

1994 S C M R 932

[Supreme Court of Pakistan]

**Present: Nasim Hasan Shah, Ajmal Mian, Sajjad Ali Shah,
Pir Muhammad Karam Shah and Maulana Muhammad Taqi Usmani, JJ**

FEDERATION OF PAKISTAN---Appellant

versus

MUHAMMAD SHAM MUHAMMADI, ADVOCATE

and 3 others---Respondents

Shariat Appeals Nos. 14 to 16 of 1991, decided on 22nd June, 1993.

(On appeal from the common judgment dated 23-5-1991 of the Federal Shariat Court, Islamabad, passed in Shariat Petitions Nos. 17/I of 1989, 3/1 of 1990 and 2/K of 1991).

(a) Approver---

---- Testimony of approver or accomplice---Necessity of corroboration---Rule of prudence that the testimony of an approver or accomplice is to be corroborated in material particulars by independent evidence has almost hardened into a rule of law---Conviction on the basis of sole testimony of an approver or accomplice thus is not safe.--[Accomplice--Evidence].

Abdul Qadir v. The State PLD 1956 SC (Pak.) 407; Muhammad Ayub Khuhro v. Pakistan through The Ministry of Interior, Government of Pakistan and 2 others PLD 1960 SC 237; Dr. Muhammad Bashir v. The State PLD 1971 SC 447; Federation of Pakistan through Secretary, Ministry of Law and another v. Gul Hasan Khan PLD 1989 SC 633; Muhammad Alam v. The State 1983 SCMR 1127 and (Al-Hujarat 6:49) ref.

(b) Islamic Jurisprudence---

---- Crime punishment---"Offence punishable with Hadd or Qisas" and an "offence which entails Ta'zir"---Distinction qua admissibility of testimony of approver or accomplice.--[Approver--Accomplice--Evidence].

A distinction is to be drawn between an offence punishable with Hadd or Qisas and an offence which entails Ta'zir. In the former case, the State cannot deviate as to the type or nature of evidence which is required for recording, a conviction in terms of the Holy Qur'an and Sunnah, but in the latter case, a State provides the punishment and, therefore, the State can also lay down the type and nature of evidence for warranting conviction. So, in the case of offences entailing punishment of Hadd and Qisas, even the State cannot provide that the testimony of an accomplice or an approver will be admissible. However, in case of an offence punishable with Ta'zir, the State may provide that the testimony of an accomplice or an approver is admissible in evidence and can furnish basis for conviction subject to corroboration or otherwise as the facts of the case warrant.

There may be a case, in which keeping in view the facts and circumstances, it may not be possible to have corroborative piece of evidence. In such a case, if the offence is punishable with Ta'zir, the State may provide that the testimony of an accomplice will be sufficient provided the Court, after appraisal of evidence is satisfied that under the circumstances of the case there could not have been any corroborative piece of evidence and it is also satisfied that the case stands proved.

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

----Arts. 16 & 129, illus. (b)---Testimony of approver has to be corroborated in material particulars: -[Approver].

Article 16 and illustration (b) of Article 129 of the Qanun-e-Shahadat are apparently in conflict. In such a case the Court is required to place such construction, which may harmonize the above two provisions. Though by virtue of the above Article 16 it is permissible that the Court may

convict an accused person on the basis of uncorroborated evidence of an accomplice, but the Court as a rule of prudence and because of above illustration (b) to Article 129 of the Order insists upon for having the testimony of an accomplice corroborated in material particulars, and, thereby harmonize the above two provisions.

Per Ajmal Mian, J.; Nasim Hasan Shah, Sajjad Ali Shah, Pir Muhammad Karam Shah, JJ. agreeing; Maulana Muhammad Taqi Usmani, J. differing--

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

---Art. 16---Constitution of Pakistan (1973), Art. 203-D---Repugnancy to Injunctions of Islam---Evidence of an accomplice is not admissible at all in case of an offence punishable with Hadd and Qisas---In case of an offence, which entails punishment of Ta'zir, testimony of accomplice is admissible and furnishes the basis for conviction provided it is corroborated in material particulars---In exceptional cases, the reasons to be recorded by the Court, testimony of accomplice may be acted upon as sufficient for warranting recording of conviction---Supreme Court ordered that Art. 16, Qanun-e-Shahadat may be amended accordingly by 31-8-1993, failing which Art. 16 will become void and shall be of no effect to the extent stated in the judgment.

Per Maulana Muhammad Taqi Usmani, J. differing.

Al-Qur'an Sharif: Surah Al-Hujurat, Sarah 106, verse 6 and Ibn `Abidin: Radd-al-Muhtar ref.

Hafiz SA. Rehman, Advocate Supreme Court and Ch. Akhtar Ali, Advocate-on-Record for Appellant.

Nemo for Respondents.

Abdul Maalik: Juris-Consult (in all Appeals).

Date of hearing: 16th February, 1993.