons who were murdered. To do so would require a photo graphic memory which the appellant does not possess.

Furthermore, why would he confess to so many murders which all attracted the death penalty. It does not appeal to logic, reason or common sense. Why would he confess to the instant murder for which he was charged **which happened over 4 years ago** when there was no other evidence against him in this case which again does not appeal to logic, reason or common sense. **The most likely scenario is that the appellant was given the already typed out confession and simply made to sign it.**

Even if we had believed and placed reliance on the confession (which we do not) what other corroborative evidence is there against the appellant? We do not find any.

- (d) No recovery of any weapon was made from the appellant. Hence FSL matches if any are irrelevant.
- (e) The appellant allegedly took the police to the place where the murder took place but admittedly this place was already known to the police so this piece of evidence is also irrelevant.
- (f) Significantly the one place which the police did not know about i.e from where the appellant was abducted the appellant did not take the police to.

18. Thus, for the reasons mentioned above by extending the benefit of the doubt to the appellant he is acquitted of the charge, the appeal is allowed the impugned judgment is set aside and the appellant shall be released unless he is wanted in any other custody case.

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