

IN THE HIGH COURT OF SINDH, KARACHI

Present:

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

**Criminal Appeal No.421 of 2020.
Conf. Case No.20 of 2020.**

Appellant:	Muhammad Sami @ Muhammad Adil S/o. Habib Ahmed through Mr. Muhammad Imran Meo, Advocate.
Respondent:	The State through Mr. Muhammad Iqbal Awan, Additional Prosecutor General.
Date of hearing:	11.04.2022.
Date of Announcement:	15.04.2022.

JUDGMENT

MOHAMMAD KARIM KHAN AGHA, I:- The appellant Muhammad Sami @ Muhammad Adil S/o. Habib Ahmed has preferred the instant appeal against the judgment dated 29.09.2020 passed by Learned Model Criminal Trial Court/ Additional District & Sessions Judge-I, Karachi East in Session Case No.998 of 2017 arising out of Crime No.315/2016 u/s. 302, 34 PPC registered at Police Station, Saudabad, Karachi whereby the appellant was convicted under section 302(b) PPC for committing Qatl-e-amd and was sentenced to death subject to confirmation by this court. He was also ordered to pay compensation of Rs.500,000/- to the legal heirs of the deceased. In case of non-payment of compensation the appellant was to undergo S.I. for six months more.

2. The brief facts of the case as narrated by Abdul Qadir son of Adam (complainant) are that on 01.11.2016 his brother Roshan informed him that he had to take amount of Rs.370,000/- from one Adil in respect of business of buffalos and later on Roshan went to cattle pen of Habib and Adil for receiving money but he did not return. Later on the complainant came to know that his brother Roshan was murdered and his dead body

was found at Malir Saudabad. On receiving such information, he proceeded to PS Saudabad with his relatives and came to know that his brother Roshan was murdered by Adil son of Muhammad Habib and his dead body was camouflaged and covered in dung in the cattle pen and accused Adil had been arrested for his murder. On such information the complainant and his relatives proceeded to the cattle pen where he found the dead body of his deceased brother. The dead body was shifted to JPMC where after completing formalities and other proceedings the dead body was handed over to him hence such FIR was lodged against the accused.

3. The investigation of the case was assigned to SIP Asghar Ali (I.O.). During course of investigation the I.O. visited the crime scene in presence of complainant Wali Muhammad and Muhammad Sami @ Adil and others and prepared such memo and handmade sketch of the place of incident. The I.O. proceeded to Nad-e-Ali Puliya for arrest of accused Habib Ahmed son of Muhammad Munshi on the pointation of accused Muhammad Sami at 2130 hours and prepared such memo. Thereafter, he returned to PS and recorded statements of witnesses. On 04.11.2016, I.O. obtained remand of accused to police custody till 07.11.2016. On 06.11.2016, I.O. interrogated the accused Muhammad Sami @ Muhammad Adil and during interrogation he showed his willingness to get recovered the churri from which he cut throat of the deceased. Thereafter, on 06.11.2016 at 1650 hours, I.O. along with complainant and Wali Muhammad went the place of incident and on the pointation of accused Muhammad Sami @ Muhammad Adil got recovered one churri from cattle pen lying under dung. The I.O. also took photographs of the accused at the time of recovery of crime weapon and prepared such memo and on the backside of the memo IO prepared sketch of the churri. On 07.11.2016, I.O. obtained remand of the accused persons till 10.11.2016. The I.O. interrogated the accused Muhammad Sami @ Muhammad Adil and during interrogation he disclosed that accused Habib Ahmed, Aqeel and Sikandar who were nominated accused in the FIR were not involved in the commission of offence. During interrogation accused Muhammad Sami @ Muhammad Adil further disclosed that his friend Muhammad

Asad and Faizan who were affiliated with MQM Haqiqi committed murder after planning and names of accused Asad and Faizan were not disclosed to him previously due to fear of MQM Haqiqi. On 10.11.2016 at about 1700 hours I.O. left PS with accused Sami @ Adil for arrest of newly introduced accused and on the pointation of accused Muhammad Sami @ Muhammad Adil I.O. arrested accused Faizan son of Hakim Ali from Bismillah Chowk at 1800 hours and prepared such memo. On 09.11.2016, I.O. produced accused Faizan for obtaining remand and he was remanded to police custody for one day till 10.11.2016. On 10.11.2016 I.O. dispatched case property i.e. deceased clothes and churri to chemical examiner and obtained such chemical report. On 10.11.2016 I.O. obtained further remand of all three accused till 12.11.2016. On 12.11.2016 I.O. moved application to the Court of Judicial Magistrate XXVI Karachi East for recording confessional statement of accused Sami @ Adil, but Link Judge who adjourned the proceedings to 14.11.2016 could not record confession. On 14.11.2016 I.O. brought accused Sami @ Adil for confession but the learned Judges XXVI and XXVII were on leave. The Magistrate-XXVIII verbally directed to produce the accused before concerned Magistrate but he granted remand to police custody for three days till 17.11.2016. On 17.11.2016, confession of accused was recorded by learned Magistrate XXVII. Thereafter, I.O. conducted raid for arrest of accused Asad but could not succeed in arresting him. After completion of the investigation I.O. challaned accused Sami @ Adil, Faizan and kept the names of accused Aqeel, Sikandar and Habib in column No.2 of challan. However, name of accused Asad was shown as absconder with red ink. On 10.12.2016 I.O. received information that accused Asad had been arrested by police of PS Garden, his custody was brought before the court of Magistrate-XXVI Karachi East where I.O. obtained police remand of accused for recovery. On 12.12.2016, I.O. interrogated the accused Asad and during interrogation he disclosed that the pistol belonged to him but Faizan made fire but the fire missed from the deceased. During interrogation accused Asad showed his willingness to recover the said pistol, which he concealed in same Bara under the dung. Thereafter, I.O. along with Qadir, Ubaidullah and custody of the accused proceeded to Bara for recovery of pistol and on the pointation of accused Asad he got recovered one pistol by digging dung which was wrapped in plastic shopper of white colour.

I.O. checked the pistol and found 36638 PSE written on it, I.O. prepared such memo and also prepared sketch on the back of the mashirnama. I.O. lodged FIR under s. 23(i)(a) of SAA 2013.

4. After completion investigation the I.O. submitted challan against accused Muhammad Asad, Aqeel, Habib Ahmed, Muhammad Sami @ Muhammad Adil, Muhammad Faizan and Sikandar for offence punishable U/s. 302/34 PPC. The Judicial Magistrate took cognizance of the case and sent up the same to the Sessions Judge Karachi East as the case was exclusively triable by the Court of Sessions, wherefrom the above noted case was received by the Model Criminal Trial Court/Additional District & Sessions Judge-I, Karachi East.

5. At the time of framing the charge all the accused plead not guilty and claimed trial.

6. 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. He gave evidence on oath but did not call any DW in support of his defence case.

7. After hearing the parties and appreciating the evidence on record the trial court convicted the appellant and sentenced him as stated above, hence, the appellant has filed this appeal against his conviction.

8. The facts of the case as well as evidence produced before the trial court find an elaborate mention in the impugned judgment dated 29.09.2020 passed by the trial court and, therefore, the same may not be reproduced here so as to avoid duplication and unnecessary repetition.

9. Learned counsel for the appellant has contended that the appellant is completely innocent and that he has been falsely implicated by the police in order to show their efficiency; that despite his brother going missing the complainant made no complainant for 2 days which shows that it is a fake case; that there are major contradictions in the evidence of the PW's and as such there evidence cannot be safely relied upon; that the

confession made by the accused before the judicial magistrate was made under duress and coercion and as such it could not be safely relied upon; that the recovery of the churri which was allegedly the murder weapon was made after a delay of three days and had been foisted on the accused; that out of the 6 accused who were charged 4 of the co-accused were acquitted whilst the other died and hence he was entitled to the same treatment as his co-accused and thus for any or all of the above reasons the accused should be acquitted of the charge by extending him the benefit of the doubt. In support of his contentions he has placed reliance on the cases of **Muhammad Fervaiz v. The State and other** (PLD 2019 Supreme Court 592), **Hakim and another v. The State** (2020 P Cr.LJ Note 169), **Tooh v. The State** (1975 P Cr.LJ 440), **Adil Khan v. The State and another** (2020 P. Cr.LJ 729), an unreported Judgment of High Court of Sindh in Spl. Crl. ATA No.13 of 2020 dated 27.11.2020 (**Imran Hussain v. The State**), **Muhammad Azhar Hussain and another v. The State and another** (PLD 2019 Supreme Court 595), **Muhammad Pervez and others** (2007 SCMR 670), **Azeem Khan and another v. Mujahid Khan and others** 2016 SCMR 274), **Taj Wali Shah v. The State** (2014 P Cr.LJ 323), **Qadir Bakhsh v. The State** (2021 P Cr.LJ 1169), **Wajid Hussain and others v. The State and others** (2020 P Cr.LJ 543), an unreported Judgment of High Court of Sindh in Crl. Spl. ATA No.357/2018 dated 21.01.2020 (**Syed Mehroz Mehdi Zaidi v. The State**), another unreported Judgment of High Court of Sindh in Crl. Spl. ATA No.163/2018 dated 25.11.2019 (**Syed Mehroz Mehdi Zaidi v. The State**) and **Abdul Qayyum and 2 others v. The State through Advocate General of AJ&K, Muzaffarabad and 12 others** (2020 YLR 1649).

10. On the other hand learned Additional Prosecutor General appearing on behalf of the State has fully supported the impugned judgment. In support of his contentions, he has contended that this is a case of circumstantial evidence but the prosecution has been able to prove its case against the accused based on the evidence of the PW's, the later retracted judicial confession of the accused which we could safely rely upon as being truthful; the recovery of the dead body on his pointation, the recovery of the murder weapon on his pointation; the corroborative/supportive medical evidence and as such the appeal should

be dismissed and the death penalty maintained as the prosecution had asserted and proved the motive for the murder; namely that the accused wanted to avoid paying the deceased for the buffalo's which he had bought from him. In support of his contentions he placed reliance on the cases of **Muhammad Ashraf v. The State** (2011 SCMR 1046), **Noor Muhammad v. The State** (1999 SCMR 2722), **Mir Muhammad v. The State** (1995 SCMR 614), **Muhammad Azad alias Javaid alias Jodi v. The State and others** (2019 SCMR 1330), **Nazir Shehzad and another v. The State** (2009 SCMR 1440), **Fazal Rehman and others v. The State and others** (PLD 2004 Supreme Court 250), **Mst. Naseem Akhtar and another v. The State** (1999 SCMR 1744), **Khan Muhammad and others v. The State** (1999 SCMR 1818), **Nabi Bakhsh and another v. The State and another** (1999 SCMR 1972) and **Muhammad Amin v. The State** (PLD 2006 Supreme Court 219).

11. We have heard the arguments of the learned counsel for the parties, gone through the entire evidence which has been read out by the learned counsel for the appellant, and the impugned judgment with their able assistance and have considered the relevant law including the case law cited at the bar.

12. Based on our reassessment of the evidence of the PW's, the place of the recovery of the dead body, the place of the recovery of the churri, 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 Roshan (the deceased) was murdered by strangulation and then had his throat cut by knife/churri on 02.11.2016 at about 0230am inside Buffalo ranch Malir Industrial Area, near Naad-e-Ali Karachi.

13. The only question left before us therefore is who murdered the deceased by strangulation and cutting his throat by churri/knife at the said time, date and location?

14. After our reassessment of the evidence we find that the prosecution has 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 and

circumstances;

(a) Admittedly there is no eye witness to the murder and the main piece of evidence against the appellant is his retracted judicial confession and 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;

CONFESSONAL STATEMENT U/S. 164 CR.PC OF MUHAMMAD SAMI

Q. What have you to say?

Answer:- Sir I with the help of co-accused persons namely Faizan s/o Hakim Ali and accused Muhammad Asad s/o Mubarak Ali made conspiracy for committing murder of deceased Roshan s/o Adam Jatoi. On 01-11-2016 at about 2200 Hours deceased Roshan came for recovery of amount of Rs.370, 000/- (three Lac and seventy thousands rupees) from me on the account of purchasing of (04) Buffalos from him, after meeting and properly hospitality he was left in our cattle farm for resting purpose. On the same day at about 2300 Hours I called accused persons namely Muhammad Asad and Faizan for watching the deceased Roshan and thereafter we confirmed that he was in deep sleep. Thereafter on the midnight on 02-11-2016 at about 0230 to 0300 Hours I alongwith accused namely Muhammad Asad and Faizan went there with intention for committing murder of Roshan. However accused Faizan was holding pistol of Asad and had tried to firing upon the deceased Roshan with intention to commit his murder but pistol did not fired due to reasons not known. Thereafter I alongwith the help of accused Faizan tied rope at the neck of deceased Roshan and started to build up pressure with intention to commit his murder thereafter deceased Roshan died due to our act and thereafter I cut the neck of the deceased Roshan Ali with the Churri as to insure that he was died rather to survive. Thereafter we dumped the dead body of deceased Roshan in garbage of Buffalos inside our cattle farm (Bhains Bara). Further I say I had done all this mess with the help of accused Muhammad Asad and accused Faizan and my family members have nothing with the alleged offence. What I have above said is the true facts of the case and I am guilty of the offence for committing murder of deceased Roshan s/o Adam Jatoi".

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 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:-

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"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 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.

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,*

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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 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

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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 note that at the time of cross examining the IO PW 9 Asghar Ali it was suggested that the accused had been coerced and induced into making his judicial confession or else his father and brother would be put in trouble and that he along with his father and brother were arrested from his house and the same line was adopted in his S.342 Cr.PC statement however we find such a suggestion/assertion a mere after thought. He did not inform the

judicial magistrate about this at the time of making his judicial confession and did not even suggest it to the judicial magistrate PW 2 Khalid Hussain when he gave evidence at trial during his cross examination. Furthermore, he failed to produce either his father or brother as a DW to support his claim or even give evidence that he was arrested from his home. In addition IO PW 9 Asghar Ali had no proven enmity against him and no reason to force him or induce him to confess to a crime which he had not committed. As such we find that the retracted judicial confession of the appellant has been voluntarily made and its object was to tell the truth as it conforms with the other evidence adduced during the prosecution case. We also note that there were hardly any procedural irregularities in recording of his confession. Admittedly it was made after a delay of about 11 days of his arrest but this delay has been explained on account of the absence of a judicial magistrate to record his confession earlier. In any event there is no hard and fast rule about any particular delay detracting from the legal validity of a retracted judicial confession, in this respect reliance is placed on the case of Khan Muhammed (Supra) and thus for the reasons discussed above we rely on the retracted judicial confession as made by the appellant.

The next question is whether there is any corroborative/supportive evidence in relation to the retracted judicial confession although admittedly corroboration tends to be a rule of caution however in cases of retracted judicial confessions we consider such corroboration/supportive evidence to be of importance/significance especially in a capital case.

We find the following corroborative/supportive evidence to the retracted judicial confession of the appellant.

(b) That the complainant PW 1 Abdul Qadir who is the brother of the deceased states in his evidence that on 01.11.2016 the deceased went to the cattle farm of Habib and Adil for receiving money but he did not return and he became aware of his absence when the deceased mobile phone went unattended. This is corroborated by PW 5 Wali Muhammed who was a friend of the deceased who in his evidence states that on 01.11.2016 he had gone with the deceased to the cattle pen to collect money from accused Adil at 7.30pm when accused Adil asked the deceased to return the next day to collect the money. He then went for a meal with the deceased before dropping the deceased back at the cattle pen that evening. On 02.11.2016 he returned to the cattle pen where the accused told him that he had paid the deceased who had then left. No enmity was suggested against either of these two witnesses who gave their evidence in a straightforward manner and were not

dented on cross examination and thus we believe their evidence. Namely, that the deceased went to Adil's cattle pen on 01.11.2016 in order to collect money from Adil and in fact the deceased was last seen with Adil on the evening of 01.11.2016 when he returned to the cattle pen to collect his money.

(c) The fact that no FIR was immediately lodged we do not find to be of any great significance based on the particular facts and circumstances of this case as when some body goes missing it is not uncommon for the FIR not to be immediately lodged as instead the relatives and friends first priority is to look for their loved ones which PW 1 Abdul Qadir and PW 5 Wali Muhammed did when they heard that the deceased was missing some time on 02.11.2016.

(d) On 03.11.2016 the accused was arrested by PW 3 Muhammed Arshad and PW 4 Muhammed Khan under S.54 Cr.PC based on spy information that he was involved in the murder of the deceased at his cattle pen. The accused only hours after his arrest took the police to the cattle pen which he owned where he pointed out the dead body of the deceased hidden under a pile of dung. Only the accused could have known where the hidden dead body was. The complainant was then contacted by the police who reached the scene of the crime with PW 5 Wali Muhammed who had been searching for the deceased. The complainant recognized the deceased as his brother and noticed the marks and wound on his neck and thereafter registered an FIR against the accused and some others. This also corroborates/supports the confession of the accused

(e) Three days after his arrest the accused took the police back to the cattle pen where he dug up the hidden churri/knife which he had used to murder the deceased. The churri/knife when sent for chemical examination was found to be stained with human blood. This also corroborates/supports the confession of the accused

(f) The medical evidence of PW 6 Dr.Siraz where she found that the deceased had died on account of strangulation and then by having his throat cut also corroborates/supports the confession of the accused

(g) About 5 days later the accused recorded his judicial confession before the judicial magistrate which he later retracted. As mentioned earlier the police tried to have the confession made earlier but no magistrate was available. We have already found the retracted judicial confession to have been made voluntarily and in order to tell the truth and we have already placed our reliance on it.

(h) That the police PW's had no enmity or ill-will towards the appellant and had no reason to falsely implicate him in this case for example by making up his arrest or foisting the churri on him and in such circumstances it has been held that the evidence of the police PWs can be fully relied upon. In this respect reliance is placed on the case of **Mushtaq Ahmed V The State** (2020 SCMR

474). As such we place reliance on the evidence of the police witnesses.

(i) That all the PW's are consistent in their evidence and even if there are some contradictions in their evidence we consider these contradictions as minor in nature and not material and certainly not of such materiality so as to effect the prosecution case and the conviction of the appellant. In this respect reliance is placed on the cases of **Zakir Khan V State** (1995 SCMR 1793) and **Khadim Hussain v. The State** (PLD 2010 Supreme Court 669). The evidence of the PW's provides a believable corroborated unbroken chain of events from PW 1 the complainant's evidence that the deceased had gone to the cattle pen to collect money which was owed to him by the accused to PW 5 Muhammed Wali accompanying him to the cattle pen and meeting with the accused to the accused arrest and taking the police firstly to where the body was hidden at his cattle pen and later to where he had hidden the murder weapon (knife/churri) at his cattle pen to the supportive/corroborative medical evidence to his confession before the judicial magistrate (later retracted) by the accused.

(j) As stated by many witnesses in their evidence and the appellant's judicial confession the motive for the murder appears to be the appellant's reluctance to pay the deceased for the buffalo's which the deceased had already provided to the accused.

(k) The fact that 4 of the appellant's co-accused were acquitted of the charge is of no assistance to the accused. This is because their case (co-accused) was on a completely different footing as none of them had confessed to any crime and there was hardly any legally admissible evidence against them which lead to them being acquitted by being given the benefit of the doubt.

(l) Undoubtedly it is for the prosecution to prove its case against the accused beyond a reasonable doubt but we have also considered the defence case to see if it at all can cast doubt on or dent the prosecution case. The defence case is simply one of false implication by the police simpliciter despite them having no enmity with the appellant. Although the appellant gave evidence on oath he did not call a single DW to support his case who would have been very much available being his father and brother as allegedly they were all arrested by the police from their house and notably no one even made any complaint to any higher authority about this illegal arrest from their house. The defence that the appellant's confession was made under duress/inducement was made belatedly in order to save his skin and we disbelieve the same in the face of the over whelming prosecution evidence and find that the defence case has not at all dented the prosecution case.

26. Thus, for the reasons mentioned above we uphold the conviction of the appellant. With regard to sentencing we note that although the

prosecution has proved its case beyond a reasonable doubt since the prosecution case largely turns on circumstantial evidence which we must consider with great care and caution, in this respect reliance is placed on the cases of *Fayyaz Ahmed V State* (2017 SCMR 2026) and *Azeem Khan V Mujahid Khan* (2016 SCMR 274), we adopt the safer approach of reducing the sentence handed down to the appellant from the death penalty to Life Imprisonment with, if any, compensation and/or fines set out in the impugned judgment remaining in tact.

27. As such the conviction of the appellant is maintained and the appeal is dismissed save as modified in terms of sentence as set out above which is reduced from the death penalty to life imprisonment with the confirmation reference being answered in the negative.

Muhammad Arif