

P L D 2001 Supreme Court 458

Present: Nazim Hussain Siddiqui, Javed Iqbal and Hamid Ali Mirza, JJ

MOAZAM SHAH---Appellant

versus

MOHSAN SHAH and another---Respondents

Criminal Appeals Nos.319 and 320 of 1994, decided on 9th January, 2001.

(On appeal from the judgment dated 27-3-1994 of the Lahore High Court, Rawalpindi Bench passed in Criminal Appeal No.20 of 1990, Murder Reference No.85 of 1990 and Criminal Revision No.60 of 1990).

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

---S. 302---Constitution of Pakistan (1973), Art.185(3)---Sentence---Leave to appeal was granted to complainant by Supreme Court to consider whether the judgment of High Court reducing sentence of accused from death to life imprisonment was in conformity with the guidelines enunciated in the case law on the subject.

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

---S. 302---Appraisal of evidence---Sentence, enhancement of---Ocular account of occurrence furnished by eye-witnesses was not shattered despite lengthy cross-examination---Mere relationship was no ground to discard the testimony of witnesses, because intrinsic worth of the testimony was to be kept in view while assessing its evidentiary value---Parties were interrelated--No specific reason was available for the eye-witnesses to support one party at the cost of the other---Eye-witnesses had no motive to falsely implicate the accused---Case was not one of mistaken identity---Accused being the only person accused in the matter, there was no question of substitution--Accused; thus, was proved to have committed the murder of the deceased--Motive for the occurrence also .stood proved---Accused had killed the deceased under a preconceived strategy which had stunned the deceased and prevented him from, taking any step to save his life---Ex facie it was a premeditated arid cod-blooded murder---Deceased was only 24 years old--- Judgment of High Court to the extent of altering the sentence of death to imprisonment for life was set aside in circumstances and that of Trial Court awarding death sentence to accused was restored.

Abdur Rashid v. Umit Ali and 2 others PLD 1975 SC 227; Muhammad Sharif v. Muhammad Javed alias Jeda Tedi and 5 others PLD 1976 SC 452; Muhammad Afzal v. Ghulam Asghar and others PLD 2000 SC 12; Bismillah v. Muhammad Jabbar 1998 SCMR 860; Abdul Wahib alias Rehra v. The State 1999 SCMR 1668 and Noor Muhammad v. The State Appeal No. 174 of 1995 ,rel.

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

---S. 302---Motive---Connotation---Evidentiary value---Motive precedes action and is basically a circumstantial evidence---Motive by itself neither proves nor disproves any assertion conclusively---Motive does help in determining the guilt of a person, particularly at the stage of investigation, but- it remains invisible to all in many cases except the offenders---When there is clear proof that person has committed a crime, motive or previous ill-will becomes immaterial and is not necessary to sustain a conviction.

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

---S. 302---Punishment---Murder cases must be seen with reference to the interest of the society and be condemned as such---To curb crime in the society is the need of the hour---One object of criminal justice is to award exemplary punishment to offenders in order to deter them from committing crimes and in this way also to serve a stern warning to those members of the society who have behavioural leaning towards criminality.

Noor Muhammad v. The State Appeal No. 174 of 1995 ref.

Sh. Zamir Hussain Advocate Supreme Court and Ejaz Muhammad Khan, Advocate-on-Record for Appellant (in Criminal Appeal No.319 of 1994). '

Muhammad Javed Aziz Sindhu, Advocate Supreme Court for Respondents (in Criminal Appeal No. 319 of 1994).

Dil Muhammad Tarar, Advocate Supreme Court for the State (in Criminal Appeal No.319 of 1994).

Muhammad Javed Aziz Sindhu, Advocate Supreme Court for Appellants (in Criminal Appeal No.320 of 1994)

Dil Muhammad Tarar, Advocate Supreme Court for the State (in Criminal Appeal No.320 of 1994).

Date of hearing: 9th January, 2001.