

Present: Manzoor Ahmad Malik, Syed Mansoor Ali Shah and Qazi Muhammad Amin Ahmed,

JJ

SHAUKAT ALI---Appellant

Versus

The STATE and others---Respondents

Criminal Appeal No.133-L of 2017, decided on 16th May, 2019.

(On appeal from the judgment dated 9-2-2015 passed by the Lahore High Court, Lahore in Criminal Appeal No.381 of 2012 and CSR No.7-T of 2012).

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

---Ss. 302(b), 365-A & 201---Anti-Terrorism Act (XXVII of 1997), S.7(e)---Qatl-i-amd, kidnapping or abduction for extorting property, valuable security etc., causing disappearance of evidence of offence, acts of terrorism---Reappraisal of evidence---Confessional statement before Judicial Magistrate, retraction from---Reliance upon such retracted confessional statement for conviction---Prosecution's reliance was primarily upon accused's confessional statement before a Judicial Magistrate---Accused when indicted claimed trial and retracted from his confessional statement, nonetheless, on a careful examination, his confessional statement was free from all taints---Such statement was seemingly voluntary without duress or inducement, and inculpatory in nature---Confessional statement reflected a complete and truthful narration of event leading to deceased's death---Magistrate had taken due care to administer necessary warnings to the accused and recorded each detail thereof in his own hand---Confessional statement did not appear to have been fabricated to advance prosecution's case and thus could be squarely relied upon without any reflection on safe administration of criminal justice---Retraction notwithstanding, the confessional statement was in synchronization with the events leading towards deceased's death and recovery of dead body on accused's disclosure---Circumstances excluded every hypothesis of innocence of accused and thus the Courts below had rightly relied upon the retracted confessional statement---Conviction of accused was maintained in circumstances---Appeal was dismissed.

(b) Criminal trial---

---Conviction---Confessional statement before Magistrate, retraction from---Retracted confession could form basis for conviction if found voluntary and truthful.

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

---Ss. 302(b), 365-A & 201---Anti-Terrorism Act (XXVII of 1997), S.7(e)---Qatl-i-amd, kidnapping or abduction for extorting property, valuable security etc., causing disappearance of evidence of offence, acts of terrorism---Reappraisal of evidence---Sentence, reduction in---Death sentence reduced to imprisonment for life---Predominant purpose behind the crime was to extract ransom and it was in that process that the deceased lost his life due to suffocation and use of excessive tranquilizers to subdue him---Viewed from such angle alteration of death penalty into imprisonment for life on each count would be appropriate---Consequently, penalty of death awarded to accused on three counts was altered into imprisonment for life on each count---Appeal was dismissed accordingly.

Mian Subah Sadiq Klasson, Advocate Supreme Court for Appellant.

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

Date of hearing: 16th May, 2019.

JUDGMENT

QAZI MUHAMMAD AMIN AHMED, J.---Through leave of the Court, impugned herein is judgment dated 9.2.2015 of a learned division bench of Lahore High Court whereby appellant's conviction and sentence returned by a learned Anti Terrorism Court vide judgment dated 23.2.2012 is maintained.

2. Naveed alias Guddu, hereinafter referred to as the deceased, left home after receipt of a phone call at 7.30 p.m. on 22.8.2011. Upon failure to return, his disappearance was reported by his brother, Muhammad Rafique, PW-7. On 25.8.2011, the family received a phone call, demanding ransom of Rs.500,000/- in pursuance whereof the witnesses went to the designated place where they saw the appellant who decamped from the scene. The incident was reported to the police in consequence whereof the appellant was arrested on 26.8.2011 and upon his disclosure dead body of the abductee was retrieved, wrapped in a jute bag. It is in this backdrop that the appellant alongside Shahzad, co-accused were indicted before the Court; third accused Nadeem Hussain is still away from law. The learned Trial Judge while acquitting Shahzad co-accused from the charge convicted the appellant under Sections 201, 302(b), 365-A of Pakistan Penal Code, 1860 read with Section 7(e) of Anti Terrorism Act, 1997; he was sentenced to death on three counts along with five years' R.I. under Section 302 of the Code ibid with fine of Rs.5,000/- or to undergo four months' S.I. in lieu thereof.

3. Muhammad Rafique, PW-7, Muhammad Shehbaz, PW-9 and Fida Muhammad, PW-10 are prominent amongst the witnesses to drive home the charge. They have furnished details preceding as well as subsequent to deceased's disappearance. The investigating officer also collected cell phone data to establish conversations between the captor and the family. However, prosecution's reliance is primarily upon appellant's confessional statement dated 16.9.2011 before a judicial magistrate. It constitutes the mainstay.

4. Though the appellant when indicted claimed trial and retracted from his confessional statement during his examination under Section 342 of the Code of Criminal Procedure, 1898, nonetheless, on a careful examination we have found his confessional statement free from all taints. Seemingly voluntary without duress or inducement; inculpatory in nature the confessional statement reflects a complete and truthful narration of event leading to deceased's death. The learned Magistrate has taken due care to administer necessary warnings to the appellant and recorded each detail thereof in his own hand. It does not appear to have been fabricated to advance prosecution's case and thus can be squarely relied upon without any reflection on safe administration of criminal justice. It is by now well settled that a retracted confession can form basis for conviction if found voluntary and truthful. Retraction notwithstanding when examined in the totality of circumstances, the disclosure is synchronized with the events leading towards deceased's death and recovery of dead body on appellant's disclosure. These circumstances exclude every hypothesis of his innocence and thus the Courts below have rightly relied upon the confessional statement, there being no space to entertain any hypothesis of innocence. Guilty verdict calls for no interference; the appeal fails. However, in so far as question of quantum of sentence

to be exacted from the appellant is concerned it requires reconsideration; in the totality of circumstances, it is unmistakably found that predominant purpose behind the crime was to extract ransom and it was in that process that the deceased lost his life due to suffocation and tranquilizer, excessively administered to subdue him; taken from this angle, alteration of death penalty into imprisonment for life on each count would be a conscionable wage in circumstances. Consequently, penalty of death is altered into imprisonment for life on each count with amounts of fine and compensation kept intact; sentences shall run concurrently with benefit of Section 382-B of the Code *ibid.* With the above modification, Criminal Appeal 133- L/2017 is dismissed.

MWA/S-29/S Appeal dismissed