

2007 S C M R 1812

[Supreme Court of Pakistan]

Present: Falak Sher, Tassaduq Hussain Jilani and Ch. Ijaz Ahmed, JJ

BARKAT ALI---Petitioner

Versus

MUHAMMAD ASIF and others---Respondents

Cr. P. Nos.482 and 483-L of 2006, decided on 27th August, 2007.

(On appeal from the judgment, dated 9-5-2006 passed by Lahore High Court, Bahawalpur, in Criminal Appeals Nos.210 of 2003 and 157 of 2005).

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

---Ss. 302/34/109---Reappraisal of evidence---Presence of prosecution witnesses at the time of occurrence was not proved---Empties recovered from the spot did not tally with weapon recovered from accused---According to prosecution witnesses co-accused had appeared with a rifle and not a gun---Report of Forensic Science Laboratory regarding .12 bore empties relating to rifle allegedly recovered from co-accused, thus, could not be relied upon---Empties of .12 bore were received in Forensic Science Laboratory after one month and 10 days of occurrence and after 24 hours of recovery of weapon---No explanation was placed on record as to why .12 bore empties were not sent to Laboratory soon after their recovery---Motive was not supported by independent evidence---Material on record showed that deceased had many enmities---Abscondence of co-accused had not been proved through documentary or oral evidence---Question of abscondence had not been put to co-accused while recording his statement under S.342, Cr.P.C.---Mere abscondence would neither prove guilty mind nor be enough for conviction in absence of sufficient evidence connecting accused with commission of offence---According to eye-witness, deceased was hit, from a distance of 30/35 feet, but medical report showed burning and blackening on dead body---Blackening would appear on dead body in case deceased had received injuries from a distance of four (4) feet---Medical evidence had, thus, contradicted statement of eye-witnesses---Accused were acquitted of the charge in circumstances.

Medical jurisprudence by Modi; Abdus Sattar's case 1974 PCr.LJ 208; Sardaran's case 1974 PCr.LJ Note, 95 at p.60; Hayat Bakhsh's case PLD 1981 SC 265 rel.

(b) Medical jurisprudence---

---Blackening on dead body would appear in case deceased received injuries from a distance of four (4) feet.

Medical jurisprudence by Modi rel.

(c) Criminal trial---

---Oral evidence to the extent of its inconsistency with medical evidence could not be accepted.

Mardan Ali's case 1980 SCMR 889; Bagh Ali's case 1983 SCMR 1292; Sain Dad's case 1972 SCMR 74 and Zardshad's case 1969 SCMR 644 rel.

(d) Criminal trial---

---Mere abscondence would not prove guilty mind.

Amanullah's case PLD 1976 SC 629 rel.

(e) Criminal trial---

---Abscondence alone would not be enough for conviction in absence of sufficient evidence connecting accused with commission of offence.

Abdus Sattar's case 1974 PCr.LJ 208; Sardaran's case 1974 PCr.LJ Note 95 at p.60; Hayat Bakhsh's case PLD 1981 SC 265 rel.

(f) Constitution of Pakistan (1973)---

---Art. 185(3)---Petitions for leave to appeal against conviction and acquittal---Maintainability--
-Supreme Court had prescribed different parameters/principles regarding both such petitions---
Impugned judgment with regard to acquittal should either be perverse or arbitrary or without any sustainable reason.

Ghulam Sakindar's case PLD 1985. SC 11 rel.

Ch. Manzoor Hussain Basra for Petitioner (in both petitions).

Perveiz Alamgir, D.P.G. for the Respondents.

Date of hearing; 27th August, 2007.