P L D 1973 Supreme Court 418

Present: Muhammad Yaqub Ali, Actg. C. J., Waheeduddin Ahmad and Muhammad Gul, JJ

THE STATE-Appellant

Versus

MUSHTAQ AHMAD-Respondent

Criminal Appeal No. 68 of 1969, decided on 17th May 1973:

(On appeal from the judgment and order of the High Courts of West Pakistan, Lahore, dated the 8th November 1966, in Criminal Appeal No. 615 of 1965).

(a) Penal Code (XLV of 1860),

S. 302/34 - Murder case-Appreciation of evidence - Corroboration - Accused and his two associates (acquitted accused) alleged to have run after deceased, overtaken him, two acquitted accused having held deceased by arms and accused stabbed deceased with a sun on left of back, thereby causing his death-Deceased receiving stab wound measuring 1/6" in diameter on back of left chest going deep into body rupturing pleura and lung-Location and depth of injury of great significance in circumstances-Location of injury on back and" extent of penetration of sun-Indicative of victim having been completely overpowered enabling accused to plunge sun with full force-Fact, held, strong corroboration of deceased being pinned' down by two accused, each holding him by arms, enabling third: accused (respondent) to stab him.

The autopsy of the deceased showed that the stab wound: measured 1/6" in diameter on the back of the left chest and it had gone deep in the body of the deceased and ruptured the left pleura, and left lung which according to the doctor proved fatal. The location and the depth of the injury on the back of the deceased are also of great significance in the case. The injury was on the back of the deceased and the thrust having regard to its penetration clearly indicates that the victim was completely overpowered enabling: accused to plunge the sun with full force. This would not have been possible if the deceased had slight freedom of movement. This offers a strong support to the prosecution version that the deceased was pinned down by the two acquitted accused each.

(b) Penal Code (XLV of 1860),

S. 302/34 - Appeal against acquittal-Credibility of witnesses, divisibility of-Occurrence taking place in broad daylight and all accused known to prosecution witnesses-Prosecution witnesses independent, natural and reliable-Judgment of acquittal proceeding on misreading of judgment of trial Court based on conjecture, and rejecting evidence on obscure grounds-Reference in judgment of acquittal to accused respondent having acted in self-defence only casual and admitted to be not established-Reference in judgment to possibility of "free fight" also casual and not pursued-Expression of doubt regarding guilt of accused imaginary-Acquittal of accused-respondent on principle of indivisibility of credibility of witnesses, held, not correct in circumstances-Maxim' Falsus in uno falsus in omnibus (false in one false in all)-Cannot be applied to administration of criminal justice-Courts have to sift "chaff from grain"-Constitution of Pakistan (1962), Art. 58(3).

The occurrence took place in broad daylight. The three accused including the accused were known to the three eye-witnesses. The informant first main prosecution witness had injuries on his person. Second main prosecution witness was absolutely independent and no suggestion, whatever, was made in the cross-examination to show that he had any axe to grind. The fact that he has a shop close to the scene of occurrence also made him a natural witness in the case. As to the third main witness of prosecution it is true that he was not named in the F. I. R. But the omission is quite understandable. The informant's immediate concern was to save the life of his brother and, therefore, without wasting any time so as to make sure who had actually witnessed the transaction, rushed his injured brother to the hospital in an auto-rickshaw. It is significant to point out that this witness is one of the persons named by one of the acquitted accused, as one of the assailants, who allegedly belaboured him and the accused. The lower Court discarded the

evidence of the first prosecution witness because he "made improvements in his statement and had given a different account of the occurrence". These "improvements and differences" apart from some variation in the narration which is natural with the efflux of time, remained unidentified. As respects the essential details, the evidence of this witness was consistent which the trial Court treated as reliable. About the second witness the lower Court observed "he had already been disbelieved by the trial Judge and that "he appears to have participated in the occurrence and was conscious of his guilt or that of his companions". The first observation proceeds on a misreading of the judgment of the trial Court. There is not a scintilla of evidence to support the second observation which, is a pure conjecture. The witness is a milk-seller who has a shop close to the place of occurrence and is named in F. I. R. There is no evidence to show that he accompanied the deceased and his brother from their house with the object of attacking the accused or his business partners against whom he had no animus.

Held: It is difficult to understand the premises on which the lower Court felt justified to reject the evidence of this witness. The accused did not specifically raise any plea of self-defence nor did he admit causing the stab wound to the deceased. Even reference by the lower Court to the respondent having acted in self-defence at the highest, was casual, which according to it was "not established" either. Similarly reference to the possibility of a "free tight" was casual and was not pursued, except perhaps to lay the foundation for "doubt with regard to the guilt of the respondent " to furish a reason for a judgment of acquittal. Having regard to the social conditions obtaining in this country, the principle falsus in uno falsus in omnibus cannot be made applicable to the administration of criminal justice and therefore Courts are under a duty to sift "chaff from the grain".

Muhammad Faiz Bakhsh v. The Queen P L D 1959 P C 24 distinguished.

(c) Precedents-

Value of-Everything said in a judgment, more particularly in a criminal judgment-To be understood as having been said with reference to facts of that particular case.

Everything said in a judgment and more particularly in a judgment in a criminal case must be understood with great particularity as having been said with reference to the facts of that particular case.

Mst. Hamida Bano v. Ashiq Hussain P L D 1963 S C 109 ref.

(d) Penal Code (XLV of 1860),

S. 100-Private defence, plea of-Accused not specifically raising plea of self-defence nor producing any evidence in defence-Possibility of any "reaction" on prosecution case-Altogether excluded in circumstances-Rule that even if plea of self-defence fails Court has duty to take into account all facts appearing on record, held, not applicable in circumstances.

In both cases reported as P L D 1953 F C 93 and P L D 1953 F C 115, which were relied on by the defence, the pleas of self-defence were not only specifically raised but evidence was also led in support thereof though such evidence was found, in each case, to be inadequate to bring the cases under any general exception. It was in that context that the Judges of the Federal Court laid down the rule that in a criminal case even if the plea of self-defence has failed nevertheless the Court was bound to take into account, all the facts appearing on the record including the evidence led for the defence with a view to finding out whether as a result of such review, the prosecution cake has been affected with a reasonable doubt, in which case the accused will be entitled to its benefit. The question then is, whether on the facts of the present case. a foundation was laid for application of the rule in Safdar Ali's case P L D 1953 F C 93. There can be no manner of doubt that the answer must be in the negative. The accused did not specifically raise a plea of self-defence, nor did be produce any evidence in his defence. Therefore, the possibility of any "reaction" on the prosecution case is excluded altogether.

Muhammad Fait Bakhsh v. The Queen P L D 1959 P C 24;

Safdar All v. The Crown P L D 1953 F C 93 and Muhammad A v. The Crown P L D 1953 F C 115 distinguished.

Woolmingtori s case 1935 A C 462 ref.

(e) Benefit of doubt-

Doctrine elucidated.

Law allows to persons accused of criminal offences the benefit of "reasonable" and not of imaginary doubts. What is reasonable doubt is not a question of law, it is essentially a question for human judgment by a prudent person to be found in each case, in the light of day to day experience in life, after "taking in account fully all the facts and circumstances appearing on the entire record". It is antithesis of a haphazard approach or reaching a fitful decision in a case.

(f) Evidence-

Production before Court of article neither used in course of transaction by either party or prosecution witnesses not necessary-Such article only an incidental element in prosecution case.

Reference was made to the omission to produce the khauncha which one of the parties had picked up from the shop of a prosecution witness who later was able to snatch it. Reference was also made to the bamboo stick which one of the parties had pulled from a hotel and caused injuries to the respondent and his co-accused but was not produced. All that need be said about the khauncha is, that it was only an incidental element in the prosecution case for it was neither used in the course of transaction either by the assailants nor the deceased, nor any of the prosecution witnesses. It is no part of the duty of the prosecution to prove all incidental matters that are mentioned by a witness.

Ghulam Safdar v. Crown P L D 1956 F C 126 ref.

(g) Criminal trial-Proof-

Some prosecution witnesses not examined-Offence, however, brought home to accused beyond any reasonable doubt on evidence actually produced-Held, nothing turns on failure to examine such witnesses.

Nothing turns on the failure to examine the witnesses if on the evidence actually produced in the case the offence with which the accused was charged is brought home to him beyond any reasonable doubt.

Malak Khan v. King-Emperor 72 I A 305 and Allah Yar v. Crown P L D 1952 F C 148 ref:

Kamal Mustafa Bokharl, Assistant Advocate-General Punjab (Kh. Abdul Waheed, Advocate Supreme Court with him) instructed by Sh. Ijaz Ali, Advocate-on-Record for the State.

Mian Qurban Sadiq Ikram, Advocate Supreme Court instructed by Sh. Abdul Karim, Advocate-on-Record for Respondent.

Dates of hearing: 16th and 17th May 1973.