

2008 S C M R 6

[Supreme Court of Pakistan]

Present: Iftikhar Muhammad Chaudhry, Nasir-ul-Mulk, Ch. Ijaz Ahmed and Syed Jamshed Ali, JJ

AKHTAR ALI and others----Appellants

Versus

THE STATE----Respondent

Criminal Appeals Nos.274 and 275 of 2003, decided on 17th September, 2007.

(On appeal against the judgment, dated 11-3-2002 passed by the Lahore High Court, Lahore, in Criminal Appeals Nos.917 and 1043 of 1998, 98/J and Murder Reference No.242-T of 1998).

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

---Ss. 302/452/394/397/449/109/34---Anti-Terrorism Act (XXVII of 1997), S.7--- Reappraisal of evidence---Acquittal of five accused and conviction of remaining three accused by Trial Court on basis of same evidence---Validity---F.I.R. had been registered against- unknown persons on basis of statement of complainant with unexplained delay of 10/11 hours---Complainant in his supplementary statement had nominated all accused persons while attributing to them specific role and specific injuries inflicted by them to deceased---According to complainant, one convicted accused was residing in same Dera, where occurrence had taken place---Complainant had taken altogether U-Turn from his previous stand, which had created serious doubts in prosecution story---Reliance could not be placed on supplementary statement of complainant for being obviously false---Case of convicted accused could not be distinguished from acquitted co-accused---Such unexplained delay in lodging of F.I.R. had provided enough time to complainant to deliberate, consult and fabricate story---Such unexplained delay in lodging of F.I.R. would lead to inference that occurrence was un-witnessed---Possibility of false involvement of convicted accused could not be ruled out---Credibility of ocular evidence was not divisible---Accused could not be convicted on basis of same evidence without independent corroboration---Subsequent supplementary statement of complainant could not be equated with F.I.R. or read as part of F.I.R., rather same would be considered as statement recorded under S.161, Cr.P.C.--- Prosecution had not proved its case against convicted accused beyond any shadow of doubt-- -Defence plea appeared to be reasonable, thus, convicted accused were entitled to benefit of doubt as of right and not as a matter of grace---Convicted accused were acquitted of the charge in circumstances.

Muhammad Rafique's case 1994 SCMR 1169; Qalab Ali's case 2005 SCMR 1857; Rahab's case 2001 SCMR 1745; Rahab's case 2002 SCMR 233; Khalid Javed's case 2003 SCMR 1419; Ghulam Muhammad's case PLD 1975 SC 588; Sheral alias Sher Muhammad's case 1999 SCMR 697; Ata Muhammad's case 1995 SCMR 599; Faiz Bakhsh's case PLD 1959 P.C. 24; Nadia's case 42 Cr.LJ 53; Muhammad's case PLD 1954 FC 84; Shear Bahadar's case 1972 SCMR 651; Muhammad Afsar's case PLD 1954 FC 171; Nadeem-ul-Haq's case 1985 SCMR 510 and Chandoo's case 1986 SCMR 720 rel.

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

---Ss. 302/452/394/397/449/109/34---Reappraisal of evidence---Eyewitnesses found to have falsely implicated five out of eight accused---Effect---Conviction of remaining three accused could not be based on same evidence without independent corroboration.

Ghulam Muhammad's case PLD 1975 SC 588; Sheral alias Sher Muhammad's case 1999 SCMR 697 and Ata Muhammad's case 1995 SCMR 599 rel.

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

---Ss. 302/452/394/397/449/109/34---Reappraisal of evidence---Ocular evidence, credibility of---Not divisible.

Faiz Bakhsh's case PLD 1959 P.C. 24; Nadia's case 42 Cr.LJ 53; Muhammad's case PLD 1954 FC 84; Shear Bahadar's case 1972 SCMR 651 and Muhammad Afsar's case PLD 1954 FC 171 rel.

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

---Ss. 302/452/394/397/449/109/34---Reappraisal of evidence---Improvements made by witness in his statement subsequently to strengthen prosecution case, could not be relied upon---Principles.

When a witness improves his version to strengthen the prosecution case, his improved statement subsequently made cannot be relied upon as the witness has improved his statement dishonestly, therefore, his credibility becomes doubtful on the well-known principle of criminal jurisprudence that improvements once found deliberate and dishonest cast serious doubt on the veracity of such witness.

Hadi Bakhsh's case PLD 1963 Kar. 805 rel.

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

---Ss. 302/452/394/397/449/109/34---Reappraisal of evidence---F.I.R., unexplained delay of 10/11 hours in lodging of---Effect---Such delay would lead to inference that occurrence was un-witnessed.

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

---Ss. 154 & 161---F.I.R.---Scope and evidentiary value---Statement of complainant recorded during investigation after registration of Evidentiary value stated.

F.I.R. is the document, which is entered under section 154, Cr.P.C. into book maintained at the police station on the application of the complainant. It brings the law into motion. The police under section 156, Cr.P.C. starts investigation of the case. Any statement or further statement of the complainant recorded during investigation by the police would neither be equated with F.I.R. nor read as part of it, therefore, subsequent supplementary statement is also considered as statement recorded under section 161, Cr.P.C. which is not signed or thumb-marked.

Khalid Javed's case 2003 SCMR 1419 rel.

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

---S. 302---Reappraisal of evidence---Benefit of doubt---Defence plea appeared to be reasonable---Prosecution failed to prove its case against accused beyond any shadow of doubt---Effect---Accused would be entitled to benefit of doubt as of right and not as a matter of grace.

Nadeem-ul-Haq's case 1985 SCMR 510 and Chandoo's case 1986 SCMR 720 rel.

Iqbal Bhatti, Advocate Supreme Court for Appellants (in Criminal Appeal No.274 of 2003).

Jehanzeb Tamman, Advocate Supreme Court for Appellants (in Criminal Appeal No.275 of 2003).

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

Date of hearing: 17th September, 2007.