

**[Supreme Court of Pakistan]**

**Present: Abdul Hameed Dogar, C.J. and Ch. Ejaz Yousaf, J**

**TAHIR JAVED----Appellant**

**Versus**

**THE STATE----Respondent**

Criminal Appeals Nos.770 and 771 of 2006, decided on 5th September, 2008.

(On appeal from the judgment, dated 3-5-2005 in Criminal Appeal No.339-J of 2002 passed by the Lahore High Court, Lahore).

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

---S. 302(b)/34---Appraisal of evidence---Benefit of doubt---Occurrence was unseen and the prosecution case had rested only on circumstantial evidence---Extra-judicial confession coming from unimpeachable source and corroborated by trustworthy evidence could only be used against the accused---In the present case extra-judicial confession having been made by accused in the presence of a number of other persons appeared to be quite improbable, because confession of such a heinous offence like murder was not normally made in the public---Extra-judicial confession was not corroborated from any independent source, inasmuch as in pursuance of the confession even the place of occurrence where the deceased was allegedly murdered, was not pointed out by any of the accused persons---Trial Court, in the absence of any corroboratory evidence, could not safely rely on the evidence of extra-judicial confession---No explanation had been offered at the trial as to why the dagger recovered at the instance of accused had reached the Laboratory after a delay of one month and four days after its dispatch by the police---Evidentiary value of the Chemical Examiner's report was therefore, greatly, marred---Report of Serologist having not been tendered in evidence, the dagger could not be said to be stained with human blood---Evidence of recovery of dagger, therefore, was of no use to prosecution---Despite the complainant having gained knowledge about the deceased being seen in the company of accused much earlier, he did not inform the police in time regarding involvement of the accused in the case and this omission was fatal to prosecution case---Occurrence, thus, had not taken place in the manner as asserted by the prosecution---Benefit of doubt was extended to accused in circumstances and they were acquitted accordingly.

Ahmed v. The Crown PLD 1951 PC 107; Sajid Mumtaz and others v. Basharat and others 2006 SCMR 231; Ziaul Rehman v. The State 2001 SCMR 1405; Tayyab Hussain Shah v. The State 2000 SCMR 683 and Sarfraz Khan v. The State and others 1996 SCMR 188 ref.

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

---S. 302(b)/34---Circumstantial evidence---Extra-judicial confession---Extent and scope---Extra-judicial confession can be used against the accused only when it comes from an unimpeachable source and trustworthy evidence is available to corroborate the same.

Ahmed v. The Crown PLD 1951 PC 107; Sajid Mumtaz and others v. Basharat and others 2006 SCMR 231; Ziaul Rehman v. The State 2001 SCMR 1405; Tayyab Hussain Shah v. The State 2000 SCMR 683 and Sarfraz Khan v. The State and others 1996 SCMR 188 ref.

S.M. Nazim, Advocate Supreme Court for Appellant (in Criminal Appeal No.770 of 2006).

Hafiz S.A. Rehman, Senior Advocate Supreme Court for Appellant (in Criminal Appeal No.771 of 2006).

Mian Asif Mumtaz, D.P.-G. Punjab for the State.

Date of hearing: 5th September, 2008.