

## **P L D 2005 Supreme Court 484**

**Present: Hamid Ali Mirza, Muhammad Nawaz Abbasi and Faqir Muhammad Khokhar, JJ**

**MUHAMMAD RIAZ---Appellant**

**Versus**

**MUHAMMAD ZAMAN and another---Respondents**

Criminal Appeal No.96 of 1999, decided on 6th December, 2004.

(On appeal from the judgment dated 17-6-1998 passed by Lahore High Court, in M.R. No. 461 of 1992 and Cr.A. No. 1009 of 1992).

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

---S. 302---Constitution of Pakistan (1973), Art.185 (3)---Leave to appeal was granted by Supreme Court to consider; whether the judgment of High Court was in consonance with law as enunciated by Supreme Court, keeping in view the evidence on record.

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

---S. 302---Evidence---Material contradictions---Effect---Material contradictions and discrepancies in evidence in a criminal case may create doubt in prosecution case and if eye witnesses are inimical and interested, such doubt may lead to reasonable possibility of the witnesses being not truthful or inference can be drawn that they, by suppressing the facts, had made a dishonest statement---Mere relationship or enmity is not sufficient to discard the evidence of a natural witness or hold him not truthful and trustworthy---Not an inflexible rule that in all Circumstances; such contradictions and discrepancies in the evidence must be treated to be injurious to the credibility of a witness and his evidence must be excluded from consideration or he must be held not truthful witness---Rather the ultimate test of veracity of a witness is the inherent merit of his own statement.

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

---S. 302/34---Re-appraisal of evidence---Ocular account and medical evidence---Contradictions---Opinion of doctor with regard to number of shots fired---Eye-witnesses, presence of---Trial Court awarded death sentence to the accused but High Court in exercise of appellate jurisdiction set aside the conviction and sentence on the ground that the statement of eye-witnesses was not supported by medical evidence and the witnesses were inimical towards the accused---Validity---Reasons given by High Court for disbelieving the presence of witnesses at the spot were highly speculative, flimsy and artificial---Conclusion that the injuries on the person of deceased were the result of one shot which was probably not fired froth' front and medical evidence was inconsistent with the ocular account of eye-witnesses, was , also not based on sound reasons---Statement of doctor to the effect that the injuries were the result of single shot being only an opinion, which might or might not be correct---Such opinion was not sufficient to discard the direct evidence and could not suggest the non-presence of eye-witnesses at the spot--Conflict of medical evidence with ocular account in respect of number and nature of injuries could be relevant to ascertain the role of an individual accused in occurrence but such was not a valid ground to disbelieve the eye-witnesses and exclude their evidence from consideration---Confusion whether the injuries were the result of two shots or a single shot would not, ipso facto, suggest that eye-witnesses had not seen the occurrence or they suppressed the truth---High Court was misled .in rejecting the direct evidence of un-impeachable character of natural witnesses on the ground that the ocular account was in conflict with medical evidence, whereas except such discrepancy, there was no other contradiction---Eye-witnesses account sought ample support from medical evidence and was worthy of credit---High Court, in complete departure to the well known principle of appraisal of evidence, had drawn conclusion from evidence which was not reasonably acceptable in the given facts and had caused miscarriage of justice---As the acquittal of accused was not based on the sound principles of criminal administration of justice and was not suitable, the same was set aside---Participation of both the accused in the occurrence stood established beyond doubt and notwithstanding the

discrepancy in the evidence regarding the number of shots, the accused had played an active role in the occurrence with the intention to kill -the deceased and were equally responsible for the murder and by virtue of S.34, P.P.C. shared the equal liability in the crime--Supreme Court held both the accused guilty of-charge of murder and sentenced them to imprisonment for life under S.302(b), P.P.C.---Appeal was allowed.

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

---S. 302---Motive---Scope---Motive is a double edged weapon, which cuts both ways.

**(e) Criminal Procedure Code (V of 1898)---**

---S. 417---Appeal against acquittal---Supreme Court, jurisdiction of--Supreme Court declines in interference in appeals against acquittal even if a different conclusion can be drawn unless it is demonstrated with certainty that the consideration on the basis of which accused were acquitted was not supported by evidence.

Ghulam Sakindar v. Mamraz Khan PLD 1985 SC 11 rel.

Munir Ahmad Bhatti, Advocate Supreme Court for Appellant.

Abdus, Saleem, Advocate Supreme Court for Respondents.

Sh. Mehmood Ahmed, Advocate-on-Record for the State.

Date of hearing: 6<sup>th</sup> December, 2004.