

P L D 1995 Supreme Court 336

...: *Present: Saleem Akhtar, Zia Mehmood Mirza*

and Fazal Krim, JJ

BAHADUR KHAN---Appellant . versus .

THE STATE---Respondent Criminal Appeal No.139 of 1993,

decided on 19th March, 1995,

(On appeal from the judgment of Peshawar High Court Circuit Bench Abbottabad dated 16-6-1991 passed in Coal Appeal No.28/90).

(a) Qanun-e-Shahadat (10 of 1984)---

---Art. 39---Confession---Retracted Confession---Constitution of Pakistan (1973), Art.185(3)---Leave to appeal was granted to consider the contentions of accused that if the Courts below would have considered the retracted confession as a whole, the accused would not have been awarded the death penalty and that the confession was retracted, and, therefore, in order to convict the accused there should have been corroboration and further that the confession should have been read as a whole and reliance should not have been placed merely on the inculcating part and ignoring the other portion.

(b) Qanun-e-Shahadat (10 of 1984)---

---Art. 39---Criminal Procedure Code (v of 1898), S.164---Confession--Retracted confession---Corroboration---Quality of corroboration---Retracted confession has to be accepted only if it is corroborated by clear, cogent and independent evidence---Court is called Upon to act upon a retracted confession to enquire into all the material points and surrounding circumstances and satisfy itself fully that the confession cannot but be true.

Retracted confession should be accepted only if it is corroborated by clear cogent and independent evidence. :though 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 circumstance 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.

As against the maker himself his confession, judicial or extra judicial, whether retracted or -not retracted can in law validly form the sole basis of his conviction, if the Court is satisfied and believes that it is 'true and voluntary' and was not obtained by torture or coercion or inducement. In the opinion of the Court the question, however, as to whether in the facts and circumstances of a given case the Court should not act upon such a confession alone is an entirely a different question which related to the weight and evidentiary value of the confession and not to its admissibility in law. Unless a retracted confession is corroborated in material particulars it is not prudent to base a conviction in a criminal case on its strength alone. It is the duty of the Court which is called upon to act upon a retracted confession to enquire into all the material points and surrounding circumstances and satisfy itself fully that the confession cannot but be true.

Naqibullah and another v. The State PLD 1978 SC 21; State v. Minhun alias Gul Hassan PLD 1964 SC 813 and Commentary on the Law of Evidence by Munir, C.J., Vol.1, p.168 ref.

(e) Confession-

--- Confession has to be read as a whole and not by relying only on the inculpatory part of the statement.

Muhammad Bilal, Advocate Supreme Court for Appellant.
Anwar H. Mir, Advocate Supreme Court for the State.

Date of hearing: 19th March, 1995.