In the Supreme Court of Pakistan
(Appellate Jurisdiction)

Present:
Mr. Justice Anwar Zaheer Jamali, HCJ
Mr. Justice Amir Hani Muslim
Mr. Justice Umar Ata Bandial

Civil Appeal No.340 of 2002.
(On appeal from judgment of Lahore High Court, Multan Bench dated 08.12.1999, passed in Writ Petition No.5566 of 1999)

Muhammad Anwar

...Appellant

Versus

Muhammad Akram & others

... Respondents

For the appellant: Mr. Arshad Ali Chaudhry, ASC/AOR.

For respondent No.1: Mr. Tauseef Ejaz Malik, ASC.
along with the respondent.

For the State: Mr. Ahmed Raza Gillani, Addl.P.G, Punjab.

Date of hearing: 28.10.2015

JUDGMENT

Anwar Zaheer Jamali, C.J. – This civil appeal with leave of the Court arises out of the order dated 08.12.1999, passed by a learned Division Bench of the Lahore High Court, Multan Bench, in Writ Petition No.5566/1999, whereby the requisite relief, as prayed for by respondent No.1 was granted to him by placing reliance upon the cases cited as Javed Shaikh v. The State (1985 SCMR 153), Shah Muhammad alias Manna v. State (1994 SCMR 582), and 1987 SCMR 36 (no citation available on this page).

2. Briefly stated relevant facts of the case are that in FIR No.240, dated 14.7.1992, registered at P.S Muzaffarabad, under section 302, PPC, respondent No.1 was the sole nominated accused with the allegations that he has committed *qatl-i-amd* of his wife Mst. Azhra Parveen, three minor daughters Mst. Shagufta, Kiran and Aneeqa and his minor son Waqar, by cutting their throats with *chhuri*. After conclusion of the trial, respondent No.1 was found guilty for the charged offence and accordingly convicted vide judgment dated 13.6.1993 and sentenced as under:-

> "18. ..... In the circumstances of the case I convict Muhammad Akram accused under Section 302(a) PPC for causing Qatl-e-amd of his wife Mst. Azra Parveen as qusas and award him death penalty. He has murdered his four children namely Shugufta, Kiran and Aneeqa his daughters and his son Waqar. In accordance with Section 306(b), PPC he has caused the death of his four children and committed qatl-e-amd not liable to qisas. It was argued on behalf of the learned counsel for the complainant that section 302(b) applied to the Qatl-e-amd of all the children but I feel that the accused is guilty under Section 308 PPC and is liable to pay diyat amounting to Rs. One lac seventy thousand on four counts as envisaged under Section 323 PPC. He is also convicted under Section 308(2) PPC for causing the death of his four children namely Shugufta, Kiran and Aneeqa his daughters and his son Waqar, as tazir and is ordered to suffer imprisonment for fourteen years on each count. In case he does not pay diyat, it may be recovered from his properly, if any, which will be given to the legal heirs of the deceased children. In case his death sentence is commuted, the sentences awarded to him under Section 308(2) PPC shall run **consecutively** as he has taken the lives of his wife and his four children. The provisions of Section 382-B, Cr.P.C are not extended in favour of the accused. ....."

3. His appeal before the Supreme Appellate Court Lahore, was also dismissed vide judgment dated 09.4.1994, however with modification in the quantum of sentence, which reads thus:-

> "We find great force in the submission of the learned defence counsel that conviction and sentence of the appellant under section 302(a) PPC with respect to the murder of Mst. Azra Parveen is not sustainable in the eye of law in view of the provisions of sections 306 and 307 PPC, as the appellant being her husband is her wali, so we alter the conviction of the appellant under section 302(a) PPC to one under section 308 PPC and award him sentence of fourteen years R.I. and also direct him to pay diyat amounting to Rs.1,70,000/-. The sentences of imprisonment awarded to the appellant under section 308 PPC on five counts shall run **consecutively**."

4. On 15.6.1999, respondent No.1, who was in custody and serving his sentence, filed a writ petition before the Lahore High Court, Multan Bench with the prayer that different sentences awarded to him may be ordered to run concurrently instead of consecutively, as ordered by the trial Court and the appellate Court. This petition was heard by a learned Division Bench in the Lahore High Court and allowed vide impugned judgment 08.12.1999.

5. We have heard the arguments of learned ASC for the appellant. He strongly contended that respondent No.1 is guilty of committing brutal murder of his wife, three minor daughters and a minor son and it was in this background that the trial Court as well as the appellate Court for valid reasons recorded in their respective judgments had ordered that the sentences awarded to him shall run consecutively, but this aspect of the case was unfairly ignored and done

away by the learned Division Bench in the High Court in a cursory manner, by placing reliance upon certain judgments, which too were not only distinguishable to the facts of the case in hand, but also subsequently reviewed by a larger bench of the Apex Court.

6. The learned Additional Prosecutor General, Punjab on behalf of the official respondents strongly supported the case of the appellant and placed reliance upon the following cases to show that the case cited in the impugned judgment have already been reviewed:-

a. Bashir v. The State (PLD 1991 SC 1145).
b. Muhammad Arshad v. The State (PLD 2011 SC 310).
c. Ali Khan Kakar v. Hammad Abbasi (2012 SCMR 334).

7. Besides, he referred some other cases to show that in the facts and circumstances of the case, awarding of different sentences with directions that the same shall run consecutively was in accordance with law. Thus, no interference was called for from the High Court while exercising its jurisdiction under Article 199 of the Constitution, which is discretionary in nature and not at all meant to perpetuate injustice of such nature.

8. The learned ASC for respondent No.1, when confronted with the above stated facts and the law cited at the bar, did not dispute the position either on facts or law, but submitted that since the respondent No.1 was *wali* of the victims of the incident, therefore, a lenient view in the matter, as taken by the High Court in its impugned judgment, is justified.

9. We have carefully considered the arguments of learned ASCs and perused the material placed on record. There is no dispute as regards the relevant facts of the case noted above that respondent No.1 was found guilty for committing *qatl-i-amd* of his wife, three daughters and a son in a brutal manner and for that account, consciously the trial Court, while awarding sentence to him, had ordered that the same shall run consecutively, and in addition to it, he was also held liable to pay *diyat* amount at the rate of Rs.1,70,000/- per victim. The appellate Court had also consciously examined this aspect and concurred with such view looking to the nature of the occurrence.

10. The discretionary power vested in the Court to direct that the awarded sentences to run consecutively or concurrently is to be exercised in the light of the facts and circumstances of each case, keeping in view the scope of section 35 of the Code of Criminal Procedure, 1908, the nature and manner of occurrence and the gravity of the offence. Thus, it seems quite strange and unreasonable that through impugned judgment, the learned Division Bench of the High Court had done away with the conditionality of such sentences while exercising writ jurisdiction under Article 199 of the Constitution, which is equitable and discretionary in nature and not meant to give premium to a criminal for commission of such heinous crime. A reference to the above cited judgments makes it abundantly clear that the citations referred and relied upon by the High Court in its impugned judgment were reviewed by a larger bench of the apex Court and in one of these

cases Ali Khan Kakar v. Hammad Abbasi (2012 SCMR 334), while considering a similar request in review jurisdiction, the conviction of the accused, who was awarded total sentence of 300 years imprisonment, was upheld.

11. From the material available before us, we have seen that a sum of Rs.8,50,000/- has been deposited by respondent no.1 in Court towards payment of *diyat* amount. It is, therefore, ordered that this amount may be paid to the legal heirs of the deceased, as mandated by law.

12. Foregoing are the reasons for our short order in this appeal, which is reproduced as under:-

> "We have heard the arguments of learned ASCs and perused the case record. For the reasons to be recorded separately, this appeal is allowed and the impugned judgment dated 08.12.1999 is set aside. Respondent No.1 Muhammad Akram, who is present in Court, is ordered to be taken into custody to serve the remaining sentence in terms of the judgment of the Supreme Appellate Court dated 09.04.1994 passed against him."

Chief Justice

Judge

Islamabad,
28th October, 2015. Judge
Approved for reporting.
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