

1998 S C M R 1823

[Supreme Court of Pakistan]

Present: Saiduzzaman Siddiqui, Raja Afrasiab Khan and Mamoon Kazi, JJ

SAR-DAR KHAN and 3 others---Appellants

versus

THE STATE---Respondent

Criminal Appeal No. 292 of 1993, decided on 4th June, 1998.

(On appeal from the judgment of Lahore High Court dated 23-9-1992 passed in Cr.A 810/89 and MR 256/89).

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

---S. 302/34---Constitution of Pakistan (1973), Art.185(3)---Leave to appeal was granted by Supreme Court to accused to examine whether the required corroboration of the testimony of interested witnesses was available particularly so when the same evidence had led to the acquittal of two co-accused implicated in the crime.

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

---S. 302/34---Case involving capital punishment---Appreciation of evidence--Some of the broad legal principles to be kept in mind while deciding such a case stated.

Following are some of the broad legal principles which should be kept in mind while deciding a case involving capital punishment. One such principle is that, if an interested witness claiming to be an eye-witness charges a person with the commission of an offence, the first thing which the Court has to determine is, whether he saw the occurrence and was in a position to identify the accused and secondly, whether he should be believed for convicting the offender without corroboration. If the interested witness has charged only one person with the commission of offence or has charged more than one person and the number of persons charged by him appear to be reasonable from the circumstances of the case, then in the absence of anything in the evidence which rendered it unsafe to rely on his evidence, his evidence is to be accepted without corroboration as substitution -is a thing of rare occurrence and cannot be assumed readily and he who asserts substitution must lay foundation for it. But if the Court finds that the interested witness has exaggerated the number of accused the Court will insist for corroboration of his testimony from some additional circumstances in the case. The next question arises, in what manner the corroboration to the testimony of the interested witness is to be sought by the Courts before relying on it for conviction. The corroboration to the testimony of an interested witness need not always be from an independent witness supporting the story put forward by the interested witness. Corroboration may be sought from any circumstance in the case which would satisfy the mind of the Court that the witness has spoken the truth. What would be these circumstances, is not possible to lay down with precision as these would vary from case to case according to the facts and circumstances of each case. Corroboration in the case of an interested witness need not be of the same probative force as in the case of an accomplice.

Niaz v. State PLD 1960 SC 387 and Nazir v. State PLD 1962 SC 269

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

---S. 302/34---Evidence---Interested witness---Test---Interested witness in a criminal case is one who has motive to involve the accused falsely in the case--Mere friendly relation or relationship of the witness with the deceased or complainant party is no ground to discard' his evidence describing him as an interested witness. ---[Witness].

Iqbal alias Bhala v. State 1994 SCMR 1 ref.

(d) Criminal trial---

---- Maxim "Falsus in uno falsus in omnibus"---Application---Maxim "Falsus in uno falsus in omnibus" has not been accepted by the superior Courts in Pakistan as a rule of universal application---Court, therefore, often sifts grain from chaff while accepting the evidence of a witness against some of the accused and at the same time not relying on his version against other accused in the case.

Muhammad Ahmed v. State 1997 SCMR 89 and Khairu v. State 1981

SCMR 1176 ref.

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

----S. 302/34---Appraisal of evidence ---Sentence---F.I.R. was promptly lodged with the names of all the accused and the witnesses---Presence of eye-witnesses at the time of incident had been established who were in a position not only to watch the whole occurrence but also to identify the accused---Omission to mention in the site plan names of all the accused could not take away the probative force of the ocular testimony---Acquittal of co-accused by High Court on benefit of doubt had not affected the prosecution case against the accused against whom the prosecution had proved the case beyond reasonable doubt on the basis of ocular evidence which was corroborated by medical evidence, motive and abscondence of accused---Accused had the motive and they had caused the death of the two deceased by effective firing---No case for lesser punishment was made out---Conviction and sentence of accused were upheld in circumstances.

Aminullah v. State PLD 1976 SC 629; Machia v. State PLD 1976 SC 695; Niaz v. State PLD 1960 SC 387; Nazir v. State PLD 1962 SC 269; Iqbal alias Bhala v. State 1994 SCMR 1; Muhammad Ahmed v. State 1997 SCMR 89; Khairu v. State 1981 SCMR 1176; Taj Muhammad v. Muhammad Yusuf PLD 1976 SC 234; Mst. Shamim Akhtar v. Faiz Akhtar PLD 1992 SC 211 and Ali Khan v. State PLD 1980 SC 109 ref.

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

----S. 302/34---Qanun-e-Shahadat (10 of 1984), Art.22---Site plan, utility of---

Site plan is prepared only to explain or to appreciate the evidence on record and same being not a substantive piece of evidence, cannot contradict the ocular account in the case. ---[Evidence]

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

----S. 302/34---Qanun-e-Shahadat (10 of 1984), Art.59---Appreciation of evidence---Opinion of expert---Recovery---Expert evidence---Recovery of crime weapon and report of Ballistic Expert or other expert evidence being only confirmatory or explanatory of the direct and other circumstantial evidence cannot outweigh the trustworthy direct evidence in the case.---[Evidence].

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

----S. 302/34---Appreciation of evidence ---Abscondence of accused--Abscondence by itself is not sufficient to prove the guilt of the absconder, but it may provide corroboration to the other evidence and circumstances proving his guilt---Value and place of the evidence regarding abscondence of accused, would largely depend on the facts . and circumstances of the case.---[Abscondence].

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

----S. 302/34---Sentence---Where prosecution in a murder case proves the case beyond reasonable doubt and also establishes the motive for the murder, the normal penalty of death is to be awarded.

Asif Saeed Khan Khosa, Advocate Supreme Court and S. Abul Aasim Jafri, Advocate-on-Record (absent) for Appellants.

Ch. M. Akram, Advocate Supreme Court for the State.

M. Ibrahim Satti, Advocate Supreme Court and Mehdi Khan Mehtab, Advocate-on-Record for the Complainant.

Dates of hearing: 24th to 26th March, 1998.