

P L D 1970 Supreme Court 56

Present: Muhammad Yaqub Ali, M. R. Khan and Wahiduddin Ahmad, JJ

Mst. SAIRAN alias SALEEMA-Appellant

Versus

THE STATE-Respondent

Criminal Appeal No. 67 of 1969, decided on 28th November 1969.

(On appeal from the judgment and order of the High Court of West Pakistan, Lahore, dated the 11th February 1969, in Criminal Appeal No. 347 of 1968/Murder Reference No. 91 of 1968).

Penal Code (XLV of 1860),

S. 302---Conviction based on circumstantial evidence alone---Facts proved must be incompatible with innocence of accused-Maintaining conviction by merely relying on statements made by witnesses in their examination-in-chief without taking into consideration facts elicited by cross-examination-High Court, held, had misread evidence causing thereby miscarriage of justice-Benefit of doubt, in circumstance, given to accused.

In the matter of conviction based on circumstantial evidence alone, the rule is that the facts proved must be incompatible with the innocence of the accused and incapable of explanation upon any other reasonable hypothesis than that of his guilt. The High Court would not be right in maintaining conviction and sentence merely relying on the statements made by the witnesses in their examination-in-chief. Their failure to consider the evidence of each witness in its entirety and the pertinent facts elicited by cross-examination, in fact, would amount to misreading of the evidence, and thus causing miscarriage of justice.

Muhammad Jafar, Advocate Supreme Court for Appellant.

Kamal Mustafa Bokhari, Assistant Advocate-General, West Pakistan, instructed by Rana Maqbool Ahmad, Attorney for Ijaz Ali, Attorney for the State.

Date of hearing: 13th November 1969.