

**JUDGMENT SHEET**  
**PESHAWAR HIGH COURT, PESHAWAR**  
**JUDICIAL DEPARTMENT**

**J U D G M E N T**

Cr. Appeal No. 174-P of 2021 with Murder  
Reference No.03 of 2021.

Date of hearing: 22.03.2022  
Appellant: *(Raziq Jan) By Mr. Shabbir Hussain Gigyani, Advocate.*


Respondent: *(State) By Mr. Muhammad Nisar Khan, A.A.G.*

(Iqbal Khan,  
Complainant) *Mr. Khizar Hayat Khazana, Advocate.*

**ISHTIAQ IBRAHIM, J.-** This single judgment shall dispose of the present Criminal Appeal No. 174-P/2021 filed by appellant namely Raziq Jan son of Pervez and Criminal Appeal No.175-P/2021 filed by Ghulam Rasool son of Gul Khan, whereby they have challenged the legality of the judgment dated 17.02.2021 rendered by the learned Additional Sessions Judge/Model Criminal Trial Court, Peshawar, in case FIR No.827 dated 24.11.2017 under sections-302/364-A/201/34 PPC registered at Police

Station, Sarband, District Peshawar, whereby the appellants were convicted and sentenced as under;

**Conviction and sentences of accused Raziq Jan.**

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- (i) Under Section 302 (b) PPC sentenced to death penalty with hanging from neck till he is dead and; to pay compensation to the tune of Rs.300,000/-, to be paid to the legal heirs of the deceased under section 544-A Cr.PC, or in default thereof shall further undergo simple imprisonment for three years.
  - (ii) Under Section-364-A PPC sentenced to death penalty with hanging from neck till he is dead.
  - (iii) Under Section-201 PPC sentenced to seven years S.I with a fine of Rs.30,000/- or in default thereof he shall further undergo simple imprisonment for 30 days. Benefit of section-382-B Cr.PC was also extended to him.

**Conviction and sentences of accused Ghulam Rasool.**

- (i) Under Section-201 PPC sentenced to Seven Years R.I with a fine of Rs.30,000/- or in default thereof he shall further undergo simple imprisonment for 30 days. Benefit of Section-382 (b) Cr.PC was also extended to him.

This judgment shall also dispose of Murder Reference No.03 of 2021 sent by the learned trial Court under Section 374 Cr.P.C for confirmation of death sentence awarded to convict-appellant namely Raziq Jan.

2. The brief facts of the prosecution case are that on 14.11.2017 Hubaib son of Barakat Shah aged about 8/9 years went missing since 0700 hours and to this effect his paternal uncle Iqbal Khan son of Amir Zada reported the matter to the police of Police Station Sarband, which was recorded in the shape of Daily Diary No.25 dated 15.11.2017 for the purpose of publication of matter that the minor named above did not return back to his house till 15.11.2017 and inquiry under section-156(3) Cr.PC was initiated in the matter. However, subsequently, on 24.11.2017 Iqbal Shah and Barakat Shah recorded their statements under section-164 Cr.PC before the Court of JMIC, wherein they charged accused Raziq Jan for kidnapping of the minor Hubaib for the purpose of his murder/other offence with a motive that Barakat Shah had prohibited his son Daud from keeping intimacy with the accused Raziq Jan and consequently, the present case FIR was registered against accused Raziq Jan under section-364-A PPC. When accused Raziq Jan was arrested by the Police on 24.11.2017 vide his card of arrest (EX PW 12/1) and during interrogation, he named co-accused Ghulam

Rasool and pointed out a pit/grave, where the minor Hubaib had been buried after strangulation, accordingly sections-302/201/34 PPC were added in the FIR. Accused Ghulam Rasool son of Gul Khan was arrested on 27.11.2017. After completion of investigation, challan was submitted before the Court. The accused were formally indicted by the trial Court for the offences, to which they pleaded not guilty and claimed trial.

3. The prosecution in supports of its case examined as many as thirteen witnesses.

4. On closure of prosecution evidence, the convict-appellants were examined under section-342 Cr.PC, wherein they pleaded innocence and were falsely implicated in the case by the complainant. However, they neither wished to record their statements on oath within the meaning of section-340(2) Cr PC, nor opted to produce evidence in defence.

5. After hearing the learned counsel for the parties, the learned trial Court vide impugned judgment dated 17.02.2021 convicted and sentenced the appellants in the manner already discussed above, hence the appellants have

filed their respective Criminal appeals cited above before this Court.

6. The learned counsel for the parties were heard and record gone through with their valuable assistance.

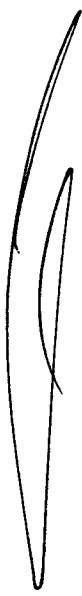
7. Rule of thumb could not be laid down while appraising a criminal case rather evidence of each case is to be considered by looking into facts and circumstances of that particular case. In this case admittedly direct evidence is not available with the prosecution and it rests on circumstantial evidence collected during the course of investigation. Circumstantial evidence brought on record in this case is the pointation of grave, where the dead body of the deceased Muhammad Hubaib was buried by the appellants, confessional statements of the appellants, statement of PW-5 Muhammad Daud with regard to the proof of the motive and medical evidence etc.

8. The complainant in his initial report in the shape of Daily Diary No.25 dated 15.11.2017 has charged none for the commission of the offence, that report was made to the extent of missing of the child namely Muhammad Hubaib. Thereafter on 24.11.2017 statements of complainant Iqbal

Khan (PW-4) and Barakat Shah (PW-3), father of the child Muhammad Hubaib, were recorded under section 164 Cr.PC, wherein they nominated only the appellant Raziq Jan, who was arrested on the same date i.e 24.11.2017 and during the course of his interrogation, he named co-appellant Ghulam Rasool, subsequently he was also arrested on 27.11.2017. On the same date, the accused disclosed that after committing the murder of Muhammad Hubaib, his dead body was buried in a graveyard situated in Sango. It is pertinent to mention here that as per recovery, pointation memo (EX PW 10/5) firstly convict-appellant Raziq Jan, who deboarded from the vehicle and he led the police party to the place, where he with the help of co-appellant Ghulam Rasool had buried the dead body of the deceased and; thereafter Ghulam Rasool was deboarded from the vehicle and he also led the police party and pointed out the place of burial of the dead body of the deceased. The site plan of the place of pointation is (EX PW 13/2). It is also pertinent to mention here that the I.O has observed in the site plan (EX PW 13/2) that this is an expansive graveyard and even it is apparent from the site

plan (EX PW 13/2) that there are numerous graves in the said graveyard. It is also a matter of record that first Raziq Jan has led the police party for the pointation of the grave of the deceased and subsequently Ghulam Rasool led the police party to the same place. We will not subscribe to the contention of the learned counsel for the appellants that it was a joint pointation for the reason that there are numberless graves and firstly appellant Raziq Jan has pointed out the place of burial of the dead body of the deceased, therefore, the same is admissible to his extent under Article-40 of the Qanun-e-Shahadat Order, 1984 while the admissibility of the pointation memo to the extent of co-appellant Ghulam Rasool will be discussed in the subsequent paragraphs, because the pointation is not the sole evidence against the appellants before us. It is also admitted that from the date of missing of the child namely Muhammad Hubaib till the pointation, the whereabouts of the child were not known and; it was in no one's knowledge that as to whether the deceased was alive or dead. Pursuant to this pointation, on the same day, Investigating Officer vide application (EX PW 13/3)

addressed to the District & Sessions Judge, Peshawar, for deputing a Magistrate for exhumation of the dead body. On the very next day, exhumation proceedings were carried out by the Medical Team comprising of Dr. Anwar Ali, Dr. Jawad alongwith Shaukat Khan SP Circle, Yasin Khan DSP Circle, Tehseenullah Khan SHO Sarband, Asif Khan OII and Gul Wali Khan Inspector OII PS Gulbahar under the supervision of Judicial Magistrate (PW-2).



9. We are of the firm view that the pointation of the grave and subsequently the recovery of the dead body of the deceased with particular reference to the appellant Raziq Jan has been duly proved by the prosecution by considering the attending circumstances of the case. In our view the recovery of the dead body vide exhumation memo (EX PW 2/7) from the graveyard of village Sangu by itself sufficient for basing conviction. The prosecution in order to prove the pointation memo examined two witnesses i.e Muhammad Riaz ASI (PW-10) and Liaqat Ali Inspector (PW-11). It is worth mentioning here that defence has not cross examined these PWs with particular reference to the pointation memo (EX PW 10/5) and the



same has remained un-rebutted and unchallenged. In this regard we are fortified by the judgment rendered in Abdul Samad's case (PLD 1964 Supreme Court-167), wherein it is held that;

*“Recovery of remains of dead body at instance of accused from a “very lonely place” four miles away. In absence of other reason for Police to go to such place, held, that accused himself led police to place of recovery.”*

Similar view was also affirmed by the Supreme Court of India (Criminal Appellate Jurisdiction) in Criminal Appeal No.954 of 2005 in case titled “*Shanti Devi..vs..State*”, wherein it is also held that;

*“16. PW-11, another independent eyewitness, also confirmed the above factum and recovery of the dead body at the instance of the appellant. Exhibit P-29 was the postmortem report prepared by PW-16 Dr.Om Prakash Mahayach alongwith PW-17 Dr.Sunil Kumar Kaushik and PW-18 Dr.Chander Bhan Midha. The articles which were recovered alongwith dead body, namely, wrist watch, pair of shoes, shirt, payaama and empty bag were all indentified by PW-2, the son of the deceased. In the opinion of PW-16, the postmortem doctor, the death could be a murder as well as natural. Therefore, it is not, as if based on the postmortem certificate and the version of PW-16, the offence of murder can be ruled out. Since the dead body was recovered in a*

*decomposed state, it was quite natural that the doctor could not specifically state as to the nature of injury on the body of the deceased. .... The very fact that the recovery of the dead body came to be made at the instance of the appellant and that too from an adjacent place to the residence of the appellant was sufficient enough to rope in the appellant in the murder of the deceased.”*

The Supreme Court of Pakistan in identical case titled *Nazir Shehzad's and other* reported as (2009 SCMR-1440) held that;

*“Appraisal of evidence. Discovery based on the information furnished by both the accused to the Investigating Officer in separate investigations, had led to the recovery of the dead body from the “Nallah”—Prior to the said information whereabouts of the dead body were not known to anyone and the same could be used against the accused under Article-40 of Qanun-e-Shahadat, 1984....Unnatural death of a 18 years old boy was proved by medical evidence, whose dead body had been identified by his father after seeing the shoes, belt and trouser of the deceased....Statements of the Doctor and father of the deceased having not been challenged, it could not be said that the dead body was not identified...Abduction of the deceased for ransom had been proved through overwhelming evidence...Complainant and his wife had received telephone calls demanding ransom and threats on behalf of accused that in case ransom was not paid their son would be done to death....Ransom amount*

*delivered to accused on demand had subsequently been recovered from him after his arrest....Scooter belonging to deceased being used by accused was also recovered from them at the time of their arrest....Accused had further led to various recoveries of incriminating articles fully implicating them in the case....Accused had murdered a student young boy of 18 years for ransom and no mitigating circumstance existed in their favour. Appeals of accused were dismissed in circumstances."*

10. Learned counsel for the appellants have challenged the evidentiary value of the above mentioned recoveries and discoveries mainly on the ground that police have not associated any independent witness with the said process and posed police officials to the recovery memos in violation of section-103 Cr.PC. No doubt, attesting witnesses of the recovery memos in the present case are mostly police officials, however, it has been repeatedly held by august Supreme Court of Pakistan that police are as good as other private witnesses, therefore, their testimony could not be discarded on the ground of their status as employees of police department when otherwise they have supported the recoveries through truthful statements and no evidence is there to suggest their ill-will

towards the appellants. It is also settled principle that compliance of section-103 Cr.PC is necessary when search of a house or place is conducted by police for recovery of something and not in the cases when the recovery is made on pointation of accused. In this regard we would refer the judgment of Hon'ble apex Court in the case of *Muhammad Akbar vs. The State* (1995 SCMR 693), wherein it was held that;

*“The objection raised by the learned counsel with regard to the violation of the provisions of section-103 Cr.PC by not joining the two respectable of the locality to witness the recovery is devoid of force. In the instant case, neither search warrants were issued by the Magistrate for the search of the house of the petitioner nor the police had searched the house/place of its own. The petitioner himself led the police to his house and pointed the place wherefrom the gun was recovered. Section-103 Cr.PC would apply to a case where the police conducts search of the house/place to recover a thing for which search is to be made and not to a case where anything is to be discovered in consequence of the information given by or on the pointation of the accused. The recovery, to be made on the pointation of the accused is relevant under Article-40 of the Qanun-e-Shahadat, 1984. The association of the two respectable inhabitants of the locality is not required in a case where the accused himself leads*

*the police to a particular place and the thing is recovered on his information and/or pointation."*

Appellant Raziq Jan was arrested on 24.11.2017 while his confessional statement was recorded on 28.11.2017, though question No.4, which he answered in terms that he was tortured, but, again questions No. 6 & 7 were put to appellant, which reads;

*"Q.6. Do you wish to consult your relatives or lawyer?"*

*A. No.*

*Q.7. Are you making the confession voluntarily?"*

*A. Yes."*

The Judicial Magistrate (PW-2) who recorded the confessional statement of appellant Raziq Jan, has clarified the answer by stating that; *"Answer to question No.4 in case of accused Raziq Jan is in affirmative. It is correct that question No.4 is regarding torture, force, threat and inducement given the accused for making his confessional statement. The witness volunteered that it was inadvertently mentioned yes instead of no."*


11. The confessional statement of the appellant Raziq Jan recorded by the Judicial Magistrate, (PW-2) on 28.11.2017 while that of co-appellant Ghulam Rasool was

recorded on 29.11.2017 respectively. The learned trial Court in para-5 of the judgment has discarded the confessional statements of both the appellants. Since we are seized of an appeal and Murder Reference as well and the entire evidence led by the prosecution is to be reappraised by this Court. We do not subscribe to the view taken by the learned trial Court by discarding the confessional statements of both the appellants on the ground that the accused were handed over back to the police after recording their confessional statements. It is noteworthy here that evidence led by the prosecution is to be appraised accumulatively and not in isolation. In other words the Court has to see the impact of the entire evidence led by the prosecution for proving the charge against the appellants. No doubt that law is there that after recording the confession, if the accused is handed over to the police back to some extent affect the credibility of the confession, but, in this case the confessions recorded by the appellants are not the only evidence with the prosecution on file against them as discussed in the



preceding paragraph, the dead body was also recovered in consequence of the information provided by the appellants.

12. Mere fact that the accused was handed over to the police after recording of confession in all circumstances shall not be a ground for discarding the confessional statements, if otherwise, it rings true and voluntary. Reliance is placed upon the judgment rendered by the Hon'ble Apex Court in cases titled ***Muhammad Sharif..vs..The State (1969 SCMR-521)***, wherein it is held that;



*“If, as suggested, the appellant had for some reason been under the impression at the time of making the confession that he would be taken as an approver, he could not have forgotten to mention it when explaining why he had made the statement. Judging from the notes made by PW-44 regarding his examination of the appellant before recording his confession to which reference has already been made we have no reason to doubt his evidence that he satisfied himself that the confession was being made voluntarily. As regards the remanding of the appellant to the police custody, the Magistrate did so for the purpose of further investigation. The mere fact that the appellant was remanded to the police custody cannot be taken as proof that the confession was not made voluntarily.”*

13. The confession of the appellant Raziq Jan is supported by Medical evidence that the deceased was strangled. Dr. Faqir Ullah (PW-9) also opined that the deceased died due to asphyxia due to ligature strangulation. Furthermore, he put the dead body of deceased in a sack and admittedly the dead body was recovered after recoding the confessional statement of the appellant Raziq Jan and that was packed in a sack and this fact has also been verified by the doctor (PW-9) that the dead body was wrapped in a plastic bag; that the body was putrefied and was emitting foul smell and that the body was lying in a position with flexed upper and lower limbs. Even if there are certain omissions, errors or irregularities, assuming for a while that the confession of the appellant Raziq Jan was not voluntary, even then, the recovery of dead body of the deceased is supported by the confessional statement of co-appellant Ghulam Rasool, which in our view is sufficient for adjudging the appellant Raziq Jan guilty. Furthermore, the I.O has also took into possession motorcycle bearing registration No.LEP-3930-Hero 70CC red in colour vide recovery memo (EX PW 10/3) upon



which appellant Raziq Jan took the dead body of deceased Hubaib after strangulation after appellant Ghulam Rasool for burial and both the appellants in their confessional statements have admitted this fact.

14. The contention of the learned counsel that the dead body of the deceased was putrefied and decomposed and this possibility could not be ruled out that the body was not of the deceased Hubaib. Fazal Shah (PW-6) identified the dead body of the deceased Hubaib before the doctor at KMC, Peshawar, and after P.M examination, the dead body was handed over to them. Shah Zali (PW-7) deposed that he escorted the dead body of the deceased to the KMC for P.M examination; that after P.M examination dead body of the deceased was handed over to the legal heirs of the deceased and both of them have not been cross examined by the defence, so the corpus delicti has been duly proved by the prosecution.

15. Now adverting to the confession of co-appellant Ghulam Rasool, who was arrested on 27.11.2017, his confessional statement was recorded on 29.11.2017, wherein he has narrated the entire episode that how the

dead body of the deceased was brought to him by co-accused Raziq Jan and where the same was buried. His confession has been duly proved through the statement of learned Judicial Magistrate (PW-2) who categorically stated that appellant has admitted his role and the role of co-appellant in the commission of offence, again it is reiterated that mere fact that he was handed over back to the police after recording his confessional statement to the Naib Court of the Court cannot be considered as a sole ground for rendering the confessional statement inadmissible. We are of the firm view that confession alone is sufficient for basing conviction, if the same is found to be voluntary and true. Reliance in this regard is placed upon the judgment rendered by the Hon'ble Apex Court in case titled *Khan Muhammad and others..vs..The State (1999 SCMR-1818)*.

Even on circumstantial evidence conviction can be based and in this regard reliance is placed upon the judgment rendered by the Hon'ble Apex Court in case titled *Sheraz, Tufail..vs..The State (2007 SCMR-518)*, wherein it is held that;

*“Accused was convicted after trial and sentenced to imprisonment for life, which was maintained by Federal Shariat Court...Plea raised by accused was that both the courts had wrongly convicted him on the basis of circumstantial evidence produced by prosecution in shape of extra-judicial confession....Validity....Both the Courts below had given finding that accused had made confessional statement voluntarily before his own nearest relative who appeared as prosecution witness....Confession of accused was also corroborated with other piece of evidence recovered during investigation...Conviction could be awarded on the basis of circumstantial evidence alone....Both the Courts below had convicted and sentenced the accused after proper appreciation of evidence on record... Concurrent conclusions arrived at by Courts below could not be interfered by Supreme Court in exercise of jurisdiction under Article-203-F(2-B) of the Constitution. ... Supreme Court declined to interfere with the conviction and sentence awarded by both the Courts below....Leave to appeal was refused.”*

Now coming to the question of conviction and sentence of appellant Raziq Jan under section-364-A PPC, it is admitted on record that both the parties are neighbors and are residing in one and the same Mohallah and even as per prosecution, the murder of minor Hubaib has taken place inside the Bhaittak of the house of appellant Raziq Jan, which is situated in same proximity, therefore,

question of abduction would not arise in the circumstances of the case. In this regard we are fortified by the judgment rendered by the Hon'ble Apex Court in case titled "*Shams Saeed Ahmad Khan..vs..Shafaullah and another*" (1985 SCMR-1822) and "*Muhammad Akhtar..vs..Muhammad Shafique and another*" (1986 SCMR-533). Appellant Raziq Jan was also convicted and sentenced under section-201 PPC, as he is also charged for the murder of the deceased and has been adjudged guilty by this Court, therefore, his conviction under section-201 PPC is not sustainable. Therefore, the charges under section-364-A and under section-201 PPC against appellant Raziq Jan are set aside and he is acquitted u/s-364-A and section-201 PPC.

Keeping in view the above discussion, the charge under section-302(b) PPC against appellant Raziq Jan has been duly proved by the prosecution and the appellant Raziq Jan has rightly been convicted and sentenced by the learned trial Court under section 302(b) PPC by awarding death sentence to him and nothing is available on record, which could justify the reduction of sentence or the same

can be considered as mitigating circumstance, the compensation of Rs.300,000/- to be paid to the legal heirs of the deceased under section 544-A Cr. PC is maintained. The conviction and sentences awarded to the co-appellant Ghulam Rasool, who buried the dead body of the deceased in order to conceal evidence and screened the co-appellant Raziq Jan has been duly proved on record against appellant Ghulam Rasool beyond reasonable shadow of doubt and the appellant has rightly been convicted and sentenced by the learned trial Court.

In light of what has been discussed above and with the modifications referred in the preceding paragraph with regard to the sentence of appellant Raziq Jan both the appeals are dismissed.

Murder Reference No.3 of 2021 sent by the learned trial Court for confirmation of death sentence awarded to the appellant Raziq Jan is answered in positive.

**Announced on:**  
27th April 2022

  
SENIOR PUISNE JUDGE

  
JUDGE