

P L D 1966 Supreme Court 708

Present: A. R. Cornelius, C. J., S. A. Rahman, Fazle-Akbar, B. Z. Kaikaus and Hamoodur Rahman, JJ

Criminal Appeal No. 8 of 1965

NUR -ELAHI-Appellant

Versus

(1) THE STATE

(2) ZAFARUL HAQ

(3) NAWAZ-UL-HAQ-Respondents

AND

Criminal Appeal No. 9 of 1965

NUR ELAHI-Appellant

Versus

(1) Ch. IKRAM-UL-HAQ

(2) THE STATE-Respondents

Criminal Appeals Nos. 8 and 9 of 1965, decided on 12th November 1965.

(On appeal from the judgments and orders of the High Court of West Pakistan, Lahore, dated the 17th August 1964, and 9th November 1964, in Criminal Revision No. 774 of 1964 and Criminal Miscellaneous Case No. 1029 of 1964, respectively).

(a) Constitution of Pakistan (1962), Art. 58(3)-Leave to appeal to Supreme Court-Granted to consider question whether "special procedure" laid down by High Court for trials of two cases relating to same murder instituted respectively by police and a private complainant, against two quite separate sets of accused, had the "sanction of law".

(b) Criminal Procedure Code (V of 1898), Ss. 233 & 239 read with S.43, Evidence Act (I of 1872)--Criminal trial-Separate trials on private complaint and police challan relating to same murder-Procedure recommending examination of common witnesses only once and their statements read out as evidence in other case not supportable-[Ali and others v. The Crown P L D 1954 Lah. 183

Noor Ahmad v. The State and Rahim Bakhsh v. The State P L D 1964 S C 120 and Ali Muhammad v. Amir Ali and others Criminal Miscellaneous No. 998 of 1945 ref.].

(c) Criminal Procedure Code (V of 1898), S. 498-BailAccused in murder case admitted to bail by High Court on medical grounds-Separate trials for murder involving two different versions sponsored by private complaint and police challan-One version "entirely" favourable to accused-Supreme Court declined to interfere.

(d) Criminal Procedure Code (V of 1898), Ss. 233 & 239 read with Ss. 208, 213, 270, 286 & 540-A-(Separate or joint trial)(Murder case)-(Commitment proceedings)-Two versions of case, with two totally different sets of accused, put forward by complainant in private complaint and by State in police challan-Committing Magistrate making two orders of commitment-Procedure to be adopted by Sessions Judge at trial-By majority: per S. A. Rahman, J., Cornelius, C. J., Fazle-Akbar and Hamoodur Rahman, JJ., agreeing: Complaint case to be taken up first and prosecution witnesses listed in police challan to be also examined, "as Court witnesses" under S.

540-A-Police challan to be taken up only if complaint case results in acquittal and in case of conviction, police case to be withdrawn by Public Prosecutor under S. 494, Criminal Procedure Code (V of 1898)-Per Kaikaus, J., contra: Difficulties to be encountered in adopting procedure recommended in majority judgment-Procedure does not solve difficulty in legal manner-Principle of "consolidation" of proceedings in civil matters-Civil Procedure Code (V of 1908), S. 151-Inherent powers of Court to adopt procedure not prohibited by Civil Procedure Code (V of 1908)-Consolidation of criminal proceedings not open to objection No express prohibition in Criminal Procedure Code (V of 1898) against joint trials in cases other than those permitted by Code Difficulties following from provisions of S. 270, Criminal Procedure Code (V of 1898) that all trials before a Court of Sessions are to be conducted by a Public Prosecutor-Proper course for Public Prosecutor to lay both versions before Court-No bar to joint committal of both sets of accused.

(e) Evidence Act (I of 1872), S. 43-Debars reading of evidence recorded in another case as evidence in case in hand-[Criminal trial-Evidence]-Violation of rule vitiates judgment.

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Ijaz Hussain Batalvi, Advocate Supreme Court, instructed by Ziaudin Ahmad Qureshi, Attorney for Appellant.

S. Nasiruddin, Advocate-General West Pakistan (Iftikharul Haq Khan, Advocate Supreme Court with him), instructed by Ijaz Ali, Attorney for Respondent No. 1.

Nazir Ahmad Khan, Senior Advocate Supreme Court (Iqbal Ahmad Siddiqui, Advocate Supreme Court with him), instructed by Maqbool Ahmad Qadri, Attorney for

Respondents Nos, 2 and 3,

Criminal Appeal No. 9 of 1965

Abdul Majid Asghar, Senior Advocate Supreme Court, instructed by Wali Muhammad, Senior Attorney for Appellant.

Nazir Ahmad Khan, Senior Advocate Supreme Court, Rashid Murtaza Qureshi Advocate Supreme Court, with him), instructed by S. M. Shah Mashhadi, Attorney for Respondent No. 1.

S. Nasiruddin, Advocate-General, West Pakistan, (Iftikhar-ul-Haq Khan, Advocate Supreme Court with him), instructed by Ijaz Ali, Attorney for Respondent No. 2.

Date of hearing: 12th November 1965.