

Present : Hamoodur Rahman, C. J., Sajjad Ahmad and M. R. Khan, JJ

Criminal Appeals Nos. 58 and 59 of 1969

MUHAMMAD ASLAM-Appellant

versus

THE STATE-Respondent

Criminal Appeals Nos. 60 and 61 of 1969

RAJA-Appellant

versus

THE STATE-Respondent

Criminal Appeals Nos. 58, 59, 60 and 61 of 1969, heard on 12th January 1970.

(On appeal from the judgments and orders of the High Court of West Pakistan, Lahore, dated the 21st December 1967, in Criminal Appeals Nos. 458, 459, 469 and 784 of 1966).

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

---S. 302-Witness-Evidence prosecution witness (a police constable) shown to have been named in a complaint filed by accused prior to incident-Nevertheless witness not treated as inimical inasmuch as he had not been summoned as accused in that case.

(b) Penal Code (XLV of 1860),-----

--- S. 307.-Prosecution witness Fact that witness was involved in another criminal case and had been bailed out in that case just at time of occurrence-Contention that witness, in circumstance, was under influence of police-Held had no force.

(c) Penal Code (XLV of 1860),-----

---- S. 302-Ballistic Expert, opinion of-Expert firing only one test bullet from crime weapon and opining after microscopic comparison of test bullet with crime bullet-Opinion even formed on basis of one test alone cannot be ruled out as of no value-Evidence Act (I of 1872), S. 45.

Major Sir Gerald Burrard on The Identification of Firearms and Forensic Ballistics considered.

(d) Penal Code (XLV of 1860), ----

---S. 302-Ballistic Expert on microscopic examination finding similarities between crime empty and test empty on as many as ten counts-Mere fact that no photographs were taken by him of either-Held : of no significance.

Major Sir Gerald Burrard on The Identification of Firearms and Forensic Ballistics considered.

(e) Penal Code (XLV of 1860), -----

---S. 302-Crime weapon-Pistol and revolver similar in size and difference can be ascertained only after examination of weapon-Fact that prosecution witness stated shot to have been fired from a pistol although weapon used was in fact a revolver-Discrepancy of witness regarding nature of weapon-Of no significance.

(f) Sentence-Capital

---sentence-Mitigation-Mere fact that sentence of death had been passed 32 years ago and all along, during pendency of appeal, convict had suffered from agony of death sentence-Held : no ground for commutation if sentence passed, a legal one-Penal Code (XLV of 1860), S. 302.

(g) Penal Code (XLV of 1860), -----

----S. 307-Accused all 'along aware that he was being tried for offence under S. 307-Mere omission to frame charge under S. 307-Held : of no consequence where 'to prejudice thereby caused to accused-Criminal Procedure Code (V of 1898), S. 535 read with S. 537.

M. Saleem, Senior Advocate Supreme Court instructed by Mushtaq Ahmad, Advocate-on-Record for Appellant (in Criminal Appeals Nos. 58 and 59 of 1969).

Dr. Tassadduque Hussain, Senior Advocate Supreme Court instructed by Masud Akhtar, Advocate-on-Record for Appellant (in Criminal Appeals Nos. 60 and 61 of 1969).

Saeedur Rahman, Advocate Supreme Court instructed by Ijaz Ali, Advocate-on-Record for the State (in all the Appeals).

Dates of hearing : 8th, 9th and 12th January 1970.