

P L D 1953 Federal Court 93

(Appellate Jurisdiction)

Before Abdul Rashid, C. J., Shahabuddin and Cornelius, JJ

SAFDAR ALI- Appellant

versus

THE CROWN-Respondent

Criminal Appeal No. 5 of 1952, decided at Dacca on 5th December 1952.

(On appeal from the judgment and order of the High Court of Judicature at Lahore, dated the 13th June 1951, in Criminal Appeal No. 660 of 1950).

(a) Evidence Act (I of 1872),

S. 105-Object-To relieve prosecution of necessity to prove absence of facts that might bring case under exception-Burden of general issue always on prosecution -Accused's burden not as heavy as that on prosecution-Accused failing to prove special pleading but succeeding in raising reasonable doubt, entitled to acquittal-"Whole of the evidence" to be looked to in entirety and not merely special pleading of accused irrespectively of prosecution evidence-No conflict between section 105 and principle laid down in Woolmington's case (L R 1935 A C p. 462).

Per Abdul Rashid, C. J.--Section 105 of the Evidence Act has been enacted in order to make it clear that it is not the duty of the prosecution to examine all possible defences that might be taken on behalf of the accused, and to prove that none of those defences would be of any assistance to him. The principles laid down in Woolrnington's case are applicable with full force in Pakistan in spite of the provisions of section 105 of the Evidence Act.

In a criminal case, it is the duty of the Court to review the entire evidence that has been produced by the prosecution and the defence. If, after an examination of the whole evidence, the Court is of the opinion that there is a reasonable possibility that the defence put forward by the accused might be true, it is clear that such a view reacts on the whole prosecution case. In these circumstances, the accused is entitled to the benefit of doubt, not as a matter of grace, but as of right, because the prosecution has not proved its case beyond reasonable doubt.

The general observations made above shall not be taken to apply to any question relating to insanity as no such question arises in the present appeal.