

1996 S C M R 908

[Supreme Court of Pakistan]

**Present: Saleem Akhtar, Manzoor Hussain Sial
and Muhammad Munir Khan, JJ**

MUHAMMAD IQBAL and others---Appellants

versus

MUHAMMAD AKRAM and another---Respondents

Criminal Appeals No.243 and 244 of 1993, decided on 20th March, 1996.

(On appeal from the judgment of Lahore High Court, Lahore, dated 28-6-1992 passed in Criminal Appeal No.582 of 1989 and Criminal Revision No.608 of 1989).

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

---Ss. 302/34 & 307/34---Constitution of Pakistan (1973), Art.185(3)---Leave to appeal was granted to accused to consider, inter alia, whether in view of conflict in ocular and medical evidence (particularly regarding firing distance) implicit reliance could be placed on the eye-witnesses merely for the reasons that there was no background of previous enmity between the parties.

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

---Ss. 302/34 & 307/34---Constitution of Pakistan (1973). Art.185(3)---Leave to appeal was granted to complainant against acquittal of accused by High Court as leave to appeal had been granted to co-accused (convicts) in the case.

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

---Ss. 302/34 & 307/34---Appreciation of evidence---Site plan---Site plan is not a substantive piece of evidence and cannot be used to discard the evidence of a witness unless he was confronted with the same.

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

---Ss. 302/34 & 307/3:4---Appreciation of evidence---Eye-witnesses whose presence on the spot was quite natural and who had identified the assailants, had made consistent and confidence inspiring statements which were in consonance with the probabilities in the case and fitted in with other evidence and circumstances of the case---Ocular testimony being wholly reliable, conviction could even be safely based on the same without further corroboration---Defence plea of substitution had no foundation to stand---Two accused who had participated in the motive incident had come to the place of occurrence carrying fire-arms in their hands and had resorted to ineffective firing while their co-accused had killed the two deceased in the occurrence and as such they were vicariously liable for the murders---Convictions and sentences of accused were upheld in circumstances.

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

---Ss. 302/34 & 307/34---Evidence---Ocular evidence ---Categories---Ocular evidence may be classified into three categories: firstly, wholly reliable,~' secondly wholly unreliable and thirdly partly reliable and partly unreliable--Conviction in the first category may safely be sustained on uncorroborated testimony while in the second category even strongest corroborative evidence may not rehabilitate such evidence and in the third category conviction-cannot be recorded unless such evidence is corroborated by oral or circumstantial evidence coming from distinct sources. -[Evidence].

(f) Penal Code (XLV of 1860)

---S. 302/34---Constitution of Pakistan (1973), Art. 185(3)---Appeal against acquittal of accused by High Court---Reasons given by High Court for giving benefit of doubt to the accused were artificial and imaginary---Police opinion about the innocence of accused or with regard to his plea of alibi supported by a number of witnesses lacked evidentiary value for non-production of such witnesses in the Court---Appearance of accused on the spot duly armed in the company of co-accused to take revenge of the motive incident ran parallel to the natural probabilities and the finding of High Court about his participation in the occurrence being doubtful, was based on surmises and conjectures---Judgment of acquittal being perverse was set aside by Supreme Court to avoid grave miscarriage of justice and conviction and sentence of death awarded to accused under S. 302/34, P.P.C. by the Trial Court were restored, there being no mitigating circumstances in his favour.

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

---Ss. 302/34 & 307/34---Evidence---Police opinion---Opinion of the police about the guilt or innocence of an accused based on statements of witnesses not produced before the Court, is inadmissible in evidence.

(h) Post-mortem---

--- Post-mortem of female dead bodies---Post-mortem of female dead bodies to be conducted by Lady Doctors alone in the presence of female members of paramedical staff---Supreme Court issued directions in this regard.

In Islam, the dead persons and dead bodies deserve to be respected. To avoid all this, it is directed that in future, female dead bodies should be postmortemed by lady doctors nowadays posted at every District and Tehsil Headquarters Hospitals. No male member should be present during the process. The skull, if required to be opened, should be got opened by Muslim male/female members of paramedical staff. In no case vaginal swabs be taken by a male member of the Paramedical staff. The Secretary Health, Government of Pakistan, will ensure that directions given by Supreme Court are strictly complied with throughout Pakistan.

Malik Rab Nawaz Noon, Advocate instructed by Ejaz Muhammad Khan, Advocate-on-Record for Appellant (in Cr. A. No. 243 of 1993 and Complainant in Cr. A. No.244 of 1993).

Muhammad Nasrullah Warriach, Advocate and Rana Maqbool Ahmed Qadri, Advocate-on-Record (absent) for Respondent No.1 in Cr. A. No.243 of 1993 and Appellants in Cr. A. No. 244 of 1993).

Ch. Muhammad Akram, Advocate (only on 9-1-1996) for the State.

Dates of hearing: 9th ad 10th January, 1996.