

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

Mr. Justice Jawwad S. Khawaja
Mr. Justice Mushir Alam
Mr. Justice Dost Muhammad Khan

Civil Appeal No.482/2014

(On appeal from the judgment dated 30.9.2013 passed by the High Court of Balochistan, Quetta in C.P.No.265/2012).

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| 1. Mst. Shahista Bibi | |
| 2. Abdul Qayyum | ...Appellants |

VERSUS

- | | |
|---|----------------|
| 1. The Supdt. Central Jail | |
| 2. I.G. (Prisons) Balochistan, Quetta | |
| 3. The Secretary, Home & Tribal Affairs Deptt.
Govt. of Balochistan, Quetta. | ...Respondents |

For the appellants: Malik Asmatullah Kasi, ASC

For the respondents: Mr. Iqbal Khattak, APG

Date of hearing: 19.9.2014

JUDGMENT

Dost Muhammad Khan, J. – Leave to appeal was granted to the appellants namely (i) Mst. Shahista Bibi (widow) of Allah Dad and (ii) Abdul Qayyum son of Allah Dad (Late), presently confined in Central Jail Mach.

2. The order, granting leave dated 24.03.2014, speaks that keeping in view the principles laid down by this Court in the cases of Shah Hussain vs. State (PLD 2009 SC 460) and Hassan v. State (PLD 2013 SC 793), the case of the appellants needs consideration.

3. As the appellants have not questioned their conviction and sentences awarded to them by the trial Court, affirmed by the High Court of Balochistan, Quetta and confirmed by this Court by dismissing their appeal on merits, but in this appeal the appellants have sought the relief of section 35 read with S. 397 Cr.P.C.

4. Relevant but brief facts sufficient for disposal of this appeal are that appellant No.2 was booked in the following crimes, by PS City Quetta: -

- (i) *In case FIR No. 16/1987 Quetta U/Ss 3, 4, 5 & 6 of the Explosive Substances Act, 1908 R/W Ss. 120-B/436/307/34 PPC;*
- (ii) *In case FIR No.17/1987, U/Ss 3, 4, 5, & 6 of the Explosive Substances Act, 1908 R/W Ss. 436, 302, 307/34 PPC,*
- (iii) *In case FIR No. 26/198, U/Ss 4 & 5 of the Explosives Substances Act, and*
- (iv) *In case FIR No.27/1987 U/Ss 4 & 5 of the Explosive Substances Act, 1908.*

In each of the four cases, appellant No.2 was awarded death sentence U/S 3/6 of the Explosive Substances Act, 1908 and U/S 302 PPC, while for the rest of the offences, he was awarded 25 years R.I with fine and 7 years R.I. with fine on four counts. However, the learned Judge of the Special Court did not direct that all the sentences of imprisonment shall run concurrently according to the scheme provided in section 35 Cr.P.C. Now when the death sentences have been commuted to life imprisonment, the same definitely exceed the human life, the average of which is upto 70/75 years at the most in Pakistan. In the first round, this Court also dismissed all the four appeals of appellant No.2, however, the death sentence in case FIR No. 16/1987 and FIR No.17/1987 was altered to life imprisonment by the Government of Pakistan.

5. On December 22, 2005 a letter was addressed to the Registrar of this Court by the Regional Director of Human Rights Commission of Balochistan that the sentences of imprisonment awarded, would never expire in his life time and the matter be brought to the notice of the Hon'ble Chief Justice of Pakistan.

6. After calculation of various sentences of imprisonment per jail record, the release of the appellant was cited as 19.05.2273. However, after hearing the arguments this Court vide order dated October 17, 2011 dismissed CMA No.28(Q) of 2006 along with Human Rights Case No.3078/2006 and Civil Petition No.1393/2010.

7. With considerable vehemence the learned counsel, while relying on the principle laid down in the case of Shah Hussain (ibid) and that of Hassan and others (aforementioned), urged that after spending many years in Death-Cell, the sentence/sentences given to the appellant/appellants were commuted by the

Government of Pakistan to life imprisonment, therefore, the expectancy of life has become a strong phenomenon to attract the beneficial and fair interpretation of this Court in the above two reported judgments to their case.

It is by now well embedded and deeply entrenched universal principle of law that while interpreting the provision of punitive law, Courts are required to strive in search of an interpretation, which prefer the liberty of a person instead of curtailing the same and that too unreasonably and unfairly unless, the statutory law clearly directs otherwise.

8. Besides the provisions of section 35 Cr.P.C. the provisions of section 397 Cr.P.C. altogether provide entirely a different proposition widening the scope of discretion of the Court to direct that sentences of imprisonment or that of life imprisonment awarded at the same trial or at two different trials but successively, shall run concurrently. Once the Legislation has conferred the above discretion in the Court then in hardship cases, Courts are required to seriously take into consideration the same to the benefit of the accused so that to minimize and liquidate the hardship treatment, the accused person is to get and to liquidate the same as far as possible. In a situation like the present one, the Court of law cannot fold up its hands to deny the benefit of the said beneficial provision to an accused person because denial in such a case would amount to a ruthless treatment to him/her and he/she would certainly die while undergoing such long imprisonment in prison. Thus, the benefit conferred upon the appellant/appellants through amnesty given by the Government, if the benefit of directing the sentences to run concurrently is denied to him/them, would brought at naught and ultimately the object of the same would be squarely defeated and that too, under the circumstances when the provision of S. 397 Cr.P.C. confers wide discretion on the Court and unfettered one to extend such benefit to the accused in a case of peculiar nature like the present one. Thus, construing the beneficial provision in favour of the accused would clearly meet the ends of justice and interpreting the same to the contrary would certainly defeat the same.

9. It is also hard and fast principle relating to interpretation of criminal law, which curtails the liberty of a person that it should be construed very strictly and even if two equal interpretations are possible then the favourable to the accused and his liberty must be adopted and preferred upon the contrary one.

10. In the cases of Khan Zaman v. The State (1987 SCMR 1382), Juma Khan v. The State (1986 SCMR 1573) and Muhammad Ittafaq v. The State (1986 SCMR 1627) similar benefit was given to the accused while construing the provision of section 35(2) Cr.P.C.

11. The Peshawar High Court widened this scope on sound reasons in the case of Altaf Hussain v. The State [PLJ 1987 Cr.C (Peshawar)437] extending the same benefit to an accused, who was already undergoing life imprisonment, awarded by the Special Military Court and directed that subsequent sentence of 5 years R.I. awarded by the Judge Special Court Anti-Corruption shall run concurrently with the life imprisonment.

12. In this case, the appellants have already undergone all the sentences, so awarded and according to the calculation chart, provided in the petition, the total period of imprisonment comes to 214 years and the total amount of fine imposed is Rs.17,20000/- or in default thereof to undergo imprisonment for a further period of 11½ years R.I. It was argued at the bar that after getting benefit of section 382-B Cr.P.C and various remissions, granted by the Federal, Provincial Governments and the Jail Authorities, the appellant/appellants have undergone sentence of 42 years 07 month and 21 days on the date, the petition for leave to appeal was instituted and the unexpired portion of sentence yet to undergo by the appellant/appellants comes to 171 years 04 months and 09 days. In our view, surely and without any fear of rebuttal, the above facts make out the case of detestable hardship, which in no circumstances, shall go unnoticed like in the past. Thus, a strong case has been made out to extend the prayed concession to the appellant/appellants.

13. The plea of the learned counsel for the State that previously the review petition of the appellant was dismissed, therefore, it should be construed as a bar to entertain a second review petition being barred by law, is misconceived one.

We have attended to this plea but it is hardly entertainable being bereft of legal grounds and is based on erroneous reasons of the law and the rules on the subject because the previous review petition was with regard to the commutation of sentence from death to life. Even otherwise, for doing substantial justice in a true sense in hardship cases like the present one, technicality of law and rule shall not operate as an absolute bar in the way of the Court because giving preference to the technicality of law would defeat substantial justice and denial of justice to a person entitled to it, would be worst kind of treatment to be meted out to him and that too by the apex Court of the country.

14. If the sentences are allowed to run consecutively, the appellant/appellants, as earlier discussed, would meet natural death during the imprisonment. This undeniable fact was even not disputed by the learned counsel for the State. The very object, for which the Government of Pakistan commuted the sentences of death to life imprisonment and the benefit so accrued to the accused would be denied to him/them in this way and that concession, thus given, would stand nowhere and may evaporate within no time like air bubbles vanish in the air within a twinkle of an eye.

15. Accordingly, this appeal is allowed and it is directed that all the sentences awarded to the appellant/appellants shall run and shall be deemed to have run concurrently, besides the appellant/appellants shall have also to get the benefit of section 382-B Cr.P.C and all the remissions whether granted by the Federal, Provincial Governments or the Jail Authorities, shall be extended to them.

Appeal is allowed.

Judge

Judge

Judge

Islamabad, the
19th September, 2014
'Nisar'

Approved For Reporting