

2005 S C M R 1958

[Supreme Court of Pakistan]

Present: Abdul Hameed Dogar and Saiyed Saeed Ashhad, JJ

NOOR MUHAMMAD---Petitioner

Versus

THE STATE and another---Respondents

Criminal Petition No.287 of 2004, decided on 26th September, 2005.

(On appeal from the judgment/order, dated 9-6-2004 passed by Peshawar High Court, in Criminal Appeal No.150 of 2003).

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

---S. 302---Interested witness---Scope---Mere relationship or close association of prosecution witness with deceased, in absence of established hostility, animosity or any other motive to depose falsely would not be sufficient to hold him to be interested witness and his testimony would not be discarded on such ground.

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

---S. 302---Constitution of Pakistan (1973), Art.185(3)---Reappraisal of evidence---Double murder---Plea of interested witness and false implication---Validity---Material on record had established that no previous enmity, hostility or grudge existed between the complainant party and accused persons---Complainant being son of one deceased and brother of other deceased would not allow the real murderer to go scot-free and to falsely implicate somebody else in place of the real culprit---Substitution being rare phenomenon in such cases, such plea was repelled---Both the Trial Court and High Court did not commit any illegality in convicting accused for the offence of murder of two persons---Sentence and conviction awarded to the accused did not suffer from misreading, non-reading or misconstruing the prosecution evidence---Both the Courts below had appraised the evidence in accordance with the principles of appraisal of evidence in criminal cases---Leave to appeal was refused.

Munawar Ali v. The State 2001 SCMR 614 and Muhammad Iqbal v. The State PLD 2001 SC 222 fol.

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

---S. 302---Reappraisal of evidence---Uninjured eye-witnesses---Effect---Plea raised by the accused was that no fire-arm injury was sustained by the eye-witnesses who were present at the scene of occurrence---Validity---No presumption or rule existed to the effect that all persons who were under attack from fire-arms ought to have received injuries---Mere fact that some of eye-witnesses did not receive injuries would not make presence of such witnesses at the place and time of incident doubtful.

Mehboob Sultan and 2 others v. The State 2001 SCMR 163 ref.

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

-- S. 302---Qanun-e-Shahadat (10 of 1984), Art.59---Reappraisal of evidence---Opinion of Fire-arms and Ballistics Expert---Plea raised by the accused was that according to the opinion of Ballistics Expert, crime empties recovered from the place of incident were fired from seven different weapons---Validity---Opinion of Ballistics Expert was not sacrosanct and possibility of error in opining that the empties/bullets secured from the scene of incident were fired from seven different fire-arms could. not be ruled out---No hard and fast rule could be laid down as regards the weight to be given to an Expert's report---Where case otherwise was proved against accused by reliable, truthful and confidence-inspiring evidence, the report of Expert would lose its value-

--Supreme Court discarded the opinion of Ballistics Expert to the extent of use of seven different weapons.

Muhammad Hanif v. The State PLD 1993 SC 895 rel.

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

---S. 302---Reappraisal of evidence---Defence evidence---Prosecution witness produced as defence witness---Effect---High Court had rightly discarded the statement of such witness as he was found to be a liar witness as contradictory , statements were made by him in his 161 Cr.P.C. statement before police and in the evidence before Trial Court---No reliance could be placed on the evidence of such witness.

Malik Rub Nawaz Noon, Senior Advocate Supreme Court and M.A. Zaidi, Advocate-on-Record for Petitioner.

Nemo for Respondents.

Date of hearing: 26th September, 2005.