

P L D 2007 Supreme Court 93

Present: Javed Iqbal, Muhammad Nawaz Abbasi, Raja Fayyaz Ahmed, Dr. Allama Khalid Mehmood, and Allama Rashid Ahmed Jullundhari, JJ

SHOUKAT ALI---Appellant

Versus

THE STATE---Respondent

Criminal Shariat Appeal No.23 of 2003, decided on 28th September, 2006.

(On appeal from the judgment dated 1-10-2001 of the Federal Shariat Court passed in Criminal Appeal No.101-L of 2000).

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

---Ss. 302/34---Offences Against Property (Enforcement of Hudood) Ordinance (VI of 1979), S.14---Constitution of Pakistan (1973), Art.203-F---Reappraisal of evidence---Proverbial Lalkara---Common intention---Friendship or relationship of witnesses with deceased---Effect---Natural witnesses---Scope---Object of section 34, P.P.C.---Allegation against accused appellant was that he along with two accused persons committed murder of deceased---Motive setup in F.I.R. was that as deceased took charge of agricultural farm from accused, therefore, out of grudge he committed murder of deceased---Accused was acquitted of charge under S.14 of Offences Against Property (Enforcement of Hudood) Ordinance, 1979 and was convicted and sentenced to life imprisonment by Trial Court under section 302/34, P.P.C.---One co-accused was sentenced to death by Trial Court but Federal Shariat Court altered death to life imprisonment---Second co-accused was acquitted by Trial Court---Accused contended that no overt act except proverbial Lalkara, was attributed to him in F.I.R. and at trial; that motive was not established on record; that prosecution evidence was furnished by interested and related witnesses; that prosecution evidence was self-contradictory and uncorroborated by independent evidence and that F.I.R. was lodged with delay benefit of which was to go to accused---Validity--Prosecution had alleged that murder of deceased was committed by all accused with common intention---Prosecution witnesses were subjected to lengthy cross-examination but nothing beneficial to accused could be elicited from them who supported each other on material points---Few minor contradictions having no substantial bearing on merits of case could be ignored safely---Prosecution witnesses had no enmity to get accused/appellant involved in heinous offence like murder, abetment and instigation as no grudge had been alleged against them---Friendship or relationship with deceased was not sufficient to discredit a witness particularly when there was no motive to falsely involve accused---In assessing value of evidence of eye-witnesses, it was necessary to examine whether in facts and circumstances of the case their presence at the scene was to make it possible for them to witness occurrence and whether there was anything inherently improbable or unreliable in their evidence---Prosecution witnesses in the present case were not interested witnesses and their version had been rightly believed by courts below---Prosecution witnesses furnished plausible justification for their presence at the place of occurrence as such they could not be labelled as chance witnesses---Object of S.34, P.P.C., which was incorporated along with S.302, P.P.C. in the present case, was to meet a case in which it might be difficult to distinguish between acts of individual members of party or to prove exactly what part was taken by each of them in the occurrence---Reason why all were deemed guilty in such cases was, that presence of accomplices gave encouragement, support and protection to person actually committing the act---Appellant, in the present case, had nourished grudge against deceased and it was he who emerged at the scene along with co-accused duly armed with deadly weapons which depicted common intention and prior concert of mind and being facilitator and abettor he remained present at. place of occurrence till murder of deceased was accomplished---Role of accused/appellant could not be confined to that of proverbial 'Lalkara' but it was more than that and he had been rightly convicted and sentenced to life imprisonment by Courts below---Appeal was dismissed.

Iqbal alias Bala v. The State 1994 SCMR 1; Nazir v. The State PLD 1962 SC 269; Khalil Ahmed v. the State 1976 SCMR 161; Allah Ditta and others v. The State 1970 SCMR 734; Muhammad Akbar v. Muhammad Khan and others PLD 1988 SC 274; Shehruddin v. Allah Rakhia 1989

SCMR 1461; Din Muhammad v. Crown 1969 SCMR 777; Riasat Ali and another v. The State PLD 1991 SC 397; 1935 Cr.LJ 1393, 1953 All. 214; In re: Basappa (Vol. 51 Cr.LJ 1950; Sitaram v. State Vol. 59 1958 Cr.LJ 1380; Panduranq Tukia and Bhillia v. The State of Hyderabad 1955 SCR 1083; NGA Tun Baw and another v. Emperor 1907 UBR (PC) Cr.LJ 205; Muklesur Rahman and another v. The King Vol. 51 1950 Cr.LJ 945; Queen v. Gorachand Gopee, p.456 by Sir Barnes Peacock; In re: Thipperudrappa Vol. 55 1954 Cr.LJ 481; Panduranq v. State of Hyderabad 1955 Cr.LJ 572; Hidayatullah v. State 1976 P.Cr.LJ 1067; Athar Khan v. State PLD 1972 Lah. 19; Hasan Din v. Muhammad Mushtaq 1978 SCMR 49; Chutta v. State 1995 P.Cr.LJ 755; Shahadat Khan v. Home Secretary PLD 1969 SC 158 and Muhammad Nawaz v. State PLD 1967 Lah. 952 ref.

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

---Ss. 34 & 302---"Common intention" and "furtherance of common intention of all"---Common intention and similar intention---Distinction, scope and object---Section 34, P.P.C. was not a punitive section and it did not enact a rule of evidence but enacted a common law principle of substantive law---Section 34, P.P.C. embodied common sense principle that if two or more persons intentionally did a thing jointly, it was just the same as if each of them had done it individually---Two or more persons where jointly caused injury to another in such a manner that each person engaged in causing the injury was to know that result of such injury might be the death of injured person, it was no answer on the part of anyone of them to allege and perhaps prove that his individual act did not cause death and that by his individual act he could not be held to have intended death---Everyone was to be taken to have intended probable and natural results of combination of acts in which he joined---Person not cognizant of intention of his companion to commit murder was not liable, though his companion indulged in unlawful act---Common intention implied acting in concert in pursuance of pre-arranged plan which was to be proved either from conduct or from circumstances or from incriminating facts---Words "in furtherance of common intention of all" had introduced as an essential part of S.34, P.P.C. the element of common intention prescribing conditions under which each person might be criminally liable when there were several actors---Common intention was an intention to commit crime actually committed and each accused person could be convicted of that crime, only if he had participated in that common intention---Similar intention was not to be confused with common intention and partition which divided "their bounds" was often very thin; nevertheless distinction was real and substantial and, if overlooked, the same was to result in miscarriage of justice---Common intention did not mean similar intention of several persons---To constitute common intention, it was necessary that intention of each one of the accused persons was known to the rest of them and shared by them.

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

---Ss. 33, 34, 35, 37 & 38---`Act' and `criminal act'---Meaning---Term `act' contemplated a series of acts done by several persons, some perhaps by one of those persons and some by another but all in pursuance of a common intention---`Criminal act' meant unity of criminal behaviour which resulted in something for which an individual was to be punishable, if it were all done by himself alone in a criminal offence.

Dr. Babar Awan, Advocate Supreme Court for Appellant.

Ch. Munir Sadiq, Advocate Supreme Court for Respondent.

Date of hearing: 2nd January, 2006.