

[Shariat Appellate Jurisdiction]

Present: Javed Iqbal, Chairman, Sardar Muhammad Raza Khan, Ch. Ijaz Ahmed, Dr. Allama Khalid Mehmood and Allama Rashid Ahmed Jullandhari, Members

Dr. JAVAID AKHTAR---Petitioner

Versus

THE STATE---Respondent

Criminal Petition No.62(S) of 2005, decided on 2nd November, 2006.

(On appeal from the order dated 31-10-2005 passed by the Federal Shariat Court, Islamabad, in Criminal Appeal No.107/I of 2005).

(a) Criminal trial---

---Fact not cross-examined---Effect---When witness was not cross-examined by accused regarding a portion of examination-in-chief, such portion was admitted by the accused.

(b) Offences Against Property (Enforcement of Hudood) Ordinance (VI of 1979)---

---S. 17---Penal Code (XLV of 1860), S.392---Qanun-e-Shahadat (10 of 1984), Art. 22-- Constitution of Pakistan (1973), Arts. 185(3) & 203-F(2-B)---Constitutional jurisdiction of Supreme Court---Scope---Reappraisal of evidence---Identification parade---Administration of justice---Accused was convicted and sentenced to 8 years of imprisonment under S.392, P.P.C., which was maintained by Federal. Shariat Court---Instead of seeking leave under Art.203-F(2-B) of the Constitution, accused filed petition under Art. 185(3) of the Constitution---Contention of accused was that complainant did not identify him during identification parade---Validity--- Identification parade was not a legal requirement---If eye-witnesses could identify the accused before Trial Court that was enough for conviction---Identification parade was immaterial if identification of accused was proved by other convincing evidence---Complainant and injured witnesses had no enmity with accused to involve him in a criminal case---Complainant being an educated lady did not exonerate real culprits and had not nominated innocent person just at the behest of police---Both the Courts below had reached concurrent conclusion after proper appreciation of evidence on record regarding the guilt of accused--Accused filed petition under Art. 185(3) of the Constitution,

against judgment of Federal Shariat Court, which was not maintainable, as he had to file petition under Art.203-F(2-B) of the Constitution---Supreme Court re-examined the evidence on record, in the interest of justice and fair-play but did not find any illegality or infirmity in the judgment passed by Federal Shariat Court---Petition was dismissed.

Mst. Nur Jehan Begum v. Syed Mujtaba Ali Naqvi 1991 SCMR 2300; Muhammad Afzal's case 1982 SCMR 129; Muhammad Khan v. Dost Muhammad PLD 1975 SC 607; Noor's case PLD 1973 SC 469; Mujahid Hussain's case 1984 SCMR 54; Abdul Kahlid's case 1986 SCMR 35 and Fazle Razaq's case 1985 SCMR 128 rel.

(c) Criminal Procedure Code (V of 1898)---

---S. 154---F.I.R. is not substantive piece of evidence.

Mokhas's case PLD 1958 SC 10 and Karam Ali's case 1968 SCMR 1025 rel.

(d) Qanun-e-Shahadat (10 of 1984)---

---Art. 150---Evidence---Hostile witness---Court would be justified to ignore the statement of hostile witness.

Parit's case 47 Cr.LJ 232 and Habibullah's case PLD 1969 SC 127 rel.

Sanaullah Zahid, Advocate Supreme Court for Petitioner.

Nemo for the State.