

IN THE FEDERAL SHARIAT COURT
(Appellate Jurisdiction)

PRESENT

MR.JUSTICE FAZAL ILAHI KHAN, CHIEF JSUTICE
MR.JUSTICE KHAN RIAZ-UD-DIN AHMAD

CRIMINAL APPEAL NO.34/Q OF 1998

Ali Akbar son of Mayar, r/o Kalagri Punjgur	...	Appellant
Versus		
The State	...	Respondent
For the appellant	...	Mr.M.Mohsin Javed, Advocate
For the State	...	Mrs.Ashraf Abbas, Advocate
F.I.R. No., date and Polcie Station	...	Nil, Dated 5.7.1993 P.S. Nall Khuzdar
Date of the Order of the Trial Court	...	13.1.1998
Date of Institution	...	28.3.1998
Date of Hearing	...	26.9.2000
Date of Decision	...	26.9.2000

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JUDGMENT:-

MR.JUSTICE FAZAL ILAHI KHAN,CHIEF JUSTICE:-

Ali Akbar son of Mayar Caste Baloch has challenged though this appeal, the Judgment and Order of Learned Additional Sessions Judge Khuzdar dated 13.1.1998, whereby he was convicted under Section 302 (B) Pakistan Penal Code, and sentenced to life imprisonment and a fine of Rs.one Lac to be paid as compensation to the legal heirs of the deceased. He was further convicted and sentenced under Section 392 Pakistan Penal Code to five years rigorous imprisonment and a fine of Rs.20,000/- to be paid to the heirs of the deceased, in default of payment of fine he was to suffer three months simple imprisonment.

2. It may be briefly stated on 5.7.1993 Muhammad Sharif son of Zarak informed the Naib Tehsildar Nall District Khuzdar that he was told by a teen ager who was grazing his cattle that dead body of a person was lying in the area known as "Samand". xxx Lal Muhammad Naib Tehsildar recorded his statement and registered a case against the unknown assailant and proceeded to the spot alongwith Levy Personnel. The dead body was recovered and sent to the doctor for post mortem examination. From the search of the dead body a

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receipt dated 4.7.1993, issued by an employee of Koshak Petrol Service Station wherefrom it transpired that the deceased was taxi driver and that he had been deprived of his car after he was done to death. During the investigation statement of Abdul Nabi son of Muhammad Umar was recorded, who stated that he was student of 10th class and also employed as sale-man at the Petrol Pump, that on 4.7.1993 at about 12.00 mid-night he had supplied petrol to yellow cab taxi driver and issued a receipt for 25.7 litre petrol. He had told him that he had come from Karachi and was proceeding to Makran through Nall. He was dressed in white clothes. Two other persons were sitting with him on the rear seat. The driver inquired from him about the shortest route to Makran via Nall. They then went towards the hotel. Muhammad Yousaf son of Muhammad Qasim, also an employee of the Petrol Pump made similar statement but both of them showed their inability to identify the person when photo of the deceased was shown to them. Karim Bakhsh son of Mula Salahi after he had read a news item in "Jang Karachi", that a dead body of a taxi driver had been recovered by the police in area of Tehsil Nal District Khuzdar, he came to Nall and contacted the

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local police as one Shah Murad his nephew and a taxi driver was missing for about 18 days. He was shown the photo of the deceased but he was unable to identify that the dead body was that of Shah Murad. However, he informed the police about the model and chassis numbers of the taxi driven by Shah Murad. That the taxi was owned by Mumtaz Ali son of Muhammad Umar Sumro and requested that in case the taxi in question is recovered then either he or the owner of the taxi car shall be informed at the address supplied to the police.

3. The case remained pending under investigation till accused/appellant was arrested in some other case in June, 1996. During investigation of that case allegedly the accused disclosed that he along with Munir son of Sher Muhammad and Murad Bakhsh son of Qader Bakhsh had deprived the driver of his taxi car in question after he was murdered. The accused was therefore, arrested in the present case and subsequently produced before Khuda Bakhsh Assistant Commissioner on 30.6.1996 for recording his confessional statement. On completion of the investigation complete challan was put in court against the accused. The learned Additional Sessions Judge framed charge against the accused for an offence

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under Section 302 Qisas and Diyat Ordinance read with

Section 17 (3) Offence against Property (Enforcement of Hudood)

Ordinance, 1979 to which the accused did not plead guilty and claimed trial.

4. In support of its case, the prosecution

produced four witnesses in all. PW.1 is Abdul Nabi, who

in his statement U/S 164 Cr.P.C before Naib Tehsildar has stated that a yellow cab car had arrived at their Petrol

Pump on 4.7.1993 and that he had sold 25.7 litre petrol

to its driver and had issued a receipt to him. He further

stated that the driver had told him that he was proceeding

to Makran, however, he was unable to identify the other

two or three persons sitting with him in the taxi. Doctor

Haroon Bakhsh (PW.2) on 5.7.1993 medically examined the

dead body and deposed that there was wound on the frontal

region of the head and bleeding from the skull. That the

weapon used in the offence was sharp and blunt. There

was signs that the deceased had been tied with rope.

The cause of death was stated to be brain injury and

internal haemorrhage. Abdur Rashid (PW.3) stated that

during the days of occurrence he was posted as Naib

Tehsildar Nall. That the case was previously investigated

by Lal Muhammad Naib Tehsildar who had registered the

case against the unknown accused vide FIR Ex.P/3-A.

He further stated that the FIR bears the signature of

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Lal Muhammad with which he was well-versed. He further stated that the accused was arrested in some other case and during interrogation he admitted that he had committed ^{present} the/murder ^{therefore also} alongwith two others. He was/ arrested on 25.6.1996 inthe present case. The accused remained under arrest from 25.6.1996, whereafter he was produced before S.D.M for recording his confessional statement. He then submitted incomplete challan against the accused. Khuda Bakhsh Sub-Divisional Magistrate (PW.4) statedthat during the days of occurrence he was posted as Assistant Commissioner Nall when Naib Tehsildar produced Ali Akbar accused before him for recording his confessional statement. According to him after completing all the formalities he recorded his confessional statement. The confessional statement was sealed and sent to the District Magistrate. The confgessional statement is Ex.P/4-A, and the certificatge in this respect is Ex.P/4-B. The accused was examined under Section 342 Criminal Procedure Code in which he denied having made any confessional statement before the Sub-Divisional Magistrate and pleaded innocence. The accused neither made any statement on oath in rebuttal of the prosecution case, nor volunteered to produce defence evidence.

5. The learned trial judge relying on the confessional statement of the accused corroborated by circumstantial evidence found him guilty of the offence convicted and sentenced him to the term of imprisonment and fine stated above.

6. It was contended by learned counsel for the appellant that the learned Judge has based the conviction of the accused on the retracted confessional statement of the accused which was recorded after 15/16 days of his arrest during ~~xxxxx~~ which he remained in police custody. It was further contended that before such statement the learned Magistrate did not assure the accused that on his refusal to make confessional statement he would not be handed over to the police and would be sent to judicial lock up as such he remained under duress and threat of the police at the time of recording such statement. It was further contended that even otherwise in the confessional statement having been retracted strong independent corroboration was required in order to earn conviction of the accused. The prosecution in pursuance of such confession al statement did not bother to trace and recover the taxi car although in the alleged confessional statement the accused had disclosed the name

and address of the person to whom the stolen/snatched vehicle was sold. The confessional statement of the accused reads as under:-

" کراچی میں لیاری جنرل ہسپتال کے قریب ہمارے رشتہ دار رہتے ہیں ان کے پاس تقریباً دس روزہ تک قیام کیا - مجھے منیر نے کہا کہ کراچی سے کارگاری ہنجگور لے جانی ہے تم بھی میرے ساتھ چلو - میں نے کہا کہ میں عزیب آدمی ہو لیکن اس نے کہا کہ تم میرے ساتھی ہو تو میں منیر کو انکار نہ کر سکا - ہم دونوں آٹھ چوک چاہیواڑہ کراچی آئے ایک پیلی ٹیکسی (بڑی) جسکے ڈرائیور کا بعد میں معلوم ہوا کہ نام شاہمراد ہے - اس سے پانچ ہزار کرایہ پر ٹیکسی کراچی سے ہنجگور تک حاصل کی اور ہم دو بجے دوپہر کراچی سے روانہ ہوئے اور تقریباً گیارہ بجے شب بخمار پہنچے - ہم نے پیشگی دو ہزار روپیہ ڈرائیور کو کراچی میں دیئے تھے - ہم بخمار پہنچکر ہم نے پمپ سے کار میں پیٹرول ڈالا اور کھانا کھایا - اور آدھے گھنٹہ میں ہنجگور کیلئے روانہ ہوئے - میں کار کی پچھلی سیٹ پر بیٹھا تھا اور منیر ڈرائیور کے برابر والی سیٹ پر بیٹھا تھا - جب ہم نے لیویز پوسٹ سے آگے نال طرف گزر گئے اور ایک ندی آئی تو منیر نے ڈرائیور کو کہا کہ گاڑی کو ندی میں روٹ چھوڑ کر دائیں طرف موڑیں - ڈرائیور کے پوچھنے پر منیر نے کہا کہ گاڑی کو لے جائیں گے اور ہمیں بھی مار دینگے منیر کے پاس ٹی پستول تھی میرے پاس کچھ بھی نہیں تھا - ڈرائیور نے نے ڈر کر کار کو دائیں طرف ندی میں موڑ دیا اور ڈرائیور نے کہا کہ مجھے قتل مت کریں گاڑی لے جائیں - منیر نے ڈرائیور شاہمراد کو دائیں طرف سیر میں پستول سے ایک فائر کیا جس سے ڈرائیور مر گیا - ڈرائیور کو ہم نے ہاتھ پاؤں باندھے اور گسیٹتے ہوئے ایک کاشی (بلوچی میں درخت

کا نام ہے) میں لاش کو پھینکا - بعد میں گاڑی سے ایک ایرانی کمبل تھا جس پر خون تھا نکال کر ندی میں پھینک دیا - ہم کار میں بیٹھ گئے اور ہنجگور روانہ ہوئے - کسی وقت منیر کار چلاتا تھا تو کسی وقت میں چلاتا تھا اور تقریباً ~~11/11/1999~~ صبح پانچ بجے کے قریب ہنجگور پہنچے - چنکان بازار میں فتح محمد سے ملاقات ہوئی اور کار کا سودا پنتیس ہزار (=/۳۵۰۰۰) روپیہ میں فتح محمد کے ساتھ ہوا - وہ ہمارا واقفکار تھا اس لئے کار ہم نے اسی وقت فتح محمد ولد نامعلوم سکنا تسپ ساروان کے حوالے کی اور شام کو گھر واقع تسپ ساروان رقم کی ادائیگی کیلئے بلایا - ہم تین بجے کے قریب تسپ ساروان فتح محمد کے پاس آئے اور پنتیس ہزار روپیہ منیر کے ہاتھ میں دئے - ہم چنکان بازار آئے اور اشرف درزی کی دکان میں بیٹھ کر رقم تقسیم کی مجھے منیر نے (=/۱۲۰۰۰) (بارہ ہزار) روپیہ مجھے دئے لیکن میں پانچ ہزار (=/۵۰۰۰) روپیہ لئے اور باقی منیر کو واپس کئے اور گھر چلے گئے - اس سے قبل میں منیر اور قادر بخش ولد مراد بخش سب تحصیل پروم . قلع ~~11/11/1999~~ ہنجگور نے اس واردات سے قبل ایک سرخ کار ایک سال قبل آٹھ چوک چاکبوازہ کراچی سے تین ہزار روپیہ پر کرایہ کی اور کراچی سے وٹہ تک کرایہ پر لی تھی صبح تقریباً ۹ بجے روانہ ہوئے اور ۲/۳ بجے دوپہر جب ہم مین روڈ پیر کی مڑار سے قبل پہنچے تو ہم نے ڈرائیور کے ہاتھ پاؤں باندھ کر روڑ سے دور پھینک دیا اور کار لیکر ترتب روانہ ہوئے - اور ترتب پہنچ کر کار کو ترتب بازار میں سڑول ولد نامعلوم کو (=/۲۰۰۰۰) (چالیس ہزار) روپیہ میں فروخت کی اس رقم سے مجھے دس ہزار روپیہ حصہ ملا باقی قادر بخش اور منیر لے گئے - "

It is unfortunate that the prosecution agencies after extracting confessional statement of the accused person take it for granted that they have won the war against crime and that there is no need to find out the voluntariness and truthfulness of such confession through other circumstantial evidence with special reform to the fact stated in such statement. The agencies do not proceed scientifically and do not apply their mind to its contents. Basing reliance/^{only}on confessional statement, as stated above, has hampered and eroded the efficiency of the investigation agencies. In large number of cases, when confessional statement is retracted in absence of any corroborative evidence in line with the contents of the statement results on failure of prosecution case.

7. It may be pointed out that the confessional statement to a great extent not only/^{is}exculpatory but is contradictory/^{to}the prosecution evidence and is/^{also}not supported by the medical evidence. According to the medical evidence the deceased had a wound below the chin and also on the frontal region of head and that there was bleeding from the skull. No internal examination was made by the doctor, but xxx the doctor was definite that the weapon used was sharp and blunt and the cause of death was brain injury and

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internal haemorrhage, while in the confessional statement the injury is attributed to Munir Ahmad his having fired at the deceased which resulted in death of the deceased. No efforts were made to recover the vehicle though the name and address of the person to whom the was sold was mentioned in the confessional statement. Similarly the objection raised to voluntary nature of the confessional statement are weighty and substantial in nature. The confession should be accepted as a whole or rejected as a whole is generally accepting a safe and time tested principle in administering criminal justice. Similarly retracting confession needs to be corroborated by reliable prosecution evidence for basing conviction thereon. However in the light of the above the voluntariness of the retracted confessional statement is highly doubtful. The arrest of the accused is shrouded in mystery, investigation is flimsy and unreliable.

8. For the reasons stated above, we accept the appeal, set-aside the Judgment and order of the learned trial Judge and acquit the accused of the charge. He shall be released forthwith if not required in any other case.

Approved for reporting.

Faza Ilahi Khan
CHIEF JUSTICE

Faza Ilahi Khan
(FAZA ILAHI KHAN)
CHIEF JUSTICE.

Quetta, the
26th, Sep: 2000.
F.Taj/*

Khan Riaz-ud-Din Ahmad
(KHAN RIAZ-UD-DIN AHMAD)
JUDGE.