

## **2001 S C M R 424**

**[Supreme Court of Pakistan]**

**Present: Abdur Rehman Khan, Iftikhar Muhammad Chaudhry  
and Abdul Hameed Dogar, JJ**

**IMRAN ASHRAF and 7 others---Appellants**

**versus**

**THE STATE---Respondent**

Criminal Appeals Nos. 36 to 43 of 2000. decided on 16th October, 2000.

(On appeal from the judgment dated 1-3-1999 of the Lahore High Court, Multan Bench, Mutlan passed in Criminal Appeals Nos. 57 to 64 of 1998).

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

---Ss. 302/149, 148 & 382---Anti-Terrorism Act (XXVII of 1997), S.7--Constitution of Pakistan (1973), Art. 185(3)---Leave to appeal was granted by Supreme Court to accused to consider the question of jurisdiction of Special Court constituted under the Anti-Terrorism Act, 1997 to try the case and the points as to whether the principles of safe administration of justice in the criminal cases had been followed in the case while appraising the prosecution evidence as also to find out if the view which found favour with the High Court was in consonance with law as enunciated by Supreme Court in various cases from time to time.

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

---Ss. 302/149, 148 & 382---Anti-Terrorism Act (XXVII of 1997), S.7--Reappraisal of evidence---Principle---Basic principle of reappraisal of evidence in criminal cases is that if a witness is trustworthy and reliable then conviction can safely be based on his evidence---In case such witness is unreliable his evidence cannot be utilized for the passing of conviction against the accused---If, however, the witness has given partially reliable and partially unreliable evidence then applying the device of sifting the grain from chaff and seeking independent corroboration from other reliable evidence on material particulars, conviction can be based on it.

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

---S. 154---Police Rules, 1934, R. 24.5(c)---Registration of First Information Report in cognizable cases---Exercise of powers by police--Scope---Principles---Delay in registration of F. I. R. ---Adverse effects section 154, Cr.P.C. lays down procedure for registration of an information in cognizable cases and it also indeed gives mandatory direction for registration of the case as per the procedure. Therefore, police enjoys no jurisdiction to cause delay in registration of the case and under the law is bound to act accordingly enabling the machinery of law to come into play as soon as it is possible and if first information report is registered without any delay it can help the investigating agency in completing the process of investigation expeditiously. Any slackness or lukewarm attitude by the registering authority of F.I.R. in fact intends to help the accused involved in the commission of the offence. Thus it is advisable that the provisions of section 154, Cr.P.C. read with Rule 24.5(c) of the Police Rules, 1934 be adhered to strictly. There should not be any negligence in recording the F.I.R. and supplying copies to concerned quarters because departure from the mandatory provision of law creates a room to doubt the truthfulness of the allegation against the accused incorporated in F.I.R.

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

---Ss. 302/149, 148 & 382---Anti-Terrorism Act (XXVII of 1997), S.7 ----- site plan--- Evidentiary value---Site plan loses its evidentiary value if it is not prepared on the pointation of a witness.

Gul Mir v. The State PLD 1980 SC 185 ref.

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

---Ss. 302/149, 148 & 382---Anti-Terrorism Act (XXVII of 1997), S.7--Appreciation of evidence---Unexplained delay in recording statement of eye-witness---Effect---Where no plausible explanation is offered by the prosecution for not recording the statement of eye-witness immediately after the registration of the case, then the evidence of such witness becomes incredible.

1993 SCMR 550 and 1995 SCMR 127 ref.

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

---Ss. 302/149, 148 & 382---Anti-Terrorism Act (XXVII of 1997), S.7--- Appreciation of evidence---Principle---Court in criminal administration of justice is duty bound to evaluate the evidence available on record as a whole notwithstanding the fact whether the benefit of the same will go to defence instead of prosecution---Court seized of the matter must consider the' cumulative effect of total evidence while assessing its evidentiary value and not to consider it in isolation.

Asadullah v. Muhammad Ali PLD 1971 SC 541 and Mst. Razia Begum v. Hijrayat Ali and 3 others PLD 1976 SC 44 ref.

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

---Ss. 302/149, 148 & 382---Anti-Terrorism Act (XXVII of 1997), S.7--Appreciation of evidence---Chance witness---Evidentiary value--Evidence of a chance witness in a criminal case can be accepted if he successfully establishes his presence at the place of incident, otherwise Court has to find out strong corroboration to his statement in order to make it admissible.

Javed Ahmad alias Jaida v. The State and another 1978 SCMR 114 and Muhammad Ahmad and another v. The State and others 1997 SCMR 89 ref.

**(h) Criminal trial---**

---Witness---Crime on a public thoroughfare---Evidence of a passerby--Admissibility and worth---Principles.

When a crime is committed on a public thoroughfare, or at a place frequented by the public generally, the presence of passersby cannot be rejected by describing them as mere chance witnesses, unless, of course, it is found that the witnesses concerned could not give any satisfactory explanation for their presence at or near the spot at the relevant time, or there is otherwise any inherent weakness or contradiction in their testimony.

Javed Ahmad alias Jaida v. The State and another 1978 SCMR 114 and Muhammad Ahmad and another v. The State and others 1997 SCMR 89 ref.

**(i) Qanun-e-Shahadat (10 of 1984)---**

---Art. 140---Penal Code (XLV of 1860), Ss. 302, 148 & 382---Evidence--Contradictions between Police statement and Court statement are required to be proved under the law.

**(j) Administration of justice---**

--- Judicial functionaries---Conduct of judicial proceedings---Duty and responsibility ---Judicial functionaries bestowed with the powers to exercise the jurisdiction conferred upon them are legally bound to decide the cases correctly and no wrong decision on law is expected from them--Any exercise of jurisdiction in violation, of law for extraneous considerations would make the concerned judicial officer liable for action under the relevant law.

PLD 1987 SC 42 rel.

**(k) Administration of justice--**

---- No party should suffer on account of wrongs committed by judicial functionaries.

State v. Asif Adil 1997 SCMR 209 ref.

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

---S. 540---Power of Court to summon any person as witness and examine--Scope---Court, in exercise of powers under 8,540, Cr.P.C. can summon any witness at any stage of the trial of his evidence which appears to be essential for the just decision of the case.

Muhammad Azam v. Muhammad Iqbal PLD 1984 SC 82; Syed Ali Nawaz Gardezi v. Lt.-Col. Muhammad Yusuf PLD 1963 SC 51; The State v. Maulvi Muhammad Jamil and others PLD 1965 SC 681; Rashid Ahmad v. The State PLD 1971 SC 709; Bashir Ahmad v. The State and another 1975 SCMR 171; Yasin alias Cheema and another v. The State 1980 SCMR 575; Rameshwar Dayal and others v. The State of U.P. AIR 1978 SC 1558; The Crown v. Rafiq Ahmad and another PLD 1955 Bal. 12; Abdul Latif and others v. State of Uttar Pradesh AIR 1978 5C 472; Jamatraj Kewalji Govani v. State of Maharashtra AIR 1968 SC 178 and Raghunandan v. State of U.P. AIR 1974 SC 463 ref.

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

---S. 540---Power of Court to summon material witness etc. ---Jurisdiction under S. 540, Cr.P.C. is always subject to the satisfaction of the Court that the evidence intended to be produced on record would be a stepping stone necessary for just decision of the case and only on such satisfaction permission can be accorded.

Mst. Amina Bibi v. Kashif-ur-Rehman 1995 PCr.LJ 730; PLD 1987 SC 427; Muhammad Azam v. Muhammad Iqbal PLD 1984 SC 82; Syed Ali Nawaz Gardezi v. Lt.-Col. Muhammad Yusuf PLD 1963 SC 51; The State v. Maulvi Muhammad Jamil and others PLD 1965 SC 681; Rashid Ahmad v. The State PLD 1971 SC 709; Bashir Ahmad v. The State and another 1975 SCMR 171; Yasin alias Cheema and another v. The State 1980 SCMR 575; Rameshwar Dayal and others v. The State of U.P. AIR 1978 SC 1558; The Crown v. Rafiq Ahmad and another PLD 1955 Bal. 12; Abdul Latif and others v. The State of Uttar Pradesh AIR 1978 SC 472; Jamatraj Kewalji Govani v. State of Maharashtra AIR 1968 5C 178 and Raghunandan v. State of U.P. AIR 1974 SC 463 ref.

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

---Ss. 302/149, 148 & 382---Anti-Terrorism Act (XXVII of 1997), S.7-- Appreciation of evidence---Corroboration---One piece of tainted evidence cannot corroborate another piece of tainted evidence.

Ali Akhtar Hussain v. The State 1972 SCMR 40 and Muhammad Ilyas and another v. The State 1993 SCMR 1602 ref.

**(o) Qanun-e-Shahadat (10 of 1984)---**

---Art. 22---Identification parade---Steps to ensure its fairness---In order to ensure that the identification parade was conducted fairly and properly it was incumbent upon the prosecution to adopt such measures so as to eliminate the possibility of identifying witnesses to see the accused after the commission of the offence till the identification parade is held immediately after the arrest of the accused persons as early as possible.

Ashraf and another v. The State AIR 1961 All. 153 and Lal Pasand v. The State PLD 1981 SC 142 ref.

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

---Ss. 302/149, 148 & 382---Anti-Terrorism Act (XXVII of 1997), S.7--Appreciation of evidence---Corroboration---Recovery of incriminating articles is used for the purpose of

providing corroboration to the ocular testimony---Ocular evidence and recoveries, therefore, are to be considered simultaneously in order to reach for a just conclusion.

Asadullah v. Muhammad Ali PLD 1971 SC 541 ref.

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

---Ss. 302/149, 148, 382---Anti-Terrorism Act (XXVII of 1997), S.7--Appreciation of evidence--Corroboration---Ocular testimony suffering from material discrepancies and having lost its intrinsic value, cannot be corroborated by any corroborative evidence like medical evidence, recovery evidence etc.

Dhunda v. The Crown ILR 16 Lah. 995 ref.

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

---Ss. 302/149, 148 & 382---Anti-Terrorism Act (XXVII of 1997), S.7--Medical evidence --- Post-mortem report---Evidentiary value of---Nature--Corroboration to other evidence ---Extent--Post-mortem report cannot furnish corroboration to the ocular testimony and other evidence brought by prosecution on record in view of principle of law that such evidence being supporting in its nature can only be helpful to prosecution if it succeeds in establishing its case on basis of direct ocular or circumstantial evidence against the accused.

Muhammad Hanif v. The State PLD 1993 SC 895 ref.

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

---Ss. 302/149, 148 & 382---Anti-Terrorism Act (XXVII of 1997), S.7--Circumstantial evidence---Circumstantial incriminating evidence must be incompatible with the innocence of the accused or the guilt of any other person and incapable of explanation upon any other reasonable hypothesis except that of his guilt.

Mst. Sairan alias Saleema v. The State PLD 1970 SC 56 ref.

**(t) Criminal trial---**

---Technicalities---Technicalities should be overlooked without causing any miscarriage of justices.

The State v. Farman Hussain PLD 1995 SC. 1 ref.

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

---Ss. 302/149, 148 & 382---Anti-Terrorism Act (XXVII of 1997), S.7--Circumstantial evidence---Approach of the Court---Technical lapses--Effect---Treatment and approach by Court---Principles stated.

The Court's approach, while appraising the evidence, should be dynamic and not static. It should keep in view all the facts and circumstances of the case and if it is satisfied that factually the person charged with the offence has committed the same, it should record the conviction though there might have been some technical lapses on the part of the investigating agency/prosecution, provided the same have not prejudiced the accused in the fair trial.

Khurshid v. The State PLD 1996 SC 305 rel.

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

---Ss. 302/149, 148 & 382---Anti-Terrorism Act (XXVII of 1997), S.7--Benefit of doubt---Prosecution is bound to prove the case against the accused beyond doubt and such burden does not shift from prosecution to accused even if he takes up any particular plea and fails to substantiate it and if there is any room for benefit of doubt in the prosecution case, it will go to accused and not to prosecution.

Safdar Ali v. The Crown PLD 1953 FC 93; Muhammad Luqman v. The State PLD 1970 SC 10 and Abdul Haque v. The State PLD 1996 SC 1 ref.

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

---Ss. 535, 537, 227 & 374---Alteration of charge by Appellate Court--Competency--- Trial Court is competent to alter the charge at any stage in exercise of its inherent jurisdiction conferred on it under S.535 read with S.537, Cr.P.C:---Appellate Court also enjoys the same powers particularly in reference cases under S.374, Cr.P.C. for confirmation or otherwise of death sentence under S.302, P.P.C.

PLD 1957 SC (Ind.) 381 ref.

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

---S. 120-A---Criminal conspiracy---Privacy and secrecy of an agreement, oral or written, to enter into a criminal conspiracy is the essence to establish' that prior to commission of offence two or more persons had entered into a conspiracy for committing an unlawful wrong.

AIR 1965 SC 682; PLD 1979 SC 53; 1985 PCr.LJ 2638; 1995 PCr.LJ 1424; 1998 PCr.LJ 1486; 1990-1903 All ER 1; 1998 PCr.LJ 1990; Bayyappanavara Munishwamy and others v. State AIR 1954 Mys. 81 ref.

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

---Ss. 302/149, 148 & 382---Anti-Terrorism Act (XXVII of 1997), S.7--Appreciation of evidence---Principle---Wholly reliable evidence can be accepted without corroboration, unreliable evidence can be brushed aside without any reservations whereas halfly reliable evidence needs strong corroboration for its acceptance.

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

---Ss. 302/149, 148 & 382---Anti-Terrorism Act (XXVII of 1997), S.7--Appreciation of evidence---Neither any prejudice had been caused to the accused nor the impugned order passed by the Special Court was without jurisdiction, because the accused had been convicted and sentenced under S.302/149, P.P.C. as well besides under S.7 of the Anti-Terrorism Act, 1997---Prosecution, however, had failed to produce trustworthy, confidence inspiring and consistent evidence against the accused which suffered from material discrepancies, contradictions and omissions and seemed to have been fabricated to prove the prosecution case---Accused on the basis of evidence of such defective quality could not be immured further because they had every right to be dealt with in accordance with law under the Constitution--Courts below had passed the judgments contrary to the substantive law as well as the precedented law enunciating the principles for appreciation of evidence---Accused were acquitted in circumstances.

PLD 1978 SC 298; PLD 1995 SC 1; PLD 1996 SC 305; PLD 1998 SC 1445; Noora and another v. The State PLD 1973 SC 469; Muhammad Ashraf and another v. The State PLD 1977 SC 538; Muhammad Aslam and another v. The State PLD 1978 SC 298; 1997 SCMR 89; Gul Mir v. The State PLD 1980 SC 185; 1993 SCMR 550; 1995 SCMR 127; Asadullah. v. Muhammad Ali PLD 1971 SC 541; Mst. Razia Begum v. Hijrayat Ali and 3 others PLD 1976 SC 44; Javed Ahmad alias Jaida v. The State and another 1978 SCMR 114; Mst. Amina Bibi v. Kashif-ur-Rehman 1995 PCr.LJ 730; PLD 1987 SC 427; Muhammad Azam v. Muhammad Iqbal PLD 1984 SC 82; Syed Ali Nawaz Gardezi v. Lt.-Col. Muhammad Yusuf PLD 1963 SC 51; The State v. Maulvi Muhammad Jamil and others PLD 1965 SC 681; Rashid Ahmad v. The State PLD 1971 SC 709; Bashir Ahmad v. The State and another 1975 SCMR 171; Yasin alias Cheema and another v. The State 1980 SCMR 575; Rameshwar Dayal and others v. The State of U.P. AIR 1978 SC 1558; The Crown v. Rafiq Ahmad and another PLD 1955 Bal. 12; Abdul Latif and others v. State of Uttar Pradesh AIR 1978 SC 472; Jamatraj Kewalji Govani v. State of Maharashtra AIR 1968 SC 178; Raghunandan v. State of U.P. AIR 1974 SC 463; 1994 PCr.LJ 140; Guli Chand and others v. State of Rajasthan AIR 1974 SC 274; Bahal Singh v. State of Haryana AIR 1976 SC 2032; Dayaramsingh v. The State of M.P. 1981 Cr.LJ 530; PLD 1996 SC

97; 1992 SCMR 338; 2000 PCr.LJ 331; Asghar Ali alias Sabah and others v. The State and others 1992 SCMR 2088; Khadim Hussain v. The State 1985 SCMR 721; Lal Singh v. Crown ILR 51 Lah. 396; Qurban and another v. The State 1994 PCr.LJ 150; 1992 SCMR 338; Ghulam Rasul and 3 others v. The State 1988 SCMR 557; Ali Muhammad and another v. the State 1985 SCMR 1834; Ali Akhtar Hussain v. The State 1972 SCMR 40; Muhammad Ilyas and another v. The State 1993 SCMR 1602; Ashrafi and another v. The State AIR 1961 All. 153; Lal Pasand v. The State PLD 1981 SC 142; Dhunda v. The Crown ILR 16 Lah. 995; Muhammad Hanif v. The State PLD 1993 SC 895; Mst. Sairan alias Saleema v. The State PLD 1970 SC 56; Allah Ditta v. The Crown 1969 SCMR 558; Safdar Ali v. The Crown PLD 1953 FC 93; Muhammad Luqman v. The State PLD 1970 SC 10; Abdul Haque v. The State PLD 1996 SC 1; PLD 1957 SC (Ind.) 381; AIR 1965 SC 682; PLD 1979 SC 53; 1985 PCr.LJ 2638; 1995 PCr.LJ 1424; 1998 PCr.LJ 1486; 1990-1903 All ER 1 and Bayyappanavara Munishwamy and others v. State AIR 1954 Mys. 81 ref.

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Dates of hearing: 19th to 22nd and 25th to 29th September, 2000.