

P L D 1991 Supreme Court 1145

**Present. Shafiur Rahman, Actg. CJ., Abdul Shakurul Salam,
Abdul Qadeer Chaudhry, Rustarn S. Sidhwa and Saleem Akhtar, JJ**

**Criminal Miscellaneous Petition No.15-11 of 1988 in
Criminal Appeal No.144-R of 1979**

BASHIR and 3 others-- Petitioners/Appellants

versus

THE STATE-- Respondent

(Criminal Miscellaneous Petition from the order of this Court dated 7-11-1983 passed in Criminal Appeals Nos. 144/79 and 145/79 and Criminal Appeal from the judgment of Lahore High Court, Lahore dated 26-9-19'19 passed, in Criminal Appeal No. 204/79 and Murder Reference No. 130 of 1979).

Criminal Miscellaneous Petition No.18-R of 1990 in Criminal Appeal No.133 of 1981

LIAQUAT SHAH and 2 others-- Petitioners/Appellants

versus

THE STATE-- Respondent

(Criminal Miscellaneous Petition from the judgment of this Court dated 11-5-1985 passed in Criminal Appeal No. 133 of 1981 and Criminal Appeal from the judgment and order of the Lahore High Court, dated 5-2-1980, passed in Criminal Appeal No. 672 of 1978).

Criminal Petition for Leave to Appeal No.169-R of 1989

SHAMMAN and 4 others-- Petitioners

versus

THE STATE--Respondent

(From the judgment/order of Lahore High Court, Lahore, dated 24-5-1989 passed in Criminal Miscellaneous No. 171-M of 1989).

Criminal Appeal No.164 of 1987

ZAHOOR alias ZAHOOR HUSSAIN and 8 others-- Appellants

versus

THE STATE-- Respondent

(From the order of Lahore High Court Lahore dated 11-1-1983 passed in Criminal Appeal No. 1165 of 1979).

Criminal Appeal No.176 of 1986

THE STATE-- Appellant

versus

MUHAMMAD TARIQ-- Respondent

(From the judgment of Lahore High Court, Lahore dated 8-4-1986 passed in Criminal Miscellaneous No. 5-M of 1984 in Criminal Appeal No. 44 of 1978).

Criminal Appeal No.186 of 1986

BASHIR and 3 others-- Appellants

versus

THE STATE-- Respondent

(From the judgment of Lahore High Court, Lahore, dated 4-3-1981 passed in Criminal Appeal No. 555 of 1979).

Civil Appeal No.440 of 1986

GOVERNMENT OF PUNJAB through Secretary, Home Department, Lahore and 2 others—Appellants

versus

ABDUR RASHID alias MALANGI--Respondent

(From the order of Lahore High Court, Lahore dated 8-4-1986 passed in Writ Petition No. 373 of 1984).

Civil Appeal No.441 of 1986

GOVERNMENT OF PUNJAB through Home Secretary, Lahore and 3 others-- Appellants

versus

BERKHA-- Respondent

(From the judgment of Lahore High Court, Lahore dated 8-4-1986 passed in I.CA.No. 252 of 1983).

Civil Appeal No.442 of 1986

THE SUPERINTENDENT, CENTRAL JAIL, KOT LAKHPAT, LAHORE and another-- Appellants

versus

Mst. AZIZ BEGUM and another-- Respondents

(From the judgment of Lahore High Court, Lahore dated 9-4-1986 passed in Writ Petition No. 768 of 1984).

Criminal Miscellaneous Petitions Nos. 15-R of 1988 and 18-R of 1990 in Criminal Appeals Nos. 144-R of 1979 and 133 of 1981 respectively, Criminal Petition for Leave to Appeal No. 169-R of 1989, Criminal Appeals Nos. 164 of 1987, 176 and 186 of 1986, Civil Appeals Nos. 440 to 442 of 1986, decided on 29th August, 1991.

Per Shafiur Rahman. Actg. CJ., Abdul Shakurul Salam, Abdul Qadeer Chaudhry, Rustant S. Sidhwa and Saleem Akhtar, JJ.--

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

---- S.35(2), proviso (a) --- Penal Code (XLV of 1860), S. 302 --- Proviso (a) to subsection (2) of S. 35, Cr.P.C. does not apply to cases of sentence awarded by the Sessions Court in original trial, it does not, therefore, apply to cases of imprisonment for life imposed in murder trial.

Javed Shaikh v. The State 1985 SCMR 153; Juma Khan and another v The State 1986 SCMR 1573; Muhammad Ittefaq v. The State 1986 SCMR 1627 and Khan Zaman and others v. The State 1987 SCMR 1382 reviewed.

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

---- S. 35(1)--- Penal Code (XLV of 18W), S.57 --- Sentence of life imprisonment unless ordered to run concurrently under S.35(1), Cr.P.C. will run consecutively in view of its qualification in terms of years under S.5-1, P.P.C. -Executive order of commutation of sentence of death into life imprisonment takes effect forthwith making such sentence to run concurrently with any other sentence ordered by the Court.

Javed Shaikh v. The State 1985 SCMR 153; Juma Khan and another v The state 1986 SCMR 1573; Muhammad Ittefaq v. The State 1986 SCMR 1627 and Khan Zaman and others v. The State 1987 SCMR 1382 reviewed.

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

---- S. 382-B--- Constitution of Pakistan (W/3), Art.185 --- Benefit of S.382-B Cr.P.C. cannot be claimed outside the judgment and independently of it from the Supreme Court.

Javed Shaikh v. The State 1985 SCMR 153; Juma Khan and; The State 1986 SCMR 1573; Muhammad Ittefaq v. The State 1986 SCMR and Khan Zaman and others v. The State 1987 SCMR 1382 reviewed.

Per Shafiur Rahman, Actg. C.J.--

Javed Shaikh v. The State 1985 SCMR 153; Juma Khan and another v The State 1986 SCMR 1573; Muhammad Ittefaq v. The State 1986 SCMR 162, and Khan Zaman and others v. The State 1987 SCMR 1382 reviewed.

K.E.S.C. Progressive Workers' Union through its Chairman v. K.E.S.C. Labour Union through its General Secretary and 7 others 1991 SCMR 888; Wilberforce on Statute Law, p.503; Maxwell on Interpretation of Statutes by Pst. J. Langan, Twelfth Edn. p.189; The Interpretation of Statutes and General Clauses Acts, (1984) by N.S.Bindra, Seventh Edn., 0.77; Craies on Statute Law, by S.G.G. Edgar, Seventh Edn. p.219; Construction of Statutes by Earl T. Crawford, p.605; Bennion on Statutory Interpretation, p.572; Leah v. Two Worlds Publishing Co. Ltd. (1951) 1 Ch.393; Lloyds and Scottish Finance Ltd. v. Modern Cars and Caravans (Kingaton) Ltd. (1966) 1 QB 764; Messrs East & West Steamship Company v. Pakistan PLD 1958 SC 41; S. Sudaram Pillai, etc. v. V.R.Pattabiraman AIR 1985 SC 582; Odgers on Construction of Deeds and Statutes Fifth Edn.; Sarathi on Interpretation of Statutes pp.294-295 and Dwarka Prasad v. Dwarka Das Saraf AIR 1975 SC 1758 ref.

Per Rustam S. Sidhwa, J.--

Javed Shaikh v. The State 1985 SCMR 153; Juma Khan and another v. The State 1986 SCMR 1573; Muhammad Ittefaq v. The State 1986 SCMR 1627 and Khan Zaman and others v. The State 1987 SCMR 1382 reviewed.

Nga Tha Byit 1893-1900, LBR 13; Vushori Lal v. Emperor AIR 1945 PC 64-72 IA. 149; Javed Shaikh's case 1985 SCMR 153; Amiruddin v. State PLD 1977 SC 602; Zulfiqar Ali v. State PLD 1984 Lah. 461 and Crown v. Habibullah PLD 1952 Lah. 587 ref.

Per Saleem Akhtar, J.--

Nemo for Appellants (in Criminal Miscellaneous Petition No. 15-R of 1988 in Criminal Appeal No. 144-R of 1979).

M. Nawaz Abbasi, Asstt. A.-G. and Rao M. Yusuf Khan, Advocate-on-Record for the State (in Criminal Miscellaneous Petition No. 15-R of 1988 in Criminal Appeal No. 144-R of 1979).

M. A. Zafar, Senior Advocate Supreme Court and M. Aslam Chaudhry, Advocate-on-Record (absent) (in Criminal Miscellaneous Petition No. 18-R of .1990 in Criminal Appeal No. 133-R of 1981).

M. Nawaz Abbasi, Asstt. A.-G. and Rao M. Yusuf Khan, Advocate-on-Record. for the State (in Criminal Miscellaneous Petition No. 18-R of 1990 in Criminal Appeal No. 133-R of 1981).

Nemo for Petitioners (in Criminal Petition for Leave to Appeal No. 169 of 1989).

M. Nawaz Abbasi, Asstt. A.-G. and Rao M. Yusuf Khan, Advocate-on-Record for Respondent (in Criminal Petition for Leave to Appeal No. 169 of 1989).

M.B. Zaman, Senior Advocate Supreme Court (absent) and Ch. Akhtar AIL Advocate-on-Record for Appellants (In Criminal Appeal No. 164 of 1987).

M. Nawaz Abbasi, Asstt. A.-G. and Rao M. Yusuf Khan, Advocate-on-Record for the State (in Criminal Appeal No. 164 of 1987).

M. Nawaz Abbasi, Asstt. A.-G. and Rao M. Yusuf Khan, Advocate-on-Record for the State (in Criminal Appeal No. 176 of 1986).

Nemo for Respondent (in Criminal Appeal No. 176 of 1986).

M. Younas Bhatti, Advocate Supreme Court (absent) for Appellants (in Criminal Appeal No. 186 of 1986).

M. Nawaz Abbasi, Asstt. A.-G. and Rao M. Yusuf Khan, Advocate-on-Record for the State (in Criminal Appeal No. 186 of 1986).

M. Nawaz Abbasi, A sstt. A.-G. and Rao M. Yusuf Khan, Advocate-on-Record for Appellants (in Civil Appeals Nos. 440 to 442 of 1986).

Nemo for Respondents (in Civil Appeals Nos. 440 to 442 of 1986).

Date of hearing: 25th March, 1991.