

P L D 1966 Supreme Court 664

Present: A. R. Cornelius, C. J., Hamoodur Rahman and Muhammad Yaqub Ali, JJ

Criminal Appeal No. 1 of 1965

THE STATE-Appellant

Versus

MANZOOR AHMAD-Respondent

AND

Criminal Appeal No. 2 of 1965

MUHAMMAD ISMAIL KHAN-Appellant

Versus

(1) MANZOOR AHMAD, AND

(2) THE STATE-Respondents

Criminal Appeals Nos. 1 and 2 of 1965, decided on 15th April 1966.

(On appeal from the judgment and order of the High Court of West Pakistan, Lahore, dated the 10th December 1962, in Criminal Appeal No. 217 of 1962/,Murder Reference No. 76 of 1962).

(a) Constitution of Pakistan (1962), Art. 58(3) - Leave to appeal to Supreme Court-Granted to consider whether appraisal of evidence by High Court (while passing an order of acquittal in an appeal from convictions for murder) was made upon correct principles.

(b) Constitution of Pakistan (1962), Art. 58 - (Criminal appeal)-Sessions Court convicting accused on charge of murder and passing sentence of death-High Court acquitting in appeal, doubting prosecution had succeeded in establishing "any circumstances" on which it had rested-Case depending "wholly" on circumstantial evidence -"Re-appraisal" of evidence by Supreme Court.

(c) Criminal trial-Circumstantial evidence-(Cries from victim of murder)-Two "high-spirited young men" fighting in a closed room in first floor of a suburban building "over love of a girl" - No cries for help expected in such circumstances, especially when knife injuries had cut through vocal organs of deceased.

(d) Criminal trial-(Witness)-(Murder case)-Boy-servant of tea-shop, indulging in "prevarications - Whether "safe to rely" in statement of such witness.

(e) Circumstantial evidence-Not explainable on any hypothesis consistent with total innocence of accused-Onus heavy on accused to furnish explanation for such evidence Onus cannot be discharged by merely hinting of "possibilities" or "suggesting some remoter hypothesis".

(f) Circumstantial evidence-Inference of guilt when to be made-"Straining" of evidence "in favour of accused" or of prosecution deprecated.

In a case resting wholly on circumstantial evidence the Court must remember that the "processes of inference and deduction are essentially involved-frequently of a delicate and perplexing character-liable to numerous causes of fallacy." Mere suspicion will not be sufficient to justify conviction. Before the guilt of the accused can be inferred merely from inculpatory circumstances those circumstances must be found to be incompatible with the innocence of the accused and "incapable of explanation upon any other reasonable hypothesis than that of his guilt." The circumstances sought to be relied upon must have been established beyond all doubt. But this only means a reasonable doubt, i.e. a doubt such as would assail a reasonable mind and

not any and every kind of doubt and much less a doubt conjured up by pre-conceived notions. But once the circumstances have been found to be so established they may well furnish a better basis for decision than any other kind of evidence. As Hewart, I. C. J. observed in the case of Percival Leonard Taylor, James Weaver & George Thomas Donovan (1828) 21 C A 20 "it is no derogation of evidence to say that it is circumstantial.

PER HAMOODUR RAHMAN, J.:-

"Straining of the evidence either in favour of the prosecution or in favour of the accused is a practice that I would deprecate but I would undoubtedly, in accordance with the established principles of administration of criminal justice in our Courts, be prepared to resolve all genuine and reasonable doubts, if any, arising in favour of the accused person. It is always dangerous to indulge in the straining of evidence, for once the process of straining begins there is no knowing where it will end.

Percival Leonard Taylor, James Weaver & George Thomas Donovan (1928) 21 C A 20 ref.

Wills' Treatise on Circumstantial Evidence.

(g) Criminal trial-(Evidence)-Lack of direct evidence connecting accused or any other person with murder-Does not mean that guilt cannot be fixed-Court to examine probabilities in light of circumstances of case.

In a case where there is no direct evidence to show as to in what precise manner the victim came to be killed the Court has to discharge its onerous duty of determining whether the death was caused by the felonious act of some other person and, if so, what offence, if any, had been committed by such a person. It is not sufficient in such a case to say that since there is no direct evidence to connect any one with the felonious act the guilt cannot be fixed. It is precisely in such cases that it is the duty of the Court to examine the probabilities in the light of the indirect evidence of the injuries on the deceased, the nature and condition of the place where the incident took place, the articles found there, the motive for the crime and the other surrounding circumstances proved.

(h) Criminal trial-(Injuries)-Abrasions plus fatal injuries in neck cutting through vocal organs-No injury being post-mortem according to medical evidence-Abrasions proof of struggle preceding fatal injuries.

(i) Criminal trial-(Evidence)-Theory put forward by accused equally probable as prosecution version -Accused's theory to be accepted-Benefit of all doubts must be given to accused.

(j) Penal Code (XLV of 1860), S. 100 read with S. 300, Exception 4-Right of self-defence-(Not pleaded by accused)Right not available where accused had overpowered deceased, thrown him on the ground and disarmed him of the knife with which accused then caused fatal injuries to deceased-Right of self-defence cannot be justifiably pleaded when accused, in a sudden quarrel, takes an "unfair advantage".

(k) Acquittal--Appeal from order of acquittal passed by High Court in case of conviction for murder-Supreme Court set aside order of acquittal on ground of "grave miscarriage of justice", where the accused, in evidence, could be found guilty of an offence under 5.304, Part I, Penal Code (XLV of 1860).

Criminal Appeal No. 1 of 1965

Aslam Riaz Hussain, Additional Advocate-General, West Pakistan (Ahmad Khan Kazi, Advocate Supreme Court, with him) instructed by Ijaz Ali Attorney for Appellant.

Nazir Ahmad Khan, Senior Advocate Supreme Court (Barkat Ali Saleemi, Advocate Supreme Court, with him) instructed by Saddiq & Co. Attorneys for Respondent.

Criminal Appeal No. 2 of 1965

Mushtaq Hussain Khan, Advocate Supreme Court, instructed by Hussain & Co., Attorneys for Appellant.

Nazir Ahmad Khan, Senior Advocate Supreme Court (Barkat Ali Saleemi, Advocate Supreme Court, with him) instructed by Siddiq & Co. Attorneys for Respondent No. 1.

Aslam Riaz Hussain, Additional Advocate-General, West Pakistan (Ahmad Khan Kazi, Advocate Supreme Court with him) instructed by Ijaz Ali, Attorney for Respondent No. 2.

Dates of hearing: 1st, 2nd and 3rd February 1966.