2012 S C M R 101

[Supreme Court of Pakistan]

Present: *Iftikhar* ***Muhammad*** *Chaudhry, C.J.,* ***Muhammad Sair Ali, Ghulam Rabbani and Khalil-ur-Rehman Ramday, JJ***

MUHAMMAD YAMEEN—*versus ABDUL SATTAR NAREJO etc*

(For implementation of this Court's order dated 9-8-2007, whereby pre-arrest bail of respondent No.l was cancelled and he was ordered to be taken into custody forthwith).

Criminal Procedure Code (V of 1898)— ***(Arrest of Accused)***

—Ss. 54 & 154—Penal Code (XLV of 1860), S. 302—Cognizable offence—Arrest—Administration of justice—Accused was involved in a murder case and as he was an influential person, therefore, he was not arrested by police—After the occurrence, accused had been elected as Naib Nazim of a Union Council and was discharging his functions in the capacity of elected representative but the authorities knowing well about the involvement of accused in the murder case, failed to cause his arrest—Supreme Court was informed that those officers who had shown their reluctance to cause arrest of accused had been proceeded against departmentally—Effect—Supreme Court had shown its satisfaction that under the command of Regional Police Officer, all necessary steps were taken by the police for causing arrest of the accused and police had succeeded in arresting him as per the report placed on record along with remand letter—Legal course was required to be followed by all functionaries notwithstanding that what would be the position or status of wrongdoer and no one was to be considered above the law—Accused having been arrested, the law would take its own course—Application was disposed of. [p. 105] A & B Date of hearing: 11th February, 2011.

2012 S C M R 140

[Supreme Court of Pakistan]

Present: Iftikhar Muhammad Chaudhry C.J., Tariq Parvez and Amir Hani Muslim, J

JAVED IQBAL ***and another—Appellants versus THE STATE—Respondent***

Decided on 13th June, 2011

(a) ***Penal Code (XLV of I860)*** ***(Sentence in 365-A PPC, Compromise Refused)***

—S. 36S-A—Abduction for ransom—Reappraisal of evidence— Quantum of sentence—Ransom, receipt—No recovery from accused— Conviction and sentence of 14 years of imprisonment, awarded by Trial Court to accused was maintained by High Court—Plea raised by accused was that no recovery was either effected from him or on his pointation—Validity—-Plea raised by accused was insignificant as it was not the role but it was the goal of abduction for ransom which mattered—Presence of accused at the time when all accused persons picked the ransom near letter box at railway station was sufficient to connect him with the offence of abduction—Accused was also found in the company of co-accused at the time when deceased was abducted on motorcycle—Reasoning for award of sentence to accused by High Court and Trial Court were sound and did not warrant interference—Once the offence was proved, accused should have been awarded sentence of death but ***as legal***

heirs of deceased had entered into compromise with co-accused and the compromise had been accepted, therefore, Supreme Court enhanced the sentence of 14 years imprisonment to imprisonment for life with forfeiture of all moveable and immovable properties*—Appeal was dismissed, [pp. 144, 145] A, C & D*

Maulana Nawab-ul-Hassan v. The State 2003 SCMR 658 ref

2012 SCMR 94

[Supreme Court of Pakistan]

Present: Tassaduq Hussain Jillani, Mahmood Akhtar Shahid Siddiqui and Asif Saeed Khan Khosa, JJ

RIZWANA BIBI—*Petitioner versus THE STATE and another—Respondents*

Decided on 15th September, 2011

(a) Penal Code (XLV of I860)— (Quashing of FIR)

— Criminal Procedure Code (V of 1898), S.561-A— Constitution of Pakistan, Art. 35— Kidnapping for ***marriage-Quashing of F.I.R.—*** *Marriage, protection of— Appellant sought quashing of F.I.R. on the ground that prosecution was mala fide and no one had abducted her—Appellant admitted before Supreme Court that after dissolution of her earlier marriage she subsequently married the accused out of which wedlock there was a baby girl—High Court declined to quash the F.I.R. registered against husband of appellant-Plea raised by State counsel was that appellant should appear before Trial Court—Validity—Statement of appellant before Supreme Court showed that mischief clauses of S. 365-B, P.P.C. were not attracted—Judgment and decree in the suit for dissolution of marriage though ex parte, despite lapse of more than two years was not challenged by the previous husband of appellant who knew about it, as he was no longer interested to pursue her, such conduct reflected his acquiescence—Statement of appellant before Supreme Court and her marriage with a person of her choice was a constitutional command— Prayer of State counsel for quashment of cases and insistence that appellant should appeal before Trial Court was repelled—Supreme Court condoned the delay in filing of appeal and quashed the proceedings pending before Trial Court—Petition was converted into appeal and allowed accordingly, [pp. 97, 98, 101] A, B & D* ***Muhammad Siddique v. State PLD 2002 Lah. 444 rel.***

2012 S C M R 109

[Supreme Court of Pakistan]

Present: Mian Shakirullah Jan, Nasir-ul-Mulk and Mian Saqib Nisar, JJ

MUSHTAQ ***and others—Appellants*** versus THE STATE—Respondent

Decided on 28th January, 2011.

(b) Penal Code (XLV of I860)— (Confessional Statement)

—Ss. 302/34—Qanun-e-Shahadat (10 of1984), Art.43—Qatl-e-amd— Confession— Sentence, quantum of— Motive— On the basis of confessional statements made by all the three accused persons, they were sentenced to death but High Court converted sentence of one accused into imprisonment for life and maintained that of remaining two—Validity—Accused had immediate grievance against deceased for having been dismissed from

service on the allegation of theft and was turned out of the house without payment of his salary—Accused admitted that he had decided to take his revenge after he was taunted by his aunt and he was motivated by revenge—Confessional statements of all the three accused, showed that the accused was mastermind of the plan and moving spirit behind it—Accused was the only one out of the three accused who in his confessional statement admitted to have participated in killing of deceased—Such admission of accused was corroborated from confessional statements of two co-accused—No mitigating circumstances were available to modify sentence awarded to him by Trial Court and upheld by appellate Court—Supreme Court declined to interfere in sentence of death awarded to accused by the courts below—Appeal was dismissed, [p. 113J C & D

2012 PSC (Crl.)65/ PLJ 2012 SC 224

[Supreme Court of Pakistan]

Present: ***MIAN SHAKIRULLAH JAN, MAHMOOD AKHTAR SHAHID SIDDIQUI and SARMAD JALAL OSMANY, JJ.***

Tariq Mehmood **Versus** ***The State***

MURDER — (Compromise/principle of "Fasad-fil-Arz")

Constitution Of Pakistan (1973)—

--Art. 185(3)—Pakistan Penal Code, 1860, S. 302(b)— Criminal Procedure Code, 1898, S. 345(5)—Murder of two deceaseds—Matter of compromise in Supreme Court— Mens rea—Principle of 'Fasad-fil-Arz'—Factual matrix—After appellant had murdered said deceased, he had fled the spot hotly pursued by complainant party whereafter he obtained a double barrel shot gun from house of co-accused and when other mentioned deceased grabbed appellant, he allegedly shot him as well—Then appellant fled towards another village again and that time villagers also joined chase when he was cornered and apprehended by police party—In that last an exchange of fire took place between appellant and villagers during which he as well as two PWs was injured—

Analysis-Appellants' intention to do away with first mentioned deceased only with whom he had previously exchanged hot words—Subsequent death of second mentioned deceased may have caused when shot gun held by appellant went off during a scuffle between the two-Appellant was running for his life—Quantum of sentence— Validity—In those circumstances it could not be said that incident in question was either brutal or gruesome or shocking—Appellant had compromised the matter with legal heirs of the deceased—There was also nothing on record to establish whether appellant had any criminal record— Criminal appeal/compromise application was dismissed— Impugned death sentence was converted to life imprisonment—Sentence reduced. (Para 9) Ref. PLD 2010 SC 938.

2012 PSC (Crl.) 100 /2012 SCMR 215/2012 SD 90/PLJ 2012 SC 213

[Supreme Court of Pakistan]

Present: Mr. Justice Tassaduq Hussain Jillani, Mr. Justice Mahmood Akhtar Shahid Siddiqui Mr. Justice AsifSaeed Khan Khosa Criminal Appeal Nos. 55 & 56 of 2009 dismissed on 27.9..2011.

GHAZANFAR ALI ©> *PAPPU* In Cr.A. No, 56/2009:

ASGHAR ALI—***Appellants*** *versus* THE STATE

(a) ***Identification Parade****—Plea that accused were shown to identifying witnesses is usual defence plea taken to challenge the veracity of identification parade. When' such a plea is taken, the Court should examine whether it is bona fide, whether there is any other material circumstance to support it and whether the testimony of identifying witnesses inspires confidence and is corroborated by other evidence. Veracity of identification parade would be unassailable when objection raised by accused was merely an allegation and was not supported by any other material on record. (P.102,103)*

(b) ***Identification Parade****— Holding of identification parade is not mandatory as it is merely corroborative piece of evidence. If the statement of a witness qua the identity of an accused in Court inspires confidence, it is consistent on all material particulars and there it nothing in evidence to suggest that he is deposing falsely, the absence of holding of identification parade would not be fatal to prosecution. (P. 105)*

(C) Penal Code (XLV of I860)—

S. 302(b). Concurrent assessment of evidence holding accused guilty of offence under S. 302(b) by Trial Court and, High Court is not ordinarily interfered with by Supreme Court under. Art. 185(3) of the Constitution, unless there are exceptional circumstances. There being no such exceptional circumstances, Supreme Court upholding conviction/life imprisonment concurrently recorded against accused by Trial Court and High Court under S. 302(b) and refusing its interference. / (P. 108)

. ***Date of hearing: 27.9.2011.***

Ref: (1975) 4 SCC 480, (1970) 3 SCC 518, NLR 2004 SCJ 387, (1996) .8 SCC 630. 2011 SCMR 1148, (1996) 8 SCC 630, NLR 2004 SCJ 518, (1975) 4 SCC 480, (1970) 3 SCC 518.

2012 PSC Crl. 182

[Supreme Court of Pakistan]

Mr. Justice Tassaduq Hussain Jillani, Mahmood Akhtar Shahid Siddiqui and Asif Saeed Khan Khosa,JJ.)]

Junaid Rehman *and others* ***Versus*** *The State*

Abduction for ransom—

*—Offence—****Actual payment of ransom—Not essential****— From the provisions of Section 365-A, PPC and Section 2(n) of the Anti-Terrorism Act, 1997, it is quite evident that in order to constitute an offence of abduction for ransom actual payment of ransom and proof thereof are not* sine qua non *and the said offence also stands constituted if there is an abduction and the purpose of abduction is extortion of ransom (Section 365-A, PPC) or ransom is demanded for release of the abductee (Section 2(n) of the Anti-Terrorism Act, 1997).*

2012 PSC Crl. 130/ PLD 2012 SC 380

[Supreme Court of Pakistan]

(Mr. Justice Asif Saeed Khan Khosa, Ejaz Afzal Khan, Ijaz Ahmed Chaudhry, Gulzar Ahmed and Muhammad Ather Saeed, JJ.)]

Ameer Zeb Versus The State

Narcotic Substances— —Question of taking samples*—Declaration—Where any narcotic substance is allegedly recovered while contained in different packets, wrappers or containers of any kind or in the shape of separate cakes, slabs or any other individual and separate physical form it is necessary that a separate sample is to be taken from any separate packet, wrapper or container, and from every cake, slab or other form for chemical analysis and if that is not done, then only that quantity of narcotic substance is- to be considered against the accused person from which a sample was taken and tested with a positive result.*

PLD 2012 SC 179/2012 PSC Crl. 115/ PLJ 2012 SC 245

[Supreme Court of Pakistan]

Mr. Justice Tassaduq Hussain Jillani, Muhammad Sair Ali and Sarmad Jalal Osmany, JJ.)]

Sher Muhammad Unar and others Versus The State

Discharge of accused*—****Principle of Jeopardy****—The finding of guilt or innocence by the police at the investigation stage is not a finding in trial culminating in conviction or acquittal and therefore the principle of double jeopardy cannot be invoked—Even if when an accused is discharged by the Magistrate/Trial Court, the consequence would be that he is discharged from his bond at a stage when his custody is no longer required by the investigating agency—But such an order is only an executive order passed at the investigating stage when the case has yet to go for trial—Nevertheless, the Court still try him if some fresh material is brought before it.*

2012 UC 124

[Supreme Court of Pakistan]

Present: Mr. Justice Muhammad Sair Ali, Mr. Justice Asif Saeed Khan Khosa

ASMATULLAH*—Petitioner* **versus'** ***THE STATE, ETC. —Respondents***

(a) Criminal Procedure Code (V of 1898)— (Direction of Court, trial not concluded, bail granted)

S. 497. ***Non-conclusion of trial by Trial Court*** *within time limit given by High Court for conclusion of trial of a murder case would be valid ground for grant of post-arrest bail to accused* ***when a general and collective allegation had been levelled against him in the FIR****. In such case, order of High Court granting post-arrest bail to accused involved in murder case under Ss. 302.34. PPC upheld by Supreme Court and leave petition filed to challenge order of High Court dismissed. (P. 127)*

2012 UC 117

[Supreme Court of Pakistan]

Present: Mr. Justice Faqir Muhammad Khokhar Mr. Justice Mian Hamid Farooq

SALEEM AKHTAR*—Petitioner versus* ***1. THE STATE 2. NADIA IDREES—Respondents***

Not Surrendered, Bail Rejected

Criminal Procedure Code (V of 1898)— S. 498. *Accused involved in a case for offences* under *Ss. 420, 468, 471, PPC who after cancellation of his bail by High Court* ***slipped away from High Court and did not surrender*** *would be fugitive from law. In this view, Supreme Court refusing to exercise its discretion in favour of such accused seeking pre-arrest bail from Supreme Court. (P.* 120)

2012 UC 89

[Supreme Court of Pakistan]

Present: Mr. Justice Mohammad Moosa Khan Leghari Mr. Justice Sheikh Hakim Ali

MUHAMMAD UMAR @ UMRI—*Petitioner* ***versus*** *THE STATE—Respondent*

Criminal Procedure Code (V of 1898)—

S. 382B. *Trial Court and High Court denying benefit of S. 382B to convict without recording any reasons. Supreme Court converting jail petition of convict into appeal, allowing appeal and granting benefit of S. 382B to convict. (P. 91,92)*

Rel. PLD 1998 SC 152 (Ghulam Murtaza VS The State),PLD 1995 SC 485 (Liaqat Ali VS The State)

NLR 2012 Criminal 11

[Supreme Court of Pakistan]

Present: Mr. Justice Iftikhar Muhammad Chaudhry, CJ. Mr. Justice Nasir-ul-Mulk Mr. Justice Tariq Parvez JJ

ASIF AYUB—***Petitioner*** *versus* ***' THE STATE—Respondent***

(a) ***Criminal Procedure Code (V of 1898)— Ss. 497/498. Principle of consistency*** *cannot be invoked when case of accused seeking bail is not at par with his co-accused released on bail. Moreover, under S. 497 read with S.. 498, superior Courts have right to form independent opinion in respect of involvement of an accused notwithstanding the fact that one of his co-accused has been released on bail. (P. 15)*

(b) Ibid— S. 497(2). Plea of innocence cannot be raised by accused to make out a case for release on bail when role of accused indicates his ***prima facie*** *involvement in commission of offences charged against him in dismissing second successive bail application of accused charged with offences under Ss. 420/467/468/471/409/109, PPC. Supreme Court upholding such order of High Court and refusing its leave to appeal against it. (P. 14,16)*

2012 CrLJ 139

[Supreme Court of Pakistan]

Present: *Mr. Justice Mohammad Moosa K. Leghari Mr. Justice Syed Zawwar Hussain Jaffery* 'Mr. *Justice Sheikh Hakim Ali*

BADAR MUNIR—***Appellant*** **versus** ***THE STATE—Respondent***

(a) *Criminal Procedure Code (V of 1898)—* ***(Suo Motu Revisional Powers, Case Must be Remanded)***

*S**. 439 read with S. 423**. High Court is not empowered to exercise suo motu power of revision under S. 439 read with S. 423 to convert acquittal judgment into conviction judgment three years after recording of acquittal judgment. Supreme Court allowing appeal against such judgment of High Court, setting it aside and restoring acquittal judgment. / (P. 147)*

Ibid— S. 439 read with S. 423(1)(a). While exercising the powers of revision under S. 439, clause (a) of S. 423(1) has not awarded the power to appellate/revisional Court to convict any acquitted person by taking suo motu action under S. 439. The commencing words of clause (a) of S. 423(1) "provided that order of acquittal can be reversed but in such cases, the Appellate Court has ***to remit the case for further probe or for its retrial. (P. 146)***

2012 CrLJ 106

[Supreme Court of Pakistan]

Present: Mr. Justice Javed Iqbal, Mr. Justice Tassaduq Hussain Jillani Mr. Justice Raja Fayyaz Ahmed, Mr. Justice Asif Saeed Khan Khosa.

HABIBULLAH—*Appellant* ***versus*** ***THE STATE—Respondent***

(a) Zina (Enforcement of Hudood) Ordinance (VII of 1979) (Absence of any marks of violence, No ground)

S. 10(3). Prosecution would prove guilt of accused under S. 10(3) to the hilt when specific role of ***committing rape*** *has been assigned by victim in an unambiguous manner to accused by stating in a categorical manner as to how she was abducted and the manner in which rape was committed by accused. Minority of her* ***age of 11 years*** *would be no ground for discarding her statement when precautionary measures were taken by Trial Court to determine her intellectual capability by asking her certain questions which were responded by her in a responsible manner. Conviction under S. 10(3) recorded against accused by Anti-Terrorism Court and upheld by High Court maintained by Supreme Court as unexceptionable and not open to interference by Supreme Court. (P. 115.116)*

(b) Ibid— S. 10(3). Conviction under S. 10(3) can be recorded on ***solitary statement of victim*** *of rape in absence of corroboration of her statement. (P. 116,117)*

(d) Ibid— S. 10(3). ***Absence of any marks of violence*** *on body of victim would not entitle accused to benefit of doubt when rape has been proved on the basis of cogent and concrete evidence including medical evidence. Held: Marks of violence on body of victim per se are not essential to establish the factum of zina-bll-jabr.(P. 118)*

2012 UC 86

[Supreme Court of Pakistan]

Present: Mr. Justice Sardar Muhammad Raza Khan Mr. Justice Mahmood Akhtar Shahid Siddiqui

Jail Petition No. 330 of 2008 dismissed on 10.11.2009. (On appeal from the judgment dated 24.11.2008 of the Lahore High Court, Multan Bench, Multan passed in Crl.A. No. 784/02 &M.R. No. 741/02).

RANA MUHAMMAD ASLAM—*Petitioner* ***versus*** *THE STATE—Respondent*

Penal Code (XLV of I860)—

S. 302. Promptness with which FIR was lodged and post-mortem examination *was conducted would rule out the possibility of false involvement of accused in murder case. Prosecution case in such circumstances would be established beyond any shadow of doubt against accused who had simply denied the occurrence. Death sentence concurrently awarded to accused by Trial Court and High Court maintained by Supreme Court as there was nothing on record to persuade Courts below to award lesser punishment. (P. 89)*

2012 SD 52

[Supreme Court of Pakistan]

Present: Mr. Justice Javed Iqbcd, Mr. Justice Anwar Zaheer Jamali

In Cr.P. 177/2011: **MUHAMMAD ZAHOOR**

In Cr.P. 178/2011: **ZAHID HUSSAIN**

In Cr.P. 1.79/2011: **ATHAR NAQVI**

In Cr.P. 180/2011: **EJAZ AHMED SHEIKH**—*Petitioners versus THE STATE*

(a) Criminal Procedure Code (V of 1898)— S. 497. ***Bail plea by accused involved in NICL case*** *and facing prosecution for offences under Ss. 409/420/468/471 read with S. 5(2), Prevention of Corruption Act, 1947* ***Refusal of bail by High Court*** *after tentative appreciation evidence in accordance with material available and arriving conclusion that prima facie a case is made out against being well-based would not warrant interference by Supreme Court.* ***Order of refusal of bail by High Court upheld by Supreme Court*** *by refusing leave to accused to appeal against it. (P. 59,62)*

"For the reasons to be recorded separately, bail applications moved by Muhammad Zahoor, Zahid Hussain and Ejaz Ahmed Sheikh ***dismissed.*** *However, Athar Naqvi, petitioner Cr.P. No. 179/2011 shall remain on bail pursuant to order passed by this Court on 29.4.2011 on the conditions as enumerated therein. The Medical Superintendent Services Hospital, Jail Road, Lahore is directed to constitute a Board where Athar Naqvi shall appear after six months and after receipt of the opinion to be formulated by the Board, the matter qua confirmation of would be decided". High Court Upheld/Leave Refused.*

2012 SCMR 242/2012 SD 63/2012 PSC Crl 224

[Supreme Court of Pakistan]

Present: Mr. Justice Tassaduq Hussain Jillani, Mr. Justice Mahmood Akhtar Shahid Siddiqui Mr. Justice AsifSaeed Khan Khosa

Crl. Review Petition No. 20 of 2010 in Jail Petition No. 21 of 2009 dismissed on 29.9.2011. (To review the judgment of this Court dated 12.11.2009 passed in Jail Petition No. 21 of 2009)

ALI HASAN @ J AMSHAID—*Petitioner versus THE STATE—Respondent*

(b) ***NADRA Record****-There is no cavil to the proposition that entry made in NADRA record as to age would not be conclusive proof of the age of holder of National Identity Card issued by NADRA. (P. 71,72)*

(c) ***Minority of accused****— Plea of minority by an accused is a special plea intended to take the accused off the noose and onus is thus on him to prove the same. Such a plea of minority must be taken by the accused at the earliest possible opportunity, preferably during course of investigation so that requisite evidence about the age of accused could also be properly collected during the said exercise of collection of evidence. Any delayed claim as to minority should be met by adverse inference. Whenever such a question of age is raised or arises at the trial, the Courts should not deal with it in a cursory or in a slipshod manner but must proceed to hold an inquiry into the matter as commanded by S. 7, Juvenile Justice System Ordinance, 2000 including medical examination of accused for the purpose. (P. 68,69)*

2012 SCMR 334

[Supreme Court of Pakistan]

Present: Tassaduq Hussain Jillani, Muhammad Sair Ali and Sarmad Jalal Osmany, JJ

ALI KHAN KAKAR ***and 2 others—Petitioners versus HAMMAD ABBASI—Respondent***

H. R. C. No.3087 of 2006, C M. A. No.28-Q of 2006 and Civil Petition No. 1393 of 2010, decided on 17th October, 2011. (Complaint from Director of Human Rights, Balochistan, Quetta).

Penal Code (XLV of I860)—

—Ss. 302 & 307/34—Explosive Substances Act (XI of 1908), S. 3— ***Criminal Procedure Code (V of 1898), Ss. 35 & 397****—Constitution of Pakistan, Art. 184(3)—Human rights case—Suo motu review—* ***Different cases of bomb blasts and consequent murders against the accused****—Accused was convicted for murder of ten persons and sentenced to death on ten counts; under S.3 of Explosive Substances Act, 1908 and sentenced to death and under S. 302, P P.C. and sentenced to imprisonment for life—Appeals by accused in such cases were dismissed by High Court and Supreme Court—Powers of Supreme Court to reduce the sentences or direct running thereof concurrently— Scope—Discretionary power vested in a court to direct* ***subsequent sentence to run concurrently with previous sentence awarded to an accused would be exercised in the light of facts of circumstances of each case depending on nature and gravity of offence****—Cases registered against accused pertained to bomb blasts and consequent murders, which must have caused a sense of suicidal insecurity—High Court and Supreme Court had already exercised their discretion—****No case for suo motu review was made out****—Supreme Court dismissed human rights case in circumstances, [p. 344] A*

2012 S C M R 229

[Supreme Court of Pakistan]

Present: Khilji Arif Hussain and Amir Hani Muslim, JJ

Mst. INAYATAN KHATOON ***and others—versus MUHAMMAD RAMZAN and others—***

decided on 11th November, 2011. (On appeal from order dated 31-5-2011 of the High Court of Sindh, Circuit Court, Larkana, passed in Criminal Revision Application No.3 of 2011).

(b) Illegal Dispossession Act (XI of 2005)—

*—Ss.4 & 5—Criminal Procedure Code (V of 1898), Ss. 154, 173, 190 & 200—Cognizance of offence—Investigation and procedure— "Cognizable case" and "private complaint"— Distinction—**Trial of an accused under Illegal Dispossession Act, 2005, cannot be equated as trial in a complaint case under S.190, Cr.P.C**.—Court, under S.5 of Illegal Dispossession Act, 2005, may order Incharge of Police Station to investigate the matter and report—Illegal Dispossession Act, 2005, itself is a special law and overrides provisions of Criminal Procedure Code, 1898, in terms of S.4 of Illegal Dispossession Act, 2005— Complaint under Illegal Dispossession Act, 2005, can be equated as complaint under S.154, Cr.P.C, whereas report under S.5(l) of Illegal Dispossession Act, 2005, can be equated as report under S.173, Cr.P.C.—Trial Court on perusal of such report and other material can take cognizance as provided under S.190, Cr.P.C. but in no way the complaint under S.5(l) of Illegal Dispossession Act, 2005, can be equated with private complaint to be processed under S.200, Cr.P.C. before a Magistrate, [p. 233]*

NLR 2012 Criminal 1

[Supreme Court of Pakistan]

Present: Mr. Justice Iftikhar Muhammad Chaudhry, CJ. Mr. Justice Nasir-ul-Muik Mr. Justice Tariq Parvez

Criminal Petition No. 371 of 2008 dismissed on 30.6.2010. (On appeal from the judgment dated 26.8.2008 passed by the Peshawar High Court, Peshawar in Criminal Appeal No. 205 of 2006).

KASHIF AMIR—*Petitioner versus THE STATE—Respondent*

***(a) Control of Narcotic Substances Act (XXV of** 1997)—*

*S. 9(c). In a case of **recovery of narcotic substance from secret cavities** of vehicle driven by accused, plea raised by accused that he had no knowledge about transportation narcotics in the vehicle being, driven by him would have substance. In such case, Trial Court and High Court would right in their concurrent judgments convicting accused w sentence of life imprisonment. Supreme Court upholding such judgment of High Court and refusing its leave to appeal against it. (P.5)*

***(b) Ibid—**S. 9(c). It is well-settled principle that **a person who on driving seat of the vehicle shall be held responsible transportation of the narcotics in the vehicle.** He cannot raise the plea that he had no knowledge of such transportation. (P.5)*

*(c) **Ibid—** S. 9(b) No condition or qualification has been made S. 9(6) that the possession should be an exclusive one. Possession under S. 9(b) can be joint possession with two more persons. Furthermore, when a person is driving vehicle, he is incharge of the same and it would be under control and possession, hence, whatever articles is lying i: would be under his control and possession.*

(d) ***Ibid—****. 29. Prosecution would discharge its burden by proving that narcotic substances were recovered from possession of accused. Held:* ***Accused had failed to discharge the burden shifted to him under S. 29 (d).***

(e) **Ibid—** *S. 9(c).* ***Destruction of charas and opium recovered from possession of accused*** *without notice to him but by following procedure prescribed in S. 516A, CrPC would be lawful. (P. 7,8)*

(f) **Ibid—** *S. 9.* ***Question with regard to non-sending of entire narcotics recovered*** *from accused to_ Chemical Examiner for his report would arise in those cases where a challenge has been made that material recovered from possession of accused was not narcotic. This question would not arise when material recovered from possession of accused was admittedly narcotic. In such case, 10% samples out of 193 kg charas and 1% sample of 5 kg opium recovered from possession of accused would be rightly sent to Chemical Examiner for his report. (P. 10)*

(g) **Ibid-** *S. 9. Plea raised by accused that he had no knowledge of narcotics transported in vehicle driven by him would not be confidence inspiring when narcotics were concealed in especially designed cavities of vehicle driven by him. (P. 10)*

2010 SCMR 927, 2010 SCMR 27, 1988 SCMR 1899, 2007 SCMR 1378, 2007 SCMR 1591, 2005 SCMR 1487, PLD 2003 Kar 606, 2003 SCMR 54

2012 UC 161

[Supreme Court of Pakistan]

Mr. Justice Iftikhar Muhammad Chaudhry, CJ. Mr. Justice Muhammad Sair Ali Mr. Justice Jawwad S. Khawaja, Criminal Petition No. 320 of 2009 disposed of on 15.7.2009.

TALIB HUSSAIN—*Petitioner* **versus** *THE STATE—Respondent* ***(Procedure for trial)***

(a) ***Witnesses—****Non-attendance of witnesses would be a serious matter when it was a case* ***under Arts. 3, 4, Prohibition (Hadd) Order. 1979*** *in which police had raided house of accused and all witnesses belonged to police department but they were reluctant to appear in the Court although their non-bailable* warrants *of arrest had been issued and DPO had been asked to effect the warrant of arrest upon P.Ws. (P. 164)*

(b) ***Prosecution Witnesses—*** *Non-production of prosecution witnesses inspite of their bailable and non-bailable warrants of arrest issued by Trial Court would give rise to two possibilities, that, either the case is false and prosecution has not come forward with evidence or accused is influential person and has prevailed upon P.Ws. not to depose against him so he may arrange his bail and ultimate acquittal from the Court. In these circumstances, Supreme Court directing DPO to execute order of Trial Court and take responsibility to produce all the police officials who were witnesses in the case. Supreme Court also directing DPO to submit report to Supreme Court indicating as to why witnesses were reluctant to appear in the Court. Supreme Court further directing Trial Court to complete trial in instant case within a week and transmit copy of its judgment to Supreme Court.* ***(Same Case Law…. 2010 SCMR 69)***

NLR 2012 Criminal 162

[Supreme Court of Pakistan]

Present: Mr. Justice Javed Iqbal Mr. Justice Jawwad S. Khawaja Mr. Justice Anwar Zaheer Jamali

Civil Appeal No. 1863 of 2005. (On appeal from the order dated 6.4.2005 of the Lahore High Court, Rawalpindi Bench, in ICA No. 20/2004).

DR. SHER AFGHAN KHAN NIAZI—*Appellant* ***versus*** *ALI S. HABIB AND OTHERS*—

(a) Constitution of Pakistan, 1973— *Art. 199.* ***Exercise of jurisdiction under Art. 199 to quash FIR*** *at premature stage for offences under Ss. 322, 324, 337G/279/420/427, PPC* ***would not be warranted*** *when case against accused persons* ***revolved around determination of facts*** *by recording of evidence as to whether SRS (Supplementary Restraint System) airbag installed in Toyota motor car driven by deceased was mal-manufactured and did not provide sufficient and requisite safeguard to deceased. Single Judge would be wrong in accepting writ petition of accused persons by ordering quashment of FIR while Division Bench would be right in dismissing ICA filed by complainant to challenge order of Single Judge. Supreme Court allowing appeal, with leave, of complainant, setting aside judgments of Single Judge and Division Bench and directing investigating officer to proceed with the matter in accordance with law in a fair and transparent manner as it would be in the interest of justice. (P. 173,176,177)*

(b) ***Ibid-****Art. 199.* ***FIR cannot be quashed*** *by High Court in exercise of its jurisdiction under Art. 199* ***merely on ground that a civil suit has been filed and that the matter falls within jurisdictional domain of the Civil Court.*** *(P. 177,178)*

(c) ***Ibid-****Art. 199 read with §. 561A, Cr.P.C. Well-entrenched practice of High Court seems to be that* ***proceedings would not be quashed*** *ordinarily by invoking provisions of Art. 199 read with S. 561A* ***unless Trial Court has exercised its powers under S. 249A or S. 265K, Cr.P.C.*** *However, in exceptional cases, the power as conferred upon High Court under S. 561A can be exercised.(P. 187)*

(d) ***Ibid-*** *Art. 199. It would be for* ***police or Trial Court to determine ingredients of Ss. 322 and 420, PPC*** *on the basis of evidence to be evaluated by it at first instance. No opinion should be formed by High Court in this regard by exercising its jurisdiction under Art. 199 read with S. 561A, Cr.P.C. (P. 178)*

(f) ***Constitution of Pakistan, 1973—*** *Art. 199 (1).* ***Words "adequate remedy"*** *used in Art. 199(1) connotes an efficacious, convenient, beneficial, effective and speedy remedy. It should be equally inexpensive and expeditious. To effectively bar the jurisdiction of High Court under Art. 199 on ground of availability of adequate remedy, the remedy available under the law must be able to accomplish the same purpose which is sought to be achieved through petition under Art. 199.* ***The other remedy in order to be adequate must be equally convenient, beneficial and effective. The relief afforded by ordinary remedy must not be less efficacious, more expensive and cumbersome to achieve as compared to that provided under Art. 199.*** *(P. 179)*

(h) ***Ibid****— Art. 199. Disputed questions of fact cannot be investigated by High Court in exercise of its jurisdiction under Art. 199.* (P. 182)

(*j*) ***Criminal Procedure Code (V of 1898)—*** *S. 561 A. There can be no cavil to the proposition that it is generally accepted that inherent jurisdiction should not normally be invoked where another remedy is available.*

Inherent powers are preserved to meet a lacuna in Cr.P.C*. in extraordinary cases and are not intended for vesting the High Court with powers to make any order which it is pleased to consider to be in the interests of justice. Inherent powers under S. 561A are controlled by principles and precedents as are express statutory powers.*

(k) ***First Information Report (FIR)—****Quashment of FIR for offences under Ss. 322, 324, 337G, 279, PPC by High Court at premature stage by invoking jurisdiction under Art. 199 of the Constitution read with S. 561A, Cr.P.C. Supreme Court, on appeal by complainant, holding that the case revolved around determination of facts which required recording-of evidence and, as such, High Court was not justified to quash the FIR by exercising its jurisdiction under Art. 199 read with S. 561A, Cr.P.C.* ***Supreme Court accepting appeal, setting aside judgment of High Court and directing investigating officer to proceed with investigation in a just and transparent manner.***

2012 PSC (Crl.) 159/PLJ 2012 SC 231/2011 SCMR 437

[Supreme Court of Pakistan]

Present: ***IFTIKHAR MUHAMMAD CHAUDHRY, HCJ. and KHILJI ARIF HUSSAIN, J.***

Suo Motu Case No. 19 of 2011, decided on 13th December, 2011.

(Suo Motu action regarding non-payment of the compensation amount to the poor electrician, who has been pressurized by the political figure of PML(N) as well as by the police to enter into a compromise with the accused murderers of his 12-years old son).

CONCLUSION ***(Amount of Diyat …. Determination at the time of Compromise)***

(1) As far as amount of Diyat is concerned, the ***same*** *shall be determined according to the prevailing rate of Diyat at the time when the compromise is effected.*

(a) Pakistan Penal Code (XLV of 1860)—

—S. 310; Explanation—Word "property"—Connotation—The word "property" includes both the movable and immovable property, therefore, compensation equal to NISAB prevailing at the time when the compromise is effected after determining the value of the movable and immovable property can also be passed. (Para 7)

(b) Pakistan Penal Code (XLV of 1860)—

—S. 323—Amount of Diyat—Object and purpose—The object and purpose of recovery of Diyat amount is that the victim should be compensated according to the rate which is prevailing at the time when the compromise is effected. (Para 6) ***Ref. 1992 SCMR 1218, 1992 P.Cr.L.J. 1583, PLD 1991 FSC 202, 2009 P.Cr.L.J. 1479.***

2012 SCMR 556

[Supreme Court of Pakistan]

Present: Tassaduq Hussain Jillani and Mian Hamid Farooq, *J J*

MUMTAZ—*Petitioner versus THE STATE—Respondent*

Criminal Petition No. 583-L of 2008, decided on 24th December, 2008.

(On appeal from order dated 12-11-2008 of the Lahore High Court, Lahore, passed in Criminal Miscellaneous No.l0264-B of 2008).

Criminal Procedure Code (V of 1898)— (Ocular & Medical conflict, no question at bail stage)

—S. 497—Penal Code (XLV of 1860), S.302/34—Qatl-e-amd and common intention—Bail, grant of—Medical and ocular account— Conflict—Plea raised by accused was that there was conflict in medical and ocular account—Validity—Accused was prima facie connected with the offence alleged in F.I.R.—Conflict between medical and ocular account could not be appreciated Without a deeper appraisal of evidence and the same was not warranted at bail stage—Bail was refused, [p. 557] A

2012 SCMR 517

[Supreme Court of Pakistan]

Present: Anwar Zaheer Jamali and Amir Hani Muslim, J J

NAZEER AHMED *and others—Petitioners versus NOORUDDIN and another—Respondents*

Criminal Petition for Leave to Appeal No. 47-K of 2011, decided on 22nd July, 2011.

(a) Anti-Terrorism Act (XXVII of 1997)—(personal vendetta, action designed, ATA jurisdiction)

*—S.6—Constitution of Pakistan, Art. 185(3)—Jurisdiction of Anti-Terrorism Court, determination of—Accused (petitioners) had challenged the order passed by High Court, by which it directed the Investigating Officer to submit challan of accused before the Anti-Terrorism Court—Validity—High Court had examined the material at length and had rightly concluded that the act of the accused created sense of insecurity amongst the villagers and did destabilize the public at large and, therefore, attracted the provisions of S.6 of Anti-Terrorism Act, 1997—**Neither motive nor intention for commission of the offence was relevant for the purpose of conferring jurisdiction of the Anti-Terrorism Court and it was the act which was designed to create sense of insecurity and/or to destabilize the public at large, which attracted, the provisions** of S.6 of Anti-Terrorism Act, 1997—Accused's act created sense of insecurity amongst the co-villagers—Order of High Court being well reasoned. Supreme Court dismissed accused's' petition and refused leave appeal, [p. 519] A, B, C & D*

Mohabat Ali v. The State 2007 SCMR 142 and Bashir Ahmed v Muhammad Siddiq PLD 2009 SC 11 distinguished.

2012 S C M R 399

[Supreme Court of Pakistan]

Present - ***Iftikhar Muhammad Chaudhry, C****.J., Khilji Arif Hussain and Sarmad Jalal Osmany, JJ*

Mst. GULNAZ*—Petitioner versus TANVIR HUSSAIN NADEEM and others—Respondents*

Civil Petition No. 1805 of 2011, decided on 13th January, 2012.

(On appeal from the judgment dated 4-10-2011 of the Lahore High Court, Lahore passed in W.P. No. 14695 of 2011).

Administration of justice—-

—Dispensation of justice by courts—Primary duty of Prosecution Agencies and Advocates stated.

The "Prosecution Agencies, Bar Associations/Advocates are integral part and important components of dispensation of justice system. Without their assistance and cooperation, it is very difficult to deliver the justice within the reasonable period of time. It has been noted that the State is one of the party in major part of litigation in court litigating against their subject without having any proper legal advice, filed appeals one after the other in routine from the money of tax payer against them. The counsel being officers of the court are under obligation to carefully examine briefs and assist the court with their best efforts and abilities to avoid multiplicity of the proceedings. Their primary responsibility is to act fairly and assist the court in reaching just and equitable conclusion in consonance with law. [p. 402] A

Mst. Mehbooba v. Abdul Jalil 1996 SCMR 1063 and Karthiyani Amma v. Padmanabha Pillai AIR 1951 Travancore-Cochin 176 ref.

2012 S C M R 428

[Supreme Court of Pakistan]

Present: Tassaduq Hussain Jillani, Mian Saqib Nisar and Ejaz Afzal Khan, JJ

ZEESHAN @ SHANI—*Appellant versus* THE STATE—*Respondent*

Criminal Appeal No.499 of 2009, decided on 26th December, 2011.

(On appeal from the judgment dated 9-6-2009 of the Lahore High Court, Rawalpindi Bench passed in Criminal Appeal No.477-T of 2006).

(a) Anti-Terrorism Act (XXVII of 1997)—

(When police encounter, other agency should investigate the case)

*—S. 7(a) & (b)—Terrorism—Death due to terrorist act—Reappraisal of evidence—Benefit of doubt—Identification of accused—Delay in F.I.R.—**Investigation of police encounter**—Police claimed that accused **opened fire on police party which resulted into death of one constable—**Accused was convicted and sentenced to death by Trial Court but High Court converted the sentence into imprisonment for life—Plea raised by accused was that it was night time occurrence , identity of assailant was not proved on record—Validity—Allegation that accused was already known to complainant and prosecution witnesses remained unproved and unsubstantiated, as accused neither criminal background nor involvement of accused was proved on the record—Question as to how could the complainant and prosecution witnesses identify the accused, was unanswered—Delay of more than one hour in lodging report had also given rise to the inference that occurrence did not take place in the manner projected by prosecution and time was consumed in making effort to give a coherent attire to prosecution case, which hardly proved successful—Such delay was all the more fatal when police station, besides being connected with the scene of occurrence through a metalled road, was at a distance of 11 kilometers from the latter—**Supreme Court observed that standard of proof should have been far higher as compared to any other criminal case, when according to prosecution, it was a case of police encounter and it was desirable and even imperative that such case should have been investigated by some other agency, as police in such case, could not have been investigators of their own cause—**Such investigation which was woefully lacking independent character could not be made basis for conviction in a charge involving capital sentence, that too when it was riddled with many lacunas and loopholes, quite apart from the after-thoughts and*

improvements—To maintain conviction and sentence of accused in such circumstances would not be in accord with safe administration of justice—Supreme Court extended benefit of doubt to accused and acquitted him of the charge—Appeal was allowed, [pp. J31, 432, 433]A, B&D

2012 S C M R 593

[Supreme Court of Pakistan]
Present: Asif Saeed Khan Khosa, Ijaz Ahmed Chaudhry and Gulzar Ahmed, JJ

MUHAMMAD ASLAM---*Appellant Versus THE STATE---Respondent*

Criminal Appeal No.517 of 2009, decided on 6th January, 2012.
(On appeal from the judgment dated 8-7-2009 in Criminal Appeal No.777 of 2004 passed by the Lahore High Court, Lahore).

Penal Code (XLV of 1860)---

*----S. 302(b)---Qatl-e-amd---Reappraisal of evidence---Trial Court convicted the appellant under S.302(b), P.P.C., and sentenced him to death---Appeal of appellant was dismissed by the High Court, however sentence of death recorded by Trial Court was altered to life imprisonment---Validity---F.I.R. was promptly lodged, allowing no time to the prosecution to concoct a false story---Post-mortem was conducted without any delay and it supported the statements of the prosecution witnesses---No previous enmity existed between the parties and witnesses were not only related to the deceased but also with the appellant, therefore, they had no motive to falsely implicate the appellant and their relationship with deceased was not sufficient to term them as interested witnesses---Prosecution witnesses were residents of the village where occurrence took place and their presence at the spot had been established beyond any shadow of doubt---Specific role of firing had been attributed to the appellant---Statements of witnesses with regard to the appellant were consistent with each other and despite lengthy cross-examination, defence failed to gain anything---Motive of the occurrence was almost admitted by the appellant himself by stating that he suspected the deceased to have concealed his mother (who was real sister of the deceased), who had been missing for three years---Alleged involvement of deceased in criminal cases did not give a licence to the general public to commit his murder---**Fact of delay in sending crime weapon and empties to the Forensic Science Laboratory did not, overweigh the ocular evidence** which was in line with and supported by the medical evidence---Prosecution had been able to prove the case against the appellant beyond any shadow of doubt---Appeal was dismissed in circumstances.*

Nizamuddin v. The State 2010 SCMR 1752 rel.

2012 S C M R 604

[Supreme Court of Pakistan]
Present: Ejaz Afzal Khan and Ijaz Ahmed Chaudhry, JJ

MAHMOOD KHALID---*Petitioner Versus SENIOR MEMBER BOARD OF REVENUE, PUNJAB, LAHORE and others---Respondents*

Civil Petition No.1004 of 2011, decided on 27th January, 2012.(On appeal from the order dated 30-6-2011 of the Lahore High Court, Bahawalpur Bench in W.P. No.3531 of 2011/BWP).

Pakistan Environmental Protection Act (XXXIV of 1997)---

*----S. 21---Criminal Procedure Code (V of 1898), S. 133---Constitution of Pakistan, Art. 185(3)**---Public Nuisance---Nuisance created by machines in grind mill installed in inhabited area**---Notices were issued by Supreme Court to Director-General Environment to explain as to whether installation of grind mill in inhabited area was permissible---Director-General Environment submitted report outlining, the different forms of nuisances created by the machines installed; the reasons for the nuisance; remedial measures that could be adopted to reverse the impact of the nuisance, and the fact that machines had since been sealed and were not operational on orders of the Assistant Commissioner---Contention of petitioner was that the grind mill was a nuisance in all forms and manifestations and it was required to be removed---Validity---Respondent had stated that machines installed by him had been sealed under order of the Assistant Commissioner and in case he operated them again, same would abide by all the remedial measures suggested by the Director-General Environment in his report---Petition for leave to appeal was disposed of accordingly.*

2012 S C M R 649

[Supreme Court of Pakistan]

Present: Iftikhar Muhammad Chaudhry, C.J., Khilji Arif Hussain and Tariq Parvez, JJ

GHULAM AHMED CHISHTI---*Petitioner Versus THE STATE and others---Respondents*

Criminal Petition No.10 of 2012, decided on 13th February, 2012.(Against order dated 20-12-2011 of Lahore High Court, Lahore, passed in Criminal Miscellaneous No.16360-B of 2011).

Criminal Procedure Code (V of 1898)--- (contumacious conduct of accused, Pre arrest refused)

----S. 498--- Penal Code (XLV of 1860), Ss.302, 324, 427, 149 & 148---Constitution of Pakistan, Art.185(3)---Qatl-e-amd, attempt to commit qatl-e-amd, causing damage rioting armed with deadly weapons, unlawful assembly---Pre-arrest bail, grant of---Absconding accused---Contention of complainant was that police was not cooperating to cause arrest of accused and knowing well that Additional Sessions Judge had issued warrants of arrest; the Station House Office of police station concerned was reluctant to appear for one reason or the other---Effect---Accused though had obtained bail from High Court but a person who was, prima facie, fugitive from law could not claim relief from Supreme Court without approaching it with clean hands---Ad interim bail granted to accused was recalled by Supreme Court and judgment passed by High Court was maintained and bail was refused---Leave to appeal was refused.

2012 S C M R 707

[Supreme Court of Pakistan]

Present: Mahmood Akhtar Shahid Siddiqui and Jawwad S. Khawaja, JJ

MUHAMMAD AFZAL---*Petitioner Versus THE STATE---Respondent*

Criminal Petition No.1026-L of 2009, decided on 23rd November, 2009.(On appeal from the order of the Lahore High Court, Lahore dated 16-7-2009 passed in Criminal Miscellaneous No.8162-B of 2009).

Criminal Procedure Code (V of 1898)--- ***(Plea of Alibi, Bail Refused)***

----S. 497---Penal Code (XLV of 1860), S.302---Qatl-e-amd---Bail, grant of---Plea of alibi---Accused pressed into service plea of alibi and contended that he was employee of transport company and was at place "S" and not at his house at place "J" at the time of occurrence---Validity---High Court had rightly observed that such was a matter, the veracity whereof would be determined at trial---Supreme Court declined to differ with High Court---Bail was refused.

2012 S C M R 721

[Supreme Court of Pakistan]

Present: Tassaduq Hussain Jillani, Anwar Zaheer Jamali and Mian Saqib Nisar, JJ

MUHAMMAD RIAZ *and others---Appellants Versus BILQIAZ KHAN and others---Respondents*

Criminal Appeals Nos. 79-P and 80-P of 2010, decided on 17th February, 2012(On appeal from the judgment dated 8-7-2010 passed by Peshawar High Court, Peshawar passed in Criminal Appeal No.572 of 2009).

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

*----Ss.365 & 365-A---Constitution of Pakistan, Art 185(3)---**Abduction and abduction for ransom**---Leave to appeal was granted by Supreme Court where High Court disbelieved most of the evidence of prosecution and on such score converted **conviction of accused from offence under S.365-A, P.P.C. to S. 365, P.P.C.***

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

*----Ss. 365 & 365-A---Abduction and abduction for ransom---Re-appraisal of evidence---Pre-conditions---**Passing of ransom---Proof**---Accused were convicted under S.365-A, P.P.C. by Trial Court for abduction for ransom and sentenced to imprisonment for life but **High Court converted the conviction to only abduction under S.365, P.P.C. and sentence was reduced to 7 years'** imprisonment---**Reasons** which found favour with High Court to reverse conviction under S.365-A, P.P.C. to one under S.365 P.P.C. **were that middle man who received the ransom amount for onward transmission to accused was neither made an approver nor a witness; nothing was brought in evidence as to wherefrom ransom amount was obtained or borrowed and manager of the bank from where money was drawn was also not produced** and payment of amount was not free from doubt---Validity---**Such observations of High Court were conjectural, fanciful and reflected non-reading of material evidence---Prosecution was not obliged to make middle man as approver or to explain as to from where ransom amount was drawn or to produce the bank manager---Passage of money was not a pre-requisite to prove S.365-A, P.P.C.**---Accused had abducted two persons for the purpose of extorting ransom and had compelled complainant to comply demand for cash/ransom for releasing the abductees---Supreme Court set aside conviction and sentence passed by High Court and restored that of Trial Court---Appeal was allowed. **Muhammad Amjad v. State PLD 2003 SC 704 ref.***

2012 S C M R 728

[Supreme Court of Pakistan]

Present: Asif Saeed Khan Khosa and Ijaz Ahmed Chaudhry, JJ

SHEERIN ZAFAR and another---Petitioners Versus ZAHID REHMAN and others---Respondents

Criminal Petitions Nos. 568 and 581 of 2011, decided on 9th March, 2012.(Against the judgment dated 23-11-2011 passed by the Islamabad High Court, Islamabad in Criminal Appeal No.30 of 2004, Murder Reference No.54 of 2005 and Criminal Revision No.19 of 2004).

Penal Code (XLV of 1860)---

----Ss. 302(b), 306(b) & 308---*Constitution of Pakistan, Art. 185(3)*---***Qatl-e-amd, Qatl-e-amd not liable to Qisas---Conflicting judgments of Supreme Court***---*Leave to appeal was granted by Supreme Court to consider factual and legal aspects of the present case highlighted by accused and for pronouncement of an authoritative judgment by a larger Bench of the Supreme Court to settle the legal controversy at rest which had resulted due to divergence of opinion expressed by different Benches of Supreme Court.*

Naseer Ahmed v. The State PLD 2000 SC 813; Dil Bagh Hussain v. The State 2001 SCMR 232; Muhammad Abdullah Khan v. The State 2001 SCMR 1775; Amanat Ali v. Nazim Ali and another 2003 SCMR 608; Muhammad Ilyas v. The State 2008 SCMR 396; Khalid Mehmood v. The State 2011 SCMR 1110; Faqir Ullah v. Khalil-uz-Zaman and others 1999 SCMR 2203; Muhammad Afzal alias Seema v. The State 1999 SCMR 2652; Umar Hayat v. Jahangir and another 2002 SCMR 629; Muhammad Akram v. The State 2003 SCMR 855; Ghulam Murtaza v. The State 2004 SCMR 4; Nasir Mehmood and another v. The State 2006 SCMR 204; Abdul Jabbar v. The State and others 2007 SCMR 1496; Iftikhar-ul-Hassan v. Israr Bashir and another PLD 2007 SC 111 and Tauqeer Ahmad Khan v. Zaheer Ahmad and others 2009 SCMR 420 ref.

2012 S C M R 997

[Supreme Court of Pakistan]

Present: Tassaduq Hussain Jillani and Mian Saqib Nisar, J J

MAZHAR AHMED—*Petitioner versus THE STATE and another Respondents*

Criminal Petition No.591 of 2011, decided on 8th May, 2012.

(On appeal from the judgment dated 23-11-2011 passed by Lahore High Court, Multan Bench in Criminal Miscellaneous No.l of 11 in Criminal Appeal No.264 of 2011).

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

—S. 426—Penal Code *(XLV of 1860), Ss. 420/161—Prevention of Corruption Act (II of 1947), S.5(2)—Cheating and dishonestly inducing] delivery of property, public servant taking gratification other than legal remuneration in respect of an official act, criminal misconduct— Suspension of sentence—Principles—**Surrender before police not a condition precedent under S.426, Cr.P.C.—Appearance before court amounting to surrender**—Scope—Accused filed petition for suspension of sentence before the High Court but same was not considered and dismissed on the ground that accused remained an absconder for one month after the pronouncement of the judgment against him-Contentions of the accused were that the High Court could not have summarily dismissed his petition for suspension of sentence having entertained the appeal against his conviction; that S.426, Cr.P.C, has two parts; one pertained to a situation when appeal was filed along with a petition for suspension for sentence and the accused might not be confinement, whereas the second part of the said section was relatable to circumstances when accused had been arrested and was in lock up and filed a petition for suspension of sentence and release, and that the court seized of the appeal could suspend the sentence in both the eventualities—Validity—Section 426, Cr.P.C, had two parts, one part was relatable to a situation when a petition for suspension was filed along with the appeal and the convict had not surrendered before the police but appeared before the court, in such a situation the court may "order that the execution of the sentence or order appealed against be suspended"—Second part of S.426, Cr.P.C, was relatable to situation when the convict had already been arrested and for such eventuality S.426, Cr.P.C, stipulated that "and, also if he is in confinement, that he be released on bail or on his own bond" Contention that appearance before the court in a petition under S.426, Cr.P.C, was not equivalent to surrender was not tenable— In the present case, accused had appeared before*

the High Court which amounted to surrender and the court could not have dismissed the petition merely because the convict had not surrendered before the police—High Court could have allowed the petition or could have dismissed the same on merits, but could not ha refused to even consider the petition—Impugned order of the High Court was set aside, petition of accused for suspension of sentence would be deemed to be pending before the High Court, which would decide the same within two weeks of the accused's appearance before it. [pp. 1001, 1003, 1004] A, D & E

Bakhta v. State 1985 SCMR 97; Musharaf Khan v. The State 1985 SCMR 900 and Zahid v. The State PLD 1991 SC 379 ref. Shamshad Hussain v. Gulraiz Akhtar PLD 2007 SC 564; Musharaf Khan v. The State 1985 SCMR 900 and Zahid v. The State 1991 SC 379 rel.

Bakhta v. State 1985 SCMR 97 distinguished.

Criminal Procedure Code (V of 1898)—

—Ss. 426 & 497—Suspension of- sentence and grant of bail— ^Principles—In absence of any guideline, the principles which govern S.497, Cr.P.C. may guide the exercise of discretion under S.426, Cr.P.C. [p. 10021 B
***Shamshad Hussain v. Gulraiz Akhtar PLD 2007 SC 564* rel.**

(c) Criminal Procedure Code (V of 1898)—

—Ss. 426 & 497—Suspension of sentence and grant of bail-Principles—Provisions under S.426(1), Cr.P.C. are analogous to the one contained in S.497, Cr.P.C. as in both the cases the sentence or detention is to be suspended pending hearing of appeal/trial and the convict or the detenu is to be released on bail with the only difference that in the former case the person is a convict who has been already found guilty while in the latter case he has been charged only to face trial and is still to be proved guilty—In absence of any guideline, it would be appropriate to follow the one provided under S.497, Cr.P.C. on the principle that where a statute lays down certain principles for doing some acts they may be taken as a guideline for doing something of the same nature which is in the discretion of the court—Under S.497, Cr.P.C, existence and non-existence of reasonable grounds for believing that person is guilty of the offence and the scope of further inquiry are the criteria/hallmarks and for arriving at such conclusion tentative assessment and not minute or detailed assessment of evidence has been made permissible—In case of suspension of sentence, only tentative assessment of available evidence and of judgment is permissible and detailed appraisal of evidence is to be avoided, [p. 1002] C
Shamshad Hussain v. Gulraiz Akhtar PLD 2007 SC 564 rel.

2012 S C M R 1014

[Supreme Court of Pakistan]

Present: Asif Saeed Khan Khosa and Ijaz Ahmed Chaudhry, J J

MUHAMMAD YAR—*Petitioner versus THE STATE—Respondent*

Criminal Petition No.358-L of 2010, decided on 21st May, 2012.

(On appeal from the judgment dated 15-3-2010 in Criminal Appeal No. 1764 of 2004 and Murder Reference No.629 of 2004 passed by the Lahore High Court, Lahore).

(a) Penal Code (XLV of I860)—

—Ss. ***100/302(b)/148/149—Right of private defence, qatl-e-amd, rioting armed with deadly weapons, unlawful assembly—Reappraisal of evidence—Right of private defence of the body extending to causing death*** *—Scope—Allegation against the accused was that he murdered the deceased due to a property dispute and resorted to aerial firing along with co-accused, resulting in injuries to several prosecution witnesses—Contentions of the accused were that the complainant party tried to take forcible possession of the disputed property and started to beat his wife and daughters, therefore, the accused while exercising his right of self-defence fired at the deceased; that the evidence on basis of which he was convicted and sentenced had been disbelieved qua the involvement of the co-accused; that prosecution had failed to prove motive against the accused, and that the eye-witnesses had*

made improvements while appearing before the Trial Court—Validity— Deceased and others came to the house of the accused and there was confrontation between the parties, but there was no evidence that the complainant party was fully armed and came to the house to cause trouble—Only allegation against the complainant party was that it had come to the spot to take possession of the disputed property and started beating the wife and daughters of the deceased, therefore, case of the accused did not fall within the ambit of S.100, P.P.C., as no evidence had come on record to suggest that complainant party came fully armed to cause trouble—None of the women folk or the females who had allegedly been given a beating by the complainant party had been produced during the investigation—Despite lengthy cross-examination all the witnesses had made consistent statements with respect to the role ascribed to the accused and their statements were fully supported by the medical evidence—Weapon of offence had been recovered from the accused and empties had also been recovered from the spot—Empties had been sent to the Forensic Science Laboratory and the report submitted by the Laboratory was in positive— Case of the prosecution was on sound footings qua involvement of the accused in the incident and his case was not at par with that of his co-accused, as no weapon of offence was recovered from the co-accused during the investigation—Accused had failed to make out a case for reduction in his sentence— Both the courts below had ***not committed any illegality or irregularity in sentencing the accused to death****—Petition for leave to appeal was dismissed, in circumstances, [pp. 1020, 1021, 1022] A, C, D &* **E**

Ghulam Farid v. The State 2009 SCMR 929; Karuppa Pillai v. State 1996 Cri. LJ 3880 and Aramana Joseph alias Pappachan v. State of Kerla 1996 Cri. U 2140 ref.

(b) Penal Code (XLV of I860)—

—S. 100—Right of self-defence extending to causing of death—Scope and pre- requisites— Law authorizes a man who is under a reasonable apprehension that his life or the life of another is in danger or there is a risk of grievous hurt, to inflict death upon the assailants but the apprehension must be reasonable and the violence inflicted must not be greater than is reasonably necessary for the purpose of self-defence— Person exercising the right of self-defence must be careful in modulating his acts—Self-defence must be proportionate and commensurate with the quality and character of the act it is intended to meet and anything done in excess is not protected under the law—For self-defence the most important question was whether there was any reasonable apprehension of danger to the accused and he committed the act of violence in exercise of such right, [p. 1021] B

2012 S C M R 1066

[Supreme Court of Pakistan]

Present: Asif Saeed Khan Khosa and Ijaz Ahmed Chaudhry, J J

KHIZAR HAYAT—*Appellant* Versus *THE STATE*—*Respondent*

Criminal Appeal No. 174 of 2003, decided on 23rd April, 2012.

(Against the judgment dated 27-2-2003 passed by the Lahore High Court, Multan Bench, Multan in Criminal Revision No.80 of 2002).

Penal Code (XLV of I860)—

Ss. 324/34/337-D— Attempt to commit qatl-e-amd, common intention, jaifah—Constitution of Pakistan, Art. 12(l)(b)—Criminal Procedure Code (V *of* 1898), S. 238; *Cr.P.C—Protection against retrospective punishment*

conviction for minor offence— Scope *Accused (appellant) had been convicted and sentenced under Ss.324, 34 and 337-D, P.P.C.—Contentions of the accused were that the occurrence had taken place at a time when S.324, P.P.C, only carried a sentence of up to ten years imprisonment* and *fine,* and that the *charge framed against him was in respect of Ss.324 and 34, P.P.C, therefore, he could not have been convicted under S.337-D, P.P.C. Validity—At the time of the alleged occurrence, an offence under S.324, P.P.C, carried a maximum sentence of ten years' imprisonment and fine and subsequently said section was amended by which a person committing an offence* under S.324, PPC *was not only to* be *punished with a maximum sentence of ten years' imprisonment and fine for his intention to commit qatal-a-amd but he was also to be additionally punished for the injury caused by him with that intention—Occurrence, in the present case, had taken place prior to the said amendment and, therefore, by virtue of Art.l2(l)(b) of the Constitution, sentence of the accused could not have been enhanced retrospectively—Section 238, Cr.P.C, allowed the court to convict a person for minor offence rather than for the major offence with which the accused had been charged but, in the present case, provisions of S.337-D, P.P.C. could not have been treated as constituting a minor offence vis-a-vis the offence under S.324, P.P.C, to invoke the provisions of S.238, Cr.P.C.— Appeal was partially - allowed, conviction and sentence of accused recorded under S.337-D, P.P.C, was set aside while those in respect of Ss.324 and 34, P.P.C, were maintained—Order accordingly, [pp. 1068, 1069] A & B*

Haq Nawaz v. The State PLD 1958 (W.P.) Baghdad-ul-Jadid 5; Nardeo Singh and others v. The State AIR 1953 All. 726; Muhammad Farooq v. The State PLD 1956 SC 248 and Akhtar Hassan Khan v. The State 1974 SCMR 199 ref.

2012 SCMR 1069

[Supreme Court of Pakistan]

Present: Iftikhar Muhammad Chaudhry, C.J., Khilji ArifHussain and Tariq Parvez, J J

SURAYA BEGUM*—Petitioner versus INSPECTOR-GENERAL OF POLICE, PUNJAB, LAHORE and others—Respondents*

Civil Petition No.297 of 2012, decided on 8th May, 2012. (On appeal from the judgment/order dated 15-2-2012 Lahore High Court, Lahore in Writ Petition No.26937 of 2011)

Penal Code (XLV of I860)—

—Ss. 365, 181 & 182—Constitution of Pakistan, Art. 185(3)… Kidnapping or abducting with intent secretly and wrongfully to confine person—Lodging of false complaint to settle civil dispute-Complainant (petitioner) in order to settle her civil dispute with her opponents in respect of a house, moved the machinery of law on a false pretext—False assertion had been made by the complainant before the police while lodging the F.I.R. under S.365, contending therein that her son was in illegal custody*—Complainant* ***made fabricated and concocted statements and sworn in false affidavits before, the High Court and the Supreme Court—As soon as complainant's opponents withdrew the execution application filed by them in pursuance of the civil court's decree and handed possession of the disputed property to the complainant, she and her husband within one hour produced the alleged abductee before the police, which fact was evident from the record as well as the report submitted by the police—Conduct of the complainant was illegal, which could not be left unnoticed—Police was directed to proceed against the complainant, who prima facie had lodged a false complaint… case was sent to the High Court for proceedings against the complainant.....Order accordingly, [pp. 1070, 1071] A, B, C, D & E Muhammad Afzal v. The State 2001 SCMR 1615 ref.***

2012 S C M R 1072

[Supreme Court of Pakistan]

Present: Anwar Zaheer Jamali, Khilji Arif Hussain and Ghulam Rabbani, J J

FARHAD ALI—*Petitioner versus MUTALIB KHAN and another—Respondents*

Criminal P.L.A. No.33-K of 2010, decided on 23rd June, 2010.

(On appeal from order of High Court of Sindh, Karachi 2-4-2010 passed in Criminal Revision Application No.42 of 2010).

Criminal Procedure Code (V of 1898)—

—S. 439(2)—Constitution of Pakistan, Art. 185(3)—High Court, as revisional court, while setting aside the order passed by the court below, remanded the case to the Trial Court with direction to decide the same on the material produced by the complainant at preliminary stage of the complaint—Contention of the accused (petitioner) was that he was one of the nominated accused in complaint and neither any notice was issued to him before passing the impugned order nor any opportunity of hearing was provided to him—Validity—In view of S.439(2), Cr.P.C, it was mandatory for the High Court, as revisional court, to have afforded a proper opportunity to the accused, after due notice to him, which admittedly was not done—Petition for leave to appeal was converted into appeal, impugned order passed by the High Court was set aside and the case was remanded to the High Court for fresh disposal in accordance the law, after affording due opportunity of hearing to all the parties [p. 1073JA&B

2012 SCMR 1156

[Supreme Court of India]
Present: P. Sathasivam and Dr. B.S. Chauhan, JJ

RAMACHANDRAN *and others---Appellants versus STATE OF KERALA---Respondent*

Criminal Appeal No.162 of 2006, decided on 2nd September, 2011.

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

----S. 149--- Unlawful assembly--- Expression "common object"---Scope---Common object formed on the spur of the moment---Scope---For "common object", it was not necessary that there should be a prior concert in the sense of a meeting of the members of the unlawful assembly, the common object might form on spur of the moment, and it was enough if it was adopted by all the members and was shared by all of them.

Bhanwar Singh and others v. State of M.P. AIR 2009 SC 768 ref.

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

----S. 149---Unlawful assembly---Offence not committed in the direct prosecution of common object---Effect---Expression "know"---Scope---Even if the offence committed was not in direct prosecution of the common object of the assembly, it might still fall under S.149 of the Penal Code, if it could be held that the offence was such as the members knew was likely to be committed---Expression 'know' did not mean a mere possibility, such as might or might not happen.

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

----S. 149--- Unlawful assembly--- Scope--- "Common object" established---Effect---Once it was established that the unlawful assembly had common object, it was not necessary that all persons forming the unlawful assembly must be shown to have committed some overt act---For incurring the vicarious liability under the provision, the liability of other members of the unlawful assembly for the offence committed during the continuance of the occurrence, rested upon the fact whether the other members knew beforehand that the offence actually committed was likely to be committed in prosecution of the common object.

Daya Kishan v. State of Haryana AIR 2010 SC 2147; Sikandar Singh v. State of Bihar AIR 2010 SC 3580 and Debashis Daw v. State of W.B. AIR 2010 SC 3633 ref.

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

----Ss. 141 & 149---Unlawful assembly---Determination---Scope---Passive association or presence in an unlawful assembly---Effect---Crucial question for determination was whether the assembly consisted of five or more persons and whether the said persons entertained one or more of the common objects specified by S.141 of the Penal Code---While determining said question, it was relevant to consider whether the assembly consisted of some persons who were merely passive witnesses and had joined the assembly as a matter of idle curiosity without intending to entertain the common object of the assembly---Mere presence or association with other members of the unlawful assembly alone was not per se sufficient to hold every one of them criminally liable for the offences committed by the others unless there was sufficient evidence on record to show that each intended to or knew the likelihood of commission of such an offending act. ***Masalti v. State of Uttar Pradesh AIR 1965 SC 202 and K.M. Ravi and others v. State of Karnataka (2009) 16 SCC 337 ref.***

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

----S. 149---Unlawful assembly---Determination---Scope---Expression "common object"---Connotation---Formation of "common object"---Scope--- Expression 'in prosecution of common object'---Interpretation---Crucial question to determine was whether the assembly consisted of five or more persons and whether the said persons entertained one or more of the common objects, as specified in S.141 of the Penal Code---Word 'object' meant the purpose or design and in order to make it 'common', it must be shared by all i.e., the object should be common to the persons, who composed the assembly and they should all be aware of it and concur in it---Common object might be formed by express agreement after mutual consultation, but that was by no means necessary and it might be formed at any stage by all or a few members of the assembly and the other members might just join and adopt it---Once common object was formed, it did not have to continue to be the same and might be modified or altered or abandoned at any stage---Expression 'in prosecution of common object' appearing in S.149 of the Penal Code had to be strictly construed as equivalent to 'in order to attain the common object'---Same must be immediately connected with the common object by virtue of the nature of the object, and there must be community of object and the object might exist only up to a particular stage, and not thereafter.

Charan Singh v. State of U.P. AIR 2004 SC 2828 ref.

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

----S. 149---Unlawful assembly---Reappraisal of evidence---Seventeen members (accused) forming part of unlawful assembly---Incident ending within a short span of time---Contention that in such circumstances it was not possible for witnesses to give detailed description as had been given in the present case, and that there were several contradictions in the witness statements---Validity---Minor contradictions, in circumstances, were to be ignored for the reason that it was natural that exact version of the incident revealing minute details

i.e. meticulous exactitude of individual acts, could not be expected from the eye-witnesses---Appeal was disposed of, accordingly. ***Abdul Sayeed v. State of Madhya Pradesh AIR 2010 SCW 5701 ref.***

2012 SCMR 1195

[Supreme Court of Pakistan]

Present: Asif Saeed Khan Khosa and Ijaz Ahmed Chaudhry, JJ

GHULAM ABBAS---*Petitioner Versus THE STATE---Respondent*

Criminal Petition No.831-L of 2010, decided on 23rd May, 2012.

(On appeal from the judgment dated 17-6-2010 in Criminal Appeal No.677 of 2004, Murder Reference No.706 of 2004 passed by the Lahore High Court, Multan Bench).

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

----S. 302(b)---Constitution of Pakistan, Art. 185(3)---Qatl-e-amd---Re-appraisal of evidence---Grave and sudden provocation---Verbal abuses and threat--- Scope--- Accused had murdered (son of the complainant) in court premises---Alleged motive behind the incident was that one of the complainant's son had allegedly murdered the real brother of the accused---Trial Court convicted the accused under S.302(b), P.P.C., and sentenced him to death---Contentions of the accused were that the deceased abused him by threatening to commit zina with his sister, therefore, he committed the murder due to sudden and grave provocation, and that carrying a weapon was a routine matter for the people of the area from which he belonged---Validity---Place of incident and firing at the deceased by the accused had been admitted by both the parties---Presence of both eye-witnesses at the spot was natural as on the day of the incident they were attending court for the trial of one of complainant's son---Both the prosecution witnesses had made consistent statements regarding the incident---Accused was arrested from the spot duly armed---F.I.R. was recorded immediately after the occurrence and the postmortem was also conducted without any delay---Even if it was assumed that the deceased had abused the accused, then the latter should have fired immediately out of grave and sudden provocation but according to the ocular account as well as medical evidence, all the injuries sustained by the deceased were on the back side of his chest---Case of the accused was not that the deceased abused him and started running, whereafter the accused fired at him---Statement of the accused regarding grave and sudden provocation, in circumstances, was an afterthought and it was not the stance he had taken at the time of his arrest---Plea of grave and sudden provocation was not borne out from the record---Accused neither appeared as his own witness under S.340(2), Cr.P.C., to prove his plea nor produced any witness in support of it---Accused had been captured and arrested by two police constables, who were present at the spot, but said constables were not cross-examined on the issue of plea of grave and sudden provocation---Admittedly the accused brought an unlicensed weapon with him and fired five to six shots on the back of the deceased's chest in the court premises, therefore, it had been rightly held by the courts below that the accused had come prepared at the place of incident to commit the murder of the deceased---Accused had acted in brutal manner while firing at the deceased and was apprehended at the spot with the weapon of offence---Courts below, in circumstances, had rightly rejected the plea of the accused regarding grave and sudden provocation, and committed no illegality or irregularity in sentencing him to death---Petition for leave to appeal was dismissed, in circumstances.

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

----S. 302(b)---Constitution of Pakistan, Art. 185(3)---Qatl-e-amd---Re-appraisal of evidence---Plea of grave and sudden provocation---Verbal abuses and threats---Scope---Mere verbal abuses and threats were never to be accepted as sufficient for accepting a plea of grave and sudden provocation.

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

----S. 302(b)---Constitution of Pakistan, Art. 185(3)---Qatl-e-amd---Re-appraisal of evidence---Plea of grave and sudden provocation---Burden of proof---Scope---Burden of proving the existence of circumstances bringing the case within the ambit of grave and sudden provocation laid upon the accused---Plea of grave and sudden provocation had to be taken into account in toto and not in piecemeal while deciding the case.

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

----S. 302(b)---Constitution of Pakistan, Art. 185(3)---Qatl-e-amd---Re-appraisal of evidence---Benefit of doubt---Principle---Where there was any doubt in the prosecution case, benefit of the same would go to the accused and not to the prosecution.

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

----S. 302(b)---Qatl-e-amd---Sentence---Imposition of death penalty---Scope---Circumstances under which penalty of death must be imposed and lesser punishment of life imprisonment should not be awarded---Such factors included the manner and method of the incident, which were clearly suggestive of the fact that the deceased was done to death in a brutal manner---Courts also had to consider the heinousness of the act committed by the accused and to proceed very carefully and cautiously while exercising the discretion to withhold the death penalty and should not ignore the circumstances and cause of occurrence.

2012 SCMR 1276

[Supreme Court of Pakistan]

Present: Mian Shakirullah Jan, Tariq Parvez and Amir Hani Muslim, JJ

SHAH MUHAMMAD---*Appellant Versus THE STATE---Respondent*

Criminal Appeal No.56-Q of 2009, decided on 7th June, 2012.
(On appeal from the Order dated 20-11-2008 passed by the High Court of Balochistan, Quetta in Criminal Appeal(s) No.3 of 2008).

Control of Narcotic Substances Act (XXV of 1997)---

----Ss. 9(c) & 35---Possession of narcotic---Reappraisal of evidence---Allegation against the accused (appellant) was that he was apprehended after a pursuit and 340 kilograms of charas was recovered from the trunk of his car, which was present in seventeen (17) bags, each containing twenty (20) packets weighing 1 kilogram each---Trial Court convicted the accused under S.9(c) of the Control of Narcotic Substances Act, 1997---Contentions of the accused were that there was a delay in sending the samples because of which possibility could not be ruled out that the samples were tampered with; that under S.35 of the Control of Narcotic Substances Act, 1997, the Chemical Examiner was not a notified analyst, therefore, his report had to be excluded from consideration; that there was contradiction in the evidence of persecution witnesses as one of them stated that from each 'packet' 10 grams of charas had been separated for dispatch, while the other witness stated that 10 grams of charas sample had been taken out from each 'bag' and not packet; that accused had produced in his defence a police official, according to whom the accused was arrested on the day of the incident for some other offence and was released on the same day at 7-30 p.m., while the case of the prosecution was that the accused was arrested for the present case at 6-30 p.m., and that the samples were not taken from all the recovered packets but from only seventeen (17) packets, weighing 170 grams, therefore, case of the accused fell within the scope of S.9(b) of Control of Narcotic Substances Act, 1997---Validity---Provincial Government had notified the Chemical Examiner in question through a notification---Since the proceedings before the Trial Court (Special Judge Narcotics) were conducted under the Criminal Procedure Code, 1898, therefore notification in favour of the Chemical Examiner in question would make him competent to prepare the report---With regard to contention of accused concerning delay in sending of samples, ground realities had to be realized that the police had less means of communication and manpower and in the absence of any evidence to presume that samples were tampered with, such an argument would not be available to the accused---Two official documents, i.e., F.I.R. and recovery memo, both stated the same fact that from each bag 10 grams of charas was separated for samples, and in such circumstances if the police official deviated from the facts by making an oral contrary statement, possibility could not be overruled that he was either mistaken or had forgotten the fact recorded by him in the documents or was making concessional statement---Regarding

contention of accused that he was arrested for some other offence at the time of the alleged incident, the Trial Court had observed that the page containing the arrest and release was somewhat differently inserted with the rest of the pages of the police record, which would create doubt in the said contention---Sufficient ocular account of two witnesses was available to establish that huge quantity of charas was recovered from the possession of the accused---Said two witnesses had categorically stated that samples were taken out from each bundle, weighing 170 grams in total, and were sent for analysis to the Chemical Laboratory---Report of the Chemical Laboratory was positive---Both prosecution witnesses were at least consistent about the fact that seventeen (17) samples were taken from seventeen (17) bags/packets, and if each bag/packet was taken to be of one (1) kilogram, then the minimum quantity of charas from which samples were taken was proved to be seventeen (17) kilograms---Case of the accused, in such circumstances, would remain within the scope of S.9(c) of Control of Narcotic Substances Act, 1997---Appeal was dismissed, in circumstances.

Ameer Zeb v. The State PLD 2012 SC 380 distinguished.

2012 SCMR 1400

Supreme Court of India
Present: G.S. Singhvi and Mrs. Gyan Sudha Misra, JJ

OM PRAKASH---*Appellant Versus STATE OF RAJASTHAN and another---Respondents*

Criminal Appeal No.651 of 2012 (arising out of S.L.P. (Cri.) No.2411 of 2011), decided on 13th April, 2012.

(c) Juvenile Justice System---

----Purpose and scope---Method and mannerism of the commission of the offence---Effect---Plea of juvenility---Determination of age of the accused---Documentary evidence not reliable to support plea of juvenility---Medical evidence indicating accused to be a major---Reliance on medical evidence---Scope.

Where the conduct of an accused or the method and mannerism of the commission of the offence indicated an evil and a well-planned design of the accused, which indicated more towards the mature skill of an accused than that of an innocent child, then in the absence of reliable documentary evidence in support of the age of the accused, medical evidence indicating that the accused was a major could not be allowed to be ignored taking shelter of the principle of benevolent legislation. Statutory protection of the legislation on juvenile justice was meant for a minor who was an innocent law breaker and was not an accused having a mature mind who used the plea of minority as a ploy or shield to protect himself from the sentence of the offence committed by him.

2012 SCMR 1422

[Supreme Court of India]

Present: R. M. Lodha and H.L. Gokhale, JJ

SURENDRA ***and others---Petitioners Versus STATE OF UTTAR PRADESH---Respondent***

Special Leave Petition (Cri) No.2874 of 2008, decided on 28th February, 2012.

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

----Murder---Unlawful assembly---Reappreaisal of evidence---Common object of unlawful assembly---Motive---Proof---Deceased was waylaid by the accused persons---Case not that of sudden provocation---Pre-planned and premeditated attack on the deceased---Accused persons armed with burris, knives and lathis---Injury report of the deceased showing that he was brutally and badly assaulted resulting in twenty one (21) injuries---Cumulative effect of injuries being the cause of death of the deceased---Pending criminal litigation between the deceased and the accused persons proving enmity, which established the motive for the occurrence---One of the accused exhorted other accused persons to kill the deceased---Effect---Prosecution, in circumstances, had been able to establish that all the members of the unlawful assembly acted in furtherance of common object to cause death of the deceased---Petitions for leave to appeal were dismissed, in circumstances.

Sarwan Singh and others v. State of Punjab (1978) 4 SCC 111 : (AIR 1978 SC 1525) and Kusum Chandrakant Khaushe v. Hmlingliana and others AIR 1993 SC 401 : (1992 AIR SCW 3273) distinguished.

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

----S. 149---Unlawful assembly---Common object---Proof---Inference of common object has to be drawn from various factors such as the weapons with which the members were armed, their movements, the acts of violence committed by them and the result.

2012 SCMR 1442

[Supreme Court of UK]

Present: Lord Phillips, President, Lord Brown, Lord Judge, Lord Kerr, Lord Clarke, Lord Dyson and Lord Wilson

R---Appellant versus GNANGO---*Respondents*

(a) Transferred malice, doctrine of---

----Applicability---Scope---Murder---Liability for 'joint enterprise'---Scope---Defendant and his adversary engaging in a fight and shooting at each other in a public place---Deceased, an innocent passer-by, caught in the cross-fire and accidentally hit by a bullet fired from the weapon of the defendant's adversary---Defendant's adversary guilty of murder under the principle of "transferred malice"---Questions for determination were whether the defendant would also be liable for the murder of the deceased in such circumstances, and if so, whether as a "joint-principal" or "accessory" to such murder---Defendant was charged and convicted of murder by the Trial Court but his conviction was overturned by the Court of Appeal---Validity.

Per Lord Phillips, President and Lord Judge; Lord Wilson agreeing; Lord Kerr dissenting. [Majority view]

Question for consideration before the Supreme Court was that, if D1 and D2 voluntarily engaged in fighting each other, each intending to kill or cause grievous bodily harm to the other and each foreseeing that the other had the reciprocal intention, and if D1 mistakenly killed V (an innocent passer-by), in the course of the fight, then in what circumstances, if any, was D2 guilty of the offence of murdering V?

Where a defendant intended to kill or cause serious injury to one victim, V1, but accidentally killed another, V2, he would be guilty of the murder of V2. The basis of such liability was customarily described as "transferred malice". The doctrine applied to secondary parties as it did to principal offenders. Thus if D2 attempted to aid,

abet, counsel or procure D1 to murder V1 but D1, intending to kill V1, accidentally killed V2 instead, D2 would be guilty of the murder of V2.

Trial Court had directed the jury that, in order to convict, they had to be satisfied that there was a plan or an agreement to have a 'shoot-out', whether made beforehand or on the spur of the moment when the defendant and his adversary fired at each other in the public place, and that the jury could convict only if they were satisfied that the defendant and his adversary had formed a mutual plan or agreement to have a gunfight, i.e. to shoot at each other and be shot at, in which each would attempt to kill or seriously injure the other. In the present case, the defendant's adversary accidentally shot the deceased and was liable for her murder under the doctrine of "transferred malice". Under the same doctrine the defendant was party to the murder. The defendant aided and abetted the murder of the deceased by aiding, abetting, counselling and procuring his adversary to shoot at him (the defendant). Defendant and his adversary had chosen to indulge in a gunfight in a public place, each intending to kill or cause serious injury to the other, in circumstances where there was a foreseeable risk that the result would be suffered by an innocent bystander. It was a matter of fortuity which of the two had fired what proved to be the fatal shot. Holding the defendant and his adversary liable for the deceased's murder, in such circumstances, accorded with the demands of justice rather than conflicting with them.

Whether the defendant was correctly described as a principal or an accessory was irrelevant to his guilt. Distinguishing between the principal and the accessory was not important in the present case. Both men agreed to the joint enterprise of having a shoot-out. Whether that made the defendant guilty as a principal to his adversary's actus reus of firing the fatal shot, or guilty as one who had "aided, abetted counselled or procured" his firing of that shot created no practical difficulty on the facts of the present case and did not affect the result. Appeal was allowed and defendant's conviction for murder was restored.

PLD 2012 SC 769

Present: Tassaduq Hussain Jillani, Mian Saqib Nisar and Ijaz Ahmed Chaudhry, JJ

MUHAMMAD ANWAR---*Petitioner Versus THE STATE---Respondent*

Criminal Miscellaneous No. 229-L of 2012 in J.P. No. 88 of 2011 along with Criminal Petition No.122-L of 2011 decided on 26th June, 2012.
(On appeal from the judgment dated 21-1-2011 in Criminal Appeal No.173-J of 2006 and M.R.No.384 of 2006 passed by the Lahore High Court, Lahore).

Penal Code (XLV of 1860)--- (Diyat on prevailing rate)

----Ss. 323 & 302(b)---Criminal Procedure Code (V of 1898), S.345---Constitution of Pakistan, Art.185(3)---Qatl-e-amd---Compromise between the parties---Nature---Value of diyat---Determination---Diyat amount was payable to legal heirs of the deceased at the rate prevalent at the time of the compromise and not the commission of the offence---Scope---Accused (applicant) was sentenced to death by the Trial Court under S.302(b), P.P.C, with a direction to pay Rs.50,000 as compensation to the legal heirs of the deceased---High Court on appeal, converted death sentence of the accused into imprisonment for life but maintained payment of compensation---Subsequently the mother, widow and son of the deceased recorded their statements stating that they had forgiven

the accused in the name of Allah without accepting Badl-e-Sulah---Widow of the deceased stated that she had accepted land and Defence Saving Certificates in the name of her minor children, according to their share of Diyat amount being their Wali---Compromise between the parties was genuine and had been effected with their own free will and consent without external pressures, however Diyat amount had been paid to the minor legal heirs of the deceased at the rate prevalent at the time of the commission of the offence---Validity---Compromise between the legal heirs of the deceased and the convict was a type of a contract---Where the legal heirs of the deceased made a statement before the court pardoning the convict, they would get Badl-e-Sulah in the shape of Diyat amount and where they forgave the convict in the name of Allah, they would get reward thereof from Allah---Where the natural guardians i.e. mother or father of the minors legal heirs of the deceased, forgave the convict, the interest of minors was to be safeguarded by paying them their due share as Diyat amount according to the rate of Diyat prevailing at the time of arriving at the compromise between the parties, as the contract could not have retrospective effect---Section 323, P.P.C, made it clear that the value of Diyat should not be less than the value of thirty thousand six hundred and thirty grams of silver, therefore, it was apparent that the rate of Diyat in vogue at the time of compromise should be applicable and not the rate prevailing at the time of commission of the offence---Compromise, in the present case, had been effected in the financial year 2011-12, therefore, the rate of Diyat declared by the Government vide its notification for the year 2011, was payable to the minor legal heirs of the deceased---Parties were allowed to compound the offence subject to the payment of Diyat to the minor legal heirs of the deceased---Application of the accused was accepted and his petition for leave to appeal was converted into appeal and allowed and he was acquitted of the charge.

2012 S C M R 517

[Supreme Court of Pakistan]

Present: Anwar Zaheer Jamali and Amir Hani Muslim, JJ

NAZEER AHMED and others---Petitioners Versus NOORUDDIN and another---Respondents

Criminal Petition for Leave to Appeal No. 47-K of 2011, decided on 22nd July, 2011.

(a) Anti-Terrorism Act (XXVII of 1997)----

----S.6---Constitution of Pakistan, Art. 185(3)---Jurisdiction of Anti-Terrorism Court, determination of---Accused (petitioners) had challenged the order passed by High Court, by which it directed the Investigating Officer to submit challan of accused before the Anti-Terrorism Court---Validity---High Court had examined the material at length and had rightly concluded that the act of the accused created sense of insecurity amongst the villagers and did destabilize the public at large and, therefore, attracted the provisions of S.6 of Anti-Terrorism Act, 1997---Neither motive nor intention for commission of the offence was relevant for the purpose of conferring jurisdiction of the Anti-Terrorism Court and it was the act which was designed to create sense of insecurity and/or to destabilize the public at large, which attracted the provisions of S.6 of Anti-Terrorism Act, 1997---Accused's act created sense of insecurity amongst the co-villagers---Order of High Court being well reasoned, Supreme Court dismissed accused's' petition and refused leave to appeal.

Mohabat Ali v. The State 2007 SCMR 142 and Bashir Ahmed v. Muhammad Siddiq PLD 2009 SC 11 distinguished.

2012 SCMR 1936

[Supreme Court of Pakistan]

Present: Tassaduq Hussain Jillani, Mian Saqib Nisar and Sarmad Jalal Osmany, JJ

HASIL KHAN---Appellant/Petitioner Versus THE STATE and others---Respondents

Criminal Appeals Nos. 59-Q, 60-Q of 2009 and Criminal Petition No.81-Q of 2009, decided on 17th September, 2012.

(On appeal from the judgments dated 11-11-2009 passed by High Court of Balochistan passed in Criminal Appeals Nos. 6 and 7(S) of 2007).

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

----S. 302(b)--- Qatl-e-amd--- Reappraisal of evidence--- Sentence, reduction in---Death sentence converted into life imprisonment---Mitigating circumstances---Motive alleged not successfully proved---Effect---Accused was alleged to have murdered the deceased (complainant's brother) by firing at him in a bus---Alleged motive for the crime was that prior to the incident accused had murdered his own sister on the pretext of Siahkari with one of the brothers of the complainant---Trial Court convicted and sentenced the accused to life imprisonment and a fine to be paid to the legal heirs of deceased as compensation but did not award the death penalty on the grounds that there were mitigating circumstances inter alia that the immediate cause of murder and actual motive remained shrouded in mystery---High Court enhanced the sentence from life imprisonment to death penalty on the basis that there were no mitigating or extenuating circumstances as accused had committed a premeditated, intentional and cold blooded murder---Validity---Ocular account was furnished mainly by brother and nephew of the deceased but their mere relationship with the deceased would not make them unworthy witnesses if their testimony was corroborated by independent evidence---Testimony of two said witnesses was corroborated by medical evidence and the recovery of weapon---Both said witnesses had reasonably explained their presence at the spot, which reason had not been specifically challenged by the defence during cross-examination---All prosecution witnesses corroborated each other and remained consistent on all material particulars of the case---Even the prosecution witness, who according to the accused did not support the prosecution story, partly supported the prosecution case since she deposed that an assailant entered the bus and started firing at the deceased but added that she could not identify the assailant---Said witness partly corroborated remaining witnesses and it would not harm the prosecution case if she could not identify the assailant/accused because she did not know the assailant/accused prior to the occurrence---Non-association of passengers and bus driver was a lapse on the part of the investigating agency but it would not erode the credibility of remaining evidence if it inspired confidence because court could not lose sight of a certain behaviour pattern in the society where people generally were reluctant to come forward to give evidence for fear of reprisal---High Court had not appreciated that the motive alleged in the F.I.R. was weak and there was no reason why deceased should have been the victim of the motive part of the prosecution story--- Trial Court had rightly observed that motive for the occurrence remained shrouded in mystery---Appeals were partly allowed and sentence of death awarded by High Court to accused was converted into life imprisonment---Appeals were allowed accordingly.

Muhammad Ahmad v. The State 1997 SCMR 89; Muhammad Ashraf Khan Tareen v. The State 1996 SCMR 1747 and Jehanzeb v. The State 2003 SCMR 98 rel.
