

1995 S C M R 635

[Supreme Court of Pakistan]

Present: Sajjad Ali Shah, CJ., Muhammad Munir Khan and Irshad Hasan Khan, JJ

Criminal Appeal No. 55 of 1992

THE STATE---Appellant

versus

MUHAMMAD SHARIF and 3 others---Respondents

(On appeal from the judgment dated 30-10-1989 of the Lahore High Court, Lahore in Cr. Appeal No. 1138 of 1988).

Criminal Appeal No. 303 of 1993

THE STATE---Appellant

versus

MUHAMMAD YASIN---Respondent

(On appeal from the judgment dated 11-11-1992 of the Lahore High Court, Lahore in Cr. Appeal No. 1054 of 1988).

Criminal Appeals Nos. 55 of 1992 and Criminal Appeal No. 303 of 1993, decided on 23rd January, 1995.

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

---Ss. 302/148/149, 109 & 120-B---Constitution of Pakistan (1973), Art. 185--Appeal against acquittal---Supreme Court, being the third and final forum, would be chary and hesitate to interfere with the concurrent findings of facts of two Courts below when these Courts had appraised the evidence against the accused and had given finding in favour of acquittal.

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

---Ss. 302/148/149, 109 & 120-B---Criminal Procedure Code (V of 1898), S.154---Prompt F.I.R.---Corroborative value---Prompt lodging of F.I.R. could be considered as a circumstance to corroborate ocular testimony but the question would arise as to what was the version of the incident stated in F.I.R. and whether it was believed by the Court and how the same had been evaluated ---F.I.R. showed that five accused persons caused injuries with Chhuris and dagger to the deceased and the sixth accused who was also named in the F.I.R. was not present at the spot but was allegedly involved in the conspiracy---Trial Court had acquitted four accused and convicted two and from the two convicted accused High Court had acquitted one and upheld the conviction and sentence of the other---Supreme Court, after evaluating the evidence of the eye-witnesses held that in such circumstances prompt filing of the F.I.R. would not help the case of the prosecution as corroboration.

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

---S. 302/148/149---Murder---Evidence---Medical evidence can be used as corroboration but only to the extent of nature and number of injuries but not co-accused.---[Evidence].

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

---S. 302/148/149---Appraisal of evidence---Motive---Double-edged weapon which cuts both ways---Enmity can be considered as sufficient motive for commission of offence and for false implication as well.

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

---S. 302/148/149---Appraisal of evidence---Chance witness---Evidentiary value---Chance witness was said to be accidentally present at the spot and his explanation with regard to his presence there was far from satisfactory---Said witness had made so many admissions about his being involved in several cases which reflected upon his antecedents---Evidence of such a chance witness has to be appraised with great care and caution.---[Evidence---Witness].

(f) Penal Code (XLV of 1860)---

---S. 302/148/149---Criminal Procedure Code (V of 1898), S. 417--Constitution of Pakistan (1973), Art. 185---Appeal against acquittal and appeal against conviction ---Appraisal of evidence by High Court and Supreme Court---Principles and distinguishing features.---[Evidence].

There is marked difference between appraisal of evidence in the appeal against conviction and in the appeal against acquittal. In the appeal against conviction, appraisal of evidence is done strictly and in the appeal against acquittal, the same rigid method of appraisal is not to be applied as there is already finding of acquittal given by the Court or Courts below after proper analysis of evidence made or done according to law. In the acquittal appeal, interference is made only when it appears that there has been gross misreading of the evidence which amounts to miscarriage of justice. In an appeal against acquittal, Supreme Court could not, on principle, ordinarily interfere and instead would give due weight and consideration to the findings of the Court acquitting the accused. This approach is slightly different from that in an appeal against conviction in which leave is granted only for reappraisal of evidence, which then is undertaken so as to see that benefit of every reasonable doubt should be extended to the accused. This difference of approach is mainly conditioned by the fact that acquittal carries with it two well-accepted presumptions; firstly, initial presumption that till found guilty, accused is innocent; and secondly that after the Trial Court below has confirmed presumption of innocence. Supreme Court would not interfere with the acquittal merely because on re-appraisal of the evidence it comes to the conclusion different from that of the Court acquitting the accused provided both the conclusions are reasonably possible.

Ghulam Sikandar and another v. Mamraz Khan and others PLD 1985 SC 11 ref.

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

---S. 302/148/149---Criminal Procedure Code (V of 1898), S. 417--Constitution of Pakistan (1973), Art. 185---Appeal against acquittal--Extension of benefit of doubt to certain accused and conviction of others--Effect---Held, acquittal of certain accused on the extension of benefit of doubt did not necessarily mean that eye-witnesses had either not seen the incident or that they had deliberately and falsely implicated the acquitted accused persons---Court in such a case was to take care that for convicting the remaining accused, the witnesses were put to hardest test of scrutiny to see if their testimony was corroborated by independent circumstances.

Feroze Khan v. Fateh Khan and 2 others 1991 SCMR 2220 ref.

(h) Penal Code (XLV of 1860)---

---S. 302/148/149---Criminal Procedure Code (V of 1898), S. 417--Constitution of Pakistan (1973), Art. 185---Appeal against acquittal---Trial Court's judgment was supported by sound reasons with which the High Court had agreed---Held, Supreme Court could not substitute its own findings with those of Trial Court and High Court unless same were artificial, shocking, ridiculous, based on misreading of evidence and leading to miscarriage of justice.

Mirza Noor Hussain v. Farooq Zaman and 2 others 1993 SCMR 305 ref.

(i) Penal Code (XLV of 1860)---

---S. 302/148/149---Criminal Procedure Code (V of 1898), S. 417--Constitution of Pakistan (1973), Art. 185---Appeal against acquittal---Appraisal of evidence---Where the Trial Court,

while appraising the evidence, could reasonably come to the conclusion that the accused were not guilty and while finding so it could not be said that the Trial Court had made misreading of the evidence, judgment of conviction by the High Court was set aside and that of acquittal by Trial Court was restored by the Supreme Court.

Yar Muhammad and 3 other v. The State 1992 SCMR 96 ref.

Abdul Rashid v. Umid Ali and 2 others PLD 1975 SC 227 distinguished.

Ijaz Ahmed Chaudhry, Assistant Advocate-General (Punjab) and Rao Muhammad Yousuf Khan, Advocate-on-Record for the State (in Criminal Appeals Nos. 55 of 1992 and 303 of 1993).

Kh. Sultan Ahmed, Senior Advocate Supreme Court and Ch. Mehdi Khan Mehtab, Advocate-on-Record (absent) for Respondents (in Criminal Appeal No. 55 of 1992).

Ch. M. Aslam, Advocate-on-Record (absent) for the Complainant (in Criminal Appeal No. 55 of 1992).

Kh. Sultan Ahmed, Senior Advocate Supreme Court and S. Abul Aasim Jaffri, Advocate-on-Record (absent) for Respondents (in Criminal Appeal No. 303 of 1993).

Date of hearing: 23rd January, 1995.