

P L D 2006 Supreme Court 538

Present: Mian Shakirullah Jan, Ch. Ijaz Ahmed and Syed Jamshed Ali, JJ

ABDUL MATEEN---Petitioner

Versus

SAHIB KHAN and others---Respondents

Criminal Petition No.39-Q of 2005, decided on 17th April. 2006.

(On appeal from the order dated 8-8-2005 passed by the High Court of Balochistan in Criminal Appeal No.136 of 2005).

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

---S. 417---Appeal against acquittal---Principles---Superior Courts while dealing with appeal against acquittal interfere only in such cases where judgment and acquittal is based on misreading and non-appraisal of evidence or is speculative, artificial, arbitrary and foolish on its face.

(b) Confession---

---Extra judicial confession---Proof---Extra judicial confession must be proved by evidence of very high and un-impeachable character.

(c) Penal Code (XLV of 1860)-

--S. 302 (b)---Constitution of Pakistan (1973), Art.185 (3)---Reappraisal of evidence---Circumstantial evidence---Extra judicial confession---Proof---Accused was convicted and sentenced to life imprisonment under S.302 (b) P.P.C. but High Court in exercise of appellate jurisdiction acquitted him---Validity---High Court rightly concluded that discovery of dead body on pointation of accused 'was highly doubtful as prosecution failed to bring on record any memo. about seizure of dead body on pointation of accused coupled with the fact that memo. was prepared for recovery of blood stained earth from place of occurrence but the same had not mentioned recovery of dead body of deceased on pointation of accused---Prosecution did not corroborate such piece of evidence through any independent piece of evidence---High Court had also, after proper re-appraisal of evidence on record, found recovery of weapon of offence from the accused to be shrouded in doubt---Supreme Court declined to interfere with judgment of acquittal passed by High Court---Leave to appeal was refused.

Ghulam Sakindar and another v. Mamaraz Khan and others PLD 1985 SC 11 fol.

(d) Constitution of Pakistan (1973)---

---Art. 185---Appeal to Supreme Court---Criminal trial---Presumption of innocence---Duty of prosecution---Accused in criminal trial is presumed to be innocent unless proved otherwise---When accused is acquitted by High Court on his appeal against conviction, he earns double presumption of innocence---Burden heavily lies on prosecution to rebut such presumption.

(e) Criminal trial---

---Conviction---Evidence---Principles---Evidence, which requires corroboration and cannot corroborate each other, is not legal basis for conviction.

Empress v. Jadub Das ILR 127 Kai. 295 and Machia and 2 others v. The State PLD 1976 SC 695 rel.

(f) Criminal trial--

---Recovery---Corroboration---Principles---Even if recovery is believed, it is only corroborative---When there is no evidence on record to be relied upon, then there is nothing

which can be corroborated by recovery.

Saifullah's case 1985 SCMR 410 rel.

(g) Criminal trial---

---Finding of guilt---Proof---Finding of guilt against accused cannot be based only on probabilities that may be inferred from evidence in a given case---Such finding should rest firmly on evidence produced.

Muhammad Ramzan's case PLD 1984 SC 184 rel.

(h) Constitution of Pakistan (1973)---

---Art. 185---Appellate jurisdiction of supreme Court---Scope---Conclusion of High, Court---Interference---Principles---Supreme Court under Art.185 of the constitution, cannot interfere in conclusions arrived at by High Court, unless and until the conclusions are result of perversity and arbitrary.

Malik Muhammad Ishaque's case PLD 1977 SC 109 rel.

M.Ayaz Khan Swati, Advocate Supreme Court for Petitioner.

Nemo for Respondent.

Date of hearing: 17th April, 2006.