

[Supreme Court of Pakistan]

Present: Asif Saeed Khan Khosa, Manzoor Ahmad Malik and Syed Mansoor Ali Shah, JJ**IMRAN ALI---Petitioner****Versus****The STATE---Respondent**

Jail Petition No. 298 of 2018, decided on 12th June, 2018.

(Against the judgment dated 20.03.2018 passed by the Lahore High Court, Lahore in Criminal Appeal No. 167868/J of 2018 and Capital Sentence Reference No. 1/T of 2018)

(a) Penal Code (XLV of 1860)---

---Ss. 364-A, 376, 377, 302(b) & 201---Anti-Terrorism Act (XXVII of 1997), S. 7---Kidnapping or abducting a person under the age of fourteen, rape, sodomy, qatl-i-amd, causing disappearance of evidence of offence, act of terrorism---Voluntary and true confession of guilt---Accused allegedly kidnapped a minor girl, where after he subjected her to sodomy and rape, before murdering her---When the charge was framed by the Trial Court against the accused he had pleaded guilty as charged and on that occasion he recorded a detailed confessional statement wherein he had admitted almost every aspect of the case alleged against him---Despite pleading guilty to the charge and making of a confessional statement the Trial Court decided to proceed with recording of evidence and during the trial statements of as many as thirty two (32) prosecution witnesses were recorded and many other pieces of evidence were brought on the record---Accused, in his statement recorded under S. 342, Cr.P.C. had once again admitted almost all the vital pieces of evidence produced by the prosecution against him as correct and had once again admitted his guilt unreservedly---Counsel for the accused had only prayed for some lenience to be shown to the accused in the matter of his sentence and no argument had been advanced before the Trial Court challenging the merits of the prosecution's case---In his memorandum of appeal filed by the accused before the High Court once again only lenience in the matter of sentence had been prayed for by the accused without questioning his convictions recorded by the Trial Court---Only during arguments before the High Court the counsel for the accused had maintained that admission of guilt by the accused before the Trial Court was a result of coercion but during such arguments he had not provided any detail regarding coercion applied against the accused so as to extract a confession---Apart from the guilty plea and confession of accused the CCTV footages, photographs, DNA tests and the medical evidence brought on record proved that the confession made by the accused was not only voluntary but also true---Guilt of the accused had been proved to the hilt---Petition for leave to appeal was dismissed in circumstances and leave was refused.

(b) Penal Code (XLV of 1860)---

---Ss. 364-A, 376, 377, 302(b) & 201---Anti-Terrorism Act (XXVII of 1997), S. 7---Kidnapping or abducting a person under the age of fourteen, rape, sodomy, qatl-i-amd, causing disappearance of evidence of offence, act of terrorism---Death sentence, confirmation of---Accused allegedly kidnapped a minor girl, where after he subjected her to sodomy and rape, before murdering her---Accused was sentenced to death by the Trial Court, which sentence was upheld by the High Court---Crimes committed by the accused were absolutely horrendous and barbaric and the same had been committed with a minor and innocent girl aged about 7/8 years---Accused had not only deceitfully kidnapped the victim but also brutalized her by committing sodomy and rape with her and then ultimately killed her mercilessly---In his pleading guilty to the charge as well as in his statement recorded under S. 342, Cr.P.C. the accused had admitted committing similar offences with eight other minor victims and in such backdrop he did not deserve any sympathy in

the matter of death sentence awarded to him---Petition for leave to appeal was dismissed in circumstances and leave was refused.

Ms. Sarwat Nawaz, Advocate Supreme Court for Petitioner.

Complainant in person.

Mazhar Sher Awan, Additional Prosecutor-General, Punjab for the State.

Date of hearing: 12th June, 2018.

JUDGMENT

ASIF SAEED KHAN KHOSA, J.---For allegedly kidnapping, sodomizing, raping and murdering a minor girl namely Zainab Amin, aged about 7/8 years, the petitioner was booked in case FIR No. 8 registered at Police Station A-Division, Kasur on 04.01.2018 and after a regular trial he was convicted by the trial court for offences under sections 364-A, 376, 377, 302(b) and 201, P.P.C. and section 7(a) of the Anti-Terrorism Act, 1997 and for some of the above mentioned offences he was sentenced to death apart from some other sentences passed against him. The petitioner challenged his convictions and sentences through an appeal which was dismissed by the High Court and all his convictions and sentences recorded by the trial court were upheld and confirmed. Hence, the present petition before this Court.

2. We have heard the learned counsel for the petitioner and the learned Additional Prosecutor-General, Punjab appearing for the State and have gone through the record of the case with their assistance.

3. It has straightaway been noticed by us that when the charge was framed by the trial court against the petitioner he had pleaded guilty as charged and on that occasion he had got recorded a detailed confessional statement wherein he had admitted almost every aspect of this case alleged against him. Despite such pleading guilty to the charge and making of a confessional statement by the petitioner the trial court had decided to proceed with recording of evidence and during the trial statements of as many as 32 prosecution witnesses were recorded and many other pieces of evidence were brought on the record. In his statement recorded under section 342, Cr.P.C. the petitioner had once again admitted almost all the vital pieces of evidence produced by the prosecution against him as correct and had once again admitted his guilt unreservedly. We have observed that even in his arguments addressed before the trial court the learned counsel for the petitioner had only prayed for some lenience to be shown to the petitioner in the matter of his sentence and no argument had been advanced before the trial court challenging the merits of the prosecution's case against the petitioner. We have further observed that in his memorandum of appeal filed by the petitioner before the High Court once again only lenience in the matter of sentence had been prayed for by the petitioner without questioning his convictions recorded by the trial court. It was for the first time during the arguments before the High Court that the learned counsel for the petitioner had maintained that admission of guilt by the petitioner before the trial court was a result of coercion but during such arguments he had not provided any detail regarding coercion applied against the petitioner so as to extract a confession. In paragraph No. 4 of the memorandum of the present petition filed before this Court it has been maintained by the petitioner that the confession made by him was a result of duress and inducement but in paragraph No. 10 of this very petition the petitioner has, once again, admitted his involvement in the alleged offences in clear and categorical terms. Apart from pleading guilty to the charge and making a confession by the petitioner there were many pieces of evidence brought on the record by the prosecution which proved every word of the confession to be correct and in that regard we may refer to the CCTV footages, photographs, DNA tests and the medical evidence which had confirmed every aspect of the confession made by the petitioner. All such pieces of evidence have convinced us that the confession made by the petitioner was not only voluntary but also true. After proper assessment and evaluation of the evidence available on the

record both the courts below had concurred in their conclusion regarding guilt of the petitioner having been proved to the hilt and upon our own independent evaluation of the evidence available on the record we have found no occasion to take a view of the matter different from that concurrently taken by the courts below. We are also mindful of the provisions of section 412, Cr.P.C. according to which in a case where an accused person pleads guilty to the charge and he is convicted on the basis of such pleading guilty then he can file an appeal only to the extent or legality of the sentence passed against him and he cannot file an appeal challenging his conviction.

4. As regards the sentences passed by the trial court against the petitioner which sentences had subsequently been upheld and confirmed by the High Court we may observe that the crimes committed by the petitioner were absolutely horrendous and barbaric and the same had been committed with a minor and innocent girl aged about 7/8 years. The petitioner had not only deceitfully kidnapped her but had also brutalized her by committing sodomy and rape with her and had then ultimately killed her mercilessly. In his pleading guilty to the charge as well as in his statement recorded under section 342, Cr.P.C. the petitioner had admitted committing similar offences with eight other minor victims and in that backdrop the petitioner did not deserve any sympathy in the matter of his sentences. This petition is, therefore, dismissed and leave to appeal is refused.

MWA/I-8/SC Petition dismissed.