

IN THE FEDERAL SHARIAT COURT

(Appellate Jurisdiction)

PRESENT

**MR. JUSTICE SHEIKH NAJAM UL HASAN
MR. JUSTICE RIAZ AHMAD KHAN
MR. JUSTICE ZAHOOB AHMED SHAHWANI**

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JAIL CRIMINAL APPEAL NO.15/I OF 2014

Nadeem Ahmed s/o Qutab-ud-Din ...
Caste Joia, r/o new Karachi

Appellant

Versus

The State

Respondent

LINKEDWITH

JAIL CRIMINAL APPEAL NO.16/I OF 2014

Muhammad Siddique s/o Qabil ...
Caste Marri Baloch, resident of
Nowshero Feroz.

Appellant

Versus

The State

Respondent

LINKEDWITH

JAIL CRIMINAL APPEAL NO.17/I OF 2014

Saifullah s/o Ghulam Mustafa ...
Caste Gorraige Baloch, r/o Tenda
Muhammad Panah, Tehsil Liaquatpur,
District Raheemyar Khan

Appellant

Versus

The State

Respondent

LINKEDWITH

JAIL CRIMINAL APPEAL NO.18/I OF 2014

Jamshaid s/o Muhammad Afzal ...
Caste Jatt, r/o Tenda Muhammad
Panah, Tehsil Liaquatpur,
District Raheemyar Khan

Appellant

Versus

The State

Respondent

LINKEDWITH

JAIL CRIMINAL APPEAL NO.19/I OF 2014

Atta Muhammad s/o Muhammad Hayat ...
Caste Shar r/o Tehsil and District
Sanghar

Appellant

Versus

The State

Respondent

LINKEDWITH

CRIMINAL REVISION NO.02/Q OF 2014

Akhtar Zaib s/o Haji Malang ...

Petitioner/Complainant

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By caste Yousafzai r/o Tehsil
Sonmiani (Winder) Lasbela

Versus

Respondents

1. Saifullah
2. Jamshaid
3. Atta Muhammad
4. Nadeem Ahmed
5. Muhammad Siddique
6. Jamshaid
7. Ali Bhai
8. Habib
9. Salah-ud-Din
10. The State

Counsel for the appellants
in all Jail Criminal Appeals

... Mr. Javed Aziz Sindhu,
Advocate

Counsel for Petitioner/complainant
in Cr. Revision No.02/Q of 2014

... Mr. Mazullah Barkandi,
Advocate

Counsel for the State

... Miss. Robina Butt, Advocate
on behalf of A.G. Baluchistan

FIR No. Date and
Police Station

... No.31/2011 dated 07.04.2011
P.S. Winder District Lasbela

Date of Judgment of trial Court

... 13.11.2013

Date of Institution of all
Jail Criminal Appeals

... 15.04.2014

Date of Institution of
Criminal Revision

... 03.07.2014

Date of hearing

... 15.01.2015

Date of decision

... 15.01.2015

Date of Announcement

... 17-02-2015

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JUDGMENT:

Zahoor Ahmed Shahwani, J :- Appellants/accused namely

Saifullah son of Ghulam Mustafa, Muhammad Siddique son of Muhammad Qabil, Atta Muhammad son of Muhammad Hayat, Nadeem Ahmed son of Qutub-ud-Din and Jamshaid son of Muhammad Afzal filed appeals against their conviction and sentences challenging the impugned Judgment dated 13.11.2013 of the learned Additional Sessions Judge, Lasbela at Hub in the High Court of Balochistan. The appeals were admitted for regular hearing by the Division Bench of the High Court of Balochistan on 25.03.2014. Later, on the written application of counsel for appellants after hearing the learned Deputy Prosecutor General, Balochistan and after going through the relevant law, the Division Bench of the High Court of Balochistan vide order dated 03.04.2014 while considering the matter falling in the jurisdiction of the Federal Shariat Court transmitted the appeals, paper books alongwith record to this Court. Vide order dated 20.05.2014 of this Court, the appeal of Nadeem Ahmed (Jail Criminal Appeal No.15/I of 2014), appeal of Muhammad Siddique Jail Criminal Appeal No.16/I of 2014), appeal of (Jail

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Criminal Appeal No.17 /I of 2014), appeal of Jamshaid (Jail Criminal Appeal No.18/I of 2014) and appeal of Atta Muhammad (Jail Criminal Appeal No.19/I of 2014) while condoning the delay, their appeal were admitted for regular hearing, Notices were also issued to the State.

2. Appellants/accused persons Saifullah, Muhammad Siddique, Atta Muhammad, Nadeem Ahmed and Jamshaid have challenged the judgment dated 13.11.2013 delivered by the learned Additional Sessions Judge, Lasbela at Hub, whereby appellants/accused namely Saifullah and Muhammad Siddique were convicted under section 396-PPC and sentenced rigorous imprisonment for life with a fine of Rs:50,000/- each or in default thereof to further undergo rigorous imprisonment for 06 months each, they were also ordered to pay a sum of Rs:1,00,000/- (one lac) each to the legal heirs of deceased U/S 544-A Cr.P.C. as compensation while convict appellants namely Atta Muhammad, Nadeem Ahmed and Jamshaid were convicted under section 396-PPC and sentenced to rigorous imprisonment for a term of 10 (ten) years with a fine of Rs:50,000/- (rupees fifty thousand) each or in default thereof to further undergo rigorous

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imprisonment for six (06) months each. They were also ordered to pay a sum of Rs:1,00,000/- (one lac)each to the legal heirs of deceased U/S 544-A Cr.P.C. as compensation. Benefit of section 382-B Cr.P.C. was extended to them.

3. Complainant Akhtar Zaib has also filed Criminal Revision Petition No.02/Q of 2014 for enhancement of sentences of the accused/appellants.

4. All the five Jail Criminal Appeals No.15/I of 2014 (Nadeem Ahmed Vs. The State), Jail Criminal Appeal No.16/I of 2014 (Muhammad Siddique Vs. The State), Jail Criminal Appeal No.17/I of 2014(Saifullah Vs. The State), Jail Criminal Appeal No.18/I of 2014 (Jamshaid Vs. The State), Jail Criminal Appeal No.19/I of 2014 (Atta Muhammad Vs. The State) and Criminal Revision Petition No.02/Q of 2014(Akhtar Zaib Vs. The State etc) have arisen out of the same judgment, they are disposed off through this single judgment.

5. During the proceeding of these appeals vide this Court order dated 20.11.2014 Cr. Revision No.2/Q/2014 filed by complainant Akhtar Zaib was admitted to full hearing and a notice was issued to all the above mentioned

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five convicts/appellants to show-cause as to why their sentence may be not enhanced.

6. Brief facts of the prosecution case as narrated by complainant Akhtar Zaib (P.W-1) in his complaint Ex.P/1-A are that they possessed a poultry farm near Haji Abdullah Burrah stop, main RCD road Winder where, in view of protection as the chickens were ready to be delivered to market, his brother namely Bakht Bahadur used to sleep. Last night at about 10.00 p.m. his brother Bakht Bahadur went to poultry farm and on next day i.e. 07.04.2011 at about 12.30 p.m. he tried to contact his brother but in vain as his mobile phone was not responding. At about 01.50 p.m. he himself went to poultry farm where upon inquiry, it came into his knowledge that 5000 chickens and labours namely Saifullah and Jamshaid alongwith his brother Bakht Bahadur were missing. Upon search he found dead body of his brother in the north-west side of poultry farm, wrapped in sheets. Lastly he requested for taking legal action against Saifullah, Jamsheed and other unknown accused persons who committed murder of his brother and robbed 5000 chickens worth of Rs.12,00,000/- (Rupees twelve hundred thousand).

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Therefore, on the basis of complaint, FIR No.31/2011(Ex.P/10-A) dated 07.04.2011 was registered at police station Winder and the accused were arrested on 08.04.2011 during course of investigation.

7. After completion of investigation challan was submitted before the trial Court on 22.04.2011 for further judicial proceedings.

8. The learned trial court framed charge against the accused on 09.05.2011 under section 17(4) Offences Against Property (Enforcement of Hudood) Ordinance, 1979 read with sections 302/392 PPC to which accused persons pleaded not guilty and claimed trial.

9. During trial, the prosecution examined ten witnesses including complainant namely Akhtar Zaib (P.W-1), who produced his written application Ex.P/1-A on the basis of which FIR Ex. P/10-A, was lodged by the police. P.W.2 Imdad Ali produced seizure memo Ex.P/2-A of mobile phones, seizure memo Ex:P/2-B of cash amount Rs:13,73, 514/-. He also produced two China mobile phones and one Nokia 6300 mobile phone as Art:P/4, Art: P/5 and Art:P/7 respectively. P.W-3 Razi Malik produced memo of dead body as Ex.P/3-A. P.W-4 Akbar Azam produced seizure

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memo Ex.P/4-B of articles seized from the place of occurrence and also produced water pipe, blood stained kameez (shirt) towel, four blankets and pieces of rope as Art:P/9 to Art:P/17. **P.W-5** Dr. Aziz Ahmed Roonjho, medical officer produced death certificate as Ex.P/5-A. **P.W-6** Abdul Wahid produced recovery memo of *Danda* as Ex.P/6-A and also produced *Danda*/wooden stick as Art:P/2. **P.W-7** Abdul Aziz constable produced memo Ex.P/7-A of three computerized weighbridge receipts and computerized bill as Art:P/22 to Art:P/25. **P.W-8** Inayatullah, Judicial Magistrate produced confessional statement of accused Jamshaid s/o Muhammad Afzal u/s 164 Cr.P.C. as Ex.P/8-A to Ex.P/8-K. **P.W-9** Malkt Khan is a circumstantial witness. **P.W-10** Khan Muhammad is the Investigating Officer of the case. He produced FIR, two site sketches, receipt of handing over dead body, inquest report, lists of case property and witnesses and two challans as Ex:P/10-A to Ex.P/10-J respectively.

10. After close of the prosecution evidence, statements of the accused were recorded under section 342 Cr.P.C. wherein they denied the allegations of the prosecution. Accused/appellants Nadeem Ahmed, Muhammad

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Siddique, Saifullah and Jamshaid neither opted to record their statement on Oath under section 340(2) Cr.P.C. nor did they produce evidence in their defence. However, accused/appellant Atta Muhammad recorded his statement under section 340(2) Cr.P.C. and produced Ali Asghar as D.W-1, Dr. Ali Asghar D.W-2 and Shams-ud-Din D.W-3 in his defence. The learned trial Court concluded the proceeding by means of judgment dated 13.11.2013 whereby the appellants were convicted and sentenced in the afore mentioned terms. The appellants being aggrieved by the impugned judgment preferred these appeals.

11. The learned counsel for the appellants contended that in fact it is case of no evidence. Appellants, Nadeem Ahmed, Muhammad Siddique and Atta Muhammad are not nominated in the FIR, no identification parade was conducted, PW-1 is brother, Imdad Ali P.W-2 is partner in Poultry Farm, Razi Malik P.W-3 and Akbar Azam P.W-4 are close relative of deceased person and being interested witnesses are not worthy of reliance, while remaining witnesses are police officials. It was also submitted that confessional statement has been recorded after inordinate delay of three

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days, which had been retracted and was not corroborated by any independent evidence and no recovery of stolen property (chickens). Learned counsel further stated that only recovery of computerized bill and receipt of weigh-bridge and computerized bill containing amount to Rs.13,73,514/- (Thirteen lac seventy three thousands five hundred fourteen only) does not connect the appellants/accused. Concluding the arguments, the learned counsel submitted that the prosecution has not been able to prove its case beyond reasonable shadow of doubt against the appellants as material contradiction exists in the prosecution evidence.

12. On the other hand, learned counsel for complainant has argued that the statements of witnesses are duly corroborated with each other on material points and no material contradiction has appeared in their statements, the medical evidence supports the ocular account and recoveries were effected on the pointation of appellants/accused persons. Further Saifullah accused made disclosure and on his pointation the stick/danda (crime weapon) was recovered from the place of occurrence with the help of

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which he attacked the deceased Bakht Bahadur, and prosecution has fully proved its case against accused/appellants beyond any shadow of doubt.

13. Whereas learned Additional Prosecution General Balochistan representing the State adopted the arguments put forth by learned counsel for the complainant.

14. We have heard the learned counsel for appellants as well as learned counsel for the complainant and the learned Assistant Prosecutor General Balochistan for the State and have gone through the evidence available on the record and have also scrutinized the impugned judgment.

15. The allegation against the convict/appellants is that in the night between 6th/7th April, they committed dacoity by taking away about 5000 chicken from the Poultry Farm of complainant Akhtar Zaib (PW-1) besides committing murder of his brother namely Bakht Bahadur (deceased).

16. Prosecution in order to bring home the charge against convict/appellants had relied upon the evidence of 10 witnesses. It is evident from the record rather an admitted fact that there is no direct ocular evidence of the occurrence and the case of prosecution is based on circumstantial

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evidence which has been collected in the shape of confessional statement of appellant Jamshaid, disclosure and recoveries.

17. From the evidence available on the record it is clear that after arrest appellant Jamshaid has recorded his confessional statement before concerned Judicial Magistrate (P.W-8) wherein he confessed that deceased was tied up with rope and chickens were taken away from poultry farm. The appellant further confessed that he alongwith accused/appellants Saifullah, Siddique and absconding accused Jamshaid had thrown the Bakht Bahadur (deceased) in bushes. The appellant Jamshaid in confession has specified the role of his companions (co-accused persons). It is evident from the confession that lastly the robbed chickens were sold out/disposed off by co-accused/appellant Nadeem, while the appellant Atta Muhammad had arranged the vehicles for transportation of chickens. The confession was recorded by the concerned Judicial Magistrate (P.W-8). He (P.W-8) produced the confessional statement as Ex.P/8-A which containing his required certificates to the extent that the confession was true and voluntary made. Though the confessional statement has been retracted and to some

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extent is exculpatory but the confession is corroborated on all material particulars.

18. The learned counsel for the appellants has contended that confessional statement has been recorded in delay of three days and appellant has retracted his judicial confession, but the contentions have no substance, because the retracted confession is sufficient for conviction when it is corroborated on material particulars by strong circumstantial piece of evidence such as recovery of crime weapon stick/*danda*, mobile phone of deceased, computerized weighbridge receipts/bills from appellants and recovery of ropes, plastic pipe, blood stained shirt, blankets and towel from the place of occurrence. Reliance is placed on the authorities reported as Wazir Khan Vs. The State (1989 SCMR.446); The State Vs. Minhun alias Gul Hassan (PLD 1964 SC 813) and Muslim Shah Vs. The State (PLD 2005 SC 168). In these cases the Hon'ble Supreme Court held "that retracted confessions, whether judicial or extra judicial, could legally be taken into consideration against the maker of those confession himself and if the confessions were found to be true and voluntary, then there was no need at

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all to look for further corroboration". So far as the delay of three days in the recording of confessional statement is concerned, reference is invited to the cases of Khuda Bakhsh Vs. The State (2004 SCMR 331) and Muslim Shah Vs. The State (PLS 2005 SC-168) wherein the Hon'ble Shariat Appellate Bench even did not consider the delay of 15 days in recording the confessional statement because it was found true and voluntary and not an out come of duress and coercion. In view of the evidence of Judicial Magistrate (P.W-8), the confessional statement was true and voluntary and not obtained under pressure or coercion. Moreover, the confession is corroborated by strong circumstantial evidence on material particulars. Though the confession has been retracted but being true and voluntary one and corroborated by strong circumstantial evidence on material points is sufficient for conviction and learned trial Court has rightly believed the same and took it into consideration against the appellants.

19. Moreover, the confessional statement of appellant, Jamshaid can also, be taken into consideration against the remaining accused/appellants as circumstantial evidence under Article 43 of Qanun-e-Shahadat Order, 1984.

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As the Article 43 of Qanun-e-Shahadat Order, 1984 contains that when more than one persons are being tried jointly for the same offence and confession made by one of such persons affecting himself and some other may be taken into consideration against such other persons as well as against the persons who made the confession.

20. It is evident from the evidence available on the record that prosecution besides confession of appellant Jamshaid had also collected other circumstantial evidence in the shape of recovery of crime weapon stick/*danda* and mobile of deceased from possession of appellant Saifullah.

It has come in the evidence of Imdad Ali (P.W-2) and Abdul Wahid (P.W-6) that accused appellant/Saifullah made disclosure and led the police to the recovery of crime weapon stick/*danda* lying on the place of occurrence as well as the mobile of deceased recovered from possession of said appellant.

The recovery of crime weapon stick/*danda* and mobile phone of the deceased from appellant Saifullah gets corroboration from the confession of appellant Jamshaid as he in his confession had stated that appellant Saifullah hit the deceased on his head with stick/*danda*. The disclosure made by

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appellant Saifullah is admissible under Article 40 of the Qanoon-e-Shahadat Order, 1984. As in pursuance of disclosure of appellant Saifullah the crime weapon stick was recovered on his pointation from the place of occurrence. Reliance is placed on the judgment passed by this Court in the case of Sher Dil and others Vs. The State and others. (2003 YLR-110)

21. It is also evident from the evidence collected by prosecution that mobile phone of the deceased was recovered from possession of appellant Saifullah and was made article through Imdad Ali (P.W-2). The recovery of mobile of the deceased from said appellant further corroborates the confessional statement and connects the appellant with the commission of offence and fortifies the prosecution version.

22. Perusal of the evidence available on the record further reveals that computerized weighbridge receipts and computerized bill Art.P/22 to Art.P/25 had been recovered from appellant Nadeem as he was deputed to sell out/dispose off the robbed chickens. The recovery of receipts and computerized bill gets corroboration from confession of appellant Jamshaid

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as he stated that appellant Nadeem was assigned the task to dispose off/sell out the robbed chickens.

23. It has also come in the evidence of prosecution witnesses that it was the appellant Atta Muhammad who had arranged the vehicle for transportation of the robbed chickens and had cleared the vehicles before and after the commission of crime at Weighbridge. In this regard besides the confession, the deposition of P.W-9 Malkat Khan is of much importance. As P.W-9 stated that appellant Atta Muhammad had appeared at the weigh-bridge and cleared the vehicles loaded with and earlier without chickens. P.W-9 also identified the appellant Atta Muhammad in the Court. The conducting of identification parade by witness was not necessary when eye witness identified accused in the Court. Even otherwise nothing came on record to suggest that P.W-9 had deposed falsely against appellant on account of any enmity or animosity. The statement of P.W-9 is corroborated by confession as appellant Jamshaid had confessed that it was appellant Atta Muhammad who had arranged the vehicles and cleared them at weighbridge.

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24. It is evident from the record that appellant Jamshaid in confessional statement has stated that Bakht Bahadur (deceased) was tied by co-accused persons/appellants Saifullah, Siddique, and Jamshaid (absconding accused) and then they including (appellant Jamshaid) had thrown him in near by bushes. The confession of said appellant further gets corroboration by the recovery of ropes, pipe etc from the place of incident as well as the evidence of Dr. Abdul Aziz who produced the death certificate. The P.W-5 has opined that the deceased died of "Asphyxia" and the weapon which was used was "Rope" (Rassi).

25. Careful perusal of the evidence collected and led by prosecution against the appellants shows that prosecution has been able to substantiate the charge against the appellants beyond reasonable doubt by means of connecting all the links of the chain, in the shape of strong circumstantial evidence. On the other hand, the defence plea adopted by the appellants seems to be after thought and can not be relied upon.

26. It was also contention of the appellants counsel that some of the appellants are not nominated in the FIR, but this contention has no force

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because the strong circumstantial evidence available on record fully connects the appellants with the commission of offence and leaves no room to doubt that appellants have not been involved.

27. After considering the material available on the record, we are of the considered view that the appellants have committed the offence punishable under section 396 PPC as the number of accused was more than four. It may be mentioned here that appellant Jamshaid s/o Mohammad Afzal remained present alongwith appellants Saifullah and Muhammad Siddique at the place of occurrence from the beginning to the end and also helped the said appellants in throwing away/disposing off Bakht Bahadur (deceased) after tying in bushes. He also accompanied the said appellants to Karachi, and remained with them till his arrest; therefore, he is not entitled for any leniency/lesser punishment, while learned trial Court has taken lenient view to his extent for which he was not entitled. Keeping in view, his role played towards the commission of offence. As such the sentence of appellant Jamshaid s/o Muhammad Afzal is enhanced from ten (10) years R.I. to imprisonment for life. The sentence of fine or quantum of imprisonment in

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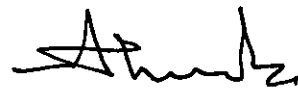
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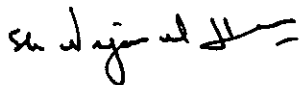
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default thereof shall remain intact. The order of payment of Rs.100000/- (one lac) to the legal heirs of the deceased under section 544-A Cr.P.C. by accused/appellant is also maintained. The benefit of section 382-B Cr.P.C. extended to the appellant is also maintained.

28. Consequently, with the above modification in the judgment to the extent of sentence of appellant Jamshaid, the impugned judgment dated 13.11.2013 passed by learned trial Court is upheld and sentences and conviction is maintained, while the jail criminal appeals filed by the appellants are dismissed, where the Criminal Revision No.02/Q of 2014 filed by complainant for enhancement of sentences of appellants is partly accepted.

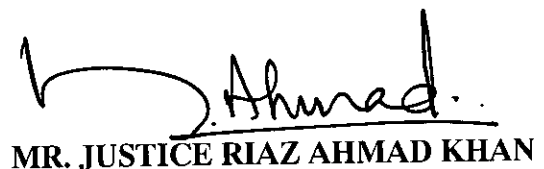


MR. JUSTICE ZAHOOH AHMED SHAHWANI



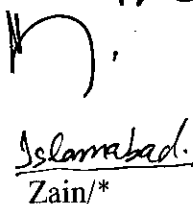
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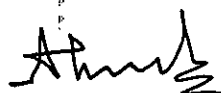


MR. JUSTICE RIAZ AHMAD KHAN

APPROVED FOR REPORTING



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Judge