

**2005 S C M R 1906**

**[Supreme Court of Pakistan]**

**Present: Nazim Hussain Siddiqui, C.J. Abdul Hameed Dogar and Muhammad Nawaz Abbasi, JJ**

**Mst. DUR NAZ and another---Petitioners**

**Versus**

**YOUSUF and another---Respondents**

Criminal Petition for Leave to Appeal No.50-K of 2003, decided on 25th April, 2005.

(On appeal from the judgment, dated 22-5-2003 of the High Court of Sindh, Circuit Bench at Hyderabad passed in Criminal Appeal No.27 of 2002 and Confirmation Case No.3 of 2002).

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

---S. 302---Constitution of Pakistan (1973), Art. 185(3)---Appeal against acquittal---Promptly lodged F.I.R. contained full details of the incident---Injuries on the person of the deceased and the manner in which the incident had taken place were fully corroborated by the medical evidence---Finding of High Court that eye-witnesses were not only interested, inimical, hostile but also chance witnesses, was based on non-reading of evidence---Fact of the eye-witnesses being natural witnesses of the occurrence, was sufficiently established on record---Defence plea taken by accused of being unaware of the proceedings against the co accused was baseless and was not established by him on record and his abscondence for ten years could not be brushed aside, as the murder of the deceased and involvement of accused therein was not a secret in the entire vicinity and the town---High Court while disagreeing with the Trial Court had totally ignored the reasons given by it for believing the eye-witnesses whose testimony was corroborated by medical evidence and the motive and inspired confidence---Reversal of the Trial Court's judgment by High Court was totally unjustified and based on arbitrary, capricious and imaginary reasonings due to non-reading and misreading of evidence---Impugned judgment of High Court acquitting the accused was consequently set aside and that of the Trial Court was restored maintaining the conviction and sentence of death of the accused.

Muhammad Ahmad and another v. The State and others 1997 SCMR 89; Alain Khan and another v. The State 1976 SCMR 128; Allah Dad and 2 others v. The State PLD 1978 SC 1; Ali Khan v. The State 1980 SCMR 474 and Abdul Wahid v. The State 2003 SCMR 668 ref.

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

---S. 302---Chance witness---Chance witness is one who appears at the place of occurrence incidentally as per chance---Presence of passersby cannot be rejected by describing them as mere chance witnesses, unless they fail to give satisfactory explanation of their presence at or near the crime spot at the relevant time or their testimony otherwise suffers from any inherent weakness or contradiction.

Muhammad Ahmad and another v. The State and others 1997 SCMR 89 ref.

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

---S. 302---Abscondence---Abscondence of accused, if proved, although is not conclusive by itself to establish his guilt and its probative value depends on the facts and circumstances of each particular case, yet the same is universally admitted as evidence of guilt of accused.

Allah Dad and 2 others v. The State PLD 1978 SC 1 and Ali Khan v. The State 1980 SCMR 474 ref.

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

---S. 302---Burden of proof---Initial burden to prove the guilt of accused lies upon the prosecution, but when a specific plea is raised by the accused in his defence the burden to prove the same lies on him and both are to be considered in juxta-position and the one nearer to the truth is to be given weight.

Abdul Wahid v. The State 2003 SCMR 668 ref.

**(e) Appeal (Criminal)---**

---Disagreement of Appellate Court with the conclusion of Trial Court---Practice and procedure---Essentials---Appellate Court while disagreeing with the conclusion of the Trial Court on the point of fact will have to take into account the reasons advanced by the Trial Court and must give its own reasons for such disagreement, which should proceed on some logical basis---Disagreement of the Appellate Court with the Trial Court's finding without disclosing any logical basis therefore cannot have binding effect.

Suleman Habibullah, Advocate-on-Record for Petitioners.

Abdul Rahim Kazi, Advocate Supreme Court for Respondent No. 1.

Dr. Kazi Khalid Ali, Additional Advocate-General, Sindh for Respondent No.2.

Date of hearing: 25th April, 2005.