

2008 S C M R 1221

[Supreme Court of Pakistan]

Present: Abdul Hameed Dogar, C.J., Ijaz-ul-Hassan Khan and Ch. Ejaz Yousaf, JJ

GHULAM QADIR and 2 others----Appellants

Versus

THE STATE----Respondent

Criminal Appeal No.402 of 2002, decided on 4th April, 2008.

(On appeal from the judgment and order of the Lahore High Court, Bahawalpur Bench, Bahawalpur, dated 21-3-2002 passed in Criminal Appeal No.20 of 2000).

(a) Criminal Procedure Code (V of 1898)---

---S. 161---Belated statements of witnesses---Effect---Belated examination of a witness by police may not be fatal to prosecution but where delay is unexplained, accused has not been named in F.I.R. and circumstances justify that open F.I.R. and delay have purposely been manoeuvred to name accused later, such managed delay and gaps adversely affected prosecution case.

Mehmood Ahmad v. The State 1995 SCMR 127 rel.

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

---Ss. 324/396/449/148/149---Conviction---Injured witness, nonappearance---Effect---If injured witness himself does not appear to charge an accused for his injury and court is not satisfied with his disability or incompetence or reasons for not appearing then conviction cannot be recorded on the basis of other evidence under Qisas.

Asghar Ali alias Sabah v. The State 1992 SCMR 2088 rel.

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

---Ss. 324/396/449/148/149---Anti-Terrorism Act (XXII of 1997), S.7---Qanun-e-Shahadat (10 of 1984), Art.22---Reappraisal of evidence---Benefit of doubt---Identification parade---Infirmities and illegalities---Role played by each accused, non-describing of---One accused was acquitted by Trial Court, while three were convicted and sentenced to death, which sentence was maintained by High Court---Validity---Proceedings of identification parade where accused were picked up without describing role played by them in crime, suffered from illegalities and infirmities rendering it completely unreliable having no evidentiary value---Possibility that police had got accused identified by witnesses prior to identification parade could not be excluded---Supreme Court, while giving benefit of doubt to accused, set aside convictions and sentences recorded by Trial Court and maintained by High Court and accused were acquitted of the charge.

Khadim Hussain v. The State 1985 SCMR 721 and Lal Singh v. Crown 1924 ILR 51 Lah. 396 ref.

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

---Ss. 324/396/449/148/149---Reappraisal of evidence--Medical evidence--Scope--Medical evidence may confirm ocular evidence with regard to receipt of injuries, nature of injuries, kinds of weapon used in occurrence but it cannot connect accused with commission of offence.

(e) Criminal trial---

---Benefit of doubt, principle of---Applicability---For the purpose of benefit of doubt to an

accused, more than one infirmity is not required---Single infirmity creating reasonable doubt in the mind of a reasonable and prudent person regarding the truth of charge, makes the whole case doubtful.

(f) Qanun-e-Shahadat (10 of 1984)---

----Arts. 117 & 120---Anti-Terrorism Act (XXII of.1997), S.7---Burden of proof---Principle--- Merely because burden is on accused to prove his innocence, it does not absolve prosecution from its duty to prove its case against accused beyond any shadow of doubt and this duty does not change or vary in the case---Finding of guilt against person cannot be based merely on high probabilities that may be inferred from evidence in a given case---Mere conjectures and probabilities cannot take place of proof.

Muhammad Luqman v. The State PLD 1970 SC 10 rel.

Raja Muhammad Ibrahim Satti, Advocate Supreme Court for Appellants.

Ms. Yasmin Sehgal D.P.-G. for the State.

Date of hearing: 4th April, 2008.