

[Supreme Court of Pakistan]

Present: Javed Iqbal, Raja Fayyaz Ahmed and Sayed Zahid Hussain, JJ

MUHAMMAD AKRAM RAHI and others---Appellants

Versus

THE STATE and others---Respondents

Criminal Appeals Nos. 64 to 66 of 2005, decided on 9th September, 2009.

(On appeal from the judgment dated 23-4-2002 in Criminal Appeals Nos. 43-J, 108-J, 425 of 1998 and Murder Reference No. 198-T passed by the Lahore High Court, Lahore).

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

---S. 302(b)---Constitution of Pakistan, Art. 185(3)- Qatl-e-amd---Leave to appeal was granted by Supreme Court to re-evaluate the evidence in order to ascertain the validity of the identification parade and accusation against the accused, as well as to examine the contentions of the complainant in depth for enhancement of sentence.

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

---S. 302(b)---Qatl-e-amd---Appraisal of evidence---Identification of accused in identification parade being merely a corroborative piece of evidence, would be immaterial in the presence of other convincing evidence of identification---Complainant had not only identified the accused in identification parade but also during the trial, who had remained in the house of the complainant for a reasonable time---No question of any doubt qua identification of accused by the complainant would, therefore, arise---No enmity whatsoever of the complainant with the accused had been alleged---Forthright, confidence-inspiring and trustworthy ocular testimony furnished by three eye-witnesses including the complainant, was duly corroborated by medical evidence and incriminating recovery---Guilt of accused, thus, had been established to the hilt---Death sentence of one accused had been converted into imprisonment for life by High Court on cogent reasons, as admittedly fatal injury on the person of the deceased was never attributed to him---Besides, sufficient incriminating material was lacking to prove the factum of common object and common intention---Prosecution evidence had not shown any preconcert and pre-arrangement for the commission of the murder---No uncalled for leniency was given to the said accused by High Court in reducing his death sentence in circumstances---Co-accused had caused fatal injury to the deceased and his case, therefore, was distinguishable from that of the said accused---Appeals were dismissed accordingly.

Muhammad Afzal v. State 1982 SCMR 129; King v. Christie 1914 AC 545; State v. Farman Hussain PLD 1995 SC 1; Lal Pasand v. The State PLD 1981 SC 142; Abdul Sattar v. The State 1981 SCMR 678 and Muhammad Yousuf Zia v. The State PLD 1988 Kar. 539 ref.

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

---S. 302(b)---Qatl-e-amd---Appraisal of evidence-Absence of identification parade---Effect---Where identity of accused is proved by other convincing direct or circumstantial evidence, the absence of identification test proceedings will be immaterial.

Muhammad Afzal v. State 1982 SCMR 129 and King v. Christie 1914 AC 545 ref.

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

---Art. 22---Identification parade---Necessity of---Identification parade becomes essential and inevitable only when a witness gets a momentary glimpse' of the accused and he claims that he would be able to identify the accused.

State v. Farman Hussain PLD 1995 SC 1 ref.

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

---S. 302(b)---Qanun-e-Shahadat (10 of 1984), Art. 22---Qatl-e-amd---Appraisal of evidence---
Identification parade, importance of---Prosecution witness can even identify the accused in court
and it is not the legal requirement that identification parade must be held in all the cases.

Lal Pasand v. The State PLD 1981 SC 142; Abdul Sattar v. The State 1981 SCMR 678 and
Muhammad Yousuf Zia v. The State PLD 1988 Kar. 539 ref.

Sardar Muhammad Siddique Khan, Advocate Supreme Court for Appellants (in Criminal Appeal
No. 64 of 2005).

M.A. Zafar, Advocate Supreme Court for Appellants (in Criminal Appeals Nos. 65 and 66 of
2005).

Khawaja Sultan Ahmed, Senior Advocate Supreme Court for Respondent No. 1 (in Criminal
Appeal No. 65 of 2005).

Nemo for Respondents Nos. 1 and 2 (in Criminal Appeal No. 66 of 2005).

Raja Shahid Mahmood Abbasi, D.P.-G for the State (in all cases).

Date of hearing: 9th September, 2009.