

IN THE HIGH COURT OF SINDH AT KARACHI

PRESENT:

Mr. Justice Khadim Hussain Tunio
Mr. Justice Amjad Ali Sahito

Spl. Crl. Anti-Terrorism Appeal No.12 of 2025 **Spl. Crl. Anti-Terrorism Jail Appeal No.18 of 2025**

Appellants : i. Rizwan S/o Muhammad Ramzan
[in Spl. Crl. A.T.A. No.12/2025] through Mr. Nasir Mehmood, Advocate

ii. Nadeem S/o Rehmatullah
through Barrister Mian Haad A.M.
Paggawala, Advocate

Appellant : Mushtaq S/o Abdul Khaliq @ Ghulam
[in Spl. Crl. A.T.J.A. No.18/2025] Qadir through M/s. Abdus Samad Khattak
& Ghulam Rasool Khattak, Advocates

Respondent : For State
Mr. Muhammad Iqbal Awan, Addl. P.G.
Sindh

Date of Hearing : 14.01.2026

Date of Judgment: 21.01.2026

J U D G M E N T

Amjad Ali Sahito, J.- Through the captioned appeals, the appellants have impugned the Judgment dated 28.02.2025 passed by the learned Judge, Anti-Terrorism Court No.VIII, Karachi in Special Case No.352/2023 arising out of FIR No.910/2022 U/s 365-A/302/201/34 PPC R/w Section 7 ATA, 1997 at PS Sachal (AVCC/CIA), Karachi; whereby all three appellants were convicted under section 265-H (2) of Cr.P.C for the offence committed under section 364/34 PPC and sentenced them for life imprisonment for kidnapping in order to murder and to pay fine of Rs.50,000/- each. In case of non-payment of fine, the appellants shall undergo sentence for simple imprisonment for six months more. The appellant Rizwan s/o Muhammad Ramzan was also convicted for the offence committed under section

302-B PPC as 'Tazir' and sentenced him to life imprisonment for the murder of deceased Nazakat and ordered to pay compensation of Rs.100,000/- (one lac) to be recoverable as arrears of land revenue, which shall be paid to the legal heirs of the deceased in view of Section 544-A Cr.P.C. and in default whereof, he shall undergo sentence for simple imprisonment for six months more. All the sentences shall run concurrently. However, the benefit of Section 382-B, Cr.P.C was extended to the appellants.

2. Brief facts of the prosecution case are that On 18.05.2022 at about 10:00 hours, complainant Sikander Bux lodged an FIR stating that his 28-year-old son, Nazakat Hussain, went missing after leaving home on 16.05.2022 at about 02:30 hours. Despite repeated attempts, the complainant could not contact his son as both mobile numbers remained switched off. After making unsuccessful efforts to trace him, the complainant reported the matter to the police against unknown persons.

3. Initial investigation was conducted by Inspector Haji Khan, who arrested accused Rizwan on 19.05.2022 under Section 54 Cr.P.C. on suspicion. On 20.05.2022, accused Rizwan was formally arrested in the case upon identification and nomination by the complainant. On 26.07.2022, further investigation was transferred to DSP Nusrat Hussain Shaikh on the orders of SSP East-I. During investigation, Section 365-A PPC was added and the case was referred to the Anti-Violent Crime Cell/CIA, Karachi. On 20.03.2023, accused Nadeem and Rizwan were arrested by AVCC on spy information in the presence of the complainant. On the same day, on the pointation of accused Rizwan, another accused, Mushtaq, was arrested from Jan Muhammad Goth, Karachi.

4. After formal investigation, the Charge was framed against all the accused persons at Ex.09, to which they pleaded not guilty and claimed to be tried, vide their pleas at Ex09/A to Ex.09/C.

5. In order to substantiate its case, the prosecution examined as many as fourteen witnesses and placed on record all relevant documentary evidence, marked as Exhibits 11 to 28/P. Thereafter, the learned Additional Prosecutor General for the State closed the prosecution side through her statement recorded at Exhibit 29.

6. The statements of all the three accused persons U/s 342 Cr.P.C were recorded at Ex.30 to Ex. 32 respectively.

7. The learned trial Court, after hearing the parties and on assessment of the evidence, convicted and sentenced the appellant as stated above vide judgment dated 28.02.2025 which has been impugned before this Court in the instant Appeals.

8. Mr. Nasir Mehmood, Advocate is appearing for appellant Rizwan and Barrister Mian A.M. Haad Paggawala, Advocate is appearing for appellant Nadeem in Spl. CrI. Anti-Terrorism Appeal No.12 of 2025. Whereas, Mr. Abdus Samad Khattak and Ghulam Rasool Khattak are appearing for appellant Mushtaq in Spl. CrI. Anti-Terrorism Jail Appeal No.18 of 2025. Learned counsel for the appellants contended that the appellants are innocent and have been falsely implicated in the instant case; that the impugned judgment is contrary to law and facts; that the learned trial Court has misappreciated the evidence, resulting in the wrongful conviction of the appellants; that material contradictions in the testimonies of the prosecution witnesses create serious doubt with respect to the prosecution case. Learned counsel further argued that the prosecution has miserably failed to connect the appellants with the commission of offence and no evidence has been brought on record against accused Rizwan except he has been nominated by the complainant and PW-2 Rehana Bibi and the screw driver was subsequently matched with the blood of the deceased mother which has no value in the eyes of law; that the only role against accused Nadeem and Mushtaq is that they were nominated by accused Rizwan to be part of his crime and only PW-13 deposed that all the accused were available with abductee at tea hotel from where he went missing and did not return, however, the said

statement was made after 11 months of the incident, which too has no value in the eyes of law; that if the complainant knew that the appellants are involved in the abduction of the deceased Nazakat then why he has not nominated any of the appellant(s) in the FIR. Lastly, they pray for acquittal of the appellants.

9. Conversely, the learned Addl. Prosecutor General, Sindh, fully supported the impugned judgment and stated that the appellants were arrested on the pointation and nomination of the complainant and prosecution witnesses have fully supported the version of the complainant; as such, they are not entitled for acquittal.

10. We have heard the learned counsel for the appellants as well as learned Addl. Prosecutor General, Sindh and have minutely examined the material available on record with their able assistance.

11. Upon careful examination of the record, it emerges that on 18.05.2022 at about 10:00 hours, the complainant Sikander Bux lodged an FIR stating that his son, Nazakat Hussain, aged about 28 years, had gone missing after leaving home on 16.05.2022 at approximately 02:30 hours for some essential work and failed to return. Despite repeated attempts, the complainant could not establish contact with his son as both mobile phone numbers remained switched off. After making diligent efforts to trace him without success, the complainant reported the matter to the police, alleging kidnapping by unknown persons.

12. During investigation, Inspector Haji Khan arrested accused Rizwan on 19.05.2022, and he was formally nominated in the case on 20.05.2022 upon identification by the complainant. Subsequently, on 20.03.2023, two additional accused, namely Nadeem and Mushtaq, were arrested from different locations and were nominated in the case.

13. PW-1, the complainant Sikander Bux, deposed that on 16.05.2022 accused Rizwan telephoned his son and called him to a tea hotel, after which Nazakat accompanied him and did not return home. He stated that after registration of the FIR, the

Investigating Officer inspected the tea hotel. He further deposed that accused Rizwan was already in police custody in another case and was shown arrested in the present matter upon his identification. He also stated that on 20.03.2023 he accompanied Inspector Muhammad Ali to Jamali Pull, where accused Nadeem and Rizwan were arrested. According to PW-1, accused Rizwan disclosed that they had killed Nazakat Hussain and later led the police to the arrest of accused Mushtaq from Ahsanabad. PW-1 also stated that accused Mushtaq's brother, Ashfaq, demanded ransom initially amounting to Rs.70 million, later reduced to Rs.50 million, and that a sum of Rs.350,000/- was paid. He further deposed regarding the recovery of a screwdriver allegedly used in the murder and the identification of the place where the dead body had been disposed of.

14. During cross-examination, PW-1 admitted that the alleged call by accused Rizwan and meeting at the tea hotel were not mentioned in the FIR or in his earlier statements, and that the name of accused Nadeem was disclosed at a later stage.

15. PW-2, Mst. Rehana Bibi, wife of the deceased, corroborated the version of PW-1, stating that accused Rizwan had called her husband during dinner and that Nazakat left for the hotel and did not return. She deposed that CCTV footage showed Nazakat in the company of accused Rizwan and Saim Nawaz. She further stated that ransom demands were later made by Ashfaq.

16. PW-3, Ghulam Mustafa, supported the prosecution version but admitted that his testimony was based on what he had been informed by others. PW-4, Abdul Ghaffar, stated that he was informed on the night of the incident that Nazakat had gone out on the call of accused Rizwan and did not return, and that search efforts proved futile.

17. The prosecution also examined Investigating Officers and medical witnesses. PW-9, Dr. Tasneem Malik, deposed regarding the collection of blood samples from Parveen Bux for DNA analysis and stated that while the DNA could not be matched with the unidentified dead body, it could not be excluded as

matching the DNA recovered from the alleged weapon of offence, i.e., a screwdriver. PW-13, Ghulam Murtaza, claimed to have last seen the deceased at Quetta Mashallah Hotel in the company of accused persons; however, his statement under Section 161 Cr.P.C. was recorded after an unexplained delay of approximately 11 months, and material details were admittedly missing from his statement.

18. PW-14, Inspector Muhammad Ali of the Anti-Violent Crime Cell, deposed regarding spy information, arrests of accused Rizwan, Nadeem, and Mushtaq, alleged confessions, recovery of the screwdriver, correspondence with the DNA laboratory, and identification of the place where the dead body was allegedly disposed of. In cross-examination, he admitted that several material facts were not mentioned in the FIR, that the place of abduction was inspected after about one year, and that statements of certain relevant witnesses were not recorded.

19. Admittedly, the alleged incident is unseen and unwitnessed. The complainant initially lodged the FIR against unknown persons and had also moved an application before the competent court regarding the missing of his son, Nazakat Hussain. However, at a later stage, suspicion was cast upon the accused Rizwan, who was subsequently arrested. Notably, the FIR is completely silent regarding any allegation against the accused Rizwan, and even the wife of the deceased did not disclose to the complainant at the relevant time that the accused Rizwan had allegedly called the deceased to a hotel.

20. It further appears that the complainant himself was uncertain about the involvement of the appellant Rizwan, as he filed an affidavit before the learned trial court expressing no objection to the grant of bail to the said accused. In this regard, during cross-examination, the complainant Sikander Bux (PW-1) candidly admitted that *“it is a fact that accused Rizwan was granted bail on the basis of my affidavit of no objection.”* Such conduct on the part of the complainant materially weakens the prosecution version and casts serious doubt on the alleged involvement of the accused.

21. Moreover, the nomination of the accused persons was made subsequently at a belated stage, during statements of witnesses recorded after considerable delay, without any plausible or satisfactory explanation. The material prosecution witnesses admittedly made improvements in their versions, and the alleged involvement and association of the accused with the crime surfaced for the first time during court proceedings. These material improvements and delayed disclosures seriously undermine the credibility, reliability, and probative value of the prosecution evidence.

22. As regards the recovery of the alleged weapon of offence, namely a screwdriver, the same was allegedly effected on 25.03.2023 (Exh.11/E) on the pointation of the accused, whereas the accused Rizwan had already been arrested much earlier on 20.05.2022 (Exh.11/C). The prosecution claimed that the DNA report connected the appellant Rizwan with the commission of the offence. However, a perusal of the record reveals that the DNA analysis report does not connect the said crime article with the deceased; rather, it merely matched the DNA profile of the mother of the abductee. Such a match, by itself, does not establish the guilt of the accused nor does it conclusively link the recovered article with the alleged commission of the offence.

23. In this regard, PW-14, Inspector Muhammad Ali of AVCC/CIA, expressly admitted in his testimony that *“it is mentioned in the MLC that DNA was not matched with the dead body, while the crime article/weapon matched with the DNA of the mother of the abductee, namely Parveen Bibi.”* It is a fundamental duty of the concerned medical officer to obtain and preserve blood samples of both the deceased and the accused persons to facilitate accurate and meaningful forensic comparison. Had such samples been properly collected and preserved, the office of the Chemical Examiner or the DNA laboratory would have been in a position to conclusively determine whether the blood or DNA found on the alleged weapon of offence matched that of the deceased or the accused. The failure to do so constitutes a

serious lapse on the part of both the Investigating Officer and the Medical Officer.

24. The trial Court has relied upon only a solitary piece of evidence, namely, the alleged statement made before police officials. Consequently, Article 38 of the Qanun-e-Shahadat Order, 1984 squarely applies, which categorically provides as under:

“38. Confession to police officer not to be proved.— No confession made to a police officer shall be proved as against a person accused of any offence.”

25. In view of Article 38 of the Qanun-e-Shahadat Order, 1984, any admission of guilt allegedly made before police officials is wholly inadmissible in evidence. Although subsequent recovery, if any, may fall within the purview of Article 40 of the Qanun-e-Shahadat Order, 1984, it is a settled principle of law that mere disclosure or confession made before the police carries no legal sanctity under the provisions of the Qanun-e-Shahadat Order, 1984. In the instant case, the alleged confession of the accused, purportedly made during police investigation while in custody, is devoid of evidentiary value and cannot be used against them. No weight whatsoever can be attached to such disclosure. Any information or statement made by an accused while in police custody before a police officer is inadmissible and irrelevant under Articles 38 and 39 of the Qanun-e-Shahadat Order, 1984.

26. In the present case, the prosecution has sought to connect the appellants with the commission of the alleged offence solely on the basis of an alleged admission of guilt made before police officials, without taking into account that neither the dead body was recovered nor any cogent, reliable, or convincing circumstantial evidence was brought on record. It is a well-established principle of law that a conviction cannot be sustained on the basis of an extra-judicial confession, particularly when the same is not corroborated by independent and trustworthy evidence. An extra-judicial confession made before police officials is inherently a weak type of evidence; therefore, utmost care and caution must be exercised before placing reliance upon it, while

keeping in view all other attending circumstances of the case. Reliance in this regard may be placed upon the judgment of *Muhammad Aslam and another v. The State* (2003 SCMR 862), wherein it has been held that an extra-judicial confession allegedly made by the accused is of no evidentiary value, especially when it is made before more than one person simultaneously. It is further settled that an extra-judicial confession, being a weak piece of evidence, must be proved to have been made voluntarily, truthfully, and in unequivocal terms before it can be acted upon.

27. Undoubtedly, neither was the dead body recovered nor were the appellants produced before a Magistrate for the recording of their confessional statements, which could have lent credibility and legal admissibility to such material for use against them. Moreover, no recovery whatsoever was effected from the appellants, except for a screwdriver. In cases resting upon circumstantial evidence, it is the paramount duty of the Investigating Officer to conduct the investigation with utmost care and caution and to collect evidence forming an unbroken chain, beginning from the “last seen” circumstance up to the alleged occurrence, supported by credible, cogent, and convincing material from all quarters. Only when such circumstantial evidence is firmly established, leaving no gaps or missing links, can it lawfully form the basis for conviction.

28. The role attributed to accused Rizwan by PW-1 Sikander Bux and PW-2 Rehana Bibi is limited to the allegation that he called the abductee Nazakat, pursuant to which Nazakat allegedly went to a tea hotel and did not return home. However, it is of considerable significance that at the time of lodging the FIR, the complainant neither disclosed this fact nor nominated accused Rizwan. Furthermore, it is alleged that after his arrest, accused Rizwan purportedly confessed before the police to having murdered Nazakat with the assistance of co-accused Nadeem and Mushtaq; however, such statements, being made to police officials, are inadmissible and cannot be relied upon as evidence in the eyes of law. The screwdriver allegedly recovered at the

pointation of accused Rizwan and claimed to have been used in the commission of the offence does not match the DNA profile of the abductee Nazakat; rather, it corresponds to the DNA of the mother of the abductee, thereby negating the prosecution's assertion.

29. PW-13 Ghulam Mustafa deposed that he saw the abductee sitting at a tea hotel, allegedly waiting for accused Rizwan, and that thereafter the abductee, along with accused Rizwan, Mushtaq, Nadeem son of Fareed, Nadeem Pathan son of Rehmatullah, and Saim Nawaz, proceeded towards a street on two motorcycles. He further stated that he came to know on the following day that Nazakat had not returned home. However, it is an admitted position that this statement was recorded by the Investigating Officer after an unexplained delay of approximately more than nine months, which gravely undermines its probative value and renders it unsafe for reliance in the eyes of law, particularly in view of Article 38 of the Qanun-e-Shahadat Order, 1984. No justification or plausible explanation for such inordinate delay has been offered by the prosecution. This unexplained lapse renders the prosecution case highly doubtful. It is a settled principle of law that even a delay of one or two days in recording the statements of witnesses, if not satisfactorily explained, is fatal to the prosecution case and seriously impairs its credibility. Reliance in this regard is placed on the judgment of the Hon'ble Supreme Court of Pakistan in the case of *Muhammad Asif v. The State* (2017 SCMR 486), wherein it was held as under:

“There is a long line of authorities/precedents of this Court and the High Courts that even one or two days unexplained delay in recording the Statement of eye-witnesses would be fatal and testimony of such witnesses Cannot be safely relied upon.”

30. In this regard, reliance can also be placed on *“Muhammad Sadiq v. The State* (PLD 1960 SC 223), *Tariq Gul v. Ziarat Gul* (1976 SCMR 236), *Muhammad Iqbal v. The State* (1984 SCMR 930) and *Haroon alias Harooni v. The State and another* (1995 SCMR 1627). Similarly, it has been settled by the august

Supreme Court of Pakistan in *Muhammad Khan vs. Maula Bakhshah* (1998 SCMR 570) that:

“It is settled law that credibility of a witness is looked with serious suspicion if his statement under Section 161, Cr.P.C. is recorded with delay without offering any plausible explanation.”

31. In view of the foregoing circumstances, it is evident that the prosecution has failed to discharge its legal obligations in accordance with law and has conducted a defective and deficient investigation. Such recurring investigative shortcomings have consistently been held to create reasonable doubt, ultimately entitling the accused to the benefit thereof and resulting in acquittal.

32. As pointed out above the improvement and contradictions in the evidence of prosecution witnesses, they have discarded the veracity of their statements, which are sufficient to render the entire case of the prosecution to be highly doubtful. In this context, the reliance is placed upon case of **‘ZAFAR vs. The STATE’ (2018 SCMR 326)**, wherein the Hon’ble Supreme Court of Pakistan has held that:-

11. Having discussed all the aforesaid aspects of the case, it has been observed by us that medical evidence, motive, recovery and for that matter absconding of appellant are merely supportive/corroborative piece of evidence and presence of eyewitnesses at the place of occurrence at the relevant time has been found by us to be doubtful, no reliance can be placed on the supportive/corroborative piece of evidence to convict the appellant on capital charge.

33. The upshot of the above discussion is that the prosecution has miserably failed to bring home the guilt of the appellants beyond reasonable doubt and it is a settled proposition of law that for giving the benefit of the doubt to an accused there doesn't need to be many circumstances creating doubts if there is a single circumstance which creates reasonable doubt about the guilt of the accused, then the accused will be entitled to the benefit. In this respect, reliance can be placed upon the case of **MUHAMMAD MANSHA v. THE STATE** reported in 2018 SCMR

772, wherein the Hon'ble Supreme Court of Pakistan has held that:-

*“4. Needless to mention that while giving the benefit of doubt to an accused it is not necessary that there should be many circumstances creating doubt. If there is a circumstance which creates reasonable doubt in a prudent mind about the guilt of the accused, then the accused would be entitled to the benefit of such doubt, not as a matter of grace and concession, but as a matter of right. It is based on the maxim, “it is better that ten guilty persons be acquitted rather than one innocent person be convicted”. Reliance in this behalf can be made upon the cases of **Tarique Parvez v. The State (1995 SCMR 1345)**, **Ghulam Qadir and 2 others v. The State (2008 SCMR 1221)**, **Muhammad Akram v. The State (2009 SCMR 230)** and **Muhammad Zaman v. The State (2014 SCMR 749)**.*

34. For the foregoing reasons, these appeals are **ALLOWED**. The impugned judgment dated 28.02.2025 passed by the Judge, Anti- Terrorism Court No.VIII, Karachi in Special Case No.352/2023 is **set aside**. Appellants Rizwan son of Muhammad Ramzan and Nadeem son of Rehmatullah in Spl. Crl. A.T.A. No.12 of 2025 and Appellant Mushtaq son of Abdul Khaliq @ Ghulam Qadir in Spl. Crl. A.T.J.A. No.18 of 2025 are **acquitted** of the charges and are ordered to be **released forthwith** if not required in any other custody case.

35. The instant appeals are disposed of accordingly.

JUDGE

JUDGE

Kamran/PS