

[Supreme Court of Pakistan]

Present: Nazim Hussain Siddiqui, Javed Iqbal and Falak Sher, JJ

WILAYAT ALI ---Petitioner

versus

THE STATE and another---Respondents

Criminal Petition No. 128-P of 2003, decided on 31st October, 2003.

(On appeal from the judgment dated 27-5-2003 of Peshawar High Court, Peshawar, passed in Cr. A. No.433 of 2002).

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

---S.302(b)---Constitution of Pakistan (1973), Art.185(3)---Ocular account, of occurrence was coherent, consistent and creditworthy which was fully supported by medical evidence, voluntary confession made by accused, recovery of shotgun and his abscondence --- Non-attachment, of the certificate with the confessional statement had no adverse effect on the worth and admissibility of the confession being a minor curable irregularity---Magistrate, who had recorded the confession had satisfied himself about its voluntariness and also completed the mandatory formalities as envisaged under. Ss. 164 & 364, Cr.P.C.---Conviction could be based on retracted confession subject to availability of some corroboration which was not a rule of law but considered inevitable by way of abundant caution and such corroboration was available in the form of recovery, abscondence, forthright eye account and medical evidence---Conclusion arrived at by the Courts below being well-based and unexceptionable did not warrant interference ---Leave to appeal was declined to accused accordingly.

Muhammad Yaqoob v. The State 1992 SCMR 1983, Mokha v. Zulfiqar PLD 1978 SC 10; Zakir Khan v. The State 1995 SCMR 1793; Roshan v. The State PLD 1977 SC 557; Umar Din v. Crown ILR 1921 Lah. 129; State v. Waqar Ahmed 1992 SCMR 950; Nadir Hussain v. The Crown 1969 SCMR 442; Habib Ullah v. The State 1971 SCMR 341 and State v. Minhun PLD 1964 SC 813 ref.

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

---S. 302(b)---Appreciation of evidence---Principles---Any contradiction, improvements or other factors made by a witness reflecting adversely on his credibility would not, by itself, be sufficient to reject his testimony as a whole---Court can rely upon a portion of the testimony of such witness if it is corroborated by other reliable evidence or circumstance.

Muhammad Yaqoob v. The State 1992 SCMR 1983, Mokha v. Zulfiqar PLD 1978 SC 10; Zakir Khan v. The State 1995 SCMR 1793 and Roshan v. The State PLD 1977 SC 557 ref.

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

---S:302(b)---Criminal Procedure Code (V of- 1898), S.164--Appreciation of evidence---Judicial confession---Principles---Confession of accused recorded under S. 164, Cr.P.C. whether retracted or not, must be supported by some connecting evidence as a rule of caution.

State v. Waqar Ahmed 1992 SCMR 950; Nadir Hussain v. The Crown 1969 SCMR 442; Habib Ullah v. The State 1971 SCMR 341 and State v. Minhun PLD 1964 SC 813 ref.

Roohul Amin Khan, Advocate Supreme Court and M. Ismail Fehmi, Advocate-on-Record for Petitioner.

Nemo for Respondents.

Date of hearing: 31st October, 2003.