

IN THE FEDERAL SHARIAT COURT
(Appellate Jurisdiction)

PRESENT

MR. JUSTICE HAZIQL KHAIRI, CHIEF JUSTICE
MR. JUSTICE MUHAMMAD ZAFAR YASIN

JAIL CRIMINAL APPEAL NO. 215/L OF 2001 (Linked with)
JAIL CRIMINAL APPEAL NO.216/L OF 2001

1. Muhammad Nadeem alias Deemi son --- Appellants respectively of Yaseen, resident of Mauza Jambnar Kalan, Phoolnagar, Kasur
2. Muhammad Sabir son of Muhammad Mukhtar, resident of Chowk Hakiman Bazar, Mohallah Club Ghar near House and Street Phelwan, Shakargarh, District Narowal

Versus

The State	---	Respondent
For the Appellants	---	Ms. Asma Jehangir and Mr. Muhammad Rafique Chaudhary, Rana Javed Anwar Khan, Mr. M.D. Tahir and Mr. Mujeeb Faisal Chaudhary, Advocates respectively
For the State	---	Mr. Asjad Javed, D.P.G.
FIR No., date and Police Station	---	316/99, 2.12.1999 P.S. Ravi Road Lahore
Date of the Order of the Trial Court	---	16.3.2000
Date of Institution	---	30.8.2001
Date of Hearing	---	23.2.2007
Date of Decision	---	17-4-2007

JUDGMENT

HAZIQU L KHAIRI, CHIEF JUSTICE.- By this judgment, we propose to dispose of two Jail Criminal Appeals Nos.215/L of 2001 and 216/L of 2001 filed by appellants Muhammad Nadeem aged 9/10 years and Muhammad Sabir, aged 13/14 years respectively who have impugned the judgment dated 16.3.2000 passed by the learned Sessions Judge, Lahore whereby appellant Muhammad Nadeem was sentenced to 14 years R.I. on 13 counts totaling 182 years under section 308 PPC and for 7 years R.I. on 13 counts totaling 91 years under section 201 PPC and further to pay Diyat at the rate of Rs.2,53,625/- to the legal heirs of 13 deceased and in case they are not available/traceable it may be deposited with the State, whereas appellant Muhammad Sabir was sentenced to 14 years R.I. on three counts totaling 42 years under section 308 PPC and 7 years R.I. on three counts totaling 21 years under section 201 PPC and further to pay Diyat of Rs.2,53,625/- to the legal heirs of the deceased and in case they are not available/traceable the same may be deposited with the State.

2. Here it may be mentioned that there were two other principal

accused in this case, namely, Javed Iqbal Mughal son of Muhammad

Ali and Shehzad alias Guddu alias Sajid son of Munawar Ahmad alias

Ranjha who were convicted and sentenced as under:-

i) Javed Iqbal Mughal was convicted and sentenced under

section 302-A PPC as Qisas on 100 counts who was

ordered to be strangulated through iron chain weapon of

offence in this case in the presence of legal heirs of the

deceased and then his body should be cut in 100 pieces

since he used to cut the dead bodies of 100 deceased

children in this case. The pieces of his dead body should

be put into drum containing the formula modes operadi

used by him for dissolving the dead body. He was also

convicted under section 201 PPC on 100 counts, seven

years R.I. each totaling 700 years R.I.

ii) Shehzad alias Sajid alias Guddu was convicted under

section 302-A PPC for committing the Qatal Amad of 98

children along with the other co-accused in furtherance

of their common intention. He was ordered to be strangulated through the weapon of offence of the case i.e. iron chain. His body should be cut into 98 pieces like the principal accused and the same should be put in the drum. He was also convicted under section 201 PPC on 98 counts, seven years R.I. each totaling 686 years R.I.

Both Javed Iqbal and Shehzad accused had committed suicide while they were in jail during the pendency of their appeals.

3. The summary of essential facts for the purpose of disposal of these appeals emerging out of the impugned common judgment are

that House No.16-B, Ravi Road, Lahore was locked for many days and acute foul smell was coming out of it. As per F.I.R. on 2.12.1999

Muhammad Ashiq Marth, Inspector/SHO, Ravi Road (P.W. 104) and also Investigating Officer of the case along with the police party

reached there and found a door of the house unlocked. As he entered there he found posters affixed on the walls allegedly written by Javed

Iqbal Mughal who was accused of murdering hundred boys. He also found and took possession of drums in the house containing human

bodies lying in liquid acid, a Kara (iron ring) around leg of a dead

body, 14 canes, two pieces of rubber pipe, one blue copper wire

stained with earth, two jugs stained with human hair, clothes of

murdered children, secured earth with chemicals, X-ray films, two

used syringes and 65 household articles etc.

4. Besides, the police also took into possession the Diaries

maintained by accused Javed Iqbal. In one diary, there were names

and addresses of one hundred children. In the second diary, the

accused recorded committing of their murder. There was an album

containing 57 photographs of the victims with writing on the backside

thereof. Inquest reports, recovery memos, site plan drawings and

marginal notes were also prepared by the police.

5. On 3.12.1999, fragments/remains of human beings were found

lying in the drums and were sent for medical examination along with

two dockets. On the same day parents and relatives of some of the

murdered children visited Police Station, Ravi Road, Lahore and

identified clothes and other articles belonging to them.

6. As many as 105 prosecution witnesses were examined and the

paper book runs into about a thousand pages, however, in order to

decide these two appeals, the foregoing facts were spelled out as they

were essential to understand the background of the case, the peculiar

nature of the crime and how it was executed by the accused persons.

Learned counsel for the parties drew our attention that the material

available against the appellants is limited to lesser pages, therefore, it

was not at all necessary to go through the entire bulk of the record

against which the two other accused namely Javed Iqbal and Shehzad

were convicted and sentenced to death. Both of them committed

suicide while in judicial custody during pendency of their appeals

before this Court.

7. Ms. Asma Jehangir, learned counsel appearing for appellant

Muhammad Nadeem and Ch. Muhammad Rafique appearing for

appellant Muhammad Sabir drew our attention that both appellants

were minors when they were arrested and tried, appellant Muhammad

Nadeem being 9/10 years of age on 8.3.2000 (P.W.33) and as per 342

Cr.P.C. statement 14 years, whereas appellant Muhammad Sabir being

12/13 years on 28-2-2000 (P.W.81). They were produced handcuffed

before the trial court by the police.

8. The case against appellant Muhammad Nadeem was initiated

by the police when he was arrested on 30.12.1999 for trying to encash

a traveler's cheque along with accused Shehzad issued by Javed Iqbal

co-accused. Next evidence against him is of PW.33 Tariq Mahmood,

a rickshaw driver, who was hired by appellant Muhammad Nadeem to

transport 4 chemical canes from the house of co-accused Javed Iqbal

to the backside of Yadgar Chowk for Rs.40/- According to him, the

age of the appellant was not more than 9/10 years. In cross-

examination, he voluntarily stated that he had seen the photograph of

appellant Muhammad Nadeem in the Daily Jang and identified him as

one of the accused persons, which led him to record his statement

before the police on 5.12.1999. It was contended by Ms. Asma

Jehangir that no photograph of appellant Nadeem in any newspaper

was produced by him nor was ever published. This was not denied by

the learned counsel for the State. According to PW.11 Dr. Imtiaz

Ahmed Bhatti, appellant Muhammad Nadeem was brought before him

by PW. 105 Masood Azizi, DSP handcuffed and was about 14 years

of age. P.W. 9 Mian Ghulam Hussain, Judicial Magistrate, Lahore

recorded the confessional statement of Muhammad Nadeem under

section 164 Cr.P.C. wherein it was stated that he was engaged to bring

boys to co-accused Javed Iqbal and he remained present at the time of

killing of many boys by accused Javed Iqbal who also committed

sodomy with them. It is pertinent to note that on 13.1.2000 his

remand was given by the Court for the next day i.e. 14.1.2000 and on

the same day viz 13.1.2000, the learned Magistrate recorded his

confessional statement which was made after 13 days of his arrest.

While recording his statement under section 164 Cr.P.C. the learned

Magistrate inter-alia asked him as under:-

کوئی جان کی رہائی کا سچا سچا جائز ہے؟
کوئی جان کی رہائی کا سچا سچا جائز ہے؟
کوئی جان کی رہائی کا سچا سچا جائز ہے؟

The question as put to appellant Muhammad Nadeem ought to

have intimidating effect on an illiterate minor that he would go to jail

after his physical remand. It was the duty of the Magistrate to have

elaborated the concept of judicial lock up vis-à-vis police lock up at a

Thana to an accused who is minor and illiterate. In common parlance a

jail is considered a more deadly and some what more permanent place

where hardened criminals are kept with police all around than a Thana

where every day police detain suspects of crime who may come and

go. It may further be stated that section 164(2) Cr.P.C. contemplates

that "such (judicial) confession shall be recorded and signed in the

manner provided in section 364 Cr.P.C. and such statements to the

confession shall then be forwarded to the Magistrate by whom the

case is to be inquired into or tried." It would be advantageous here to

reproduce sub-section (1) section 364 Cr.P.C. which is relevant for

our purpose as under:-

"364(1) Examination of accused how recorded.- Whenever the accused is examined by any Magistrate or by any Court other than a High Court, the whole of such examination, including every question put to him and every answer given by him, shall be recorded in full, in the language in which he is examined or, if that is not practicable, in the language of the Court or in English : and such record shall be shown or read to him, or, if he does not understand the language in which it is written, shall

be interpreted to him in a language which he understands, and he shall be at liberty to explain or add to his answer."

The object of section 164 Cr.P.C. read with section 364(1) Cr.P.C. is to ensure inter-alia that a person examined thereunder should fully understand every question put to him in a language he understands. If an accused understood the language of the question put to him but he was unable to comprehend the basic concept underlying therein it was incumbent upon the learned Magistrate to fully explain and make him understand the same otherwise it would defeat the very object of law and result into miscarriage of justice.

This has not been done in this case which purports to cast serious doubts to the credibility of confession itself.

10. It was next urged by Ms Asma Jehangir, learned counsel for appellant Muhammad Nadeem that the appellant had remained in police custody for 13 days where after his confession was recorded.

This inordinate delay in recording judicial confession that too of a minor in police custody was not explained by the prosecution and was completely overlooked by the learned trial Judge while convicting

him. There was not a word about it in his lengthy judgment running into 170 pages.

11. As to what is the credibility of a delayed confession, learned

counsel made reference to the case of *Tooh Vs. State, 1975 P.Cr. LJ*

440 decided by a Division Bench of Sindh High Court in which

confession was recorded on the 3rd day of arrest of the accused and it

was held that the delay of over 24 hours would normally be fatal to

the acceptance of a judicial confession. This was followed by *State*

Vs. Ishaque 1980 P.Cr. LJ 597 (DB), Bakhshali and others Vs. The

State 1990 P.Cr. LJ page 1 (DB) and the recent decision of the

Hon'ble Supreme Court of Pakistan in the case of *Naqibullah and*

another Vs. The State (PLD 1978 Supreme Court 21). Learned

Deputy Prosecutor-General Mr. Asjad Javed appearing for the State

candidly conceded that there was un-explained delay of 13 days in

recording the confession of Muhammad Nadeem, hence it has no

evidentiary value against him for conviction.

12. Next it was contended by Ms. Asma Jehangir, learned counsel

for appellant Muhammad Nadeem and Mr. Muhammad Rafique

Chaudhary, learned counsel for appellant Muhammad Sabir that

judicial confession was retracted by both the appellants in their

statements under section 342 Cr.P.C. wherein inter-alia appellant

Muhammad Nadeem had stated that he was not given the time to think

over before the learned Magistrate and he was not informed that it

could be treated against him. No such warning was given to appellant

Muhammad Sabir to whom half an hour was given for thinking.

13. Learned counsel for the appellants drew our attention to a

number of decisions made by the Superior Courts. The first case

referred to was of *State Vs. Muhammad Naseer 1993 SCMR 1822*

wherein it was held:-

121

“The respondent, however, retracted from his confession at the trial and denied even having made any such confessional statement. It is true that the conviction of an accused could be based on his retracted confession if the Court finds that it was made voluntary and was true. However, the superior Courts have consistently held, and it has now become almost a well settled rule of prudence in criminal cases, that the Courts before convicting an accused for a criminal offence on the basis of his retracted confession must look for its corroboration in material particulars from other independent piece of evidence in the case.”

14. The latest case law on retracted confession submitted by the

learned counsel was reported in *Bahadur Khan Vs. The State (PLD*

1996 Supreme Court 336) as under:-

"Admittedly appellant has retracted from his confession, which should be accepted only if it is corroborated by clear cogent and independent evidence. Although there is no such provision to accept retracted confession on this basis, this is a rule of prudence in the administration of criminal justice, which has been followed by all the jurists and authorities. The Court ought to examine whether a confession is made voluntarily free from coercion and torture and also examine the circumstances under which it was made and retracted. However, if the reason given for retracting is palpably false, absurd and incorrect the Court can accept such confession without corroboration. But for the safe administration of justice it will be proper, though not necessary to seek some corroboration for retracted confession. The corroboration of such confession should be of material particulars, connecting the accused with the offence. Other cases on this point referred to by the learned counsel were *Naqibullah and another Vs. The State (PLD 1978 Supreme Court 21), State Vs. Minhun alias Gul Hassan (PLD 1964 Supreme Court 813), Khalid Javed and another Vs. The State 2003 SCMR 1419, Mst. Nseem Akhtar Vs. The State 2003 MLD 530, Javed Masih Vs. The State 1993 SCMR 1574, Nadir Hussain Vs. The Crown (1969 SCMR 442), Muhammad Amin Vs. The State (PLD 1990 Supreme Court 484) and Muhammad Yaqoob Vs. the State (1992 SCMR 1983)."*"

15. It was also urged before us by the learned counsel that in order

to ascertain whether the confession was voluntary or not all the requirements of section 164 Cr.P.C. must be adhered to. Besides in judging the reliability of a confession certain circumstances may also be seen which have been elucidated in the case of *Fazlur Rehman Vs.*

The State PLD 1960 (W.P) Pesh. 74 (followed by Wali Muhammad

alias Nandhoo Vs. The State 1986 P.Cr. LJ 1153 (Quetta) as

follows:-

- (i) The character and duration of the custody.
- (ii) Whether the confessor was placed in a position to seek the advice of his relatives or his lawyers.
- (iii) The name and quantum of proof, which was available against the confessor before he confessed.
- (iv) Whether the confession was consistent with other evidence, which was available at the time when the confession was made.

16. As regards appellant Muhammad Sabir, the prosecution had produced only 4 witnesses against him. He is stated to have made an extra judicial confession before PW. 87 Muhammad Faisal. He was arrested on 11.1.2000 and his remand was obtained till 13.1.2000 on which date he was produced before the Judicial Magistrate for further

remand till 14.1.2000. He stated that he was feeling at home with

police and did not object to the remand. He also made judicial

confession on the same day before the Judicial Magistrate, Lahore but

he was given in police custody for appearance on 14.1.2000.

17. The association of Muhammad Sabir with Javed Iqbal was

brought into fore when he along with Javed Iqbal went to the office of

PW. 18 Munir Hussain, a Property Dealer, through whom Javed Iqbal

took on rent House No.16-B, Ravi Road, Lahore at Rs.2000/- per

month. He was told that foul smell was coming from the rented

house, which had greatly disturbed the inhabitants of the Mohallah.

Javed Iqbal handed over Rs.500/- to him for clearance of the gutters

from his house. Out of this, PW. 18 paid Rs.200/- to PW. 19 Manha

Masih, a Jamadar/sweeper for this purpose.

18. Next witness is PW. 87 Muhammad Faisal who is a car

mechanic. His house is in front of the house of Muhammad Sabir. He

took Sabir to the shop of his brother and asked him where he was for

the past 3 to 4 months to which appellant Sabir replied that he was

residing near Baba Chatri Wala and further stated:-

"We bring children, commit their murders and then throw the dead body in the acids. First we commit un-natural offence with them, and then we put an iron chain around their neck and then we put our knee on their back side and in this way we committed the murder of that boy. Then the dead body was thrown in the acids. One Javed Iqbal is their wing leader, for committing these offences (the witness replied on the interference of Court whether Sabir accused told him that he used to do all alone). I abused him and told him that I will impart this information to his parents and Sabir took it as a joke."

19. In cross-examination he confirmed having said before the

police under section 161 Cr.P.C. that he had asked Sabir as to where

he was on meeting him but when he was confronted with this

statement it was not recorded there. Similarly there was nothing in his

statement u/s 161 Cr.P.C. that "we bring children, commit their

murder and then throw their bodies in acids." What appellant Sabir

had said before the police was that "there is a house in the abadi near

Baba Chatri Wala where a person namely Javed Iqbal is residing who

commits un-natural offence with the children then commit their

murder and put them in the acids." There was also no disclosure by

him before the police that first we commit un-natural offence and then

put our knee on their backside and by this way we commit the murder

of these children. It also transpired in his cross-examination that he

had remained in Police Station for three days when he was brought

from Shakargarh and was released after his brother-in-law and uncle

had discussion with police. He further stated in his cross-examination

that "my brother-in-law has stated before the police that what

statement he (appellant Sabir) has made before the police he will not

back out from the same."

20. As regards kidnapping of one child namely Qadeer by appellant

Sabir kidnappee's brother PW. 81 Essa had admitted in his deposition

that nowhere in his statement under section 161 Cr.P.C. he had made

any such allegation against appellant Sabir.

21. Next comes the judicial confession of appellant Sabir, which

too was made on 13.1.2000 after his remand was obtained for

14.1.2000 during which period he remained in police custody. The

relevant portion of his confession before the Magistrate is as under:-

"Javed Iqbal told me that the boy whom I had brought was killed by him and showed me his clothes which frightened me.

He threatened that I will have similar fate if I tried to run away."

"Javed Iqbal took me to the room and asked me to put the chain around the neck of the body and strangle him through it, so I did. There after he undressed him (victim) and put his clothes in the drum by the side of my room and put them in the acid. He threatened me that if I tried to run away, my parents and I will be handed over to the police." Another co-accused namely Shehzad in his judicial confession had stated that threat of death was made to appellant Sabir by Javed Iqbal accused.

22. What stands out clearly to the confession made by appellant

Sabir was that it was neither made voluntarily nor it was free from coercion nor it was consistent with other evidence on record.

23. Next we came across the statements of the appellants in reply to

the questions put to them under section 342 Cr.P.C. by the learned

trial Court. It is stated in the impugned judgment that they had signed

them but it is not so. Instead they have put their left hand thumb

impression thereon as both were illiterate. However, what is pertinent

to note is that in this lengthy stereo type questionnaire, question No.12

put to both the appellants runs into 5-foolscap typed pages with

dozens of questions and depositions of a large number of PWs.

producing hundred of documents, most of which are not related to the

appellants which have made the entire judicial proceedings against

them a mockery in the eyes of law. We are fortified in our

observation by the case of Muhammad Mushtaq Vs. The State

reported in PLJ 2001 SC (AJK) 255 wherein it was stated:-

"Law on point stands settled that explanation of accused-convict is to be sought only on incriminating material which is brought on record by prosecution. Extraneous circumstances which do not form part of evidence of prosecution are not material for purpose of conviction and those cannot be taken into consideration."

24. Before we part with the above two appeals filed by minor

appellants Muhammad Nadeem and Muhammad Sabir, our attention

was invited by Ms. Asma Jehangir, Advocate that the said two minors

were convicted on 16.3.2000 a few months before the promulgation of

Juvenile Justice System Ordinance, 2000 which envisages under

section 5 separate trial of a child (below 18 years-section 2a) from the

trial of an adult person and cannot inter-alia be subjected to any labour

nor he would be handcuffed, put in fetters or given any corporal

punishment (section 12). That may be so, but Juvenile Justice System

Ordinance, 2000 extend to current, pending and future cases against a

child and has no relevance to the decided and closed cases which were earlier in time to the commencing day of the ordinance.

25. While dealing with these two appeals of the minors, we were

unable to close our eyes to the conviction and sentence for death

awarded to the main accused Javed Iqbal Mughal for murdering 100

children with direction by the learned Additional Trial Judge, Lahore

'to strangle him through iron chain weapon of offence and his body be

cut in 100 pieces since he used to cut the dead bodies of 100 deceased

children in pieces.' No doubt, it was one of the most gruesome and

shocking murders committed by a single person in the history of

crimes in which one by one children of different ages for a fairly long

period were first subjected to sodomy by him and then killed in the

most cold, barbaric and inhuman manner throwing afterwards their

dead bodies to dissolve in acid kept in drums for this purpose. We are

aware how painful it would have been for the learned trial Judge,

Lahore to conduct such a trial but in doing so he crossed the barrier of

law in directing to strangle Javed Iqbal accused in a manner provided

above and then to cut his body in 100 pieces. Such direction is

against the teachings of Islam and in violation of Rule 362 of Pakistan

Prison Rules and is also perverse, uncalled for and of no legal effect.

It may be recalled here that his appeal and the appeal of co-accused

Shehzad before this Court have become infructuous as during their

pendency both of them had committed suicide in jail.

26. The upshot of the foregoing discussion is that we accept both

the appeals filed by Muhammad Nadeem and Muhammad Sabir and

set aside the impugned judgment dated 16.3.2000 passed by the

learned Additional Sessions Judge, Lahore, with directions to jail

authorities to release both the appellants forthwith if not required in

any other case.

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17/4/07

JUSTICE HAZIQU L KHAIRI
Chief Justice

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JUSTICE MUHAMMAD ZAFAR YASIN

Lahore, the
17th April, 2007.
Bashir/*

Annoed at Lahore

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17/4/07

Absurd or reusing

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