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*Before Sh. Riaz Ahmad and Raja Afrasiab Khan, JJ*

**JAVID RASHID--Appellant**

versus

**THE STATE--Respondent**

Criminal Appeal No.1142 of 1988, heard on 17th February, 1992.

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

---- S. 302 --- Appreciation of evidence --- Extra-judicial confession having been made jointly by all the accused was inadmissible in evidence and was not corroborated by any other independent evidence --- Last seen evidence also did not connect the accused with the commission of the crime --- Recovery of gun and, cartridges from the accused did not support the prosecution version as the same was not established to have been used in the commission of the offence-- Prosecution had, thus, failed to prove its case against accused beyond reasonable doubt --- Accused was acquitted in circumstances.

**(b) Confession-**

---- Extra-judicial confession --- Joint extra-judicial confession is inadmissible in evidence. [p. 2461 B

**(c) Confession---**

---- Extra-judicial confession --- Evidence of extra-judicial confession is a weak type of evidence.

Hakim Muhammad Sardar Khan and Kh. Abrar Majal for Appellant. A.H. Masood for the State.

Date of hearing: 17th February, 1992.

**JUDGMENT**

RAJA AFRASIAB KHAN, J.---Javed Rashid (23) son of Abdul Rashid caste Jat Lohar, resident of Kulla Choor and Muhammad Afzal (P.O.) son of Sardar Khan, caste Jat, resident of Kot Patwan, District Gujrat, were tried by the learned Judge Special Court for Speedy Trials No.IX, Gujranwala, under section 302/34, P.P.C. vide Judgment dated 22-10-1988, Javed Rashid was convicted under section 302, P.P.C. and sentenced to death on two counts plus a fine of Rs.50,000 or in default thereof to undergo five years' R.I. It was directed that in case of recovery of fine, it shall be paid to the legal heirs of Mushtaq Ahmad and Shafique Ahmad deceased as compensation under section 544-A, Cr.P.-C. Muhammad Afzal (P.O.) was acquitted by the learned trial Judge by giving him the benefit of doubt vide the same judgment. The third accused, namely,

Asghar died during the trial. The appellant has challenged his conviction and sentence by filing this appeal before this Court which shall be decided through this judgment.

2. Shortly stated the facts are that Murid Hussain (37/38) son of Nawab Khan (complainant) is a resident of village Beowali. He is a farmer by profession. On 24-6-1988 at about 1-30 a.m. he was sleeping in his house along with the members of his family. He heard a noise of 4/5 fire-shots from the north-western side of his village. He could not find out the cause of firing because of darkness of night. Early in the morning, he went outside the village in order to answer the call of nature. On the Pakka road towards eastern side, he found the dead body of Mushtaq Khan, resident of Jalalpur Jattan while on the northern side, he found another dead body of Shafiq Ahmad son of Rahim Bakhsh resident of Kalachoor. Both the deceased were already known to him. The complainant suspected that they had been done to death by someone because of enmity. Muhammad Sharif was asked to stay back to guard the dead bodies. The complainant Murid Hussain himself went to the Police Station to give information. Statement Exh.PF of Murid Hussain was recorded by Zafar Iqbal S.I.(PW 13) on 24-6-1988 at 6.00 a.m. at Kutchery Chowk, Gujrat. Formal FIR Exh.PF/1 was recorded by Muhammad Sarwar A.S.I. (PW6) on the same day at 6-45 a.m., on the basis of Exh.PF.

3. Muhammad Riaz Inspector/SHO (PW12) conducted the investigation. On 28-6-1988 he went to village Beowali to find out the clue of the accused in the case. He received an information that the accused, wanted in this case, were present at the Dera of Mian Sher in village Gujarpura. He went there. Fazal Ahmad and Asgh Ali Lambardars of the village joined the police party to arrest the accused. Accordingly, the Dera of Sher Muhammad was raided by the police party. Asghar Ali and Javed Rashid were present in the said Dera. Both the accused started firing at the police party. The police party also returned the fire in self-defence. The accused left the place and ran towards the Dera of Feroze Lambardar in village Sada. Feroze, - aforesaid, asked them to immediately surrender before the police party. The accused instead of surrendering, killed Feroze Lambardar by firing from their weapons. Thereafter, Javed Rashid left the place and entered the Dera of Ghularn Rasul. He was arrested by the police party from the said Dera. A .12 bore gun P. 22 and 13 live cartridges P23/1-13 were recovered from his possession. These articles were taken into possession vide memo Exh.PO..Zafar Iqbal Sub Inspector PW13 also partly investigated the case. He visited the spot. He took into possession the dead bodies of Mushtaq and Shafique from village Beowali. The injury statement Exh.PP and inquest report Exh.PQ of Shafique Ahmad were prepared. Similarly, injury statement Exh.PR and Inquest Report Exh.PS of Mushtaq were prepared by him. The dead bodies were sent to mortuary at Gujrat for conducting post-mortem examination upon them through Muhammad Zubair Constable. Blood-stained earth was collected by the Police Officer from the place of occurrence vide memos. Exh.PG and Exh.PH. A motorcycle No.9134/GTA was also taken into possession vide memo. Exh.P.11 from the spot. He also took into possession a grip P.12 from near the dead body of Shafiq, deceased, vide memo. Exh.PJ. Another grip P.13 was taken into possession from near the place of occurrence vide memo. Exh.PK. A plastic envelop P.14 containing Shalwar Qameez P14/1-2, Handpurse P14/1-3, key ring along with two keys of motorcycle P.14/1-5 were taken into possession vide memo. Exh.PL. A wrist watch P.15, currency notes of Rs.212,

P16, a driving licence No.23559/GT P.17 and National Identity Card of Shafiq Ahmad deceased P.18 were taken into possession as a result of personal search of his body. From the personal search of Mushtaq Ahmad wrist watch P.19, purse P.20 and currency notes of Rs.151, P.21 were taken into possession vide memo Exh.PN. Last worn clothes of Shafiq deceased Shirt P.1, Shalwar P.2, Bunyan P.3, all blood-stained, Chappal P4/1-2 were also taken into possession vide memo. Exh.PD. Last worn clothes of Mushtaq, deceased, Shirt P.6, Shalwar P.7, Bunyan P8, all blood-stained, Chappal P.9/1-2 were taken into possession vide recovery memo. Exh.PE. The appellant Javed Rashid was arrested on 28-6-1988 by Raja Muhammad Ria7, Inspector S.H.O. The appellant led the police to the place of occurrence. Report of the Chemical Examiner Exh.PU and that of the Serologist Exh.PV about earth were positive inasmuch as it was opined that the earth was stained with human blood.

4. The prosecution produced evidence about extra-judicial confession having been made by the appellant and the last-seen evidence. Anwar P.W.11 deposed about the extra-judicial confession. However, Abdur Rashid P.W. was not produced during the trial. Last-seen evidence was furnished by Muhammad Azam P.W.9 and Amjad Javed P.W. was given up. The appellant in his statement under section 342, Cr.P.C. denied the allegations levelled against him and pleaded his innocence. He disclosed that the PWs were inimical towards him and that Zafar Iqbal Sub-Inspector had a grudge against him, therefore, he was falsely implicated in this case. He also made a statement on oath under section 340(2), Cr.P.C.

5. The learned trial Judge believed the prosecution evidence and convicted and sentenced the appellant as already mentioned above.

6. Learned counsel vehemently contends that this is a case of no evidence. According to the learned counsel, the prosecution has failed to prove its case against the appellant. It is argued that the alleged extra-judicial confession was joint and as such no reliance under law can be placed upon **such a** type of confession, Learned State counsel has half-heartedly supported the conviction and sentence of the appellant by adopting the reasons given by the learned Judge in the judgment.

7. We have heard the learned counsel for the appellant and the learned State counsel at considerable length. We have also gone through the whole record very carefully with the assistance of learned counsel for the parties. We have been persuaded to believe that the prosecution has miserably failed to prove its case against the appellant beyond doubt. In our view, the evidence of extra-judicial confession does not connect the appellant with the commission of the crime. It is certainly a weak type of evidence. A bald statement of Muhammad Anwar P.W.11 is full of contradictions and does not inspire confidence. He stated that on 27-6-1988, early in the morning, he went to village Warraichanwala in order to purchase a buffalo. Abdul Rashid was also with him. While coming back, they met the appellant and the co-accused in a chowk of the village. Javed Rashid and Afzal were armed with .12 bore guns while Asghar held a Rifle. The accused were already known to the witnesses. The appellant told the witness that they had murdered Mushtaq and Shafiq. They also disclosed that they were standing on the road with an intention to commit a robbery. The accused requested the witnesses to approach the complainant so that they might be forgiven by him from the

charge of murder. This is the whole evidence about extra-judicial confession. In view, evidence is deficient inasmuch as there is no other independent evidence to corroborate it. Abdul Rashid, another witness was not produced by the prosecution for unknown reasons. Apart from the above, this evidence cannot be relied upon because the extra-judicial confession was made jointly by the accused. The statement Exh.DB of Muhammad Anwar shows beyond doubt that extra-judicial confession was made jointly by both the accused. It is well- settled that a joint extra-judicial confession is inadmissible in evidence. L Learned State counsel was unable to dispute this position of law. However, he submitted that the confession was made by the accused one after the other. His contention is devoid of force because there is absolutely no evidence on record to show that the confession was not joint. Nothing substantial could be said by the learned counsel about Exh.DB, already discussed above. It is, therefore, established that the alleged extra-judicial confession was made jointly by A the accused. It is also well-settled that evidence of extra-judicial confession is a weak type of evidence. It is one of the pieces of the prosecution evidence to connect the accused with the commission of an offence. It is, therefore, difficult for us to record any conviction against the appellant on the basis of this type of evidence. This being so, this evidence has to be excluded from consideration. Last-seen evidence of Muhammad Azam P.W.9 also does not connect the appellant with the commission of the crime. He deposed that on 23-6-1988 at about mid-night, he was passing through a culvert near village Beowali. He saw I Javed Rashid, appellant and Muhammad Asghar acquitted co-accused while standing on the road. The appellant was armed with a gun while the co-accused Asghar was holding a rifle. He further stated that the appellant stopped him on the road. As per chance, a car passed through the road at that time and in consequence, the accused went away by leaving the road to avoid being noticed by the occupants of the car. The witness was thus able to run away from the place of occurrence. According to him, two other persons were also standing near the culvert. He, however, could not identify them. The evidence of P.W.9 does not disclose that it was the appellant who killed the deceased. At any rate, his evidence does not connect the appellant with the commission of these murders. The possibility that two persons standing near the culvert might have murdered Shafiq and Mushtaq could not be ruled out. This being so, his evidence is also of no help to the case of the prosecution under these circumstances: Amjad Javed was another witness who was no produced by the, prosecution in **support of testimony of Muhammad Azam P.W.** An adverse inference against the case of the prosecution can be drawn for not producing the aforesaid important witness. **Recovery of gun P.22 and cartridges P.23 /1-13** from the appellant does not support the prosecution version in as much as it was not established on record that the said gun was used in the commission of the crime.

8. For all these reasons, we are of **the view that the prosecution did not succeed** to prove its case beyond reasonable doubt against the appellant. Result of the above-discussion is that conviction and sentence of the appellant are set aside by accepting the appeal. The appellant shall, therefore, be released forthwith provided of course he is not required in some other criminal case.

**N.H.Q./J-11/L**

**Appeal accepted.**



