

2010 S C M R 1791

[Supreme Court of Pakistan]

Present: Khalil-ur-Rehman Ramday and Ch. Ijaz Ahmed, JJ

ANWAR SHAMIM and another---Petitioners

Versus

THE STATE---Respondent

Criminal Petitions Nos. 828 and 847-L of 2009, decided on 1st September, 2009.

(Against the judgment dated 3-6-2009 passed by the Lahore High Court, Lahore in Criminal Appeal No. 354 of 2003 with M.R. No. 103 of 2003).

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

---Ss. 302, 109 & 148/149---Qatl-e-amd---Reappraisal of evidence---Chance witness---If chance witness reasonably explains his presence at the spot and his narration of occurrence inspires confidence then he is not a chance witness and his testimony can be considered along with other evidence.

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

---Ss. 302, 109 & 148/149---Qatl-e-amd---Reappraisal of evidence---Minor contradictions or improvements in statement of witnesses are to be over-looked, however only material contradictions are to be considered.

Ranjha v. The State 2007 SCMR 455 rel.

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

---Ss. 302, 109 & 148/149---Constitution of Pakistan (1973), Art.185(3)---Qatl-e-amd---Reappraisal of evidence---Double murder---Related witnesses---Corroboration of evidence---Scope---Trial Court convicted both the accused under S.302 (b) P.P.C. and sentenced them to death on two counts---Plea raised by accused was that eye-witnesses were related to deceased and were chance witnesses---Validity---Mere relationship between witnesses and deceased was not enough to discard their evidence---It was duty and obligation of court for corroboration of interested witnesses, to have first ascertained whether such witness had seen the occurrence and was in a position to identify accused and whether he should be believed without corroboration---Prosecution witnesses faced lengthy cross-examination but their veracity could not be shaken by defence counsel---Both the courts below came to the conclusion that statements of eye-witnesses were of such a nature that their testimony should be given due weight and were believed---If Court was satisfied about truthfulness of direct evidence then requirement of corroborative evidence was not of much significance---Corroboration was not a rule of law but was that of prudence---Accused failed to make out any justification for interference by Supreme Court while exercising constitutional jurisdiction and also failed to raise any question of law of public importance---Constitutional jurisdiction was discretionary in character and Supreme Court, keeping in view the circumstances in which two persons were murdered by accused in very cruel manner, declined to exercise discretion in their favour---Conviction and sentence awarded by two courts below was maintained by Supreme Court---Leave to appeal was refused.'

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

---Art.121---Criminal trial---Specific plea---Proof---It is duty and obligation of accused to prove the plea taken by him in his defence in terms of Art. 121 of Qanun-e-Shahadat, 1984.

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

---S. 173---Finding of police---Scope--Finding of police is not binding on court and

investigating agency has the only duty under law to collect evidence---Investigating agency has no authority whatsoever to give finding of guilt or innocence regarding accused persons under the provisions of Criminal Procedure Code, 1898, Police Act, 1861, or Police Order, 2002/Rules framed thereunder---It is only the prerogative of court to give finding, after recording evidence and statements of accused regarding guilt or innocence of accused---Deciding cases on finding of police tantamounts to delegate powers of court to investigating agency which is not permissible under the law, Constitution and conventions.

Ch. M. Ashraf Wahlah, Advocate Supreme Court for Petitioner (in Criminal Petition No. 828-L of 2009).

Kh. Basit Waheed, Advocate Supreme Court for Petitioner (in Criminal Petition No. 847-L of 2009).

Alamgir, Additional Prosecutor-General for the State.