

**IN THE SUPREME APPELLATE COURT GILGIT-BALTISTAN
GILGIT**

Cr.A. No. 06/2013

Before:-

**Mr. Justice Rana Muhammad Arshad Khan, Chief Judge.
Mr. Justice Muzaffar Ali, Judge.**

Naheed Akhtar w/o Mukhtar Hussain R/o Khomar Gilgit.

..... **Petitioner**

VERSUS

The State

..... **Respondent**

Present:-

Malik Haq Nawaz Sr. Advocate for petitioner.

Mr. Asad Ullah Khan, Advocate General Gilgit-Baltistan.

CHAGES U/S 302/109/114/34 PPC

**PETITION FOR LEAVE TO APPEAL AGAINST THE ORDER/
JUDGMENT DATED 16 OCT, 2012 PASSED BY THE HONORABLE
CHIEF COURT, WHEREBY THE SENTENCE OF 10 YEARS RI AND
FINE OF RS: 300000/- AND IN DEFAULT TO UNDERGO 6 MONTH RI,
AWARDED BY LEARNED SESSION JUDGE GILGIT HAS BEEEN
MAINTAINED AND THE APPEAL FILED BY THE PETITIONER HAS
BEEN DISMISSED.**

**FOR SETTING ASIDE THE SAME BEING ILLEGAL, UN-WARRANTED,
UNLAWFUL AND AGAINST THE PRINCIPAL GOVERNING
DISPENSATION OF CRIMINAL JUSTICE, LAW AND EQUITY.**

Date of Hearing:- 28-10-2013.

Judgment

Rana Muhammad Arshad Khan, CJ: This appeal with the leave of this Court has arisen out of the judgment dated 16.10.2012 of the Chief Court Gilgit-Baltistan, whereby, the appeal filed by the appellant was dismissed and the Judgment dated 22.12.2010 of the learned trial Court was upheld.

2. The case of the prosecution as borne out from the record is that Muzaffar Ali Khan, retired Tehsildar made a report to the Police Station Air Port, Gilgit to the effect that his real son Mukhtar Hussain

had been residing alongwith his family in Khomer. The wife of his deceased son informed Muzzafar Ali Khan that on 16.06.2011, Mukhtar Hussain had gone outside the house early in the morning and did not come back as yet. The report with regard to the missing of Mukhtar Hussain was reportedly incorporated in the register "Rapat Roznamcha" of the said Police Station and the Police Officer started the proceedings under Section 156(2) Cr.PC. Muzaffar Ali Khan on 30.06.2011, made another statement which was recorded as supplementary statement, whereby, he had shown his suspicion to the effect that Khan Zaib s/o Hamza Khan r/o Jutial had developed illicit relations with his daughter in law Mst. Naheed Akhter. He had suspected that they might have involved in the missing of Mukhtar Hussain. After recording the supplementary statement, the Police Officer himself had become complainant and resultantly, a case FIR No. 123/2011 under Section 302/114/34 PPC, dated 03.07.2011, Exh.PW-17/B, was registered with Police Station Air Port, Gilgit, for an occurrence which had taken place between the night of 15th/16th June, 2011.

3. Before registration of the case, on 30.06.2011, Khan Zaib was reportedly summoned in the Police Station and the interrogation was carried out and Khan Zaib, during the course of interrogation, disclosed that on the night between 15/16.06.2011, Mst. Naheed Akhtar had made a telephonic call to him and persuaded him to cause the murder of Mukhtar Hussain. Mukhtar Hussain was brought by a Taxi on River View Road near Eye Vision Hospital by his wife Naheed Akhtar, where he had already made arrangement for causing the murder of Mukhtar Hussain. He disclosed further that one Arsalan s/o Sher Afzal real maternal cousin of Khan Zaib alongwith his companions namely Athar

s/o Naseem and Adnan s/o Nasir-Ud-Din were already present on the bank of the River. He had handed over Mukhtar Hussain to them, who caused the murder of said deceased by fire arm weapon and threw the dead body of the deceased in the River and Naheed Akhter was, thereafter, driven to her house.

4. The motive behind the Murder of Mukhtar Hussain was that deceased had a suspicion that Naheed Akhter had developed illicit liaison with Khan Zaib and in this view of the matter, Mukhtar Hussain was done to death by Khan Zaib in connivance with Naheed Akhtar.

5. On the registration of the case, the investigation was firstly carried out by Ibrahim Shah, Sub Inspector Police under Section 156 Cr.PC under the directives of SHO (Exh.PW-1/A). He recorded the statement of Naheed Akhtar and Naveed Alam real brother of Mst. Naheed Akhtar. It is strange to note that Ibrahim Shah, Sub Inspector, Police, himself had become the complainant of the case and he was entrusted investigation of the case vide order dated 21.06.2011 (Exh.PW-1/B).

6. The investigation of the case, thereafter, was entrusted to Hafiz-ur-Rehman, Inspector Police (PW-18) on 03.07.2011, who was posted in Police Investigation Wing, Gilgit. Khan Zaib was arrested on 03.07.2011 by his predecessor and memos of some articles were also prepared by him. The Investigating Officer took the aforesaid articles of recovery memo Exh.PW-9/B in possession and started the investigation. He arrested Mst. Naheed Akhtar on 03.07.2011 from her parent's house. Arsalan Accused was arrested on 04.07.2011. The statement of Naveed Alam was recorded by the Investigating Officer on 05.07.2011 and on the same day i.e 05.07.2011, the dead body of the deceased was found on the bank of the River at

Oshkandas and the same was brought to the District Headquarter Hospital, Gilgit for its post mortem examination. He prepared the inquest report in the DHQ Hospital which is Exh.PW-18/A and he got identified the dead body of the deceased by the witnesses vide Exh.PW-6/C and thereafter the dead body was handed over to the legal heirs of the deceased for burial. He recovered a mobile phone at the instance of Arsalan and weapon of offence, 30 bore Pistol and prepared recovery memo (Exh.PW-9/A). He also prepared the site plan (Exh.PW-12/A) showing the details of the venue of occurrence. During the investigation he obtained the warrants of arrest against accused Adnan and Athar, who had not surrendered before the law enforcing agencies and remained absconded and the Challan under Section 512 Cr.PC was submitted against the absconding accused persons. He produced Mst. Naheed Akhtar accused person before the Judicial Magistrate (PW-14) who recorded the confessional statement of Naheed Akhtar under Section 164 Cr.PC on 12.07.2011 (Exh. PW-14/B).

7. On the conclusion of the investigation, the final report under Section 173 Cr.PC was prepared wherein the names of Athar and Adnan accused persons were placed in Column No. 2 of the report, showing them to be absconders whereas the names of Mst. Naheed Akhtar, Khan Zaib and Arsalan were placed in Column No. 3 of the report and the same was submitted before the Court of competent jurisdiction for trial.

8. The learned trial Court vide Order dated 17.09.2011 framed the charge firstly against Arsalan s/o Sher Afzal under Section 302/34 PPC for causing the murder of Mukhtar Hussain and secondly against Mst. Naheed Akhtar and Khan Zaib under Section 109 PPC for the abetment of the offence while facilitating the crime committed by

Arsalan, whereas, Adnan and Athar accused persons were reportedly fugitive of law till date. The accused persons denied the charge, pleaded not guilty and claimed the trial.

9. The prosecution in order to substantiate its case against the accused persons produced as many as 18 witnesses. Muzaffar Ali Khan, (PW-1) stated that his deceased son had a telephonic call on 15.06.2011 informing that he was in hospital alongwith Barkat Ali real brother of PW-1 for his treatment whereupon PW-1 drove to hospital and got the medical check up of deceased and other necessary tests were also carried out. Barkat Ali (PW-2), real brother of PW-1 stated that Mst. Naheed Akhter had informed PW-1 regarding the missing of her husband. The statement of PW-2, under Section 161 Cr.PC was recorded. FC Sajid Hussain (PW-3) was marginal witness of Exh.PW-3/A vide which PW-2 identified the contents of the Exh.PW-3/A. Dosdar Hussain (PW-4) was the marginal witness of Exh.PW-3/A. Naveed Alam (PW-5) is real brother of Mst. Naheed Akhter accused, who narrated the whole story to which he also participated and also remained in custody of the Police. Karim Khan (PW-6) was marginal witness of Exh.PW-6/A vide which the dead body of Mukhtar Hussain was taken into the possession by the Police. Syed Muhammad Afzal (PW-7) was also marginal witness of recovery memo (Exh.PW-6/A). Noor Din, Sub. Inspector, Police, (PW-8) was directed on 05.07.2011 to the effect that he should take the dead body in possession. He, in presence of Karim Khan (PW-6) and Syed Muhammad Afzal (PW-7), got identified the dead body and had also prepared the site plan. Munir Raza SGC (PW-9) was marginal witness of the recovery memo (Exh.PW-9/A) of the recovery of 30 Bore Pistol. Atta-ur-Rhman (PW-10) was also the marginal witness of Exh.PW-9/A for the recovery of 30 Bore

Pistol on the pointing of Arsalan accused. Sharafat Ali Baig (PW-11) was signatory of Exh.PW-11/A of the recovery of Zong Cell Phone. Gaib Ali Shah, Magistrate (PW-12) was given direction by the Assistant Commissioner, Gilgit on 08.07.2011 on the written application of the Investigating Officer for his co-ordination. Sohail Abbas (PW-13) was marginal witness of memo of physical search of Mst. Naheed Akhter vide memo Exh.PW-13/A. Raja Minhaj Ali, Judicial Magistrate (PW-14) recorded the confessional statement of Mst. Naheed Akhter. Dr. Ijaz Ali, Medical Officer, District Headquarters Hospital, Gilgit (PW-15) conducted the post mortem examination on the dead body of Mukhtar Hussain. The Report is Exh.PW-15/A. Abdur Raouf, Inspector Police (PW-16) was presented an application on 21.06.2011 by PW-1, whereon he ordered for proceedings under Section 156 Cr.PC. Ibrabim Shah, Sub Inspector Police (PW-17) is complainant of FIR (Exh.PW-1/A). Hafeez-ur-Rehman, Inspector Police (PW-18) conducted the investigation of the case thoroughly.

10. After recording the evidence of the prosecution the appellant was examined under Section 342 Cr.PC. The appellant denied the allegation and pleaded innocent. When a question regarding the confessional statement Exh. PW-14/B was put to her, she answered as under: -

“Q. No. 10. What do you say about Exh.PW-14/B?

Ans. Before recording of statement under Section 164 Cr.PC, I remained in custody of Police for about nine days and during said period Police continuously tortured me and forced me for giving a false confessional statement. Prior to my production before the learned Judicial Magistrate, Raja Minhaj, Police took me to another learned Judicial Magistrate in his home, where on my request the wife of said Judicial Magistrate confirmed marks of torture/violence on my body. On this, the said Judicial Magistrate refused to record my statement. On the following day Police took me to the Judicial Magistrate Raja Minhaj after subjecting me to further violence and torture. On directions of Police, I had to cram a false

confessional statement throughout the period of my detention in Police custody and Police had further warned me that Mr. Minhas Hussain, a Judicial Magistrate, who is related to complainant party will remain present while I will be giving the statement that I had crammed on directions of Police. IO had promised to release me soon after the Magistrate recorded the said statement. On 20.07.2011, I filed an application in this Court through Dy. Superintendent Jail, Gilgit wherein I have submitted that the said statement was obtained in the above circumstances. (On my request the said application and the letter of Dy. Superintendent Jail marked as Exh.D4 & Exh.D5). Police tortured my brother also for obtaining the so called false confessional statement.

So, Exh.PW-14/B is not my confessional Statement but is a false statement obtained by Police by using third degree measures.”

11. She neither produced any defense evidence nor opted to depose on oath as required under Section 340(2) Cr.PC in disproof of charges and allegations against her.

12. On the conclusion of the trial, the learned trial Court vide its Judgment dated 22.12.2011, while acquitting the co-accused of the appellant, convicted the appellant as under: -

“Accused Mst. Naheed Akhtar convicted and sentenced in tazir, to undergo simple imprisonment for **ten (10) years** and also fined for payment of **Rs. 300,000/- (Rupees Three Lacs Only)**. In default of payment of fine convict/accused Mst: Naheed Akhtar to undergo for further simple imprisonment for **six (6) months**. Convict/accused Mst: Naheed Akhtar has been arrested on 03-07-2011 and her period of detension since then be deducted from the period of sentence, giving her benefit of Section 382-B Cr.PC.”

13. Accused Khan Zaib and accused Arsalan were acquitted of the Charge as the prosecution had failed to prove the case against them beyond any doubt. Accused Adnan and Accused Athar are still at large and have not yet surrendered before the law.

14. The prosecution neither filed any criminal review petition for enhancement of the sentence against the appellant nor any appeal against the acquitted co-accused was filed by either of the parties.

15. We have very seriously observed that the learned Trial Court has passed the Judgment in a very hasty manner. Even, it has not been specified as to under what offence the accused was convicted and the punishment to which she was sentenced for ten years and that too has been given without specifying any offence and section of any law. The Courts are required to render the Judgment after application of judicious mind. Particularly, the Trial Courts should remain conscious as the Trial Court may well assess the evidentiary value of the statements of the witnesses because the evidence of the witnesses is recorded in the presence of the Trial Court.

16. The plain reading of the last para of the Judgment (reproduced earlier) clearly reveals that the learned trial Court has not even applied its judicious mind while deciding the case in hand. Section 367Cr.PC is reproduced as follows for ready reference: -

367. Language of judgment: Contents of judgment.

- (1)
- (2) It shall specify the offence (if any) of which, and the section of the Pakistan Penal Code or other law under which the accused is convicted, and the punishment to which he is sentenced.
- (3)
- (4)
- (5)
- (6)

17. The bare reading of Section 367(2) Cr.PC makes it abundantly clear that it is the imperative duty of the Court to specify the offence of which he is being convicted and sentenced and learned Court is under legal obligation to mention the Section of Pakistan Penal Code or any other law under which, the accused is convicted and the punishment to which he is sentenced. The learned trial court while rendering the Judgment in this case lost sight of the relevant provisions of law. It is correct that the expeditious trial and quick disposal of cases are always

appreciable but the same should not be detrimental to legal interest of the accused nor it should be done at the expense of justice. In the instant case, the court adopted very hasty steps to conclude the trial which can never be appreciated. The Courts are not required to give any sort of impression of undue haste and dispose of the cases while rushing up with the disposal of the cases. It is correct that there appears to be no motive absolutely on part of the learned Trial Court while deciding the case so expeditiously. The court had not acted with specific motive but the courts may be very careful while showing their anxiety to dispose of the cases and it must be bridled with care and caution. It is fundamental duty of the Court to see that the case of the accused should not be prejudiced in any manner whatsoever.

18. The appellant feeling aggrieved and dissatisfied with her conviction and sentence called in question the Judgment dated 22.12.2011 passed by the learned Trial Court before the Hon'ble Chief Court, Gilgit-Baltistan which came up for hearing in the court of learned Single Judge of the Chief Court. The learned Single Judge after hearing the parties vide Judgment dated 16.10.2012 dismissed the appeal. The petition for leave to appeal has been preferred against the judgment dated 16.10.2012 and leave to appeal was granted vide order dated 03.07.2013 passed by this Court.

19. The learned counsel for the appellant mainly contended that there is no ocular account of the incident at all but the entire case hinges upon the circumstantial evidence. He asserts that it is the fundamental principle of the law that the safe reliance on circumstantial evidence can only be placed if the evidence adduced by the prosecution is trust worthy and confidence inspiring and he very seriously attacked that the evidence

produced by the prosecution is not worthy credence and that too has not come from independent source. He has vehemently argued that the said evidence cannot be relied upon for conviction and sentence for the reason that the name of any witness is not cited at all in the FIR. He argued further that the prosecution relied upon the confessional statement of the present appellant which is not credit worthy as the same was retracted at the earliest. The appellant was arrested on 03.07.2011 and was produced before the learned Magistrate on 12.07.2011. She remained in the custody of the Police for 09 days and such like confessional statement cannot be relied upon and is not worth consideration. He argued further that no other independent witness was produced by the Prosecution connecting the appellant with the crime. He emphasized with full force that the retracted confessional statement needs independent corroboration to earn the conviction and sentence. He states that if the case is to be proved through circumstantial evidence, it is imperative for the prosecution to make the complete chain of circumstances and no knot should be missing or broken at all and if, it is so, it shall make the case of the prosecution doubtful. The benefit of which is to be extended to the accused. He lastly argued that there is no other piece of evidence on the record connecting the appellant with the crime, he pleads for the acquittal of the appellant of the charge. It is also submitted that prosecution case to the extend of motive for the commission of murder of Mukhtar Hussain deceased as well as the recovery of incriminating articles at the instance of the accused person had already been disbelieved by the trial Court and the co-accused of the appellant had already been acquitted.

20. On the contrary, the learned Advocate General while supporting the impugned judgment vehemently opposed the contention raised by the learned counsel for the appellant. He argued that a telephonic call was received by the father of deceased made by his daughter in law and report to the Police was given with promptitude and the law was set in motion at once. The circumstantial evidence is so connecting that it makes uninterrupted chain connecting the appellant with the crime. Lastly, he argued that the prosecution has succeeded to prove its case and the appeal merits dismissal.

21. We have heard the learned counsel for the parties at a considerable length and have given anxious consideration to their arguments. We have scanned the evidence on record minutely and also scrutinized the record of the case very carefully with their able assistance.

22. Admittedly, this is an unseen occurrence. The entire case of the prosecution rests upon the circumstantial evidence, therefore, utmost care and caution is required to be taken for reaching at a just decision of the case. It is established by now that in order to prove the case on the basis of circumstantial evidence, there should have been the full chain of circumstances of the case and chain should be such that there should have not been missing even a single knot of the chain and should be linked with each other so that it may form such a continuous chain that its one end should be so linked with the other that the first touches the dead body and the other ropes the neck of the accused. But if any link of the chain is missing, it would create a serious doubt and the benefit of the same is to go to the accused person. In this regard, the guidance has been sought from the Judgments of the Hon'ble apex Court

of Pakistan reported as “Ch. Barkat Ali v. Major Karam Illahi Zia and another” (1992 SCMR 1047), “Asadullah and another v. The State (1999 SCMR 1034) and “Sarfraz Khan v. The State (1996 SCMR 188)”. In the case of Ch. Barkat Ali (supra), the Hon’ble Supreme Court of Pakistan observed as under: -

“Law relating to the circumstantial evidence that proved circumstances must be incompatible with any reasonable hypothesis of the innocence of the accused. See Siraj v. The Crown (PLD 1956 FC 123). In a case of circumstantial evidence, the rule is that no link in the Chain should be broken and that the circumstances should be such as cannot be explained away on any hypothesis other than the guilt of the accused.”

23. It has been held in the case of Sarfraz Khan (supra). The Hon’ble apex Court of Pakistan has held as under: -

“..... It is well settled that the circumstantial evidence should be so inter-connected that it forms such a continuous chain that its one end touches the dead body and other neck of the accused thereby, excluding all hypothesis of his innocence.....”

24. The survey of the case and the minute examination of the evidence brought on the file clearly reveal that there is no nexus of one link with the other and it does not make the complete chain for the conviction of the accused person. It is observed further that whole chain is broken and there is no link of one knot to another. In order to prove the case through circumstantial evidence, not only there should be link with each knot of chain rather every link should be corroborated through independent source and the source must be confidence inspiring and truthful.

25. It is obvious that the cause of death of the deceased was the result of fire arm injuries and admittedly, there is no eye witness of the occurrence and the case of the prosecution entirely depends upon the circumstantial evidence which is to be taken up with great care and

caution and every link of the chain of the circumstances of the case is of great importance which makes the role of the prosecution agency collecting the evidence against the accused is very important. Every link of chain has to be proved by truthful and convincing evidence and there should not be any element of padding at all as the matter relates with the life and liberty of a person and in view of this matter, the investigator must be very vigilant while collecting the evidence and the evidence must be above board and free from doubt and suspicion. It is the imperative duty of the prosecution to establish its case beyond any reasonable doubt. In the case "Saeed Ahmed Shah v. the State (PLD 1993 Pesh 160) it is observed as under: -

"Conviction cannot be recorded in grave offences merely on retracted confessions without independent corroboration which should convince a judicial mind and evidentiary value of which should be beyond reasonable doubt."

26. Admittedly, the occurrence had taken place on the night between 15/16.06.2011 and the case was registered on 03.07.2011 on the application made by the Muzaffar Ali Khan with the delay of 18 days and none was named in the FIR and suspicion was shown to the effect that since Khan Zaib and Mst. Naheed Akhtar had developed illicit relation with each other and on account of this, they might have caused the murder of his son. Astonishingly, the application was made in the name of concerned SHO and one Ibrahim Shah, Sub Inspector of the Air Port Police Station had become the complainant of the case himself and started with the investigation of the case. It casts a serious doubt upon the statement made by the father of the deceased for registration of the case. He appeared before the Magistrate as PW-1 and stated as under: -

"I had filed a written application Exh.PW-1/A informing Police about missing of my deceased son. Exh.PW1/A is

based on information that I obtained from accused Naheed Akhtar. Exh.PW-1/A bears my signatures and its contents are correct.”

27. The investigation of the case is so defectively conducted that the evidence collected by the investigator and produced in Court is not worthy credence at all. Arsalan had statedly caused the murder of Mukhtar Hussain with fire arm weapon and the same was already recovered at his instance. This has not been believed by the learned Courts below and acquitted him on the ground that the prosecution failed to prove the case against him.

28. So far the case of Khan Zaib is concerned, that is allegedly at par with the appellant in all respects. According to the prosecution both of them while having their hands in gloves prepared a scheme to get away from Mukhtar Hussain. The learned Trial Court observed that there is no piece of evidence available on the file connecting him with the crime except the statement recorded by co-accused Mst. Naheed Akhtar under Section 164 Cr.PC (Exh.PW-14/B). Obviously, the statement of accused cannot be read against the co-accused and it has no evidentiary value at all. Even otherwise the statement Exh.PW-14/B is so defective which cannot be read against Khan Zaib. If the evidence against Khan Zaib is to be seen in its true perspective, the prosecution could not bring on file even an iota of evidence against him connecting with the murder of Mukhtar Hussain. Even otherwise, the whole case of the prosecution rests upon as alleged that there was illicit intimacy between Khan Zaib and Mst. Naheed Akhtar but the prosecution failed to prove the most important and fundamental aspect of the case. The prosecution did not produce any witness in order to prove the factum of illicit relation between Khan Zaib and Mst. Naheed Akhtar and if it is so, the

prosecution has failed in his duty to prove the case against the accused person who allegedly abetted the offence. Moreover, no other witness has said anything with regard to illicit intimacy between the two and in the absence of it, the genesis of occurrence becomes doubtful and when, the genesis of occurrence became doubtful, the learned trial Court keeping in view all the attending circumstances, acquitted Khan Zaib and no appeal against his acquittal was filed by either of the party.

29. Now, we are left with one piece of evidence that is confessional statement of Mst. Naheed Akhtar recorded under Section 164 Cr.PC. The occurrence had taken place between the night of 15/16.06.2011 and she was arrested by the Police on 03.07.2011. She was produced before the Magistrate for physical remand on 04.07.2011 and 11.07.2011. The confessional statement was recorded on 12.07.2011 with a delay of 09 days and thereafter, she was sent to judicial lockup. She, on 19.07.2011 made an application (Exh.D/5) addressed to the learned Sessions Judge, Gilgit while retracting from her confessional statement recorded under Section 164 Cr.PC.

30. Statement under Section 164 Cr.PC belatedly recorded and that too in violation of Section 164 Cr.PC would be discarded and shall not be taken into consideration at all. It is evident that the rule of admissibility of a confessional statement prescribes no time as to the recording of the confession of an accused and simpliciter delay in recording of confession may not be fatal to the case of the prosecution but at the same time, the court is under legal obligation to examine the same keeping in view the circumstances of the case. The Court is to satisfy itself as to whether the confession is voluntary, true and is recorded in accordance with law and whether it can be relied upon,

notwithstanding that there may be some delay in recording the confessional statement, but generally the delay in recording a confession makes it doubtful. Therefore, if the statement under Section 164 Cr.PC is recorded after keeping the witness in long detention in the police custody, it is always viewed with suspicion and it has been held in the series of Judgments of the superior Courts of Pakistan that such confessional statements have been found unsafe to rely upon for conviction, particularly, when confessional statement was retracted much before the commencement of trial. No method has so far been invented to test the statement on the touch stone of truthfulness and voluntariness. The Court is to draw a conclusion while keeping in view the evidence as recorded and surrounding circumstances of the case. It has been observed in the case of “Bahadur Khan v. The State (PLD 1995 SC 336) as under: -

“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.”

31. It is settled principle of recording the confessional statement that if the confessional statement is recorded with a nominal delay after the arrest of accused, it should not be ruled out of considerations and if, there is an unexplained delay for a considerable period, the same should not be taken into consideration without any independent corroboration.

32. It is borne out from the record that when the appellant/accused was brought by the police in the Court of Magistrate

for recording of confessional statement, a number of lawyers were present in the Court and another Magistrate namely Minhas Hussain, who is said to be closely related to the complainant party, was not only present in the Court but was also made to sit on the dais of the Court alongwith the Magistrate and he remained present during the course of recording the statement. The statement of Magistrate who recorded the statement of appellant under Section 164 Cr.PC also confirms this position to the following effect: -

“..... I did not obtain information about the period of detention of said accused lady in police custody till 12.07.2011. I also did not ask the said accused lady about the date of her arrest by Police. I did not ask accused Mst. Naheed Akhtar for how many times she was produced before my predecessors for obtaining her physical remand. I did not asked the question from accused Mst. Naheed Akhter that Police had exerted pressure on her for forcing her to give confessional statement. It is also correct to say that the questionnaire I prepared and put to the accused lady does not contain the question that whether she was giving the confessional statement because of any threats etc. by the police for giving the said statement. It is correct to say that I did not question the accused lady before recording Exh.PW14/B that whether she was induced to give the confessional statement by police. I did not get checked the body of accused lade through any lady police before recording Exh.PW14/B. It is correct to say that Exh.PW14/A or Exh.PW14/B does not contain the assurance on my part to the accused lady that she will not be handed over back to police and will certainly be sent to Judicial lockup if she gave the confessional statement or otherwise. It is correct to say that while I was recording Exh.PW14/A and Exh.PW14/B my colleague brother Judicial Magistrate Mr. Minhas was sitting with me on the stage of the courtroom while few advocates were sitting in the courtroom. It is correct the Mr. Minhas Judicial Magistrate is resident of Khomer Gilgit.”

33. It is worth mentioning that the learned Magistrate who recorded the confessional statement of the appellant was required to ask certain necessary questions from deponent, like: -

a) How much time have you spent in Police Custody?

- b) Why are you making this confessional statement?
- c) Has there been any threat upon you to make a confessional statement?
- d) Have any inducement been given to you?
- e) Have you been influenced by any pressure to make a confessional statement.
- f) Have Police been maltreating you?

34. After recording the answers of the deponent/accused to above questions, if the Magistrate was satisfied that the confessional statement was being rendered voluntarily, then he should had proceeded to record the confessional statement in verbatim, however, the examination of the record clearly indicates that some questions of ordinary nature were put to the accused but the afore-referred questions which were essential to be put and obtained answers, were not asked.

35. It clearly shows that the appellant was not provided atmosphere free from fear so that she could get her statement recorded truthfully and voluntarily. The Supreme Court of Pakistan in the case, “the State v. Asfandyar Wali and 2 others observed as under: -

“Accused literally produced from dungeons of a medieval Fort, such circumstances having invited suspicion, Magistrate recording confession, held, ought to have questioned accused about his treatment in custody and should have satisfied for himself as to accused’s body having not borne any marks of ill-treatment. Elementary safeguards for recording confession having been disregarded, no reliance, held, can be placed on confession.”

36. There is no basic difference existing between confession and a retracted confession, what is required to be seen is that the element of truth should have not been missed and it is a question of fact which is to be adjudicated upon by the Court keeping in view the attending circumstances of a particular case. If the confessional statement of the accused is found voluntarily, conviction can be recorded, but the rule of caution requires that a retracted confession must be supported by some

other independent evidence connecting the accused with the crime. It is also judicial consensus that the retracted confession is always open to suspicion and cannot be acted upon unless it is corroborated by available independent, trust worthy and thorough truthful witnesses. We feel no hesitation, in the circumstances of the case, to hold that the confessional statement in question is not free from duress and coercion as the same was recorded after 09 days of her detention in Police custody.

37. It has almost become a cardinal principle by now that retracted confession should only be accepted if it is corroborated by clear, cogent and independent evidence and in the absence of these ingredients, the retracted confession cannot be relied upon at all because such evidence cannot be free from suspicion and the prosecution is required to stand on its own legs to substantiate its case beyond any shadow of doubt. In such like cases where there is no direct evidence and the occurrence is admittedly blind, it becomes imperative for the prosecution to extract the confessional statements of the accused, obtained after using third degree method. In the instant case, the appellant retracted from the confessional statement at the earliest possible opportunity, much before the commencement of trial. Even otherwise, the circumstances in which confessional statement was recorded suggests that it was not free from duress and coercion. Furthermore, after recording the statement, the same was again handed over to the Police. Although, there is no such provision in the law to accept the retracted confessional statement on these basis but it has become a rule of prudence in the administration of criminal justice and the same is being followed by all the authorities and jurists. It has been

observed in the case of Muhammad Gul and another v. the State (1991 SCMR 942) as under: -

“A retracted evidence is sufficient to make the basis of recording a conviction, but Court as a rule of procedure seeks corroboration of the same on all material particulars.”

38. It is further observed in State v. Waqar Ahmed (1992 SCMR 950) as under: -

“Tough it was not a rule of law that confession whether retracted or not could not be the sole basis for conviction but principle of procedure and rule of caution required that a retracted confession must be supported by some other connecting evidence.”

39. There is another aspect of the case that a confessional statement can be relied upon where supportive evidence of recoveries, effected at the instance of accused, had been proved on the record as well as medical evidence. The survey of the record shows that there was no supportive evidence available on the record connecting the accused with the crime for reliance on confessional statement. The prosecution has brought on the file the recovery of sleeping pills recovered from a cupboard of her house, which is not at all trust worthy, because medical evidence does not supports that the pills were administered through a cup of tea by the appellant and no such connectivity is available on the record to rely upon for conviction.

40. The evidentiary value of a confessional statement heavily depends upon its voluntary character which is of great importance because the confessions are often and if not frequently retracted at a later stage, it casts a very heavy duty upon the court to ascertain as to whether the confessional statement was made willingly. It is correct to say that the mere fact that statement was retracted does not render it inadmissible and in this view of the matter, the court is under legal

obligation to scrutinize such confession with utmost care and accept it with great caution. Even otherwise, the common sense requires that in the absence of some material corroboration it is not safe to make mere a retracted confession the base for conviction. The perusal of the record reveals further that the learned Courts below have not given any reason whatsoever, while accepting the retracted confessional statement of the accused. The conviction cannot be based on such like scanty evidence.

41. In view of what has been discussed in the preceding paragraphs, we are of the view that the prosecution has failed to prove its case against the appellant beyond reasonable doubt.

42. Foregoing are the reasons for our short order dated 28.10.2013 and the same is also made part of this Judgment which reads as under:-

“For the reasons to be recorded later, the appeal in hand is allowed. The conviction and sentence of the appellant recorded and upheld by the learned courts bellow are set aside and the appellant is acquitted of the charge. She shall be released from the Jail forthwith if, not required to be detained in connection with any other case.”

Chief Judge

Gilgit, the
20th November, 2013.

Judge