

[Supreme Court of Pakistan]

Present: Khalil-ur-Rehman Ramday, Nasir-ul-Mulk and Ch. Ijaz Ahmed, JJ

SABIR ALI alias FAUJI---Appellant

Versus

THE STATE---Respondent

Criminal Appeal No. 299 of 2007, decided on 8th October, 2009.

(On appeal from the judgment dated 2-3-2006 passed by Lahore High Court, Lahore, in Criminal Appeal No. 48-J of 2001, Murder Reference No. 161 of 2001).

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

---S. 302(b)---Constitution of Pakistan, Art. 185(3)---Leave to appeal was granted to accused by Supreme Court to reappraise the entire evidence for safe administration of justice.

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

---S. 302(b)---Appraisal of evidence---Complainant had neither named the accused nor given his descriptive features in the F.I.R.---Evidence of identification parade was of no value due to the inherent defect that the witnesses had not described the role of accused in the occurrence while identifying him---Witnesses according to F.I.R. did not know the accused prior to the occurrence and the identification parade was not held according to law, therefore identification of accused in court by the witnesses was also of no value---Witnesses of identification had various opportunities to see the accused prior to the holding of identification parade? which even otherwise having been held six months after the occurrence and nine days after the arrest of accused, had created many doubts about his identity---Confessional statement allegedly made by accused before the Investigating Officer was not believable in the absence of any corroborating evidence and no inference in this regard could be drawn against the accused when this circumstance was not put to him in his statement recorded under S.342, Cr.P.C.---Recovery of rifle from the accused in violation of S.103, Cr.P.C. was, doubtful---Witnesses had made improvements in their statements before the Trial Court---Ocular testimony was inconsistent and the same did not inspire confidence---Accused was acquitted in circumstances.

Muhammad Hussain's case 1993 SCMR 1614; Munir Ahmed's case 1998 SCMR 752; Pasand's case PLD 1981 SC 142; Farman Hussain's case PLD 1995 SC 1; Ismail's case 1974 SCMR 175; Farman Ali's case 1997 SCMR 971; Ghulam Rasul's case 1988 SCMR 557; Mahmood Ahmed's case 1995 SCMR 127; Khadim Hussain's case 1985 SCMR 721; Sohn's case PLD 1974 Cr. Cases 208; Maula Dad's case AIR 1925 Lah. 426; Sultan's case PLD 1976 B.J. 10 and G.M. Sikdar's case PLD 1970 SC 158 ref.

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

---S. 302(b)-Identification parade---Evidentiary value---Failure on the part of witnesses to describe the role of accused at the time of identification parade is an inherent defect, which renders the identification parade valueless and unreliable.

Ghulam Rasul's case 1988 SCMR 551; Mahmood Ahmed's case 1995 SCMR 127 and Khadim Hussain's case 1985 SCMR 721 ref.

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

---S. 302(b)---Identification parade---Identification test is of no value if description of accused is not given in the F.I. R.

Arshad Ali Chaudhry, Advocate Supreme Court for Appellant.

Syed Ali Imam, Deputy Prosecutor-General, Punjab for the State.

Date of hearing: 8th October, 2009.