

## UNRELIABLE CONFESSIONS IN MURDER CASES: A QUALITATIVE STUDY OF THE REVERSED JUDICIAL DECISIONS IN PAKISTAN

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### **Abstract**

*Different researchers produced enormous literature on false confession by employing different methodologies, including doctrinal research, surveys, experiments and trial transcripts. These studies documented the existence, causes, and effects of false confession. In addition, these studies examined the authenticity of confession, how the police obtain a false confession and the behavioral and psychological process behind false confession. However, many of the studies could not investigate the errors that the trial courts and the first appellate courts commit while drawing the inference of guilt of the accused from confession. As a result, the question “what errors do the trial courts and the first appellate courts commit while reasoning with confession” has not been the subject of much analysis. The present study is an effort to address that gap in the literature. After qualitative content analysis of the five appellate courts’ decisions, this article found that the trial courts and the first appellate courts used inadmissible, implausible, contradictory, and uncorroborated confession against the accused in murder cases in Pakistan. Moreover, the trial courts and the first appellate courts failed to look into the possibility of alternative inference which could have been drawn from the confession.*

*Key words: Confessions, Reversed Decision, Unreliable Trials, Pakistan*

### 1. INTRODUCTION

A distinctive feature of contemporary legal adjudication is its fact-orientation since the adjudication of every dispute under a legal rule is based on the facts of the case (Lai Ho, 2008). It is necessary that the alleged facts of the case must be established. The facts of the case can be established with the direct or the circumstantial evidence. The direct evidence establishes the existence or non-existence of any fact in one reasoning step to a matter revealed in the evidence; the circumstantial evidence reaches a conclusion in two reasoning steps (Anderson, Schum and Twining, 2005). Moreover, the direct or the circumstantial evidence must be relevant and admissible (Sinopole, 1992). The direct evidence is generally in the form of witnesses’ testimony that has seen the crime. On the other hand, there are numerous forms of circumstantial evidence in criminal proceedings including flight from the law, last seen evidence, opportunity, physical or mental capacity to commit offence, or a confession. Confession is an admission of the facts that constitute an offence, and it is made by a person charged with an offence that is the subject matter of his statement (Pakla Naryan Swami versus Emporer, 1939). Confession is of two types; judicial confession and extra-judicial confession. Judicial confession is made before the magistrate or before the trial courts. On the other hand, an extra-judicial confession is made outside the court proceedings (Wilson, 1953). Confession in criminal trials is an important piece of evidence for several reasons; some crimes are nearly impossible to prove without them, they come from the person who usually is the best witness to know the truth, or a confession may be a deliberate, self-serving, and exculpatory falsehood that serves as circumstantial evidence of guilt when disproved (Crump, 2019). To some scholars, confession has such a powerful impact on courts that the other

aspects of judicial trials are superfluous when an accused confesses (McCormick, 1972). On the other hand, some researchers believe that confession is troubling evidence. It seems that confession is a double-edged weapon: on the one hand, it helps the law enforcement agencies in crime control; on the other hand, certain aspects of confession like authenticity, voluntariness, reliability, and admissibility have become the cause of concern among scholars (Kassin & Gudjonsson, 2004).

Although confessions are useful to police, prosecutors, and courts, many researchers have empirically demonstrated that confession was a major source of errors behind wrongful convictions. Rory K. Little (2008) pointed out six evidentiary sources of wrongful convictions of innocent, and the confession evidence was one of the sources. Likewise, Laudan (2006) believes that when a confession has been obtained illegally, the confession itself and the evidence obtained due to the lead of confession must be excluded from consideration. The majority of the studies on false confessions have acknowledged confession as one of the sources of errors in wrongful convictions and have also discussed why an innocent person confesses in police custody, how an accused is wrongly convicted due to false confession, and the effects of false confessions. However, these studies have failed to examine the evidential errors that the courts committed in wrongful convictions while reasoning with confession evidence. The present article addresses this gap in the literature and reports the different reasoning errors that the trial courts and the first appellate courts committed while drawing the inference of guilt of an accused from confession evidence. It is relevant to point out that the present study is largely based on a PhD thesis entitled "Errors in Judicial Decisions in Pakistan: A Plea for Integration of Rational Approaches to Reasoning with Criminal Evidence" by the first author. The thesis empirically found that the trial courts and the first appellate courts committed several errors while reasoning with the direct or the circumstantial evidence in the murder cases. To the extent of the circumstantial evidence, the study found that the trial and the first appellate courts did not properly evaluate the different pieces of the circumstantial evidence including, motive, recoveries, identification parade, last seen evidence, flight from the law, and the confession. The present article only reports the reasoning errors which the trial courts and the first appellate courts committed while reasoning with confession evidence. This article, other than the introductory section, has five sections. The second section reviews the empirical literature on confession, the third section describes the methodology, the fourth section reports the findings, the fifth section offers a general discussion on the findings, and the sixth section concludes the article.

## 2. THE REVIEW OF THE LITERATURE

This section critically evaluates the different studies conducted by different researchers on a false confession. It is important to point out that the review in this section is limited to empirical studies, and it does not review the doctrinal literature on confession. This section has two parts; the first part reviews the studies conducted abroad, and the second part reviews the studies on false confession in Pakistan.

### 2.1- Abroad

There is a growing body of research on false confessions based on different methodologies including, surveys, archival record and experiments. These studies have examined the role of false confession and the wrongful convictions, and the different actors who obtained or processed false confessions. Many researchers have studied the role of police in obtaining false confessions. Some researchers have paid attention to police interviews; some have examined the interrogation techniques, whereas some have focused on the police investigation. These studies have pointed out several related issues. For instance, Johnson (2003) believes that the erroneous belief of the police about the suspect as the real criminal, and subsequently lengthy and suggestive interviews of the suspects, resulted in false confessions. On the same line of reasoning, Niland and Ortu (2020) found that aversive interrogation environment and verbal behaviour of law enforcement could intentionally or unintentionally produce a false confession. Likewise, some researchers associated accused's physical and mental health with false confessions during police custody (Tepfer, Cooley,



and Thompson, 2012). Similarly, Leo (2009) pointed out three causes of false confession in police custody; misclassification, coercion, and contamination.

These are significant studies since these studies point out the psychological reasons why an innocent person confesses in police custody. However, these studies are silent about the psychological processes through which false confessions, once obtained by police, may lead to wrongful convictions. In this regard, Leo and Davis (2010) examined the psychological processes associating with false confessions leading to wrongful convictions. They associated seven psychological processes with false confession including, bias effect of confession, tunnel vision, motivational biases, emotional influences on thinking and behaviour, institutional influences on evidence production and decision making, inadequate or incorrect relevant knowledge, and progressively constricting relevant evidence. These studies discussed and explained the psychological process involved in involuntary false confession in police custody. However, these studies are silent about the reasons for voluntarily false confession in the absence of higher levels of interrogation pressure in police custody. In this regard, Silvia Gubi-Kelm et al (2020) conducted interviews to dig up the reasons for voluntary false confession in Germany. She found that the accused voluntarily made false confessions to avoid the negative effects of confessing, or the accused were presented with false evidence due to public pressure and on their lawyer's advice. These studies indicate different factors and variables which caused and produced false confessions. Gisli & Gudjonsson (2003) collapsed these variables into three categories of causal elements; police factors, vulnerabilities and support. The police factors include custodial pressure, interrogative pressure and the personality of the interviewer. The vulnerabilities include physical health, mental health and psychological vulnerabilities. Likewise, the support factors include the presence of solicitors and adult at the time of confessions.

Apart from the causes and factors behind false confession, many researchers have also studied the effects of false confessions. Leo, & Ofshe, (1998) analysed sixty cases of police induced false confession in America and found that false confession made the judges bias in favor of the prosecution, resulted in unjust deprivations of liberty, wrongful convictions, incarceration, and sometimes even execution. Likewise, Guo (2017) surveyed the implementations of the exclusionary rule related to confession in china. He found that reliance of police on threats, inducements, deceptions and obtaining confession in violation of procedural laws are the reasons behind false confessions in criminal proceedings. He further pointed out that the procedural violation included taking the accused in illegal custody and failure to record audio and video interrogation. The author further found that most lawyers thought that the admissibility of multiple confessions should be admitted, and only those confessions should be excluded, which are proved to be the result of procedural errors or threats or torture.

The studies as mentioned above focused on the causes of false confession in police custody and failed to discuss how the juror process confession at trial or appellate stage. In this regard, Holt, and Palmer, (2020) conducted two experiments to investigate the effects of inconsistencies in confession on the jurors and how this might influence their belief in accused's guilt. These studies are critical since they offer a useful insight into the different methods adopted by the police, which resulted in false confessions. However, these studies have three major limitations; first, mostly these studies were conducted by researchers from psychology who failed to look at false confession from a legal perspective. Second, these studies mostly focused on false confession in police custody. Third, these studies were based on experiments and surveys, and did not analyse the judicial decisions to examine false confession.

On the other hand, many researchers also critically analysed false confession by examining the judicial decisions. Among these studies, many have acknowledged the false confession as a reason for wrongful convictions, and others have discussed the other aspects of false confession. For instance, Edwin M. Borchard (1932) analysed different cases and found that a false confession was the material factor behind wrongful convictions. He further discovered that false confession was resulted due to torture and undue influence. On the other hand, Gelman et al (2004) collected data on the appeals process for all death sentences in U.S. states between 1973 and 1995 and found

false confession as the secondary reason for wrongful convictions in the cases involving the death penalty. Similarly, Wagenaar et al. (1994) examined 35 judicial decisions and found that an accused might falsely confess to protect the other, or maybe he was a liar, or they were tricked into confessing, or as a result of police suggestions. Likewise, after analysing 50 cases, Jiangho (2011) found that coercion and torture were the main reasons for a false confession. These studies are important since the researchers used judicial decisions to analyse the false confessions. However, these studies did not discuss in detail the confession itself; rather, they provided the reasons and explanation for false confessions. However, Gareet (2010) used pretrial materials, trial materials and the confessions in thirty-eight cases to examine the substance or content of the confession. He found that the police during the interrogation process could have provided this information to the accused, which they subsequently disclosed in the confession. Subsequently, the police and the prosecutors contended at the trial that these confessions were reliable since the crime scene evidence also corroborated them.

## **2.2. In Pakistan**

Many researchers and institutions have documented the link between false confessions and wrong convictions in Pakistan. For instance, the International Federation for Human Rights and Human rights commission of Pakistan (2007) and Abbas (2011) found that false confession in police custody was the result of torture and intimidation. In addition, Lowenstein (2016) reviewed judicial cases and reported that the trial courts and the appellate courts used false confessions in wrongful convictions in death penalty cases resulted from the coercive measures of the police. These studies are critical since they point out the existence of a link between false confessions and wrongful conviction. Moreover, these studies highlighted the different reasons for false confession in police custody in Pakistan. However, these studies fail to examine the role of judges in respect of false confessions and the reasoning errors behind the false confessions. In this regard, Foundation for Fundamental Rights and Reprieve (2019) conducted a qualitative and quantitative study to examine the cases decided by the Supreme Court judges. The study found that the trial courts and the first appellate courts relied on involuntary, retracted, and illegally obtained confessions.

The studies discussed in section 2.1 and 2.1 are important since they highlighted the existence and the role of different actors in the criminal justice system. However, these studies did not offer a legal and reliable explanation of the false confessions, and pay attention to discuss the judges' role. Moreover, these studies were based on unsystematically selected cases or small data set. Furthermore, most of the studies did not offer a detailed description of the reasoning errors that the trial courts and the first appellate courts committed while reasoning with confession. On the other hand, the present study fills these gaps since it is based on systematically selected cases from five appellate courts; it reports the detailed but condensed situations when the lower courts and the first appellate courts failed to detect the errors in judicial and extra-judicial confessions.

## **3. METHODOLOGY**

The researchers used the traditional approach to inductive qualitative content since it is considered an appropriate method to analyze written judicial decisions (Hsieh and Shannon, 2005). The researcher used the secondary data for analysis i.e., the opinion of the Supreme Court and the four high courts from 2007 to 2017. While considering the suggestions given by Hall and Wright (2008), Maryam (2018), and Mariette Bengtsson (2016), the researcher devised a specific methodology to address the research question of the current study. The methodology consisted of five steps: formulation of the research question, systematic collection of cases, coding the cases, data analysis (latent and patent), and reporting results. All of these steps are briefly discussed in the following lines.

First of all, the researchers coined the research questions as stated above. After the formulation of the research question, the researchers selected the cases to address the research question. For this purpose, the researchers determined the sample frame and sample size to prepare the list of the cases for analysis. The cases decided under section 302 were considered the sample frame, and the universal and purposive sampling techniques were used to determine the sample size. After that,

the researchers developed an objective and systematic criterion to select the cases for coding purposes to ensure replicability and avoid personal bias. For that purpose, the researchers used the Pakistan law site as data set, cases reported under section 302 of the Pakistan Penal Code were accessed, and a list of the cases was prepared. After that, the inclusion and exclusion criteria were developed to include or exclude the cases for analysis. After that, a list of the reversed cases (750 appellate decisions) was prepared. After selecting the cases for analysis, the researcher thematically labeled the data with codes while keeping in mind the suggestion given by Saladana (2013).

The researchers divided the coding process into four sub-steps, namely identifying the unit of observation, identifying the unit of analysis, identifying the meaning unit, and labeling the data. The portions of the judgment in which the appellate courts evaluated the evidence were selected as the unit of observation, the portion of the judgment in which confession was evaluated were selected as the meaning units, and the portion of the judgment where the judges disbelieved the confession were selected as the unit of analysis. After that, the researchers went through the unit of analysis to note the errors pointed out by the appellate courts in the decisions of the lower courts. These errors were thematically coded by five methods: holistic coding, descriptive coding, *in vivo* coding, sub-coding, and simultaneous coding. After labeling fifty judicial decisions, the researchers prepared a priori coding categories that were subsequently refined with the feedback of some experts from academics and practice. After preparing and refining a priori coding and categories, the researcher prepared and applied the codebook on the data. After that, the researchers analyzed the codes latently and patently to draw different inferences. Based on these inferences, all the codes were merged into different sub-categories and then into major categories. After forming the sub and the major categories, the researchers reported the findings and explained each sub-category with a brief account of the facts of the selected case.

#### 4. FINDINGS

This is the empirical section of the present study, and it reports the five major categories of errors which the lower courts committed while reasoning with a confession. These five major categories include inadmissible confession, the implausibility of confession, contradiction between confession and other pieces of evidence, missing evidence, and failure to draw alternative inference from confession.

##### 4.1- The First Major Category: Inadmissible Confession

The data indicate that appellate courts reversed a substantial number of lower court decisions because the lower courts used inadmissible confessions against the accused. It is critical to emphasise that this category includes cases where confessions were not obtained, produced, or processed following the applicable legal procedure. The data indicate that appellate courts reversed a large number of lower courts decisions when they discovered that the confession was not recorded properly, was made in improper custody, or was not read to the accused, or was based on hearsay evidence, and thus formed four sub-categories; erroneous recording, improper custody, non-confrontation, and hearsay confession.

##### A. Erroneous Recording

The data indicate that the appellate courts set aside the conviction of the accused in many cases after pointing out that confession was not recorded according to the legal procedure. It has also been learnt from the data that the appellate courts discarded the confession on different grounds. The data show that the appellate courts did not use confession against the accused when judicial authority did not give him time to rethink making confessional statements. For instance, in *Hashim Qasim vs State* (2017), the Supreme Court set aside the death sentence of the accused, and this was one of the reasons that the accused was not given time to rethink making the confessional statement. Likewise, when the confession was not recorded on the prescribed form (*Tasleem v State*, 2013), recorded after administering the oath (*Azeem Khan v Mujahid Khan*, 2016), in the presence of the police (*Muhammad Ismail v State*, 2017), or when the accused was handcuffed (*Muhammad Ismail v State*, 2017), or when the confession was not in question-answer format (*Abid*





Ali v State, 2011), or accused was not warned (Amir Zaheer v State, 2010), the appellate courts set aside the confession. Likewise, when the magistrate did not provide the certificate of understanding the confession by accused (Noor Ahmad v State, 2017), or when the magistrate did not provide the certificate under section 164 of the code of criminal procedure (Mst. Bakht v State, 2014), or when the confession did not bear the date of recording (Abid Ali v State, 2011), or when the confession was not taken as a whole (Gul Muhammad v State, 2016), or when the magistrate did not inquire about the physical torture (Muhammad Imran v State, 2011), or the accused was not informed about judicial remand (Noor Muhammad v State, 2013), the appellate courts discarded the confession. Likewise, when the magistrate did not write the certificate of confession himself (Noor Muhammad v State, 2013), or the accused jointly confessed (Muhammad Younas v State, 2017), or after the court time (Amir Zaheer v State, 2011), the appellate courts discarded the confession.

#### **B. Improper Custody**

The data show that the appellate courts rejected the confession when the confession was made in illegal or improper custody. The data show that the appellate courts discarded the confession when it was brought on the record that the accused was handed back to the police after the Confession. For instance, in Muhammad Abrar vs State (2014), the appellate court set aside the conviction of the accused, and this was one of the reasons that the magistrate who recorded the confession of the accused handed him back to the police. Likewise, when the accused made confession in the police custody (Bakht Munir v State, 2016), or in illegal custody (Noor Ahmad v State, 2017), the appellate courts did not use such confession against the accused.

#### **C. Non-Confrontation**

Likewise, the data show that when the accused was not confronted with his confession after closing the prosecution evidence, the appellate courts rejected the confession. For instance, in Muhammad Rafique vs State (2009), the accused was convicted by the lower courts, and confession was one of the different items of evidence against the accused. The high court noticed that the same confession was not put to the accused when he was examined under section 342 of the code of criminal procedure, and resultantly it excluded the confession from consideration.

#### **D. Hearsay Confession**

Likewise, in Khan Muhammad vs state (2010), the Supreme Court did not consider the extra-judicial confession against the accused because the extra-judicial confession was based on hearsay evidence declared inadmissible under the Qanoon e Shahadat order, 1984.

### **4.2- The Second Major Category: Implausibility of Confession**

The implausibility of confession is the second major category of errors in the confession evidence. The data show that the appellate courts disbelieved the confession when it appeared to be unnatural. The data show that when the confession was made before an unnatural forum, or it was communicated after a considerable delay or was not communicated, or the content of the confession appeared to be implausible, or it was allegedly made on unnatural occasion, or the witnesses or accused exhibited unnatural behaviour, the appellate courts did not use such confession against accused. Accordingly, the following sub-categories were formed.

#### **A. Unnatural Forum**

The data show that the appellate courts did not believe in the confession allegedly made before such a forum before which generally an accused would not confess. For instance, in Nasir Javed vs state (2016), the prosecution alleged that the accused confessed before the relatives of the deceased. The Supreme Court disbelieved this confessional statement and observed that confessing before the relatives of the deceased was quite unnatural.

#### **B. Delayed Communication**

Likewise, the data show that the appellate courts discarded an extra-judicial confession when communicated to the police after a considerable delay of the occurrence. For instance, in Azeem Khan vs Mujahid Khan (2016), the accused allegedly confessed before the victims' relatives, but the relatives informed the police about the confession after many days. The Supreme Court observed

that it was unnatural that a witness did not inform the police or the relative of the abductee in time, and consequently, the appellate court disbelieved the confession.

**C. Non-Communication**

Likewise, the data show that the appellate courts disbelieved extra-judicial confession when the witnesses did not inform the police or the relatives of the deceased about the extra-judicial confession made by the accused before them. For instance, in *Yasir Ali vs state* (2017), the Lahore court discarded the extra-judicial confession after observing that the witnesses did not inform the complainant or the police when the accused allegedly made confession before the witnesses.

**D. Unnatural Contents of Confession**

Likewise, the data show that when it appeared to the appellate courts that the confessional statement was against ordinary human behavior, the appellate courts disbelieved such confessional statement. For instance, in *Azeem Khan vs Mujahid Khan* (2016), the accused confessed that they kidnapped the child and kept him in a house. They further confessed that the kidnapped child was tied with a tree situated in the courtyard of the house, and one accused kept an eye on him during day time and the other in the night. The Supreme Court did not believe this confessional statement and observed that it was not understandable that the kidnapped child was kept outside the house where he could have shouted for help.

**E. Unnatural occasion**

Likewise, the data show that the appellate courts disbelieved the extra-judicial confession when it appeared that it was made on an unusual day. For instance, in *Mst Gulzaran Bibi vs State* (2017), the accused lady allegedly confessed before two witnesses on the day of Qul of the deceased. The court observed that there was no occasion for the appellant to make an extra-judicial confession regarding an offence that carried the death penalty on the funeral ceremony of the deceased.

**F. Unnatural Behavior of Witnesses**

Likewise, the data show that the appellate courts did not believe in confession when they noticed that the witnesses or the police did not arrest the accused after making the extra-judicial confession. For instance, in *Muhammad Jamil vs state* (2017), the accused allegedly confessed in the panchayat (assembly of many people), but neither the relatives of the deceased nor any person from the panchayat tried to arrest the accused. The high court disbelieved the confession in these circumstances.

**G. Unnatural Behavior of Maker**

Likewise, the data show that the appellate courts rejected the confession when the prosecution did not bring on record that why the accused confessed. For instance, in *Sabir Ali vs state* (2011), the Supreme Court disbelieved the confession because there was nothing on the record that why the accused confessed.

**4.3- The Third Major Category: Contradictions with other Evidence**

The data show that in many cases, it was one of the reasons for not using confession against the accused because there was a contradiction between confession and other pieces of evidence. The data show that the appellate courts noticed contradictions between confession and different pieces of evidence, and accordingly, the following sub-categories were formed.

**A. Conflict with Recovery**

The data show that the appellate courts disbelieved the confession when it was found to conflict with the recovery. For instance, in *Muhammad Akbar vs State* (2014), the accused confessed to have killed the deceased with an 8 MM rifle and pistol, but the police recovered empties of klashankooof from the place of occurrence. The high court did not believe in the confessional statement due to such incompatibility between recovery and confessional statement.

**B. Conflict with the Motive**

The data also show that the appellate courts disbelieved the confession when the alleged motive contradicted it. For instance, in *Muhammad Saleh vs State* (2011), the prosecution alleged that the accused killed the deceased to snatch the donkey cart from him and the accused also admitted in his confessional statement that he killed the deceased to snatch the donkey cart. However, the appellate court observed that when the police recovered the dead body, the donkey cart was also

there with the dead body. The high court did not believe in the extra-judicial confession and set aside the conviction of the accused.

**C. Conflict between witnesses**

The data show that the appellate courts set aside the confession when there were contradictions between witnesses about the extra-judicial confession. For instance, in *Muhammad Khalid vs state* (2017), there were contradictions between witnesses before whom the accused allegedly made the extra-judicial confession. One witness said that the accused confessed at the gate; on the other hand, the second witness said he confessed at the door. The appellate court disbelieved the confession, and this was one of the reasons for the acquittal of the accused.

**D. Conflict with co-maker**

Likewise, the data show that the appellate courts disbelieved the confession after noticing contradictions between confessional statements of more than one accused. For instance, in *Kabir Shah vs state* (2016), the appellate court rejected the confession because there was a contradiction between the accused' confessions with each other about the timing of the occurrence.

**E. Conflict with Medical Report**

Likewise, the data show that the appellate courts did not use confession against the accused when there was a contradiction between confession and medical report. For instance, in *Yasir Ali vs state* (2017), the accused disclosed in the confessional statement that he killed the deceased by firing at him. However, the medical report indicated that no bullet was found from the body of the deceased. The Lahore court discarded the confession due to this contradiction.

**F. Conflict with Site Plan**

Likewise, the data show that the appellate court disbelieved confession when they noticed a contradiction between confession and the site plan. For instance, in *Muhammad Abrar vs state* (2014), the accused confessed and pointed out a specific place where he fired at the deceased. However, the site plan did not mention that the police recovered the empty from that place. The appellate court rejected the confession on this ground.

**4.4- The Fourth Major Category: Missing Evidence**

The data indicate that the appellate courts did not use confession against the accused when there was a lack of evidence. The data also show that when the confession was not corroborated, or when the prosecution did not produce the evidence for the expected acts of the accused (admitted in the confessional statement), the appellate court did not use such confession against the accused.

**A. Lack of Corroboration**

The data show that the appellate courts did not use confession against the accused when any other independent evidence did not corroborate the confession. For instance, in *Noor Muhammad vs state* (2017), the accused allegedly confessed before the magistrate, but subsequently, he retracted it. The appellate court held that such confession could be used against the accused if it was corroborated by independent evidence, which was missing in the case. Resultantly, it became one of the reasons for the acquittal of the accused. Likewise, the data show that the appellate courts did not use extra-judicial confession against the accused when it was not corroborated by evidence. For instance, in *Yasir Ali vs state* (2017), the accused allegedly made extra-judicial confession before the real uncle of the deceased. The Lahore high court did not use such a confession against the accused because no other evidence corroborated it.

**B. No Consequent Evidence**

In *Hashim Qasim vs state* (2017), the accused disclosed in the confessional statement that his hand was fractured during the occurrence. However, the investigating officer did not get the X-ray of the accused, and the Supreme Court rejected the confession due to this reason other than others. Likewise, in the same case, the accused did not explain in the confession that how he met with the witness of last seen. Due to this reason, the Supreme Court rejected the confession. Likewise, when the magistrate did not produce the court's written order, empowering him to record the confession of the accused, the appellate courts discarded the confession from consideration (YLR 2011 Karachi 655).

**4.5- The Fifth Major Category: Failure to Draw Alternative Inference**





This category includes the cases in which the appellate courts disbelieved the confession evidence because the lower courts could not exclude the other possibilities emerging from the confessional statement. For instance, the data show that when the appellate courts observed that a confessional statement was made after many days, the courts believed that this was not a voluntary confession; rather, it was obtained after torture. *Hizbullah vs state* (2012), is a good case to illustrate this point. In this case, the appellate court noticed that the accused made a confession after four days of his arrest, and the prosecution could not explain the delay. The court did not use this confession against the accused because the court assumed that the accused could have been subjected to torture. Likewise, the appellate court disbelieved the confessional statement bearing the thumb impression of a literate accused, and the court inferred that his thumb impression could have been obtained on a plain page (*Ehsan Ali v State*, 2009).

## 5. DISCUSSION

The present study intended to point out the errors committed by the lower courts while reasoning with confessions in murder cases in Pakistan. The study found that the lower courts used inadmissible, implausible, contradictory, and uncorroborated confessions against the accused. Moreover, the lower courts could not see that alternative inferences could have been drawn from the confession made in peculiar circumstances. The study indicates that the lower courts ignore the material illegalities which the magistrates commit before, during and after the recording of the confession. The lower courts fail to observe that the magistrates do not create a comfortable environment for the accused before confessing; they remain handcuffed, or the police remain in the same room, or they are not informed that they are not bound to confess, or they administer the oath, or they do not inform the accused that confession can be used against them in judicial trials. Likewise, the lower courts do not examine that the magistrates do not fulfil the legal requirement about writing the confession. The magistrates do not record the confession on a prescribed form, in prescribed manners, and record the confessional statement in the presence of the police. Similarly, the lower courts fail to detect certain illegalities which the magistrates commit after recording the confession. The lower courts fail to see that magistrate do not record the confession himself, do not certify that the accused understand the confession, or do not provide a certificate on a separate sheet. Likewise, the lower courts fail to observe that the accused was handed back to the police custody. Apart from this, the judges of the lower courts also commit certain procedural violations while using the confession against the accused. The courts do not confront the accused with confession so that he may explain the confession evidence against them. Likewise, the lower courts do not examine the content of the confession. They fail to notice that the content of the confession is not plausible due to the forum before it was made, the time elapsed between confession and its communication to the concerned people or the unnatural manners of commission of the offence. Likewise, the lower courts fail to see that alternative inference could have been drawn from the confession. Other than the plausibility of the content of confession, the lower courts do not examine the content of confession. They ignore the contradictions between the content of confessions and other items of evidence, including recovery evidence, motive, witnesses, different expert reports, site plan, or the co-accused statement. Likewise, the lower courts rely on confession to convict the accused without considering that any independent evidence does not corroborate confession, or there is no evidence that will naturally be present if the confession is true.

The present study's findings are broadly in line with the findings of several studies conducted on the same issue. For instance, the present study supports the findings of Wagenaar (1994) to the extent that courts convicted an accused on the basis of implausible confession. However, the present study extends their findings by showing that confessions are erroneously used by the courts, which was illegally obtained or brought on the record in violation of the law. Likewise, the present study supports the findings of Holt, and Palmer, (2020) to the extent that due to the factual errors in confession, the judges' belief in the guilt of the **accused** is reduced. The present study also supports their findings to the extent that judges do not notice inconsistencies in confession.



However, the present study extends their findings by pointing out the different instances of factual errors and inconsistencies in confessions. Nevertheless, there are several areas in which the present study's findings differ from their findings. For instance, the present study does not support their findings that contradictions in confession do not affect the belief in the accused's guilt. Likewise, the present study supports the findings of Lawrence L. Wilson (1953) to the extent that an accused cannot be convicted on the basis of uncorroborated extra-judicial confession. Likewise, the present study also supports the findings in "Pakistan capital punishment jurisprudence of the Supreme Court" to the extent that the trial courts and the high courts used an illegally obtained and inadmissible confession against the accused. However, the present study also found that the lower courts did not put the confession to the accused so that he may explain it, which is missing in that study. Likewise, the present study supports the findings of Guo (2017) to the extent that alternative explanations are generated due to inconsistencies in confession. Similarly, the present study supports his findings to the extent that police violated procedural laws to obtain a confession in criminal trials. Similarly, the present study's findings are in line with the findings of Leo, & Ofshe, (1998) to the extent that false confession resulted in convictions of innocent accused. Likewise, the present study supports the findings of Andrew Gelman et al (2004) to the extent that false confession is a secondary reason for wrongful conviction in cases involving the death penalty. Likewise, the present study supports the findings of "Foundation for Fundamental Rights and Reprieve" (2019) to the extent that the trial courts and the first appellate courts relied on involuntary, retracted, and illegally obtained confessions. On the same line of reasoning, the present study supports the findings in "426 YEARS: An Examination of 25 Wrongful Convictions in Brooklyn (2020)" to the extent that the trial courts ignored the fact that confessional statement was implausible, contradictory with other evidence, and uncorroborated. Moreover, both the studies are in line to the extent that the trials courts failed to notice that the prosecution omits to produce a certain type of consequent evidence.


## 6. CONCLUSIONS

The present study attempted to systematically investigate the errors which the trial courts and the first appellate courts committed while reasoning with confessions in murder cases in Pakistan. The study results suggest that the trial courts and the first appellate courts fail to notice that the confession was made in improper custody, or it was not recorded according to the given procedure, or the accused was not confronted with confession evidence at the time of closing the prosecution evidence. Likewise, the present study's findings indicate that the trial courts and the first appellate courts could not evaluate the plausibility of the confession. Similarly, the courts did not notice that the confession conflicted with other pieces of the direct and the circumstantial evidence. Further to that, the lower courts did not consider the other inferences which could have been drawn from the confession in the peculiar circumstances of the case. Moreover, it is concluded that the lower courts used uncorroborated confession against the accused.

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