

2001 SCMR 51

[Supreme Court of Pakistan]

Present: Rashid Aziz Khan, Iftikhar Muhammad Chaudhry and Rana Bhagwan Das, JJ

MUHAMMAD ANWAR ---Appellant

versus

THE STATE---Respondent

Criminal Appeal No.55 of 1999, decided on 2nd June, 2000.

(On appeal from the judgment, dated 23-6-1996 passed by Lahore High Court, Lahore in Criminal Appeal No. 192 and Murder Reference No.71 of 1992).

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

----Ss.105, 106 & 302---Constitution of Pakistan (1973), Art. 185(3)---Leave to appeal was granted by Supreme Court to consider as to whether the accused in the circumstances of case had exercised the right of self-defence, therefore, extreme penalty of death was not called for; and whether High Court had appraised the evidence in conformity with the well-established principles relating to appreciation of evidence as laid down by the superior Courts to ensure safe administration of justice in criminal cases.

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

----Ss.105 & 106---Self-defence, plea of---Proof---Onus---Where accused had taken the plea of self-defence, burden would shift upon him to prove the same.

Zarid Khan v. Gulsher and another 1972 SCMR 597 ref.

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

----Ss.302, 105 & 106 --Appraisal of evidence---Right of self-defence, plea of---Accepting the plea in totality---Accused raised the plea during investigation---Trial Court relying on such plea awarded death penalty to the accused for the reason that the accused failed to prove such plea during the trial but co-accused were acquitted as the Trial Court disbelieved the ocular account of prosecution witnesses to their extent---High Court in appeal disbelieved the supporting evidence i.e. incriminating empties and revolver, produced by the prosecution but confirmed the death sentence of the accused---Validity---Where the High Court disbelieved the supporting evidence, the prosecution was left in possession of the ocular statement of both the eye-witnesses and the same could not be believed for the sake of safe-administration of justice unless there was some corroboration---Supreme Court accepted the plea of the accused made by him in his statement under S.342, Cr.P.C. in totality---No material was available on record to measure the apprehension of the accused of danger to his person as well as property which persuaded him to fire upon the deceased---By raising a plausible defence plea, the accused who though himself had not received even a single injury on his body nor any weapon had been recovered from near the dead body or from the possession of the companions of the deceased, the accused had created a strong mitigating circumstance in his favour on account of which he was not entitled to the normal penalty of death---Conviction under S.302, P.P.C. was maintained and sentence of death was converted into life imprisonment in circumstances.

Sultan Khan v. Sher Khan and others PLD 19 SC 520; Ashiq Hussain v. The State 1993 SCMR 417; Khalid Javid v. State 1984 PCr.LJ. .100; Ali Sher v. State PLD 1980 SC 317; Zaheeruddin v. The State 1993 SCMR 1628 and The State v. Muhammad Hanif and 5 others 1992 SCMR 2047 ref.

Raja Muhammad Anwar, Senior Advocate Supreme Court and Tanvir Ahmed, Advocate- on-Record (absent) for Appellant.

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

Date of hearing: 2nd June, 2000.