

2005 S C M R 1568

[Supreme Court of Pakistan]

Present: Iftikhar Muhammad Chaudhry, Rana Bhagwandas and Hamid Ali Mirza, JJ

HAROON RASHEED and 6 others---Appellants

Versus

THE STATE and another---Respondents

Criminal Appeal No. 78 of 2004, decided on 30th May, 2005.

(On appeal from the judgment, dated 29-4-2002 in Criminal Appeal No. 308-T of 1999, Criminal Appeal No.33 of 2000 and Criminal Revision No. 14 of 2000 passed by the Lahore High Court).

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

---Ss. 302(b)/149, 460/149 & 148---Constitution of Pakistan (1973), Art.185(3)---Leave to appeal was granted to accused for reappraisal of the evidence as to whether High Court had failed to appraise the evidence according to the principles laid down by Supreme Court for safe administration of justice in criminal cases, to consider the pleas raised, that the ocular testimony being not confidence inspiring and unimpeachable in nature, could not form the basis of conviction; that the points raised before the High Court were not attended to in the judgment; that the eye-witnesses were not present at the place of occurrence at the relevant time; that the motive was remote being seventeen years prior to the incident and that none from the inmates of the house was produced as witness in the case.

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

---Ss. 302(b)/149, 460/149 & 148---Appraisal of evidence---F.I.R. was promptly lodged---No strong reason was forthcoming to falsely implicate the accused in the case instead of real culprits---Ocular testimony was confidence inspiring and unimpeachable and was corroborated by medical evidence---Inaccuracy in the site-plan could not take away the probative force of the ocular evidence---Absence or weakness of motive also could not make the prosecution case false or doubtful in the presence of strong, reliable and confidence inspiring evidence on record---No material inconsistencies coming into conflict with the material probabilities militating against the credibility of witnesses justifying rejection of their testimony, had been pointed out on behalf of defence---Recovery of crime weapons and empties were pieces of evidence of corroboration and even if recovery was not proved in the presence of reliable and unimpeachable ocular testimony and other circumstantial evidence, it would not adversely affect the prosecution case---Weakness or absence of motive could not be a ground for awarding lesser sentence---Three young persons had been done to unnatural death brutally as firing squad with dangerous fire-arms like kalashnikov and Rifles and normal sentence of death was just and proper---Abscondence of accused being a strong corroborative evidence, had further supported the case of prosecution about his implication in the commission of crime---Convictions and sentences of accused were upheld in circumstances.

Said Shah v. State NLR 1988 CrI. 381(b); Wahid v. The State PLD 2002 SC 62; Sardar Khan and 3 others v. The State 1998 SCMR 1823; Muhammad Mansha v. The State 1992 SCMR 273; Abdul Majeed v. The State 1992 SCMR 379; Syed Mushtaq Ahmad v. Siddiquillah PLD 1975 SC 160; Abdul Rashid v. Umid Ali PLD 1975 SC 227; State v. Sobharo 1993 SCMR 585; Syed Hamid Mukhtar Shah v. Muhammad Azam 2005 SCMR 427; Ibrahim v. The State 1996 SCMR 773; Mansha and others v. The State PLD 1971 Lah. DB 781; Asghar v. The State PLD 1958 W.P. Lah. 395; Ghulam Hussain v. The State 1984 PCr.LJ 1807; Chakar and another v. The State 1971 PCr.LJ 1121 and Beekho alias Imam Bux and 2 others v. The State 1973 PCr.LJ 896 ref.

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

---Ss. 302(b)/149, 460/149 & 148---Motive, absence of---Effect---Absence of motive or its

weakness would not come in the way of prosecution if there is otherwise strong, confidence inspiring, unimpeachable and reliable evidence in support of prosecution case, because motive is always the state of mind of the accused which cannot be proved by ocular testimony as a number of such incidents appear to occur without any motive to the knowledge of the victim.

Syed Mushtaq Ahmad v. Sidduiqullah PLD 1975 SC 160; Abdul Rashid v. Umid Ali PLD 1975 SC 227; State v. Sobharo 1993 SCMR 585; Syed Hamid Mukhtar Shah v. Muhammad Azam 2005 SCMR 427 ref.

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

---Ss. 302(b)/149, 460/149 & 148---Appreciation of evidence---Discrepancies---Effect---Material discrepancies alone which come in conflict with the material probabilities and militate against the credibility of witnesses, justify the rejection of testimony.

Abdul Rashid v. Umid Ali PLD 1975 SC 227 ref.

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

---Ss. 302(b)/149, 460/149 & 148---Medical evidence---Time of death determined through contents of stomach not reliable,--Circumstances may vary the time and digestion of food---Contents of stomach do not, by themselves, provide the necessary information for determination of time of death---State of digestion of the stomach is not a reliable test for fixing the hours of death.

Ibrahim v. The State 1996 SCMR 773; Mansha and others v. The State PLD 1971 Lah. 781 and Asghar v. The State PLD 1958 (W.P.) Lah. 395 ref.

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

---Ss. 302(b)/149, 460/149 & 148---Sentence--Motive---Weak or unproved motive cannot be a ground for awarding lesser sentence as the same is always found to be in the mind of the assailant.

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

---Ss.302(b)/149, 460/149 & 148---Appreciation of evidence---Abscondence of accused---Corroborative value---Abscondence of accused immediately after the occurrence is a strong piece of corroborative evidence.

Chakar and another v. The State 1971 PCr.LJ 1121 and Beekho alias Imam Bux and 2 others v. The State 1973 PCr.LJ 896 ref.

Kh. Sultan Ahmad, Senior Advocate Supreme Court and Raja Abdul Ghafoor, Advocate-on-Record for Appellants.

Sardar Muhammad Ishaque Khan, Senior Advocate Supreme Court for Complainant.

Raja Saeed Akram, A.A.-G. Punjab for Respondent/the State.

Dates of hearing: 28th to 30th March, 2005