

IN THE HIGH COURT OF SINDH AT KARACHI

Present:

*Mr. Justice Mohammad Karim Khan Agha
Mr. Justice Khadim Hussain Tunio,*

SPECIAL CRIMINAL A.T. APPEAL NO.130 OF 2020

Appellant:	Ahmed Saeed @ Saeed Bharam son of Muhammad Ismail through Mr. Amir Raza Naqvi, advocate.
Respondent:	The State through Mr. Muhammad Iqbal Awan, Additional Prosecutor General, Sindh.
Date of Hearing:	06.04.2022
Date of Announcement:	12.04.2022

J U D G M E N T

Mohammad Karim Khan Agha, J. Appellant Ahmed Saeed @ Saeed Bharam son of Muhammad Ismail was charge sheeted to face his trial in Special Case No.1146 of 2018 arising out of FIR No. 170 of 2003 under section 302/324/34 PPC r/w section 7 of ATA 1997 registered at PS Azizabad, Karachi and was convicted vide impugned judgment dated 08.09.2020 passed by the learned Judge, Anti-Terrorism Court No.X, Karachi whereby appellant was awarded sentence for the offence punishable u/s.7(a) of ATA, 1997 to undergo Life Imprisonment with a payment of fine of Rs.100,000/- for each legal heir of 06 deceased persons. In case of default in payment he shall further undergo R.I. for 01 year. He was also awarded sentence for the offence punishable u/s. 7(c) of ATA, 1997 to undergo R.I. for 10 years with fine of Rs.1,00,000/- and in default of payment he shall suffer S.I. for 01 year more. Both the sentences were to run concurrently. The benefit of Section 382-B was also extended to the accused.

2. The brief facts of the prosecution case in nut shell as narrated in the FIR are that on 02.09.2003 at about 2330 hours at Abbasi Shaheed Hospital, Karachi complainant Syed Sajid Hussain (now deceased) recorded his statement u/s. 154 Cr.PC wherein he narrated that on 02.09.2003, at about 1620 hours at House No.R/8 Gulshan Shamim Phase-II, Block 8, FB Area Azizabad, Karachi unknown

persons duly armed with deadly weapons gunned down Syed Saeed Ahmed, Syed Tayyab Hussain son of Syed Saeed Ahmed, Syed Mazhar Hussain son of Syed Saeed Ahmed, Qari Muhammad Yaqoob son of Abdullah, Muhammad Jibran son of Muhammad Iqbal, Muhammad Noman Khan son of Muhammad Iqbal Khan by making indiscriminate firing upon them, due to unknown personal grudge/enmity and as a result of such firing one person namely Umair-u-ddin also became severely injured, as a result of brutal / deadly firing of armed culprits who fled away from the crime scene and injured were shifted to Abbasi Shaheed Hospital, Karachi immediately for their medical treatment, where the doctors declared above named 06 injured persons as dead. Accordingly, on the same day, at about 2355 hours, above statement of the complainant was incorporated into the FIR book.

3. After usual investigation the case was disposed of in "A" class. When however the accused returned from Dubai in 2016 he was taken into custody by the rangers under the ATA where he later confessed to the police about the commission of this crime and many others. Thereafter the case was re opened and the accused was arrested in this case whilst already in custody of the police and after further investigation the case was challaned and the appellant was sent up to face trial. The appellant pleaded not guilty to the charge and claimed trial.

4. The prosecution in order to prove its case examined 09 witnesses and exhibited various documents and other items. The statement of accused was recorded under Section 342 Cr.P.C in which he denied all the allegations leveled against him and claimed false implication. The accused neither examined himself on oath nor produced any DW in support of his defence case.

5. After hearing the parties and appreciating the evidence on record the trial court convicted the appellant and sentenced him as set out earlier in this judgment. Hence, the appellant has filed this appeal against his conviction.

6. The facts of the case as well as evidence produced before the trial court find an elaborate mention in the impugned judgment dated 08.09.2020 passed by the trial court and, therefore, the same may not be reproduced here so as to avoid duplication and unnecessary repetition.

7. Learned counsel for the appellant has contended that the only alleged eye witness against him did not recognize him in court; that the only evidence against him was his retracted judicial confession which he had been forced to

sign and that the procedures for carrying out judicial confessions had been violated; that there was not a single piece of corroboratory evidence against him and that he had been convicted at the behest of the police/rangers on account of his political affiliation and that for any or all of the above reasons the appellant by being extended the benefit of the doubt should be acquitted of the charge. In support of his contentions, he placed reliance on the cases of **Tariq Pervez v State** (1995 SCMR 1345), **The State through P.G. Sindh and others v. Ahmed Omar Sheikh and others** (2021 SCMR 873), **Ali Ahmad and another v. The State and another** (PLD 2020 Supreme Court 201), **Muhammad Ismail v. The State** (2017 SCMR 713), **Bahadur Khan v. The State** (PLD 1995 Supreme Court 336), **Azeem Khan and another v. Mujahid Khan and others** (2016 SCMR 274), **The State v. Minhun alias Gul Hassan** (PLD 1964 Supreme Court 813), an unreported Judgment of High Court of Sindh in Special Criminal A.T.A. No.356 and 357 of 2018 (**Syed Mehroz Mehdi Zaidi v. The State**) dated 21.01.2020 and another unreported Judgment of High Court of Sindh in Special Criminal A.T.A. No.163 of 2018 (**Syed Mehroz Mehdi Zaidi v. The State**) dated 25.11.2019.

8. On the other hand learned Additional Prosecutor General Sindh has fully supported the impugned judgment and in particular contended that the retracted judicial confession can be safely relied upon as it was made voluntarily and that all procedural safeguards relating to the recording of the judicial confession by the magistrate had been complied with and even otherwise if there were some defects in the procedural requirements these were curable. When confronted by the court he conceded that there was no other corroboratory evidence against the appellant apart from the factum that the murder of 6 innocent people did in fact take place as narrated by the appellant in his confession at the same date, time and location; that we could safely convict the appellant based on his confession alone as no corroboration was required and as such the prosecution had proved its case against the appellant beyond a reasonable doubt and as such his appeal should be dismissed. In support of his contentions, he placed reliance on the cases of **Manjeet Singh v. The State** (PLD 2006 Supreme Court 30), **Solat Ali Khan v. The State** (2002 SCMR 820), **Muhammad Sharif v. The State** (1969 SCMR 521), **Abdul Haq and another v. The State** (2015 SCMR 1326), **Nazeer alias Wazeer v. The State** (PLD 2007 Supreme Court 202), **Mst. Naseem Akhtar and another v. The State** (1999 SCMR 1744) and **Majeed v. The State** (2010 SCMR 55).

9. We have heard the arguments of the learned counsel for the appellant as well as learned Additional Prosecutor General and have gone through the entire evidence which has been read out by learned counsel for the appellant, and the impugned judgment with the able assistance of learned counsel and have considered the relevant law including the case-laws cited at the bar.

10. Based on our reassessment of the evidence of the PW's, especially PW 1 eye witness Syed Waqaur Hussain and the other prosecution witnesses especially the medical evidence and other medical reports including the post mortem reports of the deceased, recovery of empties and blood stained earth at the crime scene we find that the prosecution has proved beyond a reasonable doubt that Syed Saeed Ahmed, Syed Tayyab Hussain, Syed Mazhar Hussain, Qari Muhammed Yaqoob, Muhammed Jibran and Muhammed Noman Khan (collectively referred to as the deceased) were all shot and murdered by firearm on 02.09.2003 at about 1620 hours outside House No.R/8 Gulshan Shamin Phase II Block 8 FB Area Azizabad Karachi.

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

12. We are acutely aware that this is a very sensitive case where 6 innocent persons have been murdered by fire arm in the most brutal fashion in broad day light without apparent reason by an alleged target killer who according to his retracted judicial confession (which we shall turn to later) had allegedly carried out many such crimes. However, as Judges we have to put such aspects aside and decide the guilt or innocence of the appellant by dispassionately assessing the evidence before us and coming to a decision which is supported by the evidence on record and the governing law and not by our emotions or own personal feelings. We can only be guided by the evidence and the law and nothing else. This aspect of the judges role in such like cases was emphasized in the case of *Naveed Asghar V State* (PLD 2021 SC 600) at P.617 para 10 in the following terms:

"Heinous nature of allegations and appraisal of evidence"

10. The ruthless and ghastly murder of five persons is a crime of heinous nature; but the frightful nature of crime should not blur the eyes of justice, allowing emotions triggered by the horrifying nature of the offence to prejudice the accused. Cases are to be decided on the basis of evidence and evidence alone and not on the basis of sentiments and emotions. Gruesome, heinous or brutal nature of the offence may be relevant at the stage of awarding suitable punishment after

conviction; but it is totally irrelevant at the stage of appraising or reappraising the evidence available on record to determine guilt of the accused person, as possibility of an innocent person having been wrongly involved in cases of such nature cannot be ruled out. An accused person is presumed to be innocent till the time he is proven guilty beyond reasonable doubt, and this presumption of his innocence continues until the prosecution succeeds in proving the charge against him beyond reasonable doubt on the basis of legally admissible, confidence inspiring, trustworthy and reliable evidence. No matter how heinous the crime, the constitutional guarantee of fair trial under Article 10 A cannot be taken away from the accused. It is, therefore, duty of the court to assess the probative value (weight) of every piece of evidence available on record in accordance with the settled principles of appreciation of evidence, in a dispassionate, systematic and structured manner without being influenced by the nature of the allegations. Any tendency to strain or stretch or haphazardly appreciate evidence to reach a desired or popular decision in a case must be scrupulously avoided or else highly deleterious results seriously affecting proper administration of criminal justice will follow. It may be pertinent to underline here that the principles of fair trial have now been guaranteed as a Fundamental Right under Article 10 A of the Constitution and are to be read as an integral part of every sub-constitutional legislative instrument that deals with determination of civil rights and obligations of, or criminal charge against, any person" (Bold added)

13. After our reassessment of the evidence on record apart from the actual murders of the deceased which we have already found the prosecution had proven as fairly conceded by the prosecution and as confirmed by the IO in his evidence the only piece of evidence against the appellant is his retracted judicial confession. PW 9 Muhammed Hussain who was the IO of the case in his evidence specifically states that except S. 164 Cr.PC statement of the accused before the judicial magistrate and admission of guilt before me there is no evidence available on the record against the accused.

14. The question therefore is whether we can safely convict on the basis of the retracted judicial confession of the accused without any corroboration. We set out the retracted judicial confession for ease of reference below;

**On Oath Statement u/s: 164 Cr.PC.
F.I.R. No.330/2009, P.S. Nabi-Bakhsh.**

"I, Ahmed Saeed @ Bharam S/o Mohammad Ismail, R/o. House No.256, Sharfabad near Tooso Restaurant Bahadurabad Karachi, Temporary resident of House No.1201, Al-Javier Building main Altawan Area Sharjah Dubai, do hereby state on oath that I belong to MQM (A). In 1989 I joined Mutehda Unit No.30 Ranchore-Lane Sector as a member/worker. I remained committee member of above unit from 1994 to 1995. In the end of 1993 I remained member of target killing teams of Zafar Tension and Habib Langra. I have committed several wardats of murder, and attempt to murder, for which I received

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instructions from MQM leadership comprising Nadeem Nusrat, Farooq Sattar, Haider Abbas and Wasim Akhtar and Mohammad Wasim etc. After completing the task I regularly used to inform them. On the instance of these persons, I constituted the target killing teams in Landhi, Korangi, Malir, Shah Faisal Colony and Gulistan-e-Jauher. Besides this being residing in Dubai I used to receive instructions from Mohammad Anwar. I used to receive the area reports from target killing teams.

In 1994 on the order of Habib Langra, I accomplished with my other accomplices Fahim Mirchi, Feroz Fouji and Nasir Bilal had committed the murder of Hameed Ghanchi at Ranchore-Lane Bus Stop by making firing with T.T. Pistols.

On 09th July-1994 at 07:15 Hrs of the evening time, I alongwith Feroz Fouji and other Mutehda workers after abducting A.S.I. Maqbool Awan committed his murder by making firing with T.T. Pistols and threw his dead-body in Ranchore-Lane near UBL Bank.

On 05th June-1995 during strike call of Mutehda, I alongwith other accomplices Javed vegetable seller and Shahid had committed the murder of two police personnel Hawaldar Aslam and constable Murtaza by making firing at Sitara Market Ranchore-Lane at about 08:30 Hrs of the evening time.

On 03rd December at about 03:30 Hrs, I alongwith my accomplices Fahim Mirchi, Habib Langra, Rizwan Arain and Nasir Bilal had committed the murder of spy Mohammad Ejaz at Moti-Mention Ranchore-Lane by making firing with T.T. Pistols.

I, Habib Langra and Ayub used to manufacture cracker for explosion and used the same for spreading of terrorism/harassment in the area during Mutehda strike in the year 1994/1995.

In 1994/1995 in order to make successful the Mutehda strike, I alongwith my accomplices Habib Langra (died), Fahim Mirchi (arrested), Naeem, Kamran and other 25/30 workers of Mutehda Unit-30 Sector (Ranchore-Lane) had set-fired 15/16 vehicles by sprinkling petrol in Ranchore-Lane.

In 1995, I, Rashid Shaikh, Feroz Fouji, Nasir Bilal, Nayab Haider, Asif Khatri, Saulat Mirza (hanged) and 10/15 target killers of North-Nazimabad and Liaquatabad Sectors had committed Rocket assaults through and made firing at Garden Police Headquarter.

On 12th March-1995 at about 10:00 Hrs of the night time, I alongwith target killing teams of Zafar Tension, Ajmal Pahari and my other accomplices namely Qamar Tedy, Asif Zaidi, Rashid Shaikh, Nasir Bilal, Saeed Bengra, Arshd K-2, Nayab Haider, Rehan Khan and 09/10 other target killers of Mutehda had committed the murder of 13 Haqeeqi workers by making firing with T.T. Pistols at Asif Colony the area of Pak Colony.

On 09th October-1995, I alongwith the Mutehda target killers Rashid Shaikh, Nasir Bilal, Ajmal Pahari, Kashif David, Feroz Fouji, Nayab Haider, Ehtesham and other 4/5 target killers being armed with Rocket Launchers, T.T. Pistols & Kalashanikovs made firing at Sindh Secretariat and blasted the motorcycle laden with explosive substance.

In 1997, I alongwith Ajmal Pahari, Nadeem Moulana, wife of Saeed Ganja and Rizwan Sukkur wala had blast a bomb in Sessions Court Sukkur.

In 1997, I alongwith Ajmal Pahari, Zafar Tension, Fahim Mirchi and Zubair Chota had blast the motorcycle laden with explosive substance in convention of PML(N) at Sohrab-Goth.

In 1997, upon the orders of Mutehda Leader Mohammad Anwar, I alongwith Rashid Akhtar @ Rashid Shaikh, Zafar Tension, Ajmal Pahari, Zeeshan Hakla, snatched the cars and motorcycles from different areas of Karachi and after loading IEDs explosive substance in the same got blasted at Jcn_g Press I.I. Chundrigar Road, Keamari and Tariq Road.

In 1998, I alongwith my other accomplices Asif Dahdan, Noshad, Faisal Lamba, Wasim Abbas, Rasheed Akhtar, Nadeem Marble had committed murder of two police personnel by making firing at APC of Police at near MQM(A) Unit-No.63, Liaquatabad.

On 02nd September-2003 at about 04:30 Hrs, I alongwith my other accomplices namely Faisal Lamba, Wasim Abbas, Wasim Commando, Haider Gaddi @ Chutiya and other 10/12 Mutehda workers had committed the murder of Saeed Ahmed, Tayyeb, Mazhar, Nauman, Qari Yaqoob and Umairuddin by making firing at Azizabad.

On 18th October-2003 at about 07:30 Hrs of the evening time, I alongwith my brother Rauf Nagori, who is trained from Raw Agency and now a days he is Raw agent in South Africa. I alongwith him as well as the target killing team of Wasim Commando had committed the murder of Muzaffar @ Doctor Dean by making firing at near Liaquatabad.

On 14th September-2004 at about 09:00 p.m, upon the orders of Ajmal Pahari, I alongwith the target killing teams of Wasim Commando and Sajid Shatru had committed the murder of Mutehda worker Tariq Zeeshan by making firing at Nasir Colony Korangi.

On 24th October-2004 at about 09:30 p.m, I alongwith the target killing teams of Sajid Shatru had committed the murder of Ashiq Hussain @ Babul Mirasi (dacoit) by making firing at Sector-32/D, Nasir Colony Koranig.

In 2004/2005, Mohammad Anwar through phone from London called me in Fandaq Apartment Dubai. When I arrived in Hotel then Mohammad Anwar, Liaquat Qureshi (died), Ajmal Pahari (arrested) and Imtiaz Commando were already present thereat. Mohammad Anwar disclosed me that Altaf Hussain ordered him to constitute target killing teams in Karachi for committing the murder of Anti people of MQM, and you all may constitute the target killing teams in Karachi, and he asked Shakeel Umar that "you will support and pay them money for expenditure".

In 2005, I alongwith the target killing teams of Sajid Shatru and Wasim Abbas had committed the murder of car riding unknown Haqeeqi worker by making at Liaquatabad-No.4.

On 20th March-2005 at about 07:00 Hrs of the evening time, I alongwith the target killing team of Sajid Shatru had committed murder of the worker of PML(Q) namely Ahsan Aziz.

In June-2005, I alongwith the target killing team of Sajid Shatru had committed the murder of cable operator Irshad in backside lane of Edhi-Home at "J" area Korangi-No.5.

In July-2005 at about 09:30 Hrs of the evening time, I alongwith the target killing team of Sajid Shatru had committed the murder of Zubair Tunda by making firing at near Matkaywali Pulya (culvert), Korangi-No.2-1/2.

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In 2006, I alongwith Sajid Shatru, Mani and Dr. Rasheed had committed the murder of car riding underworld worker Anees by making firing at near the corner of Gulistan-e-Jauhar.

On 18th February-2006 at about 03:30 p.m, I alongwith the target killing team of Sajid Shatru had committed the murder of Haqeeqi worker Shah Nawaz by making firing at Sector-51/B, Korangi-No.6.

On 24th July-2006 at about 07:00 Hrs of the evening time, I alongwith the target killing team of Sajid Shatru had committed the murder of Qadir Bux @ Babu Baloch by making firing at Jumma Goth Korangi.

On 20th September-2006 at about 02:30 Hrs, I alongwith the target killing team of Sajid Shatru after kidnapping Saleem Kan-Kata (dacoit) on gunpoint from Landhi-No.6 and committed his murder by making firing at Karbala Ground near Navy Headquarters.

In 2007 at about 10:30 Hrs of the night time, I alongwith Tahir Lamba, Naeem Mullah, Arif, Kashif David and Zakir had committed murder of the workers of Sunni-Tahreek namely Danish and his unknown accomplices by making firing at Market Road Ranchore-Lane.

In 2007 at about 08:30 Hrs, I alongwith the target killing team of Haider Gaddi @ Ali Chutiya had committed the murder of Nadeem @ SP by making firing at near Maskan Chowrangi.

In 2007 at about 03:30 Hrs, of the noon-time, I alongwith the target killing team of Sajid Shatru had committed the murder of former joint Sector Incharge of Mutehda namely Imran Khan by making firing at near 2-K Bus Stop Sakhi-Hassan.

On 29th February 2007 at about 12:00 Hrs, of the noontime, I along with the target killing team of Sajid Shatru had committed the murder of unknown Haqeeqi worker by making firing at Ilyas Goth.

In December, 2007 at about 07:00 Hrs, of the morning time, I alongwith the target killing team of Sajid Shatru after kidnapping three Bengali dacoits on gunpoint from 100-Quarters Sector-51/C, brought at Machli-Morr 100-Quarters Korangi and committed their murder by making firing.

In 2008, Muhammad Anwar phoned me from London and ordered me, Imtiaz Commando and Ajmal Pahari to commit murder of Builder Piyar Ali Siddique. I alongwith Wasim Abbas, Dr. Rasheed and Mehmood Commando had committed the murder of Builder Piyar Ali Siddique by making firing in Defence.

In 2008 at about 07:30 Hrs, of the evening time, I alongwith the target killing team of Sajid Shatru had committed the murder of two unknown worker of PPP by making firing at Singer Chowrangi.

In 2008, I along with the target killing team of Ajmal Pahari, Dr. Rasheed and Naeem Mullah had committed the murder of Mutehda worker namely Imran @ Major by making firing in the street of Imam-Bargah, Jillani Masjid, Garden.

In April-2008 I alongwith the target killing team of Mutehda leaded by Arshad Chitta and other accomplices namely Feroz Fouji, Aslam Acham, Naeem Mullah, Muhammad Imran Saeed and 2/3 other target killers had set fired in Tahir Plaza near City Court, resulting which four opponent lawyers of Mutehda were burnt fired and died. We also caused damages to the vehicles of lawyers parked in the parking area.

On 12th August-2008 at about 02:30 Hrs, I along with the target killing team of Sajid Shatru had kidnapped the Haqeeqi worker namely Sagheeruddin after stopping Mazda coach at Babar Market Landhi and committed his murder by making firing at Murtaza Chowrangi.

On 24th August-2008 at about 03:30 Hrs, I alongwith the target killing team of Sajid Shatru had committed the murder of Haqeeqi worker Mazhar Kala by making firing at Bus Stop Korangi No.5.

In 2009, I alongwith Mutehda target killers namely Mani, Tahir Rehan @ Lamba, Ajmal Pahari, Abdullah, Dr. Rasheed, Asif, Arif Kala Bacha & Shaoib had committed murder of Haqeeqi Vice Chairman namely Badar Iqbal and his driver by making firing at near Light House M.A. Jinnah Road.

In 2009, I alongwith Haider Gaddi, Dr. Rasheed, Tahir Lamba and other accomplices had committed murder of MQM Haqeeqi worker namely Abrar Hussain Zaidi by making firing with our respective arms at Sitara Market near Sukkur Bakery Ranchore Lane.

On 03rd June-2009 at about 07:30 Hrs of the morning time, I alongwith the target killing team of Sajid Shatru had committed the murder of Haqeeqi worker namely Naveed Panda by making firing at Chiragh Hotel Landhi.

On 5th January-2010 at about 05:00 Hrs, I alongwith the target killing team of Sajid Shatru had kidnapped the haqeeqi worker namely Aamir, brought at Korangi No.5 1/2 and committed his murder by making firing.

On 18th February-2010 at about 08:30 Hrs. I alongwith Dr. Rasheed and Shani had committed the murder of bookie Asif Bhoot by making firing at Bantwa-Nagar, Bundani Colony, Liaqatabad.

On 31st July-2010 at about 08:30 Hrs., I alongwith Ajmal Pahari, shafiq Dhobi, Wasim Commando, Tahir Mullah, Kashif David, Ali Chutiya, Raheel @ Mani, Bilal @ Shani had committed the murder of three workers of ANP namely Naveed, Irfan and Imran by making firing with Kalashnikov at Banaras during clash between Pathan Mohajir.

On 04th August-2010 at about 03:30 of the morning time, I alongwith the target killing team of Sajid Shatru made firing with Kalashnikov & Pistols at ANP office in Zia Colony Korangi, resulting which two worker of ANP namely Amjad Khan and Aziz Ahmed were died while Naidr Ali, Ayub, Ahsan and Imran become injured.

On 24th February-2011 at about 07:30 Hrs. I alongwith the target killing team of Sajid Shatru had committed the murder of two unknown workers of PPP by making firing at near Singer Chowrangi.

On 24th July-2012 at about 03:00 p.m. I alongwith the target killing team of Sajid Shatru and the boys of Joint Sector Incharge Saleem Inqalabi made firing with Kalashnikov and 9-MM Pistols at the vehicle of Afaq Ahmed at near PSO Patrol-Pump Landhi, resulting with Afaq Ahmed's Gunman/PC Mohammad Faisal died and 03 persons were injured.

In the year of 2013 due to acceleration in operation the aforesaid leadership called me at 90 and ordered me to go to Iran. For which my passport was got renewed, and in September/October 2013, I, Anwar Qaim-Khani and Sajid were brought by means of Corolla Car at Gawadar Iran border, where the person named Haji alongwith his two sons welcomed us. Since, Haji was continuously remained in contact with the aforesaid leadership, therefore, he welcomed us. After passing two days, he got arranged our meeting with two Irani intelligence Officers namely Ali and Zain-ul-Abideen, who intimated about high leadership of MQM that they will help us, but in return they have to do some necessary works in Karachi. Wherein the important work was the murder of Warriors (Jihadis),

who are involved in Shia Community killings on the instance of Govt. of Pakistan according to Irani Officers. We rest assured to Irani Officers that we shall make every possible cooperation with them. After two months stay in safe house in Iran, we had gone to Dubai on the order of high leadership and while staying thereat, we remained following the orders of high leadership.

I have repented from Almighty Allah, and am satisfied with this statement.

Law on retraction of judicial confessions.

15. 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)

16. It is settled law that a retracted judicial confession can be legally admissible and used against its maker in certain circumstances. In the later case of **Muhammad Amin V The State** (PLD 2006 SC 219) it was held at P.224 Para 9 as under;

"9. There is no cavil to the proposition that conviction could have been awarded on the basis of retracted confession which proposition was examined in case of Mst. Joygun Bibi v. The State PLD 1960 (SC (Pak) 313 as under:-

"We are unable to support the proposition of law laid down by the learned Judges in this regard. The retraction of a confession is a circumstance which has no bearing whatsoever upon the question whether in the first instance it was voluntarily made, and on the further question whether it is true. The fact that the maker of the confession later does not adhere to it cannot by itself have any effect upon the findings reached as to whether the confession was voluntary, and if so, whether it was true, for to withdraw from a self-accusing statement in direct face of the consequences of the accusation, is explicable fully by the proximity of those consequences and need have no connection whatsoever with either its voluntary nature, or the truth of the facts stated. The learned Judges were perfectly right in first deciding these two questions, and the answers being in the

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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)

17. 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.

18. Notably it was also held that if both (a) and (b) were satisfied that even if there were some irregularities in recording of a confession it would not warrant disregarding of the same. In our view however following the case of Azeem Khan V Mujahid Khan (2016 SCMR 274 **such irregularities must be of a minor nature and must not have detracted from either the voluntariness or truthfulness of the confession.**

19. 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.

20. 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.

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21. 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.

22. Averting to the procedural safe guards which are applicable to the recording of confessions such principles were set out in the case of **Azeem Khan v. Mujahid Khan** (2016 SCMR 274) which concerned judicial confessions under S.164 Cr.PC before judicial magistrates.

14. The judicial confessions, allegedly made by both the appellants are the material piece of evidence in the prosecution hand, therefore, we would deal with the same in the first instance.

15. Keeping in view the High Court Rules, laying down a binding procedure for taking required precautions and observing the requirements of the provision of section 364 read with section 164, Cr.P.C. by now it has become a trite law that before recording confession and that too in crimes entailing capital punishment, the Recording Magistrate has to essentially observe all these mandatory precautions. The fundamental logic behind the same is that, all signs of fear inculcated by the Investigating Agency in the mind of the accused are to be shedded out and he is to be provided full assurance that in case he is not guilty or is not making a confession voluntarily then in that case, he would not be handed over back to the police. Thereafter, sufficient time for reflection is to be given after the first warning is administered. At the expiry of that time, Recording Magistrate has to administer the second warning and the accused shall be assured that now he was in the safe hands. All police officials whether in uniform or otherwise, including Naib Court attached to the Court must be kept outside the Court and beyond the view of the accused. After observing all these legal requirements if the accused person is willing to confess, then all required questions formulated by the High Court Rules should be put to him and the answers given, be recorded in the words spoken by him. The statement of accused be recorded by the Magistrate with his own hand and in case there is a genuine compelling reason then, a special note is to be given that the same was dictated to a responsible official of the Court like Stenographer or Reader and oath shall also be administered to such official that he

would correctly type or write the true and correct version, the accused stated and dictated by the Magistrate. In case, the accused is illiterate, the confession he makes, if recorded in another language i.e. Urdu or English then, after its completion, the same be read-over and explained to him in the language, the accused fully understand and thereafter a certificate, as required under section 364, Cr.P.C. with regard to these proceedings be given by the Magistrate under his seal and signatures and the accused shall be sent to jail on judicial remand and during this process at no occasion he shall be handed over to any police official/officer whether he is Naib Court wearing police uniform, or any other police official/officer, because such careless dispensation would considerably diminish the voluntary nature of the confession, made by the accused.

16. In the instant case, the Recording Magistrate namely, Ch. Taufiq Ahmed did not observe least precautions, required under the law. He was so careless that the confessions of both the appellants were recorded on oath, grossly violating the law, the same, therefore, has rendered the confession inadmissible which cannot be safely relied upon keeping in view the principle of safe administration of justice.

17. The Recording Magistrate committed successive illegalities one after the other as after recording the confessions of the appellants on oath, both were handed over to the same police officer, who had produced them in the Court in handcuffs. This fact bespeaks volumes that the Recording Magistrate was either not knowing the law on the subject or he was acting in the police way desired by it, compromising his judicial, obligations. This careless attitude of the Magistrate provided premium to the Investigating Agency because it was thereafter, that the recoveries of the so-called incriminating articles were made at the instance of the appellants, detail of which is mentioned above.(bold added)

23. In the case of **Muhammad Ismail and others v. The State** (2017 SCMR 898) 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

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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".

24. Like wise in the case of Fazal Rehman (Supra) it was held as under at P.251;

"(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)**

25. Turning to the judicial confession of the appellant we find that we have grave doubts that it was made voluntarily or was even made at all for the following reasons;

- (a) In his S.342 Cr.PC statement the appellant denied making any confession before any magistrate and stated that it was already prepared by the police and his signature was only added.
- (b) It also begs the question why after 13 years of the offence in question he would admit to it now knowing that it carried the death penalty when there was not a shred of evidence against him in any such case. This does not appeal to reason, logic or commonsense.

(c) According to the prosecution he was brought before the judicial magistrate to record his confession which he did after being given due reflection time. However it beggars belief that before the magistrate he was able to write out a 10 page detailed statement in manuscript without any corrections or crossings out or spelling mistakes listing in chronological order all the crimes which he had committed from 1994 to 2016 a period spanning over 20 years which amounted to around 47 separate incidents in which he was able to name all of his accomplices on each occasion, who they murdered, where the murders took place and the date and the time of such murders. It is simply not believable that he was able to prepare such a detailed and precise confession of so many murders over a span of 20 years without any kind of dairy or other aid. To produce such a list of occurrences as mentioned in his confession you would need to either have a photographic memory or computer like memory. We find that it is quite apparent that the list was prepared for him and that he was made to sign it and as such the confession was not made voluntarily.

(d) With regard to the case in hand he confesses as under;

"On 02nd September-2003 at about 04:30 Hrs, I alongwith my other accomplices namely Faisal Lamba, Wasim Abbas, Wasim Commando, Haider Gaddi @ Chutiya and other 10/12 Mutehda workers had committed the murder of Saeed Ahmed, Tayyeb, Mazhar, Nauman, Qari Yaqoob and Umairuddin by making firing at Azizabad"

It is significant to note that PW 1 Syed Waqar Hussain who witnesses the incident did not recognize him in court as being present at the time of the incident. PW 1 also contradicts the accused confession by stating in his evidence that 03 persons on two motor bikes escaped from the scene yet in the confession 4 people are specifically named along with 10 to 12 others. So who were the 10 to 12 others which PW 1 ought to have seen if the confession is true?

(e) That in his written statement which was part of his S.342 Cr.PC statement the appellant has stated as under along with documentary proof in the shape of passport and visa's and death certificate which gives weight to his contention that he was made to sign a pre prepared confession;

**"WRITTEN STATEMENT UNDER SECTION 265-F(5)
OF CRIMINAL PROCEDURE CODE.**

I. Sir, I am innocent, and have no concern with the alleged offence, sir I am filing this written statement to reply question, "Do you want to say anything else" and prayer that the same may be treated as reply of above mentioned question.

II. Sir, I was arrested on 14.03.2016 in Dubai and brought to Karachi between the night of 21/22/3/2016, and thereafter I was detained for 90 days by the rangers person under section 11 EEEE of Anti-Terrorism Act 1997, nothing against me was found, and on expiry of 90 days remand, I was handed over to Nabi Bux, police by the rangers personals on 21.06.2016, SIP Choudhry Tarique an

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official of police station Nabi Bux had come at Metha Ram Hostel, Karachi and shown my arrest in case FIR No.330/2009 under section 302/34 PPC of police station Nabi Bux Karachi, as per entry No.34 dated 21.06.2016 and memo of formal arrest dated 21.06.2016 I produced the said entry and memo of arrest as Annexure A/1 and A/2 respectively and brought me at police station Nabi Bux and on the following day I was produced before learned magistrate who allowed my physical remand for 5 days in police custody and on its expiry I was again produced before the learned magistrate, who allowed three more days as my physical remand in police custody on 27.06.2016 I was again produced before the magistrate, sir it is pointed out that all the time when I has produced before the magistrate, the rangers personal were also available and took part in all the proceeding, sir where my signature was obtained on pre drafted papers, sir during detention in rangers I was badly torture/threats and put in pressure for signing the same, sir I had not given any confessional statement as alleged by the prosecution, before the Magistrate, I say that the alleged statement has been prepared / drafted by the police with in collusion and as per direction of rangers personals, and they have handed over its draft the learned magistrate, who had copied it, it is not my statement I am innocent and have been falsely implicated in false cases due to my past relationship with MQM political party.

III. Sir it is pertinent to mention over here, that this fact has been established from the alleged confessional statement that some of the incidents alleged admitted by me, took place, when I was not even in Pakistan, i.e. (i) incident shown took place on 20.03.2005, of murder of Ahsan Aziz case, I was at Dubai, from 07.03.2005 to 26.03.2005 (ii) incident shown took place on 20.09.2006 regarding murder of Saleem Kunkata, case, I was abroad from 27.08.2006 to 21.09.2006 (iii) incident shown took place on 11.06.2005 of Imran case, I was abroad from 07.06.2005 to 19.07.2005 I produce the copy of passports and travelling history regarding my non availability in Pakistan in the alleged days of incidents are attached herewith are marked as annexed "B/1 to B/3" respectively.

IV. It is submitted, that in alleged confessional statement, it is mentioned that in the incident of Tahir Plaza which took place in the year 2008, I admitted that I committed the alleged incident alongwith other including Feroz Fuji this fact has been falsified that said Feroz Fuji has already dead since 2005. Copy of his death certificate and funeral slip are attached herewith and makred as annexure C/1 and C/2 respectively.

Sir, it is further pointed out that the learned judicial magistrate namely Syed Imran Imam Zaidi was posted since a long tenure with the jurisdiction of police station Nabi Bux Karachi and it is submitted that any suspect arrested by the law enforcement agency from whatsoever are, or jurisdiction of any other police station of Karachi their after are shown alleged recovery of arms and ammunition from the jurisdiction of Police station of Nabi Bakhsh Karachi and registered cases and shown obtained their confessional statements in front of the said Magistrate, more over the learned Magistrate has admitted in his evidence about recording of such nature and some formats confessional statements of suspects namely Minhaj, Uzair Baloch and others, sir the learned Magistrate also recorded confessional statements of one Raees Mama, Imran Saeed, Syed Mehroz Mehdi,

Zaidi and others as mentioned above. Copies of some statements are attached herewith and marked as annexure "D/1" to D/4 respectively for the kind perusal of this Hon'ble Court.

Sir, I was falsely involved in this blind FIR without any evidence nor I gave any confessional statement voluntarily as alleged, now I am at mercy of this Hon'ble Court and prayer for justice from this Hon'ble Court. (bold added)

Sd/-15.08.2020
(AHMED SAEED @ SAEED BARHAM)
ACCUSED"

26. The above statement and attached documents show that the accused was not in Pakistan at the time of some of the murders which he confessed to and in some cases his accomplices were already dead at the time of the murder referred to. This gives further credence to the fact that the accused was made to sign a pre prepared confession as alleged by him and cannot be simply brushed aside.

27. Thus, when the above points are all taken together we find that by giving the appellant the benefit of the doubt the confession of the appellant was not made voluntarily and even the truth of some of its contents are doubtful and as such we disregard the same and place no reliance on it.

28. Even otherwise, we find countless significant procedural errors in the recording of the judicial confession which in our view tend to caste doubt on whether it can be safely relied upon. For example,

- (a) It was made under oath
- (b) The accused was brought to make his confession by the police and was handed back to the police after making his confession.
- (c) He was not warned that the confession may be used against him in his evidence.
- (d) Such procedural irregularities and others are amply demonstrated by the cross examination of the judicial magistrate by the appellants counsel before the trial court which is reproduced below for ease of reference;

CROSS TO MR. MUSHTAQ AHMED, LEARNED COUNSEL FOR THE ACCUSED SAEED BHARAM.

At the time of recording the above Confessional Statement of the present accused, my length of service was approximately 04½ years. No separate application for recording confessional statement of the accused Saeed was given to me in this case. I did not issue any Certified Copy of above Confessional Statement recorded by me to the I.O of this case. I have only passed the order to produce the accused after 24 hours. It is the domain of the I.O to

issue Notice U/s 160 Cr.PC to the accused. Since, it is the function of the I.O to issue Notice, therefore, said Notice is to be kept by the I.O. Since, the accused himself disclosed on Oath, therefore, I have mentioned in the 1st Line of his statement. The 1st Line/Title was verbatim written by me, as disclosed by the accused, at the time of recording his statement on oath. It is incorrect to say that the present accused had not stated in his statement on oath, as in his 1st Line, he stated the same, which I have mentioned. It is a fact that in the Certificate, I have not mentioned that accused had recorded his statement on Oath, Vol. says that since, the certificate was issued by me and was signed by me and for this reason, I did not mention the above fact. It is a fact that the custody of accused Saeed Bharam was produced by SIO Tariq Mehmood of PS Nabi Bux, Karachi. The arrest of the accused is mentioned in the Column of the 1st Page of the Statement.

Note:

At this stage, learned advocate for the accused confronted Pro Forma to this witness and by looking to the same, he replied in affirmative.

It is not in my knowledge that accused Saeed Bharam was arrested by the I.O of this case from Karachi Airport on 22nd March, 2006. It is not part of the record that the period of the detention of the accused in this case has to be disclosed. It is not in my knowledge that at the time of production of accused Saeed Bharam before me, I did not know whether he was on Remand U/s. 11 EEEE of ATA, 1997 for 90 days. It is not part of the Record regarding attach of FIR of this case, nor, it has been mentioned by me. It is incorrect to say that the custody of accused Saeed Bharam was brought by Rangers before me, for recording his statement and thereafter, I returned back the custody of the accused to Rangers. The custody of the present accused was handed over to same Police official, who had brought the accused before me after recording statement of the accused. I do not remember, whether, at that time, SIO was in proper Uniform or not. It is a fact that no Jail Warrant was attached at the time of production of the accused before me. I had not issued any Jail Warrant after recording the statement of the present accused Saeed Bharam. It is incorrect to say that I have violated the provisions of Rule 10 of Federal Capital and Sindh Courts Criminal Circular, Vol. says that at that time, the accused was remanded from the Administrative Judge of ATCs, Hon'ble High Court of Sindh at Karachi, therefore, he was returned back to the I.O for his production before the Administrative Judge of ATCs, Hon'ble High Court of Sindh at Karachi. It is a fact that above fact is not mentioned in my order or in any part of the record. I have recorded approximately 25 Confessional Statements of different culprits up till now. The jurisdiction of PS Nabi Bux remained with me for the period of 04½ years. It is incorrect to say that during my tenure, the Rangers officials got recorded all the confessional statements before me, by involving the accused persons in High Profile Cases by fixing the cases U/s. 23(i)A SAA, 2013 and 4/5 Exp. Subs Act, 1908 of P.S Nabi Bux, Karachi, Vol. says that FIR bearing No.330/2009 was already registered at P.S. Nabi Bux, Karachi U/s. 302 PPC, prior to joining my services in,

Judiciary, as I joined the Judiciary in the year 2012, which is Fours years after the incident. I had recorded confessional statement of the one accused namely Muhammad Minhaj Qazi in FIR No.71/2016 U/s. 23(i)A SAA, 2013. Likewise, I had also recorded confessional statements of the accused Uzair Baloch and other Shia Activists and other accused persons under Arms act and Explosive Substance Act. It is incorrect to suggest that I was working under the Ranger's Authorities and accordingly Rangers would get recorded statements of the accused persons by only putting my signatures on them. Vol says that the accused also put his LTI and signature upon it. It is incorrect to suggest that all the statements were pre-drafted statements and the accused persons were never produced before me. It is incorrect to suggest that I have not mentioned during recording statement of the accused Saeed Bharam that his handcuffs were removed. It is incorrect to suggest that I did not introduce myself as a Magistrate, before the recording statement of the present accused. If, it was not on record then it is correct to suggest. It is correct to suggest that I did not remove the clothes of the accused and checked his private parts. Since, all the pages of the statement were signed by the accused, wherein, it has been mentioned regarding consent of the accused, therefore, it is incorrect to suggest that I have not asked the accused about any maltreatment. It is also incorrect to say that I did not give any second warning to the accused prior to recording his confessional statement. I had given second warning to the accused at 09:30 to 12:00 PM. It is a fact that on 28th June, 2016, it was Ramzan and summer vacations were in progress and on that day, I had recorded three confessional statements of the accused persons. It is a fact that during above day and time, I also did my Court work, so also performed as Link Judge. It might be possible that I signed after the Court hours. I have not mentioned in the record that a Chair was provided to the accused at the time of recording his confessional statement. It is a fact that I have to issue Certificate U/s. 364(3) of Cr.PC at the bottom of confessional statement. The certified copy of the statement available in the Court does not bearing the certificate. Vol. says that my handwritten certificate is available on Memo of Confessional Statement. It is incorrect to say that in the Memo of Confessional Statement that al the mandatory questions are not mentioned by me in my handwriting nor, their replies. Vol. says that they were handwritten by me. It is incorrect to suggest that neither, the present accused was produced/present before me nor, he had confessed anything. I had recorded the statement of the accused as per his verbatim, therefore, I cannot say that whether on 20th March, 2005, 20th September, 2006 and 11th June, 2005, the present accused Saeed @ Bharam was not in Pakistan. Vol. says that accused might have misstated his statement, in order to make his own statement suspicious. As per verbatim, I had recorded confessional statement of the accused Saeed Bharam therefore, whatever has been mentioned in such statement is true as per his verbatim. It is incorrect to say that the accused Saeed Bharam had disclosed while recorded his statement that he was not present in Pakistan from 07th March, 2005 to 26th March, 2005 and from 07th June, 2005 to 19th July, 2005,

as well as 27th August, 2006 to 21.09.2006. It is incorrect to suggest that the accused had not confessed the present incident of the instant FIR before me. It is incorrect to say that I had recorded the confessional statement of the accused at the wish of the Rangers. I had recorded above confessional statement of the accused in the Chamber. It is incorrect to say that I have violated the law. It is also incorrect to say that I recorded above statement of the accused by violating the Rules.

It is a fact that Pro Forma on which, statement U/s 164 Cr.PC of the accused Ahmed Saeed @ Bharam was recorded was a printed Pro Forma, wherein, questions were also printed, only reply of the accused was written by me with pen. It is incorrect to say that according to law, I have to written questions with my own handwriting. It is a fact that on 1st Page, the date and time of the arrest of accused has not been mentioned in Paragraph No.1. It is a fact that in the Certificate written by me, does not disclose regarding statement made by the accused without any inducement or pressure. It is a fact that in my certificate I have not mentioned regarding consequences of his confessional statement, Vol. says that it was informed to the accused. My certificate is according to law. I had issued Certificate according to the law. I have not mentioned that what part of the body of the accused was checked by me, before recording his statement" (bold added).

(e) There is no other corroborative/supportive evidence in respect of the retracted judicial confession which as indicated above is a requirement under the law. In this respect reliance is placed on Muhammad Ismail's case (Supra) Majeed's case (Supra) and Fazal Rehman's case (supra)

(f) We have also considered the fact that the appellant has been convicted in another case by this court based on the same confession as in this case for which we have been informed leave to appeal has been granted by the Supreme Court however since each criminal case is to be decided on its own particular facts and circumstances and in accordance with the binding authorities laid down by the supreme Court we do not consider ourselves bound by either that judgment or the **Multilines case** (1995 SCMR 362).

29. Thus for the reasons mentioned above we find that the retracted judicial confession of the appellant was not made voluntarily and it is more than likely that the appellant signed a confession previously prepared by the police/rangers which he was compelled to sign and the object of such confession was not to tell the truth as is evidenced by the scanty details given in respect of the 6 murders in this case and the fact that he was abroad during the time when some of the murders which he confessed were committed. As such as mentioned earlier we disregard the retracted judicial confession where after there is no other evidence left to connect the appellant to the offence for which he was

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charged and convicted with the result that the appellant is acquitted of the charge.

30. The upshot of the above discussion is that the appeal is allowed, the appellant is acquitted of the charge and the impugned judgment is set aside. The appellant shall be released unless wanted in any other custody case.