

**IN THE HIGH COURT OF SINDH, CIRCUIT COURT,
LARKANA**

Criminal Jail Appeal No.D-52 of 2018

Present:

Mr. Justice Amjad Ali Sahito

Mr. Justice Jan Ali Junejo

Appellant : Siraj-u-Din @ Siraj s/o Nabi Bux Kori Kalhoro
Through Mr. Abid Hussain Qadri, Advocate

The State : Through Mr. Ali Anwar Kandhro, Addl.P.G

Date of hearing : 06-05-2025

Date of Judgment 22-05-2025

JUDGMENT

Jan Ali Junejo, J:- Through instant criminal jail appeal, the appellant has impugned the judgment dated 11.08.2018, rendered by learned Judge, Anti Terrorism Court, Larkana, in Special Case No.58 of 2017 (Re: The State Vs. Siraj-u-Din @ Siraj Kori Kalhoro), emanating from FIR Crime No.77 of 2017, for offence under Sections 302, 376 PPC r/w Section 7(a) of the Anti Terrorism Act, 1997, registered at Police Station, Naudero, District Larkana, whereby he was convicted and sentenced as under;

- a). *Accused Siraj-u-Din @ Siraj is convicted for the offence U/S.302(b) PPC, and is sentenced to suffer R.I for life imprisonment. He is also ordered to pay a compensation of Rs.100,000/- only (One Lac) to the legal heirs of the deceased Muskan as compensation U/S.544-A Cr.P.C recoverable as land revenue and in default of payment, the recovery of the aforesaid amount, he shall suffer imprisonment for a period of S.I for six months more.*
- b). *Accused Siraj-u-Din @ Siraj is also convicted for an offence punishable U/S.7(a) of the Anti-Terrorism Act 1997, and is sentenced to*

suffer R.I for imprisonment for life and ordered to pay fine of Rs.100,000/- only (One Lac) and in case of default in payment of fine, he shall suffer further S.I for six months more.

- c). *Accused Siraj-u-Din @ Siraj is further convicted for an offence punishable U/S.376(3) PPC, and is sentenced to suffer R.I for life imprisonment and ordered to pay fine of Rs.50,000/- only (fifty thousands) and in case of default in payment of fine, he shall suffer further S.I for four month more.*

Aforesaid sentences awarded to the accused Siraj-u-Din @ Siraj will run concurrently, with benefit of Section 382-B Cr.PC.

2. The factual matrix of the case, depicted in the FIR lodged by complainant Ameer Ali Narejo on 13.11.2017, at around 2000 hours is to the effect that yesterday i.e 12.11.2017, at evening, while he was available with inmates of his house, at about 05.00 p.m, his daughter Muskan, aged 05 years, after taking money from him went to the shop for purchasing sweets but she did not return till late. When, he came out and enquired, could not find any clue. He then narrated such facts to his cousins Ali Murtaza Narejo, Rahim Bux Narejo, relatives and other neighbors and they remained in search of their own. Today, at noon time, he came to know that yesterdays' evening, his daughter Muskan was taken by his neighbor Siraj son of Nabi Bux Kori Kalhoro at station road. On receipt of such information, he alongwith his above said cousins met accused Siraj and narrated him above facts, who after reluctance lastly confessed and stated that yesterday's evening, after taking complainant's daughter Muskan outside of his house, then took her in front of Railway Station Naudero and at railway signal, he took off her trouser, forcibly raped her and after

committing murder by strangulating her throat with same trouser, dumped her dead body in a pond near Railway Line. On getting such facts, they came at the pointed place and found the dead body of his daughter Muskan floating on surface of water in a crooked posture. They went in the water and when straightened the dead body, found it to be of his daughter, without trouser. The dead body and her trouser were brought out of the water and they also found a mark on her neck. Thereafter, they shifted the dead body to government hospital, Naudero. After getting conducted her postmortem through the police and subsequently leaving her dead body for funeral in the house, the complainant came at police station and lodged FIR that accused Siraj Kori Kalhoro after rape has killed his innocent minor daughter and by his such act, has created terror in the neighbor.

3. The investigation was followed by SIP Sartaj Ahmed Jagirani, who visited the place of occurrence on pointation of complainant, recovered green color trouser of victim and chips in plastic shopper, visited the place of missing of the complainant's daughter, inspected the dead body, recorded 161 Cr.PC statements of PWs, arrested accused Siraj Ahmed, dispatched the swabs to the Chemical Laboratory, got recorded confessional statement of the accused before concerned Judicial Magistrate and after completion of usual formalities besides preparation of Danistnama, submitted the final report under section 173 Cr.PC (*challan*) against him before the competent Court of law.

4. The present appellant pleaded not guilty to the charge framed against him and claimed trial.

5. At trial, the prosecution to establish its' case, examined P.W-01 Corpse bearer PC Azizullah at Exh.6, he produced the receipt of delivery of dead body to the complainant at Exh.6/A. P.W-02 complainant Ameer Ali Narejo at Exh.8, he produced FIR of the present case Exh.8/A. P.W-03 witness Rahim Bux at Exh.9. P.W-04 witness/Mashir Ali Murtaza at Exh.10, he produced memo of seeing the dead body, memo of place of incident, memo of inspection of place of incident and recovery of trouser and Chips, memo of arrest of accused Siraj, Danistnama at Exh.10/A to 10/E respectively. P.W-05 medical officer Dr. Salma at Exh.11, she produced postmortem report of deceased at Exh.11/A, report of chemical laboratory at Ex.11/B, letter of WMO, Government Hospital Naudero at Exh.11/C. P.W-06 SIO/SIP Sartaj Ahmed Jagirani at Exh.12, he produced roznamcha entries and letter of SSP Larkana regarding constitution of J.I.T at Exh.12/A to C. PW-07 Ahmed Ali Gabol, C.J& J.M-II Ratodero at Exh.13, he produced letter of SIO for recording confession of accused and produced confessional statement of accused at Exh.13/A and B. P.W-08 Tapedar Sher Muhammad Siyal at Exh.14, he produced letter of Mukhtiarkar concerned and sketch of vardat at Exh.14/A and B. Thereafter, learned A.P.G closed the side of prosecution.

6. The appellant in his statement recorded in terms of Section 342 Cr.P.C at Exh.16, denied the allegations leveled against him by

claiming his innocence adding that he made no confession and his signature was obtained on paper by police. He lastly prayed for justice. However, he neither examined himself on oath in disproof of the charge, nor led any evidence in his defence.

7. The learned trial Court after hearing counsel for the parties and appraisal of the evidence, convicted and sentenced the appellant vide impugned judgment dated 11.08.2018, as detailed above, which the appellant has assailed before this Court by preferring the instant criminal appeal through jail.

8. Learned counsel for the appellant submits that the judgment is against the law and facts of the case; that F.I.R is delayed for more than one day for which no plausible explanation has been furnished by the complainant; that it is an unseen incident and no independent person has been shown as a witness to believe that the appellant has committed the offence; that the ocular account is totally blind but the trial Court has relied upon the circumstantial account and the appellant has been implicated, based on extra judicial confession, which is inadmissible in evidence. Summing up his contentions, the learned defence counsel submitted that the present appellant was roped in this case falsely and the case of prosecution was not free from doubt, therefore, the appellant deserves to be acquitted in the circumstances.

9. In rebuttal to above, learned Addl.P.G while supporting the impugned judgment argued that present appellant is named in the FIR and all the witnesses have fully implicated him in commission

of the offence; the confessional statement of appellant itself is sufficient to hold him guilty, the positive medical report scientifically connects the appellant to the rape of the victim which is further corroborated by the circumstantial account, therefore, the learned trial Court has rightly convicted him of the charged offence by way of the judgment, based upon well founded reasons, which in fact requires no interference by this Court, therefore, the instant appeal filed by the appellant in its true perspective is lacking merits and is liable to its dismissal.

10. We have heard learned counsel for the respective parties and have gone through the material brought on record with their able assistance.

11. This matter concerns a tragic incident, wherein an innocent girl of five years was made victim of the sexual assault by the accused/appellant and then was brutally murdered by strangulating her throat with her own trouser. Such a barbaric act of the appellant/accused has not only traumatized the emotions and conscience of the society but has also created the wave of terror in general public. The guidelines have been taken from “Surah At-Takwir of Holy Quran” that:

This verse, while depicting the scene of Resurrection, mentions that the girls who were buried alive will be questioned for what crime they were killed. Apparently, it seems that the question will be posed to the girl herself. This will give the victim an opportunity to prove her complete innocence and thus the perpetrators of this crime will be

hauled up in the Divine Court of Justice, and will be duly punished for their wrongdoing.

12. To prove the murder, the prosecution is required to produce the tangible evidence in shape of ocular, medical as well as circumstantial accounts. It would be quite in line with well settled principle of law that if all pieces make an unbroken chain, establishing the guilt, the capital sentence can well be awarded. PW-02 Complainant Ameer Ali Narejo (Exh.08) in his evidence deposed that on 12.11.2017, while he was present at his home, his daughter Muskan aged 05 years, went at the shop to buy some sweets at about 05.00 p.m but she did not return after sufficient time. He, his cousins Ali Murtaza (PW-04), Raheem Bux (Pw-03), other relatives and neighbourers searched his daughter but could not find. On the next day, at noon time, he came to know that one Siraj residing in his neighbor has taken his daughter Muskan with him towards Naudero Railway Station. On hearing this, he alongwith his PWs Ali Murtaza and Raheem Bux enquired from accused Siraj who after giving evasive reply, admitted his guilt and informed that he has committed Zina with baby Muskan near to signal of railway station and committed her murder by strangulation with her Shalwar and the dead body was thrown in a ditch of water. He alongwith his witnesses arrived at the pointed place and found his daughter in a ditch and her Shalwar lying separately in water. They took out the dead body and found the strangulation marks on her neck. He further deposed that they informed the police and brought the dead body at Government

Hospital Naudero. After getting conducted postmortem of deceased, he brought the dead body at home and then went to police station at 08.00 p.m and lodged the FIR, which he produced at Exh.8/A. After registration of the FIR, police started the investigation and arrested the appellant/accused.

In cross-examination, he deposed that *“There is no any enmity between accused and me prior to this incident. Accused first time taken the victim. Accused admitted his guilt in presence of Muhalla peoples. We reached at the place of incident at 05.00 p.m and found dead body in pond. The witnesses were also available with me in hospital. It is incorrect to suggest that accused neither committed any offence nor he confessed before me about the commission of offence.”*

13. Witnesses Raheem Bux (PW-03) and Ali Murtaza (PW-04) in a same breathe have endorsed the version of the complainant adding that their 161 Cr.PC statements were also recorded by I.O.

14. The deeper analysis of the evidence of complainant and his witnesses, who are star witnesses of the entire scenario, unearth the factum of the incident and their evidence also finds corroboration from the medical evidence concerning the cause of death and time of the incident, as is apparent from the evidence of P.W-5 Women Senior Medical Officer Dr. Salma, who received the dead body on 13.11.2017 for the postmortem examination and she started postmortem at 05.30 p.m and finished it at 07.30 p.m. On examination, she found **ligature over neck measuring 5 cm x 3.5 cm and she was victim of sexual intercourse**. She took the

vaginal swab and sent for chemical examination. She formed her opinion that ***death of minor baby Muskan occurred due to throttling and fracture on hyoid bone. The minor victim was subjected to sexual assault which was also the reason of her death. The sexual act was found to be performed before death.*** The report with regard to swabs sent for chemical examination received and on such basis, she produced letter of final postmortem report at Exh.11/C.

15. Generally, the circumstantial account is presumed to be a weak sort of evidence, but it alone cannot be based to record an acquittal, rather the administration of justice for such like situation, requires more care and caution from the Courts while appreciating the evidence. In such like cases, the criterion to see whether circumstantial evidence can hold a conviction or to depend purely on a single principle which stood reiterated in the case of ***Sh.Muhammad Amjad v. The State (PLD 2003 SCMR-704)***, wherein the Honourable Supreme Court of Pakistan has observed that;

“Circumstantial evidence---House in question was in possession of the accused from where the dead body was recovered; unimpeachable evidence had established that recoveries of dead body, car and other articles were made on the lead, provided by the accused---All the pieces of circumstantial evidence when combined together provided a strong chain of circumstances lead, to the irresistible conclusion that it was the accused and the accused alone, who had killed the deceased and all such evidence under Art.40, Qanun-e-Shahadat, 1984 were admissible and were proved by conclusive evidence.”

16. The evidence of PW-04 Mashir Ali Murtaza finds support from the evidence of PW-06 I.O/SIP Sartaj Ahmed Jagirani, and he gave details of preparation of mashirnamas of place of incident/place of missing of baby, recovery of trouser of victim and pieces of chips from spot, memo of arrest of accused, inspection of dead body and Danistnama, by investigation officer SIP Sartaj Ahmed Jagirani, in his presence.

In cross-examination, he deposed that *"I acted as mashir voluntarily in this case. We made enquiry from accused in front of his door. At the time of admission by accused, complainant and Raheem Bux were also available. Other muhalla people were also available on spot. Accused admitted his guilt without any torture or maltreatment. From the place of vardat shalwar of victim as well as five pieces of chips in Thelhi were secured by police. It is incorrect to suggest that all memos were prepared by police at P.S."*

17. According to the standard proof, required to convict a person on circumstantial account, the circumstances relied upon in support of the conviction must be fully established and the chain of evidence furnished by the circumstances must be so complete as not to leave any reasonable ground for the conclusion, consistent with the innocence of the accused. The circumstances from which the conclusion of the guilt are to be drawn have not only to be fully established, but also that all the circumstances to establish should be conclusive and should not be capable of being explained by any other hypothesis is to accept the guilt of the accused and when all

the circumstances have cumulatively taken together should lead to the only irresistible conclusion that the accused alone is the perpetrator of the crime, wherein the prosecution has to provide all links in the chain and unbroken one where it's one end touches the dead body while the other neck of the accused.

18. Turning to confessional statement of appellant/accused, Mr. Ahmed Ali, learned Judicial Magistrate-II, Ratodero, in his evidence deposed that on 21st November, 2017 while posted as J.M-II Ratodero, application for recording confessional statement of accused in present crime, moved by SIP Sartaj Ali Jagirani of P.S Naudero was allowed and the accused brought in custody before him was taken in the custody of Court staff, his handcuffs were removed and the police was ordered to go away from the Chamber. Accused was introduced that he is before the Judicial Magistrate and he is not bound to record his confessional statement and if he records, it will be used against him. The reflection time from 1400 hours to 1500 hours was given to the accused. After reflection period, it was confirmed that no police is available/hear the proceedings of confessional statement. Question was asked from the accused in Sindhi language that before whom he is produced, he replied that he is produced before the Judicial Magistrate-II, Ratodero, for recording his confessional statement. He was asked that he was not bound to make confessional statement, if he so, it will be used against him, he replied as he is aware and ready for any consequence. He was also asked that he will be sent to Judicial

Custody if he records confessional statement or not. He replied, he knew very well. The question regarding inducement/promise made to him by the police or inducement to his family members, he replied in negative. Further, he said that **he is making confession due to fear of Allah and ashamed on his act. He was also asked that why he is making confession, on such he replied that due to fear of Allah and ashamed on his act.** After making assurance that confessional statement of accused is on his own accord/will and wishes, the statement of accused was recorded by him as per his verbatim and he obtained his LTI on it. He signed at the end of statement and certificate was typed and signed by him. He produced such confessional statement of accused at Exh.13/B and he identified the accused present in Court to be same.

In cross examination, he deposed that **“It is incorrect to suggest that accused made no confession voluntarily. It is incorrect to suggest that confessional statement was given by accused due to pressure of police”.**

19. In addition to this, it is worth to mention here that the confessional statement under Section 164 Cr.PC, is sufficient for conviction. Judicial confession alone can be made a basis for conviction when it is found true, convincing and made voluntarily by the accused without any duress or coercion. In this case, the confession of the appellant/accused appears to be voluntarily and is in line with the prosecution case. The appellant was arrested on 14.11.2017 by I.O/SIP Sartaj Ahmed Jagirani and was then

produced before the concerned Magistrate, where his confessional statement was recorded. In last question to his confessional statement, the appellant/accused replied as under;

“About nine days before, at 05.00 p.m, while I was standing in front of my house, a little girl named Muskan daughter of Ameer Ali by caste Narejo, r/o Public Park Muhalla Gharghal Shah, Naudero, aged about 5/6 years having worn green color clothes, came out of the house and seeing her, I had developed the lust and evil thought created in my mind. I purchased chips of five rupees for her and then took her towards Railway Station. After crossing railway station, reached at railway signal, there it became night. Then I got Muskan sleep in the room of railway signal and after strangulating her with my own hands, I killed her and then thrown her dead body in a pond situated towards southern side adjacent to railways crossing. Thereafter, I came to my home. On the next day, the legal heirs of Muskan and neighbours were searching her and they were worried, thereafter, I showed them the dead body of Muskan lying in a pond of Railway crossing and thereafter I alongwith them shifted the dead body towards Naudero Hospital, later-on the legal heirs came to know and I narrated them facts that I had taken Muskan with me for fulfilling my lust and on her cries, I killed her by strangulation after removing her trouser and then put on her trouser. I had not committed rape with Muskan and I am guilty of the offence that I had attempted to commit rape with her. When I took off her trouser, she cried and then I killed her by strangulating with her trouser and thereafter thrown her dead body in a pond. Now, I am repenting and give my volunteer statement at my own accord and due to fear of “Almighty Allah” and the punishment whatsoever be, would be accepted.”

20. In a question, he was offered to give a detailed reply as to how he has committed the offence, to which he replied that he is ready to confess his guilt on his own accord and without any pressure or inducement. The learned Magistrate again and again put his

question that if he records confessional statement; such confession will be used against him, even then he has confessed his guilt.

21. In question No.2 of his statement under section 342 Cr.PC, he replied that he has made no confession and his signature was obtained on paper by police, however, PW-07 Learned Magistrate (Exh.13) deposed that when one hour reflection time was given and at that time the police personnel were not present before the Court, despite, he made confession of his guilt before the Magistrate.

22. It is worth to mention here that to establish the admissibility or non-admissibility of confession in criminal cases, the great responsibility rests upon the Courts to determine if the confession is voluntary and true or is lacking within the scope of either term "voluntary" and "true". If the confession directly or indirectly is the result of inducement, threat or promise from a person in authority, it would be treated as not voluntary. Voluntary and true are two different terms related with confession and each of them has its own significance. A confession, which is voluntary, is admissible in evidence even though it may be incorrect in its contents. As against above, a confession, which is not voluntary, is not admissible though it may be true, whether a confession is voluntary and true is a question of fact and is to be determined keeping in view the attending circumstances of each case. Voluntariness of confession and of being true are totally distinct. Voluntariness relates to its admissibility, while its truth is looked into for the purpose of assessing its value.

23. We are of the view that the confessional statement made by appellant/accused is voluntarily and can be relied upon to base conviction, as it is settled principle of law that the murder case can be proved by producing the tangible evidence of witnesses or if any confessional statement is made by the accused. The reliance in this context is placed upon case of **Suleman v. The State (2006 SCMR-366)**, wherein the Honourable Apex Court has observed that:-

“Accused in his confessional statement before the Magistrate had categorically admitted to have killed the minor boy of 7/8 years on the instigation of co-accused for monetary consideration---Shoes of the deceased had been recovered from the bathroom of the house of accused---Entire story had been disclosed by the accused himself voluntarily and without any duress while confessing his guilt before the Magistrate, which even otherwise was corroborated by his extra-judicial confession made before the prosecution witness---Impugned judgment did not suffer from any illegality, misreading or non-reading of evidence---No extenuating circumstance could be pointed out to reduce the death sentence awarded to accused---Leave to appeal was declined to accused in circumstances.”

24. So far as the defence plea taken by the appellant in his statement under section 342 Cr.PC that he made no confession and his signature was obtained on a paper by the police. However, such question was not put by the defence counsel to the learned Magistrate or police officer while recording their evidence. At belated stage, the accused has taken this plea just to save himself from the conviction, otherwise, we have observed that the confession so made by the appellant/accused is voluntarily and without duress and the appellant has admitted his guilt before the

Magistrate while recording his confessional statement, wherein the learned Magistrate has given the details that how the appellant admitted his guilt, as such, the plea taken by him is not helpful to his case.

25. In the wake of above discussion, we have no hesitation to hold that the prosecution has successfully established the guilt against the present appellant and the defence has also failed to pinpoint any material illegality or serious infirmity committed by learned trial Court while passing the impugned judgment, which in our unanimous view, is based on well founded appreciation of the evidence and thus it requires no interference by this Court. Consequently, the instant Criminal Jail Appeal filed by the appellant being devoid of merits is **dismissed** accordingly and the conviction/sentence awarded to him by the learned trial Court shall hold the field.

JUDGE

JUDGE